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DEPARTMENT OF TRANSPORTATION (DOT)

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–17996; Directorate Identifier 2004–NM–100–AD; Amendment 39–13659; AD 2004–11–13]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD) for all Airbus Model A318, A319, A320, and A321 series airplanes. That AD currently requires a one-time general visual inspection to determine the part number and serial number of both main landing gear (MLG) sliding tubes, and related investigative and corrective actions if necessary. This amendment adds an additional inspection to determine only the serial number of the MLG sliding tubes. This AD is prompted by a report that the field of MLG sliding tubes subject to the identified unsafe condition has expanded. We are issuing this AD to detect and correct cracking in an MLG sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane.

DATES: Effective June 23, 2004.

The incorporation by reference of Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004, listed in the AD is approved by the Director of the Federal Register as of June 23, 2004.

On April 14, 2004 (69 FR 16475, March 30, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A320–32A1273, dated February 5, 2004.

We must receive any comments on this AD by August 9, 2004.

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

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand 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.

You can get the service information identified in this AD from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You may examine this information 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.*

You may examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

Docket Management System (DMS)

The FAA has implemented new procedures for maintaining AD dockets electronically. As of May 17, 2004, new AD actions are posted on DMS and assigned a docket number. We track each action and assign a corresponding directorate identifier. The DMS AD docket number is in the form ''Docket No. FAA–2004–99999.'' The Transport Airplane Directorate identifier is in the form ''Directorate Identifier 2004–NM–999–AD.'' Each DMS AD docket also lists the directorate identifier (''Old Docket Number'') as a cross-reference for searching purposes.

Examining the Dockets

You may examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: On March 19, 2004, we issued AD 2004–07–02, amendment 39–13546 (69 FR 16475, March 30, 2004). That AD requires a one-time general visual inspection to determine the part number and serial number of both main landing gear (MLG) sliding tubes, and related investigative and corrective actions if necessary. That AD was prompted by a report indicating that, during a routine visual inspection of an MLG sliding tube, a linear crack was found at the intersection of the cylinder and the axle. The actions specified in that AD are intended to detect and correct cracking in an MLG sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane.

Actions Since AD Was Issued

Since we issued that AD, the Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that the applicability field of the MLG sliding tubes that need to be inspected has been expanded. Initially, the number of affected parts included MLG sliding tubes with certain serial numbers (S/Ns) and with certain part numbers (P/Ns). However, the field of affected parts has been expanded to include additional MLG sliding tubes that are subject to the identified unsafe condition. Additionally, the MLG sliding tubes have all been identified by S/N, regardless of P/N.

Relevant Service Information

Airbus has issued All Operators Telex (AOT) A320–32A1273, Revision 01, dated May 6, 2004, which describes procedures for a one-time inspection to determine the serial number of both MLG sliding tubes, and related investigative and corrective actions if necessary. The AOT specifies to report the S/N to Airbus. The related investigative action includes repetitive inspections of the MLG sliding tubes for cracking. The corrective actions include replacing the MLG sliding tube with a new or serviceable MLG sliding tube, reporting any cracking to Airbus, and sending the affected MLG sliding tube to Messier-Dowty. Replacing the MLG sliding tube with an MLG sliding tube having a S/N that is not listed in the AOT eliminates the need for the repetitive inspections.

The DGAC mandated the service information and issued French airworthiness directive UF–2004–065, dated May 11, 2004, to ensure the continued airworthiness of these airplanes in France.

FAA's Determination and Requirements of This AD

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

Therefore, we are issuing this AD to detect and correct cracking in an MLG sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane. This AD continues to require a one-time general visual inspection to determine the P/N and S/N of both MLG sliding tubes, and related investigative and corrective actions if necessary. This AD adds an additional inspection to determine only the S/N of the MLG sliding tubes. This AD also provides for terminating action for certain requirements. This AD requires using the service information described previously to perform these actions, except as discussed under ''Differences Among the French Airworthiness Directive, Service Information, and This AD.''

We are requiring a short compliance time because the identified unsafe condition can adversely affect the controllability of the airplane. Therefore, we must issue this AD immediately, and you must comply with the requirements at the specified time intervals.

Differences Among the French Airworthiness Directive, Service Information, and This AD

The applicability of the French airworthiness directive and the effectivity of the AOT include the list of affected S/Ns for the MLG sliding tubes. The applicability of this AD does not include S/Ns. We find that listing S/Ns in the applicability is not necessary because paragraphs (f) and (g) of this AD require a general visual inspection to determine the S/N of both MLG sliding tubes.

The AOT specifies to send any cracked part to Messier-Dowty. This AD does not include such a requirement.

Clarification of Inspection Terminology

The Airbus AOT specifies to ''visually check'' the serial number displayed on the MLG sliding tube. This AD requires a ''general visual inspection,'' which is defined in Note 1 of this AD. For certain airplanes, the AOT also specifies to ''visually check'' the MLG sliding tube for surface cracking. This AD requires a ''detailed inspection,'' which is defined in Note 2 of this AD.

Clarification of Corrective Action

The Airbus AOT specifies to remove any cracked MLG sliding tube from the airplane, but does not specify replacing the affected part with another part. This AD requires replacing any cracked part with a new or serviceable part.

Change to Existing AD

This AD would retain certain requirements of AD 2004–07–02. Since AD 2004–07–02 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, the corresponding paragraph identifiers have changed in this AD, as listed in the following table:

REVISED PARAGRAPH IDENTIFIERS

Requirement in AD 2004–07–02	Corresponding requirement in this AD
Paragraph (a)	Paragraph (f).
Paragraph (b)	Paragraph (h).
Paragraph (c)	Paragraph (i).

Interim Action

We consider this AD to be interim action. The manufacturer is currently developing a non-destructive inspection technique to detect non-metallic inclusions in the base metal of the MLG sliding tube, which, along with any necessary corrective actions, will address the unsafe condition identified in this AD. Once this inspection is developed, approved, and available, we may consider additional rulemaking.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD; therefore, providing notice and opportunity for public comment before the AD is issued is impracticable, and good cause exists to make this AD effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–17996; Directorate Identifier 2004–NM–100–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, *etc.*). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications with you. You can get more information about plain language at *http://www/faa.gov/language* and *http://www.plainlanguage.gov.*

Regulatory Findings

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

For the reasons discussed above, I certify that the regulation:

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

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

3. 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 regulatory evaluation of the estimated costs to comply with this AD. *See* the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing amendment 39–13546 (69 FR 16475, March 30, 2004) and adding the following new AD:

2004–11–13 Airbus: Docket No. FAA–2004–17996; Directorate Identifier 2004–NM–100–AD; Amendment 39–13659.

Effective Date

(a) This AD becomes effective June 23, 2004.

Affected ADs

(b) This AD supersedes AD 2004–07–02, amendment 39–13546.

Applicability

(c) This AD applies to all Model A318, A319, A320, and A321 series airplanes, certificated in any category.

Unsafe Condition

(d) This AD was prompted by a report that the field of main landing gear (MLG) sliding tubes subject to the identified unsafe condition has expanded. We are issuing this AD to detect and correct cracking in a main landing gear (MLG) sliding tube, which could result in failure of the sliding tube, loss of one axle, and consequent reduced controllability of the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2004–07–02

Part Number Identification, Detailed Inspection, and Corrective Action

(f) For airplanes on which the actions required by AD 2004–07–02, amendment 39–13546, have been done before the effective date of this AD: Within 30 days after April 14, 2004 (the effective date of AD 2004–07–02), do a one-time general visual inspection to determine the part number (P/N) and serial number (S/N) of both MLG sliding tubes, per Airbus All Operators Telex (AOT) A320–32A1273, dated February 5, 2004. After the effective date of this AD, only the S/N must be determined and only Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004, may be used; as required by paragraph (g) of this AD.

(1) If both the P/N and S/N of any MLG sliding tube are not listed in the AOT A320–32A1273, dated February 5, 2004: No further action is required by this paragraph for that MLG sliding tube.

(2) If both the P/N and S/N of any MLG sliding tube are listed in the AOT A320–32A1273, dated February 5, 2004: Before further flight, do a detailed inspection of the MLG sliding tube for cracking, per AOT A320–32A1273, dated February 5, 2004, or AOT A320–32A1273, Revision 01, dated May 6, 2004. After the effective date of this AD, do the detailed inspection per AOT A320–32A1273, Revision 01, dated May 6, 2004.

(i) If no cracking is found in any MLG sliding tube: Repeat the detailed inspection thereafter at intervals not to exceed 10 days until the inspection required by paragraph (g)(2)(ii) of this AD is done.

(ii) If any cracking is found in any MLG sliding tube: Before further flight, replace the part with a new or serviceable part per a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual is one approved method. Installation of an MLG sliding tube that does not have both a P/N and an S/N listed in Airbus AOT A320–32A1273, dated February 5, 2004; or an S/N listed in Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004; is terminating action for the repetitive inspections required by paragraph (f)(2)(i) of this AD for that MLG sliding tube only. After the effective date of this AD, only the installation of an MLG sliding tube that does not have an S/N listed in Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004, is terminating action for the repetitive inspections required by paragraph (f)(2)(i) of this AD for that MLG sliding tube only.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Note 2: For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required.''

New Requirements of This AD

Serial Number Identification

(g) For all airplanes: Within 30 days after the effective date of this AD, do a one-time general visual inspection to determine the S/N of both MLG sliding tubes, per Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004. Instead of inspecting the MLG sliding tubes, reviewing the airplane maintenance records is acceptable if the S/N of the MLG sliding tubes can be positively determined from that review.

(1) If the S/N of any MLG sliding tube is not listed in AOT A320–32A1273, Revision 01, dated May 6, 2004: No further action is required by this paragraph for that MLG sliding tube.

(2) If the S/N of any MLG sliding tube is listed in AOT A320–32A1273, Revision 01, dated May 6, 2004: Do the actions in paragraph (g)(2)(i) or (g)(2)(ii) of this AD, as applicable.

(i) For any MLG sliding tube that has not been inspected per paragraph (f)(2) of this AD before the effective date of this AD: Before further flight, do a detailed inspection of the MLG sliding tube for cracking, per AOT A320–32A1273, Revision 01, dated May 6, 2004.

(A) If no cracking is found in any MLG sliding tube: Repeat the detailed inspection at intervals not to exceed 10 days.

(B) If any cracking is found in any MLG sliding tube: Before further flight, replace the part with a new or serviceable part per a method approved by either the FAA or the Direction Générale de l'Aviation Civile (or its delegated agent). Chapter 32 of the Airbus A318/A319/A320/A321 Aircraft Maintenance Manual is one approved method. Installing an MLG sliding tube that has an S/N that is not listed in Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004, terminates

the repetitive inspections required by paragraph (g)(2)(i) of this AD for that MLG sliding tube only.

(ii) For any MLG sliding tube that has been inspected per paragraph (f)(2) of this AD before the effective date of this AD: Within 10 days since the last inspection required by paragraph (f)(2) of this AD, do the detailed inspection required by paragraph (g)(2)(i) of this AD. Performing this detailed inspection terminates the repetitive inspections required by paragraph (f)(2)(i) of this AD.

Submission of Cracked Parts Not Required

(h) Airbus AOT A320–32A1273, dated February 5, 2004, and AOT A320–32A1273, Revision 01, dated May 6, 2004, specify to send any cracked part to Messier-Dowty. This AD does not include such a requirement.

Reporting Requirement

(i) Prepare a report of any crack found during any detailed inspection required by paragraphs (f)(2)(i) and (g)(2) of this AD. Send the report to Airbus Customer Services, Engineering and Technical Support, Attention: M.Y. Quimiou, SEE33, fax +33+ (0) 5.6193.32.73, at the applicable time specified in paragraph (i)(1) or (i)(2) of this AD. The report must include the MLG sliding pin P/N and S/N, date of inspection, a description of any cracking found, the airplane serial number, and the number of flight cycles on the MLG at the time of inspection. Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements contained in this AD and has assigned OMB Control Number 2120–0056.

(1) If the inspection is done after April 14, 2004: Submit the report within 30 days after the inspection.

(2) If the inspection was done before April 14, 2004: Submit the report within 30 days after April 14, 2004.

Parts Installation

(j) As of the effective date of this AD, no person may install an MLG sliding tube having an S/N that is listed in Airbus AOT A320–32A1273, Revision 01, dated May 6, 2004, on any airplane, unless the part has been inspected, and any applicable correction done, per paragraph (g)(2)(i) of this AD.

Alternative Methods of Compliance (AMOCs)

(k) The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(l) French airworthiness directive UF–2004–065, dated May 11, 2004, also addresses the subject of this AD.

Material Incorporated by Reference

(m) You must use Airbus All Operators Telex A320–32A1273, dated February 5, 2004; and Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004; as applicable; to perform the actions that are required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approves the incorporation by reference of Airbus All Operators Telex A320–32A1273, Revision 01, dated May 6, 2004, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) On April 14, 2004 (69 FR 16475, March 30, 2004), the Director of the Federal Register approved the incorporation by reference of Airbus All Operators Telex A320–32A1273, dated February 5, 2004.

(3) You can get copies of the documents from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. You can review copies at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, Nassif Building, Washington, DC; 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.*

Issued in Renton, Washington, on May 28, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12678 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–53–AD; Amendment 39–13658; AD 2004–11–12]

RIN 2120–AA64

Airworthiness Directives; Alexander Schleicher Model ASW 27 Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Alexander Schleicher Model ASW 27 sailplanes equipped with integrated (wet inner surface) water ballast tanks in the wings, which could put the center of gravity (CG) of the sailplane out of the acceptable range. This AD requires you to install a warning placard requiring pilots weighing more than 105 kg (231.5 lbs) to use the rearmost backrest hinge position; and requires you to determine the forward empty CG and make any necessary adjustments. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Germany. We are issuing this AD to correct the CG to the acceptable range when integrated ballast water tanks are installed. Failure of the sailplane to be within the acceptable CG range could result in loss of sailplane control.

DATES: This AD becomes effective on July 27, 2004.

As of July 27, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Alexander Schleicher GmbH & Co., Segelflugzeugbau, D–36163 Poppenhausen, Germany.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–53–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: Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Luftfahrt-Bundesamt (LBA), which is the airworthiness authority for Germany, recently notified FAA that an unsafe condition may exist on certain Alexander Schleicher Model ASW 27 sailplanes with wings equipped with integrated (wet inner surface) water ballast tanks. The LBA reports that water ballast in the integral wing water ballast tanks causes a stronger nose heavy moment than the soft water ballast bags, putting the CG out of acceptable range. To compensate for this, pilots over a certain weight must only use the rearmost backrest position.

What is the potential impact if FAA took no action? Failure of the sailplane to be within the acceptable CG range could result in loss of sailplane control.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Alexander Schleicher Model ASW 27 sailplanes equipped with integrated (wet inner surface) water ballast tanks in the wings. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 14, 2004 (69 FR 19777). The NPRM proposed to require you to install a warning placard requiring pilots weighing more than 105 kg (231.5 lbs) to use the rearmost backrest hinge position; and require you to determine the forward empty weight CG and make any necessary adjustments.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the 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 sailplanes does this AD impact? We estimate that this AD affects 31 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the modification:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
1 workhour × $60 per hour = $60	$7	$67	$2,077

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–53–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–11–12 Alexander Schleicher Gmbh & Co.: Amendment 39–13658; Docket No. 2003–CE–53–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on July 27, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects the following Alexander Schleicher Model ASW 27 sailplanes that are certificated in any category:

Serial numbers	Condition
(1) 27105, 27109, 27110, 27113, 27115, 27116, and 27119 through 27177.	Equipped with integrated (wet inner surface) water ballast tanks on the wing at manufacture.
(2) 27001 and up	Equipped with integrated (wet inner surface) water ballast tanks through wing replacement per Technical Note No. 2.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of water ballast in the integral wing water ballast tanks that may cause a stronger nose heavy moment than the soft water ballast bags, putting the center-of-gravity (CG) out of acceptable range. To compensate for this, pilots over a certain weight must only use the rearmost backrest position. The actions specified in this AD are intended to correct the forward empty weight CG and prevent loss of sailplane control.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Fabricate (using letters at least 1/8-inch in height) a warning placard with the following language and install this placard in the cockpit in full view of the pilot: ''When water ballast is used, pilots weighing 105 kg (231.5 lbs) or more including parachute must use the rearmost back rest hinge position!''.	Warning placard must be installed within 25 hours time-in-service (TIS) after July 27, 2004 (the effective date of this AD).	Install placard following Alexander Schleicher Technical Note No. 9, dated February 27, 2002.
(2) Determine the forward empty weight CG ..... (i) If the CG is out of acceptable range, prior to further flight, contact the manufacturer at Alexander Schleicher GmbH & Co., Seglflugzeugbau, D–36163 Poppenhausen, Germany for corrective action and perform the corrective action. (ii) If CG is within acceptable range, no further action is necessary.	Within the next 50 hours TIS after July 27, 2004 (the effective date of this AD).	Check forward empty weight of CG following Alexander Schleicher Technical Note No. 9, dated February 27, 2002.

Note: Alexander Schleicher Technical Note No. 9, dated February 27, 2002, changes some pages to the maintenance manual. We recommend that you review those changes.

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, Standards Office, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, MO 64106. For information on any already approved alternative methods of compliance, contact Gregory Davison, Aerospace Engineer, Small Airplane Directorate, ACE–112, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: 816–329–4130; facsimile: 816–329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Alexander Schleicher Technical Note No. 9, dated February 27, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Alexander Schleicher GmbH & Co., Seglflugzeugbau, D–36163 Poppenhausen, Germany. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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.*

Is There Other Information That Relates to This Subject?

(h) LBA AD 2002–086, dated March 7, 2002, and Alexander Schleicher Technical Note No. 9, dated February 27, 2002 also address the subject of this AD.

Issued in Kansas City, Missouri, on May 27, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12574 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–66–AD; Amendment 39–13656; AD 2004–11–10]

RIN 2120–AA64

Airworthiness Directives; Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' Model SZD–50–3 ''Puchacz'' Sailplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA adopts a new airworthiness directive (AD) for all Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL-Bielsko'' (PZL-Bielsko) Model SZD–50–3 ''Puchacz'' sailplanes. This AD requires you to inspect the airbrake torque tube for cracks, distortion, and corrosion (herein referred to as damage). This AD also requires you to replace or repair any damaged airbrake torque tube. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this AD to detect and correct damage on the airbrake torque tube, which could result in failure of the airbrake system. This failure could lead to loss of control of the sailplane.

DATES: This AD becomes effective on July 19, 2004.

As of July 19, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

ADDRESSES: You may get the service information identified in this AD from Allstar PZL Glider Sp. z o.o., ul. Cieszyńska 325, 43–300 Bielsko-Biala.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–66–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: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Office (CAO), which is the airworthiness authority for Poland, recently notified FAA that an unsafe condition may exist on all PZL-Bielsko Model SZD–50–3 ''Puchacz'' sailplanes. The CAO reports several instances of the airbrake torque tube breaking and separating from the fuselage during flight, which makes it impossible to retract the airbrake.

An investigation revealed damage at the welded joint between the airbrake torque tube and the fuselage. The damage was caused by material fatigue due to frequent striking load that exceeds the recommended allowances and/or corrosion.

What is the potential impact if FAA took no action? This condition, if not detected and corrected, could cause the airbrake system to fail. Failure of the airbrake system could result in loss of control of the sailplane.

Has FAA taken any action to this point? We issued a proposal to amend

part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all PZL-Bielsko Model SZD–50–3 ''Puchacz'' sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 9, 2004 (69 FR 18845). The NPRM proposed to require you to inspect the airbrake torque tube for cracks, distortion, and corrosion (damage) and replace or repair any damaged airbrake torque tube.

Comments

Was the public invited to comment? We provided the public the opportunity to participate in developing this AD. We received no comments on the proposal or on the determination of the cost to the public.

Conclusion

What is FAA's final determination on this issue? We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Changes to 14 CFR Part 39—Effect on the AD

How does the revision to 14 CFR part 39 affect this AD? On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the 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 sailplanes does this AD impact? We estimate that this AD affects 8 sailplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected sailplanes? We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per sailplane	Total cost on U.S. operators
5 workhours × $65 per hour = $325	Not applicable	$325	$2,600

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of sailplanes that may need this replacement:

Labor cost	Parts cost	Total cost per sailplane
5 workhours × $65 per hour = $325	$294	$325 + $294 = $619

Regulatory Findings

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

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

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–66–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. FAA amends § 39.13 by adding a new AD to read as follows:

2004–11–10 Przedsiebiorstwo Doswiadczalno-Produkcyjne Szybownictwa ''PZL–Bielsko'': Amendment 39–13656; Docket No. 2003–CE–66–AD.

When Does This AD Become Effective?

(a) This AD becomes effective on July 19, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Model SZD–50–3 ''Puchacz'' sailplanes, all serial numbers, that are certificated in any category.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Poland. We are issuing this AD to detect and correct cracks in the airbrake torque tube, which could result in failure of the airbrake system. This failure could lead to loss of control of the sailplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) Using a flourescent dye-penetrant or dye-check method, inspect the airbrake torque tube for cracks and corrosion pits. Visually inspect for permanent distortions and surface corrosion (damage).	Within the next 25 hours time-in-service (TIS) after July 19, 2004 (the effective date of this AD). Repetitively inspect thereafter at intervals not to exceed 12 calendar months or 100 hours TIS, whichever occurs later.	Follow Allstar PZL Glider SP. Z o.o. Mandatory Bulletin No. BE–052/SZD–50–3/2003 ''Puchacz'', dated July 22, 2003.
(2) Based on the results of the inspection: (a) Repair the airbrake torque tube if slight, uniform corrosive deposits are found during the inspection required in paragraph (e)(1) of this AD by removing the corrosive deposits with a fine abrasive paper; and (b) Replace the airbrake torque tube if any other damage is found during the inspection required in paragraph (e)(1) of this AD.	Prior to further flight after the inspection in which the damage is found. Continue with the repetitive inspections required in paragraph (e)(1) of this AD after each repair or replacement is made.	Follow Allstar PZL Glider Sp. Z o.o. Mandatory Bulletin No. BE–052/SZD–50–3/2003 ''Puchacz'', dated July 22, 2003.

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, Standards Office, Small Airplane Directorate, FAA. For information on any already approved alternative methods of compliance, contact Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; facsimile: (816) 329–4090.

Does This AD Incorporate Any Material by Reference?

(g) You must do the actions required by this AD following the instructions in Allstar PZL Glider Sp. Z o.o. Mandatory Bulletin No. BE–052/SZD–50–3/2003 ''Puchacz'', dated July 22, 2003. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Allstar PZL Glider Sp. z o.o., ul. Cieszyńska 325, 43–300 Bielsko-Biala. You may review copies at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; 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.*

Is There Other Information That Relates to This Subject?

(h) Republic of Poland AD Number SP–0052–2003–A, dated July 22, 2003, also addresses this subject.

Issued in Kansas City, Missouri, on May 27, 2004.

Scott L. Sedgwick,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12573 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–111–AD; Amendment 39–13654; AD 2004–11–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330, A340–200, and A340–300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes, that requires replacement of flap rotary actuators with modified flap rotary actuators. This action is necessary to prevent fatigue failure of the rotary actuator lever for the flaps, which could result in loss of the flap surface and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

DATES: Effective July 13, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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.*

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A330, A340–200, and A340–300 series airplanes was published in the **Federal Register** on February 13, 2004 (69 FR 7181). That action proposed to require replacement of flap rotary actuators with modified flap rotary actuators.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. The FAA has duly considered the comments received.

Request To Reference Latest Revisions of Service Information

One commenter, the airplane manufacturer, requests that we revise the proposed AD to refer to Airbus Service Bulletins A330–27–3106 (for Model A330 series airplanes) and A340–27–4111 (for Model A340–200 and –300 series airplanes), both Revision 02, both dated February 4, 2004. The proposed AD refers to the original issue of those service bulletins, dated February 18, 2003, as the acceptable sources of service information for the accomplishment of the proposed actions.

We concur with the commenter's request. The procedures in Revision 01, dated April 8, 2003, and Revision 02 of the referenced service bulletins are essentially the same as those in the

original issue of the service bulletins. Revision 02 of the service bulletins adds references to Liebherr-Aerospace Lindenberg GmbH Service Bulletins 697510–27–03 and 697511–27–03, both dated December 5, 2003, as additional sources of service information for replacing the subject flap rotary actuators. Accordingly, we have revised paragraph (a) of this AD to refer to Revision 02 of the Airbus service bulletins as the appropriate sources of service information for accomplishment of the required actions. We have also added a new paragraph (b) (and reidentified subsequent paragraphs accordingly) to state that replacements accomplished before the effective date of this AD per the original issue or Revision 01 of the service bulletins are acceptable for compliance with this AD. Also, we have revised Note 1 of this AD to add references to the new Liebherr-Aerospace Lindenberg GmbH service bulletins.

Request To Revise Compliance Threshold

The same commenter requests that we revise the proposed AD to make the compliance threshold for the proposed actions consistent with that specified in the parallel French airworthiness directives. The commenter notes that, while paragraph (a) of the proposed AD specifies doing the replacement at the later of the times specified in paragraphs (a)(1) and (a)(2) of this AD, French airworthiness directives 2003–140(B) and 2003–141(B), both dated April 2, 2003, specify doing the replacement at the earlier of those times.

We concur. The reference to the ''later'' of the times in paragraphs (a)(1) and (a)(2) of the proposed AD was inadvertent, and was due to a misinterpretation of the French airworthiness directives. We intend the requirements of this AD and the compliance times for those requirements to be the same as those in the parallel French airworthiness directives. (We state no difference from the French airworthiness directives in the proposed AD.) We have revised paragraph (a) of this AD to require compliance at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD. We have determined that no U.S.-registered airplane is close to the compliance threshold, so this change should not increase the economic burden on any operator.

Difference Between the French Airworthiness Directive and This AD

The applicability of French airworthiness directives 2003–140(B) and 2003–141(B), both dated April 2, 2003, excludes airplanes on which Airbus Service Bulletin A330–27–3106 (for Model A330 series airplanes) or A340–27–4111 (for Model A340–200 and –300 series airplanes) has been accomplished in service. However, we have not excluded those airplanes from the applicability of this AD. Rather, this AD includes a requirement to accomplish the actions specified in those service bulletins. Such a requirement ensures that the actions specified in the service bulletins and required by this AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this AD unless an alternative method of compliance is approved.

Conclusion

After careful review of the available data, including the comments noted above, we have determined that air safety and the public interest require the adoption of the rule with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

We estimate that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 45 work hours per airplane to accomplish the required replacement, and that the average labor rate is $65 per work hour. Required parts will cost approximately $35,000 per airplane. Based on these figures, the cost impact of this AD on U.S. operators is estimated to be $341,325, or $37,925 per airplane.

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–11–08 Airbus: Amendment 39–13654. Docket 2003–NM–111–AD.

Applicability: Model A330, A340–200, and A340–300 series airplanes; except for those on which Airbus Modification 50044 has been accomplished in production, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the rotary actuator lever for the flaps, which could result in loss of the flap surface and consequent reduced controllability of the airplane, accomplish the following:

Replacement

(a) Replace the flap rotary actuators with modified flap rotary actuators in accordance with the Accomplishment Instructions of Airbus Service Bulletin A330–27–3106 (for Model A330 series airplanes) or A340–27–4111 (for Model A340–200 and –300 series airplanes), both Revision 02, both dated February 4, 2004, as applicable. Do the replacement at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD.

(1) Prior to the accumulation of 18,000 total flight cycles.

(2) Within 12 years since the date of issuance of the original Airworthiness Certificate, or within 12 years since the date of issuance of the original Export Certificate of Airworthiness, whichever occurs first.

(b) Replacements accomplished before the effective date of this AD in accordance with Airbus Service Bulletin A330–27–3106 (for Model A330 series airplanes) or A340–27–4111 (for Model A340–200 and –300 series airplanes), both dated February 18, 2003; or Revision 01 of those service bulletins, both dated April 8, 2003; as applicable; are acceptable for compliance with paragraph (a) of this AD.

Note 1: Airbus Service Bulletins A330–27–3106 and A340–27–4111, both Revision 02, reference Liebherr-Aerospace Lindenberg GmbH Service Bulletins 697510–27–02 and 697511–27–02, both dated February 21, 2003; and Liebherr-Aerospace Lindenberg GmbH Service Bulletins 697510–27–03 and 697511–27–03, both dated December 5, 2003; as additional sources of service information for accomplishment of the replacement.

Alternative Methods of Compliance

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

Incorporation by Reference

(d) Unless otherwise specified in this AD, the actions shall be done in accordance with Airbus Service Bulletin A330–27–3106, Revision 02, dated February 4, 2004; or Airbus Service Bulletin A340–27–4111, Revision 02, dated February 4, 2004; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Note 2: The subject of this AD is addressed in French airworthiness directives 2003–140(B), dated April 2, 2003, and 2003–141(B), dated April 2, 2003.

Effective Date

(e) This amendment becomes effective on July 13, 2004.

Issued in Renton, Washington, on May 20, 2004.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12572 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–323–AD; Amendment 39–13657; AD 2004–11–11]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, that requires, for certain airplanes, installation of screws and spacers to secure the wire bundles for the aft fuel boost pumps of the main fuel tanks. For certain other airplanes, this amendment requires a general visual inspection of the wire bundles to determine if the wire bundles are clamped, and/or if they are damaged; further investigation, as applicable; repair of any damage; and installation of applicable brackets, clamps, and spacers to secure the wire bundles. This action is necessary to prevent electrical arcing in a fuel leakage zone, which could result in an uncontrolled fire. This action is intended to address the identified unsafe condition.

DATES: Effective July 13, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of July 13, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; 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.*

FOR FURTHER INFORMATION CONTACT: Doug Pegors, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6504; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes was published in the **Federal Register** on March 5, 2004 (69 FR 10357). That action proposed to require for certain airplanes, installation of screws and spacers to secure the wire bundles for the aft fuel boost pumps of the main fuel tanks. For certain other airplanes, that action proposed to require a general visual inspection of the wire bundles to determine if the wire bundles are clamped, and/or if they are damaged; further investigation, as applicable; repair of any damage; and installation of applicable brackets, clamps, and spacers to secure the wire bundles.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

We have determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,284 airplanes of the affected design in the worldwide fleet. The FAA estimates that 527 airplanes of U.S. registry will be affected by this AD. The work hours and required parts per airplane vary according to the configuration group to which the affected airplane belongs. The average labor rate is $65 per work hour.

The following table shows the estimated cost impact for airplanes affected by this AD:

TABLE—COST IMPACT

Airplane configuration group	Work hours per airplace	Labor cost per airplane	Parts cost per airplane	Total cost per airplane
1, 2, 3 and 4 on which the actions described in the initial Service Bulletin have not been accomplished	3	$195	$292	$485
1, 2, 3 and 4 on which the actions described in the initial Service Bulletin have been accomplished; 5, 6, and 7	2	130	3	133

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

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2004–11–11 Boeing: Amendment 39–13657. Docket 2002–NM–323–AD.

Applicability: Model 737–600, 737–700, 737–700C, 737–800, and 737–900 series airplanes, as listed in Boeing Alert Service Bulletin 737–28A1148, Revision 2, dated December 18, 2003; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing in a fuel leakage zone, which could result in an uncontrolled fire, accomplish the following:

Service Bulletin References

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Alert Service Bulletin 737–28A1148, Revision 2, dated December 18, 2003.

Inspection, Installation, and Corrective Actions

(b) For airplanes listed in the service bulletin as Groups 1, 2, 3, and 4 on which Boeing Alert Service Bulletin 737–28A1148, dated September 14, 2000, has been accomplished; and for airplanes listed in the service bulletin as Groups 5, 6 and 7: Within six months after the effective date of this AD, install screws and spacers to secure the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks. Perform all actions per the service bulletin.

(c) For airplanes listed in the service bulletin as Groups 1 and 2 on which Boeing Alert Service Bulletin 737–28A1148, dated September 14, 2000, has not been accomplished: Within six months after the effective date of this AD, perform a general visual inspection of the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks for chafing or other damage. Perform any applicable corrective action; and install a new bracket, clamp, and spacers to secure the wire bundles; prior to further flight. Perform all actions per the service bulletin.

(d) For airplanes listed in the service bulletin as Groups 3 and 4 on which Boeing Alert Service Bulletin 737–28A1148, dated September 14, 2000, has not been accomplished: Within six months after the effective date of this AD, perform a general visual inspection of the applicable wire bundles for the aft fuel boost pumps of the main fuel tanks to determine if the wire bundle is secured with a clamp; and perform any related investigative action, and any applicable corrective actions, prior to further flight. Perform all actions per the service bulletin.

Note 1: For the purposes of this AD, a general visual inspection is defined as: ''A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made from within touching distance unless otherwise specified. A mirror may be necessary to enhance visual access to all exposed surfaces in the inspection area. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked.''

Actions Accomplished Per Previous Issue of the Service Bulletin

(e) Actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 737–28A1148, Revision 1, dated August 22, 2002, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance

(f) In accordance with 14 CFR 39.19, the Manager, Seattle Aircraft Certification Office, FAA, is authorized to approve alternative methods of compliance (AMOCs) for this AD.

Incorporation by Reference

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–28A1148, Revision 2, dated December 18, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; 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.*

Effective Date

(h) This amendment becomes effective on July 13, 2004.

Issued in Renton, Washington, on May 26, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–12571 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

New Animal Drugs; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for two approved new animal drug applications (NADAs) from Zema Corp. to Virbac AH, Inc.

DATES: This rule is effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT: David R. Newkirk, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–6967, e-mail: *david.newkirk@fda.gov*.

SUPPLEMENTARY INFORMATION: Zema Corp., P.O. Box 12803, Research Triangle Park, Durham, NC 27709, has informed FDA that it has transferred ownership of, and all rights and interest in, the following two approved NADAs to Virbac AH, Inc., 3200 Meacham Blvd., Ft. Worth, TX 76137:

Application No.	21 CFR Section	Trade Name
NADA 102–942	520.580	PULVEX Multipurpose Worm Caps
NADA 091–260	520.1804	PULVEX Worm Caps

Accordingly, the agency is amending the regulations in 21 CFR 520.580 and 520.1804 to reflect the transfer of ownership.

Following these changes of sponsorship, Zema Corp. is no longer the sponsor of an approved application. Accordingly, the agency is amending the regulations in 21 CFR 510.600(c) to remove the entries for Zema Corp.

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

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e.

§ 510.600 [Amended]

■ 2. Section 510.600 is amended in the table in paragraph (c)(1) by removing the entry for ''Zema Corp.'' and in the table in paragraph (c)(2) by removing the entry for ''050906''.

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 3. The authority citation for 21 CFR part 520 continues to read as follows:

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

§ 520.580 [Amended]

■ 4. Section 520.580 is amended in paragraph (b)(1) by removing ''050906'' and by adding in its place ''051311''.

§ 520.1804 [Amended]

■ 5. Section 520.1804 is amended in paragraph (b) by removing ''050906'' and by adding in its place ''051311''.

Dated: May 19, 2004.

Steven D. Vaughn,

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

[FR Doc. 04–12840 Filed 6–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Oxytetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations for oxytetracycline injectable solutions. The regulations for oxytetracycline injectable solutions are also being revised to conform to a current format. These changes are being made to improve the organization and readability of the regulations.

DATES: This rule is effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT: George K. Haibel, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4567, e-mail: *george.haibel@fda.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 19, 2003 (68 FR 54804), § 522.1660a (21 CFR 522.1660a) was added to reflect the approval of a 300-milligram (mg)/milliliter (mL) oxytetracycline injectable solution under NADA 141–143. At this time, we are redesignating and amending §§ 522.1660 (21 CFR 522.1660) and 522.1660a as §§ 522.1660a and 522.1660b, respectively. These sections are also being revised to conform to a current format. These changes are being made to improve the organization and readability of the regulations.

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

List of Subjects in 21 CFR Part 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

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

■ 2. Sections 522.1660 and 522.1660a are redesignated as §§ 522.1660a and 522.1660b, respectively, and new § 522.1660 is added to read as follows:

§ 522.1660 Oxytetracycline injectable solutions.

■ 3. Newly redesignated § 522.1660a is amended by revising paragraphs (b) and (c), by redesignating paragraph (d) as paragraph (e), by revising newly redesignated paragraph (e), and by adding new paragraph (d) to read as follows:

§ 522.1660a Oxytetracycline injection, 200 milligrams/milliliter.

(a) * * *

(b) *Sponsors.* See Nos. 000010, 000069, 011722, 053389, 055529, 057561, 059130, and 061623 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.500 of this chapter.

(d) *Special considerations.* When labeled for the treatment of anaplasmosis or anthrax, labeling shall also bear the following: ''Federal law restricts this drug to use by or on the order of a licensed veterinarian.''

(e) *Conditions of use*—(1) *Beef cattle, dairy cattle, and calves including prerumenative (veal) calves*—(i) *Amounts and indications for use*—(A) 3 to 5 mg per pound of body weight (mg/lb BW) per day (/day) intramuscularly, subcutaneously, or intravenously for treatment of pneumonia and shipping fever complex associated with *Pasteurella* spp. and *Haemophilus* spp., foot-rot and diphtheria caused by *Fusobacterium necrophorum*, bacterial enteritis (scours) caused by *Escherichia coli*, wooden tongue caused by *Actinobacillus lignieresii*, leptospirosis caused by *Leptospira pomona*, wound infections and acute metritis caused by *Staphylococcus* spp. and *Streptococcus* spp., and anthrax caused by *Bacillus anthracis*.

(B) 5 mg/lb BW/day intramuscularly or intravenously for treatment of anaplasmosis caused by *Anaplasma marginale*, severe foot-rot, and advanced cases of other indicated diseases.

(C) 9 mg/lb BW intramuscularly or subcutaneously as single dosage where retreatment of calves and yearlings for bacterial pneumonia is impractical, for treatment of infectious bovine keratoconjunctivitis (pinkeye) caused by *Moraxella bovis*, or where retreatment for anaplasmosis is impractical.

(D) 9 to 13.6 mg/lb BW intramuscularly or subcutaneously as single dosage where retreatment of calves and yearlings for bacterial pneumonia is impractical or for treatment of infectious bovine keratoconjunctivitis (pink eye) caused by *Moraxella bovis*.

(E) 13.6 mg/lb BW intramuscularly or subcutaneously as a single dosage for control of respiratory disease in cattle at high risk of developing BRD associated with *Mannheimia (Pasteurella) haemolytica*.

(ii) *Limitations.* Exceeding the highest recommended level of drug per pound of bodyweight per day, administering more than the recommended number of treatments, and/or exceeding 10 mL intramuscularly or subcutaneously per injection site may result in antibiotic residues beyond the withdrawal time. Rapid intravenous administration in cattle may result in animal collapse. Oxytetracycline should be administered intravenously slowly over a period of at least 5 minutes. Discontinue treatment at least 28 days prior to slaughter. Not for use in lactating dairy animals.

(2) *Swine*—(i) *Amounts and indications for use*—(A) Sows: 3 mg/lb BW intramuscularly once, approximately 8 hours before farrowing or immediately after completion of farrowing, as an aid in control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*.

(B) 3 to 5 mg/lb BW/day intramuscularly for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*, pneumonia caused by *Pasteurella multocida*, and leptospirosis caused by *Leptospira pomona*.

(C) 9 mg/lb BW as a single dosage where retreatment for pneumonia is impractical.

(ii) *Limitations.* Administer intramuscularly. Do not inject more than 5 mL per site in adult swine. Discontinue treatment at least 28 days prior to slaughter.

■ 4. Newly redesignated § 522.1660b is amended in paragraph (e)(1)(ii) by removing ''milliliter'' and by adding in its place ''mL'', by removing paragraph (e)(2)(ii), by redesignating paragraph (e)(2)(iii) as new paragraph (e)(2)(ii) and removing ''milliliter'' and by adding in its place ''mL'', and by revising paragraph (e)(2)(i) to read as follows:

§ 522.1660b Oxytetracycline injection, 300 milligrams/milliliter.

* * * * *

(e) * * *

(2) *Swine*—(i) *Amounts and indications for use*—(A) Sows: 3 mg/lb BW intramuscularly once, approximately 8 hours before farrowing or immediately after completion of farrowing, as an aid in control of infectious enteritis (baby pig scours, colibacillosis) in suckling pigs caused by *E. coli*.

(B) 3 to 5 mg/lb BW/day intramuscularly for treatment of bacterial enteritis (scours, colibacillosis) caused by *E. coli*, pneumonia caused by *Pasteurella multocida*, and leptospirosis caused by *Leptospira pomona*.

(C) 9 mg/lb BW as a single dosage where retreatment for pneumonia is impractical.

* * * * *

Dated: May 20, 2004.

Andrew J. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–12839 Filed 6–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Tiamulin and Chlortetracycline

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Pennfield Oil Co. The ANADA provides for the use of single-ingredient Type A medicated articles containing tiamulin hydrogen fumarate and chlortetracycline hydrochloride to make two-way combination drug Type B and Type C medicated feeds for swine.

DATES: This rule is effective June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV 104), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–8549, e-mail: lluther@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Pennfield Oil Co., 14040 Industrial Rd., Omaha, NE 68144, filed ANADA 200–356 for use of PENNCHLOR (chlortetracycline hydrochloride) and DENAGARD (tiamulin hydrogen fumarate) Type A medicated articles to make two-way

combination drug Type B and Type C medicated feeds for swine. Pennfield Oil Co.'s ANADA 200–356 is approved as a generic copy of Boehringer Ingelheim Vetmedica, Inc.'s NADA 141–011. The ANADA is approved as of April 6, 2004, and the regulations are amended in 21 CFR 558.600 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.600 [Amended]

■ 2. Section 558.600 is amended in the table in paragraph (e)(1)(iii) in the ''Sponsor'' column by numerically adding ''053389''.

Dated: May 18, 2004.

Andrew J. Beaulieu,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 04–12838 Filed 6–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

Mechanical Power—Transmission Apparatus; Mechanical Power Presses; Telecommunications; Hydrogen

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

ACTION: Final rule; technical amendments.

SUMMARY: This final rule corrects errors in four OSHA standards. The first correction deletes two references to a nonexisting table in the Mechanical Power-Transmission Apparatus Standard. The second is a correction of typographical errors in the Mechanical Power Presses Standard. The third correction is to a cross-reference in the Telecommunications Standard. The fourth correction is to a reference to a table contained in the Hazardous Materials Standard for Hydrogen.

DATES: This final rule becomes effective on June 8, 2004.

FOR FURTHER INFORMATION CONTACT: For general information and press inquiries, contact George Shaw, Acting Director, Office of Communications, Room N3637, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–1999 or fax: (202) 693–1635. For technical information, contact Kenneth Stevanus, Office of Engineering Safety, Room N3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2260.

SUPPLEMENTARY INFORMATION:

I. Mechanical Power-Transmission Apparatus

OSHA standards 29 CFR 1910.219 and 29 CFR 1926.307 contain requirements for the construction of guards for all types of mechanical power-transmission apparatus. On November 24, 1978, OSHA revoked certain safety and health standards, including Tables O–12 and O–13 in 29 CFR 1910.219 (43 FR 49726, 49741). These tables contained specifications for materials used in guarding mechanical power-transmission apparatus. They were revoked because they were considered overly detailed and too restrictive of the kinds of materials used for guards (43 FR 49740). Further, all references to these two tables were also to be removed. However, OSHA neglected to remove two references to Table O–12.

The first reference to Table O–12 that still appears is found in paragraph (e)(1)(i) of 29 CFR 1910.219 and paragraph (e)(1)(i) of 29 CFR 1926.307, both of which read as follows:

> Where both runs of horizontal belts are seven (7) feet or less from the floor level, the guard shall extend to at least fifteen (15) inches above the belt or to a standard height (see Table O–12), except that where both runs of a horizontal belt are 42 inches or less from the floor, the belt shall be fully enclosed in accordance with paragraphs (m) and (o) of this section. [Emphasis added.]

The second reference to Table O–12 is found in paragraph (o)(5)(ii) of 29 CFR 1910.219 and paragraph (o)(5)(ii) of 29 CFR 1926.307, both of which read as follows:

> Posts shall be not more than eight (8) feet apart; they are to be permanent and substantial, smooth, and free from protruding nails, bolts, and splinters. If made of pipe, the post shall be one and one-fourth (1¼) inches inside diameter, or larger. If made of metal shapes or bars, their section shall be equal in strength to that of one and one-half (1½) by one and one-half (1½) by three-sixteenths (3/16) inch angle iron. If made of wood, the posts shall be two by four (2 × 4) inches or larger. The upper rail shall be two by four (2 × 4) inches, or two one by four (1 × 4) strips, one at the top and one at the side of posts. The midrail may be one by four (1 × 4) inches or more. Where panels are fitted with expanded metal or wire mesh as noted in Table O–12, the middle rails may be omitted. Where guard is exposed to contact with moving equipment, additional strength may be necessary. [Emphasis added.]

OSHA is removing the text referring to Table O–12 from all four of these paragraphs.

II. Mechanical Power Presses

On December 3, 1974, OSHA published in the **Federal Register** (39 FR 41841) a final rule on Mechanical Power Presses based on a petition to revoke 29 CFR 1910.217(d)(1) and (d)(2). As part of the final rule, a new paragraph (c)(5) was added, reading, in part, as follows:

> Where the operator feeds or removes parts by placing one or both hands in the point of operation, and a two hand control, presence sensing device of Type B gate or movable barrier (on a part revolution clutch) is used for safeguarding:

The paragraph as printed contains typographical errors that change the meaning of the paragraph and imply that a Type-B gate is a presence-sensing device. This is not the case. A Type-B gate is considered a safety device when used with a failsafe control system and a brake monitor.

In the preamble to the December 3, 1974, **Federal Register** (39 FR 41843), OSHA stated:

> In addition, presence sensing devices or two hand controls may be used on part revolution clutch presses. Where either of these devices, or a Type B gate, are used [sic], the employer must also use a failsafe control system and a brake monitor in order to qualify the device as a safety device.

Several paragraphs later, the Agency noted that commenters pointed out that:

> [Paragraph] (b)(13) should also apply to the Type B gate or movable barrier device, because the effectiveness of this device also depends upon the performance of the brake (TR 423).

OSHA agreed with this (39 FR 41843) and stated:

> Therefore, the final standard requires employers to comply with paragraph (b)(13) when using a Type B gate or movable barrier device, two-hand control, or a presence sensing device.

In this notice, OSHA is correcting the typographical error in 1910.217(c)(5) by adding a comma after the word ''device'' and deleting the word ''of'' before the word ''Type.'' The introductory text to paragraph (c)(5) will then read:

> Where the operator feeds or removes parts by placing one or both hands in the point of operation, and a two hand control, presence sensing device, Type B gate or movable barrier (on a part revolution clutch) is used for safeguarding:

III. Telecommunications

On June 18, 1998, OSHA published a final rule in the **Federal Register** (63 FR 33450), removing and revising certain standards that were out of date, duplicative, unnecessary, or inconsistent. In that final rule, the Telecommunications Standard, 29 CFR 1910.268, was amended to: ''Revise paragraph (f)(1), remove paragraphs (f)(2) through (f)(4) and (f)(7) through (f)(9) and re-designate paragraphs (f)(5) and (f)(6) as (f)(2) and (f)(3)'' (63 FR 33467). However, redesignated paragraph (f)(3) of 29 CFR 1910.268 (former paragraph (f)(6)) has continued to include a cross-reference to former paragraph (f)(5):

> Gloves and blankets shall be marked to indicate compliance with the retest schedule, and shall be marked with the date the next test is due. Gloves found to be defective in the field or by the tests set forth in paragraph (f)(5) of this section shall be destroyed by cutting them open from the finger to the gauntlet.

The 1998 notice should have corrected this cross-reference to refer to redesignated paragraph (f)(2) instead of (f)(5). OSHA is now correcting this cross-reference accordingly.

IV. Hydrogen

OSHA standard 29 CFR 1910.103 contains requirements for the installation of gaseous hydrogen systems on consumer premises where the hydrogen supply to the consumer premises originates outside the consumer premises and is delivered by mobile equipment. On October 24, 1978, OSHA revised certain safety and health standards, including Table H–2 in 29 CFR 1910.103 (43 FR 49732). This table contained specifications for the minimum distances used to determine placement of hydrogen systems of indicated capacity located outdoors, in special buildings or in special rooms to any specified outdoor exposure. The table was amended by removing line 13, ''public sidewalks * * *,'' and line 14, ''line of adjoining property * * *,'' because they dealt with public safety and property protection and were not within OSHA's regulatory jurisdiction (43 FR 49732).

However, a reference to line 14 in Table H–2 (referenced as ''Item'' 14) found at 29 CFR 1910.103(b)(2)(ii)(c) was not removed at that time. This paragraph still contains a cross-reference to the nonexistent Item 14 and states that: ''The distances in Table H–2 Items 1, 14, and 3 to 10 inclusive do not apply where protective structures such as adequate fire walls are located between the system and the exposure.''

OSHA is revising paragraph (c) to read: ''The distances in Table H–2 Items 1 and 3 to 10 inclusive do not apply where protective structures such as adequate fire walls are located between the system and the exposure.'' This change will remove the cross-reference to the nonexistent item 14, and clarify the requirements contained in this paragraph.

V. Exemption From Notice-and-Comment Procedures

In accordance with the rulemaking provisions of the Administrative Procedures Act (5 U.S.C. 553) and 29 CFR 1911.5, OSHA hereby finds good cause to publish these amendments without any further delay or public procedure. They do not change any existing rights or obligations and no stakeholder is likely to object to them. Therefore, the Agency finds that public notice-and-comment procedures are unnecessary within the meaning of 5 U.S.C. 553(b)(3)(b) and 29 CFR 1911.5.

List of Subjects

29 CFR Part 1910

Hazardous substances, Hydrogen, and Occupational safety and health.

29 CFR Part 1926

Construction industry, and Occupational safety and health.

Authority: This document was prepared under the authority of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

■ Accordingly, pursuant to section 6 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655), Section 4 of the Administrative Procedure Act (5 U.S.C. 553) and Secretary of Labor's Order No. 5–2002 (67 FR 65008), OSHA is amending 29 CFR parts 1910 and 1926 as set forth below.

Signed at Washington, DC this 28th day of May, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart H—Hazardous Materials—[Amended]

■ 1. The authority citation for Subpart H of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911.

Section 1910.119 also issued under section 304, Clean Air Act Amendments of 1990 (Pub. L. 101–549), reprinted at 29 U.S.C. 655 Note.

Section 1910.120 also issued under section 126, Superfund Amendments and Reauthorization Act of 1986 as amended (29 U.S.C. 655 Note), and 5 U.S.C. 553.

■ 2. In § 1910.103, paragraph (b)(2)(ii)(*c*) introductory text is revised to read as follows:

§ 1910.103 Hydrogen.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(*c*) The distances in Table H–2 Items 1 and 3 to 10 inclusive do not apply where protective structures such as adequate fire walls are located between the system and the exposure.

* * * * *

Subpart O—Machinery and Machine Guarding—[Amended]

■ 3. The authority citation for Subpart O of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR

25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; 29 CFR part 1911. Sections 1910.217 and 1910.219 also issued under 5 U.S.C. 553.

§ 1910.217 [Amended]

■ 4. In § 1910.217, the introductory text to paragraph (c)(5) is amended by adding a comma after the word ''device'' and removing the word ''of'' before the word ''type.''

§ 1910.219 [Amended]

■ 5. Paragraph (e)(1)(i) of § 1910.219 is amended by removing the text ''(see Table O–12),'' and paragraph (o)(5)(ii) is amended by removing the text ''as noted in Table O–12.''

Subpart R—Special Industries—[Amended]

■ 6. The authority citation for Subpart R of Part 1910 is revised to read as follows:

Authority: Sections 4, 6, 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 6–96 (62 FR 111), 3–2000 (65 FR 50017), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911. Section 1910.268 also issued under 5 U.S.C. 553.

§ 1910.268 [Amended]

■ 7. Paragraph (f)(3) of § 1910.268 is amended by revising the text ''paragraph (f)(5)'' to read ''paragraph (f)(2).''

PART 1926—[AMENDED]

Subpart I—Tools-Hand and Power—[Amended]

■ 8. The authority citation for Subpart I of Part 1926 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), 1–90 (55 FR 9033), or 5–2002 (67 FR 65008), as applicable; and 29 CFR part 1911. Section 1926.307 also issued under 5 U.S.C. 553.

§ 1926.307 [Amended]

■ 9. In § 1926.307, paragraph (e)(1)(i) is amended by removing the text ''(see Table O–12),'' and paragraph (o)(5)(ii) is amended by removing the text ''as noted in Table O–12.''

[FR Doc. 04–12761 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AL93

Change of Effective Date of Rule Adding a Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes

AGENCY: Department of Veterans Affairs.

ACTION: Final rule; change of effective date.

SUMMARY: The Department of Veterans' Affairs (VA) is changing the effective date of a final rule published on May 8, 2001, titled ''Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes.'' This action is necessary to conform to the decision of the United States Court of Appeals for the Federal Circuit in *Liesegang* v. *Secretary of Veterans Affairs,* which determined that the correct effective date of the amendment was May 8, 2001. The effect of this Notice is to insure that the effective date conforms to the decision of the United States Court of Appeals for the Federal Circuit and current VA practice.

DATES: *Effective Date:* May 8, 2001.

FOR FURTHER INFORMATION CONTACT: Randy A. McKevitt, Regulations Staff, Compensation and Pension Service (211A), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, telephone (202) 273–7211.

SUPPLEMENTARY INFORMATION: The Department of Veterans' Affairs (VA) is amending the effective date of a previously published final rule. On May 8, 2001, VA published in the **Federal Register** (66 FR 23166) a final rule titled ''Disease Associated With Exposure to Certain Herbicide Agents: Type 2 Diabetes,'' which added Diabetes Mellitus Type 2 to the list of diseases in 38 CFR 3.309(e) that are presumed to be due to exposure to herbicides used in the Republic of Vietnam. VA determined that the effective date of the amendment should be July 9, 2001, 60 days after publication in the **Federal Register**, based on 38 U.S.C. 1116(c)(2) and 5 U.S.C. 801 *et. seq.* VA published that date as the effective date in the final rule.

On December 10, 2002, the United States Court of Appeals for the Federal Circuit decided *Robert B. Liesegang, Sr., Roberto Sotelo and Paul L. Fletcher* v. *Secretary of Veterans Affairs* (312 F.3d 1368 (Fed. Cir. 2002)). Petitioners challenged the effective date assigned to the regulation amendment. The Court found that the Congressional Review Act (section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104–121, tit. II. § 251, 110 Stat. 868 (1996) (codified at 5 U.S.C. 801–808), (CRA)), could be read in harmony with the Agent Orange Act of 1991 (Pub. L. No. 102–4, 105 Stat. 11 (1991) (codified in part at 38 U.S.C. 1116)), so that the CRA does not change the date on which the regulation becomes effective; it only affects the date when the rule becomes operative. The CRA provides for a 60-day waiting period before an agency may enforce a major rule to allow Congress the opportunity to review the regulation. The Court found that the CRA delayed the date on which the Type-2 diabetes regulation became operative, and VA had to wait until July 9, 2001, to implement that rule. The Court found that once implemented, the correct effective date of the regulation is the date of publication in the **Federal Register**, May 8, 2001.

Following the Court's decision, VA instructed the decision makers in the field to apply May 8, 2001, as the effective date for the regulation.

For the reasons discussed above, VA is amending the effective date of the amendment to 38 CFR 3.309(e), which added diabetes mellitus Type-2 to the list of diseases presumed to be due to exposure to herbicides used in the Republic of Vietnam, to May 8, 2001.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This amendment will have no such effect on state, local, or tribal governments, or private sector.

Paperwork Reduction Act

This final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

Regulatory Flexibility Act

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that these amendments would not directly affect any small entities. Only VA beneficiaries could be directly affected.

Therefore, under 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604.

Catalog of Federal Domestic Assistance Program Numbers

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: May 27, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

[FR Doc. 04–12828 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 61

RIN 2900–AL63

VA Homeless Providers Grant and Per Diem Program; Religious Organizations

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts with changes the provisions of a proposed rule that revised the regulations concerning the VA Homeless Providers Grant and Per Diem Program (Program). Specifically, the proposed rule revised provisions that apply to religious organizations that receive Department of Veterans Affairs (VA) funds under the Program to ensure that VA activities under the Program are open to all qualified organizations, regardless of their religious character, and to clearly establish the proper uses to which funds may be put, and the conditions for the receipt of such funding.

Consistent with Title VII of the Civil Rights Act of 1964, the proposed rule removed the regulatory prohibition against religious organizations making employment decisions on a religious basis; as such organizations do not forfeit that exemption when administering VA-funded programs. Also, the proposed rule ensured that direct government funds are not used for inherently religious activities.

DATES: *Effective Date:* This final rule is effective on July 8, 2004.

FOR FURTHER INFORMATION CONTACT: Guy A. Liedke, VA Homeless Providers Grant and Per Diem Program, Mental Health Strategic Health Care Group (116E), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420; (877) 332–0334. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** on September 30, 2003 at 68 FR 56426, we promulgated a proposed rule that would amend § 61.64 of the regulations concerning the VA Homeless Providers Grant and Per Diem Program as explained in the **SUMMARY** portion of this document.

We provided a 30-day comment period that ended October 30, 2003. We received comments from 13 commenters, of which nine were interest groups or civil or religious liberties organizations, two were individuals, one was a homeless veterans provider and one was a Congressman. We considered all comments in developing this final rule. Some of the comments generally supported the proposed rule; most were critical. The following is a summary of the comments, and VA's responses.

II. Comments and Reponses

Participation by Faith-Based Organizations in VA Programs

Several commenters expressed appreciation and support for the Department's efforts to clarify the rules governing participation of faith-based organizations in its programs, one stating that ''[a]s a general matter we find the proposed regulations excellent and we enthusiastically support them.'' Another stated that it believed that the § 61.64(a) provision that faith-based organizations are eligible on the same basis as any other organization to participate in VA programs should be maintained in the final rule. Further, several commenters were generally supportive of the President's Faith-Based and Community Initiative.

However, some of those commenters, and others, disagreed with the proposed rule on the basis that it would allow Federal funds to be given to ''pervasively sectarian'' organizations. They maintained that the rule places no limitations on the kinds of religious organizations that can receive funds, and they requested that ''pervasively sectarian'' organizations be barred from receiving Department funds. Similarly, one commenter suggested that the proposed rule improperly allows direct grants of public funds to religious organizations in which religious missions overpower secular functions, and another suggested that it be revised to bar VA funding of programs that result in ''government-financed religious indoctrination.'' Another commenter ''strongly oppose[d] all illegal and unconstitutional initiatives to use tax dollars for any form of faith based initiative.''

We do not agree that the Constitution requires VA to distinguish between different religious organizations in providing funding under the Program. Religious organizations that receive direct VA funds may not use such funds for inherently religious activities. These organizations must ensure that such religious activities are separate in time or location from services directly funded by VA and must also ensure that participation in such religious activities is voluntary. Further, they are prohibited from discriminating against a program beneficiary on the basis of religion or a religious belief, and program participants that violate these requirements will be subject to applicable sanctions and penalties. The regulations thus ensure that there is no direct government funding of inherently religious activities, as required by current precedent. In addition, the Supreme Court's ''pervasively sectarian'' doctrine—which held that there are certain religious institutions in which religion is so pervasive that no government aid may be provided to them, because their performance of even ''secular'' tasks will be infused with religious purpose—no longer enjoys the support of a majority of the Court. Four Justices expressly abandoned it in *Mitchell* v. *Helms,* 530 U.S. 793, 825–829 (2000) (plurality opinion), and Justice O'Connor's opinion in that case, joined by Justice Breyer, set forth reasoning that is inconsistent with its underlying premises, see *id.* at 857–858 (O'Connor, J., concurring in judgment) (requiring proof of ''actual diversion of public support to religious uses''). Thus, six members of the Court have rejected the view that aid provided to religious institutions will invariably advance the institutions' religious purposes, and that view is the foundation of the ''pervasively sectarian'' doctrine. VA therefore believes that under current precedent, the Department may fund all service providers, without regard to religion and free of criteria that require the provider to abandon its religious expression or character.

One commenter stated that the rule bans discrimination against faith-based providers who apply to participate in Department-funded programs, but not discrimination ''in favor of'' such providers. The commenter suggested that we prohibit discrimination both ''in

favor of'' and against faith-based providers. Similarly, another commenter suggested that the rule not give favorable treatment to religious organizations by exempting them from requirements applicable to secular organizations.

We agree with the first commenter and have therefore modified the language of the final rule to address this concern and to clarify that the requirement of nondiscrimination applies to both VA and state or local officials administering Department funds. Section 61.64(a) of the final rule reads: ''Neither the Federal Government nor any state or local government receiving funds under any Department program shall, in the selection of service providers, discriminate for or against an organization on the basis of the organization's religious character or affiliation.'' Far from favoring religious organizations, the same subsection of the rule articulates that faith-based organizations are ''eligible, on the same basis as any other organization.'' Rather the intent of the rule is to ensure that both secular and faith-based organizations receive equal treatment under the Program. We do note, however, that while the final rule does not permit discrimination either in favor of or against religious providers, nothing in the rule precludes those administering VA-funded programs from accommodating religious organizations in a manner consistent with the Establishment Clause.

One commenter noted that by equating religious and non-religious providers and seeking to treat them as equals, VA fails to recognize the unique place that religion has in our society and in our constitutional scheme, and that religion should be above the fray of government funding, government regulation, and government auditing, not reduced to it.

VA disagrees. This rule does not present any violation of the Establishment Clause or Free Exercise Clause of the First Amendment of the Constitution. Rather, this rule governs the conscious decision of a religious organization to administer regulated activities, by accepting public funds to do so. Therefore, we have retained language that enables faith-based organizations to compete on an equal footing for funding, within the framework of constitutional church-state guidelines.

Inherently Religious Activities

Some commenters suggested that the proposed rule does not sufficiently detail the scope of religious content that must be omitted from government-funded programs. For example, one commenter suggested that the explanation given of ''inherently religious activities'' as ''worship, religious instruction, or proselytization'' is unclear or incomplete. Relatedly, it was suggested that the proposed rule authorizes conduct that will impermissibly convey the message that the government endorses religious content. One commenter requested that the proposed rule be changed to make clear that the government may not disburse public funds to organizations that convey religious messages or in any way advance religion.

VA disagrees with these comments. Concerning the rule's treatment of ''inherently religious'' activities, as the commenters' own submissions suggest, it would be difficult to establish an acceptable list of all inherently religious activities. Inevitably, the regulatory definition would fail to include some inherently religious activities or include certain activities that are not inherently religious. Rather than attempt to establish an exhaustive regulatory definition, with the exception of the editorial change noted below, VA has decided to retain the language of the proposed rule, which provides examples of the general types of activities that are prohibited by the regulations. This approach is consistent with Supreme Court precedent, which likewise has not comprehensively defined inherently religious activities. For example, prayer and worship are inherently religious, but VA-funded services do not become inherently religious merely because they are conducted by individuals who are religiously motivated to undertake them or view the activities as a form of ''ministry.'' As to the suggestion that the rule indicates that VA endorses religious content, it again merits emphasis that the rule forbids the use of direct government assistance for inherently religious activities and states that any such activities must be voluntary and separated, in time or location, from activities directly funded by VA. Finally, there is no constitutional support for the view that the government must exclude from its programs those organizations that convey religious messages or advance religion with their own funds. As noted above, the Supreme Court has held that the Constitution forbids the use of direct government funds for inherently religious activities, but the Court has rejected the presumption that religious organizations will inevitably divert such funds and use them for their own religious purposes. VA rejects the view that organizations with religious commitments cannot be trusted to fulfill their written promises to adhere to grant requirements.

One commenter noted that VA omitted the phrase ''inherently religious activities'' in § 61.64(b)(1), which prohibits use of direct VA financial assistance for certain religious activities, and noted that similar provisions in other agency faith-based regulations contained this language.

VA agrees and has revised § 61.64(b)(1) to read:

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Inherently religious activities such as, religious worship, instruction or proselytization * * *.

Voucher-Style Programs Under the Rule

Some commenters claimed that the proposed rule authorizes a voucher program for religious organizations without instituting adequate constitutional safeguards and requested that the rule be revised to comply with the framework instituted by *Zelman* v. *Simmons Harris,* 536 U.S. 639 (2002). These commenters stated that secular alternatives are not available in the social service context, eliminating the possibility of real choice by program beneficiaries. They requested that the proposed rule clearly state that beneficiaries have the right to object to a religious provider assigned to them, to receive a secular provider, and that they be given notice of these rights.

VA respectfully declines to adopt the recommendations of the commenters, but has revised the final rule to more explicitly reflect the Court's holding in *Zelman.* First, VA does not currently operate any voucher-style programs, so the application of any regulations in this regard would be purely hypothetical. In addition, as the rule now states, any voucher-style programs offered by the VA will comply with Federal law, including current precedent. So that the rule better reflects current precedent VA has modified the final rule to include a new paragraph (g) that reads

(g) To the extent otherwise permitted by federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this Part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be

paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

VA thus believes that the final rule adequately addresses these commenters' constitutional concerns.

The ''Separate, in Time or Location'' Requirement

One commenter stated that the provisions of § 61.64(c), requiring inherently religious activities to be separate in time or location, should be maintained in the final rule. Others maintained that the proposed rule should be amended to clarify the ''separate, in time or location'' requirement. One commenter suggested that the requirement be strengthened to require activities be ''separate by both time and location.''

VA declines to adopt the suggested revisions. As an initial matter, VA does not believe that the requirement is ambiguous or necessitates additional regulation for proper adherence. Where a religious organization receives direct government assistance, any inherently religious activities that the organization offers must simply be offered separately—in time or place—from the activities supported by direct government funds. As to the suggestion that the rule must require separation in both time and location, VA believes that such a requirement is not legally necessary and would impose an unnecessarily harsh burden on small faith-based organizations, which may have access to only one location that is suitable for the provision of VA-funded services.

Applicability of Rule to ''Commingled'' Funds

One commenter noted that the term ''voluntarily contributes'' as used in proposed § 61.64(f)—which stated that

> [i]f a State or local government voluntarily contributes its own funds to supplement Federally funded activities * * * if the funds are commingled, this provision applies to all of the commingled funds

—may lead to confusion over the applicability of the section to matching funds. The commenter suggested that paragraph (f) specifically provide that if a State or local government provides matching funds, then the provisions of this section shall apply to all of the funds whether or not commingled.

VA believes that this section of the rule is sufficiently clear. As the rule states, when States and local governments have the option to commingle their funds with Federal funds or to separate State and local funds from Federal funds, Federal rules apply if they choose to commingle their own funds with Federal funds. Some Department programs explicitly require that Federal rules apply to state ''matching'' funds, ''maintenance of effort'' funds, or other grantee contributions that are commingled with Federal funds—*i.e.,* are part of the grant budget. In these circumstances, Federal rules of course remain applicable to both the Federal and State or local funds that implement the program.

Another commenter stated that under the proposed rule, a State or local government has the option to segregate the Federal funds or commingle them. The commenter requested that the Department mandate that State and local funds should be kept separate from any Federal funds.

VA disagrees with this comment. As an initial matter, VA believes it would be inappropriate to require States and local governments to separate their own funds from Federal funds in the absence of a matching requirement or other required grantee contribution. Where no matching requirement or other required grantee contribution is applicable, whether to commingle State and Federal funds is a decision for the States and local governments to make.

Faith-Based Organizations and State Action

One commenter claimed that there is a sufficient nexus between the organizations covered by the proposed regulation and the government, such that the organizations are state actors subject to constitutional requirements.

VA disagrees with this comment. The receipt of government funds does not convert a non-governmental organization into a state actor subject to constitutional norms. See *Rendell-Baker* v. *Kohn,* 457 U.S. 830 (1982) (holding that the employment decisions of a private school that receives more than 90 percent of its funding from the state are not state actions).

State and Local Diversity Requirements and Preemption

Some commenters expressed concern that the proposed rule will exempt religious organizations from State and local diversity requirements or anti-discrimination laws. Further, commenters suggested that the proposed rule be modified to state that State and local laws will not be preempted by the rule.

The requirements that govern funding under the VA Homeless Providers Grant and Per Diem Program (Program) do not address preemption of State or local laws. Federal funds, however, carry Federal requirements. No organization is required to apply for funding under these programs, but organizations that apply and are selected for funding must comply with the requirements applicable to the Program funds.

Religious Organizations' Display of Religious Art or Symbols

Several commenters have disagreed with the provisions allowing religious organizations conducting VA-funded programs in their facilities to retain the religious art, icons, scriptures, or other religious symbols found in their facilities. These commenters contend, among other things, that such displays impermissibly foster the impression of Government support for the religious mission and will necessarily lead to indoctrination of beneficiaries.

VA disagrees with these comments. A number of Federal statutes affirm the principle embodied in this rule. *See, e.g.,* 42 U.S.C. 290kk–1(d)(2)(B). In addition, a prohibition on the use of religious icons would make it more difficult for many faith-based organizations to participate in VA's Program than other organizations by forcing them to procure additional space. It would thus be an inappropriate and excessive restriction, typical of the types of regulatory barriers that this final rule seeks to eliminate. Consistent with constitutional church-state guidelines, a faith-based organization that participates in the Program will retain its independence and may continue to carry out its mission, provided that it does not use direct VA funds to support any inherently religious activities. Accordingly, this final rule continues to provide that faith-based organizations may use space in their facilities to provide VA-funded services, without removing religious art, icons, scriptures, or other religious symbols.

Religious Freedom Restoration Act

Another commenter requested that VA include language in the regulation by way of notice that the Religious Freedom Restoration Act (''RFRA''), 42 U.S.C. 2000bb *et seq.,* may also provide relief from otherwise applicable provisions prohibiting employment discrimination on the basis of religion. The commenter noted that, for example, the Department of Health and Human Services has recognized RFRA's ability to provide relief from certain employment nondiscrimination requirements in the final regulations it promulgated governing its substance abuse and mental health programs.

VA notes that RFRA, which applies to all Federal law and its implementation, 42 U.S.C. 4000bb–3, 4000bb–2(1), is

applicable regardless of whether it is specifically mentioned in these regulations. Whether or not a party is entitled to an exemption or other relief under RFRA simply depends upon whether the party satisfies the requirements of that statute. VA therefore declines to adopt this recommendation at this time.

Recognition of Religious Organizations' Title VII Exemption

A number of commenters expressed views on the proposed rule's repeal of the current rule's prohibition against primarily religious organizations discriminating in employment on the basis of religion. Two commenters agreed with the repeal of this prohibition, and one suggested that the proposed rule specifically provide that the Title VII exemption is not forfeited as a result of receiving VA funds.

Others argued that it is unconstitutional for the government to provide funding for provision of social services to an organization that considers religion in its employment decisions. Some of these commenters either requested that the current prohibition be maintained or that the proposed rule be revised to prohibit employment discrimination based on religion for positions funded with VA assistance.

VA disagrees with these objections to the rule's recognition that a religious organization does not forfeit its Title VII exemption when administering VA-funded services. As an initial matter, applicable statutory nondiscrimination requirements are not altered by this rule. Congress establishes the conditions under which religious organizations are exempt from Title VII; this rule simply recognizes that these requirements, including their limitations, are fully applicable to Federally funded organizations unless Congress says otherwise. As to the suggestion that the Constitution restricts the government from providing funding for social services to religious organizations that consider faith in hiring, that view does not accurately represent the law. As noted above, the employment decisions of organizations that receive extensive public funding are not attributable to the state, see *Rendell-Baker* v. *Kohn,* 457 U.S. 830 (1982), and it has been settled for more than 100 years that the Establishment Clause does not bar the provision of direct Federal grants to organizations that are controlled and operated exclusively by members of a single faith. See *Bradfield* v. *Roberts,* 175 U.S. 291 (1899); see also *Bowen* v. *Kendrick,* 487 U.S. 589, 609 (1988). Finally, the Department notes that allowing religious groups to consider faith in hiring when they receive government funds is much like allowing a Federally funded environmental organization to hire those who share its views on protecting the environment—both groups are allowed to consider ideology and mission, which improves their effectiveness and preserves their integrity. Thus, the Department declines to amend the final rule to require religious organizations to forfeit their Title VII rights.

Discrimination on the Basis of Sexual Orientation

One commenter objected to the ability of religious organizations to discriminate on the basis of sexual orientation.

Although Federal law prohibits persons from being excluded from participation in VA services or subjected to discrimination based on race, color, national origin, sex, age, or disability, it does not prohibit discrimination on the basis of sexual orientation. We decline to impose additional restrictions by regulation.

Organizations That Discriminate

One commenter stated that the proposed rule failed to take any steps to prevent government money from flowing to anti-Semite, racist, or bigoted organizations.

VA disagrees. As discussed above, Federal law prohibits persons from being excluded from participation in VA services or subjected to discrimination based on race, color, national origin, sex, age, or disability.

Nondiscrimination in Providing Assistance

Commenters have requested that the proposed rule include a provision protecting beneficiaries who object to the religious character of a grantee and a requirement that the government provide a secular alternative upon request. The commenters suggest language that not only protects beneficiaries ''on the basis of religion and religious belief,'' but also ''on the basis of religion, religious belief, *a refusal to hold a religious belief, or a refusal to actively participate in a religious practice.*'' One of these commenters suggested that the proposed rule prohibit religious discrimination against any person receiving assistance under the Program, either direct (grants) or indirect (vouchers). That commentator also suggested that the proposed rule prohibit providers from inquiring about a beneficiary's religious beliefs. One commenter understood the proposed regulation to forbid religious providers to compel participants to participate in religious activities even in a passive way. Another commenter recommended that the final rule specify that failure to participate in religious activities should not result in disqualification from, or reduction of one's chance to participate in, program activities in the future, or public beratement to remedy this lack of participation. One commenter requests that remedies and a grievance process be included in the proposed regulation for beneficiaries who do not voluntarily attend religious organization programs or who are not provided an adequate alternative.

VA believes that the existing language prohibiting faith-based organizations from discriminating against program beneficiaries on the basis of ''religion or religious belief'' is sufficiently explicit to include beneficiaries who hold no religious belief. Such a prohibition is straightforward and requires no further elaboration. In addition, the rule provides that religious organizations may not use direct Federal funding from VA for inherently religious activities and that any such activities must be offered separately, in time or location, and must be voluntary for program beneficiaries. These requirements further protect the rights of program beneficiaries, for whom traditional channels of airing grievances are generally available.

As to the rights of beneficiaries receiving indirect assistance, per the discussion on voucher style programs, we believe that the religious freedom of beneficiaries is protected by the guarantee of genuine and independent choice among providers. Such choice will ensure that any participation in religious activities is voluntary and that, regardless of religion, beneficiaries have access to government-funded services. Whether the context is direct or indirect assistance, therefore, beneficiaries may not be required to receive religious services to which they object: In the direct aid context, such activities must be voluntary and separate from the government-funded activities; in the indirect aid context, beneficiaries have a choice among providers and may choose a provider that does not integrate religion into its provision of services. We have modified the final rule to make clear that the nondiscrimination provision of part (e) of the rule applies to direct financial assistance.

Assurance/Notice Requirements

One commenter suggested that the proposed rule retain the current requirement that religious organizations provide assurance that they will

conduct activities for which assistance is provided in a manner free from religious influences, while another suggested that all recipients, secular and religious, should be required to make this assurance. Further, several commenters suggested that the proposed rule require recipients to provide notice to beneficiaries at the outset of their receipt of services that participation in inherently religious activities is voluntary, or that their receipt of benefits may not be conditioned upon such participation.

The final rule remains unchanged from the proposed rule on this matter. Each grantee must sign assurances certifying that the grantee will comply with the various laws applicable to recipients of Federal grants, including this final rule and its prohibition on the use of direct financial assistance from VA for inherently religious activities. Thus VA does not believe that the assurance, such as that which is being removed, is necessary for any type of organization.

We also decline to require that religious organizations provide a notice to a beneficiary or potential beneficiary assuring that participation in religious activities would be entirely on a voluntary basis. We recommend that States and participating organizations work together to ensure that clients and potential clients have a clear understanding of the services offered by the organization, including any religious activities, as well as the organization's expectations and requirements. The requirement that participation be voluntary, however, is sufficient to address concerns about the religious freedom of program beneficiaries.

VA believes that no additional requirements above and beyond those imposed on all participating organizations are needed. In issuing this rule, VA's general approach is that faith-based organizations are not a category of applicants or recipients who need additional requirements or oversight in order to ensure compliance with program regulations. Rather, VA believes that faith-based organizations, like other recipients of VA funds, fully understand the restrictions on the funding they receive, including the restriction that inherently religious activities cannot be undertaken with direct Federal funding and must remain separate from Federally funded activities. The requirements for use of funds under the Program apply to, and are binding on, all participants.

Oversight and Corporate Structure

A few commenters also requested that the proposed rule require monthly reports and periodic site visits of faith-based recipients to ensure that Federal funds are not used to support inherently religious activities. Commenters also suggested that the rule should require religious organizations to establish separate 501(c)(3) corporations and/or separate accounts to receive VA funds to allow for proper oversight.

VA declines to adopt these changes. VA currently subjects all grantee facilities and records to inspections ''at such times as are deemed necessary to determine compliance with the provisions of this part [61].'' 38 CFR 61.65. Hence it is unnecessary to subject religious organizations to additional inspections.

Further, VA finds no basis for requiring greater oversight and monitoring of faith-based organizations than of other recipients simply because they are faith-based organizations. All program participants must be monitored for compliance with Program requirements, and no grantee may use VA funds for any ineligible activity, whether that activity is an inherently religious activity or a nonreligious activity that is outside the scope of the Program. Many secular organizations participating in the VA Program also receive funding from several sources (private, State, or local) to carry out activities that are ineligible for funding under the VA Program, *e.g.*, permanent housing. The non-eligible activities are often secular activities but not activities eligible for funding under the VA Program. All recipients receiving funding from various sources and carrying out a wide range of activities must ensure through proper accounting principles that each set of funds is applied only to the activities for which the funding was provided. Applicable policies, guidelines, and regulations prescribe the cost accounting procedures that are to be followed in using VA funds. This system of monitoring is more than sufficient to address the commenters' concerns, and the amount of oversight of religious organizations necessary to accomplish these purposes is no greater than that involved in other publicly funded programs that the Supreme Court has upheld.

Likewise, VA finds no basis to require religious organizations to establish separate corporations and/or separate accounts to receive VA funds. Further, such requirements would make it more difficult for many faith-based organizations to participate in VA's Program than other organizations by creating additional corporate governance and/or accounting burdens. They would thus be inappropriate and excessive requirements, typical of the types of regulatory barriers that this final rule seeks to eliminate.

One commenter suggested that the rule define ''religious organization'' and ''faith-based organization'' by reference to the tax code in order to create clarity and consistency, and facilitate reporting rules for religious organizations receiving public funds that establish the same public accountability applicable to secular non-profits. The same commenter stated that all recipients, faith-based and secular, should be required to qualify as 501(c)(3) corporations and to comply with the accounting standards established in OMB Circulars A–122 and A–133.

VA declines to adopt these suggestions. One of the objectives of this rule is to move away from unnecessary Federal inquiry into the religious nature, or absence of religious nature, of an applicant for VA funds. With respect to any applicant for VA funds, VA's focus should always be that (1) the applicant is an eligible applicant for a program, as ''eligible applicant'' is defined for that program; (2) the applicant meets any other eligibility criteria that the program may require; and (3) the applicant commits to undertake only eligible activities with VA funds and abide by all program requirements that govern those funds. Regardless of how an organization labels itself, it will be treated the same under the rule. As to public accountability, as discussed, VA has the right to inspect recipients' records related to assistance under the Program, and the public may obtain from VA through the Freedom of Information Act any documentation obtained in such investigations.

Further, the regulations at this Part already require nonprofit recipients to qualify as 501(c)(3) or (c)(19) corporations, and require all recipients to comply with accounting standards of OMB Circulars A–122 and A–133. 38 CFR 61.1, 61.12(b), 61.66.

III. Findings and Certifications

Based on the rationale set forth in the proposed rule and our responses to comments on that rule, we are adopting the provisions of the proposed rule as a final rule with changes. This final rule is issued under authority of 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, and 7721 note.

Paperwork Reduction Act

This final rule does not contain any new collections of information under the Paperwork Reduction at §§ 61.11, 61.15, 61.17, 61.20, 61.31, 61.41, 61.51, 61.55 and 61.80. The Office of Management and Budget has assigned

control number 2900–0554 to the information collections. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays this currently valid OMB control number.

Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any one year). Executive Order 12866 requires that regulations be reviewed to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this rule is consistent with these priorities and principles. This rule is considered a ''significant regulatory action'' under the Executive Order (although not an economically significant regulatory action), and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

The Secretary hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–602. In all likelihood, only similar entities that are small entities will participate in the Homeless Providers Grant and Per Diem Program. The proposed rule would not impose any new costs, or modify existing costs, applicable to Department grantees. Rather, the purpose of the proposed rule is to remove policy prohibitions that currently restrict the equal participation of religious or religiously affiliated organizations in the Department's programs. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirement of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no such effect on State, local, or tribal governments, or the private sector.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance program number is 64.024.

List of Subjects in 38 CFR Part 61

Administrative practice and procedure, Alcohol abuse, Alcoholism, Day care, Dental health, Drug abuse, Government contracts, Grant programs-health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Mental health programs, Per-diem program; Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: May 28, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ Accordingly, the proposed rule amending 38 CFR part 61 that was published in the **Federal Register** at 68 FR 56426 on September 30, 2003, is adopted as a final rule with the following changes.

PART 61—VA HOMELESS PROVIDERS GRANT AND PER DIEM PROGRAM

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note.

■ 2. Revise § 61.64 to read as follows:

§ 61.64 Religious organizations.

(a) Organizations that are religious or faith-based are eligible, on the same basis as any other organization, to participate in VA programs under this part. In the selection of service providers, neither the Federal Government nor a state or local government receiving funds under this part shall discriminate for or against an organization on the basis of the organization's religious character or affiliation.

(b)(1) No organization may use direct financial assistance from VA under this part to pay for any of the following:

(i) Inherently religious activities such as, religious worship, instruction, or proselytization; or

(ii) Equipment or supplies to be used for any of those activities.

(2) For purposes of this section, ''indirect financial assistance'' means Federal assistance in which a service provider receives program funds through a voucher, certificate, agreement or other form of disbursement, as a result of the independent and private choices of individual beneficiaries. ''Direct financial assistance,'' means Federal aid in the form of a grant, contract, or cooperative agreement where the independent choices of individual beneficiaries do not determine which organizations receive program funds.

(c) Organizations that engage in inherently religious activities, such as worship, religious instruction, or proselytization, must offer those services separately in time or location from any programs or services funded with direct financial assistance from VA, and participation in any of the organization's inherently religious activities must be voluntary for the beneficiaries of a program or service funded by direct financial assistance from VA.

(d) A religious organization that participates in VA programs under this part will retain its independence from Federal, State, or local governments and may continue to carry out its mission, including the definition, practice and expression of its religious beliefs, provided that it does not use direct financial assistance from VA under this part to support any inherently religious activities, such as worship, religious instruction, or proselytization. Among other things, faith-based organizations may use space in their facilities to provide VA-funded services under this part, without removing religious art, icons, scripture, or other religious symbols. In addition, a VA-funded religious organization retains its authority over its internal governance, and it may retain religious terms in its organization's name, select its board members and otherwise govern itself on a religious basis, and include religious reference in its organization's mission statements and other governing documents.

(e) An organization that participates in a VA program under this part shall not, in providing direct program assistance, discriminate against a program beneficiary or prospective program beneficiary regarding housing, supportive services, or technical assistance, on the basis of religion or religious belief.

(f) If a State or local government voluntarily contributes its own funds to supplement Federally funded activities, the State or local government has the option to segregate the Federal funds or commingle them. However, if the funds are commingled, this provision applies to all of the commingled funds.

(g) To the extent otherwise permitted by Federal law, the restrictions on inherently religious activities set forth in this section do not apply where VA funds are provided to religious

organizations through indirect assistance as a result of a genuine and independent private choice of a beneficiary, provided the religious organizations otherwise satisfy the requirements of this Part. A religious organization may receive such funds as the result of a beneficiary's genuine and independent choice if, for example, a beneficiary redeems a voucher, coupon, or certificate, allowing the beneficiary to direct where funds are to be paid, or a similar funding mechanism provided to that beneficiary and designed to give that beneficiary a choice among providers.

(Authority: 38 U.S.C. 501, 2002, 2011, 2012, 2061, 2064, 7721 note.)

[FR Doc. 04–12827 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA133–5066a; FRL–7670–8]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Revisions to Regulations for General Compliance Activities and Source Surveillance; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correcting amendment.

SUMMARY: This document corrects errors in the final rule pertaining to the chart listing Virginia regulations which EPA has incorporated by reference into the Virginia SIP.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Kathleen Anderson, (215) 814–2173 or by e-mail at *anderson.kathleen@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' or ''our'' are used we mean EPA. On March 15, 2004 (69 FR 12074), we published a final rulemaking action announcing our approval of revisions to certain regulations updating requirements related to applicability, compliance, testing and monitoring. In that document, we inadvertently made incorrect entries to the rule chart in 40 CFR 52.2420(c). This action corrects the errors, published in the rule chart at 69 FR 12078, to the notes found in the ''Explanation [Former SIP citation]'' column for entries 5–10–10, 5–10–20, 5–40–20, 5–40–40, 5–40–50, 5–50–10, 5–50–20, 5–50–40, and 5–40–50. The corrections are described in the following table:

Entry	Column title	Description of correction
5–10–10	General	Remove ''and added new paragraph D''.
5–10–20	Terms Defined	Add: ''Terms Revised: Volatile Organic Compounds''.
5–40–20	Compliance	Add: ''Revised paragraphs I, I.2, I.3 and I.4.''
5–40–40	Monitoring	Remove D.1 and D.12 and replace with E.1 and E.12.
5–40–50	Notifications, records and reporting	Add: ''Revised paragraphs C.2 and C.3.''
5–50–10	Applicability	Replace D with C and remove E.
5–50–20	Compliance	Replace first sentence with ''Added new paragraph A.2, renumbered paragraphs A.3 through A.5 and revised paragraph A.3.''
5–50–40	Monitoring	Replace with ''Revised paragraphs C and E.1 through E.8; Added new paragraph E.10.''
5–50–50	Notification, records and reporting	Replace with ''Revised paragraphs A.1 through A.4, C, C.1 through C.3, D, E and F.''

This action also revises the date format found in the ''State effective date'' column for all of the entries published in the March 15, 2004 final rulemaking notice. In this correction action, we are revising the dates from ''August 1, 2002'' to ''8/1/02.'' We are also restoring the entries for 5–40–21, 5–40–22 and 5–40–41, which EPA had previously added to the table in paragraph 52.2420(c) on April 21, 2000 (65 FR 21315), but which were inadvertently removed by EPA's March 15, 2004 revisions to the entries for 9 VAC 5, Chapter 40, Part I.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. We have determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because we are merely correcting an incorrect citation in a previous action. Thus, notice and public procedure are unnecessary. We find that this constitutes good cause under 5 U.S.C. 553(b)(B).

Statutory and Executive Order Reviews

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore 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)). Because the agency has made a ''good cause'' finding that this action is not subject to notice-and-comment requirements under the Administrative Procedures Act or any other statute as indicated in the Supplementary Information section above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. This rule also 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, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it 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 governments, as specified by Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This technical correction action does not involve technical standards; 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. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order. This rule does not impose an information collection burden under 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. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA had made such a good cause finding, including the reasons therefore, and established an effective date of May 14, 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**. This correction to 40 CFR 52.2420(c) for Virginia is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Dated: May 27, 2004.

James W. Newsom,

Acting Regional Administrator, EPA 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 VV—Virginia

■ 2. In § 52.2420, the table in paragraph (c) is amended:

■ a. Under Chapter 10 by revising the entry for 5–10–10 and the fifth entry for 5–10–20.

■ b. Under Chapter 40 by revising entries 5–40–10, 5–40–20 and 5–40–30, 5–40–40 and 5–40–50.

■ c. Under Chapter 40 by adding entries 5–40–21, 5–40–22 and 5–40–41.

■ d. Under Chapter 50 by revising entries 5–50–10, 5–50–20, 5–50–30, 5–50–40 and 5–50–50.

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
CHAPTER 10			GENERAL DEFINITIONS [Part I]	
5–10–10	General	8/1/02	3/15/04 69 FR 12074	Revised paragraphs A, B, C.
*	*	*	*	*
5–10–20	Terms Defined	8/1/02	3/15/04 69 FR 12074	Terms Added: EPA, Initial emissions test, Initial performance test (as corrected 11/05/03 and effective 01/01/04 in the Commonwealth), Maintenance area. Terms Revised: Affected facility, Delayed compliance order, Excessive concentration, Federally enforceable, Malfunction, Public hearing, Reference method, Reid vapor pressure, Stationary source, True vapor pressure, Vapor pressure, Volatile organic compounds. Terms Removed: Air Quality Maintenance Area.
*	*	*	*	*
CHAPTER 40			EXISTING STATIONARY SOURCES [Part IV]	
PART I			SPECIAL PROVISIONS	
5–40–10	Applicability	8/1/02	3/15/04 69 FR 12074	Revised paragraphs A, B, and C; added paragraph D.
5–40–20 (Except A.4)	Compliance	8/1/02	3/15/04 69 FR 12074	Added new paragraph A.2 and revised renumbered paragraph A.3; added new paragraph G, revised paragraphs H, H.1, H.1.b through e; revised paragraphs I, I.2, I.3 and I.4; added new paragraph J. NOTE: New paragraph A.4. is not included in the SIP revision.
5–40–21	Compliance Schedules	7/1/97	4/21/00 65 FR 21315	Appendix N.
5–40–22	Interpretation of Emissions Standards Based on Process eight—Rate Tables.	7/1/97	4/21/00 65 FR 21315	Appendix Q.
5–40–30	Emissions Testing	8/1/02	3/15/00 69 FR 12074	Revised Paragraphs A and F.1; NOTE: Revisions to paragraph C are not included in SIP revision.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP—Continued

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation [former SIP citation]
5–40–40	Monitoring	8/1/02	3/15/00 69 FR 12074	Revised paragraph B, and E.1; added paragraph E.12.
5–40–41	Emission Monitoring Procedures for Existing Sources.	7/1/97	4/21/00 65 FR 21315	Appendix J.
5–40–50	Notification, records and reporting.	8/1/02	3/15/04 69 FR 12074	Added new paragraph A.3; revised paragraphs C, C.1, C.2 and C.3., D, E and F.
*	*	*	*	*
CHAPTER 50		NEW AND MODIFIED STATIONARY SOURCES [Part V]		
PART I		SPECIAL PROVISIONS		
5–50–10	Applicability	8/1/02	3/15/04 69 FR 12074	Revised paragraphs B and C, added paragraph F.
5–50–20	Compliance	8/1/02	3/15/04 69 FR 12074	Added new paragraph A.2, renumbered paragraphs A.3 through A.5, and revised paragraph A.3; Added new paragraph G; revised paragraphs H, H.2, H.2a, H.3 and H.4; added new paragraph I.
5–50–30	Performance Testing	8/1/02	3/15/04 69 FR 12074	Revised paragraphs A and F.1; NOTE: Revisions to paragraph C are not included in SIP revision.
5–50–40	Monitoring	8/1/02	3/15/04 69 FR 12074	Revised paragraphs C, and E.1 through E.8; Added new paragraph E.10.
5–50–50	Notification, records and reporting.	8/1/02	3/15/04 69 FR 12074	Revised paragraphs A.1 through A.4, C, C.1 through C.3, D, E and F.
*	*	*	*	*

[FR Doc. 04–12772 Filed 6–7–04; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN79–3; FRL–7670–5]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a site-specific revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Xcel Energy (formerly known as Northern States Power Company) Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota. By its submittal dated August 9, 2002, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve Xcel's federally enforceable Title V operating permit into the Minnesota SO_2 SIP and remove the Xcel Administrative Order from the state SO_2 SIP. The state is also requesting in this submittal, that EPA rescind the Administrative Order for Ashbach Construction Company (Ashbach) from the Ramsey County particulate matter (PM) SIP. EPA proposed approval of this SIP revision and published a direct final approval on September 2, 2003. EPA received adverse comments on the proposed rulemaking, and therefore withdrew the direct final rulemaking on October 27, 2003.

DATES: This rule is effective July 8, 2004.

ADDRESSES: EPA has established a docket for this action under Docket ID No. MN–79. All documents in the docket are listed in the index. Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information where disclosure is restricted by statute. Publicly available docket materials are available in hard copy at the following address: United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. The Docket Facility is open during normal business hours, Monday through Friday, excluding legal holidays. We recommend that you telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch, United States Environmental Protection Agency, Region 5, Mailcode AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 353–8328. E-mail address: *panos.christos@epa.gov*.

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

I. Does This Action Apply to Me?
II. What Action Is EPA Taking Today?
III. What Is the Background for This Action?
IV. What Public Comments Were Received and What Is EPA's Response?
V. Statutory and Executive Order Reviews

General Information

I. Does This Action Apply to Me?

No, it applies to a single source, Xcel Energy's Inver Hills Generating Plant located in the city of Inver Grove Heights, Dakota County, Minnesota.

II. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SO_2 SIP certain portions of the Title V permit for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is approving into the SIP only those portions of Xcel's Title V permit cited as ''Title I Condition: State Implementation Plan for SO_2.'' In this same action, EPA is removing from the state SO_2 SIP the Xcel Administrative Order which had first been approved into the SO_2 SIP on September 9, 1994, and amended on June 13, 1995 and October 13, 1998. In addition, EPA is removing from the state

PM SIP the Ashbach Administrative Order which had previously been approved into the PM SIP on February 15, 1994.

III. What Is the Background for This Action?

The SIP revision submitted by MPCA on August 9, 2002, consists of a Title V permit issued to Xcel. The state has requested that EPA approve the following:

(1) The inclusion into the Minnesota SO_2 SIP of only the portions of the Xcel Inver Hills Generating Plant Title V permit cited as ''Title I Condition: State Implementation Plan for SO_2.'';

(2) The removal from the Minnesota SO_2 SIP of the Administrative Order for Xcel previously approved into the SIP; and,

(3) The removal from the Minnesota PM SIP of the Administrative Order for Ashbach previously approved into the SIP.

We concluded in our September 2, 2003, direct final action at 68 FR 52110 that the SIP revision for Xcel was approvable, because the state's request does not change any of the emission limitations currently in the SO_2 SIP or their accompanying supportive documents, such as the SO_2 air dispersion modeling. The revision to the SO_2 SIP does not approve any new construction or allow an increase in emissions, thereby providing for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS) and satisfying the applicable SO_2 requirements of the Clean Air Act (Act). The only change to the SO_2 SIP is the enforceable document for Xcel, from the Administrative Order to the Title V permit.

We also concluded on September 2, 2003, that the Administrative Order for Ashbach was no longer necessary since the company has permanently ceased operations at the Saint Paul asphalt plant. Therefore, we took action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP.

The September 2, 2003, direct final action stated that if we received adverse comments by October 2, 2003, we would publish a timely notice of withdrawal in the **Federal Register**. Because we received an adverse comment, we withdrew the direct final approval of the revision to the Minnesota SO_2 SIP on October 27, 2003, at 68 FR 61105. As stated in the proposal, there will not be a second comment period on this action.

IV. What Public Comments Were Received and What Is EPA's Response?

We received one comment opposing our September 2, 2003, approval of Minnesota's SIP revision. Although the comment does not specifically address the actual action taken in the SIP revision, it is ''adverse'' to the SIP action in that the commenter asks us to take a different action regarding this Minnesota power plant than the action we proposed to take. Below, we have paraphrased the comment and have responded to it.

Comment: When a power plant is fixed, there should be an improvement as to the amount of toxics being emitted. Any improvements in power plants should also reduce emissions. Toxins from Minnesota are transported east and negatively impact the health of citizens of the eastern United States. Minnesota power plants must be required to clean the air.

Response: This comment raises points that are unrelated to or outside the scope of this SIP revision, but are apparently directed to either the New Source Review program or the section 112 air toxics program. The commenter is asking EPA to impose substantive requirements that the Agency is not able to require in response to this SIP submission from the State.

As detailed in the September 2, 2003, direct final action, we are approving the current SIP submittal for Xcel because the only change to the SO_2 SIP is the enforceable document for Xcel, from the Administrative Order to the Title V permit. Further, we are taking action to rescind the Administrative Order for Ashbach from the Ramsey County PM SIP because the company has permanently ceased operations at the Saint Paul asphalt plant. The commenter submitted no new information that would warrant a disapproval under the requirements of the Act.

V. 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

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTA), 15 U.S.C. 272, requires federal agencies to use technical standards that are developed or adopted by voluntary consensus to carry our policy objectives, so long as such standards are not inconsistent with applicable law or otherwise impracticable. In reviewing program submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Absent a prior existing requirement for the state to use voluntary consensus standards, EPA has no authority to disapprove a program submission for failure to use such standards, and it would thus be inconsistent with applicable law for EPA to use voluntary consensus standards in place of a program submission that otherwise satisfies the provisions of the Act. Therefore, the requirements of section 12(d) of the NTTA do not apply.

Civil Justice Reform

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct.

Governmental Interference With Constitutionally Protected Property Rights

EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order, and has determined that the rule's requirements do not constitute a taking.

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, EPA 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 August 6, 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, Particulate matter, Reporting and recordkeeping requirements, Sulfur Dioxide.

Dated: May 20, 2004.

Norman R. Niedergang,

Acting Regional Administrator, Region 5.

■ For the reasons stated in the preamble, part 52, chapter I, of 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.*

■ 2. Section 52.1220 is amended by adding paragraph (c)(63) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(63) On August 9, 2002, the State of Minnesota submitted a revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for Xcel Energy's Inver Hills Generating Plant (Xcel) located in the city of Inver Grove Heights, Dakota County, Minnesota. Specifically, EPA is only approving into the SO_2 SIP those portions of the Xcel Title V operating permit cited as ''Title I Condition: State Implementation Plan for SO_2'' and is removing from the state SO_2 SIP the Xcel Administrative Order previously approved in paragraph (c)(46) and modified in paragraphs (c)(35) and (c)(41) of this section. In this same action, EPA is removing from the state particulate matter SIP the Administrative Order for Ashbach Construction Company previously approved in paragraph (c)(29) and modified in paragraph (c)(41) of this section.

(i) Incorporation by reference.

(A) AIR EMISSION PERMIT NO. 03700015–001, issued by the Minnesota Pollution Control Agency to Northern States Power Company Inver Hills Generating Plant on July 25, 2000, Title I conditions only.

[FR Doc. 04–12771 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 148–5078a; FRL–7671–1]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards for Portable Fuel Containers in the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). Specifically, EPA is approving new emission standards for portable fuel containers or spouts sold, supplied, offered for sale, or manufactured for sale in the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (Northern Virginia area). EPA is approving the new portable fuel container standards to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act (CAA).

DATES: This rule is effective on August 9, 2004 without further notice, unless EPA receives adverse written comment by July 8, 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 VA148–5078 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. VA148–5078. 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.

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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers, (215) 814–2308, or by e-mail at *powers.marilyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On January 24, 2003 (68 FR 3410), EPA issued a determination that the Metropolitan Washington, DC ozone nonattainment area (DC Area) failed to attain the ozone standard by the statutory date of November 15, 1999, and reclassified the area from ''serious'' to ''severe'' for one-hour ozone. As a severe nonattainment area, the DC Area must now meet the requirements of section 182(d) of the CAA, and attain the one-hour ozone standard by November 15, 2005. As a result of the reclassification to severe nonattainment, the states that comprise the DC Area (Maryland, Virginia, and District of Columbia) must implement additional control measures and submit SIP revisions for post-1999 Rate of Progress Plans, revisions to Contingency Plans, and revisions to the Attainment demonstration.

As part of Virginia's strategy to meet its portion of emission reduction keyed to the post-1999 ROPs, the 2005 attainment demonstration, and/or the contingency plan, the state adopted new measures to control volatile organic compound (VOC) emissions from four additional source categories, including a regulation to control emissions from portable fuel containers.

On February 23, 2004, the Commonwealth of Virginia submitted a formal revision to its SIP. The SIP revision consists of four new regulations to 9 VAC 5, Chapter 40, amendments to one existing article of 9 VAC 5, Chapter 40 and amendments to one article of 9 VAC Chapter 20.

The new regulations are:

(1) 9 VAC 5 Chapter 40, New Article 42—''Emission Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area'' (''Rule 4–42''). (9 VAC 5–40–5700 to 9 VAC 5–40–5770).

(2) 9 VAC 5, Chapter 40, New Article 47—''Emission Standards for Solvent Metal Cleaning Operations in the Northern Virginia Volatile Organic Compound Emissions Control Area'' (''Rule 4–47'')—(9 VAC 5–40–6820 to 9 VAC 5–40–6970).

(3) 9 VAC 5, Chapter 40, New Article 48—''Emission Standards for Mobile Equipment Repair and Refinishing Operations in the Northern Virginia Volatile Organic Compound Emission Control Area'' (''Rule 4–48'') (9 VAC 5–40–6970 to 9 VAC 5–40–7110) .

(4) 9 VAC 5, Chapter 40–New Article 49—''Emission Standards for Architectural and Industrial Maintenance Coatings in the Northern Virginia Volatile Organic Compound Emissions Control Area'' (''Rule 4–49'') (9 VAC 5–40–7120 to 9 VAC 5–40–7230).

The February 23, 2004, submittal also included amendments to 9 VAC 5–20–21 ''Documents incorporated by reference'' to incorporate by reference additional test methods and procedures needed for Rule 4–42 or Rule 4–49, and, also amendments to section 9 VAC 5–40–3260 of Article 24 ''Emission Standards for Solvent Metal Cleaning Operations Using Non-Halogentated Solvents'' (''Rule 4–24'').

This action concerns only Rule 4–42 and the addition of paragraph E 12 to 9 VAC 5–20–21 of the February 23, 2004 SIP revision. The other portions of the February 23, 2004 SIP revision submittal (Rule 4–47, Rule 4–48, Rule 4–49, the amendment to 9 VAC 5–40–3260, and the other amendments and additions to 9 VAC 5–20–21) will be the subject of separate rulemaking actions.

II. Summary of SIP Revision

The standards and requirements contained in Virginia's portable fuel container rule are based on the Ozone Transport Commission (OTC) model rule. The OTC developed control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing those model rules. The OTC Portable Fuel Container model rule was based on the existing rules developed by the California Air Resources Board, which were analyzed and modified by the OTC workgroup to address VOC reduction needs in the Ozone Transport Region (OTR).

The provisions of Virginia's Rule 4–42 will apply to any source or person who sells, supplies, offers for sale, or manufactures for sale portable fuel containers or spouts in the Northern Virginia counties of Arlington, Fairfax, Loudoun, Prince William, and Stafford counties; and the cities of Alexandria, Fairfax, Falls Church, Manassas, and Manassas Park. Affected persons must comply by January 1, 2005. The rule does not apply to any portable fuel container or spout manufactured for shipment, sale and use outside of the Northern Virginia area.

This regulation requires each portable fuel container or spout sold in the Northern Virginia area to meet the following requirements: (1) Have an automatic shut-off and closure device; (2) contain one opening for both filling and pouring; (3) meet minimal fuel flow rate based on nominal capacity; (4) meet a permeation standard, and (5) have a manufacturer's warranty against defects. The regulation includes exemptions, standards, testing procedures, recordkeeping, and administrative requirements. To demonstrate compliance, Virginia has added test methods and procedures to the

documents incorporated by reference in its General Provisions, 9 VAC 5–20.

III. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information (1) That are generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts. . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the Clean Air Act, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the Clean Air Act is likewise unaffected by this, or any, state audit privilege or immunity law.

IV. Final Action

EPA is approving a revision to the Commonwealth of Virginia SIP to establish regulations for the control of VOC emissions from portable fuel containers (Rule 4–42 in 9 VAC 5–40) and the associated test methods and procedures incorporated by reference in the General Provisions (9 VAC 5–20–21). These regulations will apply in the Northern Virginia area. Implementation of this VOC control measure strengthens the Virginia SIP, and results in emission reductions that will help the DC area meet the additional requirements associated with its reclassification to a severe nonattainment area for one-hour ozone. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates 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 rule will be effective on August 8, 2004 without further notice unless EPA receives adverse comment by July 8, 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.

IV. 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. 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 August 9, 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 to approve new VOC standards for portable fuel containers manufactured, sold, or supplied for use in the Northern Virginia Area 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 27, 2004.

James W. Newsom,

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 VV—Virginia

■ 2. In Section 52.2420, the table in paragraph (c) is amended by adding an entry to 9 VAC 5, Chapter 40 Part II to read as follows :

§ 52.2420 Identification of plan.

* * * * *

(c) EPA approved regulations.

EPA-APPROVED REGULATIONS IN THE VIRGINIA SIP

State citation (9 VAC 5)	Title/subject	State effective date	EPA approval date	Explanation (former SIP section)
*	*	*	*	*
Chapter 40	Existing Stationary Sources			
*	*	*	*	*
Part II Emission Standards				
*	*	*	*	*
Article 42	Emissions Standards for Portable Fuel Container Spillage in the Northern Virginia Volatile Organic Compound Emissions Control Area (Rule 4–42)			
5–40–5700	Applicability	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5710	Definitions	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5720	Standard for volatile organic compounds.	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5730	Administrative requirements	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5740	Compliance	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5750	Compliance Schedules	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5760	Test methods and procedures	3/24/2004	June 8, 2004 [Federal Register page citation].	
5–40–5770	Notification, records and reporting	3/24/2004	June 8, 2004 [Federal Register page citation].	
*	*	*	*	*

* * * * *

■ 3. Section 52.2423 is amended by adding paragraph (s) to read as follows:

§ 52.2423 Approval status.

* * * * *

(s) EPA approves as part of the Virginia State Implementation Plan the references to the documents listed in 9 VAC 5 Chapter 20, Section 5–20–21, paragraph E.12 of the Virginia Regulations for the Control and Abatement of Air Pollution submitted by the Virginia Department of Environmental Quality on February 23, 2004.

[FR Doc. 04–12769 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 310

[Docket Number: MARAD–2004–17760]

RIN 2133–AB60

Merchant Marine Training

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Interim final rule with request for comments.

SUMMARY: The Maritime Administration is publishing this interim final rule to implement changes to its regulations in part 310 regarding Maritime Education and Training. This rulemaking updates the Maritime Education and Training regulations to conform with Title XXXV, Subtitle A, of the National Defense Authorization Act for Fiscal Year 2004, regarding the administration of state, regional and United States merchant marine academies. This rulemaking also makes non-substantive technical changes to part 310.

DATES: This interim final rule is effective July 8, 2004. Comments on the rule must be submitted by August 9, 2004.

ADDRESSES: You may submit comments [identified by DOT DMS Docket Number MARAD–2004–17760] by any of the following methods:

- *Web Site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 7th St., SW., Nassif Building, Room PL–401, Washington, DC 20590–001.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://dms.dot.gov* including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

Docket: For access to the docket to read background documents or comments received, go to *http://dms.dot.gov* at any time or to Room PL–401 on the plaza level of the Nassif Building, 400 7th St., SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Jay Gordon, Maritime Administration, 400 7th St., SW., Washington, DC 20590; telephone: (202) 366–5173; or e-mail: *Jay.Gordon@marad.dot.gov.*

SUPPLEMENTARY INFORMATION: For purposes of the following analysis, the term ''Act'' refers to the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, unless otherwise indicated.

Section-By-Section Analysis

Section 310.1 Definitions

(b) *Act*—We update the term ''Act'' to include sections of the Maritime Education and Training Act of 1980, Pub. L. 96–453, as amended, which includes the changes effected by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, and any subsequent amendments.

(i) *Cost of Education Provided*—is a concept added by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, in connection with requiring Student Incentive Payment (''SIP'') students defaulting on their obligations to repay the student incentive payments made to such students by the Federal Government.

(j)–(r)—Definitions under these designations were renumbered.

Section 310.3 Schools and Courses

Changes in this section include capitalizing the words ''training ship'' and replacing the title of the Office of Maritime Labor and Training with the Office of Policy and Plans.

Section 310.7 Federal Student Subsistence Allowances and Student Incentive Payments

Section 310.7(b)(1)—Under the Oceans Act of 1992, Pub. L. 102–587, the student incentive payment amount was increased from $1200 per annum to $3000 per annum. While MARAD's regulations currently list $1200 as the annual SIP payment amount, students currently receive payments of $3000 per annum. Students receiving $3,000 under their existing service obligation contracts will have the option of continuing to receive the $3,000 payment under their old service obligation contracts or executing new service obligation contracts and receiving the increased amount of $4000 per annum. The new service obligation contracts will specifically list $4000 as the payment amount and will also have the increased obligations required by the new law. Individuals must execute the new service obligation contracts to receive the increased SIP payment amount.

Section 310.7(b)(3) addresses the form of the service obligation contract. This paragraph is changed to reflect revisions in the Act.

Section 310.7(b)(3)(ii)—Under former (b)(3)(ii), the separation of an individual by the School released that individual from his or her obligation to complete the course of instruction at the School. By virtue of the changes in the law, the separation of an individual by the School no longer releases an individual from this obligation. An individual who is separated by the School is now in default of his or her service obligations and is liable for the remedies for failure to fulfill these obligations, such as induction into military service or recovery by the Federal Government of the Cost of Education Provided, plus interest and attorney's fees.

Section 310.7(b)(3)(iv)—The previous law required graduates to maintain their license for at least six (6) years following graduation. This required the graduate to maintain a Coast Guard license at least equal to the license that such graduate had upon graduation from the School. The subsequent promulgation of Standards of Training, Certification and Watchkeeping (STCW) requirements created a situation in which various graduates were required to take additional courses in order to maintain such a license. Given the unanticipated impact of the STCW requirements, the Administration has determined that individuals graduating without the necessary STCW courses need not take these courses and can satisfy their service obligations by

maintaining a more restricted type of Coast Guard license, other than a continuity license. Continuity licenses were not deemed acceptable because they do not allow such graduates to sail in any capacity.

Individuals executing or reexecuting service obligation contracts after the effective date of the Act are now required to maintain licenses that are at least equal in status to the licenses they had at the time of graduation (*i.e.*, the ability to sail without restrictions in both domestic and foreign commerce). Such graduates are required to take all courses necessary to maintain their licenses, even with respect to unforeseen future requirements. The type of Coast Guard license that is required to satisfy the service obligation of maintaining a license for at least six (6) years following graduation is a license containing appropriate national and international endorsements and certifications required by the United States Coast Guard for service both on domestic and international voyages. ''Appropriate'' in this instance means the same endorsements and certifications held at the date of graduation, or the equivalent. Restricted licenses limited in applicability to just portions of the domestic or international voyages do not satisfy this obligation, nor do continuity licenses. This change confirms the Administration's longstanding interpretation of the law in this respect, that graduates continue to maintain Coast Guard licenses that are not more restricted than the licenses with which they graduated.

Section 310.7(b)(3)(vi)—The Act now allows employment within the Federal Government to satisfy the requirement that graduates ''serve in the foreign or domestic commerce'' or ''national defense'' of the United States. Such employment in the Federal Government must be significantly maritime-related and serve the national security interests of the United States.

The determination of whether such employment satisfies this service obligation is made by the Administration. Examples of civilian employment that might satisfy this obligation are civilian positions relating to vessel or port security in the Navy, the Department of Homeland Security, or the Transportation Security Administration. ''Significant'' is equated to a material or essential portion of an individual's responsibilities. It does not mean a ''majority'' of such individual's responsibilities, but means more than just an incidental part.

Section 310.7(b)(5)—The number of days required to qualify for an ''afloat employment year'' for each year will be set forth on the Administration's Web site at *http://www.marad.dot.gov.*

Section 310.7(b)(7)—Breach of Contract

Section 310.7(b)(7)(i)(A)—Undergraduate Breach/Induction into Armed Forces: This paragraph is substantially rewritten to conform to the new terms of the Act. Any individual who has accepted SIP payments for a minimum of two (2) academic years and fails to fulfill any of their service obligations may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve a period of time not to exceed two (2) years. In cases of hardship or impossibility of performance of the provisions of the service obligation contract due to accident, illness or other justifiable reason, as determined by the Maritime Administrator, this requirement may be waived in whole or in part. *See* section 310.7(b)(8).

Section 310.7(b)(7)(i)(B)—Undergraduate Breach/Collection of Cost of Education Provided: This paragraph contains a new provision set forth in the Act. It authorizes the Secretary of Transportation, acting through the Maritime Administrator, to take action against defaulting individuals to recover the Cost of Education Provided to such individuals, plus interest and attorney's fees. Such authority may be exercised in instances where the Maritime Administrator determines that it would better serve the national interest to recover the Cost of Education Provided from a defaulting individual rather than to refer such individual to the Secretary of Defense for induction into the Armed Forces of the United States.

Section 310.7(b)(7)(i)(C)—Sets forth the discretionary authority of the Maritime Administrator to reduce the amount to be recovered from such defaulting individuals to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction. This provision is in addition to the Maritime Administrator's authority to waive the service obligations as set forth in section 310.7(b)(8).

Section 310.7(b)(7)(i)(D)—For purposes of paragraph (b)(7)(i)(A) of this section, an ''academic year'' is defined as the completion by a student of the required number of semesters, trimesters, or quarters, as applicable, whether at school or at sea, which comprise a complete course of study for an academic year. Thus, liability under paragraph (b)(7)(i)(A) begins for students at the beginning of their third (3rd) academic year, whether at school or at sea.

Section 310.7(b)(7)(ii)—Post Graduation Defaults

Section 310.7(b)(7)(ii)(A)—Individuals who breach their service obligations after graduation are subject to be ordered to active duty in the Armed Forces of the United States for a period of time not less than two (2) years and not more than the unexpired portion of the three (3) years of service required in the foreign and domestic commerce or the national defense of the United States following graduation.

Section 310.7(b)(7)(ii)(B)—If the Secretary of Defense is unable or unwilling to order an individual to active duty or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the defaulting individual the Cost of Education Provided by the Federal Government, plus interest and attorney's fees.

Section 310.7(b)(7)(ii)(C)—Sets forth the discretionary authority of the Maritime Administrator to reduce the amount to be recovered from such defaulting individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

This provision is in addition to the Maritime Administrator's authority to waive the service obligations. Such authority is set forth in section 310.7(b)(8) and may be exercised in cases where there would be undue hardship or impossibility of performance of the provisions of the service obligation contract due to accident, illness or other justifiable reason.

Section 310.7(b)(10)(ii)(C)—Reflects that graduates are required to keep the Office of Policy and Plans, as opposed to the Office of Maritime Labor, Training and Safety, aware of the graduates' current mailing addresses.

Section 310.7(b)(11)—This new paragraph reflects that the Administration is now authorized to collect debts owed to the Federal Government by commencing court proceedings as well as utilizing the Federal debt collection procedures set forth in chapter 176, title 28 of the United States Code and other applicable administrative remedies for debt collection. Such administrative collection options include offsetting debts against defaulting individuals' tax refunds.

Section 310.12–1 Form of Agreement

The form of agreement has been deleted in its entirety. Setting forth a required agreement in the Administration's regulations constrained the ability of the Administration and the Schools to modify the agreement to reflect changing circumstances. Not only would the agreements have to be modified, but also the regulations would have to be changed. A model agreement will be posted on MARAD's Web site at *http://www.marad.dot.gov.*

Subpart C—Admission and Training of Midshipmen at the United States Merchant Marine Academy

Section 310.51 Definitions

(b) *Act*—We update the term ''Act'' to include sections of the Maritime Education and Training Act of 1980, Pub. L. 96–453, as amended, which includes the changes effected by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, and any subsequent amendments.

(f) *Cost of Education Provided*—is a concept added by the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, in connection with recovery of funds from individuals failing to perform their service obligations, both before and after graduation. It is the intent of the Act that the Administration recover the financial costs incurred by the Federal Government for providing training or financial assistance to students at the Academy. For students at the Academy, this means the pro rata cost of all charges incurred with respect to the Academy for a given fiscal year, including room, board, classroom academics, and other training activity costs as well as any direct financial assistance given to such individual.

(g)–(i)—Definitions under these designations were renumbered.

Section 310.58 Service Obligation for Students Executing or Reexecuting Contracts

Section 310.58(a)—The terms of the National Defense Authorization Act for Fiscal Year 2004, Pub. L. 108–136, apply to individuals executing service obligation contracts after November 24, 2003. No individual previously having executed a service obligation contract is required by virtue of the amendments of the Act to execute a new service obligation contract. Individuals executing contracts after November 24, 2003, even those who have already executed a service obligation contract, are required to execute the new service obligation contract if they receive new consideration from the Federal Government for such execution.

Section 310.58(a)(1)—Under former section 310.58(a)(1), the separation of an individual by the Academy released that individual from his or her obligation to complete the course of instruction at the Academy. By virtue of the changes in the law, the separation of an individual by the Academy no longer releases an individual from this obligation. An individual who is separated by the Academy is now in default of his or her service obligations and is liable for the remedies for failure to fulfill these obligations. Among these remedies are induction into military service or recovery by the Federal Government of the Costs of Education Provided.

Section 310.58(a)(3)—Under former section 310.58(a)(3), graduates were required to maintain their license for at least six (6) years following graduation. This required the graduate to maintain a Coast Guard license at least equal to the license that such graduate had upon graduation from the Academy. The subsequent promulgation of STCW requirements created a situation wherein various graduates were required to take additional courses in order to maintain such a license. Given the unanticipated impact of the STCW requirements, the Administration determined that individuals graduating without the necessary STCW courses need not take these courses and can satisfy their service obligations by maintaining a more restricted type of Coast Guard license, other than a continuity license. Continuity licenses were not acceptable because they do not allow such graduates to sail in any capacity.

Individuals executing service obligation contracts after the effective date of the Act are now required to maintain their licenses in at least equal status to the status they had at the time of graduation (*i.e.*, the ability to sail without restrictions in both domestic and foreign commerce). Such graduates are required to take all courses necessary to maintain their licenses, even with respect to unforeseen future requirements. The type of Coast Guard license that is required to satisfy the service obligation of maintaining a license for at least six (6) years following graduation is a license containing appropriate national and international endorsements and certifications required by the United States Coast Guard for service both on domestic and international voyages. ''Appropriate'' in this instance means the same endorsements and certifications held at the date of graduation, or the equivalent. Restricted licenses limited in applicability to just portions of the domestic or international voyages do not satisfy this obligation, nor do continuity licenses. The Act confirmed the Administration's longstanding interpretation of the law in this respect, that graduates had to maintain a Coast Guard license that was not more restricted than the license with which they graduated.

Section 310.58(a)(5) has been amended to reflect the statutory authorization of additional ways to perform the employment aspects of the service obligation requirements. The Act now allows employment within the Federal Government to satisfy the requirement that graduates ''serve in the foreign or domestic commerce'' or ''national defense'' of the United States. Such employment in the Federal Government must be significantly maritime-related and serve the national security interests of the United States.

The determination of whether such employment satisfies the service obligation requirements is made by the Administration. Examples of civilian employment that might satisfy the service obligation are civilian positions relating to vessel or port security in the Navy, the Department of Homeland Security, or the Transportation Security Administration.

''Significantly'' is equated to a material or essential portion of an individual's responsibilities. It does not mean a ''majority'' of such individual's responsibilities, but means more than just an incidental part.

Section 310.58(b) is amended for purposes of clarity and to indicate that the number of days for satisfactory service for each sea year will be set forth on the Administration's Web site at http://www.marad.dot.gov.

Section 310.58(e)(1)—Breach of Contract Before Graduation

Section 310.58(e)(1)(i)—This paragraph is substantially rewritten to conform to the new terms of the Act. Any individual who has attended the Academy for a minimum of two (2) academic years who fails to fulfill any of their service obligations may be ordered by the Secretary of Defense to active duty in the Armed Forces of the United States to serve a period of time not to exceed two (2) years. In cases of hardship or impossibility of performance of the provisions of the service obligation contract due to accident, illness or other justifiable reason, as determined by the Maritime Administrator, this requirement may be waived in whole or in part. See section 310.58(f).

Section 310.58(e)(1)(ii)—This paragraph contains a provision set forth in the Act. It authorizes the Secretary of Transportation, acting through the Maritime Administrator, to take action against defaulting individuals to recover the Cost of Education Provided from individuals who have attended the Academy for more than two (2) academic years, but not yet graduated.

Section 310.58(e)(1)(iii)—For purposes of paragraph (e)(1)(i) of this section, an ''academic year'' is defined as the completion by a student of a total of three (3) trimesters, whether at the Academy or at sea. Thus, liability under paragraph (e)(1)(i) begins for students when they begin their seventh (7th) trimester, whether at the Academy or at sea.

Section 310.58(e)(2)—Breach After Graduation

Section 310.58(e)(2)(i)—Individuals who breach their service obligations after graduation are subject to be ordered to active duty in the Armed Forces of the United States for a period of time of not less than three (3) years and not more than the unexpired portion of the five (5) years of service required in the foreign and domestic commerce or the national defense of the United States following graduation.

Section 310.58(e)(2)(ii)—If the Secretary of Defense is unable or unwilling to order an individual to active duty or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the defaulting individual the Cost of Education Provided by the Federal Government.

Section 310.58(e)(2)(iii) sets forth the discretionary authority of the Maritime Administrator to reduce the amount to be recovered from such defaulting individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction. This provision is in addition to the Maritime Administrator's authority to waive the service obligations as set forth in section 310.58(f).

Section 310.58(h)(2)(iii)—Reflects that graduates are required to keep the Office of Policy and Plans, as opposed to the Office of Maritime Labor, Training and Safety, aware of the graduates' current mailing addresses.

Section 310.58(i)—This new paragraph reflects that the Administration is now authorized to collect debts owed to the Federal Government by commencing court proceedings as well as utilizing the Federal debt collection procedures set forth in chapter 176, title 28 of the United States Code and other applicable administrative remedies for debt collection. Such administrative collection options include offsetting debts against defaulting individuals' tax refunds.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures. This interim final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This interim final rule is not likely to result in an annual effect on the economy of $100 million or more. This interim final rule is also not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034, February 26, 1979). The economic impact associated with this rule, if any, should be minimal; therefore, further regulatory evaluation is not necessary. This interim final rule is intended only to update provisions in Part 310 to conform to the National Defense Authorization Act for Fiscal Year 2004 and to make technical changes and corrections.

Administrative Procedure Act

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to notice and comment procedures when they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for not providing notice and comment since this interim final rule only updates existing regulations to conform to the National Defense Authorization Act for Fiscal Year 2004 and makes non-substantive technical corrections. While MARAD feels that public comment on this rule is unnecessary, we will accept comments during the timeframe outlined in the **DATES** section of this rulemaking.

Regulatory Flexibility Act

The Maritime Administrator certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. This interim final rule is intended only to update provisions in Part 310, which do not affect a substantial number of small entities, but instead affect the United States Merchant Marine Academy, State merchant marine academies, and students thereof.

Federalism

We have analyzed this interim final rule in accordance with the principles and criteria contained in Executive Order 13132 (Federalism) and have determined that it does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. These regulations have no substantial effect on the States, the current Federal-State relationship, or the current distribution of power and responsibilities among the various local officials. Therefore, consultation with State and local officials is not necessary.

Executive Order 13175

MARAD does not believe that this interim final rule will significantly or uniquely affect the communities of Indian tribal governments when analyzed under the principles and criteria contained in Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). Therefore, the funding and consultation requirements of this Executive Order do not apply.

Environmental Impact Statement

We have analyzed this interim final rule for purposes of compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have concluded that under the categorical exclusions in section 4.05 of Maritime Administrative Order (MAO) 600–1, ''Procedures for Considering Environmental Impacts,'' 50 FR 11606 (March 22, 1985), neither the preparation of an Environmental Assessment, an Environmental Impact Statement, nor a Finding of No Significant Impact for this interim final rule is required. This interim final rule involves administrative and procedural regulations that have no environmental impact.

Unfunded Mandates Reform Act of 1995

This interim final rule does not impose an unfunded mandate under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more, in the aggregate, to any of the following: State, local, or Native American tribal governments, or the private sector. This interim final rule is the least burdensome alternative that achieves the objective of the rule.

Paperwork Reduction Act

This rulemaking contains no new or amended information collection or recordkeeping requirements that have been approved or require approval by the Office of Management and Budget.

Privacy Act

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

List of Subjects in 46 CFR Part 310

Grant programs-education, Reporting and recordkeeping requirements, Schools, Seamen.

■ For the reasons set forth in the preamble, MARAD amends 46 CFR Chapter II as follows:

PART 310—MERCHANT MARINE TRAINING

■ 1. The authority citation for part 310 continues to read as follows:

Authority: 46 App. U.S.C. 1295; 49 CFR 1.66.

■ 2. Amend § 310.1 by revising paragraphs (b), (i), (j), (k), (l), (m), (n), (o), (p), and (q) and by adding new paragraph (r) to read as follows:

§ 310.1 Definitions.

* * * * *

(b) *Act* means the Maritime Education and Training Act of 1980, Pub. L. 96–453, as amended.

* * * * *

(i) *Cost of Education Provided* means the financial costs incurred by the Federal Government in providing student incentive payments for students at the State maritime academies.

(j) *Deputy* means the Deputy Maritime Administrator, Department of Transportation.

(k) *Maritime Service* means the United States Maritime Service.

(l) *Midshipman* means a student in good standing at a State maritime academy or college who has accepted midshipman status in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve) under the Act.

(m) *Officers* means all officers and faculty employed by a State maritime academy or college.

(n) *Region Director* means the Director of the Administration's region office in which a School is located or in which a training ship is located.

(o) *School* means State or Territorial or regional maritime academy or college meeting the requirements of the Act.

(p) *Superintendent* means the superintendent or president of a School.

(q) *Supervisor* means the employee of the Administration designated to supervise the Federal Government's interest in a School under the provisions of the Act, an agreement, and this subpart.

(r) *Training Ship* means a vessel used for training by a school and furnished by the Administration to a State or Territory, and includes the ship itself and all its equipment, apparel, appliances, machinery boilers, spare and replacement parts and other property contained in it.

* * * * *

§ 310.3 [Amended]

■ 3. Amend § 310.3 in paragraph (b)(1) by removing the words ''training ship'' and adding in their place ''Training Ship'' and in paragraph (c)(3) by removing the words ''Maritime Labor and Training'' and adding in their place ''Policy and Plans.''

■ 4. Amend § 310.7 by revising paragraphs (b)(1), (b)(3), (b)(5), (b)(7), (b)(8), and (b)(10)(ii)(C), and by adding paragraph (b)(11) to read as follows:

§ 310.7 Federal student subsistence allowances and student incentive payments.

* * * * *

(b) * * *

(1) *General provisions.* In accordance with the Administration's established subsidy quotas for classes entering after April 1982, each school shall identify to the Administration, no later than February 1 annually, those students who have been selected to receive the student incentive payment authorized by the Act. The students so identified must meet the requirements of § 310.6(b). The Administration shall provide the school with the necessary service obligation contracts. The contracts will be signed by the designated students and returned by the School to the Supervisor and shall become effective when signed by the Supervisor or his or her designee. A copy shall be returned to the School for transmittal to the student. Payments will be issued to midshipmen in amounts equaling $4000 for each academic year of attendance whom execute the service obligation contracts providing for such payment amount. Payments shall commence to accrue on the day each such midshipman begins his or her first term of work at the School. Such payments shall be made quarterly to the midshipman until the completion of his or her course of instruction but in no event for more than four (4) academic years. The School shall submit a quarterly certified Daily Attendance Report listing the names of all designated midshipmen who are entitled to student incentive payments. Midshipmen who do not take all necessary steps to maintain their midshipman status, who lose their midshipman status due to action by the U.S. Navy, or who make the commitment identified in paragraph (a)(4) of this section will have their student incentive payment terminated.

* * * * *

(3) *Form of the service obligation contract.* The service obligation contract shall obligate the midshipman to—

(i) Use the student incentive payment to defray the cost of uniforms, books and subsistence;

(ii) Complete the course of instruction at the School;

(iii) Take the examination for a license as an officer in the merchant marine of the United States on or before the date of graduation from a School and fulfill the requirements for such license not later than three (3) months after such graduation;

(iv) Maintain a valid license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from a School, accompanied by the appropriate national and international endorsements and certification required by the United States Coast Guard for service aboard vessels on domestic and international voyages (''appropriate'' means the same endorsements and certifications held at the date of graduation, or the equivalent);

(v) Apply for an appointment as, and accept if tendered, and serve as a commissioned officer in the United States Naval Reserve (including the Merchant Marine Reserve, United States Naval Reserve), the United States Coast Guard Reserve, or any other Reserve unit of an armed force of the United States for at least six (6) years following the date of graduation from a school; and

(vi) Serve in the foreign or domestic commerce or both, and the national defense of the United States for at least three (3) years following graduation from a School—

(A) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or Territory of the United States;

(B) As an employee in a United States maritime-related industry, profession, or marine science (as determined by the Maritime Administrator), if the Maritime Administrator determines that service under paragraph (b)(3)(vi)(A) of this section is not available to such individual;

(C) As a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration or in other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined to be satisfactory by the Maritime Administrator; or

(D) By combining the services specified in paragraphs (b)(3)(vi)(A), (b)(3)(vi)(B) and (b)(3)(vi)(C) of this section; and

(E) Such employment in the Federal Government must be both significantly maritime-related and serve the national security interests of the United States. ''Significantly'' is equated to a material or essential portion of an individual's responsibilities. It does not mean a ''majority'' of such individual's responsibilities, but means more than just an incidental part.

* * * * *

(5) *Afloat employment year.* For purposes of the service obligation, a satisfactory year of afloat employment shall be a number of days employed afloat that is at least equal to the median number of days of seafaring employment under Articles achieved by deck or engine officers in the most recent calendar year for which statistics are available. Such figures for each year will be posted on the Administration's Internet site at *http://www.marad.dot.gov.*

* * * * *

(7) *Breach of contract*—(i) Breach before graduation. (A) If the Maritime Administrator determines that any individual who has accepted Federal student incentive payments for a minimum of two (2) academic years has failed to fulfill any part of the contract set forth in § 310.7(b)(3), such individual may be ordered by the Secretary of Defense to active duty in one of the Armed Forces of the United States to serve a period of time not to exceed two (2) years. In cases of hardship as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (b)(7)(i)(A) of this section, or if the Maritime Administrator determines that reimbursement of the cost of education provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the amount of student incentive payments, plus interest and attorney's fees.

(C) The Maritime Administrator is authorized to reduce the amount to be recovered under paragraph (b)(7)(i)(B) of this section from such individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

(D) For purposes of paragraph (b)(7)(i)(A) of this section, an ''academic year'' is defined as the completion by a student of the required number of semesters, trimesters, or quarters, as applicable, whether at school or at sea, which comprise a complete course of study for an academic year. Thus, liability under paragraph (b)(7)(i)(A) of this section begins for students at the beginning of their third (3rd) academic year, whether at school or at sea.

(ii) *Breach after graduation.* (A) If the Maritime Administrator determines that an individual has failed to fulfill any part of the service obligations (described in § 310.7(b)(3)), such individual may be ordered to active duty to serve a period of time not less than two (2) years and not more than the unexpired portion of the service obligation contract relating to service in the foreign or domestic commerce or the national defense, as determined by the Maritime Administrator. The Maritime Administrator, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(B) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (b)(7)(ii)(A) of this section or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided, plus interest and attorney's fees.

(C) The Maritime Administrator may reduce the amount to be recovered under paragraph (b)(7)(ii)(B) of this section from such individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

(8) *Waivers.* Waivers may be granted in cases where there would be undue hardship or impossibility of performance of the provisions of the contract due to accident, illness or other justifiable reason. Applications for waiver will be submitted to the Supervisor.

* * * * *

(10) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

(ii) * * *

(C) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Policy and Plans. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Policy and Plans, 400 7th St., SW., Washington, DC 20590.

* * * * *

(11) *Remedies.* To aid in the recovery of the cost of education under this section, the Maritime Administrator may request the Attorney General to begin court proceedings, and the Maritime Administrator may make use of the Federal debt collection procedure in chapter 176 of title 28, United States Code, or other applicable administrative remedies.

* * * * *

■ 5. Section 310.12–1 is revised to read as follows.

§ 310.12–1 Form of agreement.

The form of agreement between the Maritime Administrator and schools for annual maintenance and support payments, Federal student subsistence and incentive payments and fuel assistance under the 1958 Act and the Act is available on MARAD's Web site at *http://www.marad.dot.gov.*

* * * * *

■ 6. Amend § 310.51 by revising paragraphs (b), (f), (g), and (h), and by adding a new paragraph (i) to read as follows:

§ 310.51 Definitions.

* * * * *

(b) *Act* means the Maritime Education and Training Act of 1980, Pub. L. 96–453, 94 Stat. 1997, as subsequently amended, 46 App. U.S.C. 1295–1295g.

* * * * *

(f) *Cost of Education Provided* means the financial costs incurred by the Federal Government for providing training or financial assistance to students at the United States Merchant Marine Academy, including direct financial assistance, room, board, classroom academics, and other training activities.

(g) *Foreign student* means an individual who owes national allegiance

to a country or political entity other than the United States, and the term includes United States nationals.

(h) *NOAA* means the National Oceanic and Atmospheric Administration.

(i) *USNR* means the United States Naval Reserve.

* * * * *

■ 7. Amend § 310.58 by revising the section heading, paragraphs (a), (b), (e), (f), (h)(1), and (h)(2), and by adding a new paragraph (i) to read as follows:

§ 310.58 Service obligation for students executing or reexecuting contracts.

(a) The service obligation contract shall obligate each midshipman who is a citizen and who executes or reexecutes a service obligation contract to:

(1) Complete the course of instruction at the Academy;

(2) Fulfill the requirements for a license as an officer in the merchant marine of the United States on or before the date of graduation from the Academy;

(3) Maintain a license as an officer in the merchant marine of the United States for at least six (6) years following the date of graduation from the Academy accompanied by the appropriate national and international endorsements and certifications as required by the United States Coast Guard for service aboard vessels on both domestic and international voyages (''appropriate'' means the same endorsements and certifications held at the date of graduation, or the equivalent);

(4) Apply for an appointment as, accept any tendered appointment as and serve as a commissioned officer in the USNR (including the Merchant Marine Reserve, USNR), the United States Coast Guard Reserve, or any other Reserve component of an armed force of the United States for at least six (6) years following the date of graduation from the Academy;

(5) Serve in the foreign or domestic commerce and the national defense of the United States for at least five (5) years following the date of graduation from the Academy:

(i) As a merchant marine officer serving on vessels documented under the laws of the United States or on vessels owned and operated by the United States or by any State or territory of the United States;

(ii) As an employee in a United States maritime-related industry, profession or marine science (as determined by the Maritime Administrator), if the Maritime Administrator determines that service under paragraph (a)(5)(i) of this section is not available;

(iii) As a commissioned officer on active duty in an armed force of the United States or in the National Oceanic and Atmospheric Administration; or

(iv) Other maritime-related employment with the Federal Government which serves the national security interests of the United States, as determined by the Maritime Administrator; or

(v) By combining the services specified in paragraphs (a)(5)(i), (ii), (iii) and (iv) of this section; and,

(vi) Such employment in the Federal Government that satisfies paragraph (a)(5)(iv) of this section must be both significantly maritime-related and serve the national security interests of the United States. ''Significantly'' is equated to a material or essential portion of an individual's responsibilities. It does not mean a ''majority'' of such individual's responsibilities, but means more than just an incidental part; and

(6) Submit periodic reports to the Administration to establish compliance with all the terms of the contract.

(b) *Service as a merchant marine officer.* For purposes of the service obligation set forth in paragraph (a)(5)(i) of this section, a satisfactory year of service on vessels in the United States merchant marine as a merchant marine officer shall be the lesser of—

(1) 150 days; or

(2) The number of days that is at least equal to the median number of days of seafaring employment under articles achieved by deck or engine officers in the most recent calendar year for which statistics are available. The number of such days for each year as determined by the Administration are set forth at *http://www.marad.dot.gov.*

* * * * *

(e) *Breach of contract.*

(1) Breach before graduation: (i) If the Maritime Administrator determines that an individual who has attended the Academy for not less than two (2) academic years has failed to complete the course of instruction at the Academy, such individual may be ordered by the Secretary of Defense to active duty in one of the Armed Forces of the United States to serve for a period of time not to exceed two (2) years. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(ii) If the Secretary of Defense is unable or unwilling to order an individual to active duty under the previous paragraph, or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided by the Federal Government would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided by the Federal Government.

(iii) For purposes of paragraph (e)(1)(i) of this section, an ''academic year'' is defined as the completion by a student of a total of three (3) trimesters, whether at the Academy or at sea. Thus, liability under paragraph (e)(1)(i) of this section begins for students when they begin their seventh (7th) trimester, whether at the Academy or at sea.

(2) Breach after graduation: (i) If the Maritime Administrator determines that an individual has failed to fulfill any part of the service obligation contract (described in § 310.58(a)), such individual may be ordered to active duty to serve a period of time not less than three (3) years and not more than the unexpired portion of the service obligation contract relating to service in the foreign or domestic commerce or the national defense, as determined by the Maritime Administrator. The Maritime Administrator, in consultation with the Secretary of Defense, shall determine in which service the individual shall be ordered to active duty to serve such period of time. In cases of hardship, as determined by the Maritime Administrator, the Maritime Administrator may waive this provision in whole or in part.

(ii) If the Secretary of Defense is unable or unwilling to order an individual to active duty under paragraph (e)(2)(i) of this section or if the Maritime Administrator determines that reimbursement of the Cost of Education Provided would better serve the interests of the United States, the Maritime Administrator may recover from the individual the Cost of Education Provided.

(iii) The Maritime Administrator may reduce the amount to be recovered from such individual to reflect partial performance of service obligations and such other factors as the Maritime Administrator determines merit such reduction.

(f) *Waivers.* The Maritime Administrator shall have the discretion to grant waivers of all or a portion of the service obligation contract in cases where there would be undue hardship or impossibility of performance due to accident, illness or other justifiable reason. Applications for waivers shall be submitted in writing to the Academies Program Officer, Office of Policy and Plans, Maritime

Administration, 400 7th St., SW., Washington, DC 20590.

* * * * *

(h) *Determination of compliance with service obligation contract; deferment; waiver; and appeal procedures.*

(1) A designated official of the Administration shall:

(i) Determine whether a student or graduate has breached his or her service obligation contract;

(ii) Grant or deny a deferment of the service obligation, except for obligations otherwise a part of the graduate's commissioned officer status; and,

(iii) Grant or deny a waiver of the requirements of the service obligation contract in cases of undue hardship or impossibility of performance due to accident, illness or other justifiable reason.

(2)(i) If a student or graduate disagrees with the decision of the designated official, the student or graduate may appeal that decision to the Maritime Administrator. The appeal will set forth all the legal and factual grounds on which the student or graduate bases the appeal. Any grounds not set forth in the appeal are waived.

(ii) Appeals must be filed with the Maritime Administrator within thirty (30) calendar days of the date of receipt by such student or graduate of the written decision of the designated official. Appeals must be filed at the Office of the Maritime Administrator, Maritime Administration, Room 7210, 400 7th St., SW., Washington, DC 20590. Each decision will include a notice of appeal rights.

(iii) A decision is deemed to be received by a student or graduate five (5) working days after the date it is mailed by first class mail, postage prepaid, to the address for such student or graduate listed with the Office of Policy and Plans. It is the responsibility of such student or graduate to ensure that their current mailing address is on file with the Office of Policy and Plans, Maritime Administration, 400 7th St., SW., Washington, DC 20590. Students and graduates can determine the current address on file with the Office of Policy and Plans by logging into the service obligation contract compliance Web site at *http://mscs.marad.dot.gov.* Changes in the address listed can be made through the Internet.

* * * * *

(i) *Remedies.* To aid in the recovery of the Cost of Education Provided the Maritime Administrator may request the Attorney General to begin court proceedings, and the Maritime Administrator also may make use of the Federal debt collection procedures in chapter 176 of title 28, United States Code, and other applicable administrative remedies.

* * * * *

By Order of the Maritime Administrator.

Dated: June 2, 2004.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 04–12765 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–81–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2, 73, 74 and 90

[ET 03–158; MB 03–159; FCC 04–80]

New York City Metropolitan Area Public Safety Agencies to Use Frequencies at 482–488 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules of the Federal Communications Commission (FCC) to reallocate television channel 16 to the land mobile service in order to permit the New York Police Department and New York Metropolitan Advisory Committee (NYMAC) to utilize the channel for public safety services.

DATES: The rule changes will become effective July 8, 2004.

ADDRESSES: Federal Communications Commission, 445 12th St., SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dave Roberts (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's Report and Order, (MO&O) FCC 04–80, adopted on March 31, 2004, and released on April 9, 2004. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the FCC's copy contractor, Qualex International, 445 12th Street, SW., Room CY-B402, Washington, DC 20554. The full text may also be downloaded at: *http://www.fcc.gov.* Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365 or at *bmillin@fcc.gov.*

By this MO&O, the FCC reallocates television channel 16 to the land mobile service for use by the New York Police Department and NYMAC for public safety use in the New York metropolitan area.

The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, § 73.606(b) of the Commission's rules. *See* Certification That §§ 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend §§ 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

Accordingly, *it is ordered* that pursuant to the authority contained in sections 1, 4(i), 4(j), 301, 303, 308, 309(j), and 337 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(j), 157(a), 301, 303, 308, 309(j), and 337 this Report and Order *is adopted.*

List of Subjects in 47 CFR Parts 2, 73, 74 and 90

Television, Land mobile radio services.

Federal Communications Commission.

William F. Caton,

Deputy Secretary.

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 2, 73, 74, and 90 as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 1. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

■ a. Revise page 37.

■ b. In the list of non-Federal Government (NG) footnotes, revise footnote NG66; and remove footnotes NG114 and NG127.

§ 2.106 Table of Frequency Allocations.

The revisions read as follows:

* * * * *

BILLING CODE 6712–01–P

470-849 MHz (UHF) Page 37

International Table			United States Table		FCC Rule Part(s)
Region 1	Region 2	Region 3	Federal Government	Non-Federal Government	
470-790 BROADCASTING	470-512 BROADCASTING Fixed Mobile 5.292 5.293	470-585 FIXED MOBILE BROADCASTING 5.291 5.298	470-608	470-512 FIXED LAND MOBILE BROADCASTING NG66 NG115 NG128 NG149	Public Mobile (22) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
	512-608 BROADCASTING 5.297	585-610 FIXED MOBILE BROADCASTING RADIONAVIGATION 5.149 5.305 5.306 5.307		512-608 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
	608-614 RADIO ASTRONOMY Mobile-satellite except aeronautical mobile-satellite (Earth-to-space)		608-614 RADIO ASTRONOMY US74 LAND MOBILE US350 US246		Personal (95)
	614-806 BROADCASTING Fixed Mobile	610-890 FIXED MOBILE 5.317A BROADCASTING	614-890	614-698 BROADCASTING NG115 NG128 NG149	Broadcast Radio (TV) (73) Auxiliary Broadcasting (74)
				698-764 FIXED MOBILE BROADCASTING NG159 NG115 NG128	Wireless Communications (27) Broadcast Radio (TV) (73) Auxiliary Broadcasting (74) Private Land Mobile (90)
				764-776 FIXED MOBILE NG115 NG128 NG158 NG159	Auxiliary Broadcasting (74) Private Land Mobile (90)

* * * * *

Non-Federal Government (NG) Footnotes

* * * * *

NG66 The band 470–512 MHz (TV channels 14–20) is allocated to the broadcasting service on an exclusive basis throughout the United States and its insular areas, except as described below:

(a) In the urbanized areas listed in the table below, the indicated frequency bands are allocated to the land are allocated to the land mobile service on an exclusive basis for assignment to eligibles in the Public Mobile Services, the Public Safety Radio Pool, and the Industrial/Business Radio Pool, except that:

(1) Licensees in the land mobile service that are regulated as Commercial Mobile Radio Service (CMRS) providers may also use their assigned spectrum to provide fixed service on a primary basis.

(2) The use of the band 482–488 MHz (TV channel 16) is limited to eligibles in the Public Safety Radio Pool in or near (i) the Los Angeles urbanized area; and (ii) New York City; Nassau, Suffolk, and Westchester Counties in New York State; and Bergen County, New Jersey.

Urbanized area	Bands (MHz)	TV channels
Boston, MA	470–476, 482–488	14, 16
Chicago, IL-Northwestern Indiana	470–476, 476–482	14, 15
Cleveland, OH	470–476, 476–482	14, 15
Dallas-Fort Worth, TX	482–488	16
Detroit, MI	476–482, 482–488	15, 16
Houston, TX	488–494	17
Los Angeles, CA	470–476, 482–488, 506–512	14, 16, 20
Miami, FL	470–476	14
New York, NY-Northeastern New Jersey	470–476, 476–482, 482–488	14, 15, 16
Philadelphia, PA-New Jersey	500–506, 506–512	19, 20
Pittsburgh, PA	470–476, 494–500	14, 18
San Francisco-Oakland, CA	482–488, 488–494	16, 17
Washington, DC-Maryland-Virginia	488–494, 494–500	17, 18

(b) In the Gulf of Mexico offshore from the Louisiana-Texas coast, the band 476–494 MHz (TV channels 15–17) is allocated to the fixed and mobile services on a primary basis for assignment to eligibles in the Public Mobile and Private Land Mobile Radio Services.

(c) In Hawaii, the band 488–494 MHz (TV channel 17) is allocated exclusively to the fixed service for use by common carrier control and repeater stations for point-to-point inter-island communications only.

(d) The use of these allocations is further subject to the conditions set forth in 47 CFR parts 22 and 90.

* * * * *

PART 73—RADIO BROADCAST SERVICES

■ 3. The authority citation for Part 73 continues to read as follows:

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

■ 4. The table in 73.623(e) is amended by revising the entry for New York and by adding entries for Cleveland and Detroit to read as follows:

§ 73.623 DTV applications and changes to the DTV allotments.

* * * * *

(e) * * *

City	Channels	Latitude	Longitude
* * *	* *	*	*
Cleveland, OH	14, 15	41° 29′ 51.2″	081° 41′ 49.5″
* * *	* *	*	*
Detroit, MI	15, 16	42° 19′ 48.1″	083°02′ 56.7″
* * *	* *	*	*
New York, NY	14, 15, 16	40° 45′ 06″	073°59′ 39″
* * *	* *	*	*

* * * * *

■ 5. Section 73.6020 is amended by revising the last sentence to read as follows:

§ 73.6020 Protection of stations in the land mobile radio service.

• * * In addition to the protection requirements specified in § 74.709(a) of this chapter, Class A TV stations must not cause interference to land mobile stations operating on channel 16 in New York City; Nassau, Suffolk, and Westchester counties in New York State; and Bergen County, New Jersey.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCASTING AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

■ 6. The authority citation for Part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

■ 7. Section 74.709(a) is amended by revising the entries for Los Angeles and New York City in the table to read as follows:

§ 74.709 Land Mobile station protection.

(a) * * *

City	Channels	Coordinates	
		Latitude	Longitude
* * *	* *	*	*
Los Angeles, CA	14, 16, 20	34° 03′ 15″	118° 18′ 28″
New York, NY	14, 15, 16	40° 45′ 06″	073° 59′ 39″

* * * * *

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 8. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 9. Section 90.303 is amended to read as follows:

§ 90.303 Availability of frequencies.

(a) Frequencies in the band 470–512 MHz are available for assignment as described below. Note: coordinates are referenced to the North American Datum 1983 (NAD83).

(b) The following table lists frequency bands that are available for assignment in specific urban areas. The available frequencies are listed in § 90.311 of this part.

Urbanized area	Geographic center		Banks (MHz)	TV channels
	North latitude	West longitude		
Boston, MA	42° 21′24.4″	71° 03′ 23.2″	470–476, 482–488	14, 16
Chicago, IL [1]	41° 52′ 28.1″	87° 38′ 22.2″	470–476, 476–482	14, 15
Cleveland, OH [2]	41° 29′ 51.2″	81° 49′ 49.5″	470–476, 476–482	14, 15
Dallas/Fort Worth, TX	32° 47′ 09.5″	96° 47′ 38.0″	482–488	16
Detroit, MI [3]	42° 19′ 48.1″	83° 02′ 56.7″	476–482, 482–488	15, 16
Houston, TX	29° 45′ 26.8″	95° 21′ 37.8″	488–494	17
Los Angeles, CA [4]	34° 03′ 15.0″	118° 14′ 31.3″	470–476, 482–488, 506–512	14, 16, 20
Miami, FL	25° 46′ 38.4″	80° 11′ 31.2″	470–476	14
New York/NE NJ	40° 45′ 06.4″	73° 59′ 37.5″	470–476, 476–482, 482–488	14, 15, 16
Philadelphia, PA	39° 56′ 58.4″	75° 09′ 19.6″	500–506, 506–512	19, 20
Pittsburgh, PA	40° 26′ 19.2″	79° 59′ 59.2″	470–476, 494–500	14, 18
San Francisco/Oakland, CA	37° 46′ 38.7″	122° 24′ 43.9″	482–488, 488–494	16, 17
Washington, DC/MD/VA	38° 53′ 51.4″	77° 00′ 31.9″	488–494, 494–500	17, 18

[1] In the Chicago, IL, urbanized area, channel 15 frequencies may be used for paging operations in addition to low power base/mobile usages, where applicable protection requirements for ultrahigh frequency television stations are met.
[2] Channels 14 and 15 are not available in Cleveland, OH, until further order from the Commission.
[3] Channels 15 and 16 are not available in Detroit, MI, until further order from the Commission.
[4] Channel 16 is available in Los Angeles for use by eligibles in the Public Safety Radio Pool.

(c) The band 482–488 MHz (TV Channel 16) is available for use by eligibles in the Public Safety Radio Pool in the following areas: New York City; Nassau, Suffolk, and Westchester counties in New York State; and Bergen County, New Jersey. All part 90 rules shall apply to said operations, except that:

(1) *Location of stations.* Base stations shall be located in the areas specified in this paragraph (c). Mobile stations may operate throughout the areas specified in this paragraph (c) and may additionally operate in areas not specified in this paragraph (c) provided that the distance from the Empire State Building (40° 44′ 54.4″ N, 73° 59′ 8.4″ W) does not exceed 48 kilometers (30 miles).

(2) *Protection criteria.* In order to provide co-channel television protection, the following height and power restrictions are required:

(i) Except as specified in paragraph (c)(2)(ii) of this section, base stations shall be limited to a maximum effective radiated power (ERP) of 225 watts at an antenna height of 152.5 meters (500 feet) above average terrain (AAT). Adjustment of the permitted power will be allowed provided it is in accordance with the ''169 kilometer Distance Separation'' entries specified in Table B in 47 CFR 90.309(a) or the ''LM/TV Separation 110 miles (177 km)'' curve in Figure B in 47 CFR 90.309(b).

(ii) For base stations located west of the Hudson River, Kill Van Kull, and Arthur Kill, the maximum ERP and antenna height shall be limited to the entries specified in Table B in 47 CFR 90.309(a) or in Figure B in 47 CFR 90.309(b) for the actual separation distance between the base station and the transmitter site of WNEP–TV in Scranton, PA (41° 10′ 58.0″ N, 75° 52′ 20.0″ W).

(iii) Mobile stations shall be limited to 100 watts ERP in areas of operation extending eastward from the Hudson River and to 10 watts ERP in areas of operation extending westward from the Hudson River.

[FR Doc. 04–12425 Filed 6–7–04; 8:45 am]
BILLING CODE 6712–01–C

DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 2002–D023]

Defense Federal Acquisition Regulation Supplement; Follow-On Production Contracts for Products Developed Pursuant to Prototype Projects

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide an exception from competition requirements to apply to contracts awarded under the authority of section 822 of the National Defense

Authorization Act for Fiscal Year 2002. Section 822 provides for award of a follow-on production contract, without competition, to participants in an ''other transaction'' agreement for a prototype project, if the agreement was entered into through use of competitive procedures, provided for at least one-third non-Federal cost share, and meets certain other conditions of law.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D023.

SUPPLEMENTARY INFORMATION:

A. Background

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103–160; 10 U.S.C. 2371 *note*) provides authority for DoD to enter into transactions other than contracts, grants, or cooperative agreements, in certain situations, for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by DoD. Such transactions are commonly referred to as ''other transaction'' (OT) agreements for prototype projects.

Section 822 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) permits award of a follow-on production contract, without competition, to participants in an OT agreement for a prototype project if—

(1) The OT agreement provided for a follow-on production contract;

(2) The OT agreement provided for at least one-third non-Federal cost share for the prototype project;

(3) Competitive procedures were used for the selection of parties for participation in the OT agreement;

(4) The participants in the OT agreement successfully completed the prototype project;

(5) The number of units provided for in the follow-on production contract does not exceed the number of units specified in the OT agreement for such a follow-on production contract; and

(6) The prices established in the follow-on production contract do not exceed the target prices specified in the OT agreement for such a follow-on production contract.

DoD published amendments to the ''Other Transactions'' regulations at 32 CFR part 3 on March 30, 2004 (69 FR 16481), to implement section 822. This DFARS rule provides the corresponding exemption from competition requirements for follow-on production contracts awarded under the authority of section 822.

DoD published a proposed DFARS rule at 68 FR 33057 on June 3, 2003. Two sources submitted comments on the proposed rule. A discussion of the comments is provided below. The difference between the proposed and final rules is addressed in the discussion of Comment 3 below.

1. *Comment:* A company may submit a proposal below cost for production during the initial competition in hopes of recovering costs in a sole source environment. The Government should not facilitate recovery of these costs, and this should be addressed prior to finalizing the rule.

DoD Response: This concern is not unique to this rule, but exists in any competition where only one offeror is selected for award. The companion rule at 32 CFR 3.9 requires that the offered prices for production be evaluated during the original competition. This, coupled with the inherent responsibility of a contracting officer to ensure that contractors honor their commitments, obviates the need for any special DFARS text regarding this concern.

2. *Comment:* The requirement for production may change such that the prototype no longer represents a clear solution to the Government's needs and, in such a case, other companies should be afforded the opportunity to offer solutions for the production phase. The rule should specify the procedures to be used for such a follow-on competition (*e.g.*, solicit only original competitors, open solicitation).

DoD Response: The companion rule at 32 CFR 3.9 outlines the upfront limitations for use of this authority and specifies in paragraph (c) that the authority should be used only when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee. This limits use of the authority for higher-risk prototype projects where the production requirement, and thus the pricing, may be less certain. This limitation, coupled with the inherent responsibility of a contracting officer regarding scope determinations, obviates the need to specify any unique scope determination for use of this follow-on authority. Additionally, if the contracting officer determines that the follow-on production is beyond the scope of that originally contemplated, the contracting officer must then develop an acquisition strategy for the new requirement. The contracting officer must determine, in accordance with the FAR and the particulars of the acquisition, the appropriate acquisition strategy. It is not practicable to stipulate in regulation what constitutes a new requirement, nor the nature of any follow-on competition for such a new requirement.

3. *Comment:* The reference in the parenthetical at 206.001(S–70)(2) should be corrected from ''32 CFR 3.9(c)'' to ''32 CFR 3.9(d)''.

DoD Response: Concur. The correction has been incorporated into the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to production contracts for DoD weapons and weapon systems. Such contracts typically are not awarded to small business concerns.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any 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 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 206 is amended as follows:

■ 1. The authority citation for 48 CFR part 206 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.001 is amended by adding, after paragraph (b), a new paragraph (S–70) to read as follows:

206.001 Applicability.

* * * * *

(S–70) Also excepted from this part are follow-on production contracts for products developed pursuant to the ''other transactions'' authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the

agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 *note*, subsections (f)(2)(A) and (B) (see 32 CFR 3.9(d)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

[FR Doc. 04–12939 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2003–D105]

Defense Federal Acquisition Regulation Supplement; Contracting for Architect-Engineer Services

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1427 of the National Defense Authorization Act for Fiscal Year 2004. Section 1427 increases, from $85,000 to $300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns.

DATES: Effective Date: June 8, 2004. Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D105, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm*. Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil*. Include DFARS Case 2003-D105 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf*.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602–0296.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS part 219 to implement section 1427 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1427 amends 10 U.S.C. 2855 to increase, from $85,000 to $300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

The objective of the rule is to establish a new dollar threshold of $300,000 for use in determining whether DoD acquisitions for architect-engineer services for military construction or family housing projects will be set aside for small business concerns. The legal basis for the rule is 10 U.S.C. 2855, as amended by section 1427 of Pub. L. 108–136. In accordance with 10 U.S.C. 2855, acquisitions below the stated threshold must be set aside for small business concerns, and acquisitions at or above the threshold may not be set aside for small business concerns. The rule will apply to small entities that perform architect-engineer services. The rule will increase opportunities for these entities to receive DoD contract awards. 10 U.S.C. 2855 permits the Secretary of Defense to revise the dollar threshold specified within the statute, to ensure that small business concerns receive a reasonable share of contracts for architect-engineer services for military construction or family housing projects. The new statutory threshold of $300,000 is considered to be appropriate at this time.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D105.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements section 1427 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136). Section 1427 amends 10 U.S.C. 2855 to increase, from $85,000 to $300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns. Section 1427 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 219

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 219 is amended as follows:

■ 1. The authority citation for 48 CFR Part 219 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.502–1 [Amended]

■ 2. Section 219.502–1 is amended in paragraph (2) by removing ''$85,000'' both places it appears and adding ''$300,000'' in its place.

219.502–2 [Amended]

■ 3. Section 219.502–2 is amended in paragraph (a)(iii) by removing ''$85,000'' and adding ''$300,000'' in its place.

219.1005 [Amended]

■ 4. Section 219.1005 is amended in paragraph (a)(i)(B) two times, in paragraph (a)(i)(C), and in paragraph

(a)(i)(D), by removing ''$85,000'' and adding ''$300,000'' in its place.

[FR Doc. 04–12935 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002–D034]

Defense Federal Acquisition Regulation Supplement; Fish, Shellfish, and Seafood Products

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 and similar sections in subsequent DoD appropriations acts. Section 8136 requires the acquisition of domestic fish, shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2002–D034.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 7441 on February 14, 2003, to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248). Section 8136 relates to application of 10 U.S.C. 2533a (the Berry Amendment), which prohibits DoD from acquiring certain items unless they are grown, reprocessed, reused, or produced in the United States. 10 U.S.C. 2533a(f) provides an exception to this prohibition for foods manufactured or processed in the United States. Section 8136 of Pub. L. 107–248 made the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. The interim rule published on February 14, 2003, amended DFARS 225.7002–2 and the clause at DFARS 252.225–7012 to add requirements for the acquisition of domestic fish, shellfish, and seafood in accordance with section 8136 of Pub. L. 107–248.

As a result of public comments received on the interim rule, DoD published a proposed rule at 68 FR 53945 on September 15, 2003, to clarify what ''produced in the United States'' means with regard to fish, shellfish, and seafood. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule, with an update to the statutory reference at DFARS 225.7002–2 to reflect the recurrence of this provision in section 8118 of the DoD Appropriations Act for Fiscal Year 2004 (Pub. L. 108–87).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule may 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.* DoD has prepared a final regulatory flexibility analysis. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 and similar sections in subsequent DoD appropriations acts. Section 8136 makes 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. 10 U.S.C. 2533a(f) is an exception to domestic source requirements that applies to foods manufactured or processed in the United States. The objective of the rule is to prohibit DoD acquisition of foreign fish, shellfish, and seafood, even if processed or manufactured in the United States. The rule applies to all suppliers, processors, and manufacturers of seafood products sold to DoD. There were no public comments on the initial regulatory flexibility analysis. As a result of public comments received on the interim rule, the final rule clarifies what ''produced in the United States'' means with regard to fish, shellfish, and seafood. The rule should have a beneficial impact on domestic suppliers of fish, shellfish, and seafood.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR chapter 1.

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7002–2 is amended by revising paragraph (l) to read as follows:

225.7002–2 Exceptions.

* * * * *

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107–248) and similar sections in subsequent DoD appropriations acts, this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

■ 3. Section 252.212–7001 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2004)''; and

■ b. In paragraph (b), in entry ''252.225–7012'', by removing ''(MAY 2004)'' and adding in its place ''(JUN 2004)''.

■ 4. Section 252.225–7012 is amended as follows:

■ a. By revising the clause date to read ''(JUN 2004)'';

■ b. By adding paragraphs (a)(3) and (a)(4);

■ c. By revising paragraph (b) introductory text and paragraph (c)(4); and

■ d. By adding paragraph (d) to read as follows:

252.225–7012 Preference for Certain Domestic Commodities.

* * * * *

(a) * * *

(3) *United States* means the 50 States, the District of Columbia, and outlying areas.

(4) *U.S.-flag vessel* means a vessel of the United States or belonging to the United States, including any vessel registered or having national status under the laws of the United States.

(b) The Contractor shall deliver under this contract only such of the following items, either as end products or components, that have been grown, reprocessed, reused, or produced in the United States:

* * * * *

(c) * * *

(4) To foods, other than fish, shellfish, or seafood, that have been manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. Fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States shall be provided in accordance with paragraph (d) of this clause;

* * * * *

(d)(1) Fish, shellfish, and seafood delivered under this contract, or contained in foods delivered under this contract—

(i) Shall be taken from the sea by U.S.-flag vessels; or

(ii) If not taken from the sea, shall be obtained from fishing within the United States; and

(2) Any processing or manufacturing of the fish, shellfish, or seafood shall be performed on a U.S.-flag vessel or in the United States.

[FR Doc. 04–12938 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 227 and 252

[DFARS Case 2003–D104]

Defense Federal Acquisition Regulation Supplement; Written Assurance of Technical Data Conformity

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004. Section 844 eliminates the requirement for a contractor to furnish written assurance that technical data delivered to the Government is complete and accurate and satisfies the requirements of the contract.

DATES: *Effective date:* June 8, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D104, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D104 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 227.71 and removes the clause at DFARS 252.227–7036, Declaration of Technical Data Conformity, to implement Section 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. This change reduces paperwork for contractors, but does not diminish the contractor's obligation to provide technical data that is complete and adequate, and that complies with contract requirements.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this 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 elimination of the requirement for a contractor to provide a written declaration of technical data conformity does not diminish the contractor's obligation to provide technical data that is complete and accurate and satisfies contract requirements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D104.

C. Paperwork Reduction Act

The information collection requirements of the clause at DFARS 252.227–7036, Declaration of Technical Data Conformity, are currently approved under Office of Management and Budget Control Number 0704–0369. Elimination of this clause will reduce estimated annual public reporting burden by 126,886 hours (estimated 507,545 declarations annually at .25 hours per declaration).

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 844 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 844 amended 10 U.S.C. 2320(b) to eliminate the requirement for contractors to furnish written assurance that delivered technical data is complete and accurate and satisfies the requirements of the contract. Section 844 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 227 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council

■ Therefore, 48 CFR Parts 227 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 227 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 227—PATENTS, DATA, AND COPYRIGHTS

227.7103–6 [Amended]

■ 2. Section 227.7103–6 is amended as follows:

■ a. In paragraph (e)(2) by adding ''and'' after the semicolon;

■ b. By removing paragraph (e)(3); and
■ c. By redesignating paragraph (e)(4) as paragraph (e)(3).

227.7103–14 [Amended]

■ 3. Section 227.7103–14 is amended as follows:
■ a. By removing paragraph (a)(1); and
■ b. By redesignating paragraphs (a)(2) and (a)(3) as paragraphs (a)(1) and (a)(2), respectively.

227.7104 [Amended]

■ 4. Section 227.7104 is amended as follows:
■ a. In paragraph (e)(4) by adding ''and'' after the semicolon;
■ b. By removing paragraph (e)(5); and
■ c. By redesignating paragraph (e)(6) as paragraph (e)(5).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.227–7036 [Removed and Reserved]

■ 5. Section 252.227–7036 is removed and reserved.

252.227–7037 [Amended]

■ 6. Section 252.227–7037 is amended in the introductory text as follows:
■ a. By removing ''227.7103(e)(4)'' and adding in its place ''227.7103–6(e)(3)''; and
■ b. By removing ''227.7104(e)(6)'' and adding in its place ''227.7104(e)(5)''.

[FR Doc. 04–12936 Filed 6–7–04; 8:45 am]
BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 2002–D015]

Defense Federal Acquisition Regulation Supplement; Production Surveillance and Reporting

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to eliminate requirements for contract administration offices to perform production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts. This change will permit contract administration offices to devote more resources to critical and high-risk contracts.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0293; facsimile (703) 602–0350. Please cite DFARS Case 2002–D015.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 242.1104 to eliminate requirements for contract administration offices to perform production surveillance on contractors that have only Criticality Designator C (low-urgency) contracts, and for monitoring of progress on any Criticality Designator C contract, unless production surveillance or contract monitoring is specifically requested by the contracting officer. This change will enable contract administration offices to use production surveillance resources in a more effective manner.

DoD published a proposed rule at 68 FR 50495 on August 21, 2003. One respondent submitted comments on the proposed rule. The respondent disagreed with the proposed change, because a Criticality Designator C contract could become more critical at a later date. DoD agrees that this situation could occur. However, DoD does not believe the general policy should be driven by exceptional situations. The rule provides flexibility for contracting officers to request production surveillance and contract monitoring when deemed necessary. Therefore, DoD has adopted the proposed rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the DFARS changes in this rule primarily affect the allocation of Government resources to production surveillance functions.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 242

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 242 is amended as follows:
■ 1. The authority citation for 48 CFR Part 242 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Section 242.1104 is revised to read as follows:

242.1104 Surveillance requirements.

(a) The cognizant contract administration office (CAO)—

(i) Shall perform production surveillance on all contractors that have Criticality Designator A or B contracts;

(ii) Shall not perform production surveillance on contractors that have only Criticality Designator C contracts, unless specifically requested by the contracting officer; and

(iii) When production surveillance is required, shall—

(A) Conduct a periodic risk assessment of the contractor to determine the degree of production surveillance needed for all contracts awarded to that contractor. The risk assessment shall consider information provided by the contractor and the contracting officer;

(B) Develop a production surveillance plan based on the risk level determined during a risk assessment;

(C) Modify the production surveillance plan to incorporate any special surveillance requirements for individual contracts, including any requirements identified by the contracting officer; and

(D) Monitor contract progress and identify potential contract delinquencies in accordance with the production surveillance plan. Contracts with Criticality Designator C are exempt from this requirement unless specifically requested by the contracting officer.

[FR Doc. 04–12932 Filed 6–7–04; 8:45 am]
BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 69, No. 110
Tuesday, June 8, 2004

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

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 30 and 41

[Docket No. 04–13]

RIN 1557–AC84

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 211, 222, and 225

[Docket No. R–1199]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 334 and 364

RIN 3064–AC77

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 568, 570, and 571

[No. 2004–26]

RIN 1550–AB87

Proper Disposal of Consumer Information Under the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Office of the Comptroller of the Currency, Treasury (OCC); Board of Governors of the Federal Reserve System (Board); Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision, Treasury (OTS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The OCC, Board, FDIC, and OTS (the Agencies) are requesting comment on a proposal to implement section 216 of the Fair and Accurate Credit Transactions Act of 2003 by amending the Interagency Guidelines Establishing Standards for Safeguarding Customer Information. The proposal would require each financial institution to develop, implement, and maintain appropriate measures to properly dispose of consumer information derived from consumer reports to address the risks associated with identity theft. Each institution would be required to implement these measures as part of its information security program.

DATES: Comments must be submitted on or before July 23, 2004.

ADDRESSES: Because the Agencies will jointly review all of the comments submitted, you may comment to any of the Agencies and you need not send comments (or copies) to all of the Agencies. Because paper mail in the Washington area and at the Agencies is subject to delay, please submit your comments by e-mail whenever possible.[1] Commenters are encouraged to use the title ''FACT Act Disposal Rule'' in addition to the docket or RIN number to facilitate the organization and distribution of comments among the Agencies. Interested parties are invited to submit comments in accordance with the following instructions:

OCC: You should designate OCC in your comment and include Docket Number 04–13. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- OCC Web site: *http://www.occ.treas.gov.* Click on ''Contact the OCC,'' scroll down and click on ''Comments on Proposed Regulations.''
- E-mail address: *regs.comments@occ.treas.gov.*
- Fax: (202) 874–4448.
- Mail: Office of the Comptroller of the Currency, 250 E Street, SW., Public Reference Room, Mail Stop 1–5, Washington, DC 20219.
- Hand Delivery/Courier: 250 E Street, SW., Attn: Public Reference Room, Mail Stop 1–5, Washington, DC 20219.

Instructions: All submissions received must include the agency name (OCC) and docket number or Regulatory Information Number (RIN) for this notice of proposed rulemaking. In general, the OCC will enter all comments received into the docket without change, including any business or personal information that you provide. You may review the comments received by the OCC and other related materials by any of the following methods:

- Viewing Comments Personally: You may personally inspect and photocopy comments received at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect comments by calling (202) 874–5043.
- Viewing Comments Electronically: You may request e-mail or CD–ROM copies of comments that the OCC has received by contacting the OCC's Public Reference Room at *regs.comments@occ.treas.gov.*
- Docket: You may also request available background documents using the methods described earlier.

Board: You may submit comments, identified by Docket No. R–1199, by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *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, NW., 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, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit comments, identified by RIN number by any of the following methods:

- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.*

[1] The Agencies do not edit personal, identifying information such as names or e-mail addresses from electronic submissions. Submit only information you wish to make publicly available.

Follow instructions for submitting comments on the Agency Web site.

• E-mail: *Comments@FDIC.gov.* Include the RIN number in the subject line of the message.

• Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

• Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

• Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose.html* including any personal information provided.

Office of Thrift Supervision: You may submit comments, identified by No. 2004–26, by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.

• E-mail: *regs.comments@ots.treas.gov.* Please include No. 2004–26 in the subject line of the message and include your name and telephone number in the message.

• Fax: (202) 906–6518.

• Mail: Regulation Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention: No. 2004–26.

• Hand Delivery/Courier: Guard's Desk, East Lobby Entrance, 1700 G Street, NW., from 9 a.m. to 4 p.m. on business days, Attention: Regulation Comments, Chief Counsel's Office, Attention: No. 2004–26.

Instructions: All submissions received must include the agency name and number or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *http://www.ots.treas.gov/pagehtml.cfm?catNumber=67&an=1.* In addition, you may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment for access, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755. (Prior notice identifying the materials you will be requesting will assist us in serving you.) We schedule appointments on business days between 10 a.m. and 4 p.m. In most cases, appointments will be available the next business day following the date we receive a request.

FOR FURTHER INFORMATION CONTACT:

OCC: Aida Plaza Carter, Director, Bank Information Technology, (202) 874–4740; Amy Friend, Assistant Chief Counsel, (202) 874–5200; or Deborah Katz, Senior Counsel, Legislative and Regulatory Activities Division, (202) 874–5090.

Board: Donna L. Parker, Supervisory Financial Analyst, Division of Supervision & Regulation, (202) 452–2614; Thomas E. Scanlon, Counsel, Legal Division, (202) 452–3594; Minh-Duc T. Le or Ky Tran-Trong, Senior Attorneys, Division of Consumer and Community Affairs, (202) 452–3667.

FDIC: Jeffrey M. Kopchik, Senior Policy Analyst, Division of Supervision and Consumer Protection, (202) 898–3872; Kathryn M. Weatherby, Examination Specialist, Division of Supervision and Consumer Protection, (202) 898–6793; Robert A. Patrick, Counsel, Legal Division, (202) 898–3757; Janet V. Norcom, Counsel, Legal Division, (202) 898–8886.

OTS: Lewis C. Angel, Senior Project Manager, Technology Risk Management, (202) 906–5645; Richard Bennett, Counsel (Banking and Finance), Regulations and Legislation Division, (202) 906–7409; Paul Robin, Special Counsel, Regulations and Legislation Division, (202) 906–6648.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 216 of the Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) adds a new section 628 to the Fair Credit Reporting Act (FCRA), at 15 U.S.C. 1681w, that, in general, is designed to protect a consumer against the risks associated with unauthorized access to information about the consumer contained in a consumer report, such as fraud and related crimes including identity theft. Section 216 of the Act requires each of the Agencies to adopt a regulation with respect to the entities that are subject to its enforcement authority ''requiring any person that maintains or otherwise possesses consumer information, or any compilation of consumer information, derived from consumer reports for a business purpose to properly dispose of any such information or compilation.'' Public Law 108–159, 117 Stat. 1985–86. The FACT Act mandates that the Agencies ensure that their respective regulations are consistent with the requirements issued pursuant to the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. 106–102), as well as other provisions of Federal law.

The Agencies propose amendments to the Interagency Guidelines Establishing Standards for Safeguarding Customer Information (Guidelines)[2] to require financial institutions to implement controls designed to ensure the proper disposal of ''consumer information'' within the meaning of section 216. In accordance with section 216 of the Act, the Agencies have consulted with the Federal Trade Commission, the National Credit Union Administration, and the Securities and Exchange Commission to ensure that, to the extent possible, the rules proposed by the respective agencies are consistent and comparable.

II. Background

On February 1, 2001, the Agencies issued the Guidelines pursuant to sections 501 and 505 of the GLB Act (15 U.S.C. 6801 and 6805). The Guidelines establish standards relating to the development and implementation of administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of customer information. The Guidelines apply to the financial institutions subject to the Agencies' respective jurisdictions. As mandated by section 501(b) of the GLB Act, the Guidelines require each financial institution to develop a written information security program that is designed to: (1) Ensure the security and confidentiality of customer information; (2) protect against any anticipated threats or hazards to the security or integrity of such information; and (3) protect against unauthorized access to or use of such information that could result in substantial harm or inconvenience to any customer.[3] The Guidelines direct financial institutions to assess the risks to their customer information and customer information systems and, in turn, implement appropriate security measures to control those risks.[4] For example, under the risk-assessment framework currently imposed by the Guidelines, each financial institution must evaluate whether the controls the institution has developed sufficiently protect its customer information from unauthorized access, misuse, or

[2] 12 CFR Parts 30, app. B (OCC); 208, app. D–2 and 225, app. F (Board); 364, app. B (FDIC); 570, app. B (OTS). *See* 66 FR 8616 Feb. 1, 2001. Citations to the Guidelines omit references to titles and publications and give only the appropriate paragraph or section number.

[3] Guidelines, II.B.

[4] *See generally* III.B and III.C.

alteration when the institution disposes of the information.[5]

III. Proper Disposal of Consumer Information and Customer Information

The Agencies are proposing to amend the Guidelines to require each financial institution to develop and maintain, as part of its information security program, appropriate controls designed to ensure that the institution properly disposes of ''consumer information.'' The proposed amendments to the Guidelines generally would require a financial institution to dispose of ''consumer information'' derived from a consumer report in a manner consistent with the existing requirements that apply to the disposal of ''customer information.'' The Agencies propose to incorporate this new requirement into the Guidelines by: (1) Adding a definition of ''consumer information''; (2) adding an objective (in paragraph II) regarding the proper disposal of consumer information; and (3) adding a provision (in paragraph III) that would require a financial institution to implement appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information.

The Agencies propose to require each financial institution to implement the appropriate measures to properly dispose of ''consumer information'' within three months after the final regulations are published in the **Federal Register**. The Agencies believe that any changes to an institution's existing information security program to properly dispose of ''consumer information'' likely will be minimal. Accordingly, the Agencies consider a three-month period sufficient to enable financial institutions to adjust their systems and controls.

The Agencies invite comment on all aspects of the proposal. A discussion of each proposed amendment to the Guidelines and to the addition of cross-references to the Guidelines in the Agencies' FCRA regulations follows.

Consumer Information

The proposal defines ''consumer information'' to mean ''any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the [institution] for a business purpose.'' ''Consumer information'' also is defined to mean ''a compilation of such records.''

The scope of information covered by the terms ''consumer information,'' and ''customer information'' as defined under the Guidelines, will sometimes overlap, but will not always coincide. The Agencies note that the proposed definition of ''consumer information'' is drawn from the term ''consumer'' in section 603(c) of the FCRA, which defines a ''consumer'' as an individual. 15 U.S.C. 1681a(c). By contrast, ''customer information'' under the Guidelines, only covers nonpublic personal information about a ''customer,'' namely, an individual who obtains a financial product or service to be used primarily for personal, family, or household purposes and who has a continuing relationship with the financial institution.[6] The relationship between ''consumer information'' and ''customer information'' can be illustrated through the following examples. Payment history information from a consumer report about an individual, who is a financial institution's customer, will be *both* ''consumer information'' because it comes from a consumer report and ''customer information'' because it is nonpublic personal information about a customer. In some circumstances, ''customer information'' will be broader than ''consumer information.'' For instance, information about a financial institution's transactions with its customer would be only ''customer information'' because it does not come from a consumer report. In other circumstances, ''consumer information'' will be broader than ''customer information.'' ''Consumer information'' would include information from a consumer report that an institution obtains about an individual who applies for but does not receive a loan, an individual who guarantees a loan for a business entity, an employee or a prospective employee, or an individual in connection with a loan to the individual's sole proprietorship. In each of these instances, the consumer reports would not be ''customer information'' because the information would not be about a ''customer'' within the meaning of the Guidelines.

The Agencies propose to define ''consumer information'' as ''any record *about an individual* * * * that is a consumer report or is derived from a consumer report.'' Under this definition, information that may be ''derived from consumer reports'' but does not identify a particular consumer would *not* be covered under the proposal. For example, a financial institution must implement measures to properly dispose of ''consumer information'' that identifies a consumer, such as the consumer's name and the credit score derived from a consumer report. However, this requirement would not apply to the mean credit score that is derived from a group of consumer reports. The Agencies believe that limiting ''consumer information'' to information that identifies a consumer is consistent with the current law relating to the scope of the term ''consumer report'' under the FCRA and the purposes of section 216 of the FACT Act.

The Agencies request suggestions for clarifying the scope of information covered under the term ''consumer information.'' Among other issues, the Agencies believe that the phrase ''derived from consumer reports'' covers all of the information about a consumer that is taken from a consumer report, including information that results in whole or in part from manipulation of information from a consumer report or information from a consumer report that has been combined with other types of information. Consequently, a financial institution that possesses any of this information must properly dispose of it.

For example, any record about a consumer derived from a consumer report, such as the consumer's name and credit score, that is shared among affiliates must be disposed of properly by each affiliate that possesses that information. Similarly, a consumer report that is shared among affiliated companies after the consumer has been given a notice and has elected not to opt out of that sharing, and therefore is no longer a ''consumer report'' under the FCRA,[7] would still be ''consumer information'' under this proposal. Accordingly, a financial institution that receives ''consumer information'' under these circumstances must properly dispose of the information. The Agencies seek comment on whether the definition of ''consumer information'' should be revised to further clarify this interpretation of the statutory phrase ''derived from consumer reports,'' such as by example or otherwise.

The Agencies note that the proposed definition of ''consumer information'' includes the qualification ''for a business purpose,'' as set forth in section 216 of the Act. The Agencies believe that the phrase ''for a business purpose'' encompasses any commercial purpose for which a financial institution might maintain or possess ''consumer

[5] *See* 66 FR 8618 (''Under the final Guidelines, a financial institution's responsibility to safeguard customer information continues through the disposal process.'').

[6] I.C.2.b.

[7] 15 U.S.C. 1681a(d)(2)(A)(iii).

information'' and request comment on that interpretation.

New Objective for an Information Security Program

The Agencies are proposing to add a new objective regarding the proper disposal of consumer information in paragraph II.B. of the Guidelines. The proposal would require a financial institution to design its information security program to ''[e]nsure the proper disposal of consumer information in a manner consistent with the disposal of customer information.''

The Agencies believe that imposing this additional objective in paragraph II.B is important to ensure that the requirement to properly dispose of ''consumer information'' applies to a financial institution's service providers. The Guidelines require, in part, that a financial institution ''[r]equire its service providers by contract to implement appropriate measures designed to meet the objectives of these Guidelines.'' [8]

By expressly incorporating a provision in paragraph II.B., the Agencies' proposal requires each financial institution to contractually require its service providers to develop appropriate measures for the proper disposal of consumer information and, where warranted, to monitor its service providers to confirm that they have satisfied their contractual obligations.

The Agencies also propose to amend paragraph III.G.2. to allow a financial institution a reasonable period of time, after the final regulations are issued, to amend its contracts with its service providers to incorporate the necessary requirements in connection with the proper disposal of consumer information. The Agencies propose allowing one year after publication of the final regulations for financial institutions to modify the contracts that will be affected by the Guidelines.

The Agencies seek comment on whether a one-year period for modification of agreements with service providers is appropriate.

New Provision To Implement Measures To Properly Dispose of Consumer Information

The Agencies propose to amend paragraph III.C. (*Manage and Control Risk*) by adding a new provision to require a financial institution to develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of consumer information. This new provision requires an institution to implement these measures ''in a manner consistent with the disposal of customer information'' and ''in accordance with each of the requirements in this paragraph III.'' of the Guidelines.

Paragraph III. of the Guidelines presently requires a financial institution to undertake measures to design, implement, and maintain its information security program to protect customer information and customer information systems, including the methods it uses to dispose of customer information. Under the proposal, an institution must adopt a comparable set of procedures and controls to properly dispose of ''consumer information.'' For example, a financial institution must broaden the scope of its risk assessment to include an assessment of the reasonably foreseeable internal and external threats associated with the methods it uses to dispose of ''consumer information,'' and adjust its risk assessment in light of the relevant changes relating to such threats. The Agencies, by expressly adding this new provision, are requiring a financial institution to integrate into its information security program each of those risk-based measures in connection with the disposal of ''consumer information,'' as set forth in paragraph III. of the Guidelines.

The Agencies believe that it is not necessary to propose a prescriptive rule describing proper methods of disposal. Nonetheless, consistent with interagency guidance previously issued through the Federal Financial Institutions Examination Council (FFIEC),[9] the Agencies expect institutions to have appropriate disposal procedures for records maintained in paper-based or electronic form. The Agencies note that an institution's information security program should ensure that paper records containing either customer or consumer information should be rendered unreadable as indicated by the institution's risk assessment, such as by shredding or any other means. Institutions also should recognize that computer-based records present unique disposal problems. Residual data frequently remains on media after erasure. Since that data can be recovered, additional disposal techniques should be applied to sensitive electronic data.[10]

The Agencies seek comment on whether the proposed amendment to paragraph III.C. of the Guidelines sufficiently explains the nature and scope of the obligations on each financial institution to modify its information security program to include measures that must be implemented and adjusted, as appropriate, to properly dispose of ''consumer information.''

The Agencies request comment on whether the use in the Guidelines of the statutory phrase ''proper disposal'' is sufficiently clear. Would a more specific standard provide better guidance to financial institutions, better protect consumers, or both?

Proposed Amendments to the Agencies' FCRA Regulations

The Agencies propose to amend their respective regulations that implement the FCRA [11] by adding a new provision setting forth the duties of users of consumer reports regarding identity theft. As proposed, the new provision requires a financial institution to properly dispose of consumer information in accordance with the standards set forth in the Guidelines. The proposed provision also incorporates a rule of construction that closely tracks the terms of section 628(b) of the FCRA, as added by section 216 of the FACT Act.

The Agencies request comment on the proposed amendments to their respective FCRA rules.

IV. Regulatory Analysis

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 appendix A.1), the Agencies have reviewed the proposed rules. (The Board has done so under authority delegated to the Board by the Office of Management and Budget.) The proposed rules contain no collections of information pursuant to the Paperwork Reduction Act.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, each agency must publish an initial regulatory flexibility analysis with its proposed rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. (5 U.S.C. 601–612). Each of the Agencies hereby certifies that its rule, if adopted as proposed, would not have a significant economic impact on a substantial number of small entities.

The proposed rules require a financial institution subject to the jurisdiction of the appropriate agency to implement

[8] III.D.2. This requirement applies to both domestic and foreign-based service providers.

[9] *See* FFIEC Information Security Booklet, page 63 at: *http://www.ffiec.gov/ffiecinfobase.html_pages/it_01.html#infosec.*

[10] *See* footnote 9, *supra.*

[11] 12 CFR part 41 (OCC); 12 CFR part 222 (Board); 12 CFR part 334 (FDIC); and 12 CFR part 571 (OTS).

appropriate controls designed to ensure the proper disposal of ''consumer information.'' A financial institution must develop and maintain these controls as part of implementing its existing information security program for ''customer information,'' as required under the Guidelines.[12]

Any modifications to a financial institution's information security program needed to address the proper disposal of ''consumer information'' could be incorporated through the process the institution presently uses to adjust its program under paragraph III.E. of the Guidelines, particularly because of the similarities between the consumer and customer information and the measures commonly used to properly dispose of both types of information. To the extent that these proposed rules impose new requirements for certain types of ''consumer information,'' developing appropriate measures to properly dispose of that information likely would require only a minor modification of an institution's existing information security program.

Because some ''consumer information'' will be ''customer information'' and because segregating particular records for special treatment may entail considerable costs, the Agencies believe that many banks and savings associations, including small institutions, already are likely to have implemented measures to properly dispose of both ''customer'' and ''consumer'' information. In addition, the Agencies, through the Federal Financial Institutions Examination Council (FFIEC), already have issued guidance regarding their expectations concerning the proper disposal of *all* of an institution's paper and electronic records. *See* FFIEC Information Security Booklet, December 2002, p. 63.[13] Therefore, the proposed rules do not require any significant changes for institutions that currently have procedures and systems designed to comply with this guidance.

The Agencies anticipate that, in light of current practices relating to the disposal of information in accordance with the Guidelines and the guidance issued by the FFIEC, the proposed rules would not impose undue costs on financial institutions. Therefore, the Agencies believe that the controls that small financial institutions would develop and implement, if any, to comply with the proposed rules likely pose a minimal economic impact on those entities. Nonetheless, the Agencies specifically request comment on the burden the proposed rules would have on small financial institutions, and how the Agencies' proposed rules might minimize this burden, to the extent consistent with the requirements of the FACT Act.

Solicitation of Comments on Use of Plain Language

Section 722(a) of the GLB Act requires the Federal banking agencies to use plain language in all proposed and final rules.[14] In light of this requirement, the Agencies have sought to present the proposed rules in a simple and straightforward manner. The Agencies invite your comments on how to make the rules easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulations easier to understand? If so, what changes to the format would make the regulations easier to understand?
- What else could we do to make the regulations easier to understand?

OCC and OTS Executive Order 12866 Determination

The OCC and OTS each have determined that this proposal is not a ''significant regulatory action'' under Executive Order 12866.

OCC and OTS Unfunded Mandates Reform Act of 1995 Determination

Under section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), the OCC and OTS must prepare budgetary impact statements before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, under section 205 of the Unfunded Mandates Act, the OCC and OTS must identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

For the reasons outlined earlier, the OCC and OTS have determined that this proposal will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more, in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995 and this rulemaking requires no further analysis under the Unfunded Mandates Act.

OCC Community Bank Comment Request

The OCC invites your comments on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comments on the impact of this proposal on community banks' current resources and available personnel with the requisite expertise, and whether the goals of the proposed regulations could be achieved, for community banks, through an alternative approach.

List of Subjects

12 CFR Part 30

Banks, banking, Consumer protection, National banks, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 41

Banks, banking, Consumer protection, National banks, Reporting and recordkeeping requirements.

12 CFR Part 208

Banks, banking, Consumer protection, Information, Privacy, Reporting and recordkeeping requirements.

12 CFR Part 211

Exports, Foreign banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 222

Banks, banking, Holding companies, State member banks.

12 CFR Part 225

Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 334

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and soundness.

[12] In 2001, the Agencies issued final Guidelines requiring financial institutions to develop and maintain an information security program, including procedures to dispose of customer information, and each agency provided a final regulatory flexibility analysis at that time. *See* 66 FR 8625–32 Feb. 1, 2001.

[13] *See* FFIEC Information Security Booklet, page 63 at: *http://www.ffiec.gov/ffiecinfobase/html_pages/it_01.html#infosec.*

[14] Pub. L. 106–102, 113 Stat. 1338 (1999), codified at 12 U.S.C. 4809.

12 CFR Part 364

Administrative practice and procedure, Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Safety and soundness.

12 CFR Part 568

Consumer protection, Privacy, Reporting and recordkeeping requirements, Savings associations, Security measures.

12 CFR Part 570

Accounting, Administrative practice and procedure, Bank deposit insurance, Consumer protection, Holding companies, Privacy, Reporting and recordkeeping requirements, Safety and soundness, Savings associations.

12 CFR Part 571

Consumer protection, Credit, Fair Credit Reporting Act, Privacy, Reporting and recordkeeping requirements, Savings associations.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons discussed in the joint preamble, 12 CFR part 30 and 12 CFR part 41 (as proposed to be added at 69 FR 23394, April 28, 2004), are proposed to be amended as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

1. The authority citation for part 30 is revised to read as follows:

Authority: 12 U.S.C. 93a, 1818, 1831–p and 3102(b); 15 U.S.C. 1681s, 1681w, 6801, and 6805(b)(1).

2. Appendix B to Part 30 is amended by:

a. Amending paragraph I. INTRODUCTION by adding a new sentence at the end of the paragraph;

b. Amending paragraph I.A. by adding a new sentence at the end of the paragraph;

c. Redesignating paragraphs I.C.2.b. through e. as paragraphs I.C.2.d. through g., respectively;

d. Adding new paragraphs I.C.2.b. and c.;

e. Adding a new paragraph II.B.4.;

f. Adding a new paragraph III.C.4.; and

g. Adding new paragraphs III.G.3. and 4. to read as follows:

Appendix B to Part 30—Interagency Guidelines Establishing Standards for Safeguarding Customer Information

* * * * *

I. * * *

* * * These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621(b) and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).

A. *Scope.* * * * The Guidelines also apply to the proper disposal of consumer information by such entities.

* * * * *

C. * * *

2. * * *

b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records.

c. *Consumer report* has the same meaning as set forth in 15 U.S.C. 1681a(d).

* * * * *

II. * * *

B. * * *

4. Ensure the proper disposal of consumer information in a manner consistent with the disposal of customer information.

III. * * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information, in accordance with each of the requirements of this paragraph III.

* * * * *

G. *Implement the Standards.* * * *

3. *Effective date for measures relating to the disposal of consumer information.* Each bank must satisfy these Guidelines with respect to the proper disposal of consumer information by [This date will be 90 days after the date of publication in the **Federal Register** of a final rule].

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a bank's existing contracts with its service providers with regard to any service involving the disposal of consumer information must comply with these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule].

PART 41—FAIR CREDIT REPORTING

3. The authority citation for part 41 is revised to read as follows:

Authority: 12 U.S.C. 1 *et seq.*, 24 (Seventh), 93a, 481, 484, and 1818; 15 U.S.C. 1681a, 1681b, 1681s, 1681w, 6801 and 6805.

4. Subparts E through H are added and reserved.

5. A new subpart I, consisting of § 41.83, is added to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 41.83 Disposal of consumer information.

(a) *In general.* Each bank must properly dispose of any consumer information that it maintains or otherwise possesses in accordance with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, as set forth in appendix B to 12 CFR part 30.

(b) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require a bank to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Dated: May 14, 2004.

John D. Hawke, Jr.,

Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the joint preamble, parts 208, 211, 222, and 225 of chapter II of title 12 of the Code of Federal regulations are proposed to be amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR Part 208 is revised to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1831x, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909, 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, 78w, 1681s, 1681w, 6801 and 6805; 31 U.S.C. 5318, 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128.

2. In § 208.3 revise paragraph (d)(1) to read as follows:

§ 208.3 Application and conditions for membership in the Federal Reserve System.

* * * * *

(d) *Conditions of membership.* (1) *Safety and soundness.* Each member bank shall at all times conduct its business and exercise its powers with due regard to safety and soundness. Each member bank shall comply with the Interagency Guidelines Establishing

Standards for Safety and Soundness prescribed pursuant to section 39 of the FDI Act (12 U.S.C. 1831p–1), set forth in appendix D–1 to this part, and the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and, with respect to the proper disposal of consumer information, section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D–2 to this part.

* * * * *

3. Amend Appendix D–2 to part 208, as follows:

a. In section I., Introduction, a new sentence is added at the end of the introductory paragraph.

b. In section I.A., Scope, a new sentence is added at the end of the paragraph.

c. In section I.C.2, paragraphs b. through f. are redesignated as paragraphs d. through h., respectively, and new paragraphs b. and c. are added.

d. In section II.B., Objectives, a new paragraph 4 is added.

e. In section III.C., Manage and Control Risk, a new paragraph 4 is added.

f. In section III.G., Implement the Standards, new paragraphs 3 and 4 are added.

Appendix D–2 to Part 208—Interagency Guidelines Establishing Standards for Safeguarding Customer Information

* * * * *

I. * * *

* * * These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621(b) and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).

A. *Scope.* * * * These Guidelines also apply to the proper disposal of consumer information by such entities.

* * * * *

C. * * *

2. * * *

b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), and as defined in subpart A of part 222 (Regulation V) of this chapter.

* * * * *

II.* * *

B. * * *

4. Ensure the proper disposal of consumer information in a manner consistent with the disposal of customer information.

* * * * *

III.* * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information, in accordance with each of the requirements in this paragraph III.

* * * * *

G. * * *

3. *Effective date for measures relating to the disposal of consumer information.* Each bank must satisfy these Guidelines with respect to the proper disposal of consumer information by [This date will be 90 days after the date of publication in the **Federal Register** of a final rule].

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a bank's existing contracts with its service providers with regard to any service involving the disposal of consumer information must comply with these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule].

PART 211—INTERNATIONAL BANKING OPERATIONS (REGULATION K)

4. The authority citation for part 211 is revised to read as follows:

Authority: 12 U.S.C. 221 *et seq.*, 1818, 1835a, 1841 *et seq.*, 3101 *et seq.*, and 3901 *et seq.*; 15 U.S.C. 1681s, 1681w, 6801 and 6805.

5. In § 211.5, revise paragraph (l) to read as follows:

§ 211.5 Edge and agreement corporations.

* * * * *

(l) *Protection of customer information and consumer information.* An Edge or agreement corporation shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and, with respect to the proper disposal of consumer information, section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D–2 to part 208 of this chapter.

* * * * *

6. In § 211.24, revise paragraph (i) to read as follows:

§ 211.24 Approval of offices of foreign banks; procedures for applications; standards for approval; representative-office activities and standards for approval; preservation of existing authority.

* * * * *

(i) *Protection of customer and consumer information.* An uninsured state-licensed branch or agency of a foreign bank shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and, with respect to the proper disposal of consumer information, section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w), set forth in appendix D–2 to part 208 of this chapter.

* * * * *

PART 222—FAIR CREDIT REPORTING (REGULATION V)

7. The authority citation for part 222 is revised to read as follows:

Authority: 15 U.S.C. 1681b, 1681s, and 1681w; Secs. 3 and 217, Pub. L. 108–159, 117 Stat. 1952.

8. Add a new subpart I to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

Sec.
222.80–222.82 [Reserved]
222.83 Disposal of consumer information.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 222.80–222.82 [Reserved]

§ 222.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, as required under §§ 208.3(d) (Regulation H), 211.5(l) and 211.24(i) (Regulation K), or 225.4(h) (Regulation Y) of this chapter, as applicable.

(b) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (Regulation Y)

9. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3310, 3331–3351, 3906, and 3909; 15 U.S.C. 1681(b)(1), 1681s, 1681w, 6801 and 6805.

10. In § 225.4, revise paragraph (h) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(h) *Protection of customer information and consumer information.* A bank holding company, including a bank holding company that is a financial holding company, shall comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, as set forth in appendix F of this part, prescribed pursuant to sections 501 and 505 of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805) and, with respect to the proper disposal of consumer information, section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w).

11. In Appendix F to part 225, the following amendments are made:

a. In section I., Introduction, a new sentence is added at the end of the introductory paragraph.

b. In section I.A., Scope, a new sentence is added at the end of the paragraph.

c. In section I.C.2., paragraphs 2.b. through 2.f. are redesignated as paragraphs 2.d. through 2.h., respectively, and new paragraphs 2.b and 2.c are added.

d. In section II.B., Objectives, a new paragraph 4 is added.

e. In section III.C., Manage and Control Risk, a new paragraph 4 is added.

f. In section III.G., Implement the Standards, new paragraphs 3 and 4 are added.

Appendix F To Part 225—Interagency Guidelines Establishing Standards For Safeguarding Customer Information

* * * * *

I. * * *

* * * These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621(b) and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).

A. *Scope.* * * * These Guidelines also apply to the proper disposal of consumer information by such entities.

* * * * *

C. *Definitions.* * * *

2. * * *

b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by you or on your behalf for a business purpose. Consumer information also means a compilation of such records.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), and as defined in subpart A of part 222 (Regulation V) of this chapter.

* * * * *

II. * * *

B. *Objectives.* * * *

* * * * *

4. Ensure the proper disposal of consumer information in a manner consistent with the disposal of customer information.

III. * * *

C. *Manage and Control Risk.* * * *

4. Develop, implement, and maintain, as part of your information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information, in accordance with each of the requirements in this paragraph III.

* * * * *

G. *Implement the Standards.* * * *

3. *Effective date for measures relating to the disposal of consumer information.* You must satisfy these Guidelines with respect to the proper disposal of consumer information by [This date will be 90 days after the date of publication in the **Federal Register** of a final rule].

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., your existing contracts with your service providers with regard to any service involving the disposal of consumer information must comply with these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule].

By order of the Board of Governors of the Federal Reserve System, May 25, 2004.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Federal Deposit Insurance Corporation proposes to amend 12 CFR part 334 (as proposed to be added at 69 FR 2339, April 28, 2004), and 12 CFR part 364 as follows:

PART 334—FAIR CREDIT REPORTING

1. The authority citation for part 334 is revised to read as follows:

Authority: 12 U.S.C. 1818 and 1819 (Tenth); 15 U.S.C. 1681b, 1681s, and 1681w.

2. Add a new subpart I to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

Sec.
334.80–334.82 [Reserved]
334.83 Disposal of consumer information.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 334.80–334.82 [Reserved]

§ 334.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, as set forth in appendix B to part 364 of this chapter, prescribed pursuant to section 216 of the Fair and Accurate Credit Transactions Act of 2003 (15 U.S.C. 1681w).

(b) *Rule of construction.* Nothing in this section shall be construed to:

(1) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(2) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

3. The authority citation for part 364 is revised to read as follows:

Authority: 12 U.S.C. 1819 (Tenth), 1831p–1; 15 U.S.C. 1681s, 1681w, 6801(b), 6805(b)(1).

4. Revise § 364.101(b) to read as follows:

§ 364.101 Standards for safety and soundness.

* * * * *

(b) *Interagency Guidelines Establishing Standards for Safeguarding Customer Information.* The Interagency Guidelines Establishing Standards for Safeguarding Customer Information prescribed pursuant to section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p–1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801, 6805(b)), and with respect to the proper disposal of consumer information, requirements pursuant to sections 621(b) and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w), as set forth in appendix B to this part, apply to all insured state nonmember banks, insured state licensed branches of foreign banks, and any subsidiaries of such entities

(except brokers, dealers, persons providing insurance, investment companies, and investment advisers).

5. In Appendix B to part 364, the following amendments are made:

a. In the Introduction, a new sentence is added at the end of the introductory paragraph.

b. In section I.A., Scope, the first sentence is revised.

c. In section I.C.2., Definitions, paragraphs 2.b. through 2.e. are redesignated as paragraphs 2.d. through 2.g., respectively, and new paragraphs 2.b. and 2.c. are added.

d. In section II.B., Objectives, a new paragraph 4. is added.

e. In section III.C., Manage and Control Risk, a new paragraph 4. is added.

f. In section III.G, new paragraphs 3. and 4. are added.

Appendix B to Part 364—Interagency Guidelines Establishing Standards for Safeguarding Customer Information

* * * * *

I. Introduction

* * * These Guidelines also address standards with respect to the proper disposal of consumer information pursuant to section 621(b) and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s(b) and 1681w).

A. *Scope.* The Guidelines apply to customer information maintained by or on behalf of, and to the disposal of consumer information by, entities over which the Federal Deposit Insurance Corporation (FDIC) has authority. * * *

* * * * *

C. * * *

2. * * *

b. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by or on behalf of the bank for a business purpose. Consumer information also means a compilation of such records.

c. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d).

* * * * *

II. * * *

B. * * *

4. Ensure the proper disposal of consumer information in a manner consistent with the disposal of customer information.

III. * * *

C. * * *

4. Develop, implement, and maintain, as part of its information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information, in accordance with each of the requirements in this paragraph III.

* * * * *

G. * * *

3. *Effective date.* Each bank must satisfy these Guidelines with respect to the proper disposal of consumer information by [This date will be 90 days after the publication in the **Federal Register** of a final rule.]

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., a bank's existing contracts with its service providers with regard to any service involving the disposal of consumer information must comply with these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule.]

Dated at Washington, DC, this 21st day of May, 2004.

By order of the Board of Directors.
Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set forth in the joint preamble, the Office of Thrift Supervision proposes to amend chapter V of title 12 of the Code of Federal Regulations by amending parts 568 and 570, and amending part 571 (as proposed to be added at 69 FR 23402, April 28, 2004), as follows:

PART 568—SECURITY PROCEDURES

1. The authority citation for part 568 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

2. Revise the part heading for part 568 to read as shown above.

3. Revise the first sentence of § 568.1(a) to read as follows:

§ 568.1 Authority, purpose, and scope.

(a) This part is issued by the Office of Thrift Supervision (OTS) under section 3 of the Bank Protection Act of 1968 (12 U.S.C 1882), sections 501 and 505(b)(1) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805(b)(1)), and sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w). * * *

* * * * *

4. Revise § 568.5 to read as follows:

§ 568.5 Protection of customer information.

Savings associations and their subsidiaries (except brokers, dealers, persons providing insurance, investment companies, and investment advisers) must comply with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information set forth in appendix B to part 570 of this chapter.

PART 570—SAFETY AND SOUNDNESS GUIDELINES AND COMPLIANCE PROCEDURES

5. The authority citation for part 570 is revised to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

6. Amend Appendix B of part 570 by:

a. Revising the first sentence of the introductory paragraph of section I. *Introduction;*

b. Adding a new sentence to the end of paragraph I.A. *Scope;*

c. Redesignating paragraphs 2.a. through 2.d. of paragraph I.C.2. *Definitions* as paragraphs 2.c. through 2.f., respectively, and adding new paragraphs 2.a. and 2.b.;

d. Adding a new paragraph 4. to paragraph II.B. *Objectives;*

e. Adding a new paragraph 4. to paragraph III.C. *Manage and Control Risk;* and

f. Adding new paragraphs 3. and 4. to paragraph III.G. *Implement the Standards.*

Appendix B to Part 570—Interagency Guidelines Establishing Standards for Safeguarding Customer Information

* * * * *

I. Introduction

The Interagency Guidelines Establishing Standards for Safeguarding Customer Information (Guidelines) set forth standards pursuant to section 39(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1), and sections 501 and 505(b) of the Gramm-Leach-Bliley Act (15 U.S.C. 6801 and 6805(b)). These Guidelines also address standards with respect to the proper disposal of consumer information, pursuant to sections 621 and 628 of the Fair Credit Reporting Act (15 U.S.C. 1681s and 1681w). * * *

A. *Scope.* * * * These Guidelines also apply to the proper disposal of consumer information by such entities.

* * * * *

C. *Definitions.* * * *

2. * * *

a. *Consumer information* means any record about an individual, whether in paper, electronic, or other form, that is a consumer report or is derived from a consumer report and that is maintained or otherwise possessed by you or on your behalf for a business purpose. Consumer information also means a compilation of such records.

b. *Consumer report* has the same meaning as set forth in the Fair Credit Reporting Act, 15 U.S.C. 1681a(d), and as defined in part 571 of this chapter.

* * * * *

II. * * *

B. *Objectives.* * * *

4. Ensure the proper disposal of consumer information in a manner consistent with the disposal of customer information.

III. * * *

C. *Manage and Control Risk.* * * *

4. Develop, implement, and maintain, as part of your information security program, appropriate measures to properly dispose of consumer information in a manner consistent with the disposal of customer information, in accordance with each of the requirements in this paragraph III.

* * * * *

G. *Implement the Standards.* * * *

3. *Effective date for measures relating to the disposal of consumer information.* You must satisfy these Guidelines with respect to the proper disposal of consumer information by [This date will be 90 days after the date of publication in the **Federal Register** of a final rule].

4. *Exception for existing agreements with service providers relating to the disposal of consumer information.* Notwithstanding the requirement in paragraph III.G.3., your existing contracts with your service providers with regard to any service involving the disposal of consumer information must comply with these Guidelines by [This date will be one year after the date of publication in the **Federal Register** of a final rule].

PART 571—FAIR CREDIT REPORTING

7. The authority citation for part 571 continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464, 1467a, 1828, 1831p–1, 1881–1884; 15 U.S.C. 1681s and 1681w; 15 U.S.C. 6801 and 6805(b)(1).

8. Add a new subpart I to read as follows:

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

Sec.
571.80–571.82 [Reserved]
571.83 Disposal of consumer information.

Subpart I—Duties of Users of Consumer Reports Regarding Identity Theft

§ 571.80–571.82 [Reserved]

§ 571.83 Disposal of consumer information.

(a) *In general.* You must properly dispose of any consumer information that you maintain or otherwise possess in accordance with the Interagency Guidelines Establishing Standards for Safeguarding Customer Information, as set forth in appendix B to part 570 of this chapter.

(b) *Rule of construction.* Nothing in this section shall be construed to:

(i) Require you to maintain or destroy any record pertaining to a consumer that is not imposed under any other law; or

(ii) Alter or affect any requirement imposed under any other provision of law to maintain or destroy such a record.

Dated: April 27, 2004.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 04–12317 Filed 6–7–04; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AC84

Deposit Insurance Assessments—Certified Statements

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of proposed rulemaking with request for comment.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) proposes to modernize and simplify its deposit insurance assessment regulations governing certified statements, to provide regulatory burden relief to insured depository institutions. Under the proposal, insured institutions would be required to obtain their certified statements on the Internet via the FDIC's transaction-based e-business website, FDIC*connect.* Correct certified statements would no longer be signed or returned to the FDIC. The semiannual certified statement process would be synchronized with the present quarterly invoice process. Two quarterly certified statement invoices would comprise the semiannual certified statement and reflect the semiannual assessment amount. If an insured institution agrees with its quarterly certified statement invoice, it would simply pay the assessed amount and retain the invoice in its own files. If it disagrees with the quarterly certified statement invoice, it would either amend its report of condition or similar report (to correct data errors) or amend its quarterly certified statement invoice (to correct calculation errors). The FDIC would automatically treat either as the insured institution's request for revision of its assessment computation, eliminating the requirement of a separate filing. These proposed changes, which would reduce the time and effort required to comply with the certified statement process, result from the FDIC's ongoing program under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) to provide regulatory burden relief to insured depository institutions.

DATES: Comments must be submitted on or before August 9, 2004.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web site: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Follow the instructions for submitting comments on the FDIC Web site.
- E-mail: *comments@FDIC.gov.* Include ''Part 327—Certified Statements'' in the subject line of the message.
- Mail: Robert E. Feldman, Executive Secretary, Attention: Comments/Legal ESS, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- Hand Delivery/Courier: Comments may be hand-delivered to the guard station located at the rear of the FDIC's 17th Street building (accessible from F Street) on business days between 7 a.m. and 5 p.m.

Instructions: All submissions received must include the agency name and use the title ''Part 327—Certified Statements.'' The FDIC may post comments on its Internet site at: *http://www.fdic.gov/regulations/laws/federal/propose.html.* Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Steve Wagoner, Senior Assessment Specialist, Division of Finance, (202) 416–7152; Linda A. Abood, Supervisory IT Specialist, Division of Information Resources Management, (703) 516–1202; or Christopher Bellotto, Counsel, (202) 898–3801, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

The FDIC is proposing to amend 12 CFR 327.2 to modernize and simplify the certified statement process and to reduce the regulatory burden on insured depository institutions under its ongoing EGRPRA program. At present, the FDIC issues to each insured depository institution two deposit insurance invoices each semiannual period. The second invoice received during the semiannual period is the certified statement. An insured

institution must certify the accuracy of the information on the certified statement—by signing it—and return it to the FDIC. If the information is incorrect, the institution must amend the certified statement, return it to the FDIC, and file a separate request for revision of assessment computation in order to change the amount of an assessment payment.

Under the proposal, the two quarterly invoices—each to be called a quarterly certified statement invoice—would together comprise the semiannual certified statement. Insured institutions would download their quarterly certified statement invoices directly from the FDIC's e-business Web site, FDIC*connect*. If, after reviewing the data, the institution believes its quarterly certified statement invoice is correct, it would no longer be required to sign or return the invoice to the FDIC. Instead, an insured institution would pay the amount specified on the invoice and retain it in the institution's files.

Disagreements with quarterly certified statement invoices would be handled with greater ease. If an institution believes the report of condition or similar report (Call Report or Thrift Financial Report (TFR)) data used on a quarterly certified statement invoice is not correct, the institution would amend its Call Report/TFR (as it does now); if an institution believes the Call Report/TFR data on the invoice is correct, but the calculation of the assessment amount is incorrect, the institution would amend the invoice to show the desired change, sign it, and return it to the FDIC within the specified timeframe. Either way, the FDIC would automatically treat the institution's action as a request for revision of assessment computation under section 327.3(h), and the present need for the institution to file a separate request for revision under the FDIC's regulations would be eliminated. With these changes, the regulatory burden in the assessment process would be reduced for the benefit of insured depository institutions. The FDIC would benefit as well, by significantly reducing staff time required for administering the risk-based assessment system and assessment billing and collection process.

I. Background

Under section 7(c) of the Federal Deposit Insurance Act (FDI Act or Act) (12 U.S.C. 1817(c)) insured depository institutions are required to file a certified statement with the FDIC for each semiannual deposit insurance assessment period, containing such information as the FDIC ''may require for determining the institution's semiannual assessment.'' 12 U.S.C. 1817(c)(1)(A). The FDI Act also provides that the certified statement ''shall * * * be in such form and set forth such supporting information as the Board of Directors shall prescribe * * *'' 12 U.S.C. 1817(c)(1)(B)(i). In this way, the Act vests in the FDIC discretion to prescribe the information contained in, as well as the form of, semiannual certified statements. As a result of the FDIC's exercise of this discretion over a period of years, the certified statement process has evolved in response to advances in collection procedures and data processing technology.

Prior to 1995, the FDIC mailed a blank certified statement form to each insured depository institution each semiannual period. Each institution was required to transcribe manually on this form the deposit data culled from its two prior Call Reports/TFRs and to calculate its assessment payment. The assessment was paid for the entire semiannual period one month after the beginning of the semiannual period (*i.e.*, January 31 and July 31). An officer of the institution was required to certify the accuracy of that information by signing the form, which was then returned to the FDIC along with the institution's check for the assessment amount. Under this system almost all of the certified statements were returned to the FDIC each semiannual period, but about 10 percent of the certified statements received contained mistakes, due in part to simple transpositions of figures and mathematical errors that required correction and revision.

The FDIC revised the process for collecting deposit insurance assessments—adopting the present system of quarterly payments in 1994 and implementing it in March of 1995. 59 FR 67153 (Dec. 29, 1994). As part of this changeover to the current automated invoicing and collection system, the FDIC assumed responsibility for ''filling out'' the certified statement and calculating each institution's deposit insurance assessment. The information used by the FDIC in completing certified statements is derived from institutions' Call Reports/TFRs, and is stored by the FDIC electronically. Because the June and December Call Report/TFR data was not available electronically until after the next semiannual payment date,[1] the FDIC instituted the practice of collecting semiannual assessments in two quarterly installments to facilitate FDIC preparation of assessment forms for insured institutions.

Accordingly, since 1995, the semiannual assessment has been collected in two quarterly installments; the sum of these installments equals an institution's semiannual assessment. Each quarterly installment is based on deposit data contained in one of the two quarterly Call Reports/TFRs submitted by the institution during the previous semiannual period. Under section 7(a)(3) of the FDI Act (12 U.S.C. 1817(a)(3)), reports of condition must contain a declaration by an officer of the institution, and a signed attestation by two other institution officers, that the information set forth is true and correct.

The FDIC computes the amount of each quarterly installment by retrieving the relevant electronic data from the Call Report/TFR for each institution. Once computed, the FDIC sends each insured institution an invoice for the first semiannual installment, and, three months later, a certified statement for the second installment. The invoice and the certified statement[2] are each mailed about two weeks prior to the actual collection of each respective installment; collection is accomplished via Automated Clearing House (ACH) direct debit of the account designated by the institution for that purpose.[3]

The invoice and the certified statement differ in two essential respects. The invoice contains the data, assessment computation, and amount due for the first installment of the semiannual period only. The certified statement, however, contains more than just the data, assessment computation, and amount due for the second installment of the semiannual period. It also restates the first installment information and combines the two sets of information into a semiannual presentation. In addition, the second installment invoice—the certified statement—contains a signature block and must be signed and returned to the FDIC, while the first installment invoice is subject to neither requirement. Under the current process, if the institution

[1] The June 30 Call Report/TFR data was not available electronically until after the July 31 payment date; similarly, the December 31 Call Report/TFR data was not available electronically until after the January 31 payment date.

[2] The term ''invoice'' will be used to refer to the invoice for the first quarterly installment; the term ''certified statement'' will be used to refer to the invoice for the second quarterly installment.

[3] The mailing date is about two weeks prior to the ACH payment/settlement date. The FDIC also collects Financing Corporation (FICO) assessments pursuant to the same statutory requirements that govern FDIC deposit insurance assessments. The FICO rate is established based on the deposit data reflected on the invoice and certified statements. To ensure timely collection of adequate funds for FICO, institutions pay the original amount due, and any appropriate adjustments, plus interest, are part of a subsequent quarterly assessment collection.

agrees with the information on the first installment invoice, the institution takes no action other than to fund the designated assessment account sufficiently to allow the direct debit of the account. At most institutions, an officer will review the first installment invoice before authorizing payment by comparing the deposit data on the invoice to the amounts reported by the institution on its corresponding Call Report/TFR, reconciling any adjustments from prior assessment periods as may be noted on the back of the invoice, verifying the rate multiplier used and the ACH account information, and spot checking mathematical calculations. If the institution disagrees with the information on the first installment invoice, the institution must, by regulation (12 CFR 327.3(h)), file a request for revision of its assessment computation if it wishes to change its assessment payment, which in practice is usually done to obtain a refund.

If an institution agrees with the second installment invoice (the certified statement), in addition to ensuring that the designated account is adequately funded and payment is authorized, an officer of the institution must certify the accuracy of the statement and return it to the FDIC. Generally, this process will involve checking the restated first invoice data again, as well as checking the data for the second half of the semiannual period. The institution must return its certified statement (usually by mail) signed by an officer, not later than the second quarterly payment date of the semiannual period (*i.e.*, certified statements must be returned by March 30 for the January–June semiannual period and by September 30 for the July–December semiannual period).[4] If the institution disagrees with the certified statement, the institution must annotate the changes, certify by signing, and return the form to the FDIC. As with the first installment, the institution is required under section 327.3(h) to file a request for revision of its assessment computation if it wishes to change its assessment payment, which in practice is usually done to obtain a refund.

Under the existing automated system, the certified statement has evolved from a semiannual form used by insured institutions to report their deposit data and calculate their assessment payments, into a form designed to confirm the accuracy of information previously provided by the institution (via Call Reports/TFRs) and the accuracy of the FDIC's assessment calculations based on that information.

The present certified statement process imposes significant and unnecessary burdens on insured institutions and the FDIC. The FDIC must mail out over 9,000 first installment invoices and an equal number of certified statements each semiannual period. Institution officials have to review and accept the first installment assessment calculation twice: once in reviewing the first installment invoice and then a second time, when reviewing the certified statement. Institutions must also return their certified statements to the FDIC, even if no discrepancies are found, a process prone to recurrent errors. For example, some institutions return the wrong form (the first installment invoice rather than the certified statement), or the certified statement may be lost in transit. Approximately 1,000 institutions fail to file their certified statements on time each semiannual period, necessitating significant follow-up efforts by FDIC staff through letters and telephone calls.

In addition, institutions filing corrected certified statements or invoices are required under section 327.3(h) to file a separate request for revision of that payment with the FDIC within 60 days from the date of the quarterly assessment invoice. The request for revision sets in motion the process of FDIC review of the validity of the certified statement amendment, the accuracy of the corresponding assessment payment, and the potential for a refund or additional charges based on the FDIC's determination. Finally, the return of certified statements to the FDIC was important when institutions themselves filled out the certified statement and computed the assessment owed to the FDIC. Today, however, the information used to complete the certified statement is drawn from Call Reports/TFRs previously attested to by officers of the insured depository institutions and stored electronically by the FDIC. In effect, the information on the certified statements has already been certified and transmitted to the FDIC. Moreover, unlike the certified statement, the completed Call Report/TFR signature and attestation page is not returned to the appropriate Federal banking agency. Instead, the page is signed and attached to the hard-copy record of the completed Call Report/TFR, which the institution retains in its own files.

For these reasons, return of certified statements to the FDIC has been identified under the FDIC's ongoing EGRPRA program as an outdated, redundant, and burdensome process, both for the industry and the FDIC.

II. Proposed Amendments to § 327.2

Under the proposed revisions to section 327.2, the two quarterly assessment invoices issued during a semiannual period would each become a component of the required semiannual certified statement. The two quarterly certified statement invoices combined would—as the invoice and certified statement do now—reflect an institution's total assessment payment for each semiannual period.

The FDIC would, under the proposal, no longer mail out paper copies of certified statement invoices to insured institutions. Instead, insured institutions would access their quarterly certified statement invoices each quarter via the FDIC's transaction-based e-business Web site, FDIC*connect,* which would require that all institutions obtain Internet access. In addition, Notices of Assessment Risk Classification, presently mailed with the first quarterly invoice each semiannual period (see 12 CFR 327.4(a)), would be provided with the first quarterly certified statement invoice each semiannual period on FDIC*connect.*

Each institution would register an employee as its FDIC*connect* Designated Coordinator, who would access the quarterly certified statement invoice or grant access for that purpose to another individual. Accessing quarterly certified statement invoices via FDIC*connect* would comply with the provisions of the Government Paperwork Elimination Act, which requires agencies to offer on-line alternatives to paper-based processes. Recognizing, however, that Internet access might be unavailable or pose a hardship to some insured institutions, the FDIC seeks comment from interested parties on the need for and scope of an exemption to allow for delivery of quarterly certified statement invoices by an alternate method.

The FDIC is also considering, as a courtesy, notifying all insured depository institutions via e-mail of the availability of the quarterly certified statement invoice. Comment is requested on whether the proposed e-mail notification process is necessary or

[4] An institution's assessment for the first semiannual period of each year (January 1 through June 30) is calculated on the deposits reported on the previous September and December Call Report/TFR. The first installment (due January 2) is based on the September deposits and the second installment (due March 30) is based on the December deposits. The assessment for the second semiannual period (July 1 through December 31) is calculated on the deposits reported on the previous March and June Call Report/TFR. The first installment (due June 30) is based on the March deposits, and the second installment (due September 30) is based on the June deposits. *See* 12 CFR 327.3.

desirable. Having obtained their quarterly certified statement invoices via FDIC*connect,* return of those statements to the FDIC—if the institution believes the invoice is correct—would no longer be required. If an institution agrees with its quarterly certified statement invoice, an officer of the institution would simply retain it in the institution's files for the five-year record retention period established in the FDI Act. *See* 12 U.S.C. 1817(b)(5). Because the data used to complete the quarterly certified statement invoice has been previously attested to on the institution's Call Report/TFR, the data would be deemed certified by the institution, and signing the quarterly certified statement invoice would not be required. The institution need only pay the assessment indicated on the quarterly certified statement invoice—by funding its designated account and permitting the FDIC's direct debit—to be in conformity with both the proposed rule and the FDI Act.

If an institution disagrees with the Call Report/TFR data used to compute the assessment amount listed on a quarterly certified statement invoice, the institution would amend its Call Report/TFR data (as it does now), and the FDIC would automatically treat the amendment as a request for revision of assessment computation under 12 CFR 327.3(h). Similarly, if an institution disagrees with the calculation of the assessment amount (with no change required to Call Report/TFR data), the institution would annotate the quarterly certified statement invoice with the correct information, certify its accuracy by signing, return it to the FDIC within the specified timeframe, and the FDIC would automatically treat the amended invoice as a request for revision of assessment computation under § 327.3(h). In either case, no separate request for revision would be needed.[5] In the event of an assessment dispute, the FDIC would also be able to request from an insured institution the quarterly certified statement invoice retained in the institution's files.

Under the proposal, quarterly certified statement invoices from prior semiannual periods would still be subject to change should an institution discover errors and seek to amend its Call Report/TFR. The FDIC would consider such requests for assessment changes for the full five-year statute of limitations period for assessments. Institutions would also continue to be obligated to ensure that the debit to the institution's designated ACH account is adequately funded and authorized.

The proposal would provide several benefits to the industry. By accessing FDIC*connect* institutions would obtain their assessment invoice data more quickly and more reliably, and at less cost to the FDIC. The official delegated with the responsibility for an institution's FDIC assessments could retrieve quarterly certified statement invoices at his or her convenience twenty-four hours a day (allowing limited downtime for maintenance during off hours) without mail or internal routing delays. Signing and returning correct quarterly certified statement invoices would be eliminated. Making each invoice a component of the semiannual certified statement would synchronize the payment and certification processes, and also clear up confusion caused by the requirement that institutions return every other invoice. In addition, insured institutions' officers would be able to eliminate some steps in their review. Under the current system, the institutions must review their first invoice data twice—once on the first invoice and again when it is reiterated on the certified statement. The proposal would eliminate this needless repetition, thereby reducing the regulatory burden imposed by the certified statement process. Finally, the proposal would simplify and streamline the FDIC's review process for assessment payment changes; when an amended quarterly certified statement invoice is returned to the FDIC, a separately filed request for revision of assessment computation would no longer be required.

The FDIC believes that the present certified statement process has not kept up with the evolution and modernization of assessment collections. Several proposed revisions have been identified under the FDIC's ongoing EGRPRA program. Under the proposed revisions, the assessment process would be simplified by synchronizing assessment certification with the quarterly payment process in a format that would better meet the needs of insured institutions and the FDIC. Internet access would assure timely and reliable receipt by insured institutions of their quarterly certified statement invoices and would be the first step toward providing future business processes between insured institutions and the FDIC electronically. Institutions would be relieved of the administrative chore of ensuring that correct certified statements are signed and mailed back to the FDIC, and reviews would be simplified. The FDIC would realize cost savings by eliminating the need to process and mail over 9,000 paper invoices each calendar quarter, track receipt of, file and store returned certified statements, and take follow-up actions for statements that are not returned to the FDIC. The proposed revisions would also obviate the need for insured institutions to file requests for revision of assessment computation to effect payment changes associated with certified statement amendments.

III. Request for Comment

The Board invites comments on all aspects of the proposed rule, including any other revisions to simplify, clarify, or improve the process of filing certified statements. Interested persons are invited to submit written comments during the 60-day comment period.

IV. Paperwork Reduction Act

The proposed rule contains a revision to an existing collection of information. The revision has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). The FDIC has previously obtained OMB approval of this collection of information under control number 3064–0057. Comments specifically regarding the accuracy of the burden estimate and suggestions for reducing the burden should be sent to: Gary Kuiper, Legal Division (Consumer and Compliance Unit), Room PA–1730–3038, 550 17th Street, NW., Washington, DC 20429. All comments should refer to the title of the proposal. Comments may be hand delivered to the guard station at the rear of the 17th St Building (located on F Street), on business days between 7 a.m. and 5 p.m., Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Copies of comments should also be sent to: Mark Menchak, FDIC Desk Officer: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Washington, DC 20503.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the agency's functions, including whether the information has practical utility;

(b) The accuracy of the estimates of the burden of the revised 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;

[5] The requirements for filing a request for review of an institution's assessment risk classification under 12 CFR 327.4(d) would be unaffected by this change.

(d) Ways to minimize the burden of the revised information collection on respondents, including 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.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the revised information collections should be modified. All comments will become a matter of public record.

Title of the Collection: Certified statement for semiannual deposit insurance assessment.

Summary of proposed changes to the information collection: As discussed more fully in the preamble, the proposed revisions to 12 CFR 327.2 would change the manner in which the FDIC provides—and FDIC-insured institutions receive—quarterly assessment invoices and certified statements. At present the FDIC mails certified statements and invoices to approximately 9,700 insured institutions each semiannual period. Each invoice and certified statement must be reviewed by the institution. The data on the invoice is reiterated on the certified statement and must be reviewed again. Institutions must sign and return the certified statements to the FDIC whether the certified statements are correct or incorrect. If the institution believes the certified statement is incorrect, a separate request for review must also be filed if the institution wishes to obtain a refund.

Under the proposed rule, institutions will access their quarterly certified statement invoices via the FDIC's e-business Web site, FDIC*connect*. Return of correct invoices will be eliminated. An insured institution will review each quarterly certified statement invoice just once. Only quarterly certified statement invoices that the institution believes are not correct will be returned to the FDIC, amended to show corrections. The FDIC will treat an amended certified statement invoice as a request for review, eliminating the need for the institution to file a separate request under 12 CFR 327.3(h). The proposed amendment will require insured depository institutions to obtain their quarterly certified statement invoices on the Internet, comply with a registration process for FDIC*connect*, and retain a copy of the quarterly certified statement invoice for their records. Access to quarterly certified statement invoices via FDIC*connect* will be more secure than the mail, will eliminate much internal routing of statements within institutions, will permit 24-hour access to quarterly certified statement invoices (with minimal maintenance downtime), and will eliminate significant FDIC tracking and processing.

Estimated Paperwork Burden Under the Proposal:

Number of respondents: 9,700.

Annual number of responses per respondent: 2.

Total annual responses: 19,400.

Estimated average time per response: 20 minutes.

Total estimated annual burden hours: 6,467.

V. Regulatory Flexibility Act

Pursuant to 5 U.S.C. 605(b) the FDIC certifies that the proposed rule would not have a significant economic impact on a substantial number of small businesses within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The proposed rule, if finalized, will affect all insured depository institutions (there are approximately 9,700 at present). Of the total number of insured institutions, approximately 60% are small business entities (assets of $150 million or less). The proposed rule will slightly reduce the regulatory burden (from an estimated 30 minutes per response to an estimated 20 minutes per response) imposed by the certified statement process, and therefore will not have a significant economic impact on any insured depository institution.

The proposed rule will change the manner in which the FDIC provides and insured institutions receive certified statements, as set out in the Preamble. Under the proposed rule, institutions will access their quarterly certified statement invoices via the FDIC's e-business Web site, FDIC*connect*, rather than by mail. No significant burden is anticipated in this requirement because the FDIC believes that very few institutions do not already have Internet access or cannot readily obtain it (in the Preamble the FDIC seeks comment on the need for a hardship exemption). Return of correct invoices will be eliminated. An insured institution will review each quarterly certified statement invoice only once, unlike the present system. Only quarterly certified statement invoices that the institution believes are not correct will be returned to the FDIC, amended to show corrections. The FDIC will treat amended certified statement invoices as requests for review, eliminating the need for institutions to make a separate filing under 12 CFR 327.3(h). The proposed rule will clarify that institutions should retain a copy of the quarterly certified statement invoice for their records, but no significant burden is anticipated in this requirement because the FDIC believes that insured institutions already retain copies of their certified statements and invoices. Access to quarterly certified statement invoices via FDIC*connect* will be more secure than the mail, will eliminate much internal routing of statements within institutions, will permit 24-hour access to quarterly certified statement invoices (with minimal maintenance downtime), and will eliminate significant FDIC tracking and processing. In short, the proposal will reduce the regulatory burden on insured institutions.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act requires banking agencies to use plain language in all proposed and final rules published after January 1, 2000. Comments are invited on how to make the proposed rule easier to understand. For example, you may wish to address the rule's organization, clarity, technical language, or formatting. Have we organized the material to suit your needs? If not, how could this material be better organized? Are the requirements in the rule clearly stated? If not, how could the rule be more clearly stated? Do the regulations contain technical language or jargon that is not clear? If so, which language requires clarification? Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand? Would more, but shorter, sections be better? If so, which sections should be changed? What else could we do to make the regulation easier to understand?

List of Subjects in 12 CFR Part 327

Assessments, Bank deposit insurance, Banks, Banking, Financing Corporation, Freedom of information, Hearing and appeal procedures, Record retention,

Reporting and recordkeeping requirements, Savings associations.

For the reasons stated in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend part 327 of Title 12 of the Code of Federal Regulations as follows:

PART 327—ASSESSMENTS

1. The authority citation for part 327 continues to read as follows:

Authority: 12 U.S.C. 1441, 1441b, 1813, 1815, 1817–1819; Pub. L. 104–208, 110 Stat. 3009–479 (12 U.S.C. 1821).

2. Section 327.2 of subpart A is revised to read as follows:

§ 327.2 Certified statements.

(a) *Required.* (1) Each insured depository institution shall certify its semiannual certified statement in the manner and form set forth in this section.

(2) The semiannual certified statement shall be comprised of the two quarterly assessment invoices issued during each semiannual period as prescribed in § 327.3(c) and (d). The two quarterly certified statement invoices combined shall reflect the amount and computation of the institution's semiannual assessment. Any rule applicable to the certified statement shall apply to each quarterly certified statement invoice.

(b) *Availability and access.* (1) The Corporation shall make available to each insured depository institution via the FDIC's e-business Web site FDIC*connect* two quarterly certified statement invoices during each semiannual period.

(2) Insured depository institutions shall access their quarterly certified statement invoices via FDIC*connect*, unless the FDIC provides notice to insured depository institutions of a successor system. In the event of a contingency, the FDIC may employ an alternative means of delivering the quarterly certified statement invoices.

(c) *Review by institution.* The president of each insured depository institution, or such other officer as the institution's president or board of directors or trustees may designate, shall review the information shown on each quarterly certified statement invoice.

(d) *Retention by institution.* If the appropriate officer of the insured depository institution agrees that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice and shall retain the quarterly certified statement invoice in the institution's files for five years as specified in section 7(b)(5) of the Federal Deposit Insurance Act.

(e) *Amendment by institution.* If the appropriate officer of the insured depository institution determines that to the best of his or her knowledge and belief the information shown on the quarterly certified statement invoice is not true, correct and complete and in accordance with the Federal Deposit Insurance Act and the regulations issued under it, the institution shall pay the amount specified on the invoice, and may

(1) Amend its Report of Condition, or other similar report, to correct any data believed to be inaccurate on the quarterly certified statement invoice; amendments to such reports timely filed under section 7(g) of the Federal Deposit Insurance Act but not permitted to be made by an institution's primary Federal regulator may be filed with the FDIC for consideration in determining deposit insurance assessments; or

(2) Amend and sign its quarterly certified statement invoice to correct a calculation believed to be inaccurate and return it to the FDIC by the quarterly payment date for that semiannual period as specified in § 327.3(c) and (d).

(f) *Certification.* Data used by the Corporation to complete the quarterly certified statement invoice has been previously attested to by the institution in its Reports of Condition, or other similar reports, filed with the institution's primary Federal regulator. When an insured institution pays the amount shown on the quarterly certified statement invoice and does not correct that invoice as provided in paragraph (e) of this section, the information on that invoice shall be deemed certified for purposes of paragraph (a) of this section and section 7(c) of the Federal Deposit Insurance Act.

(g) *Requests for revision of assessment computation.* The timely filing of an amended Report of Condition or other similar report, or an amended quarterly certified statement invoice, that will result in a change to deposit insurance assessments owed or paid by an insured depository institution shall be treated as a timely filed request for revision of computation of quarterly assessment payment under § 327.3(h).

Dated at Washington, DC, this 21st day of May, 2004.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 04–12922 Filed 6–7–04; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–225A]

RIN 1218–AC03

Notice of Availability of the Regulatory Flexibility Act Review of Presence Sensing Device Initiation for Mechanical Power Presses

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

ACTION: Notice of availability.

SUMMARY: The Occupational Safety and Health Administration (OSHA) has conducted a review of the Presence Sensing Device Initiation (PSDI) requirements of the Mechanical Power Presses Standard pursuant to section 610 of the Regulatory Flexibility Act, and section 5 of Executive Order 12866 on Regulatory Planning and Review. In 1988, in order to assist small and large businesses in improving productivity while also improving worker protection, OSHA adopted provisions to permit PSDI. However, the PSDI provisions have not been utilized because no independent organization has been willing to validate PSDI installations.

Based on this review and public comments, OSHA has decided to update its mechanical power press standard to ANSI B.11.1–2001 or something similar. The new ANSI standard permits PSDI without independent validation but includes other provisions to maintain PSDI safety. Also, it improves safety and productivity of mechanical power presses in other ways, as well.

ADDRESSES: Copies of the entire report may be obtained from the OSHA Publication Office, Rm. N–3101, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1888, Fax (202) 693–2498. The full report, comments, and referenced documents are available for review at the OSHA Docket Office, Docket No. S–225A, Rm. 2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2119. The main text of the report will become available on the OSHA Web page at *www.OSHA.gov.*

FOR FURTHER INFORMATION CONTACT: Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Rm. N3641, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1939, Fax (202) 693–1641. Direct technical inquiries about the Mechanical Power Presses and PSDI Standards to: Alcmene Haloftis, Rm. N3107, Telephone (202) 693–1859, or visit the OSHA Homepage at *www.OSHA.gov.* Direct press inquiries to George Shaw, Acting Director of Information and Consumer Affairs, Rm. N–3647, telephone (202) 693–1999.

SUPPLEMENTARY INFORMATION:

Background: The Occupational Safety and Health Administration (OSHA) has completed a ''lookback'' review of the Presence Sensing Device Initiation (PSDI) provisions of its Mechanical Power Presses Standard, titled ''Regulatory Review of OSHA's Presence Sensing Device Initiation (PSDI) Standard, May 2004.'' This **Federal Register** Notice announces the availability of the review document and briefly summarizes it.

A mechanical power press is a mechanically powered machine that shears, punches, forms or assembles metal or other material by means of cutting, shaping or combination dies attached to slides. A press consists of a stationary bed or anvil, and a slide having a controlled reciprocating motion. The slide, called the ram, is equipped with special punches and moves downward into a die block which is attached to the rigid bed. The punches and the die block assembly are generally referred to as a ''die set.''

The main function of a stamping press is to provide sufficient power to close and open the die set, thus shaping or cutting the metal part set on the die block. The metal part is fed into the die block and the ram descends to perform the desired stamping operation. The danger zone for the operator is between the punches and the die block. This area is referred to as the ''point of operation.''

If the employee's hand is in the point of operation when the press strokes, amputation of a finger, hand or arm is quite possible. Safeguards are needed to prevent or greatly reduce the possibility of this happening. However, there are a significant number of such amputations each year because of failure of safeguards, improper operation or other causes.

OSHA regulates mechanical power presses at 29 CFR 1910.217. OSHA adopted that standard in 1971 based on the 1971 revision of the American National Standards Institute (ANSI) voluntary consensus standard (ANSI B11.1. ''Safety Requirements for Construction, Care and Use of Mechanical Power Presses.'')

Until 1988, based on the 1971 ANSI Standards, the OSHA standard required manual actuation of a press stroke, to prevent the actuation of a press stroke when the employee's hand was in the point of operation. A typical method of actuation was dual palm buttons set sufficiently far apart to prevent part of the employee's body from being in the point of operation when the press stroked.

A presence sensing device, typically a light curtain, senses when an object, such as a hand, is within its field. The 1971 ANSI standard permitted presence sensing devices (PSD) to be used as a guard, but it did not permit the PSD to initiate (actuate) the stroke of the press when the PSD senses that the employee has fed the press and removed the employee's hands and arms from the point of operation. PSDI increases the speed of the operation, consequently improving productivity. Experts also believe, if done correctly, it would be more protective of employees by protecting non-operator employees near the press (who would not be protected by manual actuation alone) and by reducing employee fatigue.

After several major studies, several rounds of public comments and a public hearing, OSHA issued the final rule permitting PSDI on March 14, 1988 at 53 FR 8327. OSHA believed, based on the studies, expert opinions, European experience, an experimental variance and comments, that the regulation would substantially improve productivity, better protect workers, and be implemented.

The Final Rule includes requirements for designing PSDI systems. It includes requirements that manufacturers certify the system and that an independent organization validate that certification. These provisions are located at 29 CFR 1910.217(h) and Appendices A, B and C.

However, PSDI has not been adopted for mechanical power presses. No organization has agreed to validate PSDI installations. PSDI is still widely used in Europe, and it is used for other types of equipment in the United States, where it had not been prohibited. In addition, there is a much updated ANSI B.11.1–2001 standard on mechanical power presses which permits PSDI. This updated standard does not require third party validation for PSDI, but it has a number of requirements for PSDI safety which are integrated throughout the standard.

Regulatory Review

OSHA decided to review the PSDI provisions of the Mechanical Power Presses Standard pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and section 5 of Executive Order 12866 (59 FR 51739, October 4, 1993). A major goal of the review was to determine whether there are changes that can be made which will encourage the implementation of PSDI, to improve business and, particularly, small business productivity, while protecting workers. In addition, the review covered all issues raised by section 610 of the Regulatory Flexibility Act and section 5 of E.O. 12866.

The purpose of a review under section 610 of the Regulatory Flexibility Act ''(S)hall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rule on a substantial number of small entities.

The Agency shall consider the following factors:

(1) The continued need for the rule;

(2) The nature of complaints or comments received concerning the rule from the public;

(3) The complexity of the rule;

(4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules; and, to the extent feasible, with state and local governmental rules; and

(5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the areas affected by the rule.

The review requirements of section 5 of Executive Order 12866 require agencies:

To reduce the regulatory burden on the American people, their families, their communities, their state, local and tribal governments, their industries: to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

OSHA requested public comments on its review of the PSDI Standard on August 28, 2002 at 67 FR 55181. It

requested that comments be submitted by January 27, 2003. Nine comments were received.

In its August 28, 2002 **Federal Register** Notice, OSHA also presented for public comment four possible options to encourage the safe implementation of PSDI.

- Option 1—Update all of § 1910.217 to ANSI B 11.1—2001 or something quite similar.
- Option 2—Revise the third-party validation requirements.
- Option 3—Eliminate all requirements for third-party validation, possibly replacing it with a self-certification requirement; leave the other PSDI requirements intact.
- Option 4—Replace OSHA's current PSDI requirements with the PSDI requirements in the new ANSI B.11.1.

The final report, ''Regulatory Review of OSHA's Presence Sensing Device Initiation (PSDI) Standard, May 2004'' discusses all issues raised by section 610 of the Regulatory Flexibility Act, section 5 of E.O. 12866, and by public comments. It reviews the industry profile, safety issues, economic benefits of PSDI, reasons why PSDI was not implemented, and public comments. It also analyzes the four options presented.

The report estimates that 40,000 employees use mechanical power presses which could be converted to PSDI. It estimates that 88% of such presses are used by small businesses. It reviews estimates that adding PSDI to a press would increase productivity on average 24.3% and that, if added to all suitable presses, PSDI would save industry $162 million per year. Those estimates indicated that the net average saving to industry would be between $100–129 million after taking into account the cost of the equipment and required validation.

The report also analyzes the number of injuries from mechanical power presses. There are a number of data series, each with its advantages and disadvantages. The lowest estimate is 64 amputations and 65 other serious injuries per year based on reports to OSHA. The Bureau of Labor Statistics (BLS) estimate is 211 amputations and 832 injuries per year in a category somewhat broader than mechanical power presses.

The report also discusses why third party validation was not implemented. That approach has worked in other areas and was recommended by many experts. However, there are liability concerns and some of the validation criteria may have been too restrictive.

The report summarizes the nine comments. Five of the commenters recommended updating to ANSI B.11.1–2001 because they believed that would not only safely permit PSDI without validation, but would also have a range of other benefits. Three commenters recommended amending the PSDI provisions in some way, and one had no recommendation.

In summary, the conclusions reached by OSHA in its review of the PSDI Standard are as follows; the full report discusses these conclusions at greater length. This review of the PSDI Standard under section 610 of the Regulatory Flexibility Act finds the following:

- There is a continued need for a rule, but if the benefits OSHA sought in the 1988 rule are to be gained (*i.e.*, improved worker safety and employer productivity), the rule needs to be changed.
- The Standard, as currently written, has not been implemented and is complex.
- Paragraph (h) and § 1910.217 are significantly different from the latest revision to American National Standards Institute (ANSI) B 11.1, the industry consensus standard for mechanical power presses. The OSHA PSDI Standard does not overlap, duplicate, or conflict with other state or Federal rules.
- The technology for PSDI systems themselves has not changed since paragraph (h) was adopted in 1988, but the technology for controlling mechanical power presses has changed considerably since § 1910.217 was adopted. A number of operating modes that are not addressed in § 1910.217 are now used. Press operation is now often controlled by computers, introducing hazards that are not addressed in the Standard. Economic conditions of the industry have not changed in ways that would impact the use of power presses. There has, however, been a shift toward the use of hydraulic power presses, which are not regulated under § 1910.217.
- OSHA is considering revisions to the Standard to facilitate installation and use of PSDI on part-revolution mechanical power presses. Because the PSDI Standard has never been implemented, it has not had an economic impact on small entities. OSHA continues to believe that PSDI, if safely implemented, could provide economic benefits to employers and safety and health benefits to employees (*e.g.*, reduction of fatigue).

Furthermore, this review of the PSDI Standard under section 5 of Executive Order 12866, finds the following:

- The PSDI Standard has not been implemented. OSHA conducted this review to identify the problems with the Standard so that the Standard could be revised.
- The Standard is compatible with other OSHA standards. No other OSHA standard addresses the use of PSDI systems.
- The Standard has not met the President's priorities to the extent that it has not produced the benefits sought; that is, allowing industry to use a system that would increase productivity and improve safety for employees. OSHA is considering revisions to the Standard to encourage implementation.
- The Standard has been ineffective because it has not been implemented. OSHA is considering revision of the Standard.

Based on analyses and information obtained during this Section 610 review, OSHA has decided on Option 1, to update all of § 1910.217 to ANSI B.11.1—2001 or something quite similar. Implementing this option would address industry concerns that the mechanical power presses standards (§ 1910.217) is out-of-date and could be made safer. Five of the nine respondents who commented on this Section 610 review, in response to OSHA's August 28, 2002 **Federal Register** Notice, recommended that OSHA replace the entire mechanical power press standard with ANSI B 11.1—2001. PSDI is an integral part of that ANSI standard, and there is no validation requirement. Furthermore, many in the field believe this updating is overdue, that there would be a range of benefits, and that it would lead to implementation of PSDI.

Authority: This document was prepared under the direction of John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued pursuant to section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and section 5 of Executive Order 12866 (59 FR 51724, October 4, 1993).

Signed at Washington, DC this 2nd day of June, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–12931 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–26–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA148–5078b; FRL–7670–9]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; VOC Emission Standards for Portable Fuel Containers in the Metropolitan Washington, DC Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the Commonwealth of Virginia State Implementation Plan (SIP). The revisions pertain to new emission standards for portable fuel containers sold, supplied, offered for sale, or manufactured for sale in the Northern Virginia portion of the Metropolitan Washington, DC ozone nonattainment area (Northern Virginia Area). In the Final Rules section of this **Federal Register**, EPA is approving the new standards as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this 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 July 8, 2004.

ADDRESSES: Submit your comments, identified by VA 148–5078 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. VA148–5078. 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.

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 Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia, 23219.

FOR FURTHER INFORMATION CONTACT: Marilyn Powers (215) 814–2308 , or by e-mail at *powers.marilyn@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.

Dated: May 27, 2004.

James W. Newsom,

Acting Regional Administrator, Region III.

[FR Doc. 04–12770 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[CC Docket No. 92–105; FCC 04–111]

The Use of N11 Codes and Other Abbreviated Dialing Arrangements

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on various abbreviated dialing arrangements that could be used by state ''One Call'' notification systems in compliance with the Pipeline Safety Improvement Act of 2002 (the Pipeline Safety Act). We seek comment on whether an N11 code, a code using a leading star or number sign, or another three-digit number should be assigned to comply with the Pipeline Safety Act. We also seek comment on implementation issues such as the integration of existing One Call Center numbers, an appropriate implementation timeframe for each proposed abbreviated dialing arrangement, and whether we should delegate authority to the state commissions to address implementation issues.

DATES: Comments are due on or before July 8, 2004. Reply comments are due on or before July 23, 2004.

ADDRESSES: All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. See **SUPPLEMENTARY INFORMATION** for further filing instructions.

FOR FURTHER INFORMATION CONTACT: Regina Brown, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* in CC Docket No. 92–105 released on May 14, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

I. Introduction

1. In this *Notice of Proposed Rulemaking,* (Notice) May 14, 2004, we seek comment on various abbreviated dialing arrangements that could be used by state ''One Call'' notification systems in compliance with the Pipeline Safety Improvement Act of 2002 (the Pipeline

Safety Act). A One Call notification system is a communication system established by operators of underground facilities and/or state governments in order to provide a means for excavators and the general public to notify facility operators in advance of their intent to engage in excavation activities. One Call Centers, which cover different geographic areas, are generally accessed by dialing a toll-free or local telephone number. Our objective in initiating this proceeding is to assess possible abbreviated dialing arrangements to use to access state One Call Centers, while at the same time, seeking to minimize any adverse impact on numbering resources. We seek comment on whether an N11 code, a code using a leading star or number sign, or another three-digit number should be assigned to comply with the Pipeline Safety Act. We also seek comment on implementation issues such as the integration of existing One Call Center numbers, an appropriate implementation timeframe for each proposed abbreviated dialing arrangement, and whether we should delegate authority to the state commissions to address implementation issues.

II. Discussion

A. Abbreviated Dialing Arrangements

1. N11 Codes

2. *Background.* N11 codes are abbreviated dialing arrangements that enable callers to connect to a location in the public switched telephone network by dialing only three digits, where ''N'' represents one of the digits from 2–9. Thus, the network must be pre-programmed to translate the three-digit code into the appropriate seven or ten-digit dialing sequence and route the call accordingly. Because there are only eight possible N11 codes (211, 311, 411, 511, 611, 711, 811, 911), N11 codes are among the scarcest of resources under the Commission's jurisdiction.

3. To date, the Commission has assigned the 211 for information and referral services, 311 for non-emergency police and other governmental services, 511 for travel and information services, 711 for telephone relay services for the hearing impaired, and 911 as the national emergency number. In addition, 411, 611 and 811 are widely used by carriers, but have not been assigned by the Commission for nationwide use. N11 codes that have not been assigned nationally can continue to be assigned for local uses, provided that such use can be discontinued on short notice.

4. *Discussion.* We seek comment on using an N11 code for access to One Call Centers. Specifically, we seek comment on which N11 code should be assigned for this purpose. When advocating a specific N11 code, we ask parties to explain why the proposed N11 code is preferred. We also seek comment on the NANC's recommendation that we assign 811. According to the NANC, 811 is the best alternative for satisfying the requirement in the Pipeline Safety Act to assign a three-digit code because 811 will have less impact on customer dialing patterns and can be implemented without the substantial cost and delay of switch development required with an alternative like #344 or 344. The NANC determined that using 811 to access One Call Centers consumes fewer numbering resources than other alternative abbreviated dialing arrangements.

5. Commenters should also address whether we should incorporate the One Call access service with existing N11 codes, such as 311 or 511, to preserve the few remaining N11 codes. For example, should we also assign 311, which is currently assigned for non-emergency police and other governmental services, for access to One Call Centers? Commenters should describe the advantages and disadvantages of such an approach. We ask commenters that advocate shared use of an existing N11 code to propose solutions to mitigate the concerns expressed by the NANC.

2. Codes Using a Leading Star or Number Sign

6. *Background.* The leading star and number signs serve as network control characters to speed up connections. The star indicates to the switching system that the digits following specify a certain desired feature/service from the switch. The dial equivalent to the star is the digits 1–1 and is used instead of the star when activating or deactivating a vertical service from a rotary phone.

7. Vertical Service Codes (VSCs) are codes that use a leading star. They are numbering resources maintained and administered by the North American Numbering Plan Administrator (NANPA). Specifically, VSCs are customer-dialed codes that allow customers to access features and services provided by telecommunications service providers. The format of a VSC is *XX or *2XX (touchtone) and 11XX or 112XX (rotary). Services that rely on VSCs include call forwarding, which is activated by dialing *72 or 1172, automatic callback, and customer-originated trace.

8. The number key has generally been used to stop any switch timing protocol and immediately process the call and for control in telephone systems, such as voicemail (#86). In addition, the number key is used by Operator Services switching systems to re-originate a credit card call with the same billing information used in the preceding call. It is also used for control in telephone systems, such as voicemail. There is no dialed equivalent to the number sign character since, unlike the star character, the number sign is not used in the dialing sequence.

9. *Discussion.* We seek comment on whether a code with a leading star or number sign should be used to access One Call Centers. Commenters that propose the use of a code with a leading star or number sign should specify the code that should be used. We also seek comment on the extent to which using a code with a leading star or number sign will either promote or discourage exhaustion of NANP numbers.

10. Implementation of the #344 (#DIG) code in the wireless sector has been in progress since 1999. The NANC recommends that, because of the effort that has gone into wireless implementation of #344, calls from wireless customers to One Call Centers should continue to be permitted, but it does not recommend the use of a code with a leading star or number sign for the purpose of complying with the statute's requirement to utilize a ''three-digit'' number to access One Call Centers.

11. The NANC raises several concerns with respect to using a code with a leading star or number sign. First, the NANC maintains that codes using a leading star or number sign would not achieve the uniformity mandated by the Pipeline Safety Act since all users would not be dialing the same sequence. For example, an abbreviated dialing code using a leading star sign would require rotary customers to dial the digits ''1–1'' in place of the star. Second, many Private Branch Exchange systems use the star and/or number signs for feature access. Thus, the NANC believes that reprogramming these systems may not always be feasible and will involve considerable customer expense. Third, the NANC states that some switching systems are not capable of processing access codes using a leading star or number sign in the dialing sequences and the necessary switch development would delay the full implementation of the One Call functionality. Therefore, the NANC does not recommend assigning a code using a leading star or number sign as the One Call abbreviated dialing code. We seek comment on the

issues raised by the NANC. Specifically, we ask parties to discuss any existing measures that can mitigate or alleviate the limitations with using a leading star or number sign.

B. Establishment of 344 as an Abbreviated Dialing Code

12. *Background.* Easily Recognizable Codes (ERCs) are Numbering Plan Areas (NPAs) or area codes designating special services, *e.g.*, 888 for toll-free service. The NANPA has assigned certain area codes as ERCs. The second and third digits of an ERC are the same (*e.g.*, 344). Although the 344 NPA has not yet been allocated, there are NPAs in which 344 is assigned as a central office code (NXX). The DOT requests the establishment of an abbreviated dialing arrangement that uses the digits ''344'' (which corresponds to the digits of the 344 ERC) to access One Call centers throughout the country. Alternatively, DOT requests a substitute mnemonic three-digit abbreviated dialing arrangement.

13. *Discussion.* We seek comment on DOT's proposal to establish the digits ''344'' as an abbreviated dialing arrangement for access to One Call Centers or any other mnemonic three-digit abbreviated dialing arrangement for this purpose. We tentatively conclude that because 344 corresponds to an ERC, an abbreviated dialing code in the format of an ERC or other area code would be inconsistent with our numbering resource optimization policies by potentially rendering eight million NANP telephone numbers unusable.

14. The NANC raises several other concerns with respect to establishing an abbreviated dialing code that corresponds to the digits of an ERC. First, the NANC is concerned that the selection of an ERC for this purpose may set a precedent for similarly using other NPAs that would accelerate NANP exhaust. Second, according to the NANC, unlike areas where ten-digit dialing has been implemented, where seven-digit dialing is permissible, most wireline switches would need to implement an inter-digit timeout method to distinguish between calls to either the One Call Center or calls to a telephone number whose central office code has the same digits as the abbreviated dialing code. Thus, the NANC asserts that calls may be inappropriately routed to the One Call Center or may be interpreted by the end user as a problem with the service. If the call is interpreted by the end user as a service problem, they may hang up and not reinitiate contact with the One Call Center. Third, NANC states that existing switches may not be able to accommodate 344 as an abbreviated dialing code. For example, the NANC notes that switches may be unable to: (1) resolve code conflict where 344 is a working NXX and seven-digit dialing is allowed; and (2) support 344 as a three-digit code even where 344 is not a working NXX and/or ten-digit dialing is required.

15. We seek comment on the issues raised by the NANC and whether there are existing measures that can address these issues. We also seek comment as to the extent switch development or replacement may be needed and the impact this will have on nationwide implementation.

C. Implementation Issues

1. Integration of Existing One Call Center Numbers

16. The Pipeline Safety Act expressly mandates use of a three-digit toll-free number to access State One Call Centers. We seek comment on methods to ensure that calls to One Call Centers are ''toll-free.'' So that callers do not incur toll charges, the NANC recommends that each One Call Center provide a toll-free number, which can be an 8YY number or any number that is not an IntraLATA toll call from the area to be served. When a caller dials the abbreviated dialing code, the carriers would translate the abbreviated dialing code into the appropriate toll-free or local number. We seek comment on the NANC's recommendation. We also seek comment on whether the dialing sequence should be the same for all providers or whether existing abbreviated dialing sequences, *e.g.*, #344, should be allowed to continue.

2. Originating Switch Location

17. We also seek comment on whether the originating NPA–NXX should determine the One Call Center into which the number will be translated. For example, in establishing a framework for its evaluation of various abbreviated dialing arrangements to implement the Pipeline Safety Act, the NANC assumed that for wireline-originated calls, the originating NPA–NXX would determine the One Call Center to which the call is sent. For wireless-originated calls, the NANC assumed that the originating Mobile Switch Center would determine the One Call Center to which the call is sent.

3. Timeframe for Implementation

18. We seek comment on the timeframe for implementing each abbreviated dialing arrangement proposed in this Notice. In light of the various technical and operational issues, we ask parties to comment on all of the steps that carriers must undertake to prepare the network for use of the various abbreviated dialing arrangements to route properly such calls to the One Call Centers. We seek comment on the timeframe for proper transition if existing abbreviated dialing sequences, such as #344, are eliminated. We also seek comment on what timeframe should be given to carriers to vacate any existing uses, if an unassigned N11 code, such as 811, is selected to access One Call Centers. We ask parties to provide suggested timeframes that will allow carriers to complete those steps as expeditiously as possible. We also seek comment on the technical and operational issues that should be considered when adopting a time period for implementation that will allow carriers sufficient time to prepare the network for use of each proposed abbreviated dialing arrangement.

19. For example, if an N11 code is selected, existing uses of the selected N11 code need to be vacated. The NANC estimates that an individual carrier's implementation time for an N11 code, such as 811, ranges from a few months to one year. Further, the NANC estimates that all other alternatives such as 344 or #344 will require switch development by some vendors, which can take one to three years before the new parameters can be released and installed. According to the NANC, certain switches have limited or no switch development support and may require replacement. Thus, implementation of a three-digit solution for certain switches may not be possible until after the switch features are activated. We seek comment on the NANC's recommendation of approximately one to two years to prepare the network to support One Call notification to existing One Call Centers.

20. Further, we seek comment on whether the timeframes for implementation should be uniform or based on local conditions. If timeframes are based on local conditions, we seek comment on what the basis should be for establishing different timeframes. We also seek comment on whether, pursuant to section 251(e), we should delegate authority to the states to establish the timeframe for implementation. We seek comment on how best to engage states in the implementation process, *e.g.*, industry workshops or other public forums, to help address the technical and operational issues.

II. Procedural Matters

A. Regulatory Flexibility Analysis

21. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. section 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) for the Notice. Comments on the IRFA should be labeled as IRFA Comments, and should be submitted pursuant to the filing dates and procedures set forth in paragraphs 23–29, *infra*.

B. Paperwork Reduction Act Analysis

22. This Notice does not contain a proposed or modified information collection.

C. Filing Procedures

23. Pursuant to sections 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before July 8, 2004, and reply comments on or before July 23, 2004. In order to facilitate review of comments and reply comments, parties should include the name of the filing party and the date of the filing on all pleadings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies.

24. Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/cgb/ecfs*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at *http://www.fcc.gov/e-file/email.html*.

25. Parties that choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location will be 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

26. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method . . .	It should be addressed for delivery to . . .
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE., Suite 100, Washington, DC 20002 (8 to 7 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail	445 12th Street, SW., Washington, DC 20554.

27. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications, at the filing window at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in ''read only'' mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02–60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase ''Disk Copy—Not an Original.'' Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12st Street, SW., Room CYB–402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger).

28. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC 20554 (see alternative addresses above for delivery by hand or messenger) (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com*.

29. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com.*

D. Further Information

30. Alternative formats (computer diskette, large print, audio recording, and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 voice, (202) 418–7365 TTY, or *bmillin@fcc.gov.* This Notice can also be downloaded in Microsoft Word and ASCII formats at *http://www.fcc.gov/ccb/universalservice/highcost.*

Initial Regulatory Flexibility Analysis (Notice of Proposed Rulemaking)

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice of Proposed Rulemaking*

(Notice). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the Notice provided above in Section VI(C). The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. In addition, the Notice and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

32. In this Notice, we seek comment on various abbreviated dialing arrangements that could be used by state ''One Call'' notification systems in compliance with the Pipeline Safety Improvement Act of 2002 (the Pipeline Safety Act). A One Call notification system is a communication system established by operators of underground facilities and/or state governments in order to provide a means for excavators and the general public to notify facility operators in advance of their intent to engage in excavation activities. One Call Centers, which cover different geographic areas, are generally accessed by dialing a toll-free or local telephone number. Our objective in initiating this proceeding is to assess possible abbreviated dialing arrangements to use to access state One Call Centers, while at the same time, seeking to minimize any adverse impact on numbering resources. We seek comment on whether an N11 code, a code using a leading star or number sign, or another three-digit number should be assigned to comply with the Pipeline Safety Act. We also seek comment on implementation issues such as the integration of existing One Call Center numbers, an appropriate implementation timeframe for each proposed abbreviated dialing arrangement, and whether we should delegate authority to the state commissions to resolve implementation issues. We tentatively conclude that an abbreviated dialing code in the format of an Easily Recognizable Code or other area code would be inconsistent with our numbering resource optimization policies by potentially rendering eight million telephone numbers unusable.

2. Legal Basis

33. This Notice is adopted pursuant to sections 1, 4(i), 4(j), 201–205, 251, 252, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. sections 151, 154(i), (j), 201–205, 251, 252, and 303.

3. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

34. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

a. Telecommunications Service Entities

(i) Wireline Carriers and Service Providers

35. We have included small incumbent local exchange carriers in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

36. *Incumbent Local Exchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,337 carriers have reported that they are engaged in the provision of incumbent local exchange services. Of these 1,337 carriers, an estimated 1,032 have 1,500 or fewer employees and 305 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by our action.

37. *Competitive Local Exchange Carriers, Competitive Access Providers, ''Shared-Tenant Service Providers,''* and *''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 609 carriers have reported that they are engaged in the provision of either competitive access provider services or competitive local exchange carrier services. Of these 609 carriers, an estimated 458 have 1,500 or fewer employees and 151 have more than 1,500 employees. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees. In addition, 35 carriers have reported that they are ''Other Local Service Providers.'' Of the 35, an estimated 34 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers'' are small entities that may be affected by our action.

38. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 133 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 127 have 1,500 or fewer employees and six have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by our action.

39. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 625 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 590 have 1,500 or fewer employees and 35 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll

resellers are small entities that may be affected by our action.

40. *Payphone Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for payphone services providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 761 carriers have reported that they are engaged in the provision of payphone services. Of these, an estimated 757 have 1,500 or fewer employees and four have more than 1,500 employees. Consequently, the Commission estimates that the majority of payphone service providers are small entities that may be affected by our action.

41. *Interexchange Carriers.* Neither the Commission nor the SBA has developed a small business size standard specifically for providers of interexchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 261 carriers have reported that they are engaged in the provision of interexchange service. Of these, an estimated 223 have 1,500 or fewer employees and 38 have more than 1,500 employees. Consequently, the Commission estimates that the majority of IXCs are small entities that may be affected by our action.

42. *Operator Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 23 carriers have reported that they are engaged in the provision of operator services. Of these, an estimated 22 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of OSPs are small entities that may be affected by our action.

43. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 37 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated 36 have 1,500 or fewer employees and one has more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by our action.

(ii) Wireless Telecommunications Service Providers

44. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this second category and size standard, the majority of firms can, again, be considered small.

45. *Cellular Licensees.* The SBA has developed a small business size standard for wireless firms within the broad economic census category ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category Cellular and Other Wireless Telecommunications firms, Census Bureau data for 1997 show that there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this category and size standard, the great majority of firms can be considered small. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service, or Specialized Mobile Radio Telephony services, which are placed together in the data. We have estimated that 294 of these are small, under the SBA small business size standard.

46. *Common Carrier Paging.* The SBA has developed a small business size standard for wireless firms within the broad economic census categories of ''Cellular and Other Wireless Telecommunications.'' Under this SBA category, a wireless business is small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 1997 show that there were 1,320 firms in this category, total, that operated for the entire year. Of this total, 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Thus, under this category and associated small business size standard, the great majority of firms can be considered small. In the Paging *Third Report and Order,* 62 FR 16004, April 3, 1997, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 985 licenses auctioned, 440 were sold. Fifty-seven companies claiming small business status won. According to the most recent *Trends in Telephone Service,* 433 carriers reported that they were engaged in the provision of paging and messaging services. Of those, we estimate that 423 are small, under the SBA approved small business size standard.

47. *Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding

years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the wireless communications services. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

48. *Wireless Telephony.* Wireless telephony includes cellular, personal communications services, and specialized mobile radio telephony carriers. As noted earlier, the SBA has developed a small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. According to the most recent *Trends in Telephone Service* data, 719 carriers reported that they were engaged in the provision of wireless telephony. We have estimated that 294 of these are small under the SBA small business size standard.

49. *Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In addition, we note that, as a general matter, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily represent the number of small businesses currently in service. Also, the Commission does not generally track subsequent business size unless, in the context of assignments or transfers, unjust enrichment issues are implicated.

50. *Narrowband Personal Communications Services.* To date, two auctions of narrowband PCS licenses have been conducted. For purposes of the two auctions that have already been held, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. In the future, the Commission will auction 459 licenses to serve Metropolitan Trading Areas and 408 response channel licenses. There is also one megahertz of narrowband PCS spectrum that has been held in reserve and that the Commission has not yet decided to release for licensing. The Commission cannot predict accurately the number of licenses that will be awarded to small entities in future actions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis, that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

51. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to ''Cellular and Other Wireless Telecommunications'' companies. This category provides that a small business is a wireless company employing no more than 1,500 persons. According to the Census Bureau data for 1997, only 12 wireless firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. If this general ratio continues in the context of Phase I 220 MHz licensees, the Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard.

52. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is a new service, and is subject to spectrum auctions. In the *220 MHz Third Report and Order,* 62 FR 16004, April 3, 1997, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group Licenses, and 875 Economic Area Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

53. *800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in

auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. These bidding credits apply to SMR providers in the 800 MHz and 900 MHz bands that either hold geographic area licenses or have obtained extended implementation authorizations. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes, for purposes here, that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands that may be affected by the rules and policies adopted herein.

54. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order*, 65 FR 17599, April 4, 2000, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

55. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System. The Commission uses the SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

56. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to ''Cellular and Other Wireless Telecommunications,'' *i.e.*, an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

57. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for the category ''Cellular and Other Telecommunications,'' which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We noted, however, that the common carrier microwave fixed licensee category includes some large entities.

58. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for ''Cellular and Other Wireless Telecommunications'' services. Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.

59. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by the rules and policies adopted herein.

60. *Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas. Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations

authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category, total, that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. Consequently, we estimate that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

61. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 LMDS licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

62. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order*, 64 FR 59656, November 3, 1999, we established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. We cannot estimate, however, the number of licenses that will be won by entities qualifying as small or very small businesses under our rules in future auctions of 218–219 MHz spectrum.

63. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. The applicable SBA small business size standard is that of ''Cellular and Other Wireless Telecommunications'' companies. This category provides that such a company is small if it employs no more than 1,500 persons. According to Census Bureau data for 1997, there were 977 firms in this category, total, that operated for the entire year. Of this total, 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more. Thus, under this size standard, the great majority of firms can be considered small. These broader census data notwithstanding, we believe that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

64. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to the future auction, if held.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

65. Depending on which alternative is ultimately chosen to comply with the Pipeline Safety Act, there will be some cost associated with our action. We invite comment on any possible costs.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

66. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

67. We will consider any proposals made to minimize any significant economic impact on small entities. The overall objective of this proceeding is to assess possible nationwide toll-free abbreviated dialing arrangements to use to access state One Call Centers as mandated by the Pipeline Safety Act. Depending on which alternative is ultimately chosen to comply with the Pipeline Safety Act, the establishment of a three-digit code for any purpose may eliminate use of those numbers as Numbering Plan Areas, rendering approximately eight million telephone numbers useless. Thus, such assignment of a toll-free abbreviated dialing arrangement to implement the Pipeline Safety Act may potentially impact three-digit numbering resources and the design and operation of the three-digit One Call system. We, therefore, seek comment on abbreviated dialing arrangements that comply with the requirements of the Pipeline Safety Act while at the same time minimize, to the extent possible, any adverse impact on numbering resources. In addition, we have discussed the possible costs of switch development, and encourage

comment on how we might reduce this carrier cost, including such costs for small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

68. None.

III. Ordering Clauses

69. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted.

70. Pursuant to the authority contained in sections 1, 4(i), 4(j), 201–205, 214, 254, and 403 of the Communications Act of 1934, as amended, the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–12830 Filed 6–7–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

48 CFR Part 212

[DFARS Case 2003–D074]

Defense Federal Acquisition Regulation Supplement; Acquisition of Commercial Items

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to update text pertaining to the acquisition of commercial items. This proposed rule is a result of an initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D074, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2003–D074 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dpap/dfars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes—

- Delete unnecessary text pertaining to structuring of contracts at DFARS 212.303; and
- Update a FAR reference at DFARS 212.503(c)(ii).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule deletes unnecessary text pertaining to structuring of contracts and updates reference information, but makes no significant change to contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003–D074.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any 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 212

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR part 212 as follows:

1. The authority citation for 48 CFR part 212 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

212.303 [Removed]

2. Section 212.303 is removed.

212.503 [Amended]

3. Section 212.503 is amended in paragraph (c)(ii) by revising the parenthetical to read ''(see FAR 15.403–1(b)(3))''.

[FR Doc. 04–12937 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2004–D001]

Defense Federal Acquisition Regulation Supplement; Reporting Contract Performance Outside the United States

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for reporting of

contract performance outside the United States. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004–D001, using any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include DFARS Case 2004–D001 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at *http://www.acq.osd.mil/dp/dars/transf.htm.*

This proposed rule is a result of the DFARS Transformation initiative. The proposed changes clarify requirements for reporting of contract performance outside the United States; and establish two separate contract clauses to eliminate confusion between two reporting requirements presently contained in one clause.

DFARS Subpart 225.72, Reporting Contract Performance Outside the United States, implements: (1) DoD policy for contractor reporting of performance outside the United States under contracts exceeding $500,000; and (2) requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada, when the contract exceeds $10 million and could be performed inside the United States or Canada.

This proposed rule revises DFARS Subpart 225.72, and the corresponding solicitation provision and contract clauses, to clarify the two separate reporting requirements. In addition, the proposed rule removes text from DFARS 225.7202 related to contracting officer distribution of reports. This text will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI). A proposed rule describing the purpose and structure of PGI was published at 69 FR 8145 on February 23, 2004.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule clarifies existing reporting requirements, with no substantive change to those requirements. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D001.

C. Paperwork Reduction Act

The proposed rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.* The existing information collection requirements in DFARS Subpart 225.72 have been approved by OMB under Control Number 0704–0229.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR Parts 225 and 252 as follows:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7200 is revised to read as follows:

225.7200 Scope of subpart.

This subpart addresses—

(a) The requirements of 10 U.S.C. 2410g for offerors and contractors to notify DoD of any intention to perform a DoD contract outside the United States and Canada when the contract could be performed inside the United States or Canada; and

(b) DoD requirements for contractor reporting of the volume, type, and nature of contract performance outside the United States.

3. Sections 225.7202 and 225.7203 are revised to read as follows:

§ 225.7202 Contracting officer distribution of reports.

Follow the procedures at PGI 225.7202 for distribution of reports submitted with offers in accordance with the provision at 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer.

§ 225.7203 Solicitation provision and contract clause.

Except for acquisitions described in 225.7201—

(a) Use the provision at 252.225–7003, Report of Intended Performance Outside the United States and Canada—Submission with Offer, in solicitations with a value exceeding $10 million;

(b) Use the clause at 252.225–7004, Immediate Reporting of Intended Contract Performance Outside the United States and Canada, in solicitations and contracts with a value exceeding $10 million; and

(c) Use the clause at 252.225–7XXX, Quarterly Reporting of Contract Performance Outside the United States, in solicitations and contracts with a value exceeding $500,000.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Sections 252.225–7003 and 252.225–7004 are revised to read as follows:

§ 252.225–7003 Report of Intended Performance Outside the United States and Canada—Submission with Offer.

As prescribed in 225.7203(a), use the following provision:

Report of Intended Performance Outside the United States and Canada—Submission With Offer (XXX 2004)

(a) The offeror shall submit, with its offer, a report of intended performance outside the United States and Canada if—

(1) The offer exceeds $10 million in value; and

(2) The offeror is aware that the offeror or a first-tier subcontractor intends to perform any part of the contract outside the United States and Canada that—

(i) Exceeds $500,000 in value; and

(ii) Could be performed inside the United States or Canada.

(b) Information to be reported includes that for—

(1) Subcontracts;

(2) Purchases; and

(3) Intracompany transfers when transfers originate in a foreign location.

(c) The offeror shall submit the report using—

(1) DD Form 2139, Report of Contract Performance Outside the United States; or

(2) A computer-generated report that contains all information required by DD Form 2139.

(d) The offeror may obtain a copy of DD Form 2139 from the Contracting Officer or via the Internet at *http://web1.whs.osd.mil/icdhome/forms.htm.*

(End of provision)

252.225–7004 Immediate Reporting of Intended Contract Performance Outside the United States and Canada.

As prescribed in 225.7203(b), use the following clause:

Immediate Reporting of Intended Contract Performance Outside the United States and Canada (XXX 2004)

(a) *Reporting requirement.* The Contractor shall submit a report in accordance with this clause, if the Contractor or a first-tier subcontractor will perform any part of this contract outside the United States and Canada that—

(1) Exceeds $500,000 in value; and

(2) Could be performed inside the United States or Canada.

(b) *Submission of reports.* The Contractor—

(1) Shall submit a report as soon as the information is known;

(2) To the maximum extent practicable, shall submit a report regarding a first-tier subcontractor at least 30 days before award of the subcontract;

(3) Need not resubmit information submitted with its offer, unless the information changes;

(4) Shall submit all reports to the Contracting Officer; and

(5) Shall submit a copy of each report to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060.

(c) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at *http://web1.whs.osd.mil/icdhome/forms.htm.*

(End of clause)

5. Section 252.225–7XXX is added to read as follows:

252.225–7XXX Quarterly Reporting of Contract Performance Outside the United States.

As prescribed in 225.7203(c), use the following clause:

Quarterly Reporting of Contract Performance Outside the United States (XXX 2004)

(a) *Reporting requirement.* Except as provided in paragraph (b) of this clause, within 10 days after the end of each quarter of the Government's fiscal year, the Contractor shall report any subcontract, purchase, or intracompany transfer that—

(1) Will be or has been performed outside the United States;

(2) Exceeds the simplified acquisition threshold in Part 2 of the Federal Acquisition Regulation; and

(3) Has not been identified in a report for a previous quarter.

(b) *Exception.* Reporting under this clause is not required if—

(1) A foreign place of performance is the principal place of performance; and

(2) The Contractor specified the foreign place of performance in the Place of Performance provision of its offer.

(c) *Submission of reports.* The Contractor shall submit the reports required by this clause to: Deputy Director of Defense Procurement and Acquisition Policy (Program Acquisition and International Contracting), OUSD(AT&L)DPAP(PAIC), Washington, DC 20301–3060.

(d) *Report format.* The Contractor—

(1) Shall submit reports using—

(i) DD Form 2139, Report of Contract Performance Outside the United States; or

(ii) A computer-generated report that contains all information required by DD Form 2139; and

(2) May obtain copies of DD Form 2139 from the Contracting Officer or via the Internet at *http://web1.whs.osd.mil/icdhome/forms.htm.*

(e) *Subcontracts.* The Contractor—

(1) Shall include the substance of this clause in all first-tier subcontracts exceeding $500,000, except those for commercial items, construction, ores, natural gases, utilities, petroleum products and crudes, timber (logs), or subsistence; and

(2) Shall provide the number of this contract to its subcontractors required to submit reports under this clause.

(End of clause)

[FR Doc. 04–12934 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register

Vol. 69, No. 110

Tuesday, June 8, 2004

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

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 04–004N]

International Standard-Setting Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the sanitary and phytosanitary standard-setting activities of the Codex Alimentarius Commission (Codex), in accordance with section 491 of the Trade Agreements Act of 1979, as amended, and the Uruguay Round Agreements Act, Public Law 103–465, 108 Stat. 4809. This notice also provides a list of other standard-setting activities of Codex, including commodity standards, guidelines, codes of practice, and revised texts. This notice, which covers the time periods from June 1, 2003, to May 31, 2004, and June 1, 2004, to May 31, 2005, seeks comments on standards currently under consideration and recommendations for new standards.

ADDRESSES: Comments may be submitted by any of the following methods:

- Mail, including floppy disks or CD–ROM's, and hand- or courier-delivered items: Send to Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, 300 12th Street, SW., Room 102 Cotton Annex, Washington, DC 20250.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions at that site for submitting comments.

All submissions received must include the Agency name and docket number 04–004N. Please state that your comments refer to Codex and, if your comments relate to specific Codex committees, please identify those committees in your comments and submit a copy of your comments to the delegate from that particular committee. All comments submitted will be available for public inspection in the FSIS Docket Room at the address listed above between 8:30 a.m. and 4:30 p.m., Monday through Friday. The comments also will be posted on the Agency's Web site at *http://www.fsis.usda.gov/OPPDE/rdad/FRDockets.htm.*

FOR FURTHER INFORMATION CONTACT: F. Edward Scarbrough, Ph.D., United States Manager for Codex, U.S. Department of Agriculture, Office of the Undersecretary for Food Safety, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700; (202) 205–7760. For information pertaining to particular committees, the delegate of that committee may be contacted. (A complete list of U.S. delegates and alternate delegates can be found in Attachment 2 to this notice.) Documents pertaining to Codex are accessible via the World Wide Web at the following address: *http://www.codexalimentarius.net.* The U.S. Codex Office also maintains a Web site at *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.*

SUPPLEMENTARY INFORMATION:

Background

The World Trade Organization (WTO) was established on January 1, 1995, as the common international institutional framework for the conduct of trade relations among its members in matters related to the Uruguay Round Trade Agreements. The WTO is the successor organization to the General Agreement on Tariffs and Trade (GATT). U.S. membership in the WTO was approved and the Uruguay Round Agreements Act was signed into law by the President on December 8, 1994. The Uruguay Round Agreements became effective, with respect to the United States, on January 1, 1995. Pursuant to section 491 of the Trade Agreements Act of 1979, as amended, the President is required to designate an agency to be responsible for informing the public of the sanitary and phytosanitary (SPS) standard-setting activities of each international standard-setting organization, Codex, International Office of Epizootics, and the International Plant Protection Convention. The President, pursuant to Proclamation No. 6780 of March 23, 1995 (60 FR 15845), designated the U.S. Department of Agriculture as the agency responsible for informing the public of sanitary and phytosanitary standard-setting activities of each international standard-setting organization. The Secretary of Agriculture has delegated to the Administrator, Food Safety and Inspection Service (FSIS), the responsibility to inform the public of the SPS standard-setting activities of Codex. The FSIS Administrator has, in turn, assigned the responsibility for informing the public of the SPS standard-setting activities of Codex to the U.S. Codex Office, FSIS.

Codex was created in 1962 by two U.N. organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the principal international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled. In the United States, the United States Department of Agriculture (USDA); the Food and Drug Administration (FDA), Department of Health and Human Services (HHS); and the Environmental Protection Agency (EPA) manage and carry out U.S. Codex activities.

As the agency responsible for informing the public of the sanitary and phytosanitary standard-setting activities of Codex, FSIS publishes this notice in the **Federal Register** annually. Attachment 1 (Sanitary and Phytosanitary Activities of Codex) sets forth the following information:

1. The sanitary or phytosanitary standards under consideration or planned for consideration; and

2. For each sanitary or phytosanitary standard specified:

a. A description of the consideration or planned consideration of the standard;

b. Whether the United States is participating or plans to participate in the consideration of the standard;

c. The agenda for United States participation, if any; and

d. The agency responsible for representing the United States with respect to the standard.

To obtain copies of those standards listed in Attachment 1 that are under consideration by Codex, please contact the Codex delegate or the U.S. Codex office. This notice also solicits public comment on those standards that are under consideration or planned for consideration and recommendations for new standards. The delegate, in conjunction with the responsible agency, will take the comments received into account in participating in the consideration of the standards and in proposing matters to be considered by Codex.

The United States' delegate will facilitate public participation in the United States Government's activities relating to Codex Alimentarius. The United States' delegate will maintain a list of individuals, groups, and organizations that have expressed an interest in the activities of the Codex committees and will disseminate information regarding United States' delegation activities to interested parties. This information will include the current status of each agenda item; the United States Government's position or preliminary position on the agenda items; and the time and place of planning meetings and debriefing meetings following Codex committee sessions. In addition, the U.S. Codex Office makes much of the same information available through its Web page, *http://www.fsis.usda.gov/Regulations_&_Policies/Codex_Alimentarius/index.asp.* Please visit the Web page or notify the appropriate U.S. delegate or the Office of U.S. Codex Alimentarius, Room 4861, South Agriculture Building, 1400 Independence Avenue, SW., Washington, DC 20250–3700, if you would like to access or receive information about specific committees.

The information provided in Attachment 1 describes the status of Codex standard-setting activities by the Codex Committees for the time periods from June 1, 2003 to May 31, 2004, and June 1, 2004 to May 31, 2005. In addition, the following attachments are included:

Attachment 2 List of U.S. Codex Officials (includes U.S. delegates and alternate delegates)
Attachment 3 Timetable of Codex Sessions (June 2003 through June 2005)
Attachment 4 Definitions for the Purpose of Codex Alimentarius
Attachment 5 Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts
Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts
Attachment 6 Nature of Codex Standards

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that the public and in particular that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it on-line through the FSIS Web page located at *http://www.fsis.usda.gov* and through the Regulations.gov Web site. The Regulations.gov Web site is the central online rulemaking portal of the United States government. It is being offered as a public service to increase participation in the Federal government's regulatory activities. FSIS participates in Regulations.gov and will accept comments on documents published on the site. The site allows visitors to search by keyword or Department or Agency for rulemakings that allow for public comment. Each entry provides a quick link to a comment form so that visitors can type in their comments and submit them to FSIS. The Web site is located at *http://www.regulations.gov.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and other types of information that could affect or would be of interest to our constituents and stakeholders. The update is communicated via Listserv, a free e-mail subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The update also is available on the FSIS Web page. Through Listserv and the Web page, FSIS is able to provide information to a much broader, more diverse audience.

Done at Washington, DC, on June 1, 2004.

F. Edward Scarbrough,

United States Manager for Codex.

Attachment 1: Sanitary and Phytosanitary Activities of Codex

Codex Alimentarius Commission and Executive Committee

The Codex Alimentarius Commission will hold its Twenty-Seventh Session June 28–July 3, 2004 in Geneva, Switzerland. At that time it will consider procedural matters, the standards, codes of practice, and related matters brought to its attention by the general subject committees, commodity committees, *ad hoc* Task Forces and member delegations. It will also consider options or strategies regarding the Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards, as well as budgetary and strategic planning issues. The issue of Codex interaction with other international organizations will also be discussed. At this Session, the Commission will elect a Chair and three Vice Chairs.

Prior to the Commission meeting, the Executive Committee will meet at its Fifty-fourth Session on June 24–26, 2004. It is composed of the chairperson, vice-chairpersons and seven members elected from the Commission, one from each of the following geographic regions: Africa, Asia, Europe, Latin America and the Caribbean, Near East, North America, and South-West Pacific. In addition, regional coordinators from the six regions will attend as observers. It will discuss implementation of the Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards, matters arising from reports of Codex Committees, standards management issues, and the Trust Fund for the Participation of Developing Countries and Countries in Transition in the Work of the Codex Alimentarius.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Residues of Veterinary Drugs in Foods

The Codex Committee on Residues of Veterinary Drugs in Foods (CCRVDF) determines priorities for the consideration of residues of veterinary drugs in foods and recommends Maximum Residue Limits (MRLs) for veterinary drugs. A veterinary drug is defined as any substance applied or administered to a food producing animal, such as meat or dairy animals, poultry, fish or bees, for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

A Codex Maximum Limit for Veterinary Drugs (MRLVD) is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or ug/kg on a fresh weight basis) that is adopted by the Codex Alimentarius Commission to be permitted or recognized as acceptable in or on a food. An MRLVD is based on the Acceptable Daily Intake (ADI) and indicates the amount of residue in food that is considered to be without appreciable toxicological hazard. An MRLVD also takes into account other

relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical analytical methods are available.

Acceptable Daily Intake (ADI): An estimate by the Joint FAO/WHO Expert Committee on Food Additives (JECFA) of the amount of a veterinary drug, expressed on a body weight basis, that can be ingested daily over a lifetime without appreciable health risk (standard man = 60 kg).

The 15th Session of CCRVDF will take place in the United States on October 25–28, 2004. The following will be discussed by the Committee:

Draft Maximum Residue Limits for:

- Flumequine.
- Neomycin.
- Dicyclanil.
- Melengestrol acetate.
- Trichlorfon (metrifonate).

Proposed Draft Maximum Residue Limits for:

- Cefuroxime.
- Cypermethrin.
- Alpha-Cypermethrin.

The Committee continues to work on:

- Proposed Draft Code of Practice to Minimize and Contain Antimicrobial Resistance.
- Proposed Draft Revised Guidelines for the Establishment of a Regulatory Program for Control of Veterinary Drug Residues in Foods.
- Risk Analysis Principles and Methodologies, including Risk Assessment Policies in the Codex Committee on Residues of Veterinary Drugs in Foods.
- Proposed Draft Appendix on the Prevention and Control of Veterinary Drug Residues in Milk and Milk Products.
- Priority List of Veterinary Drugs Requiring Evaluation or Reevaluation.
- Methods of Analysis and Sampling Issues.
- Performance-based Criteria.
- Identification of Routine Methods of Analysis.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Additives and Contaminants

The Codex Committee on Food Additives and Contaminants (CCFAC) (a) establishes or endorses permitted maximum or guideline levels for individual food additives, contaminants, and naturally occurring toxicants in food and animal feed; (b) prepares priority lists of food additives and contaminants for toxicological evaluation by the Joint FAO/WHO Expert Committee on Food Additives (JECFA); (c) recommends specifications of identity and purity for food additives for adoption by the Commission; (d) considers methods of analysis for food additives and contaminants; and (e) considers and elaborates standards and codes for related subjects such as labeling of food additives when sold as such and food irradiation. The following matters are under consideration by the Commission at its 27th Session in July 2004. The relevant document is ALINORM 4/27/12.

Risk Analysis

To be considered at Step 8:

- Draft Risk Analysis Principles applied by the Codex Committee on Food Additives and Contaminants.

Food Additives

To be considered at Step 8:

- General Standard for Food Additives: Food Category System.
- General Standard for Food Additives: Draft Food Additive Provisions in Tables 1 and 2.

To be considered at Step 5/8 of the Accelerated Procedure:

- General Standard for Food Additives: Proposed Draft Food Additive Provisions in Tables 1 and 2.
- Advisory Specifications for the Identity and Purity of Food Additives.
- Draft Revisions to the Codex International Numbering System for Food Additives.

The Committee is continuing work on:

- General Standard for Food Additives: Draft Food Additive Provisions (in Table 1 and Table 3).
- General Standard for Food Additives: Revisions to the Preamble to clarify relationship between the General Standard and food additive provisions in Codex Commodity Standards and to clarify the principles for establishing food additive provisions in the General Standard.
- International Numbering System.
- Specifications for the Identity and Purity of Food Additives.
- Inventory of processing aids.
- Discussion paper on food additives used as carriers.
- Discussion paper on the Harmonization of Terms Used by Codex and JECFA.
- Terms of reference for a risk assessment of the use of ''active chlorine'' by a Joint FAO/WHO Expert Consultation.

Contaminants

To be considered at Step 8:

- General Standard for Contaminants and Toxins: Preamble.
- General Standard for Contaminants and Toxins: Proposed Draft Principles for Exposure Assessment of Contaminants and Toxins in Foods.
- CCFAC Policy for Exposure Assessment of Contaminants and Toxins in Foods or Food Groups.
- Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Peanuts.
- Code of Practice for the Prevention and Reduction of Lead Contamination in Foods.

To be considered at Step 5:

- Draft Code of Practice for the Prevention and Reduction of Aflatoxin Contamination in Tree Nuts.
- Draft Code of Practice for the Prevention and Reduction of Inorganic Tin Contamination in Canned Foods.
- Draft Revised Guideline Levels for Radionuclides in Foods Following Accidental Nuclear Contamination for Use in International Trade, Including Guideline Levels for Long-Term Use.

The Committee is continuing work on:

- Maximum levels for aflatoxin in tree nuts (almonds, hazelnuts, and pistachios).
- Discussion paper on Aflatoxin Contamination in Brazil Nuts.
- Maximum level for lead in fish.
- Maximum levels for cadmium in polished rice, wheat grain, potato, stem and root vegetables, leafy vegetables, other vegetables, and molluscs.
- Proposed Draft Code of Practice for Source Directed Measures to Reduce Dioxin and Dioxin-like PCB Contamination in Foods.
- Discussion paper with proposals for maximum levels for 3-monochloropropanediol in acid-hydrolyzed vegetable protein (acid-HVP) and acid-HVP containing foods.
- Discussion paper on acrylamide.

The Committee is beginning new work on:

- Sampling plans for aflatoxin in tree nuts (almonds, Brazil nuts, hazelnuts, and pistachios).
- Discussion paper on options for incorporating the JECFA safety evaluation of flavors into the Codex system.
- Discussion paper on polyaromatic hydrocarbons.
- Discussion paper on methylmercury in fish.

General Issues

- Priority List of Food Additives, Contaminants and Naturally Occurring

Toxicants Proposed for Evaluation by JECFA.

Responsible Agency: HHS/FDA.

U.S. Participation: YES.

Codex Committee on Pesticide Residues

The Codex Committee on Pesticide Residues recommends to the Codex Alimentarius Commission establishment of maximum limits for pesticide residues for specific food items or in groups of food. A Codex Maximum Residue Limit for Pesticide (MRLP) is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. Foods derived from commodities that comply with the respective MRLPs are intended to be toxicologically acceptable, that is, consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, * should indicate that foods complying with Codex MRLPs are safe for human consumption. * Acceptable Daily Intake (ADI) of a chemical is the daily intake which, during an entire lifetime, appears to be without appreciable risk to the health of the consumer on the basis of all the known facts at the time of the evaluation of the chemical by the Joint FAO/WHO Meeting on Pesticide Residues. It is expressed in milligrams of the chemical per kilogram of body weight.

Codex MRLPs are primarily intended to apply in international trade and are derived from reviews conducted by the Joint Meeting on Pesticide Residues (JMPR) following:

(a) Review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices (GAP). Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices, and

(b) Toxicological assessment of the pesticide and its residue.

The following items will be considered by the Commission at its 27th Session in July 2004. The relevant document is ALINORM 04/27/24.

To be considered at Step 8:

- Draft and Draft Revised Maximum Residue Limits.

To be considered at Step 5/8:

- Proposed Draft and Proposed Draft Revised Maximum Residue Limits.
- Draft Revision of the Guidelines on Good Laboratory Practice in Pesticide Residue Analysts.

To be considered at Step 5:

- Proposed Draft and Proposed Draft Revised Maximum Residue Limits.

The committee is continuing work on:

- Consideration of Draft and Proposed Draft Residue Maximum Limits in Foods and Feeds.
- Pilot Project for the examination of national MRLs as Interim Codex MRLs for safer replacement pesticides.
- Proposals for Improvement of Methodology for Point Estimates.
- Risk Analysis Policies Used in Establishing Codex MRLs.
- Revision of the List of Recommended Methods on Analysis for Pesticide Residues.
- Estimation of Uncertainty.
- Proposals for new Tropical Fruit and Vegetable Commodities.
- Elaboration of MRLs for Spices.
- Revision of the Codex Classification of Foods and Animal Feeds.
- Criteria for Prioritization Process.
- Revision of Codex Priority Lists of Pesticides for review by JMPR.

Responsible Agency: EPA; USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Methods of Analysis and Sampling

The Codex Committee on Methods of Analysis and Sampling:

(a) Defines the criteria appropriate to Codex Methods of Analysis and Sampling;

(b) Serves as a coordinating body for Codex with other international groups working in methods of analysis and sampling and quality assurance systems for laboratories;

(c) Specifies, on the basis of final recommendations submitted to it by the other bodies referred to in (b) above, Reference Methods of Analysis and Sampling appropriate to Codex Standards which are generally applicable to a number of foods;

(d) Considers, amends, if necessary, and endorses, as appropriate, methods of analysis and sampling proposed by Codex (Commodity) Committees, except that methods of analysis and sampling for residues of pesticides or veterinary drugs in food, the assessment of microbiological quality and safety in food, and the assessment of specifications for food additives do not fall within the terms of reference of this Committee;

(e) Elaborates sampling plans and procedures, as may be required;

(f) Considers specific sampling and analysis problems submitted to it by the Commission or any of its Committees; and

(g) Defines procedures, protocols, guidelines or related texts for the assessment of food laboratory proficiency, as well as quality assurance systems for laboratories.

The 25th Session of the Committee met in Budapest, Hungary, on March 8–12, 2004. The relevant document is ALINORM 04/27/23. The following will be considered by the Commission at its 27th Session in July 2004:

To be considered at Step 8:

- Draft General Guidelines on Sampling.
- Draft Guidelines on Measurement Uncertainty.

To be considered at Step 5:

- Proposed Draft Guidelines for Evaluating Acceptable Methods of Analysis.

The Committee will continue work on:

- Criteria for Evaluating Acceptable Methods of Analysis.
- Proposed Draft Guidelines for Settling of Disputes on Analytical (test) Results.
- Consideration of the Fitness-For-Purpose Approach to Evaluating Methods of Analysis.
- Further Review of the *Analytical Terminology for Codex Use* in the Procedural Manual.
- Endorsement of Methods of Analysis and Sampling Provisions in Codex Standards.
- Criteria for Methods of Analysis for the Detection and Identification of Foods derived from Biotechnology.
- Methods of Analysis for the determination of dioxins and PCBs.

Responsible Agency: HHS/FDA; USDA/ARS.

U.S. Participation: Yes.

Codex Committee on Food Import and Export Certification and Inspection Systems

The Codex Committee on Food Import and Export Inspection and Certification Systems is charged with developing principles and guidelines for food import and export inspection and certification systems to protect consumers and to ensure fair practices in international trade in food. Additionally, the Committee develops principles and guidelines for the application of measures by competent authorities to provide assurance that foods comply with essential requirements, especially statutory health requirements. This encompasses work on: equivalence of food inspection systems including equivalence agreements, processes and procedures to ensure that sanitary measures are

implemented; guidelines on food import control systems; and guidelines on food product certification and information exchange. The development of guidelines for the appropriate utilization of quality assurance systems to ensure that foodstuffs conform to requirements and to facilitate trade are also included in the Committee's terms of reference.

The following will be considered for adoption by the Commission at its 27th Session in July 2004.

To be considered at Step 5/8:

• Proposed Draft Principles and Guidelines for the Exchange of Information in Food Safety Emergency Situations.

New Work:

• Proposed Draft Appendices to the Guidelines on the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification.

• Proposed Draft Principles for Electronic Certification.

• Proposed Draft Guidelines for Risk-based Inspection of Imported Foods.

The committee is continuing work on:

• Discussion paper on the Revision of the Guidelines for the Exchange of Information Between Countries on Rejections of Imported Foods.

• Discussion paper on ''traceability/product tracing'' in the context of Food Inspection and Certification Systems.

• Discussion paper on the Revision of the Guidelines for Generic Official Certificate Formats and the Production and Issuance of Certificates.

• Discussion paper on clarification of the reference ''a reasonable interval'' in the Guidelines for Food Import Control Systems.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on General Principles

The Codex Committee on General Principles deals with procedure and general matters as are referred to it by the Codex Alimentarius Commission. The 19th (Extraordinary) Session addressed issues related to decisions made by the Commission regarding the FAO/WHO Codex Evaluation. The 20th Session which met on May 3–7, 2004 in Paris, France, considered the regular work of the Committee. The relevant documents are ALINORM 04/27/33 and ALINORM 04/27/33A. Matters from the 19th Session to be considered for adoption by the 27th Commission in July 2004 are:

• Procedural Amendments to the *Rules of Procedure.*

• Proposed Amendments to the *Procedures for the Elaboration of Codex Standards and Related Texts.*

• Draft Criteria for the Appointment of Chairpersons.

• Draft Guidelines to Host Governments of Codex Committees and *ad hoc* Intergovernmental Task Forces.

• Draft Guidelines on the Conduct of Meetings of Codex Committees and *ad hoc* Intergovernmental Task Forces.

• Draft Guidelines to Chairpersons of Codex Committees and *ad hoc* Intergovernmental Task Forces.

At its 20th (regular) Session, the Committee continued work on:

• Proposed Draft Working Principles for Risk Analysis for Food Safety (Guidance to National Governments).

• Proposed Draft Revised Code of Ethics for International Trade in Foods.

• Guidelines for Cooperation with International Intergovernmental Organizations.

• Definition of traceability/product tracing.

• Proposed Amendment to Rule VII.5 (Observers) of the Rules of Procedure.

• Review of the Principles concerning the Participation of International Non-Governmental Organizations in the work of the Commission.

• Matters arising from the 19th (Extraordinary) Session:.

(a) Clarification of the respective roles of Members of the Executive Committee elected on a geographic basis and of Coordinators.

(b) Clarification of the duration of the terms of the Coordinators and other Members of the Executive Committee.

(c) Relevance of the current acceptance and notification procedures for Codex standards.

(d) Possible reorganization of the structure and presentation of the Procedural Manual.

(e) Particular situation of the North America Region in the context of Rule IV.1.

(f) Implication of the exclusive use of electronic distribution of Codex documents to Members and Observers.

(g) Criteria applicable for the participation of developing country members in the Executive Committee in the light of the proposed Rule XII.3 and the Codex budget available. At its 21st (Extraordinary) Session the Committee will continue work on:

• Consideration of the Status of Observers in the Executive Committee.

• Revision of the Criteria for the Establishment of Work Priorities.

• Draft Guidelines on Physical Working Groups and Draft Guidelines on Electronic Working Groups.

Responsible Agency: USDA/FSIS; HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Food Labelling

The Codex Committee on Food Labelling is responsible for drafting provisions on labelling issues assigned by the Codex Alimentarius Commission. The reference document is ALINORM 04/27/22. The Committee held its thirty-second Session in Montreal, Quebec, Canada, on May 10–14, 2004. It considered the following items:

• Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods: Draft Revised Annex 2—Permitted Substances.

• Report of the Working Group on the Management of the Agenda Items on Labelling of Foods and Food Ingredients Obtained through Certain Techniques of Genetic Modification/Genetic Engineering.

• Draft Amendment to the General Standard for the Labelling of Prepackaged Foods—(Draft Recommendations for the Labelling of Foods Obtained through Certain Techniques of Genetic Modification/Genetic Engineering) (Definitions).

• Proposed Draft Guidelines for the Labelling of Food and food Ingredients obtained through certain Techniques of Genetic Modification/Genetic Engineering: Labelling Provisions.

• Draft Guidelines for the Use of Health and Nutrition Claims.

• Proposed Draft Amendment to the General Standard for the Labelling of Prepackaged Foods: Quantitative Declaration of Ingredients.

• Discussion paper on Misleading Claims.

• Discussion paper on Country of Origin Labelling.

• Discussion on Food Labelling and Traceability/Product Tracing.

Responsible Agency: HHS/FDA; USDA/FSIS.

U.S. Participation: Yes.

Codex Committee on Food Hygiene

The Codex Committee on Food Hygiene has four primary responsibilities. First, the Committee drafts basic provisions on food hygiene applicable to all food. These provisions normally take the form of Codes of Hygienic Practice for a specific commodity (*e.g.*, bottled water) or group of commodities (*e.g.*, milk and milk products). Second, it suggests and prioritizes areas where there is a need for microbiological risk assessment at the international level and considers microbiological risk management matters in relation to food hygiene and in relation to the risk assessment activities of FAO and WHO. Third, it considers, amends, if necessary, and

endorses food hygiene provisions that are incorporated into specific Codex commodity standards by the Codex commodity committees. Fourth, the Committee provides such other general guidance to the Commission on matters relating to food hygiene as may be necessary. The following items will be considered by the Codex Alimentarius Commission at its 27th Session in July 2004. The relevant document is ALINORM 04/27/13.

To be considered at Step 8:

• Draft Code of Hygienic Practice for Milk and Milk Products.

• Definitions of Food Safety Objective, Performance Objective, and Performance Criterion.

The committee continues to work on:

• Discussion papers on the management of the work of the Committee.

• Work on Microbiological Risk Assessment/Risk Management.

• Criteria to Establish Work Priorities.

• Options for Cross-Committee Interaction Process.

• Proposed Draft Guidelines on the Application of the General Principles of Food Hygiene to the [management] of *Listeria monocytogenes* in Foods.

• Proposed Draft Revision of the Code of Hygienic Practice for Eggs and Egg Products.

• Proposed Draft Guidelines for the Validation of Food Hygienic Control Measures.

• Endorsement of Hygiene Provisions in Codex Standards and Codes of Practice.

• Reports of *ad hoc* Expert Consultations.

• Risk Management Strategies for *Salmonella* spp. in Poultry.

• Risk Management Strategies for *Campylobacter* spp. in Poultry.

• Risk Profile for Enterohemorrhagic *E. coli*, including the Identification of Commodities of Concern, including Sprouts, Ground Beef and Pork.

• Discussion paper on the Proposed Draft Revision of the Recommended International Code of Practice for Foods for Infants and Children; Risk Profile on *E. sakazakii.*

• Discussion paper on Proposed Draft Guidelines for Evaluating Objectionable Matter in Food.

Responsible Agency: HHS/FDA; FSIS/USDA.

U.S. Participation: Yes.

Codex Committee on Fresh Fruits and Vegetables

The Codex Committee on Fresh Fruits and Vegetables is responsible for elaborating world-wide standards and codes of practice for fresh fruits and vegetables. The following standards will be considered by the 27th Session of the Commission in July 2004. The relevant document is ALINORM 04/27/35.

To be considered at Step 8:

• Draft Standard for Oranges.

To be considered at Step 5:

• Proposed Draft Standard for Tomatoes.

The Committee continues work on:

• Draft Standard for Table Grapes retained at Step 7.

• Proposed Draft Standard for Rambutan.

• Proposed Draft Standard for Apples.

• Section 2.1.1 (Maturity Requirements) and Annex on Small-berry Varieties (Section 3.1) (draft Codex Standard for Table Grapes).

• Proposed Draft Guide for the Quality Control of Fresh Fruits and Vegetables.

• Standard Layout for Codex Standards for Fresh Fruits and Vegetables.

Responsible Agency: USDA/AMS.

U.S. Participation: Yes.

Codex Committee on Nutrition and Foods for Special Dietary Uses

The Codex Committee on Nutrition and Foods for Special Dietary Uses is responsible for studying nutritional problems referred by the Codex Alimentarius Commission. The Committee also drafts general provisions, as appropriate, on nutritional aspects of all foods and develops standards, guidelines, or related texts for foods for special dietary uses. The relevant document is ALINORM 03/27/26. The following items will be considered by the 27th Session of the Commission in July 2004.

To be adopted at Step 5:

• Proposed Draft Revised Standard for Processed Cereal-Based Foods for Infants and Young Children.

• Proposed Draft Revised Standard for Infant Formula.

• Proposed Draft Guidelines for Vitamin and Mineral Supplements.

The Committee continues work on:

• Proposed Draft Revision of the Advisory Lists of Nutrient Compounds for Use in Foods for Special Dietary Uses intended for use by Infants and Young Children.

• Guidelines for Use of Nutrition Claims—Draft Table of Conditions for Nutrient Contents Claims (Part B containing Provisions on Dietary Fibre) at Step 6.

• Draft Revised Standards for Gluten-Free Foods at Step 7.

• Proposed Draft Recommendations on the Scientific Basis of Health Claims.

• Guidelines on the Application of Risk Analysis to the Work of the CCNFSDU.

• Discussion paper on the FAO Technical Workshop on Energy Conversion Factors.

Responsible Agency: HHS/FDA.

U.S. Participation: Yes.

Codex Committee on Fish and Fishery Products

The Fish and Fishery Products Committee is responsible for elaborating standards for fresh, frozen and otherwise processed fish, crustaceans and mollusks. The following will be considered by the 27th Session of the Commission when it meets in June 2004. The relevant document is ALINORM 04/27/18.

To be considered at Step 8:

• Draft Standard for Salt Atlantic Herring and Salted Sprat.

• Draft Model Certificate for Fish and Fishery Products (Sanitary Certificate).

• Draft Amendment to the Standard for Quick Frozen Lobsters.

To be considered at Step 5/8:

• Proposed Draft Code of Practice for Fish and Fishery Products (aquaculture and quick frozen coated fish products).

To be considered at Step 5:

• Proposed Draft Amendment to the Standard for Salted Fish and Dried Salted Fish.

The Committee continues work on the following:

• Proposed Draft Code of Practice for Fish and Fishery Products (other sections).

• Proposed Draft Standard for Live and Raw Bivalve Mollusks.

• Proposed Draft Standard for Smoked Fish.

• Proposed Draft Standard for Granular Sturgeon Caviar.

• Proposed Draft Standard for Quick Frozen Scallop Adductor Muscle Meat.

• Revision of the procedure for the Inclusion of Species.

• Proposed Draft Amendment of the Labelling Section in the Standard for Canned Sardines and Sardine-Type Products (Clupea bentincki).

Responsible Agency: HHS/FDA; USDC/NOAA/NMFS.

U.S. Participation: Yes.

Codex Committee on Milk and Milk Products

The Codex Committee on Milk and Milk Products is responsible for establishing international codes and standards for milk and milk products. The Committee held its 6th Session in Auckland, NZ on April 26–30, 2004. The relevant document is ALINORM 04/27/11.

The Committee worked on the following:

• Proposed Draft Amendment to Section 3.3 (Composition) of the Codex General Standard for Cheese.

• Proposed Draft Standard for Products in Which Milk Components are Substituted by Non-Milk Components.
• Evaporated Skimmed Milk with Vegetable Fat.
• Sweetened Condensed Skimmed Milk with Vegetable Fat.
• Skimmed Milk Powder with Vegetable Fat.
• Proposed Draft Model Export Certificate for Milk and Milk Products.
• Methods of Analysis and Sampling for Milk Products.
• Draft Revised Standards for Individual Cheeses.
• Draft Revised Standard for Processed Cheese.
• Draft Revised Standard for Dairy Spreads.
• Proposed Draft Revised Standard for Whey Cheese.
• Proposed Standard for Parmesan Cheese.
• Discussion paper on Proposed Revision of the Codex Standard for Extra Hard Grating Cheese.

Responsible Agency: USDA/AMS; HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Fats and Oils

The Codex Committee on Fats and Oils is responsible for elaborating standards for fats and oils of animal, vegetable, and marine origin. The Committee will hold its next session on February 21–25, 2005, in London, England.

The Committee continues work on:
• Draft Standard for Fat Spreads and Blended Spreads.
• Proposed Draft Amendments to the Standard for Named Vegetable Oils:
• Amendment to Sesame Seed Oil.
• Rice Bran Oil.
• Draft List of Acceptable Previous Cargoes.
• Proposed Draft List of Acceptable Previous Cargoes.
• Proposed Draft Amendment to the Standard for Olive Oil: Linolenic Acid content.
• Proposed Draft Amendments to the Recommended International Code of Practice for the Storage and Transport of Edible Fats and Oils in Bulk:
• Amendments to Table 1.

Responsible Agency: HHS/FDA; USDA/ARS.
U.S. Participation: Yes.

Codex Committee on Processed Fruits and Vegetables

The Codex Committee on Processed Fruits and Vegetables is responsible for elaborating standards for Processed Fruits and Vegetables. After having been adjourned *sine die*, the Committee reconvened in Washington, DC, in March 1998 to begin work revising the standards. The Committee will hold its next session on September 27–October 1, 2004.

The committee is continuing work on:
• Draft Codex Standard for Pickled Products.
• Proposed Draft Revised Standards for:
• Processed Tomato Concentrates.
• Canned Tomatoes.
• Canned Vegetables including Guidelines for Packing Media for Canned Vegetables.
• Jams, Jellies and Marmalades.
• Soy Sauce.
• Canned Citrus Fruits.

Other work:
• Methods of Analysis for Processed Fruits and Vegetables.
• Priority List for the Standardization of Processed Fruits and Vegetables.

Responsible Agency: USDA/AMS; HHS/FDA.
U.S. Participation: Yes.

Codex Committee on Meat Hygiene

The 24th Session of the Commission decided to reactivate the Codex Committee on Meat Hygiene with New Zealand as Host Government. The Terms of Reference were amended to reflect the inclusion of poultry in its mandate. The relevant document is ALINORM 04/27/16.

The Committee continues to work on:
• Proposed Draft Code of Hygienic Practice for Meat at Step 5.
• Incorporating the Hygiene Provisions for Processed Meat in the Draft Code of Hygienic Practice for Meat for discussion.
• Attaching the Proposed Draft Annex on Risk-Based Post-Mortem Examination Procedures for Meat and the Proposed Draft Annex on Microbiological Verification of Process Control of Meat Hygiene as Annex I and II, respectively.

Responsible Agency: USDA/FSIS.
U.S. Participation: Yes.

Codex Committee on Cereals, Pulses, and Legumes

The 26th Session of the Codex Alimentarius Commission adopted the Proposed Draft Standard for Instant Noodles at Step 5, on the recommendation of the Coordinating Committee for Asia, and advanced it to Step 6 for consideration by the Committee on Cereals, Pulses and Legumes by correspondence. The United States, as host government, has circulated the Draft Standard for comments and will circulate the revised version for another round of comments following discussion in CCFAC regarding additives and peroxide values.

Responsible Agency: HHS/FDA; USDA/GIPSA.
U.S. Participation: Yes.

Certain Codex Commodity Committees [1]

Several Codex Alimentarius Commodity Committees have adjourned *sine die.* The following Committees fall into this category:

• *Cocoa Products and Chocolate.*
Responsible Agency: HHS/FDA.
U.S. Participation: Yes.
• *Natural Mineral Water.*
Responsible Agency: HHS/FDA.
U.S. Participation: Yes.
• *Sugars.*
Responsible Agency: USDA/ARS; HHS/FDA.
U.S. Participation: Yes.
• *Vegetable Proteins.*
Responsible Agency: USDA/ARS; HHS/FDA.
U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Animal Feeding

The Commission at its 23rd Session established the Ad Hoc Intergovernmental Task Force on Animal Feeding to develop guidelines or standards as appropriate on good animal feeding practices. The Revised Draft Code of Practice for Good Animal Feeding was held at Step 8 by the Commission at its 26th Session in June 2003, with the exception that the definition of ''feed additive'' and paragraphs 11, 12, and 13 were advanced to step 6. The Task Force held its 5th Session on May 17–19, 2004 and discussed:
• Revised Draft Code of Practice for Good Animal Feeding (definition of ''feed additive'' and paragraphs 11, 12, and 13)

Responsible Agency: HHS/FDA; USDA/APHIS.
U.S. Participation: Yes.

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices

The Commission at its 23rd Session established this Task Force to revise and consolidate the existing Codex standards and guidelines for fruit and vegetable juices and related products, giving preference to general standards. These standards were originally developed by the Joint UNECE/Codex Group of Experts on the Standardization of Fruit Juices which had been abolished by its parent organizations. The Task Force will hold its fourth session in Brazil, on October 11–15, 2004.

The committee is discussing:
• Proposed Draft Minimum Brix Level for Reconstituted Juice and Reconstituted Puree and Minimum Juice

and/or Puree Content for Fruit Nectars (%v/v).

• Grape, Guava, Mandarin/Tangerine, Mango, Passion Fruit and Tamarind (Indian date) juice at step 7.

• Orange, Lemon, Lime and Pineapple Juice at step 4.

Responsible Agency: HHS/FDA; USDA/AMS.

U.S. Participation: Yes.

FAO/WHO Regional Coordinating Committees

The Codex Alimentarius Commission is made up of an Executive Committee, as well as approximately 30 subsidiary bodies. Included in these subsidiary bodies are coordinating committees for groups of countries located in proximity to each other who share common concerns. There are currently six Regional Coordinating Committees:

• Coordinating Committee for Africa.

• Coordinating Committee for Asia.

• Coordinating Committee for Europe.

• Coordinating Committee for Latin America and the Caribbean.

• Coordinating Committee for the Near East.

• Coordinating Committee for North America and the South-West Pacific.

The United States participates as an active member of the Coordinating Committee for North America and the South-West Pacific, and is informed of the other coordinating committees through meeting documents, final reports, and representation at meetings. Each regional committee:

• Defines the problems and needs of the region concerning food standards and food control;

• Promotes within the committee contacts for the mutual exchange of information on proposed regulatory initiatives and problems arising from food control and stimulates the strengthening of food control infrastructures;

• Recommends to the Commission the development of world-wide standards for products of interest to the region, including products considered by the committee to have an international market potential in the future; and

• Serves a general coordinating role for the region and performs such other functions as may be entrusted to it by the Commission.

Codex Coordinating Committee for North America and the South-West Pacific

The Coordinating Committee is responsible for defining problems and needs concerning food standards and food control of all Codex member countries of the region. The Eighth Session of the Committee will take place in Apia, Samoa on October 19–22, 2004. Items on the agenda may include:

• Trust Fund for the Participation of Developing Countries in Codex Standard Setting Procedures.

• Joint FAO/WHO Evaluation of the Codex Alimentarius and other FAO and WHO Work on Food Standards.

• Consideration of Traceability/Product Tracing.

• Strategic Plan for the Coordinating Committee for North America and the Southwest Pacific.

• Cooperation between Codex and the International Office of Epizootics.

Responsible Agency: USDA/FSIS.

U.S. Participation: Yes.

Attachment 2: U.S. Codex Alimentarius Officials

Codex Committee Chairpersons

Codex Committee on Food Hygiene

Dr. Karen Hulebak, Assistant Administrator, Office of Public Health Science, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 3130, South Building, Washington, DC 20250–3700, Phone: (202) 720–8609, Fax: (202) 720–9893, E-mail: *karen.hulebak@fsis.usda.gov.*

Codex Committee on Processed Fruits and Vegetables

Mr. David L. Priester, International Standards Coordinator, Fruit & Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2049, South Building, Stop 0140, 1400 Independence Avenue, SW., Washington, DC 20250–0240, Phone: (202) 720–2185, Fax: (202) 720–8871, E-mail: *david.priester@usda.gov.*

Codex Committee on Residues of Veterinary Drugs in Foods

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place (HFV–1), Rockville, MD 20855, Phone: (301) 827–2950, Fax: (301) 827–4401, E-mail: *ssundlof@cvm.fda.gov.*

Codex Committee on Cereals, Pulses and Legumes (adjourned sine die)

Mr. Steven N. Tanner, Director, Technical Services Division, Grain Inspection, Packers & Stockyards, Administration, U.S. Department of Agriculture, 10383 N. Executive Hills Boulevard, Kansas City, MO 64153–1394, Phone: (816) 891–0401, Fax: (816) 891–0478, E-mail: *stanner@tsd.fgiskc.usda.gov.*

Listing of U.S. Delegates and Alternates; Worldwide General Subject Codex Committees

Codex Committee on Residues of Veterinary Drugs in Foods (Host Government—United States)

U.S. Delegate

Dr. Steven D. Vaughn, Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Place, Rockville, MD 20855, Phone: (301) 827–1796, Fax: (301) 594–2297, E-mail: *SVaughn@cvm.fda.gov.*

Alternate Delegate

Dr. Alice Thaler, Staff Director, Animal and Egg Production Food Safety Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Washington, DC 20250, Phone: (202) 690–2683, Fax: (202) 720–8213, E-mail: *alice.thaler@fsis.usda.gov.*

Codex Committee on Food Additives and Contaminants (Host Government—The Netherlands)

U.S. Delegate

Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1700, Fax: (301) 436–2632, E-mail: *Terry.Troxell@cfsan.fda.gov.*

Alternate Delegate

Dr. Dennis M. Keefe, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (HFS–255), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (202) 418–3113, Fax: (202) 418–3131, E-mail: *dennis.keefe@cfsan.fda.gov.*

Codex Committee on Pesticide Residues (Host Government—The Netherlands)

U.S. Delegate

Ms. Lois Rossi, Director of Registration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, Phone: (703) 305–5035, Fax: (703) 305–5147, E-mail: *Rossi.Lois@epamail.epa.gov.*

Alternate Delegate

Dr. Robert Epstein, Associate Deputy Administrator, Science and Technology, Agricultural Marketing Service, U.S.

Department of Agriculture, P.O. Box 96456, Room 3522S, Mail Stop 0222, 1400 Independence Ave., SW., Washington, DC 20090, Phone: (202) 720–2158, Fax: (202) 720–1484, E-mail: *Robert.Epstein@usda.gov.*

Codex Committee on Methods of Analysis and Sampling (Host Government—Hungary)

U.S. Delegate

Dr. Gregory Diachenko, Director, Division of Chemistry Research and Environmental Review, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition (CFSAN), Food and Drug Administration (HFS–245), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1898, Fax: (301) 436–2634, E-mail: *Gregory.Diachenko@cfsan.fda.gov.*

Alternate Delegate

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Codex Committee on Food Import and Export Certification and Inspection Systems (Host Government—Australia)

U.S. Delegate

Dr. Catherine Carnevale, Director, Office of Constituent Operations, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–550), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2380, Fax: (301) 436–2618, E-mail: *Catherine.Carnevale@cfsan.fda.gov.*

Alternate Delegate

Ms. Karen Stuck, Assistant Administrator, Office of International Policy, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 2137, South Building, 1400 Independence Ave., SW., Washington, DC 20250–3700, Phone: (202) 720–3470, Fax: (202) 720–7990, E-mail: *Karen.Stuck@fsis.usda.gov.*

Codex Committee on General Principles (Host Government—France)

U.S. Delegate

Note: A member of the Steering Committee heads the delegation to meetings of the General Principles Committee.

Codex Committee on Food Labeling (Host Government—Canada)

Interim U.S. Delegate

Mr. L. Robert Lake, Director, Office of Regulations and Policy, Center for Food Safety and Applied Nutrition (HFS–4), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2379, Fax: (301) 436–2637, E-mail: *RLake@cfsan.fda.gov.*

Alternate Delegate

Mary K. Cutshall, Acting Director, Strategic Initiatives, Partnerships and Outreach Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, 405 Aerospace Building, Washington, DC 20250–3700, Phone: (202) 690–6520, Fax: (202) 690–6519, E-mail: *Mary.Cutshall@fsis.usda.gov.*

Codex Committee on Food Hygiene (Host Government—United States)

U.S. Delegate

Dr. Robert L. Buchanan, Director, Office of Science, Center for Food Safety and Applied Nutrition (HFS–006), Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2369, Fax: (301) 436–2642, E-mail: *Robert.Buchanan@cfsan.fda.gov.*

Alternate Delegate

Dr. Perfecto Santiago, Assistant Deputy Administrator, Office of Policy, Program and Employee Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 402 Cotton Annex, 300 12th St., SW. Washington, DC 20250, Phone: (202) 205–0699, Fax: (202) 401–1760, E-mail: *Perfecto.Santiago@fsis.usda.gov.*

Codex Committee on Nutrition and Food for Special Dietary Uses (Host Government—Germany)

U.S. Delegate

Vacant.

Alternate Delegate

Vacant.

Worldwide Commodity Codex Committees

Codex Committee on Fresh Fruits and Vegetables (Host Government—Mexico)

U.S. Delegate

Mr. Dorian LaFond, International Standards Coordinator, Fruit and Vegetables Program, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2086, South Building, 1400 Independence Ave., SW., Washington, DC 20250, Phone: (202) 690–4944, Fax: (202) 720–4722, E-mail: *dorian.lafond@usda.gov,*

Alternate Delegate

Vacant.

Codex Committee on Fish and Fishery Products (Host Government—Norway)

U.S. Delegate

Mr. Philip C. Spiller, Director, Office of Seafood (HFS–400), Center for Food Safety and Applied Nutrition, Food and Drug Administration, Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–2300, Fax: (301) 436–2599, E-mail: *Philip.Spiller@cfsan.fda.gov.*

Alternate Delegate

Richard V. Cano, Acting Director, National Seafood Inspection Program, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, Phone: (301) 713–2355, Fax: (301) 713–1081, Email: *richard.cano@noaa.gov.*

Codex Committee on Cereals, Pulses and Legumes (Host Government—United States)

U.S. Delegate

Mr. Charles W. Cooper, Director, International Policy and Industry Outreach Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1714, Fax: (301) 436–2618, E-mail *Charles.Cooper@cfsan.fda.gov.*

Alternate Delegate

Mr. David Shipman, Deputy Administrator, Federal Grain Inspection Division, Grain Inspection, Packers and Stockyards Administration, U.S. Department of Agriculture, Room 1661, South Building, 1400 Independence Ave., SW., Washington, DC 20250, Phone: (202) 720–9170, Fax: (202) 205–9237, E-mail: *dshipman@gipsadc.usda.gov.*

Codex Committee on Milk and Milk Products (Host Government—New Zealand)

U.S. Delegate

Mr. Duane Spomer, Chief, Dairy Standardization Branch, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2750, South Building, 1400 Independence Ave., SW., Washington, DC 20250, Phone: (202)

720–9382, Fax: (202) 720–2643, E-mail: *duane.spomer@usda.gov.*

Alternate Delegate

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Codex Committee on Fats and Oils (Host Government—United Kingdom)

U.S. Delegate

Mr. Charles W. Cooper, Director, International Policy and Industry Outreach Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1714, Fax: (301) 436–2618, E-mail: *Charles.Cooper@cfsan.fda.gov.*

Alternate Delegate

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Codex Committee on Cocoa Products and Chocolate (Host Government—Switzerland)

U.S. Delegate

Mr. Charles W. Cooper, Director, International Policy and Industry Outreach Branch, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–585), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1714, Fax: (301) 436–2618, E-mail: *Charles.Cooper@cfsan.fda.gov.*

Alternate Delegate

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Codex Committee on Sugars (Host Government—United Kingdom)

U.S. Delegate

Dr. Thomas L. Tew, Research Geneticist, Sugarcane Research Unit, Agricultural Research, U.S. Department of Agriculture, 5883 USDA Road, Houma, LA 70360, Phone: (504) 872–5042, Fax: (504) 868–8369, E-mail: *ttew@nola.srrc.usda.gov.*

Alternate Delegate

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Codex Committee on Processed Fruits and Vegetables (Host Government—United States)

U.S. Delegate

Mr. Dorian Lafond, International Standards Coordinator, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2086, South Building, 1400 Independence Ave., SW., Washington, DC 20250, Phone: (202) 690–4944, Fax: (202) 720–0016, E-mail: *Dorian.Lafond@usda.gov.*

Alternate Delegate

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Codex Committee on Vegetable Proteins (Host Government—Canada)

U.S. Delegate

Dr. Wilda H. Martinez, Area Director, ARS North Atlantic Area, Agricultural Research Service, U.S. Department of Agriculture, 600 E. Mermaid Lane, Wyndmoor, PA 19038, Phone: (215) 233–6593, Fax: (215) 233–6719, E-mail: *wmartinez@ars.usda.gov.*

Alternate Delegate

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Codex Committee on Meat Hygiene (Host Government—New Zealand)

U.S. Delegate

Dr. Perfecto Santiago, Assistant Deputy Administrator, Office of Policy, Program and Employee Development, Food Safety and Inspection Service, U.S. Department of Agriculture, 402 Cotton Annex, 300 12th Street, SW., Washington, DC 20250, Phone: (202) 205–0699, Fax: (202) 401–1760, E-mail: *Perfecto.Santiago@fsis.usda.gov.*

Alternate Delegate

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Codex Committee on Natural Mineral Waters (Host Government—Switzerland)

U.S. Delegate

Dr. Terry C. Troxell, Director, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–300), Harvey W. Wiley Federal Building, 5100 Paint Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1700, Fax: (301) 436–2632, E-mail: *terry.troxell@cfsan.fda.gov.*

Alternate Delegate

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Ad Hoc Intergovernmental Task Forces

Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices (Host Government—Brazil)

U.S. Delegate

Mr. Martin Stutsman, Consumer Safety Officer, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, Food and Drug Administration (HFS–306), Harvey W. Wiley Federal Building, 5100 Paint

Branch Parkway, College Park, MD 20740–3835, Phone: (301) 436–1642, Fax: (301) 436–2651, E-mail: *Martin.Stutsman@cfsan.fda.gov.*

Alternate Delegate

Vacant.

Ad Hoc Intergovernmental Task Group on Animal Feeding (Host Government—Denmark)

U.S. Delegate

Dr. Stephen F. Sundlof, Director, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Place (HFV–1), Metro Park N. 4, Rockville, MD 20855, Phone: (301) 827–2950, Fax: (301) 827–4401, E-mail: *ssundlof@cvm.fda.gov.*

Alternate Delegate

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There are six regional coordinating committees:

Coordinating Committee for Africa.

Coordinating Committee for Asia.

Coordinating Committee for Europe.

Coordinating Committee for Latin America and the Caribbean.

Coordinating Committee for the Near East.

Coordinating Committee for North American and the South-West Pacific.

Contact

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ATTACHMENT 3: TIMETABLE OF CODEX SESSIONS

[June 2003 through June 2005]

2003:			
CX 702–52	Executive Committee (52nd Session)	26–27 June	Rome.
CX 701–26	Codex Alimentarius Commission (26th Session).	30 June–5 July	Rome.
CX 731–11	Codex Committee on Fresh Fruits and Vegetables (11th Session).	8–12 September	Mexico City.
CX 722–26	Codex Committee on Fish and Fishery Products (26th Session).	13–17 October	Aalesund (Norway).
CX 720–25	Codex Committee on Nutrition and Foods for Special Dietary Uses (25th Session).	3–7 November	Berlin.
CX 716–19	Codex Committee on General Principles (19th Session).	17–21 November	Paris.
CX–733–12	Codex Committee on Food Import and Export Inspection and Certification (12th Session).	1–5 December	Brisbane.
2004:			
CX 702–53	Executive Committee (53rd Session)	4–6 February	Geneva.
CX 723–10	Codex Committee on Meat and Poultry Hygiene (10th Session).	16–20 February	Auckland.
CX 715–25	Codex Committee on Methods of Analysis and Sampling (25th Session).	8–12 March	Budapest.
CX 711–36	Codex Committee on Food Additives and Contaminants (36th Session).	22–26 March	Rotterdam.
CX 712–36	Codex Committee on Food Hygiene (36th Session).	29 March–3 April	Washington, DC.
CX 718–36	Codex Committee on Pesticide Residues (36th Session).	19–24 April	New Delhi.
CX–703–06	Codex Committee on Milk and Milk Products (6th Session).	26–30 April	Auckland.
CX 716–19	Codex Committee on General Principles (19th Session).	3–7 May	Paris.
CX 714–32	Codex Committee on Food Labelling (32nd Session).	10–14 May	Montreal.
CX 803–05	Ad Hoc Intergovernmental Task Force on Animal Feeding (5th Session).	17–19 May	Copenhagen.
CX 702–54	Executive Committee (54th Session)	24–26 June	Geneva.
CX 701–27	Codex Alimentarius Commission (27th Session).	28 June–3 July	Geneva.
CX 727–14	Regional Coordinating Committee for Asia (14th Session).	7–10 September	JeJu (City) Republic of Korea.
CX 706–24	Regional Coordinating Committee for Europe (24th Session).	20–23 September	Bratislava (Slovak Republic).
CX 713–22	Codex Committee on Processed Fruits and Vegetables (22nd Session).	27 September–1 October	Alexandria, VA.
CX 801–03	Ad Hoc Intergovernmental Task Force on Fruit and Vegetable Juices (3rd Session).	11–15 October	TBA (Brazil).
CX 732–08	Regional Coordinating Committee for North America and South West Pacific (8th Session).	19–22 October	Apia (Samoa).

ATTACHMENT 3: TIMETABLE OF CODEX SESSIONS—Continued

[June 2003 through June 2005]

CX 730–15	Codex Committee on Residue of Veterinary Drugs in Foods (15th Session).	25–28 October	TBA, USA.
CX 720–26	Codex Committee on Nutrition and Foods for Special Dietary Uses (26th Session).	1–5 November	Bonn (Germany).
CX 716–21	Codex Committee on General Principles (21st Session).	15–19 November	Paris.
CX 701–55	Executive Committee (55th Session)	22–24 November	Rome.
CX 725–14	Regional Coordinating Committee for Latin America and the Caribbean (14th Session).	29 November–3 December	Buenos Aires.
CX 733–13	Codex Committee on Food Import and Export Inspection and Certification Systems (13th Session).	6–10 December	TBA, (Australia).
2005:			
CX 707–16	Regional Coordinating Committee for Africa (16th Session).	14–17 December	Rabat (Morocco).
CX 723–11	Codex Committee on Meat and Poultry Hygiene (11th Session).	14–18 February	TBA, (New Zealand).
CX 709–19	Codex Committee on Fats and Oils (19th Session).	21–25 February	London.
CX 722–27	Codex Committee on Fish and Fishery Products (27th Session).	28 February–4 March	TBA (South Africa).
CX 734–03	Regional Coordinating Committee for Near East (3rd Session).	7–10 March	Amman (Jordan).
CX 712–37	Codex Committee on Food Hygiene (37th Session).	14–19 March	TBA, USA.
CX 711–37	Codex Committee on Food Additives and Contaminants (37th Session).	21–25 March	Rotterdam.
CX 715–26	Codex Committee on Methods of Analysis and Sampling (26th Session).	4–8 April	Budapest.
CX 716–22	Codex Committee on General Principles (22nd Session).	11–15 April	Paris.
CX 718–37	Codex Committee on Pesticide Residues (37th Session).	18–23 April	The Hague.
CX 714–33	Codex Committee on Food Labelling (33rd Session).	9–13 May	TBA.
CX 731–12	Codex Committee on Fresh Fruits and Vegetables (12th Session).	16–20 May	Mexico City.
CX 702–56	Executive Committee (56th Session)	23–24 June	Rome.
CX 701–28	Codex Alimentarius Commission (28th Session).	27 June–1 July	Rome.

Attachment 4: Definitions for the Purpose of Codex Alimentarius

Words and phrases have specific meanings when used by the Codex Alimentarius. For the purposes of Codex, the following definitions apply:

1. *Food* means any substance, whether processed, semi-processed or raw, which is intended for human consumption, and includes drink, chewing gum, and any substance which has been used in the manufacture, preparation or treatment of ''food'' but does not include cosmetics or tobacco or substances used only as drugs.

2. *Food hygiene* comprises conditions and measures necessary for the production, processing, storage and distribution of food designed to ensure a safe, sound, wholesome product fit for human consumption.

3. *Food additive* means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing, packaging, transport, or holding of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such foods. The food additive term does not include ''contaminants'' or substances added to food for maintaining or improving nutritional qualities.

4. *Contaminant* means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry, and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination. The term does not include insect fragments, rodent hairs and other extraneous matters.

5. *Pesticide* means any substance intended for preventing, destroying, attracting, repelling, or controlling any pest including unwanted species of plants or animals during the production, storage, transport, distribution and processing of food, agricultural commodities, or animal feeds or which may be administered to animals for the control of ectoparasites. The term includes substances intended for use as a plant-growth regulator, defoliant, desiccant, fruit thinning agent, or sprouting inhibitor and substances applied to crops either before of after harvest to protect the commodity from

deterioration during storage and transport. The term pesticides excludes fertilizers, plant and animal nutrients, food additives, and animal drugs.

6. *Pesticide residue* means any specified substance in food, agricultural commodities, or animal feed resulting from the use of a pesticide. The term includes any derivatives of a pesticide, such as conversion products, metabolites, reaction products, and impurities considered to be of toxological significance.

7. *Good Agricultural Practice in the Use of Pesticides (GAP)* includes the nationally authorized safe uses of pesticides under actual conditions necessary for effective and reliable pest control. It encompasses a range of levels of pesticide applications up to the highest authorized use, applied in a manner that leaves a residue, which is the smallest amount practicable.

Authorized safe uses are determined at the national level and include nationally registered or recommended uses, which take into account public and occupational health and environmental safety considerations.

Actual conditions include any stage in the production, storage, transport, distribution and processing of food commodities and animal feed.

8. *Codex Maximum Limit for Pesticide Residues (MRLP)* is the maximum concentration of a pesticide residue (expressed as mg/kg), recommended by the Codex Alimentarius Commission to be legally permitted in or on food commodities and animal feeds. MRLPs are based on their toxological affects and on GAP data and foods derived from commodities that comply with the respective MRLPs are intended to be toxologically acceptable.

Codex MRLPs, which are primarily intended to apply in international trade, are derived from reviews conducted by the JMPR following:

(a) toxological assessment of the pesticide and its residue, and

(b) review of residue data from supervised trials and supervised uses including those reflecting national good agricultural practices. Data from supervised trials conducted at the highest nationally recommended, authorized, or registered uses are included in the review. In order to accommodate variations in national pest control requirements, Codex MRLPs take into account the higher levels shown to arise in such supervised trials, which are considered to represent effective pest control practices.

Consideration of the various dietary residue intake estimates and determinations both at the national and international level in comparison with the ADI, should indicate that foods complying with Codex MRLPs are safe for human consumption.

9. *Veterinary Drug* means any substance applied or administered to any food-producing animal, such as meat or milk-producing animals, poultry, fish or bees, whether used for therapeutic, prophylactic or diagnostic purposes or for modification of physiological functions or behavior.

10. *Residues of Veterinary Drugs* include the parent compounds and/or their metabolites in any edible portion of the animal product, and include residues of associated impurities of the veterinary drug concerned.

11. *Codex Maximum Limit for Residues of Veterinary Drugs (MRLVD)* is the maximum concentration of residue resulting from the use of a veterinary drug (expressed in mg/kg or µg/kg on a fresh weight basis) that is recommended by the Codex Alimentarius Commission to be legally permitted or recognized as acceptable in or on food.

An MRLVD is based on the type and amount of residue considered to be without any toxological hazard for human health as expressed by the Acceptable Daily Intake (ADI), or on the basis of a temporary ADI that utilizes an additional safety factor. An MRLVD also takes into account other relevant public health risks as well as food technological aspects.

When establishing an MRLVD, consideration is also given to residues that occur in food of plant origin and/or the environment. Furthermore, the MRLVD may be reduced to be consistent with good practices in the use of veterinary drugs and to the extent that practical and analytical methods are available.

12. *Good Practice in the Use of Veterinary Drugs (GPVD)* is the official recommended or authorized usage including withdrawal periods approved by national authorities, of veterinary drugs under practicable conditions.

13. *Processing Aid* means any substance or material, not including apparatus or utensils, not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients, to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product.

Definitions of Risk Analysis Terms Related to Food Safety

Hazard: A biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse health effect.

Hazard Identification: The identification of biological, chemical, and physical agents capable of causing adverse health effects and which may be present in a particular food or group of foods.

Hazard Characterization: The qualitative and/or quantitative evaluation of the nature of the adverse health effects associated with biological, chemical and physical agents that may be present in food. For chemical agents, a dose-response assessment should be performed. For biological or physical agents, a dose-response assessment should be performed if the data are obtainable.

Dose-Response Assessment: The determination of the relationship between the magnitude of exposure (dose) to a chemical, biological or physical agent and the severity and/or frequency of associated adverse health effects (response).

Exposure Assessment: The qualitative and/or quantitative evaluation of the likely intake of biological, chemical, and physical agents via food as well as exposures from other sources if relevant.

Risk: A function of the probability of an adverse health effect and the severity of that effect, consequential to a hazard(s) in food.

Risk Analysis: A process consisting of three components: risk assessment, risk management and risk communication.

Risk Assessment: A scientifically based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

Risk Assessment Policy: Documented guidelines on the choice of options and associated judgments for their application at appropriate decision points in the risk assessment such that the scientific integrity of the process is maintained.

Risk Characterization: The qualitative and/or quantitative estimation, including attendant uncertainties, of the probability of occurrence and severity of known or potential adverse health effects in a given population based on hazard identification, hazard characterization and exposure assessment.

Risk Communication: The interactive exchange of information and opinions throughout the risk analysis process concerning risk, related risk factors and risk perceptions, among risk assessors, risk managers, consumers, industry, the academic community and other interested parties, including the

explanation of risk assessment findings and the basis of risk management decisions.

Risk Estimate: The quantitative estimation of risk resulting from risk characterization.

Risk Management: The process, distinct from risk assessment, of weighing policy alternatives, in consultation with all interested parties, considering risk assessment and other factors relevant for the health protection of consumers and for the promotion of fair trade practices, and, if needed, selecting appropriate prevention and control options.

Risk Profile: The description of the food safety problem and its context.

Attachment 5

Part 1—Uniform Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission decides, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies,'' to elaborate a Worldwide Codex Standard and also decides which subsidiary body or other body should undertake the work. A decision to elaborate a Worldwide Codex Standard may also be taken by subsidiary bodies of the Commission in accordance with the above-mentioned criteria, subject to subsequent approval by the Commission or its Executive Committee at the earliest possible opportunity. In the case of Codex Regional Standards, the Commission shall base its decision on the proposal of the majority of members belonging to a given region or group of countries submitted at a session of the Codex Alimentarius Commission.

(2) The Secretariat arranges for the preparation of a proposed draft standard. In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

The proposed draft standard is submitted through the Secretariat to the Commission or to the Executive Committee with a view to its adoption as a draft standard. When making any decision at this step, the Commission or the Executive Committee will give due consideration to any comments that may be submitted by any of its members regarding the implications which the proposed draft standard or any provisions of the standard may have for their economic interests. In the case of Regional Standards, all members of the Commission may present their comments, take part in the debate and propose amendments, but only the majority of the Members of the region or group of countries concerned attending the session can decide to amend or adopt the draft. When making any decisions at this step, the members of the region or group of countries concerned will give due consideration to any comments that may be submitted by any of the members of the Commission regarding the implications which the proposed draft standard or any provisions of the proposed draft standard may have for their economic interests.

Step 6

The draft standard is sent by the Secretariat to all members and interested international organizations for comment on all aspects, including possible implications of the draft standard for their economic interests.

Step 7

The comments received are sent by the Secretariat to the subsidiary body or other body concerned, which has the power to consider such comments and amend the draft standard.

Step 8

The draft standard is submitted through the Secretariat to the Commission together with any written proposals received from members and interested international organizations for amendments at Step 8 with a view to its adoption as a Codex Standard. In the case of Regional standards, all members and interested international organizations may present their comments, take part in the debate and propose amendments but only the majority of members of the region or group of countries concerned attending the session can decide to amend and adopt the draft.

Part 2—Uniform Accelerated Procedure for the Elaboration of Codex Standards and Related Texts

Steps 1, 2 and 3

(1) The Commission or the Executive Committee between Commission sessions, on the basis of a two-thirds majority of votes cast, taking into account the ''Criteria for the Establishment of Work Priorities and for the Establishment of Subsidiary Bodies'', shall identify those standards which shall be the subject of an accelerated elaboration process. The identification of such standards may also be made by subsidiary bodies of the Commission, on the basis of a two-thirds majority of votes cast, subject to confirmation at the earliest opportunity by the Commission or its Executive Committee by a two-thirds majority of votes cast.

(2) The Secretariat arranges for the preparation of a *proposed draft standard.* In the case of Maximum Limits for Residues of Pesticides or Veterinary Drugs, the Secretariat distributes the recommendations for maximum limits, when available from the Joint Meetings of the FAO Panel of Experts on Pesticide Residues in Food and the Environment and the WHO Panel of Experts on Pesticide Residues (JMPR), or the Joint FAO/WHO Expert Committee on Food Additives (JECFA). In the cases of milk and milk products or individual standards for cheeses, the Secretariat distributes the recommendations of the International Dairy Federation (IDF).

(3) The proposed draft standard is sent to Members of the Commission and interested international organizations for comment on all aspects including possible implications of the proposed draft standard for their economic interests. When standards are subject to an accelerated procedure, this fact shall be notified to the Members of the Commission and the interested international organizations.

Step 4

The comments received are sent by the Secretariat to the subsidiary body or other body concerned which has the power to consider such comments and to amend the proposed draft standard.

Step 5

In the case of standards identified as being subject to an accelerated

elaboration procedure, the draft standard is submitted through the Secretariat to the Commission together with any written proposals received from Members and interested international organizations for amendments with a view to its adoption as a Codex standard. In taking any decision at this step, the Commission will give due consideration to any comments that may be submitted by any of its Members regarding the implications which the proposed draft standard or any provisions thereof may have for their economic interests.

Attachment 6: Nature of Codex Standards

Codex standards contain requirements for food aimed at ensuring for the consumer a sound, wholesome food product free from adulteration, and correctly labelled. A Codex standard for any food or foods should be drawn up in accordance with the Format for Codex Commodity Standards and contain, as appropriate, the criteria listed therein.

Format for Codex Commodity Standards Including Standards Elaborated Under the Code of Principles Concerning Milk and Milk Products

Introduction

The format is also intended for use as a guide by the subsidiary bodies of the Codex Alimentarius Commission in presenting their standards, with the object of achieving, as far as possible, a uniform presentation of commodity standards. The format also indicates the statements which should be included in standards as appropriate under the relevant headings of the standard. The sections of the format required to be completed for a standard are only those provisions that are appropriate to an international standard for the food in question.

Name of the Standard
Scope
Description
Essential Composition and Quality Factors
Food Additives
Contaminants
Hygiene
Weights and Measures
Labelling
Methods of Analysis and Sampling

Format for Codex Standards

Name of the Standard

The name of the standard should be clear and as concise as possible. It should usually be the common name by which the food covered by the standard is known or, if more than one food is dealt with in the standard, by a generic name covering them all. If a fully informative title is inordinately long, a subtitle could be added.

Scope

This section should contain a clear, concise statement as to the food or foods to which the standard is applicable unless the name of the standard clearly and concisely identifies the food or foods. A generic standard covering more than one specific product should clearly identify the specific products to which the standard applies.

Description

This section should contain a definition of the product or products with an indication, where appropriate, of the raw materials from which the product or products are derived and any necessary references to processes of manufacture. The description may also include references to types and styles of product and to type of pack. The description may also include additional definitions when these additional definitions are required to clarify the meaning of the standard.

Essential Composition and Quality Factors

This section should contain all quantitative and other requirements as to composition including, where necessary, identity characteristics, provisions on packing media and requirements as to compulsory and optional ingredients. It should also include quality factors that are essential for the designation, definition, or composition of the product concerned. Such factors could include the quality of the raw material, with the object of protecting the health of the consumer, provisions on taste, odor, color, and texture which may be apprehended by the senses, and basic quality criteria for the finished products, with the object of preventing fraud. This section may refer to tolerances for defects, such as blemishes or imperfect material, but this information should be contained in appendix to the standard or in another advisory text.

Food Additives

This section should contain the names of the additives permitted and, where appropriate, the maximum amount permitted in the food. It should be prepared in accordance with guidance given on page 84 of the Codex Procedural Manual and may take the following form:

''The following provisions in respect of food additives and their specifications as contained in section * * * of the Codex Alimentarius are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.:

''*Name of additive*, *maximum level* (in percentage or mg/kg).''

Contaminants

(a) *Pesticide Residues*: This section should include, by reference, any levels for pesticide residues that have been established by the Codex Committee on Pesticide Residues for the product concerned.

(b) *Other Contaminants*: In addition, this section should contain the names of other contaminants and where appropriate the maximum level permitted in the food, and the text to appear in the standard may take the following form:

''The following provisions in respect of contaminants, other than pesticide residues, are subject to endorsement [have been endorsed] by the Codex Committee on Food Additives and Contaminants.''

A tabulation should then follow, viz.:

''*Name of contaminant*, *maximum level* (in percentage or mg/kg).''

Hygiene

Any specific mandatory hygiene provisions considered necessary should be included in this section. They should be prepared in accordance with the guidance given in the Codex Procedural Manual. Reference should also be made to applicable codes of hygienic practice. Any parts of such codes, including in particular any end-product specifications, should be set out in the standard, if it is considered necessary that they should be made mandatory. The following statement should also appear:

''The following provisions in respect of the food hygiene of the product are subject to endorsement [have been endorsed] by the Codex Committee on Food Hygiene.''

Weights and Measures

This section should include all provisions, other than labelling provisions, relating to weights and measures, *e.g.*, where appropriate, fill of container, weight, measure or count of units determined by an appropriate method of sampling and analysis. Weights and measures should be expressed in S.I. units. In the case of standards which include provisions for the sale of products in standardized amounts, *e.g.* multiples of 100 grams, S.I. units should be used, but this would not preclude additional statements in the standards of these standardized amounts in approximately similar amounts in other systems of weights and measures.

Labelling

This section should include all the labelling provisions contained in the standard and should be prepared in accordance with the guidance given in the Codex Procedural Manual. Provisions should be included by reference to the General Standard for the Labelling of Prepackaged Foods. The section may also contain provisions which are exemptions from, additions to, or which are necessary for the interpretation of the General Standard in respect of the product concerned provided that these can be justified fully. The following statement should also appear:

''The following provisions in respect of the labelling of this product are subject to endorsement [have been endorsed] by the Codex Committee on Food Labelling.''

Methods of Analysis and Sampling

This section should include, either specifically or by reference, all methods of analysis and sampling considered necessary and should be prepared in accordance with the guidance given in the Codex Procedural Manual. If two or more methods have been proved to be equivalent by the Codex Committee on Methods of Analysis and Sampling, these could be regarded as alternatives and included in this section either specifically or by reference. The following statement should also appear:

''The methods of analysis and sampling described hereunder are to be endorsed [have been endorsed] by the Codex Committee on Methods of Analysis and Sampling.''

[FR Doc. 04–12736 Filed 6–7–04; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee meeting

AGENCY: Forest Service USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Public Law 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Public Law 106–393), the Boise and Payette National Forest's Southwest Idaho Resource Advisory Committee will meet for a business meeting.

DATES: Wednesday, June 23, 2004, beginning at 10:30 a.m.

ADDRESSES: The meeting will be held at the American Legion Hall, Cascade, Idaho.

FOR FURTHER INFORMATION CONTACT: Randy Swick, Designated Federal Officer, at (208) 634–0401 or electronically at *rswick@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda topics include review and approval of project proposals, and an open public forum. The meeting is open to the public.

Dated: June 2, 2004.

Mark J. Madrid,

Forest Supervisor, Payette National Forest.

[FR Doc. 04–12906 Filed 6–7–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 24–2004]

Foreign-Trade Zone 8—Toledo, OH, Area; Application for Expansion

An application has been submitted to the Foreign-Trade Zones (FTZ) Board (the Board) by the Toledo-Lucas County Port Authority, grantee of FTZ 8, requesting authority to expand its zone in the Toledo, Ohio area, within the Toledo/Sandusky Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on June 1, 2004.

FTZ 8 was approved on October 11, 1960 (Board Order 51, 25 FR 9909, 10/15/60) and expanded on January 22, 1973 (Board Order 92, 38 FR 3015, 1/31/73); on January 11, 1985 (Board Order 277, 50 FR 2702, 1/18/85); on August 19, 1991 (Board Order 532, 56 FR 42026, 8/26/91); on June 12, 2000 (Board Order 1102, 65 FR 37960, 6/19/00); and, on June 7, 2002 (Board Order 1231, 67 FR 41393, 6/18/02). The general-purpose zone currently consists of four sites (959 acres) in the Toledo area: *Site 1* (150 acres)—Overseas Cargo Center within the Port of Toledo complex, Toledo; *Site 2* (337 acres)—Toledo Express Airport, Swanton; *Site 3* (10 acres)—First Choice Packaging warehouse facility, 1501 West State Street, Fremont; and, *Site 4* (462 acres)—Cedar Point Development Park and adjacent areas, located east of Lallendorf Road, south of Cedar Point Road and west of Wynn Road, Oregon, Ohio.

The applicant is now requesting authority to expand the general-purpose zone to include a site at the Ohio Northern Global Distribution & Business Center (Proposed Site 5, 206.76 acres, 2 parcels) in Wood County which includes: *Proposed Site 5A* (95.40 acres)—located at 6722 Commodore Road in Walbridge; and, *Proposed Site 5B* (111.36 acres)—located south of State Route 795, east of Tracy Road and north of Keller Road in Walbridge. The owners of the site are Tracy Development Ltd., Shenandoah Valley Realty Ltd., Jacobs Industries, and CSX Transportation. The sites will provide public warehousing and distribution services to area businesses. No specific manufacturing authority is being requested at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB-Suite 4100W, 1401 Constitution Avenue, NW., Washington, DC 20230.

The closing period for their receipt is August 9, 2004. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 23, 2004).

A copy of the application and accompanying exhibits will be available during this time for public inspection at address Number 1 listed above, and at the U.S. Department of Commerce Export Assistance Center, 300 Madison Avenue, Toledo, OH 43604.

Dated: June 1, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–12942 Filed 6–7–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: On July 1, 2003, the Department of Commerce (the Department) published in the **Federal Register** (68 FR 39055) a notice announcing the initiation of the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. The period of review (POR) is May 1, 2002 to April 30, 2003.

We preliminarily determine that sales of circular welded carbon steel pipes and tubes from Taiwan have been made at prices below the normal value (NV) by the respondent, Yieh Hsing Enterprise Co, Ltd. (Yieh Hsing). If these preliminary results are adopted in the final results of this administrative review, we will instruct Customs and Border Protection (CBP) to assess antidumping duties based on all appropriate entries. Interested parties are invited to comment on these preliminary results. Parties who submit argument in these proceedings are requested to submit with the argument: (1) A statement of the issues, (2) a brief summary of the argument, and (3) a table of authorities.

DATES: *Effective Date:* June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Angela Strom or Robert James, Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 7866, Washington, DC 20230; telephone (202) 482–2704 or (202) 482–0649.

SUPPLEMENTARY INFORMATION:

Background

On May 1, 2003, the Department published in the **Federal Register** a notice of ''Opportunity to Request Administrative Review'' of the antidumping duty order on circular welded carbon steel pipes and tubes from Taiwan. *See Antidumping or Counterveiling Duty Order, Finding or Suspended Investigation, Opportunity to Request Administrative Review,* 68 FR at 23281. On July 1, 2003, in response to a request from petitioners, Allied Tube and Conduit Corporation, IPSCO Tubulars Inc. and Wheatland Tube Company, the Department published in the **Federal Register** our notice of initiation of this administrative review. *See Initiation of Antidumping and Counterveiling Duty Administrative Reviews and Request for Revocation in Part,* 68 FR at 39055. Petitioners requested the Department to conduct an administrative review of entries of subject merchandise made by Yieh Hsing. The period of review covers May 1, 2002 to April 30, 2003.

On August 7, 2003, the Department issued its antidumping duty questionnaire to Yieh Hsing. Yieh Hsing submitted its response to section A of the questionnaire on September 11, 2003, its response to sections B and C on September 25, 2003, and its response to section D on October 2, 2003. On October 17, 2003, the Department issued a supplemental questionnaire for section A, to which Yieh Hsing responded on November 12, 2003. On November 17, 2003, the Department issued a supplemental questionnaire for section D of the questionnaire; Yieh Hsing submitted its response on December 8, 2003. On December 3, 2003, the Department issued a supplemental questionnaire for sections B and C of the questionnaire; Yieh Hsing filed its response on January 5, 2004. On January 16, 2004, the Department issued another supplemental questionnaire, to which Yieh Hsing responded on February 17, 2004. We verified Yieh Hsing's submitted data as discussed below in the ''Verification'' section of this notice.

Because it was not practicable to complete this review within the normal time frame, on December 16, 2003 the Department extended the time limit for the preliminary results of the administrative review to May 30, 2004. *See Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Notice of Extension of Time Limits,* 68 FR at 69987 (December 16, 2003). Due to the unexpected emergency closure of the main Commerce building on Tuesday, June, 1, 2004, the Department has tolled the deadline for these preliminary results by one day to June 2, 2004.

Period of Review

The period of review (POR) is from May 1, 2002 to April 30, 2003.

Scope of the Review

Imports covered by this review are shipments of certain circular welded carbon steel pipes and tubes. The Department defines such merchandise as welded carbon steel pipes and tubes of circular cross section, with walls not thinner than 0.065 inch and 0.375 inch or more but not over 4 ½ inches in outside diameter. These products are commonly referred to in the industry as ''standard pipe'' and are produced to various American Society for Testing Materials specifications, most notably A–53, A–120 and A–135. Standard pipe is currently classified under Harmonized Tariff Schedule of the United States (HTSUS) item numbers 7306.30.5025, 7306.30.5032, 7306.30.5040, and 7306.30.5055. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Verification

As provided in section 782(i) of the Tariff Act, we verified the cost and sales information provided by Yieh Hsing using standard verification procedures, including on-site inspection of production and warehousing facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public and proprietary versions of the verification reports, which are on file in the Central Records Unit of the Department. *See* ''Verification of Yieh Hsing Sales and Cost Responses'' dated May 11, 2004.

Affiliation

In *Hot-Rolled Steel from Taiwan,* the Department found that China Steel and Yieh Loong were affiliated with Yieh Hsing and Yieh Phui (*See Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products from Taiwan* 66 FR 49618 (September 28, 2001) and accompanying Issues and Decision Memorandum at Comments 1 and 2), and petitioners indicate that many of the determinative facts of that case continue into the present review. Petitioners also noted that the Court of International Trade upheld this decision on January 26, 2004 in *China Steel Corporation and Yieh Loong* v. *United States (China Steel),* Slip Op. 04–6). Petitioners contend that this decision compels a finding that China Steel and Yieh Loong are affiliated with Yieh Hsing.

Petitioners asked the Department to acquire information regarding ownership, common board members and any sales transactions between Yieh Hsing, China Steel and Yieh Loong. Yieh Hsing responded to these requests in their November 12, 2003, December 8, 2003 and February 17, 2004

Supplemental Questionnaire Responses. In the investigation of *Hot Rolled Steel from Taiwan,* the Department determined that Yieh Hsing was affiliated with Yieh Loong and China Steel since Yieh Loong and Yieh Hsing shared a common chairman and maintained minority cross ownership between one another (*see* Memorandum to the File ''Certain Hot-Rolled Carbon Steel Flat Products from Taiwan-CSC, Yieh Loong and affiliated resellers'' (April 19, 2001)).

From the information on the record provided at verification and in Yieh Hsing's questionnaire responses in the current review, we found that the previous common chairman had stepped down from both Yieh Hsing and Yieh Loong prior to this period of review and that Yieh Loong maintained only an insignificant percentage of ownership of Yieh Hsing. Because the determinative facts in *Hot Rolled Steel from Taiwan* involving Yieh Hsing and Yieh Loong do not exist in the current review, we find no basis for affiliation between Yieh Hsing and Yieh Loong and Yieh Hsing and China Steel. Accordingly, we need not address collapsing or the issues associated with collapsing.

Normal Value Comparisons

To determine whether sales of circular welded carbon steel pipes and tubes from Taiwan to the United States were made at less than normal value (NV), we compared the export price (EP) to the NV, as described in the ''Export Price'' and ''Normal Value'' sections of this notice, below. In accordance with section 777A(d)(2) of the Tariff Act, we compared the EPs of individual U.S. transactions to monthly weighted-average NVs of the foreign like product where there were sales at prices above the cost of production (COP), as discussed in the ''Cost of Production'' section below.

Product Comparisons

In accordance with section 771(16) of the Tariff Act, we considered all products produced by the respondent, covered by the descriptions in the ''Scope of the Review'' section of this notice, to be foreign like products for the purpose of determining appropriate product comparisons to U.S. sales of circular welded carbon steel pipes and tubes from Taiwan.

We have relied on the following five criteria to match U.S. sales of subject merchandise to home market sales of the foreign like product: pipe specification (SPECH/U), pipe diameter (DIAMH/U), wall thickness (WALLH/U), whether black or galvanized (COATH/U) and whether plain-end or threaded and coupled (ENDH/U). Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the five characteristics reported by Yieh Hsing.

Export Price

Section 772(a) of the Tariff Act defines EP as ''the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).'' We calculated the price of U.S. sales based on EP for the subject merchandise sold to unaffiliated purchasers in the United States prior to importation. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign inland freight, foreign warehousing, foreign brokerage and handling, international freight, cargo loading and marine insurance.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Tariff Act, to the extent practicable, we determine NV based on sales in the home market at the same level of trade (LOT) as the EP. For EP, the LOT is the level of the starting sale price, which is usually from the exporter to the importer. When NV is based on CV, we derive the level of trade from the sales upon which selling, general and administrative (SG&A) expenses and profit are based. To determine whether NV sales are at a different level of trade than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the home market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and home market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Tariff Act. In identifying LOTs for U.S. EP sales, we considered the selling functions reflected in the starting price after any adjustments under section 772(c) of the Tariff Act.

In implementing these principles in this administrative review, we obtained information from Yieh Hsing about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Yieh Hsing and the level to which each selling activity was performed for each channel of distribution. In the home market, Yieh Hsing sold to distributors and end-users while in the U.S. market, Yieh Hsing sold to trading companies. Yieh Hsing did not claim a level of trade adjustment and noted the overall sales process was similar for all sales to both markets. We did not find a significant variation in selling functions provided to home market and U.S. customers; thus, we have determined there is only one level of trade for Yieh Hsing's sales to all markets.

Normal Value

A. Selection of Comparison Market

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Tariff Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined the home market was viable. *See* Yieh Hsing's November 12, 2003 response at Attachment 5.

B. Affiliated Party Transactions and Arm's-Length Test

Yieh Hsing reported that it made a small portion of sales in the home market to affiliated parties. Sales to affiliated customers in the home market not made at arm's-length prices are excluded from our analysis because we consider them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). Prior to performing the arm's-length test, we aggregated the applicable customer codes reported for individual affiliates in order to treat them as single entities. *See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade,* 67 FR 69186, 69194 (November 15, 2002) (*Modification to Affiliated Party Sales*). To test whether the sales to affiliates were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all direct selling

expenses, discounts and rebates, movement charges, and packing. Where prices to the affiliated party were, on average, within a range of 98 to 102 percent of the price of identical or comparable merchandise to the unaffiliated parties, we determined that the sales made to the affiliated party were at arm's length. *See Modification to Affiliated Party Sales* at 69187–88. In accordance with the Department's practice, we only included in our margin analysis those sales to affiliated parties that were made at arm's length.

C. Cost of Production Analysis

Because we disregarded sales of certain products made at prices below the cost of production (COP) in the previous review of circular welded carbon steel pipes and tubes from Taiwan (*see Certain Circular Welded Carbon Steel Pipes and Tubes From Taiwan: Final Results of Antidumping Duty Administrative Review,* 65 FR 60613 (October 12, 2000)), we have reasonable grounds to believe or suspect that Yieh Hsing made sales of the foreign like product at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Tariff Act. Therefore, pursuant to section 773(b)(1) of the Tariff Act, we initiated a COP investigation of sales by Yieh Hsing.

In accordance with section 773(b)(3) of the Tariff Act, we calculated the weighted-average COP for each model based on the sum of Yieh Hsing's material and fabrication costs for the foreign like product, plus amounts for selling expenses, general and administrative (GNA) expenses, interest expenses and packing costs. With one exception, the Department relied on the COP data reported by Yieh Hsing. We revised the overall GNA expense total to recalculate the GNA ratio used for COP purposes by deducting a revised figure for commercial paper handling charge and adding certain unreported depreciation expenses (*see* the Department's Preliminary Analysis Memorandum dated June 2, 2004).

In determining whether to disregard home market sales made at prices below the COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act whether, within an extended period of time, such sales were made in substantial quantities, and whether such sales were made at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. Pursuant to section 773(b)(2)(C) of the Tariff Act, where less than 20 percent of the respondent's home market sales of a given model were at prices below the COP, we did not disregard any below-cost sales of that model because we determined that the below-cost sales were not made within an extended period of time in ''substantial quantities.'' Where 20 percent or more of the respondent's home market sales of a given model were at prices less than COP, we disregarded the below-cost sales because: (1) They were made within an extended period of time in ''substantial quantities,'' in accordance with sections 773(b)(2)(B) and (C) of the Tariff Act, and (2) based on our comparison of prices to the weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Tariff Act.

To determine whether Yieh Hsing made sales at prices below COP, we compared the product-specific COP figures to home market prices net of discounts and rebates and any applicable movement charges of the foreign like product as required under section 773(b) of the Tariff Act.

Our cost test for Yieh Hsing revealed that for home market sales of certain models, less than 20 percent of the sales volume (by weight) of those models were at prices below the COP. We therefore retained all such sale observations in our analysis and used them in the calculation of NV. Our cost test also indicated that for certain models, 20 percent or more of the home market sales volume (by weight) were sold at prices below COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Tariff Act, we excluded these below-cost sales from our analysis and used the remaining above-cost sales in the calculation of NV (*see* Preliminary Analysis Memo).

D. Constructed Value

In accordance with section 773(e) of the Tariff Act, we calculated CV based on the sum of Yieh Hsing's material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of CV as described above in the ''Cost of Production Analysis'' section of this notice. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. For selling expenses, we used the actual weighted-average home market direct and those indirect selling expenses adjusted based on findings at verification.

E. Price-to-Price Comparisons

We calculated NV based on prices to unaffiliated customers or prices to affiliated customers we determined to be at arm's length for home market sale observations that passed the cost test. We adjusted gross unit price for rebates and made deductions, where appropriate, for foreign inland freight and packing, pursuant to section 773(a)(6)(B) of the Tariff Act. We made adjustments for differences in circumstances of sale which included home market and U.S. imputed credit expenses, bank charges, and other direct selling expenses incurred on U.S. sales in accordance with section 773(a)(6)(C)(iii) of the Tariff Act. The Department relied on the sales database figures reported by Yieh Hsing, except as noted below:

—Based on the findings at verification, we adjusted certain rebate amounts for sales to a specific customer in a defined time period and recalculated imputed credit expenses for all home market sales (*see* Preliminary Analysis Memorandum).

—Based on findings at verification, we adjusted NV to account for certain unreported direct selling expenses associated with U.S. sales (*see* Application of Adverse Facts Available Section and Preliminary Analysis Memorandum).

—We added two missing observations to the U.S. sales database that Yieh Hsing stated had been inadvertently omitted in the most recently submitted U.S. sales database.

Application of Adverse Facts Available

Section 776(a)(2) of the Tariff Act provides: If an interested party (A) withholds information that has been requested by the administrating authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and the manner requested, subject to subsections (c)(1) and (e) of section 782; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title.

Moreover, section 776(b) of the Tariff Act provides that: If the administering authority 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 from the

administering authority, the administering authority, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of the party in selecting from among the facts otherwise available.

At verification of Yieh Hsing's sales and cost responses, the Department found certain expenses identified in Yieh Hsing's ''commission expense'' accounting ledger, with references to various U.S. commercial invoice numbers for particular U.S. customers. Yieh Hsing had not identified these sales-specific expenses in its questionnaire responses, and the full nature and extent of these selling expenses is unclear due to Yieh Hsing's failure to report them to the Department.

Pursuant to section 776(a)(2)(B) of the Tariff Act, we have determined that Yieh Hsing's failure to report certain direct selling expenses relating to sales of subject merchandise to the United States warrants the use of facts otherwise available. Because the Department finds that Yieh Hsing failed to cooperate by not acting to the best of its ability in complying with the Department's requests for reporting of all expenses associated with sales of subject merchandise to the United States, the Department is using an inference that is adverse to Yieh Hsing (*see* Preliminary Analysis Memo for explanation of the facts available selected).

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period May 1, 2002 through April 30, 2003, to be as follows:

Manufacturer/exporter	Margin (percent)
Yieh Hsing Enterprise Co. Ltd ..	1.61

The Department will disclose calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b). An interested party may request a hearing within thirty days of publication of these preliminary results. *See* 19 CFR 351.310(c). Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter, unless the Department alters the date per 19 CFR 351.310(d). Interested parties may submit case briefs or written comments no later than 30 days after the date of publication of these preliminary results of review. Briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit arguments in these proceedings are requested to submit with the argument: (1) A statement of the issue, (2) a brief summary of the argument and (3) a table of authorities. Further, we would appreciate it if parties submitting case briefs, rebuttal briefs, and written comments would provide the Department with an additional copy of the public version of any such argument on diskette. The Department will issue final results of this administrative review, including the results of our analysis of the issues in any such case briefs, rebuttal briefs, and written comments or at a hearing, within 120 days of publication of these preliminary results.

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to CBP upon completion of the review. For the preliminary results, we calculated an importer-specific assessment rates based upon importer information provided by Yieh Hsing in its January 6, 2004 response and its most recent U.S. sales database. Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of circular welded carbon steel pipes and tubes from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the company reviewed will be the rate established in the final results of review;

(2) For any previously reviewed or investigated company not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review or previous review, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be the ''all others'' rate of 9.70 percent from the investigation; *see Certain Welded Carbon Steel Pipes and Tubes from Taiwan: Final Determination of Sales at Less Than Fair Value* 49 FR 9931–01 (March 16, 1984).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Tariff Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–12940 Filed 6–7–04; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–844]

Steel Concrete Reinforcing Bar From The Republic of Korea: Notice of Preliminary Results and Preliminary Rescission, in Part, of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results and preliminary rescission, in part, of antidumping duty administrative review.

DATES: *Effective Date:* June 8, 2004.

SUMMARY: In response to a request from the petitioner,[1] the Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on steel concrete reinforcing bar (''rebar'') from the Republic of Korea (''Korea''). The period of review (''POR'') is September 1, 2002, through August 31, 2003. This review covers six manufacturers/exporters of subject merchandise.

As a result of our review, we preliminarily determine that four

[1] The petitioner in this proceeding is the Rebar Trade Action Coalition and its individual members: Gerdau AmeriSteel, CMC Steel Group, Nucor Corporation, and TAMCO.

respondents had no sales or shipments of subject merchandise to the United States during the POR. Therefore, we are preliminarily rescinding the review with respect to these respondents. The remaining two respondents, Dongil Industries Co. Ltd. (''Dongil'') and Hanbo Iron & Steel Co., Ltd. (''Hanbo''), failed to respond to our questionnaire. As a result, we are basing our preliminary results for Dongil and Hanbo on total adverse facts available (''AFA''). If these preliminary results are adopted in our final results of review, we will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. We invite parties to comment on these preliminary results.

FOR FURTHER INFORMATION CONTACT: Richard Johns or Mark Manning, Antidumping and Countervailing Duty Enforcement Group II, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2305 and (202) 482–5253, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 7, 2001, the Department published an antidumping duty order on rebar from Korea. *See Antidumping Duty Orders: Steel Concrete Reinforcing Bars From Belarus, Indonesia, Latvia, Moldova, People's Republic of China, Poland, Republic of Korea and Ukraine,* 66 FR 46777 (September 7, 2001). On September 2, 2003, the Department published a notice of opportunity to request the second administrative review of this order. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 52181 (September 2, 2003). On September 30, 2003, in accordance with 19 CFR 351.213(b), the petitioner requested an administrative review of six manufacturers/exporters of rebar from Korea: Dongil, Dongkuk Steel Mill Co. Ltd. (''DSM''), Hanbo, INI Steel, Korea Iron and Steel Co., Ltd. (''KISCO''), and Kosteel Co., Ltd. (''Kosteel''). On October 24, 2003, the Department published the notice of initiation of this administrative review, covering the period September 1, 2002, through August 31, 2003. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 68 FR 60910 (October 24, 2003).

On October 22, 2003, the Department issued the antidumping questionnaire to each of the six manufacturers/exporters listed above. On November 12, 2003, DSM and KISCO notified the Department that they had no sales or shipments of subject merchandise to the United States during the POR. On December 3, 2003, Kosteel also notified the Department that it had no sales or shipments of subject merchandise to the United States during the POR. Dongil, Hanbo, and INI Steel failed to respond to the Department's November 12, 2003, questionnaire.

On May 6, 2004, the Department notified interested parties that we intend to rescind this administrative review with respect to those manufacturers/exporters that had no sales or shipments during the POR. *See* Memorandum to the File from Richard Johns, International Trade Compliance Analyst, ''Rescission of Antidumping Duty Administrative Review of Steel Concrete Reinforcing Bars from Korea for the Period of Review September 1, 2002 through August 31, 2003,'' dated May 6, 2004. We invited interested parties to comment on our intention to rescind the review with respect to companies for which there is no evidence of sales or shipments of subject merchandise to the United States during the POR.

On May 11, 2004, the Department sent a letter to Dongil, Hanbo, and INI Steel informing these companies that we did not receive a response from them to the antidumping questionnaire. In the letter, the Department stated that, if the reason as to why they did not respond to the antidumping questionnaire is that they had no shipments of subject merchandise to the United States during the POR, they should inform the Department of this fact; otherwise, the Department may conclude that these companies decided not to cooperate with the Department's review. In response, on May 13, 2004, INI Steel reported that it had no sales or shipments of subject merchandise to the United States during the POR. Dongil and Hanbo did not respond to the Department's May 11, 2004, letter.

On May 12, 2004, the Department released to interested parties the results of a U.S. Customs and Border Protection (''CBP'') data query for shipments of subject merchandise to the United States during the POR. *See* Memorandum to the File from Richard Johns, International Trade Compliance Analyst, ''U.S. Customs and Border Protection Data Query Results,'' dated May 12, 2004. We invited interested parties to comment on the results of this data query. We received the petitioner's comments regarding the Department's May 6, 2004, and May 12, 2004, memoranda on May 20, 2004. In its comments, the petitioner did not provide any evidence of sales or shipments from DSM, INI Steel, KISCO, or Kosteel. The petitioner recommends that the Department apply total AFA against Dongil and Hanbo because these companies failed to provide the information requested by the Department's October 22, 2003, antidumping questionnaire and May 11, 2004, letter. The petitioner also recommends that the Department not rescind the review with respect to DSM, INI Steel, KISCO, and Kosteel because the Department's query of CBP data covered only the months of the POR. According to the petitioner, limiting the data query to only the months of the POR fails to capture sales made during the POR which were based upon entries made prior to the POR, in addition to sales made during the POR which were based upon entries made after the POR. To account for these potential problems, the petitioner urges the Department to request further information from DSM, INI Steel, KISCO, and Kosteel regarding the date of sale used by these companies when they informed the Department that they had no sales during the POR.

Due to the unexpected emergency closure of the main Commerce building on Tuesday, June, 1, 2004, the Department has tolled the deadline for these preliminary/final results by one day to June 2, 2004.

As noted above, DSM, INI Steel, KISCO, and Kosteel notified the Department that they had no sales or shipments of subject merchandise in the United States during the POR. The Department obtained data from CBP that supported their claims of no entries during the POR. In addition, no interested party provided evidence of sales or shipments of subject merchandise from DSM, INI Steel, KISCO, or Kosteel during the POR. Furthermore, with respect to the arguments raised by the petitioner in its comments on our intent to rescind this review in part, we note that the antidumping questionnaire issued to the six respondents contains clear instructions on how to identify the universe of sales that should be reported in this POR. Accordingly, we are preliminarily rescinding the review with respect to DSM, INI Steel, KISCO, and Kosteel. Because Dongil and Hanbo failed to respond to the Department's October 22, 2003, questionnaire and May 11, 2004, letter, we preliminarily find that the application of total AFA is warranted in this case.

Scope of the Review

The product covered by this administrative review is all rebar sold in

straight lengths, currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') under item number 7214.20.00 or any other tariff item number. Specifically excluded are plain rounds (*i.e.*, non-deformed or smooth bars) and rebar that has been further processed through bending or coating. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this proceeding is dispositive.

Facts Available

Section 776(a)(2) of the Tariff Act of 1930, as amended (''the Act''), provides that if any interested party: (A) Withholds information that has been requested by the Department; (B) fails to provide such information by the deadlines for submission of the information or in the form or manner requested; (C) significantly impedes an antidumping investigation; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in making its determination.

Section 782(d) of the Act provides that, if the Department determines that a response to a request for information does not comply with the request, the Department will inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person the opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, the Department may, subject to section 782(e), disregard all or part of the original and subsequent responses, as appropriate.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed ''deficient'' under section 782(d) if: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Furthermore, section 776(b) of the Act states 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 from the administering authority or the Commission, the administering authority or the Commission * * *, in reaching the applicable determination under this title, may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available.'' *See also* Statement of Administrative Action (''SAA'') accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

Application of Facts Available

The evidence on the record of this review establishes that, pursuant to section 776(a)(2)(A) of the Act, the use of total facts available (''FA'') is warranted in determining the dumping margin for U.S. sales of rebar made by Dongil and Hanbo because these two companies failed to provide requested information. As stated above, on October 22, 2003, the Department issued the antidumping questionnaire to six manufacturers/exporters of the subject merchandise. Four companies ultimately advised the Department that they did not have shipments or sales of subject merchandise to the United States during the POR. Dongil and Hanbo failed to respond to the Department's antidumping questionnaire. On May 11, 2004, we informed Dongil and Hanbo that, because they failed to respond to the Department's antidumping questionnaire, and had not informed the Department as to whether they had sales or shipments of subject merchandise to the United States during the POR, we may use AFA to determine their dumping margins. Dongil and Hanbo did not respond to the Department's May 11, 2004, letter. Based on the data obtained from CBP, the Department cannot conclude that these companies had no sales to the United States during the POR. *See* Memorandum to the File from Richard Johns, International Trade Compliance Analyst, ''Entry Data With Respect to Dongil and Hanbo,'' dated June 1, 2004.

Because Dongil and Hanbo failed to provide the necessary information requested by the Department, pursuant to section 776(a)(2)(A) of the Act, we must establish the margins for these companies based on the facts otherwise available.

Use of Adverse Inferences

In selecting from among the facts otherwise available, pursuant to section 776(b) of the Act, an adverse inference is warranted when the Department has determined that a respondent has ''failed to cooperate by not acting to the best of its ability to comply with a request for information.'' Section 776(b) of the Act goes on to note that an adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in the investigation under this title; (3) any previous review under section 751 or determination under section 753, or (4) any other information on the record.

Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870; *Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221 (CIT 1998); *Mannesmannrohren-Werke AG* v. *United States,* 77 F. Supp. 2d 1302 (CIT 1999). The Court of Appeals for the Federal Circuit (CAFC), in *Nippon Steel Corporation* v. *United States,* 337 F. 3d 1373, 1380 (Fed. Cir. 2003), provided an explanation of the ''failure to act to the best of its ability'' standard, holding that the Department need not show intentional conduct existed on the part of the respondent, but merely that a ''failure to cooperate to the best of a respondent's ability'' existed, *i.e.*, information was not provided ''under circumstances in which it is reasonable to conclude that less than full cooperation has been shown.'' *Id.* The CAFC did acknowledge, however, that ''deliberate concealment or inaccurate reporting'' would certainly be a reason to apply AFA, although it indicated that inadequate responses to agency inquiries ''would suffice'' as well. *Id.*

To examine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b) of the Act, the Department considers, *inter alia,* the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–53820 (October 16, 1997).

The record shows that Dongil and Hanbo failed to cooperate to the best of their ability, within the meaning of section 776(b) of the Act. In reviewing the evidence on the record, the Department finds that Dongil and Hanbo failed to provide requested information. Moreover, these companies failed to offer any explanation for their failure to respond to our antidumping questionnaire or May 11, 2004, letter. As a general matter, it is reasonable for the Department to assume that these companies possessed the records necessary to participate in this review; however, by not supplying the information the Department requested, these companies failed to cooperate to the best of their ability. As these companies have failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section

776(b) of the Act. As AFA for Dongil and Hanbo, we have used a rate of 102.28 percent, which is the highest margin from any segment of the proceeding. Specifically, this rate was the highest margin alleged for any Korean company in the petition and is the rate used as AFA for Hanbo in the final determination of the less-than-fair-value (''LTFV'') investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea,* 66 FR 33526 (June 22, 2001).

Corroboration of Information

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as ''{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.'' *See* SAA accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA further provides that the term ''corroborate'' means that the Department will satisfy itself that the secondary information to be used has probative value. *See* SAA at 870. Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. During the LTFV investigation, we examined the reliability of the 102.28 percent rate selected as AFA for Hanbo and found it to be reliable. *See* Memorandum to Troy H. Cribb, Assistant Secretary for Import Administration, from Holly A. Kuga, Acting Deputy Assistant Secretary for AD/CVD Enforcement, Group II, ''The Use of Facts Available for Hanbo Iron & Steel Co. Ltd., and Corroboration of Secondary Information,'' dated January 16, 2001, and placed on the record of this review concurrently with these preliminary results. We have re-examined the information used as FA in the LTFV investigation and we consider it reliable, for purposes of this second administrative review.

As to the relevance of the AFA rate, the CIT has stated that Congress ''intended for an adverse facts available rate to be a reasonably accurate estimate of the respondent's actual rate, albeit with some built-in increase intended as a deterrent to non-compliance.'' *F.Lli De Cecco Di Filippo Fara S. Martino S.p.A.,* v. *U.S.,* 216 F.3d 1027, 1032 (Fed. Cir. 2000). The Department considers information reasonably at its disposal to determine whether a margin continues to have relevance. Where circumstances indicate that the selected margin is not appropriate as AFA, the Department will disregard the selected margin and determine an appropriate margin. *See e.g., Fresh Cut Flowers from Mexico: Final Results of Antidumping Administrative Review,* 61 FR 6812 (February 22, 1996).

With respect to the rate selected for Dongil and Hanbo, we note that in determining the relevant AFA rate, the Department assumes that if an uncooperative respondent could have demonstrated that its dumping margin is lower than the highest prior margin, it would have provided information showing the margin to be less. *See Rhone Poulenc, Inc.* v. *United States,* 899 F.2d 1185, 1190–91 (Fed. Cir. 1990) (''*Rhone Poulenc*''). Given Dongil and Hanbo's failure to cooperate to the best of their respective abilities in the instant administrative review, we have no reason to believe that the dumping margins for their sales of subject merchandise would be any less than the current ''all others'' rate of 22.89 percent for Dongil, which does not have its own individual rate, or Hanbo's current cash deposit rate of 102.28 percent. In *Rhone Poulenc,* the CAFC found that the presumption that, ''the highest prior margin was the best information of current margins'' was a permissible interpretation of 19 U.S.C. 1677e(c). *See Rhone Poulenc,* 899 F.2d at 1190. In upholding this presumption, the CAFC cited the rationale underlying the adverse inference rule, that the presumption ''reflects a common sense inference that the highest prior margin is the most probative evidence of current margins because, if it were not so, the importer, knowing of the rule, would have produced current information showing the margin to be less.'' *Id.* In other proceedings, the Department has used the highest margin as AFA. *See, e.g., Freshwater Crawfish Tail Meat from the People's Republic of China; Notice of Final Results of Antidumping Duty Administrative Review,* 68 FR 19504 (April 21, 2003). In fact, the Department used the 102.28 percent rate as AFA in the final determination of the LTFV investigation with respect to Hanbo. Therefore, Dongil and Hanbo had notice that the 102.28 percent rate may be used as the AFA rate that would be applied for their failure to cooperate. Consequently, in keeping with *Rhone Poulenc,* we consider the 102.28 percent rate to be the most probative evidence of current margins for Dongil and Hanbo because, if it were not so, these two manufacturers/exporters, knowing of the rule, would have produced current information showing the margin to be less. Therefore, we consider the 102.28 percent rate to be relevant.

Accordingly, we have determined that the rates selected as AFA are both reliable and relevant. Therefore, we have corroborated these rates in accordance with section 776(c) of the Act.

Preliminary Results of Review

As a result of our review, we preliminarily determine the following weighted-average dumping margin exists for the period September 1, 2002, through August 31, 2003:

Manufacturer/exporter	Weighted-average margin (percentage)
Dongil Industries Co. Ltd	102.28
Hanbo Iron & Steel Co., Ltd	102.28

Public Comment

According to 19 CFR 351.224(b), the Department will disclose any calculations performed in connection with the preliminary results of review within five days of the date of publication of the preliminary notice. However, in the instant review, the Department did not perform any calculations because all margins result from the application of total AFA. Therefore, no calculations will be disclosed in this case.

An interested party may request a hearing within 30 days of publication of the preliminary results. *See* 19 CFR 351.310(c). We will issue a memorandum identifying the date of a hearing, if one is requested. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue, (2) a brief summary of the argument, and (3) a table of authorities. Further, the Department requests that parties submitting written comments provide the Department with a diskette containing the public version of those comments. Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act, the Department will issue the final results of this administrative review, including the results of our analysis of the issues

raised by the parties in their comments, within 120 days of publication of the preliminary results. The assessment of antidumping duties on entries of merchandise covered by this review and future deposits of estimated duties shall be based on the final results of this review.

Duty Assessments

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries. According to 19 CFR 351.212(b)(1), the Department normally will calculate an assessment rate for each importer of subject merchandise covered by the review by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal customs duty purposes. In the instant review, for the respondents receiving dumping rates based upon AFA, the Department will instruct CBP to liquidate entries according to the AFA *ad valorem* rate. For the respondents being rescinded from this review, the Department will instruct CBP to assess antidumping duties at the cash deposit rate in effect at the time of entry. The Department will issue appropriate appraisement instructions directly to CBP within fifteen days of publication of the final results of review.

Cash Deposit Rates

The following cash deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of rebar from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for Dongil and Hanbo will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent review period; (3) if the exporter is not a firm covered in this review, a prior review, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.89 percent, the ''all others'' rate made effective by the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Steel Concrete Reinforcing Bars From the Republic of Korea,* 66 FR 33526 (June 22, 2001). These required cash deposit rates shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: June 2, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. 04–12941 Filed 6–7–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting of The Manufacturing Council

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Update: notice of public meeting and location change.

SUMMARY: The Manufacturing Council will hold a full Council meeting to discuss topics related to the state of manufacturing. The Manufacturing Council is a Secretarial Board at the Department of Commerce, established by Secretary Donald L. Evans on April 7, 2004 to ensure regular communication between Government and the manufacturing sector. This will be the inaugural meeting of the Council and include discussion of the organization of the Council and the implementation of the *Manufacturing in America* report, released by the Department of Commerce in January. The Council shall also advise the Secretary on government policies and programs that affect United States manufacturing and provide a forum for discussing and proposing solutions to industry-related problems. For further information and updates, please visit the Manufacturing Council Web site at: *http://www.manufacturing.gov/council.htm.*

DATES: June 15, 2004.

TIME: 2 p.m.

ADDRESSES: Cascade Engineering, 5141 36th Street, SE., Grand Rapids, Michigan, 49512. This program is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be submitted no later than June 8, 2004, to The Manufacturing Council, Room 2015B, Washington, DC 20230. Seating is limited and will be on a first come, first served basis. If you would like to participate via teleconference, please call the Manufacturing Council Executive Secretariat.

FOR FURTHER INFORMATION CONTACT: The Manufacturing Council Executive Secretariat, Room 2015B, Washington, DC 20230 (Phone: 202–482–1369).

Dated: June 3, 2004.

Sam Giller,

Executive Secretary, The Manufacturing Council.

[FR Doc. 04–13002 Filed 6–7–04; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Villa Marina Yacht Harbor, Inc. From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: Notice of appeal and request for comments.

SUMMARY: Villa Marina Yacht Harbor, Inc. has filed an administrative appeal with the Department of Commerce asking that the Secretary of Commerce override the Puerto Rico Planning Board's objection to the proposed expansion of an existing marina located in Sardinera Bay, Sardinera Ward, Fajardo, Puerto Rico.

DATES: Public comments on the appeal are due within 30 days of the publication of this notice.

ADDRESSES: All e-mail comments on issues relevant to the Secretary's decision of this appeal may be submitted to *villamarina.comments@noaa.gov.* Comments may also be sent by mail to Molly Holt, Attorney-Adviser, NOAA Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Materials from the

appeal record will be available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the NOAA Office of the General Counsel for Ocean Services. In addition, public filings made by the parties to the appeal will be available at the offices of the Puerto Rico Planning Board.

FOR FURTHER INFORMATION CONTACT: Molly Holt, Attorney-Adviser, NOAA Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910 or at (301) 713–2967, extension 215.

SUPPLEMENTARY INFORMATION:

I. Notice of Appeal

On October 31, 2003, Villa Marina Yacht Harbour, Inc. (Appellant) filed a notice of appeal with the Secretary of Commerce (Secretary) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act of 1972 (CZMA), as amended, 16 U.S.C. 1451 *et seq.,* and the Department of Commerce's implementing regulations, 15 CFR part 930, subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to Appellant's consistency certification for a U.S. Army Corps of Engineers permit for a marina expansion. This project is located in Sardinera Bay, Sardinera Ward, Fajardo, Puerto Rico.

The CZMA provides that a timely objection by a State precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary finds that the activity is either ''consistent with the objectives'' of the CZMA (Ground I) or ''necessary in the interest of national security'' (Ground II). Section 307(c)(3)(A). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the State's consistency objections based on Ground I. To make the determination that the proposed activity is ''consistent with the objectives'' of the CZMA, the Secretary must find that: (1) The proposed activity furthers the national interest as articulated in section 302 or 303 of the CZMA, in a significant or substantial manner; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest, when those effects are considered separately or cumulatively; and (3) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with enforceable policies of Puerto Rico's management program. 15 CFR 930.121.

II. Public Comments

Written public comments are invited on any of the issues that the Secretary must consider in deciding this appeal. Comments must be received within 30 days of the publication of this notice, and may be submitted by e-mail to *villamarina.comments@noaa.gov.* Comments may also be sent to Molly Holt, Attorney-Adviser, NOAA Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Room 6111, Silver Spring, MD 20910. Comments will be made available to the Appellant and the State; they will also be posted on a Department of Commerce Web site identified below.

III. Appeal Documents

NOAA intends to provide the public with access to all materials and related documents comprising the appeal record via the Internet at *http://www.ogc.doc.gov/czma.htm* and, during business hours, at the NOAA Office of the General Counsel for Ocean Services. In addition, copies of public filings by the parties will be available for review at the offices of the Puerto Rico Planning Board.

Dated: May 28, 2004.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

James R. Walpole,

General Counsel.

[FR Doc. 04–12835 Filed 6–7–04; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060204A]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Atlantic Mackerel, Squid, Butterfish Committee (with Advisors), Executive Committee, and Research Set-Aside Committee will hold public meetings.

DATES: The meetings will be held on Monday, June 21, through Thursday, June 24, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Hershey Lodge and Convention Center, West Chocolate Avenue and University Drive, Hershey, PA; telephone: (717) 533–3311.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: (302) 674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–6742331, ext. 19.

SUPPLEMENTARY INFORMATION: The Atlantic Mackerel, Squid, and Butterfish Committee with its Advisory Panel will meet from 1 p.m. to 5 p.m. on Monday, June 21 and continue on Tuesday, June 22 from 8 a.m. until 5 p.m. On Wednesday, June 23, Council will meet from 8 a.m. until 6 p.m. On Thursday, June 24, the Executive Committee will meet from 8 a.m. to 9 a.m. The Research Set-Aside Committee will meet from 9 a.m. to 10 a.m. Council will meet from 10 a.m. until approximately 2 p.m.

Agenda items for the Council's committees and the Council itself are: Review the Atlantic Mackerel, Squid and Butterfish Monitoring Committee's recommendations and develop 2005 quota levels and associated management measures; Discuss status of the public hearing document for Amendment 9 to the Atlantic Mackerel, Squid, Butterfish Plan and develop and adopt preferred alternatives for the following: Extending the moratorium on entry to the commercial *Illex* fishery; Allowing for specification of management measures for multiple years; Allowing for the transit of vessels through the U.S. Exclusive Economic Zone (EEZ) with *Illex* caught outside of the U.S. EEZ; Revising the current overfishing definition for *Loligo* squid; Implementing measures to reduce discards; Identifying essential fish habitat for *Loligo* squid eggs; Review Atlantic Mackerel, Squid, Butterfish Committee's recommendations and develop and adopt 2005 quota specifications and associated management measures; Discuss implication for clam industry of NMFS certification of a new vessel monitoring system; Develop and adopt multi-year quota specifications and associated management measures for surfclams and ocean quahogs; Address establishment of a fishery research trust fund using proceeds from sale of research set-aside quota; Address use of public workshop to aid in developing research set-aside

priorities; Discuss use of pre-proposals prior to technical review; Receive a NMFS presentation on Issues and Options regarding Amendment 2 to the NMFS Atlantic Tunas, Swordfish, and Sharks Fishery Management Plan; the Council will also receive and discuss committee and organizational reports including the New England Council's report regarding possible actions on herring, groundfish, monkfish, red crab, scallops, skates, and whiting; the South Atlantic Council's report; Highly Migratory Species (HMS) issues; and act on any new and/or continuing business.

Although non-emergency issues not contained in this agenda may come before the Council for discussion, these issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final actions to address such emergencies.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Debbie Donnangelo at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: June 2, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1258 Filed 4–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060204B]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council (Council) and NMFS will hold a coastal pelagic species (CPS) stock assessment review (STAR) panel to review assessment methods for Pacific mackerel and Pacific sardine.

DATES: The workshop is scheduled for Monday, June 21, 2004 through Friday, June 25, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The STAR panel will be held at the NMFS Southwest Fisheries Science Center, Large Conference Room, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA 92037; telephone: (858) 546–7000.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council (503) 820–2280; or Anne Allen, Southwest Fisheries Science Center (858) 546–7000.

SUPPLEMENTARY INFORMATION: The workshop will be held on Monday, June 21, 2004, from 8 a.m to 5 p.m.; Tuesday, June 22, 2004, from 8 a.m. to 5 p.m.; Wednesday, June 23, 2004, from 8 a.m. to 5 p.m.; Thursday, June 24, 2004, from 8 a.m. to 5 p.m.; and Friday, June 25, from 8 a.m. until business for the day is completed.

The purpose of the CPS STAR Panel meeting is to review draft stock assessment documents and any other pertinent information for Pacific mackerel and Pacific sardine, work with the Stock Assessment Teams to make necessary revisions, and produce a STAR Panel report for use by the Council family and other interested persons for developing management recommendations for the 2005 Pacific sardine fishery and 2005/06 Pacific mackerel fishery.

Although non-emergency issues not contained in this notice may arise during the STAR Panel, those issues may not be the subject of formal action during this meeting. Formal action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least five days prior to the meeting date.

Entry to the Southwest Fisheries Science Center (SWFSC) requires visitors to register with the front office each morning. A visitor's badge, which must be worn while at (SWFSC), will be issued to non-Federal employees participating in the meeting. Since parking is at a premium at the SWFSC, car pooling, and mass transit are encouraged.

Dated: June 2, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–1257 Filed 6–7–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection Renewal; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning the proposed revision of its Voucher and Payment Request Form (OMB Number 3045–0014). Copies of the forms can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by August 9, 2004.

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

ADDRESSES: You may submit written input to the Corporation by any of the following methods:

(1) Electronically through the Corporation's e-mail address system to Bruce Kellogg at *Bkellogg@cns.gov*.

(2) By fax to 202–565–2742, Attention Mr. Bruce Kellogg.

(3) By mail sent to: Corporation for National and Community Service, National Service Trust Office, 8th Floor, Attn: Mr. Bruce Kellogg, 1201 New York Avenue NW., Washington, DC 20525.

(4) By hand delivery or by courier to the Corporation's mailroom at Room 6010 at the mail address given in paragraph (3) above, between 9 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

ADDRESSES: Send comments to Bruce Kellogg, National Service Trust, Corporation for National and Community Service, 1201 New York Ave., NW., Washington, DC, 20525.

FOR FURTHER INFORMATION CONTACT: Bruce Kellogg, (202) 606–5000, ext. 526.

SUPPLEMENTARY INFORMATION:

I. Background

The Corporation for National and Community Service supports programs that provide opportunities for individuals who want to become involved in national service. The service opportunities cover a wide range of activities over varying periods of time. Upon successfully completing an agreed-upon term of service in an approved AmeriCorps program, a national and community service participant—an AmeriCorps member—receives an ''education award''. This award is an amount of money set aside in the member's name in the National Service Trust Fund. The education award can be used to make payments towards qualified student loans or pay for educational expenses at qualified post-secondary institutions and approved school-to-work opportunities programs. Members have seven years in which to draw against any unused balance.

The National Service Trust is the office within the Corporation that administers the education award program. This involves tracking the service for all AmeriCorps members, ensuring that certain requirements of the Corporation's enabling legislation are met, and processing school and loan payments that the members authorize.

II. Current Action

After an AmeriCorps member completes a period of national and community service, the individual receives an education award that can be used to pay against qualified student loans or pay for current post secondary educational expenses. The Voucher and Payment Request Form is the document that a member uses to access his or her account in the National Service Trust.

The form serves three purposes: (1) The AmeriCorps member uses it to request and authorize a specific payment to be made from his or her account, (2) the school or loan company uses it to indicate the amount for which the individual is eligible, and (3) the school or loan company and member both certify that the payment meets various legislative requirements. When the Corporation receives a voucher, it is processed and the U.S. Treasury issues a payment to the loan holder or school on behalf of the AmeriCorps member.

The form was first designed and some variation of it has been in use since the summer of 1994. We are proposing revisions to clarify certain sections of the existing form and to include terminology included in recent legislative changes. The changes impose no additional burden. The legislated change in terminology modifies the definition of loans ''made directly to the student * * *'' to loans ''made, insured, or guaranteed directly to the student * * *''

Modifications to Section A clarify instructions to the member on filling out that portion of the Voucher, especially the dollar amount the member requests and authorizes. Similarly, modifications to Section B clarify information provided to loan holders and educational institutions, particularly in regard to stating the dollar amount for educational expenses.

The Corporation seeks to continue using this particular form, albeit in a revised version. The current form is due to expire June 30, 2004.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: Voucher and Payment Request Form.

OMB Number: 3045–0014.

Agency Number: None.

Affected Public: Individuals who have completed a term of national service who wish to access their education award accounts.

Total Respondents: 69,000 responses annually (estimated annual average over the next three years).

Frequency: Experience has shown that some members may not ever use the education award and others use it several times a year).

Average Time Per Response: Total of 5 minutes (one half minute for the AmeriCorps member's section and 4½ minutes for the school or lender).

Estimated Total Burden Hours: 5,750 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: June 2, 2004.

Ruben Wiley,

Manager, National Service Trust.

[FR Doc. 04–12947 Filed 6–7–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs.

ACTION: Notice.

In accordance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary of Defense for Health Affairs announces the proposed new 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 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 August 9, 2004.

ADDRESSES: Written comments and recommendations on the information collection should be sent to Michael Hartzell, Lt Col, USAF, BSC, Health Program Analysis and Evaluation/TMA, 5111 Leesburg Pike, Suite 810, Falls Church, Virginia 22041–3206.

Title; Associated Form; and OMB Number: Viability of TRICARE Standard.

Needs and Uses: As mandated by Congress, confidential surveys of civilian physicians will be completed in TRICARE market areas within the United States to determine how many accept new TRICARE Standard patients in each market area. 20 TRICARE market area in the United States will be conducted each fiscal year until all TRICARE market areas in the United States have been surveyed.

Affected Public: Individuals—Licensed MDs (Medical Doctors) and DOs (Doctor of Osteopathy).

Annual Burden Hours: 5,333.

Number of Respondents: 3,200.

Responses per Respondent: 1 per person.

Average Burden per Response: 10 minutes per survey.

Frequency: Once.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Health Program Analysis and Evaluation Directorate (HPAE) under the authority of the Office of the Assistant Secretary of Defense (Health Affairs)/TRICARE Management Activity will undertake an evaluation of the DoD's TRICARE Standard healthcare option. HPAE will collect and analyze data that are necessary to meet the requirements outlined in section 723 of the National Defense Authorization Act for FY2004.

Activities include the collection and analyses of data obtained confidentially from civilian physicians (M.D.s & D.O.s) within U.S. TRICARE market areas. Specifically, telephone surveys of civilian providers will be conducted in the TRICARE market areas to determine how many healthcare providers are accepting new patients under TRICARE Standard in each market area. The telephone surveys will be conducted at least 20 TRICARE market areas in the United States each fiscal year until all market areas in the United States have been surveyed. In prioritizing the order in which these market areas will be surveyed, representatives of TRICARE beneficiaries will be consulted in identifying locations that had historical evidence of access-to-care problems under TRICARE Standard. These areas will receive priority in surveying.

Information will be collected telephonically to determine the number of healthcare providers that currently accept TRICARE Standard beneficiaries as patients under TRICARE Standard in each market area. Providers will also be asked if they would accept TRICARE Standard beneficiaries as new patients under TRICARE Standard. Analyses and reports will include all legislative requirements.

Dated: June 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, DoD.

[FR Doc. 04–12831 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0232]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Contract Pricing

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the 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 the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection requirement for use through August 31, 2004. DoD proposes that OMB extend its approval for use through August 31, 2007.

DATES: DoD will consider all comments received by August 9, 2004.

ADDRESSES: You may submit comments, identified by OMB Control Number 0704–0232, using any of the following methods:

- Defense Acquisition Regulations Web Site: *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* Follow the instructions for submitting comments.
- E-mail: *dfars@osd.mil.* Include OMB Control Number 0704–0232 in the subject line of the message.
- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Ted Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to *http://emissary.acq.osd.mil/dar/dfars.nsf.*

FOR FURTHER INFORMATION CONTACT: Mr. Ted Godlewski, (703) 602–2022. The information collection requirements addressed in this notice are available electronically via the Internet at: *http://www.acq.osd.mil/dp/dars/dfars.html.* Paper copies are available from Mr. Ted Godlewski, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 215.4, Contract Pricing, and related clause in DFARS 252.215; OMB Control Number 0704–0232.

Needs and Uses: DoD contracting officers need this information to negotiate an equitable adjustment in the total amount paid or to be paid under a fixed-price redeterminable or fixed-price incentive contract, to reflect final subcontract prices; and to determine if a contractor has an adequate system for generating cost estimates, and monitor correction of any deficiencies.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 5,350.

Number of Respondents: 310.

Responses Per Respondent: .45.

Annual Responses: 141.

Average Burden Per Response: 37.94 hours.

Frequency: On occasion.

Summary of Information Collection

DFARS 215.404–3(a)(iv)(B) requires that, upon establishment of firm prices for each subcontract listed in a repricing modification, the contractor shall submit the subcontractor's costs incurred in performing the subcontract and the final subcontract price. This requirement applies to the pricing of a fixed-price redeterminable or fixed-

price incentive contract that includes subcontracts placed on the same basis for which the contractor has not yet established final prices, if cost or pricing data is inadequate to determine whether the amounts are reasonable, but circumstances require prompt negotiation.

DFARS 215.407–5, Estimating systems, and the clause at 252.215–7002, Cost Estimating System Requirements, require that certain large business contractors—

- Establish an adequate cost estimating system and disclose the estimating system to the administrative contracting officer (ACO) in writing;
- Maintain the estimating system and disclose significant changes in the system to the ACO on a timely basis; and
- Respond in writing to written reports from the Government that identify deficiencies in the estimating system.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 04–12933 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–09]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–09 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

1 JUN 2004
In reply refer to:
I-04/001809

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 04-09, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $319 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Transmittal No. 04-09

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Israel

(ii) Total Estimated Value:

Major Defense Equipment*	$208 million
Other	$111 million
TOTAL	$319 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:

5,000	Joint Direct Attack Munitions (JDAM) tail kits (which include 2,500 GBU-31 for MK-84, 500 GBU-31 for BLU-109, 500 GBU-32 for MK-83, and 1,500 GBU-30 for MK-82 bombs)
2,500	MK-84 live bombs
1,500	MK-82 live bombs
500	BLU-109 live bombs
500	MK-83 live bombs
40	MK-84 inert bombs
40	MK-82 inert bombs
40	BLU-109 inert bombs
40	MK-83 inert bombs
4,500	DSU-33B/B live fuze components
4,500	FMU-139B/B live fuze components
500	FMU-143B/B live fuze components

Also included are: testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support.

(iv) Military Department: Air Force (YEV and YEW)

(v) Prior Related Cases, if any: FMS case YET - $22 million – 9Sep02
FMS case YEQ - $34 million - 9Feb00

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress:

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel – Joint Direct Attack Munitions

The Government of Israel has requested a possible sale of :

5,000	Joint Direct Attack Munitions (JDAM) tail kits (which include 2,500 GBU-31 for MK-84, 500 GBU-31 for BLU-109, 500 GBU-32 for MK-83, and 1,500 GBU-30 for MK-82 bombs)
2,500	MK-84 live bombs
1,500	MK-82 live bombs
500	BLU-109 live bombs
500	MK-83 live bombs
40	MK-84 inert bombs
40	MK-82 inert bombs
40	BLU-109 inert bombs
40	MK-83 inert bombs
4,500	DSU-33B/B live fuze components
4,500	FMU-139B/B live fuze components
500	FMU-143B/B live fuze components

Also included are: testing, spare and repair parts, support equipment, contractor engineering and technical support, and other related elements of program support. The estimated cost is $319 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability and economic progress in the Middle East.

The proposed sale will contribute significantly to U.S. strategic and tactical objectives. Israel will maintain its qualitative edge with a balance of new weapons procurement and upgrades supporting its existing systems. Israel, which already has tail kits in its inventory, will have no difficulty absorbing these additional kits.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: McDonnell Douglas Corporation (subsidiary of the Boeing Company) of St. Charles, Missouri; Alliant Techsystems Incorporated of Janesville, Wisconsin; Alliant Techsystems Incorporated of Clearwater, Florida; Lockheed-Martin Aerospace Corporation of Fort Worth, Texas; Northrup Grumman Company of Los Angeles, California; and Honeywell Corporation of Clearwater, Florida. There are no known offset agreements in connection with this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Israel.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-09

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Joint Direct Attack Munition is actually a guidance kit that converts existing unguided free-fall bombs into precision-guided "smart" munitions. By adding a new tail section containing an Inertial Navigation System (INS) guidance/Global Positioning System (GPS) guidance to unguided bombs, the cost effective JDAM provides highly accurate weapon delivery in any "flyable" weather. The INS, using updates from the GPS, helps guide the bomb to the target via the use of movable tail fins.

2. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

Access to accurate target coordinates
INS/GPS capability
Operational Test and Evaluation Plan

3. A determination has been made that Israel can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This proposed sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 04–12832 Filed 6–7–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alteration will allow the disclosure of records to the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization; and to Federal and State agencies, including their contractors and grantees, for purposes of providing military wage, training, and educational information, so that Federal reporting requirements can be satisfied.

DATES: This action will be effective without further notice on July 8, 2004, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 28, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: June 2, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base (December 26, 2002, 67 FR 78781).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to entry 'citizenship data'.

* * * * *

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In Routine Use #9, replace 'Transportation (DOT)' with 'Homeland Security.'

Add two new routine uses '24. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, section 1701, and E.O. 13269, Expedited Naturalization).

25. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, *et seq.*) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, *et seq.*) can be satisfied.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; active and retired members of the commissioned corps of the Public Health Service; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

Current and former DoD civilian employees since January 1, 1972. All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a State employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration and the Public Health Service who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active and retired members of the Uniformed Services, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal (non-postal) civilian employees and all Federal civilian retirees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

Individuals who are authorized Web access to DMDC computer systems and databases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, citizenship data, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; performance ratings of DoD civilian employees and military members; reasons given for leaving military service or DoD civilian service; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various in-service education and training programs; date of award of certification of military experience and training; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT–1,

General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

Names of individuals, as well as DMDC assigned identification numbers, and other user-identifying data, such as organization, Social Security Number, e-mail address, phone number, of those having Web access to DMDC computer systems and databases, to include dates and times of access.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub. L. 95–452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; Pub. L. 106–265, Federal Long-Term Care Insurance; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and State and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals.

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301–1510.

DMDC Web usage data will be used to validate continued need for user access to DMDC computer systems and databases, to address problems associated with Web access, and to ensure that access is only for official purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veterans Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)).

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606—Selected Reserve and Title 38 U.S.C., Chapter 30—Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38

U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub. L. 83–598, 84–356, 86–724, 94–455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns, or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of (1) conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings, and (2) obtaining current earnings data on individuals who have voluntarily left military service or DoD civil employment so that analytical personnel studies regarding pay, retention and benefits may be conducted.

Note 3: Earnings data obtained from the SSA and used by DoD does not contain any information that identifies the individual about whom the earnings data pertains.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SVB). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

c. To the Client Identification Branch for the purpose of validating the assigned Social Security Number for individuals in DoD personnel and pay files, using the SSA Enumeration Verification System (EVS).

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Homeland Security to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to States of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as State bonuses for veterans, *etc.* Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub. L. 95–452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, State or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the United States Government under the Debt Collection Act of 1982 (Pub. L. 97–365) and the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

17. To State and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub. L. 101–510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy

the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 4: Data obtained from such organizations and used by DoD does not contain any information that identifies the individual about whom the data pertains.

22. To Federal and State agencies for purposes of obtaining socioeconomic information on Armed Forces personnel so that analytical studies can be conducted with a view to assessing the present needs and future requirements of such personnel.

23. To Federal and State agencies for purposes of validating demographic data (*e.g.*, Social Security Number, citizenship status, date and place of birth, *etc.*) for individuals in DoD personnel and pay files so that accurate information is available in support of DoD requirements.

24. To the Bureau of Citizenship and Immigration Services, Department of Homeland Security, for purposes of facilitating the verification of individuals who may be eligible for expedited naturalization (Pub. L. 108–136, section 1701, and E.O. 13269, Expedited Naturalization).

25. To Federal and State agencies, as well as their contractors and grantees, for purposes of providing military wage, training, and educational information so that Federal-reporting requirements, as mandated by statute, such as the Workforce Investment Act (29 U.S.C. 2801, *et seq.*) and the Carl D. Perkins Vocational and Applied Technology Act (20 U.S.C. 2301, *et seq.*) can be satisfied.

The DoD 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 5: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD 'Blanket Routine Uses' do not apply to these types of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords that are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

The records are used to provide a centralized system within the Department of Defense to assess manpower trends, support personnel functions, perform longitudinal statistical analyses, conduct scientific studies or medical follow-up programs and other related studies/analyses. Records are retained as follows:

(1) Input/source records are deleted or destroyed after data have been entered into the master file or when no longer needed for operational purposes, whichever is later. Exception: Apply NARA-approved disposition instructions to the data files residing in other DMDC data bases.

(2) The Master File is retained permanently. At the end of the fiscal year, a snapshot is taken and transferred to the National Archives in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

(3) Outputs records (electronic or paper summary reports) are deleted or destroyed when no longer needed for operational purposes. **Note:** This disposition instruction applies only to recordkeeping copies of the reports retained by DMDC. The DOD office requiring creation of the report should maintain its recordkeeping copy in accordance with NARA-approved disposition instructions for such reports.

(4) System documentation (codebooks, record layouts, and other system documentation) are retained permanently and transferred to the National Archives along with the master file in accordance with 36 CFR part 1228.270 and 36 CFR part 1234.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, Attn: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel

Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 04–12833 Filed 6–7–04; 8:45 am]

BILLING CODE 5001–06–P

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 July 8, 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.

Dated: June 2, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of English Language Acquisitions

Type of Review: New.

Title: Title III Biennial Evaluation Report Required of State Education Agencies Regarding Activities Under the NCLB Act of 2001.

Frequency: Biennially.

Affected Public: State, local, or tribal gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 52.

Burden Hours: 260.

Abstract: State Directors of Title III of the No Child Left Behind (Elementary and Secondary Education) Act—Language Instruction for Limited English Proficient and Immigrant Students—are required to transmit their State Formula Grant Biennial Evaluation Report to the Secretary of Education every two years. Approval is being requested for the form on which to submit that report.

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 2479. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. 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 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@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. 04–12852 Filed 6–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before August 9, 2004.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: June 2, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: Extension.

Title: Adult Education and Family Literacy Act State Plan (PL 105–220).

Frequency: Annually.

Affected Public: State, local, or tribal gov't, SEAs or LEAs (primary).

Reporting and Recordkeeping Hour Burden:

Responses: 59.
Burden Hours: 2,655.

Abstract: It is unlikely that Congress will pass a reauthorization of the Workforce Investment Act (WIA) this year. Therefore, the enclosed Policy Memorandum is designed to advise states about how to continue their adult education program under section 422 of the General Education Provisions Act (GEPA) (20 U.S.C. 1226 (a)).

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the ''Browse Pending Collections'' link and by clicking on link number 2555. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. 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 202–245–6621. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@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. 04–12893 Filed 6–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Supplementary Notice

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection request published on April 16, 2004 (Page 20603, Column 3) entitled, ''Performance Based Data Management Initiative (PBDMI)'' as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 15, 2004.

Dated: June 3, 2004.

Angela C. Arrington,

Leader, Regulatory Information Management Group, Office of the Chief Information Officer.

On April 16, 2004 the United States Department of Education requested public comments under the Paperwork Reduction Act for the Performance Based Data Management Initiative (PBDMI). This supplementary notice provides some necessary additional material to explain this collection activity and invite interested persons to access the site again to obtain updated documents on PBDMI.

Civil Rights Data Collection

For many years, the Office of Civil Rights has conducted a Bi-annual collection of data from a sample of districts and schools to measure education trends and evaluate data associated with ensuring that the laws and regulations providing all students with equal access to education are being enforced. In this next information collection cycle, this data collection will be coordinated with PBDMI in an effort to reduce the paperwork burden on those educators providing this information. Comments from the public regarding the collection of this data should be included as part of this clearance process.

Use of the Collected Data

The primary and immediate use of this data will be to evaluate the education outcomes of selected federally funded education programs in elementary and secondary education. This data will be used by federal program managers and analysts to ascertain the status and progress of the education programs for which they are responsible. It is expected that this data will be made available to State and local education agencies and the public after data quality has been established and compliance with all laws and regulations protecting the privacy of individuals has been met. There are no current plans to provide this information to any other interested groups except through the general public access situation just mentioned.

Data To Be Provided

PBDMI data to be collected over the next twelve months will include data about schools, districts, and States for the 2002–2003, 2003–2004, and 2004–2005 school years. Many of the States have already provided a significant portion of the 2002–2003 school year data as part of the pilot test that was conducted this past year. Quality data submitted during the pilot test will not need to be resubmitted. Data for the 2003–2004 school year will be collected in the fall of this year and data for the 2004–2005 school year will be collected as it becomes available throughout the 2004–2005 school year. Data specifically associated with the Civil Rights Data Collection will be collected starting in December 2004 and due by the end of March 2005.

Further Inquiry Invited

The PBDMI collection clearance submission has been revised and expanded to provide a more comprehensive and understandable description and justification of this activity. Interested persons are invited to visit the Web site *OCIO_RIMG@ed.gov* or write to the following address and request a paper copy of this clearance package for their review: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at his e-mail address *Joe_Schubart@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. 04–12894 Filed 6–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–013]

CenterPoint Energy—Mississippi River Transmission Corporation; Notice of Negotiated Rate

May 27, 2004.

Take notice that on May 25, 2004, CenterPoint Energy—Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourteenth Revised Sheet No. 10, to be effective May 15, 2004.

MRT states that this tariff sheet reflects the expiration of a negotiated rate transaction between MRT and CenterPoint Energy Gas Transmission Company. MRT further states that Rate Schedule FTS TSA, contract number 3229 has expired by its own terms effective as of the end of the day, May 14, 2003.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to

makeprotestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1272 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–255–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 27, 2004.

Take notice that on May 24, 2004, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets with a proposed effective date of May 8, 2004:

Sixth Revised Sheet No. 320
Fourth Revised Sheet No. 345

Columbia states that on April 8, 2004, it filed revised tariff sheets that, among other things, added new language to the minimum pressure and hourly flow rate provisions of its General Terms and Conditions (GTC). Columbia further states that on May 7, 2004, the Commission accepted Columbia's proposed revised tariff sheets subject to Columbia making a specific revision to the filed sheets and the instant filing reflects the required revisions.

Columbia states that copies of its filing have been mailed to all firm customers, interruptible customers, and affected State commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1274 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–92–002]

Georgia Public Service Commission; Notice of Compliance Filing

May 28, 2004.

Take notice that on May 17, 2004, Atlanta Gas Light Company (Atlanta) tendered for filing its Georgia Public Service Commission Gas Tariff incorporating certain revisions in purported compliance with a Federal Energy Regulatory Commission Order issued April 15, 2004, in Docket No. RP04–92–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *ee* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Protest Date: June 4, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1260 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–029]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

May 28, 2004.

Take notice that on May 25, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Original Sheet No. 8Y, reflecting an effective date of June 1, 2004.

Gulfstream states that this filing is being made in connection with a negotiated rate transaction, under Rate Schedule PALS, pursuant to section 31 of the General Terms and Conditions of Gulfstream's FERC Gas Tariff. Gulfstream states that Original Sheet No. 8Y identifies and describes the negotiated rate transaction, including the exact legal name of the relevant shipper, the negotiated rate, the rate schedule, the contract terms, and the contract quantity. Gulfstream also states that Original Sheet No. 8Y includes footnotes where necessary to provide further details on the transaction listed thereon.

Gulfstream states that copies of its filing have been mailed to all affected customers and interested State commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1267 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–361–028]

Gulfstream Natural Gas System, L.L.C.; Notice of Negotiated Rate

May 27, 2004.

Take notice that on May 24, 2004, Gulfstream Natural Gas System, L.L.C. (Gulfstream) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Sub Original Sheet No. 8N, with an effective date of November 1, 2003, and a revised negotiated rate letter agreement with one of its shippers.

Gulfstream states that the purpose of this filing is to comply with the Commission's Order issued in the captioned dockets on December 24, 2003 (December 24 Order). Gulfstream states that it has made changes to a negotiated rate agreement and the tariff sheet reflecting the terms of the negotiated rate agreement, as directed by the December 24 Order.

Gulfstream states that it has served this filing on all parties on the Commission's Official Service List in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules of practice and procedure. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1273 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP03–398–000 and RP04–155–000 (Consolidated)]

Northern Natural Gas Company; Notice of Informal Settlement Conference

May 28, 2004.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 1 p.m. (e.s.t.) on Thursday, June 17, 2004, and continuing, if necessary, at 9:30 a.m. on Friday, June 18, 2004, in a room to be announced later at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kevin Frank, (202) 502–8065, *kevin.frank@ferc.gov*; Gopal Swaminathan, (202) 502–6132, *gopal.swaminathan@ferc.gov*; or William Collins, (202) 502–8248, *william.collins@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1268 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–343–000]

Paiute Pipeline Company; Notice of Application

May 28, 2004.

Take notice that on May 21, 2004, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193–4197, filed in Docket No. CP04–343–000 an application pursuant to sections 7(b) and 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for an order granting a certificate of public convenience and necessity to construct compression facilities and approval to abandon facilities and services associated with its liquefied natural gas (LNG) service all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY, (202) 502–8659.

Paiute states that as part of its transmission system, Paiute operates an LNG peak shaving facility near Lovelock, Nevada. Paiute states that it leases this peaking facility along with approximately 61 miles of 20-inch diameter loopline from Public Service Resources Corporation. The current term of the lease expires on July 6, 2005, and Paiute states that it has been unable to negotiate an extension of the lease. Paiute states that all of its LNG storage customers have given notice of their termination of their storage service and that these customers have made alternate transportation arrangements on Tuscarora Gas Transmission Company's (Tuscarora).

Specifically, Paiute proposes to: (1) Abandon the storage facility; (2) abandon approximately 61 miles of 20-inch diameter loop pipeline between the LNG storage facility and Wadsworth Junction on Paiute's mainline; (3) abandon its LNG storage services under Rate Schedule LGS–1; (4) construct and

operate a new 3,747 horsepower compressor station approximately 2 miles north of the Wadsworth Junction in Washoe County, Nevada to partially replace the capacity associated with the pipeline loop; and (5) make certain minor modifications at seven locations where Paiute's 16-inch diameter mainline ties into the leased pipeline. Paiute estimates that the new compressor station will cost $9,265,000. Paiute requests a Commission order no later than December 1, 2004, to meet an in-service date of July 1, 2005.

At this time, the Commission staff cannot evaluate Paiute's proposal because Paiute has not provided sufficient detailed technical information related to the abandonment and deactivation of the LNG peak shaving facility. For this reason, Commission staff will conduct a technical conference in the near future after the comment period, at which, Paiute will be required to present detailed plans for the deactivation and abandonment of the LNG peak shaving facility's equipment, liquefier, vaporizers, pumps, compressors, tanks, instrumentation, etc., beyond the purging procedures identified in the application. Paiute will also be required to explain how these plans conform to the equipment manufacturers' recommendations.

Any questions regarding the application should be directed to Edward C. McMurtrie at (702) 876–7178, Paiute Pipeline Company, P.O. Box 94197, Las Vegas, Nevada 89193–4197.

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, on or before the comment date, 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). 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.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: June 17, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1263 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–305–000]

Puget Sound Energy, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 27, 2004.

Take notice that on May 24, 2004, Puget Sound Energy, Inc. (Puget) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 24, 2004:

Third Revised Sheet No. 1
Original Sheet Nos. 112 through 116

Puget states that the purpose of this filing is to incorporate in its tariff Amendment No. 5 dated May 14, 2004, to the Jackson Prairie Gas Storage Project Agreement in order to reflect the interim storage capacity and storage service rights resulting from the completion of the second phase of the authorized storage capacity expansion of the Jackson Prairie Gas Storage Project approved in Docket No. CP02–384–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1275 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–340–000]

Southern Natural Gas Company; Notice of Application

May 28, 2004.

Take notice that on May 18, 2004, Southern Natural Gas Company (Southern Natural) filed in the above-captioned docket an application pursuant to the provisions of section 7 of the Natural Gas Act, as amended, and pursuant to the Commission's Regulations requesting an order approving the abandonment of certain pipeline and appurtenant facilities and for a certificate of public convenience and necessity authorizing the construction, installation, and operation of certain other pipeline and appurtenant facilities. Southern Natural's proposals are more fully set forth in the application which is on file

with the Commission and open to public inspection. The name, address, and telephone number of the person to whom any further questions, correspondence and communications concerning this application should be addressed is: Patricia S. Francis, Senior Counsel, Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563; phone: (205) 325–7696.

Southern Natural requests authorization to abandon by sale to Atlanta Gas Light Company (Atlanta Gas) about 253.6 miles of various pipelines located between Southern Natural's south main lines and north main lines which serve the metropolitan area of Atlanta, Georgia. Southern Natural proposed to sell the various pipelines and appurtenant facilities to Atlanta Gas at a cost of about $32,000,000. In addition, Southern will abandon 10 meter stations and two regulator stations and construct, install, and operate four new delivery points consisting of tap, metering, and appurtenant facilities at Southern's existing property at the Thomaston Compressor Station, the Bass Junction Crossover, the South Atlanta #1 site and the Ben Hill Check Station. Southern also requests authorization to construct, install, and operate about 6.36 miles of 30-inch pipeline to close the gap between its 20-inch Thomaston-Griffin 2nd Loop and 30-inch Ocmulgee-Atlanta 3rd Loop in Spalding County, Georgia. The total cost of these facilities is estimated to be $19,280,289. Finally, Southern proposes to uprate about 11.4 miles of its 16-inch South Main Line between Milepost 459.9 and 471.3 in Jefferson and Richmond Counties, Georgia from a Maximum Allowable Operating Pressure (MAOP) of 1,100 psig to an MAOP of 1,200 psig.

In addition, Southern Natural and Atlanta Gas have agreed to extend the terms of various natural gas transportation agreements between themselves on a staggered basis until 2015. Southern Natural requests the Commission's approval of the application by no later than October 31, 2004, in order to close on the sale of facilities by April 1, 2005.

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, on or before the comment date, 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 (18 CFR 157.10). 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.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: June 18, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1262 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–411–005]

Tractebel Calypso Pipeline, LLC; Notice of Compliance Filing

May 27, 2004.

Take notice that on May 24, 2004, Tractebel Calypso Pipeline, LLC (Tractebel Calypso) tendered for filing as part of its FERC Gas Tariff, First Revised Pro Form Volume No. 1, the following tariff sheets:

First Revised Pro Forma Tariff Sheet Nos. 1 through 521

Tractebel Calypso asserts that the purpose of this filing is to comply with the Commission's May 1, 2003 Preliminary Determination On Non-Environmental Issues, 103 FERC ¶ 61, 106 (Preliminary Determination), in Docket Nos. CP01–409–000, 001, and 002 CP01–410–000, 001, and 002, CP01–411–000, 001, and 002, CP01–444–000, 001, and 002 and March 24, 2004 Order Issuing Certificates, Section 3 Authorization, And Presidential Permit, 106 FERC ¶ 61, 273 (Final Order) in Docket Nos. CP01–409–000, 001, and 002, CP01–410–000, 001, and 002, CP01–411–000, 001, and 002, CP01–444–000, 001, and 002.

Tractebel Calypso asserts that the revisions to the pro forma tariff sheets establish an Interruptible Revenue Crediting Provision, eliminate ACA charges from the pro forma rates, update the pro forma tariff to incorporate currently required NAESB standards, update the pro forma tariff to conform to Order No. 637 and its subsequent clarifications and revisions, relating to scheduling procedures, capacity segmentation, and pipeline penalties, provide for a lost and unaccounted for fuel reimbursement provision. Tractebel also states that the revised *pro forma* tariff sheets reflect the use of Tractebel Calypso's current name and address.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed on or before the protest date as shown below. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208-3676, or TTY, contact (202) 502-8659. The Commission

strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the eFiling link.

Protest Date: June 11, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1276 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–344–000]

Tuscarora Gas Transmission Company; Notice of Application

May 28, 2004.

Take notice that on May 21, 2004, Tuscarora Gas Transmission Company (Tuscarora), 1140 Financial Blvd., Suite 900, Reno, Nevada 89502, filed in Docket No. CP04–344–000 an application pursuant to section 7(c) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations for an order granting a certificate of public convenience to construct and operate compression facilities to provide additional firm transportation for three customers all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call (202) 502–3676 or TYY, (202) 502–8659.

Specifically, Tuscarora seeks authority to construct and operate: (1) A new 8,000 horsepower gas-fired compressor station (Likely Compressor Station) on Tuscarora's mainline near Milepost 81.6 in Modoc County, California; and (2) a new 3,600 horsepower booster compressor unit at its existing Wadsworth Booster Station in Washoe County, Nevada. Tuscarora estimates that the proposed facilities will cost $16.5 million and will be able to provide 51,753 Dth per day of new firm capacity. Tuscarora requests a Commission order by November 18, 2004 in order to have the proposed facilities in service by the 2005–2006 heating season.

Any questions regarding the application should be directed to Gregory L. Galbraith, Tuscarora Gas Transmission Company, 1140 Financial Blvd., Suite 900, Reno, Nevada 89502, and phone: 775–834–4292; Fax 775–834–3886.

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, on or before the comment date, 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). 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.

Persons who wish to comment only on the environmental review of this project, or in support of or in opposition to this project, should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the applicant. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: June 17, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1264 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–306–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 27, 2004.

Take notice that on May 24, 2004, Viking Gas Transmission Company (Viking) tendered for filing its FERC Gas Tariff, First Revised Volume No. 1, the revised tariff sheets listed in Appendix A of the filing to become effective July 1, 2004.

Viking states that during 2003, Northern Plains Natural Gas Company (NPNG) became the new Operator of Viking. Viking explains that it proposes to make numerous housekeeping changes throughout its Tariff associated with the change in operation of Viking.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or TTY, contact (202) 502–8659. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the e-Filing link.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1270 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES04–36–000, et al.]

Midwest Independent Transmission System Operator, Inc., et al.; Electric Rate and Corporate Filings

May 28, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Midwest Independent Transmission System Operator, Inc.

[Docket No. ES04–36–000]

Take notice that on May 24, 2004, Midwest Independent Transmission System Operator, Inc. (Midwest ISO) submitted an application pursuant to section 204 of the Federal Power Act requesting that the Commission authorize borrowings in an amount not to exceed $2 million under a loan agreement with the Indiana Development Finance Authority.

Midwest ISO also requests a waiver from the Commission's competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: June 17, 2004.

2. Pedro J. Pizarro

[Docket No. ID–4033–000]

Take notice that on April 30, 2004, Pedro J. Pizarro tendered for filing an application for authorization to hold interlocking positions between Southern California Edison Company and the California Power Exchange Corporation pursuant to section 305(b) of the Federal Power Act and part 45 of the Commission's regulations, 18 CFR 45 (2003).

Comment Date: June 9, 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. E4–1259 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC04–65–000, et al.]

GenWest LLC, et al.; Electric Rate and Corporate Filings

May 27, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. GenWest LLC

[Docket Nos. EC04–65–000 and ER04–820–001]

Take notice that on May 21, 2004, GenWest LLC (GenWest) informed the Commission that the authorization granted by the Commission on March 30, 2004, in Docket No. EC04–65–000 to dispose of a 25 percent ownership interest in GenWest's Silverhawk Generating Facility to Southern Nevada Water Authority was consummated by a transaction on May 17, 2004. In addition, GenWest submitted an amendment to the Build-Transfer Agreement between GenWest and SWNA.

GenWest also filed an amendment to its May 7, 2004, filing in Docket No. ER04–820–000 of a Co-Tenancy Agreement between itself and SNWA, designated GenWest LLC, Original Rate Schedule FERC No. 2. GenWest requests a May 17, 2004, effective date for Rate Schedule No. 2.

Comment Date: June 11, 2004.

2. Naniwa Energy LLC

[Docket No. EC04–112–000]

Take notice that on May 24, 2004, Naniwa Energy LLC (Naniwa) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization of a disposition of jurisdictional facilities, whereby KPIC North America Corporation's ownership interest in Naniwa would be transferred to Naniwa Terminal LLC. Naniwa has requested privileged treatment of certain information and documentation submitted with the application.

Comment Date: June 14, 2004.

3. Mesquite Investors, L.L.C. and Newmarket Power Company, L.L.C.

[Docket No. EC04–113–000]

Take notice that on May 24, 2004, Mesquite Investors, L.L.C. (Mesquite) and Newmarket Power Company, L.L.C. (Newmarket) (jointly, Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act for authorization for Mesquite to transfer to Newmarket all of Mesquite's membership interests in Bayonne Plant Holding, L.L.C. (Bayonne), Camden Plant Holding, L.L.C. (Camden), and Newark Bay Holding Company, L.L.C. (Newark Holding) (the Proposed Transaction) and for the potential sale of interests in Newmarket to passive investors. Applicants state that the proposed transaction will result in a change of control over the jurisdictional facilities owned directly by Bayonne and Camden, and indirectly by Newark Holding and its wholly-owned subsidiary, Liberty View Power, L.L.C.

Comment Date: June 14, 2004.

4. SE Ravenswood Trust

[Docket No. EG04–72–000]

Take notice that on May 25, 2004, SE Ravenswood Trust (Applicant), tendered for filing an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations.

Applicant states that it is a Delaware entity formed to own and lease Ravenswood Unit 40, an approximately 250 MW generating facility located in Long Island City, New York. The New York Public Service Commission has determined that Ravenswood Unit 40 and its related equipment are eligible facilities in Case 04–E–0195, Order Authorizing Transaction and Providing for Other Relief (May 3, 2004).

Applicant states that copies of the filing were served upon the United States Securities and Exchange Commission and the New York State Public Service Commission.

Comment Date: June 15, 2004.

5. Sithe Energy Marketing, L.P., AG-Energy, L.P., Power City Power Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., and Sithe/Independence Power Partners, L.P.

[Docket Nos. ER02–2202–005, ER98–2782–006, and ER03–42–006]

Take notice that on April 23, 2004, Sithe Energy Marketing, L.P., AG-Energy, L.P., Power City Power Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P. and Sithe/Independence Power Partners, L.P. (together, the Sithe Entities) submitted an updated triennial market power report and report of changes in status. Sithe Entities state that in this filing, they also request a waiver of the Commission's recent changes to its requirements for market power assessments or, in the alternative, an extension of time to submit additional market power assessments.

Comment Date: June 8, 2004.

6. Pacific Gas and Electric Company

[Docket Nos. ER04–142–001, ER04–143–001, and ER04–295–001]

Take notice that on May 24, 2004, Pacific Gas and Electric Company (PG&E) submitted a compliance filing pursuant to the Commission's Order issued in Docket Nos. ER04–142–000, ER04–143–000 and ER04–295–000 on April 16, 2004.

PG&E states that copies of PG&E's filing have been served upon each person designated on the official service list in these proceedings.

Comment Date: June 14, 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. E4–1277 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP03–75–000]

Freeport LNG Development, L.P.; Notice of Availability of the Final Environmental Impact Statement for the Proposed Freeport LNG Project

May 28, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this final environmental impact statement (EIS) for the construction and operation of the liquefied natural gas (LNG) import terminal and natural gas pipeline facilities proposed by Freeport LNG Development, L.P. (Freeport LNG), referred to as the Freeport LNG Project, in the above-referenced docket.

The final EIS was prepared to satisfy the requirements of the National Environmental Policy Act (NEPA). The staff concludes that approval of the Freeport LNG Project, with appropriate mitigating measures as recommended, would have limited adverse environmental impact. The final EIS evaluates alternatives to the proposal, including system alternatives, alternative sites for the LNG import terminal, and pipeline alternatives.

The final EIS addresses the potential environmental effects of the construction and operation of the following facilities in Brazoria County, Texas.

- LNG ship docking and unloading facilities with a protected single berth equipped with mooring and breasting dolphins, three liquid unloading arms, and one vapor return arm;
- Reconfiguration of a storm protection levee and a permanent access road;
- Two 26-inch-diameter (32-inch outside diameter) LNG transfer lines, one 16-inch-diameter vapor return line, and service lines (instrument air, nitrogen, potable water, and firewater);
- Two double-walled LNG storage tanks each with a usable volume of 1,006,000 barrels (3.5 billion cubic feet of gas equivalent);
- Six 3,240 gallon-per-minute (gpm) in-tank pumps;
- Seven 2,315 gpm high-pressure LNG booster pumps;
- Three boil-off gas compressors and a condensing system;
- Six high-pressure LNG vaporizers using a primary closed circuit water/glycol solution heated with twelve water/glycol boilers during cold weather and a set of intermediate heat exchangers using a secondary circulating water system heated by an air tower during warm weather, and circulation pumps for both systems;
- Two natural gas superheaters and two fuel gas heaters;
- Ancillary utilities, buildings, and service facilities at the LNG terminal; and
- 9.6 miles of 36-inch-diameter natural gas pipeline extending from the LNG import terminal to a proposed Stratton Ridge Meter Station.

The purpose of the Freeport LNG Project is to provide the facilities necessary to deliver LNG to intrastate shippers, including the Dow Chemical Company and ConnocoPhillips, at the proposed Stratton Ridge Meter Station by 2007. Freeport LNG's proposed facilities would re-vaporize and transport up to 1.5 billion cubic feet of natural gas per day.

The final EIS has been placed in the public files of the FERC and is available for public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First St., NE., Room 2A, Washington, DC 20426; (202) 502–8371.

A limited number of copies of the final EIS are available from the Public Reference Room identified above. In addition, the final EIS has been mailed to Federal, State, and local agencies; elected officials; public libraries; newspapers; parties to the proceeding; and public interest groups, individuals, and affected landowners who requested a copy of the EIS.

In accordance with the Council on Environmental Quality's (CEQ) regulations implementing the NEPA, no agency decision on a proposed action may be made until 30 days after the U.S. Environmental Protection Agency publishes a notice of availability of a final EIS. However, the CEQ regulations provide an exception to this rule when an agency decision is subject to a formal internal appeal process which allows other agencies or the public to make

their views known. In such cases, the agency decision may be made at the same time the notice of the final EIS is published, allowing both periods to run concurrently. The Commission's decision for this proposed action is subject to a 30-day rehearing period.

Additional information about the Project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet website (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659 or at *FERCOnlineSupport@ferc.gov*. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1261 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7387–019]

Erie Boulevard Hydropower, L.P.; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

May 28, 2004.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New major license.

b. *Project No.:* 7387–019.

c. *Date Filed:* October 20, 2003.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Piercefield Hydroelectric Project.

f. *Location:* On the Raquette River, in St. Lawrence and Franklin Counties, New York. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

h. *Applicant Contact:* Mr. Jerry L. Sabattis, P.E., Licensing Coordinator, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Liverpool, New York 13088, telephone (315) 413–2787 and Mr. Samuel S. Hirschey, P.E., Manager, Licensing, Compliance, and Project Properties, 225 Greenfield Parkway, Liverpool, New York 13088, telephone (315) 413–2790.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.gov*, telephone (202) 502–8675 or Kim Carter, *kim.carter@ferc.gov*, telephone (202) 502–6486.

j. *Deadline for Filing Motions to Intervene and Protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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.

Motions to intervene may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *Description of Project:* The Piercefield Hydroelectric Project consists of the following existing facilities: (a) A dam comprising of a 495-foot-long concrete retaining wall/dike on the right shoreline, a 620-foot-long concrete and masonry stone retaining wall located along the left shoreline, a 118-foot-long stop log spillway, and a 294-foot-long, 22-foot-high ogee spillway section; (b) a 110-foot-long concrete masonry forebay, having a varying width of 40 feet to 55 feet with an average depth of 17 feet; (c) a reservoir having a surface area of 370 acres at normal pool elevation of 1542.0 feet m.s.1.; (d) a powerhouse containing 3 generating units having a total rated capacity of 2,700 kW; (e) 600-V and 2.4-kV generator leads; (f) 600-V/46-kV, 2.5-MVA and the 2.4/46-kV, 2.5-MVA three-phase transformer banks; (g) 3.84-mile, 46-kV transmission line; and (h) appurtenant facilities.

m. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. Anyone may submit a protest or a motion to intervene in accordance with the requirements of rules of practice and procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005.Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1265 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7387–019]

Erie Boulevard Hydropower, L.P.; Notice of Intent To Prepare an Environmental Assessment, Notice of Paper Scoping and Soliciting Scoping Comments, and Notice of Revised Schedule for Processing Application

May 27, 2004.

Take notice that the following hydroelectric application has been filed with Commission and is available for public inspection:

a. *Type of Application:* New major license.

b. *Project No.:* 7387–019.

c. *Date Filed:* October 20, 2003.

d. *Applicant:* Erie Boulevard Hydropower, L.P.

e. *Name of Project:* Piercefield Hydroelectric Project.

f. *Location:* On the Raquette River, in St. Lawrence and Franklin Counties, New York. The project does not occupy Federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, P.E., Licensing Coordinator, Erie Boulevard Hydropower, L.P., 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2787, and Mr. Samuel S. Hirschey, P.E., Manager, Licensing, Compliance, and Project Properties, 225 Greenfield Parkway, Liverpool, New York, 13088, telephone (315) 413–2790.

i. *FERC Contact:* Janet Hutzel, *janet.hutzel@ferc.gov*, telephone (202) 502–8675 or Kim Carter, *kim.carter@ferc.gov*, telephone (202) 502–6486.

j. Deadline for filing scoping comments: 60 days from issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Scoping comments may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filing. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. After logging into the e-Filing system, select ''Comment on Filing'' from the Filing Type Selection screen and continue with the filing process.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The Piercefield Hydroelectric Project consists of the following existing facilities: (a) A dam comprising of a 495-foot-long concrete retaining wall/dike on the right shoreline, a 620-foot-long concrete and masonry stone retaining wall located along the left shoreline, a 118-foot-long stop log spillway, and a 294-foot-long, 22-foot-high ogee spillway section; (b) a 110-foot-long concrete masonry forebay, having a varying width of 40 feet to 55 feet with an average depth of 17 feet; c) a reservoir having a surface area of 370 acres at normal pool elevation of 1542.0 feet m.s.1.; (d) a powerhouse containing 3 generating units having a total rated capacity of 2,700 kW; (e) 600-V and 2.4-kV generator leads; (f) 600-V/46-kV, 2.5-MVA and the 2.4/46-kV, 2.5-MVA three-phase transformer banks; (g) 3.84-mile, 46-kV transmission line; and (h) appurtenant facilities.

m. A Scoping Document (SD) outlining the subject areas to be addressed in the EA was distributed to the parties on the Commission(s mailing list. Copies of the scoping document and application are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field (P–7387), to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov*, or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph (h) above.

n. You may also register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. *Scoping Process:* Scoping is intended to advise all parties regarding the proposed scope of the EA and to seek additional information pertinent to this analysis. The Commission intends to prepare one Environmental Assessment (EA) on the project in accordance with the National Environmental Policy Act (NEPA). The EA will consider both site-specific and cumulative environmental effects and reasonable alternatives to the proposed action. Should substantive comments requiring re-analysis be received on the NEPA document, we would consider preparing a final NEPA document.

At this time, the Commission staff does not anticipate holding formal public or agency scoping meetings near the project site. Instead, staff will conduct paper scoping.

As part of scoping the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from participants all available information, especially quantifiable data, on the resources at issue; (3) encourage comments from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Consequently, interested entities are requested to file with the Commission any data and information concerning environmental resources and land uses in the project area and the project's impacts to the aforementioned.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1271 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD04–8–000]

Electric Creditworthiness Standards; Notice of Technical Conference and Request for Written Comments on Credit-Related Issues for Electric Transmission Providers, Independent System Operators, and Regional Transmission Organizations

May 28, 2004.

The Federal Energy Regulatory Commission (Commission) will hold a technical conference to consider, among other things, whether the Commission should institute a generic rulemaking to consider credit-related issues for service provided by jurisdictional Transmission Providers,[1] Independent System

[1] For the purposes of this notice, a Transmission Provider is defined as an entity that provides electric transmission service that is neither an ISO nor an RTO.

Operators (ISO), and Regional Transmission Organizations (RTO). The conference will take place on July 13, 2004, at 9:30 a.m. (e.s.t.) in the Commission Meeting Room 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. In preparation for the technical conference, the Commission invites all interested parties to submit written comments, addressing the subjects and questions discussed below, on or before June 25, 2004.

Background

While credit policies of regulated utilities have always been a component of the Commission's regulatory agenda, changes in the industry (especially changes in the types of participants in the market) have caused credit-related issues to become increasingly significant. In particular, due to market conditions and price volatility experienced recently within the industry, many participants in competitive energy markets have been subject to downgrades (often below investment grade levels) by credit rating agencies. In fact, some of these market participants have been forced to seek bankruptcy protection from creditors. As a result, credit downgrades have raised the level of concern regarding credit-related risks to Transmission Providers and ISOs/RTOs.[2] At the same time, certain market participants have alleged that Transmission Providers and ISOs/RTOs have sought excessive levels of credit support from customers and thereby have effectively foreclosed full market participation by competitive entities. In this regard, higher than necessary credit requirements may exacerbate the financial strain on market participants, reducing the amount of participation and liquidity in the market; lower liquidity, in turn, reduces choices for customers and reduces the transparency and competitiveness of the market.

We note that the Commission issued recently the Gas Credit NOPR[3] to standardize the creditworthiness provisions in the natural gas industry. In that NOPR, the Commission stated that standardized creditworthiness provisions in the gas industry will promote consistent practices across markets and utilities and provide customers with an objective and transparent creditworthiness evaluation.[4]

With respect to credit-related policy concerns for Transmission Providers in the electric industry, the Commission believes that there may be a lack of transparency in the creditworthiness requirements in the pro forma Open Access Transmission Tariff (OATT);[5] that is, it does not provide specific credit standards and processes but instead only requires that Transmission Providers utilize ''reasonable credit review procedures'' and that such ''review shall be made in accordance with standard commercial practices.'' As a result, the Commission believes that the credit policies of Transmission Providers may contain differing or unclear credit requirements for customers. Therefore, we seek comment (as discussed further in the questions below) on whether the Commission should consider a similar course for the electric industry as the one it took in relation to the gas industry in the Gas Credit NOPR (*i.e.*, implement standardized and comprehensive tariff-based creditworthiness procedures).

As for credit-related policy issues in the context of ISOs/RTOs, the Commission believes that there are ways to reduce credit/default exposure in those markets.[6] We note that ISOs/RTOs are typically non-profit entities that administer the market on behalf of market participants. As such, in ISO/RTO markets credit is collectively extended by market participants to each individual market participant. Therefore, if one market participant defaults, it falls upon the remaining participants to make up the shortfall (*i.e.*, the default risk is mutualized). Although we recognize that some ISO/RTO markets use instruments such as insurance to reduce this risk, such instruments are expensive and the ultimate responsibility still lies with market participants. Accordingly, the Commission seeks comment on (as discussed further in the questions below) ways to reduce credit exposure and minimize mutualized default risk in ISO/RTO markets.

Although up to this point the Commission has treated various credit-related issues in this notice as only being applicable to either Transmission Providers or ISOs/RTOs, the Commission believes, as discussed further below, that there may be credit-related solutions that are potentially applicable to both Transmission Providers and ISOs/RTOs.

To address the concerns discussed above, the Commission is holding a technical conference, and information gathered from that conference will be of material use to the Commission in understanding the range of issues regarding credit requirements in the electric industry. In addition, in order to assist the Commission in its preparation for that conference, the Commission invites all interested persons to submit written comments on any of the subjects discussed above, the specific questions posed below, or other issues related to credit requirements in the electric industry.

Questions for Comment

The Commission seeks comments on the following questions:

A. Questions Regarding Transmission Providers:

1. Should credit requirements for wholesale electric transmission services be standardized?

2. Do the existing OATTs and/or credit polices of Transmission Providers contain either unreasonable or unclear requirements for customers?

3. Does the pro forma OATT provide sufficient transparency with regard to credit requirements? If not, what problems are caused from that lack of transparency? What changes to the pro forma OATT would be appropriate to consider as a remedy to better facilitate access to markets and therefore market participation?

4. Should the Commission establish creditworthiness standards for the

[2] Although the Commission recognizes that there is some overlap, credit concerns facing Transmission Providers and ISOs/RTOs differ in important ways. The Commission has noted that the differences between ISOs/RTOs and Transmission Providers warrants different approaches to creditworthiness requirements for these entities. *See* Duquesne Light Co., 103 FERC ¶ 61,227 P 17 (2003). Recognizing these unique differences and the disparate problems that these entities pose, in this notice, the Commission often treats separately credit concerns regarding Transmission Providers and ISOs/RTOs.

[3] *See* Creditworthiness Standards for Interstate Natural Gas Pipelines, 69 FR 8587 (Feb. 25, 2004), FERC Stats, & Regs., Notice of Proposed Regulations ¶ 32,573 (2004) (Gas Credit NOPR).

[4] *Id.*

[5] Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities and Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 Fed. Reg. 21,540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888–A, 62 Fed. Reg. 12,274 (March 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), aff'd in relevant part, remanded in part on other grounds sub nom. *Transmission Access Policy Study Group, et al.* v. *FERC*, 225 F.3d 667 (D.C. Cir. 2000), aff'd sub nom. *New York* v. *FERC*, 535 U.S. 1 (2002).

[6] For example, the Commission recently approved a New England Power Pool (NEPOOL) filing that revises its existing financial assurance and billing policies to implement a weekly billing and payment system for charges in NEPOOL's hourly markets, which by significantly decreasing the billing and settlement period reduces the amount of collateral required from market participants and the exposure of NEPOOL to a default by market participants. *See* New England Power Pool, Docket No. ER04–697–000.

electric industry similar to those that it proposed in the Gas Credit NOPR? What are the relevant differences between the gas and electric industries that need to be taken into account?

5. For the purpose of credit standards, does it matter who the market participant is (*e.g.*, are there different standards for financial institutions as opposed to municipal entities)?

B. Questions Regarding ISOs/RTOs:

6. Are credit requirements and costs related to creditworthiness negatively impacting market participation in ISO/RTO markets and liquidity levels?

7. What cost-effective steps can be taken to minimize exposure to risk among market participants (*e.g.*, shortening settlement periods, or evaluating credit on a net obligation basis)?

8. Are there elements of existing market rules that can be improved to reduce unnecessary credit requirements?

9. How can the mutualized default risk in ISOs/RTOs be reduced?

10. How can barriers to entry, if there are any, be minimized, while preserving adequate collateral to protect markets?

11. For the purpose of credit standards, does it matter who the market participant is (*e.g.*, are there different credit standards for investor owned participants with physical assets, financial institutions, and municipal entities)?

12. How should a load serving entity that is the provider of last resort be treated in the event of a default?

13. Is there a need to allow for regional variations among RTOs/ISOs with regard to credit policies? If so, what level of standardization may be achieved?

C. Questions regarding credit-related solutions with potential applicability to Transmission Providers and/or ISO/RTO markets:

14. Can clearing be applied to the electricity industry with respect to Transmission Providers and/or non-ISO/RTO markets, as it has been in other sectors (for instance, equity and fixed income clearing is performed by the Depository Trust Clearing Corporation for trading on the New York Stock Exchange, American Stock Exchange, and NASDAQ)? If so, what type of new or existing entity would provide the clearing services and does it need to be granted a franchise monopoly for any or all of its services?

15. What options are available to either insure or otherwise outsource risks currently self-insured or mutualized by market participants (*e.g.*, insurance, credit default swaps)?

16. What are the benefits and costs of the preceding credit-related solutions (*i.e.*, clearing and insurance) or other such solutions? Are they cost-effective? How would the benefits and costs of these solutions be allocated?

Public Comment Information

As discussed, in preparation for the technical conference, the Commission invites interested persons to submit written comments on the matters and issues raised in this notice, including any related matters or alternative proposals that commenters may wish to discuss. All written comments should be submitted on or before June 25, 2004. We are hereby establishing a proceeding, Docket No. AD04–8–000, to provide an opportunity for all interested persons to submit comments, and all future actions with respect to the technical conference will also be taken under that docket.

All comments should include an executive summary; the summary should not exceed two pages and the comments should not exceed 15 pages. In addition, if answering a specific question in paragraph eight of this notice, please identify the number of that question. To conserve time and avoid unnecessary expense, persons with common interests or views are encouraged to submit joint comments. Comments related to this proceeding may be filed in paper format or electronically. However, the Commission strongly encourages electronic filings. Those filing electronically do not need to make a paper filing.

Documents filed electronically via the Internet can be prepared in a variety of formats, including MS Word, Portable Document Format, Real Text Format, or ASCII format, as listed on the Commission's Web site at *http://www.ferc.gov*, under the e-Filing link. The e-Filing link provides instructions for how to Login and complete an electronic filing. First time users will have to establish a user name and password. The Commission will send an automatic acknowledgment to the sender's e-mail address upon receipt of comments.

For paper filings, the original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

All comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426, during regular business hours. In addition, all comments may be viewed, printed, or downloaded remotely via the Internet through FERC's home page using the eLibrary link.

Conference Information

As noted, upon evaluation of the comments requested herein, the Commission will hold a technical conference open to all interested persons. The technical conference will be held on July 13, 2004 at 9:30 a.m. (e.s.t.) in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC.

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. You may register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new issuances and filings related to this docket. For additional information please contact Eugene Grace, 202–502–8543 or by e-mail at *eugene.grace@ferc.gov*.

Magalie R. Salas,

Secretary.

[FR Doc. E4–1269 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL04–6–000]

Solicitation Processes for Public Utilities; Supplemental Notice of Agenda for Technical Conference

May 28, 2004.

1. The attachment to this supplemental notice provides additional

information concerning the technical conference to discuss issues associated with solicitation processes for power procurement on June 10, 2004, from 9 a.m. to 12 p.m. (e.s.t.) in the Commission's Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. All interested persons are invited to attend. Microphones will be available to enable those in the audience to participate in the discussion as issues arise.

2. 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 10 days after the Commission receives the transcripts. Additionally, 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.''

3. For more information about the conference, please contact Mary Beth Tighe at 202–502–6452 or *mary.beth.tighe@ferc.gov*.

Magalie R. Salas,

Secretary.

Solicitation Processes for Public Utilities Technical Conference, June 10, 2004, 9 a.m.–12 p.m. (e.s.t.)

Agenda

In *Boston Edison Re: Edgar Electric Company*, 55 FERC ¶ 61,382 (1991) (*Edgar*), the Commission held that in analyzing market-based rate transactions between an affiliated buyer and seller, the Commission must ensure that the buyer has chosen the lowest-cost supplier from among the options presented, taking into account both price and non-price terms. As such, *Edgar* addressed the concern in that case that utilities would choose to purchase power from their affiliates at inflated prices rather than at competitive levels from unaffiliated entities. The effect was that such higher costs could have been passed on to wholesale (as well as retail) customers. The Commission's *Edgar* policy, which has been in effect since 1991, involves a review of power purchase agreements between affiliates to determine whether the rate is just and reasonable and whether there is an absence of self-dealing. Recently, with the development of significant amounts of independent generation in every region, competitive alternatives to affiliate purchases have increased. Thus, the Commission is interested in having a discussion addressing the issues listed below.

Panelists will each be asked to address issues among the following in an overview followed by questions and general discussion:

1. Is the Commission's *Edgar* policy adequate to ensure that the most competitive power procurement choice is being made by utilities when affiliates are involved? Should the policy include a requirement for a competitive solicitation? If so, how should the solicitation be designed?

2. To the extent you have been involved in solicitation processes to date:

■ Please briefly describe the product solicited (*e.g.*, power purchase agreement, dispatchable asset-backed contract, firm load-following power).

■ Was the competition on price only or also non-price factors?

■ How were the following treated: transmission service; FTRs; participation by affiliates, including the use of utility land/facilities?

■ Discuss creditworthiness screening, conduct of the bid/auction, post-bid negotiations, regulatory oversight, and independent observer.

3. Prior to initiating a competitive solicitation, should there be a collaborative process (outreach) to achieve consensus on issues with respect to the solicitation design and the evaluation criteria to be used? If so, what should be the characteristics of that collaborative process?

4. Are there ways to ensure that there is no preferential dealing among affiliates in soliciting and awarding power purchase agreements? If so, what safeguards should be included?

5. To what extent are transmission service and monopsony power factors in the competitive solicitation? What criteria should be established under the Commission's *Edgar* policy to ensure that all participants are treated in a non-discriminatory manner?

6. Should a market monitor or independent entity oversee the administration of solicitations in which affiliates are involved? To the extent a monitor is involved, what criteria should be established to ensure that the monitor is independent of all parties participating in the solicitation process? For example, how should the monitor be selected? By whom? To whom should the monitor report? Who should pay for the monitor's services?

7. Provide proposals for ''best practice'' competitive solicitation methods or principles that could be used to ensure that power transactions are the result of a fair, transparent and accurate process.

8. How can FERC and State regulators coordinate in the design and oversight of solicitation processes?

Panel I—9 a.m.–10:30 a.m. (e.s.t): John Hilke, Federal Trade Commission; Craig Roach, Principal, Boston Pacific Company, Inc.; Harvey Reiter, Partner, Stinson, Morrison, Hecker LLP; Ron Walter, Executive Vice President—Development, Calpine Corporation; Ed Comer, Vice President and General Counsel, Edison Electric Institute.

Break—10:30 a.m.–10:45 a.m.

Panel II—10:45 a.m.–12 p.m.: Tom Welch, Chairman, Maine Public Utilities Commission; Elizabeth Benson, Energy Associates, CLECO Independent Monitor; Ershel Redd, President, Western Region, NRG; Ted Banasiewicz, Principal, USA Power LLC.

[FR Doc. E4–1266 Filed 6–7–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2004–0095; FRL–7361–9]

TSCA Section 8 (a) Preliminary Assessment Information Rule (PAIR); Request for Comment on Renewal of Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), EPA is seeking public comment and information on the following Information Collection Request (ICR): TSCA Section 8 (a) Preliminary Assessment Information Rule (PAIR) (EPA ICR No. 0586.10, OMB No. 2070–0054). This ICR involves a collection activity that is currently approved and scheduled to expire on October 31, 2004. The information collected under this ICR relates to identifying, assessing, and managing human health and environmental risks from chemical substances, mixtures, and categories. The ICR describes the nature of the information collection activity and its expected burden and costs. Before submitting this ICR to the Office of Management and Budget (OMB) for review and approval under the PRA, EPA is soliciting comments on specific aspects of the collection.

DATES: Written comments, identified by the docket ID number OPPT–2004–0095, must be received on or before August 9, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 564–8086; fax number: (202) 564–4765; e-mail address: *brown.gerry@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you are a manufacturer or importer of chemical substances, mixtures, or categories. Potentially affected entities may include, but are not limited to:

- Chemical manufacturing (NAICS 325), e.g., basic chemical manufacturing, resin, synthetic rubber, artificial and synthetic fibers and filaments manufacturing, paint, coating, adhesive manufacturing and other chemical product, and preparation manufacturing.
- Petroleum refineries (NAICS 32411), e.g., crude petroleum refineries, diesel fuels manufacturing, fuel oils manufacturing, oil refineries, petroleum distillation.

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 technical person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPPT–2004–0095. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the EPA Docket Center, Rm. B102-Reading Room, EPA West, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The EPA Docket Center Reading Room telephone number is (202) 566–1744 and the telephone number for the OPPT Docket, which is located in EPA Docket Center, is (202) 566–0280.

2. *Electronic access*.You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

C. How and to Whom Do I Submit the Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

EPA may not be able to consider your comment.

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPPT–2004–0095. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *oppt.ncic@epa.gov*, Attention: Docket ID Number OPPT–2004–0095. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.

3. *By hand delivery or courier*. Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number OPPT–2004–0095. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

D. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider when I Prepare My Comments for EPA?

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

F. What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of PRA, EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates of the burdens of the proposed collections of information.
3. Enhance the quality, utility, and clarity of the information to be collected.
4. Minimize the burden of the collections of information on those who are to respond, including through the use of appropriate automated or electronic collection technologies or other forms of information technology, e.g., permitting electronic submission of responses.

II. What Information Collection Activity or ICR Does this Action Apply to?

EPA is seeking comments on the following ICR:

Title: TSCA Section 8 (a) Preliminary Assessment Information Rule (PAIR).

ICR numbers: EPA ICR No. 0586.10, OMB Control No. 2070–0054 .

ICR status: This ICR is currently scheduled to expire on October 31, 2004. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register**, are listed in 40 CFR part 9, and included on the related collection instrument or form, if applicable.

Abstract: Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes EPA to promulgate rules under which manufacturers, importers, and processors of chemical substances and mixtures must maintain records and submit reports to EPA. EPA has promulgated the PAIR under TSCA section 8(a). EPA uses the PAIR to collect information to identify, assess, and manage human health and environmental risks from chemical substances, mixtures, and categories. The PAIR requires chemical manufacturers and importers to complete a standardized reporting form to help evaluate the potential for adverse human health and environmental effects caused by the manufacture or importation of identified chemical substances, mixtures, or categories. Chemicals identified by EPA or any other Federal Agency, for which a justifiable information need for production, use or exposure-related data can be satisfied by the use of the PAIR are proper subjects for TSCA section 8(a) PAIR rulemaking. In most instances the information that EPA receives from a PAIR report is sufficient to satisfy the information need in question.

Responses to the collection of information are mandatory (see 40 CFR part 712). Respondents may claim all or part of a notice confidential. EPA will

disclose information that is covered by a claim of confidentiality only to the extent permitted by, and in accordance with, the procedures in TSCA section 14 and 40 CFR part 2.

III. What are EPA's Burden and Cost Estimates for this ICR?

Under PRA, ''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. For this collection it 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.

The ICR provides a detailed explanation of this estimate, which is only briefly summarized in this notice. The annual public burden for this collection of information is estimated to average 29.5 hours per response. The following is a summary of the estimates taken from the ICR:

Respondents/affected entities: Manufacturers or importers of chemical substances, mixtures, or categories.

Estimated total number of potential respondents: 11.

Frequency of response: On occasion.

Estimated total/average number of responses for each respondent: 1.79.

Estimated total annual burden hours: 580 hours.

Estimated total annual burden costs: $48,972.

IV. Are There Changes in the Estimates from the Last Approval?

This request reflects a decrease in the total estimated burden of 2,775 hours (from 3,355 hours to 580 hours) from that currently in the OMB inventory. This decrease is attributable to a reduction in the assumed number of PAIR reports filed annually, from an average of 118.00 per year to 19.67 per year. The more recent average is based on the past 3 years (2001–2003) of PAIR reporting data. The annual average numbers of respondents (reporting sites) is 11, which has also decreased from the previous assumed average of 48.

V. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 25, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

[FR Doc. 04–12916 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7671–9]

Fourth Meeting of the World Trade Center Expert Technical Review Panel To Continue Evaluation on Issues Relating to Impacts of the Collapse of the World Trade Center Towers

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: The World Trade Center Expert Technical Review Panel will hold its fourth meeting intended to provide for greater input from individuals on ongoing efforts to monitor the situation for New York residents and workers impacted by the collapse of the World Trade Center. The panel members will help guide the EPA's use of the available exposure and health surveillance databases and registries to characterize any remaining exposures and risks, identify unmet public health needs, and recommend any steps to further minimize the risks associated with the aftermath of the World Trade Center attacks. The panel will meet several times over the course of approximately two years. These panel meetings will be open to the public, except where the public interest requires otherwise. Information on the panel meeting agendas, documents (except where the public interest requires otherwise), and public registration to attend the meetings will be available from an Internet Web site. EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003.

DATES: The fourth meeting of this panel will be held on June 22, 2004, from 9:30 a.m. to 5:15 p.m., eastern daylight savings time. On-site registration will begin at 9 a.m.

ADDRESSES: The meeting will be held at St. John's University, Saval Auditorium, 101 Murray Street (between Greenwich Street and West Side Highway), New York City (Manhattan). The auditorium is located on the second floor of the building and is handicap accessible. A government-issued identification (*e.g.*, driver's license) is required for entry.

FOR FURTHER INFORMATION CONTACT: For meeting information, registration and logistics, please see the Web site *http://www.epa.gov/wtc/panel* or contact ERG at (781) 674–7374. The meeting agenda and logistical information will be posted on the Web site and will also be available in hard copy. For further information regarding the technical panel, contact Ms. Lisa Matthews, EPA Office of the Science Advisor, telephone (202) 564–6669 or e-mail: *matthews.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Meeting Information

Eastern Research Group, Inc., (ERG), an EPA contractor, will coordinate the meeting. To attend the meeting as an observer, please register by visiting the Web site at: *http://www.epa.gov/wtc/panel.* You may also register for the meeting by calling ERG's conference registration line between the hours of 9 a.m. and 5:30 p.m. e.d.s.t. at (781) 674–7374 or toll free at 1–800–803–2833, or by faxing a registration request to (781) 674–2906 (include full address and contact information). Pre-registration is strongly recommended as space is limited, and registrations are accepted on a first-come, first-served basis. The deadline for pre-registration is June 17, 2004. Registrations will continue to be accepted after this date, including on-site registration, if space allows. There will be a limited time at the meeting for oral comments from the public. Oral comments will be limited to five (5) minutes each. If you wish to make a statement during the observer comment period, please check the appropriate box when you register at the Web site. Please bring a copy of your comments to the meeting for the record or submit them electronically via e-mail to *meetings@erg.com,* subject line: WTC.

II. Background Information

Immediately following the September 11, 2001, terrorist attack on New York City's World Trade Center, many federal agencies, including the EPA, were called upon to focus their technical and scientific expertise on the national emergency. EPA, other federal agencies, New York City, and New York State public health and environmental authorities focused on numerous cleanup, dust collection and ambient air monitoring activities to ameliorate and better understand the human health impacts of the disaster. Detailed information concerning the environmental monitoring activities that were conducted as part of this response is available at the EPA Response to 9–11 Web site at *http://www.epa.gov/wtc/.*

In addition to environmental monitoring, EPA efforts also included toxicity testing of the dust, as well as the development of a human exposure and health risk assessment. This risk assessment document, *Exposure and Human Health Evaluation of Airborne Pollution from the World Trade Center Disaster,* is available on the Web at *http://www.epa.gov/ncea/wtc.htm*). Numerous additional studies by other Federal and State agencies, universities, and other organizations have documented impacts to both the outdoor and indoor environments, and to human health.

While these monitoring and assessment activities were ongoing, and the cleanup at Ground Zero itself was occurring, EPA began planning for a program to clean and monitor residential apartments. From June 2002 until December 2002, residents impacted by World Trade Center dust and debris in an area of about 1 mile by 1 mile south of Canal Street were eligible to request either federally-funded cleaning and monitoring for airborne asbestos or monitoring of their residences. The cleanup continued into the summer of 2003, by which time the EPA had cleaned and monitored 3,400 apartments and monitored 800 apartments. Detailed information on this portion of the EPA response is also available at *http://www.epa.gov/wtc/.*

A critical component of understanding long-term human health impacts is the establishment of health registries. The World Trade Center Health Registry is a comprehensive and confidential health survey of those most directly exposed to the contamination resulting from the collapse of the World Trade Center towers. It is intended to give health professionals a better picture of the health consequences of 9/11. It was established by the Agency for Toxic Substances and Disease Registry (ATSDR) and the New York City Department of Health and Mental Hygiene (NYCDHMH) in cooperation with a number of academic institutions, public agencies and community groups. Detailed information about the registry can be obtained from the registry Web site at: *http://www.nyc.gov/html/doh/html/wtc/index.html.*

In order to obtain individual advice on the effectiveness of these programs, unmet needs and data gaps, the EPA has convened a technical panel of experts who have been involved with World Trade Center assessment activities. Dr. Paul Gilman, EPA Science Advisor, serves as Chair of the panel, and Dr. Paul Lioy, Professor of Environmental and Community Medicine at the Environmental and Occupational Health Sciences Institute of the Robert Wood Johnson Medical School—UMDNJ and Rutgers University, serves as Vice Chair. A full list of the panel members, a charge statement and operating principles for the panel are available from the panel Web site listed above. Panel meetings typically will be one-or two-day meetings, and they will occur over the course of approximately a two-year period. Panel members will provide individual advice on issues the panel addresses. These meetings will occur in New York City and nearby locations. All of the meetings will be announced on the Web site and by a **Federal Register** Notice, and they will be open to the public for attendance and brief oral comments. The focus of the fourth meeting is to discuss issues surrounding development of a World Trade Center dust signature. The panel will also discuss issues surrounding development of a screening survey to determine the geographic extent of World Trade Center contamination, as well as World Trade Center contamination as a function of building use and cleaning history. Further information on panel meetings can be found at the Web site identified earlier: *http://www.epa.gov/wtc/panel.*

III. How To Get Information on E-DOCKET

EPA has established an official public docket for this action under Docket ID No. ORD–2004–0003. 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 Office of Environmental Information (OEI) Docket in the Headquarters EPA Docket Center, (EPA/DC) EPA West Building, Room B102, 1301 Constitution Avenue, NW., Washington, DC 20460. 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 OEI Docket is (202) 566–1752; facsimile: (202) 566–1753; or e-mail: *ORD.Docket@epa.gov.*

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.

Dated: June 2, 2004.

Paul Gilman,

EPA Science Advisor and Assistant Administrator for Research and Development.

[FR Doc. 04–12930 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7671–7]

Administrative Order on Consent—Portland Cement, Site 5

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement agreement pursuant to section 122(g)(4) of CERCLA, request for public comment, and notice of opportunity for a public meeting.

SUMMARY: Notice is hereby given of a proposed settlement pursuant to section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9622(g)(4), concerning the Portland Cement Superfund site, Site 5 (''Site 5''). The proposed settlement is embodied in an Administrative Order on Consent (''AOC'') between the United States, on behalf of the United States Environmental Protection Agency (''EPA''), the present owners of Site 5 (the 1967 Trust and the 1981 Trust, hereinafter, collectively the ''Trusts''),

and the Trustees of those Trusts (collectively the ''Parties'').

Site 5 is located at approximately 2500 West and Cudahy Lane in Section 10, Township 1 North, Range 1 West, SLB&M, Davis County, Utah. Site 5 encompasses approximately 16.5 acres of undeveloped land surrounded by salt flats. Site 5 is one of five sites on which cement kiln dust (''CKD'') and refractory brick from the former Portland Cement Plant in Salt Lake City, Utah were dumped. Approximately 42,500 to 68,000 cubic yards of CKD were distributed unevenly in piles of varying degrees at Site 5. In 1994, EPA reached a settlement with Lone Star Industries, the then owner and operator of the former Portland Cement Plant which provided financial settlement to EPA with respect to the five CKD dump sites in Utah. EPA has undertaken response actions at Site 5, and in 2001, EPA completed an Engineering Evaluation/Cost Analysis (EE/CA) for Site 5. EPA has incurred and will continue to incur response costs at or in connection with Site 5.

Under the proposed AOC, the Trusts and Trustees agree to pay $75,000 within 30 days of the effective date of the AOC and agree to pay a percentage of the Net Sales Proceeds of any sale of the Property as outlined in the AOC. In exchange, the United States will provide covenants to the Trusts and Trustees under section 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 or 9607 and under section 7003 of Resource Conservation and Recovery Act, 42 U.S.C. 6973 and will provide full and complete contribution protection for the Trusts and Trustees.

Comment Period and Opportunity for Public Meeting: For thirty (30) days following the date of publication of this document, July 8, 2004, the Agency will receive written comments relating to the proposed AOC and will accept a request for a public meeting in the affected area. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center at the U.S. Environmental Protection Agency, Region 8, 999 18th Street, Denver, Colorado, 80202. The Agreement is subject to final approval after the comment period and after the public meeting, if a public meeting is requested. A public meeting will only be held, if one is requested. Please send all comments on this document or request for a public meeting to Richard Sisk, Legal Enforcement Attorney (8ENF–L), U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, CO 80202–2466.

FOR FURTHER INFORMATION CONTACT: Richard Sisk, Legal Enforcement Attorney (ENF–L), Legal Enforcement Program, U.S. Environmental Protection Agency, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, (303) 312–6638. Please contact Sharon Abendschan, Enforcement Specialist at (303) 312–6957 for requests for copies of the Administrative Order on Consent/or repository location(s) where supporting documentation may be found and reviewed.

Dated: May 28, 2004.

Michael T. Risner,

Acting Assistant Regional Administrator, Office of Enforcement, Compliance and Environmental Justice, Region VIII.

[FR Doc. 04–12929 Filed 6–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7670–4]

Public Water System Supervision Program Revision for the State of South Carolina

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of South Carolina is revising its approved Public Water System Supervision Program. South Carolina has adopted drinking water regulations for the Radionuclide, Arsenic, and Long Term 1 Enhanced Surface Water Treatment Rules. EPA has determined that the State Radionuclide, Arsenic, and Long Term 1 Surface Water Treatment Rules meet all minimum federal requirements, and are no less stringent than the corresponding federal regulations. Therefore, EPA has tentatively decided to approve the State program revisions. All interested parties may request a public hearing. A request for a public hearing must be submitted by July 8, 2004 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by July 8, 2004, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on July 8, 2004. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, at the following offices: South Carolina Department of Health and Environmental Control, Bureau of Water, 2600 Bull Street, Columbia, South Carolina 29201. Environmental Protection Agency, Region 4, Drinking Water Section, 61 Forsyth Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Janine Morris, EPA Region 4, Drinking Water Section at the Atlanta address given above (telephone 404–562–9480).

Authority: (Section 1401 and section 1413 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142).

Dated: May 24, 2004.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–12701 Filed 6–7–04; 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 11, 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 that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the

Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before August 9, 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 Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0179.

Title: Section 73.1590, Equipment Performance Measurements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit, not-for-profit institutions.

Number of Respondents: 13,049.

Estimated Time per Response: 0.5–18 hours.

Frequency of Response: Recordkeeping requirement.

Total Annual Burden: 12,335 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1590 requires licensees of AM, FM, TV, and Class A stations, except licensees of Class D non-commercial educational FM stations authorized to operate with 10 watts or less output power, to make equipment performance measurements for each main transmitter. These measurements and a description of the equipment and procedure used in making the measurements must be kept on file at the transmitter for two years and must be made available to the FCC upon request. FCC staff use the data in field investigations to identify sources of interference.

OMB Control Number: 3060–0173.

Title: Section 73.1207, Rebroadcasts.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Business or other for-profit entities; not-for-profit institutions.

Number of Respondents: 5,562.

Estimated Hours per Response: 0.5 hours.

Frequency of Response: Recordkeeping; on occasion reporting requirement; third party disclosure.

Total Annual Burden: 5,056 hours.

Total Annual Cost: None.

Privacy Impact Assessment: No impact(s).

Needs and Uses: 47 CFR 73.1207 requires licensees of broadcast stations to obtain written permission from an originating station prior to retransmitting any program or any part thereof. A copy of the written consent must be kept in the station's files and made available to the FCC upon request. This written consent assures the Commission that prior authorization for retransmission of a program was obtained. Section 73.1207 also requires stations that use the National Institutes of Standards and Technology (NIST) time signals to notify the NIST semiannually of use of time signals.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–12943 Filed 6–7–04; 8:45 am]

BILLING CODE 6712–10–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

May 26, 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 August 9, 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: 3060–0166.

Title: Part 42, Preservation of Records of Communications Common Carriers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 52.

Estimated Time per Response: 2 hours.

Frequency of Response: Recordkeeping requirement; on occasion and third party disclosure reporting requirements.

Total Annual Burden: 104 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: Part 42 prescribes the regulations governing the preservation of records of communications common carriers that are fully subject to the jurisdiction of the FCC. The requirements are necessary to ensure the availability of carrier records needed by Commission staff for regulatory purposes.

OMB Control Number: 3060–0736.

Title: Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96–149.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 4 respondents, 48 responses.

Estimated Time per Response: 3 hours.

Frequency of Response: Monthly and third party disclosure reporting requirements.

Total Annual Burden: 144 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Needs and Uses: In the Report and Order issued in CC Docket No. 96–149, the Commission adopted safeguards to govern Bell Operating Companies (BOCs) entry into certain new markets. In the MO&O issued in the proceeding, the CCB (currently Wireline Competition Bureau) requires each BOC to provide, among other things, unaffiliated entities all listing information, including unlisted and unpublished numbers as well as the numbers of other local exchange carriers' customers that the BOC uses to provide E911 services. The requirements are necessary to ensure the BOCs' compliance the Act.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–12944 Filed 6–7–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Proposed Collection; Comment Request: Third National Survey of Older Americans Act Title III Service Recipients

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements contained in consumer assessment surveys that are used by AoA to measure program performance for programs funded under Title III of the Older Americans Act.

DATES: Submit written or electronic comments on the collection of information by August 9, 2004.

ADDRESSES: Submit electronic comments on the collection of information to: *Cynthia.Bauer@aoa.gov.*

Submit written comments on the collection of information to Administration on Aging, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Cynthia Agens Bauer on 202–357–0145.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, AoA is publishing notice of the proposed collection of information set forth in this document. With respect to the following collection of information, AoA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of AoA's functions, including whether the information will have practical utility; (2) the accuracy of AoA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumption used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Third National Survey of Older Americans Act Title III Service Recipients—NEW—This information collection, which builds on earlier national pilot studies and performance measurement tools developed by AoA grantees in the Performance Outcomes Measures Project (POMP), will include consumer assessment surveys for the Home-delivered Nutrition Program, Transportation Services and the National Family Caregiver Support Program. Copies of the POMP instruments can be located at *http://www.gpra.net.* This information will be used by AoA to track performance outcome measures; support budget requests; comply with Government Performance and Results Act (GPRA) reporting requirements; provide information for OMB's Program Assessment Rating Tool (PART); provide national benchmark information for POMP grantees and inform program development and management initiatives.

AoA estimates the burden of this collection of information as follows: Respondents: Individuals; Number of Respondents: 6,000; Number of Responses per Respondent: one; Average Burden per Response: 30 minutes; Total Burden: 3,000 hours.

Dated: June 2, 2004.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 04–12858 Filed 6–7–04; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Grants and Cooperative Agreements; Availability, etc: Developmental Disabilities Programs, Help America Vote Training and Technical Assistance Projects

Federal Agency Name: Administration for Children and Families, Administration on Developmental Disabilities.

Funding Opportunity Title: Help America Vote Act Training and Technical Assistance to Assist Protection and Advocacy Systems to Establish or Improve Voting Access for Individuals with Disabilities.

Announcement Type: Competitive Grant-Initial.

Funding Opportunity Number: HHS–2004–ACF–ADD–DH–0002.

CFDA Number: 93.618.

DATES: Applications are due July 8, 2004. Letters of Intent are due June 23, 2004.

I. Funding Opportunity Description

This announcement is covered under the Help America Vote Act of 2002, Public Law (P.L.) 107–252, title II subtitle D, part 2, section 291 (42 U.S.C. 15461). Provisions under this section provide for the award of grants for Training and Technical Assistance to assist P & A Systems in:

- Promoting full participation in the electoral process for individuals with

disabilities, including registering to vote, casting a vote, and accessing polling places;

• Developing proficiency in the use of voting systems and technologies as they affect individuals with disabilities;

• Demonstrating and evaluating the use of such systems and technologies by individuals with disabilities (including blindness) in order to assess the availability and use of such systems and technologies for such individuals; and

• At least one recipient must provide training and technical assistance for non-visual access.

Objectives: Project funds must be used to provide training and technical assistance to Protection & Advocacy Systems in their promotion of self sufficiency and protection of the rights of individuals with disabilities as this affects the establishment or improvement of access to full participation in the voting process.

Background

The Help America Vote Act (HAVA), signed into law by President George W. Bush on October 29, 2002, contains three grant programs that will enable a grantee to establish, expand, and improve access to and participation in the election process by individuals with the full range of disabilities (*e.g.*, visual impairments including blindness, hearing impairments including deafness, the full range of mobility impairments including gross motor and fine motor impairments, emotional impairments, and intellectual impairments).

On January 23, 2004, with the passage of Pub. L. 108–199, Congress appropriated $9,941,000 for States to operate the Election Assistance for Individuals with Disabilities (EAID) grant program; $4,622,565 for payments for Protection and Advocacy systems, and $347,935 (7 percent) for payments to provide training and technical assistance to the Protection & Advocacy Systems with respect to the activities carried out under section 291 of the Help America Vote Act. HAVA assigned responsibility for the EAID to the Secretary of Health and Human Services (the Secretary), who has assigned responsibility for carrying out this program to the Administration for Children and Families (ACF). Within ACF, the Administration on Developmental Disabilities (ADD) is responsible for the administration of the EAID grant program. This announcement pertains to the 7 percent of Protection and Advocacy Systems funds to be used for grants to entities that will provide technical assistance to Protection and Advocacy Systems.

Goals of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is located within the Administration for Children and Families (ACF), Department of Health and Human Services (DHHS). ADD shares goals with other ACF programs that promote the economic and social well-being of families, children, individuals, and communities.

Purpose of the Administration on Developmental Disabilities

The Administration on Developmental Disabilities (ADD) is the lead agency within ACF and HHS responsible for planning and administering programs to promote the self-sufficiency and protect the rights of persons with developmental disabilities. ADD administers the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (the DD Act). The DD Act provides for funding to States to provide advocacy, promote consumer oriented systems change and capacity building activities, and facilitate network formations.

The four programs funded under the DD Act are:

(1) State Councils on Developmental Disabilities that engage in advocacy, capacity building and systematic change activities.

(2) Protection and Advocacy Systems (P&As) that protect the legal and human rights of individuals with developmental disabilities.

(3) The National Network of University Centers for Excellence in Developmental Disabilities, (UCEDD) that engages in training, outreach and dissemination activities.

(4) Projects of National Significance (PNS), including Family Support Grants that support the development of family-centered and directed systems for families of children with disabilities, including children with developmental disabilities.

(5) In addition to responsibilities under the DD Act, ADD has been given the responsibility by the Secretary of the U.S. Department of Health and Human Services for three grant programs authorized under the Help America Vote Act of 2002 (HAVA), Pub. L. 107–252. This announcement is for the HAVA Training and Technical Assistance to Assist Protection and Advocacy Systems to Establish or Improve Voting Access for Individuals with Disabilities program.

II. Award Information

Funding Instrument Type: Grant.

Anticipated total Priority Area Funding: $347,935.

Anticipated Number of Awards: 1–4 per project and budget period.

Ceiling on amount of Individual Awards: $347,935 per project and budget period.

Floor on Individual Award Amounts: $86,984 per project and budget period.

Average projected Award Amount: $86,984 per project and budget period.

Project Periods for Awards: 12-month project and budget periods.

III. Eligibility Information

1. Eligible Applicants

County governments, City or township governments, Special district governments, State controlled institutions of higher education, Native American tribal governments (federally recognized), Non-profit organizations having a 501(c)(3) status with the Internal Revenue Code, other than institutions of higher education, Non-profit organizations that do not have 501(c)(3) status with the Internal Revenue Code, other than institutions of higher education, Private institutions of higher education, and faith-based organizations.

Additional Information on Eligibility:

An applicant is only eligible to receive a payment for this grant if the applicant:

• Is a public or private non-entity with demonstrated experience in voting issues for individuals with disabilities.

• Is governed by a board with respect to which the majority of its members are individuals with disabilities or family members of such individuals or individuals who are blind; and

• Submits to the Secretary (delegated to ACF) an application at such time, in such manner and containing such information as the Secretary (delegated to ACF) may require.

All applications that are developed jointly by more than one agency or organization must identify only one organization as the lead organization and the official applicant. The other participating organizations can be included as co-participants, sub-grantees, or subcontractors.

Any non-profit organization submitting an application must include proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption 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 singed by the parent organization that the applicant organization is a local non-profit affiliate.

Applicants are cautioned that the ceiling for individual awards is $347,935.

Applications exceeding the $347,935 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that are developed jointly by more than one agency or organization that fail to identify only one organization as the lead organization and the official applicant will be considered non-responsive and returned without review.

2. Cost Sharing or Matching—None

3. Other (if Applicable)

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at*http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $347,935. Applications exceeding the $347,935 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications that are developed jointly by more than one agency or organization that fail to identify only one organization as the lead organization and the official applicant will be considered non-responsive and returned without review.

Pre-award costs are not allowable charges to this program. Applications that include pre-award costs with their submission will be considered non-responsive and will not be eligible for funding under this announcement.

Construction is not an allowable activity or expenditure under this program. Applications that propose construction projects or expenditures 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

U.S. Department of Health and Human Services (HHS), Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Mail Stop HHH 405–D, Washington, DC 20447, Attention: Margaret Schaefer, Phone: (202) 690–5962, E-mail: *mschaefer@acf.hhs.gov.*

2. Content and Form of Application Submission

Letter of Intent

Applicants must submit a letter of intent stating the name of the applicant organization and/or lead organization that will apply for this grant.

The Application

Each application package must include an original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.Gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants. Gov.

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in 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 from Grants. Gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *http://www.Grants.gov.* You must search for the downloadable application package by the CFDA number.

Application Requirements

A complete application consists of the following items in this order:

—Application for Federal Assistance (SF 424, REV 4–92);
—Budget Information—Non-Construction Programs (SF 424A, REV 4–92);
—Budget justification for Section B—Budget Categories;
—Proof of designation as lead agency;
—Table of Contents;
—Letter from the Internal Revenue Service, etc. to prove non-profit status, if necessary;
—Copy of the applicant's approved indirect cost rate agreement, if appropriate;
—Project Summary/Abstract

—Project Narrative
—Any appendices/attachments;
—Assurances—Non-Construction Programs (Standard Form 424B, REV 4–92);
—Certification Regarding Lobbying;
—Certification of Protection of Human Subjects, if necessary; and
—Certification of the Pro-Children Act of 1994 (Environmental Tobacco Smoke), signature on the application represents certification.

Applicants must demonstrate proof of non-profit status and this proof must be included in their applications. Applicants must include 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.

Application Format

Length: Applications must not exceed 25 pages.

Instructions for Preparing the Application and Completing Application Forms

The SF 424, SF 424A, SF 424A—Page 2 and Certifications/Assurances are contained in the application package that can be accessed as mentioned earlier in this announcement. Please prepare your application in accordance with the following instructions:

1. SF 424 Page 1, Application Cover Sheet

Please read the following instructions before completing the application cover sheet. An explanation of each item is included. Complete only the items specified.

Top of Page. Please indicate that you are applying for new or implementation funds.

Item 1. ''Type of Submission''—Preprinted on the form.

Item 2. ''Date Submitted'' and ''Applicant Identifier''—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. ''Date Received By State''—State use only (if applicable).

Item 4. ''Date Received by Federal Agency''—Leave blank.

Item 5. ''Applicant Information''.

''Legal Name''—Enter the legal name of applicant organization. For applications developed jointly, enter the name of the lead organization only. There must be a single applicant for each application.

''Organizational Unit''—Enter the name of the primary unit within the applicant's organization that will actually carry out the project activity. Do not use the name of an individual as the applicant. If this is the same as the applicant organization, leave the organizational unit blank.

''Address''—Enter the complete address that the organization actually uses to receive mail, since this is the address to which all correspondence will be sent. Do not include both street address and P.O. Box number unless both must be used in mailing.

''Name and telephone number of the person to be contacted on matters involving this application (give area code)''—Enter the full name (including academic degree, if applicable) and telephone number of a person who can respond to questions about the application. This person should be accessible at the address given here and will receive all correspondence regarding the application.

Item 6. ''Employer Identification Number (EIN)''—Enter the employer identification number of the applicant organization, as assigned by the Internal Revenue Service, including, if known, the Central Registry System suffix.

Item 7. ''Type of Applicant''—Self-explanatory.

Item 8. ''Type of Application''—Preprinted on the form.

Item 9. ''Name of Federal Agency''—Preprinted on the form.

Item 10. ''Catalog of Federal Domestic Assistance Number and

Title''—Enter the Catalog of Federal Domestic Assistance (CFDA) number assigned to the program under which assistance is requested and its title.

Item 11. ''Descriptive Title of Applicant's Project''—Enter the project title. The title is generally short and is descriptive of the project, not the priority area title.

Item 12. ''Areas Affected by Project''—Enter the governmental unit where significant and meaningful impact could be observed. List only the largest unit or units affected, such as State, county, or city. If an entire unit is affected, list it rather than subunits.

Item 13. ''Proposed Project''—Enter the desired start date for the project and projected completion date.

Item 14. ''Congressional District of Applicant/Project''—Enter the number of the Congressional district where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located. If Statewide, a multi-State effort, or nationwide, enter ''00.''

Item 15. Estimated Funding Levels.

In completing 15a through 15f, the dollar amounts entered should reflect, for a 12-month project period, the total amount requested.

Item 15a. Enter the amount of Federal funds requested in accordance with the preceding paragraph. This amount should be no greater than the maximum amount specified in the priority area description.

Items 15b–e. Enter the amount(s) of funds from non-Federal sources that will be contributed to the proposed project. Items b-e are considered cost-sharing or ''matching funds.'' The value of third party in-kind contributions should be included on appropriate lines as applicable. For more information regarding funding as well as exceptions to these rules, see Part III, Sections C and D.

Item 15f. Enter the estimated amount of program income, if any, expected to be generated from the proposed project. Do not add or subtract this amount from the total project amount entered under item 15g. Describe the nature, source and anticipated use of this program income in the Project Narrative Statement.

Item 15g. Enter the sum of items 15a–15e.

Item 16a. ''Is Application Subject to Review By State Executive Order 12372 Process? Yes.''—Enter the date the applicant contacted the SPOC regarding this application. Select the appropriate SPOC from the listing provided online at *http://www.whitehouse.gov/ omb/ grants/spoc.html.* The review of the application is at the discretion of the SPOC. The SPOC will verify the date noted on the application.

Item 16b. ''Is Application Subject to Review By State Executive Order 12372 Process? No.''—Check the appropriate box if the application is not covered by E.O. 12372 or if the program has not been selected by the State for review.

Item 17. ''Is the Applicant Delinquent on any Federal Debt?''—Check the appropriate box. This question applies to the applicant organization, not the person who signs as the authorized

representative. Categories of debt include audit disallowances, loans and taxes.

Item 18. ''To the best of my knowledge and belief, all data in this application/preapplication are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.''—To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for signature of this application by this individual as the official representative must be on file in the applicant's office, and may be requested from the applicant.

Item 18a–c. ''Typed Name of Authorized Representative, Title, Telephone Number''—Enter the name, title and telephone number of the authorized representative of the applicant organization.

Item 18d. ''Signature of Authorized Representative'' —Signature of the authorized representative named in Item 18a. At least one copy of the application must have an original signature. Use colored ink (not black) so that the original signature is easily identified.

Item 18e. ''Date Signed''—Enter the date the application was signed by the authorized representative.

2. SF 424A—Budget Information—Non-Construction Programs

This is a form used by many Federal agencies. For this application, Sections A, B, C, E and F are to be completed. Section D does not need to be completed.

Sections A and B should include the Federal as well as the non-Federal funding for the proposed project covering (1) the total project period of 17 months or less or (2) the first year budget period, if the proposed project period exceeds 15 months.

Section A—Budget Summary. This section includes a summary of the budget. On line 5, enter total Federal costs in column (e) and total non-Federal costs (none for these projects), including third party in-kind contributions, but not program income, in column (f). Enter the total of (e) and (f) in column (g).

Section B—Budget Categories. This budget, which includes the Federal as well as non-Federal funding for the proposed project (none for these projects), covers the total project period of 12 months or less. It should relate to item 15g, total funding, on the SF 424. Under column (5), enter the total requirements for funds (Federal and non-Federal [none]) by object class category.

A separate budget justification should be included to fully explain and justify major items, as indicated below. The types of information to be included in the justification are indicated under each category. For multiple year projects, it is desirable to provide this information for each year of the project. The budget justification should immediately follow the second page of the SF 424A.

Personnel—Line 6a. Enter the total costs of salaries and wages of applicant/grantee staff. Do not include the costs of consultants; this should be included on line 6h, ''Other.''

Justification: Identify the principal investigator or project director, if known. Specify by title or name the percentage of time allocated to the project, the individual annual salaries, and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Fringe Benefits—Line 6b. Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a break-down of amounts and percentages that comprise fringe benefit costs, such as health insurance, FICA, retirement insurance, etc.

Travel—6c. Enter total costs of out-of-town travel (travel requiring per diem) for staff of the project. Do not enter costs for consultant's travel or local transportation, which should be included on Line 6h, ''Other.''

Justification: Include the name(s) of traveler(s), total number of trips, destinations, length of stay, transportation costs and subsistence allowances.

Equipment—Line 6d. Enter the total costs of all equipment to be acquired by the project. For state and local governments, including Federally recognized Indian Tribes, ''equipment'' is tangible, non-expendable personal property having a useful life of more than one year and acquisition cost of $5,000 or more per unit.

Justification: Equipment to be purchased with Federal funds must be justified. The equipment must be required to conduct the project, and the applicant organization or its sub grantees must not have the equipment or a reasonable facsimile available to the project. The justification also must contain plans for future use or disposal of the equipment after the project ends.

Supplies—Line 6e. Enter the total costs of all tangible expendable personal property (supplies) other than those included on Line 6d.

Justification: Specify general categories of supplies and their costs.

Contractual—Line 6f. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations, including delegate agencies. Also include any contracts with organizations for the provision of technical assistance. Do not include payments to individuals on this line. If the name of the contractor, scope of work, and estimated total costs are not available or have not been negotiated, include on Line 6h, ''Other.''

Justification: Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, and the estimated dollar amounts of the awards as part of the budget justification. Whenever the applicant/grantee intends to delegate part or the entire program to another agency, the applicant/grantee must complete this section (Section B, Budget Categories) for each delegate agency by agency title, along with the supporting information. The total cost of all such agencies will be part of the amount shown on Line 6f. Provide backup documentation identifying the name of contractor, purpose of contract, and major cost elements.

Construction—Line 6g. Not applicable. New construction is not allowable.

Other—Line 6h. Enter the total of all other costs. Where applicable, such costs may include, but are not limited to: Insurance; medical and dental costs; noncontractual fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use; training costs, including tuition and stipends; training service costs, including wage payments to individuals and supportive service payments; and staff development costs. Note that costs identified as ''miscellaneous'' and ''honoraria'' are not allowable.

Justification: Specify the costs included.

Total Direct Charges—Line 6i. Enter the total of Lines 6a through 6h.

Indirect Charges—6j. Enter the total amount of indirect charges (costs). If no indirect costs are requested, enter ''none.'' Generally, this line should be used when the applicant (except local governments) has a current indirect cost rate agreement approved by the Department of Health and Human Services or another Federal agency.

Local and State governments should enter the amount of indirect costs determined in accordance with DHHS

requirements. When an indirect cost rate is requested, these costs are included in the indirect cost pool and should not be charged again as direct costs to the grant.

In the case of training grants to other than State or local governments (as defined in title 45, Code of Federal Regulations, part 74), the Federal reimbursement of indirect costs will be limited to the lesser of the negotiated (or actual) indirect cost rate or 8 percent of the amount allowed for direct costs, exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

For training grant applications, the entry under line 6j should be the total indirect costs being charged to the project. The Federal share of indirect costs is calculated as shown above. The applicant's share is calculated as follows:

(a) Calculate total project indirect costs (a*) by applying the applicant's approved indirect cost rate to the total project (Federal and non-Federal) direct costs.

(b) Calculate the Federal share of indirect costs (b*) at 8 percent of the amount allowed for total project (Federal and non-Federal) direct costs exclusive of any equipment charges, rental of space, tuition and fees, post-doctoral training allowances, contractual items, and alterations and renovations.

(c) Subtract (b*) from (a*). The remainder is what the applicant can claim as part of its matching cost contribution.

Justification: Enclose a copy of the indirect cost rate agreement.

Applicants subject to the limitation on the Federal reimbursement of indirect costs for training grants should specify this.

Total—Line 6k. Enter the total amounts of lines 6i and 6j.

Program Income—Line 7. Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount.

Justification: Describe the nature, source, and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources. This section summarizes the amounts of non-Federal resources that will be applied to the grant. Enter this information on line 12 entitled ''Totals.'' In-kind contributions are defined in title 45 of the Code of Federal Regulations, Parts 74.51 and 92.24, as ''property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the sub grantee, or a cost-type contractor under the grant or sub grant.''

Justification: Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs. Not applicable.

Section E—Budget Estimate of Federal Funds Needed for Balance of the Project. This section should only be completed if the total project period exceeds 17 months.

Totals—Line 20. For projects that will have more than one budget period, enter the estimated required Federal funds for the second budget period (months 13 through 24) under column ''(b) First.'' If a third budget period will be necessary, enter the Federal funds needed for months 25 through 36 under ''(c) Second.'' Columns (d) and (e) are not applicable in most instances, since ACF funding is almost always limited to a three-year maximum project period. They should remain blank.

Section F—Other Budget Information.

Direct Charges—Line 21. Not applicable.

Indirect Charges—Line 22. Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Project Summary/Abstract

Clearly mark this separate page with the applicant's name as shown in item 5 of the SF 424, the priority area number as shown at the top of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project. Provide a summary description that accurately and concisely reflects the proposal. The summary should describe the objectives of the project, the approaches to be used and the expected outcomes. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals must be closed captioned and audio described). The project summary description, together with the information on the SF 424, will constitute the project ''abstract.'' This is a major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

Forms and Certifications

The applicant must complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

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.'' The forms are located on the Web at *http://www.acf.hhs.gov/programs/ofs/forms.htm.*

3. Submission Dates and Times

Letters of Intent are due on June 23, 2004 at the following address: U.S. Department of Health and Human Services (HHS), Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Mail Stop 405–D, Humphrey Building, Washington, DC 20447, Attention: Margaret Schaefer, Phone: (202) 690–5962, E-mail: *mschaefer@acf.hhs.gov.*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Standard Time) on July 8, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: U.S. Department of Health and Human Services (HHS),

Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, 8th floor, SW., Washington, DC 20447, Attention: Lois B. Hodge.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the following address: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Grants Management, 901 D St Aerospace Center, ACF Mailroom, 2nd Floor, SW., Washington, DC 20447, Attention Lois B. Hodge.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. 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
Notice of Intent	As described in Section IV and III.	Per description in Section IV. Content and Form of Application Submission.	By deadline date specified in **DATES** section of announcement.
Table of Contents	As described in Section IV	Per description in Section IV	By application due date.
Project Summary Abstract	As described in Section IV		By application due date.
Narrative	As described in Section V	Format described in Section V	By application due date.
SF 424, SF 424A, and SF 424B.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Proof of Non-profit Status (if applicable).	As described in Section III and IV.	Per description in Section III and IV	By application due date.
Copy of Indirect Cost rate agreement (if applicable).	As described in Section IV	Per description in Section IV	By application due date.
Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL).	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.
Environmental Tobacco Smoke Certification.	Per required form	May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.	By application due date.

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/form.htm*.	By application due date.

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia. Applicants from these jurisdictions need not take action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of

Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

Applicants are cautioned that the ceiling for individual awards is $347,935.

Applications exceeding the $347,935 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Pre-award costs are not allowable charges to this program. Applications that include pre-award costs with their submission will be considered non-responsive and will not be eligible for funding under this announcement.

Construction is not an allowable activity or expenditure under this program. Applications that propose construction projects or expenditures will be considered non-responsive and will not be eligible for funding under this announcement.

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: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Grants Management, 370 L'Enfant Promenade, 8th floor, SW., Washington, DC 20447, Attention: Lois B. Hodge.

Hand Delivery: 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 that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: U.S. Department of Health and Human Services (HHS), Administration for Children and Families, Office of Grants Management, 901 D St., Aerospace Center, ACF Mailroom, 2nd Floor, SW., Washington, DC 20447, Attention: Lois B. Hodge.

Electronic Submission: Please *see* section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

V. Application Review Information

General Instructions for the Uniform Project Description

The following are instructions and guidelines on how to prepare the ''Narrative'' section of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139 which expires 4/30/2007.

An agency may nor 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.

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.

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.

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.

Results or Benefits Exepected

Identify the results and benefits to be derived. For example, describe how the activities that your organization undertakes will promote the full participation in the electoral process for individuals with the full range of disabilities, including registering to vote, casting a vote, and accessing polling places.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss

the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria

In considering how applicants will carry out the responsibilities addressed under this announcement, competing applications for financial assistance will be reviewed and evaluated against the following criteria:

1. Criteria

Criterion 1: Approach (Maximum 35 Points)

Applications will be evaluated based on the extent to which they discuss the criteria to be used to evaluate the results, explain the methodology that will be used to determine if the needs identified and discussed are being met, and the results and benefits identified are being achieved. Applicants will be evaluated based on the extent to which they present a plan that (1) clearly reflects an understanding of the characteristics, needs and services currently available to the targeted population; (2) provides appropriate services that directly address the needs of the target population; (3) is evidence-based and grounded in theory and practice; (4) is appropriate and feasible; and (5) can be reliably evaluated.

Applications will be evaluated based on the extent to which they outline a plan of action pertaining to the scope and detail on how the proposed work will be accomplished for each project, and include a definition of the goals and specific measurable objectives for the project; (8 points).

Applications will be evaluated based on the extent to which they identify the kinds of data to be collected and maintained and discuss the criteria to be used to evaluate the results and success of the project. For example, the applicant may provide a description of how the proposed project will be evaluated to determine the extent to which it has achieved its stated goals and objectives; the applicant may also provide a description of methods of evaluation that include the use of performance measures that are clearly related to the intended outcome of the project; (8 points).

Applications will be evaluated based on the extent to which they describe any unusual features of the project, such as design or technological innovation, reductions in cost or time, or extraordinary social and community involvement; (5 points).

Applications will be evaluated based on the extent to which they provide for each project, when possible, a quantitative description of the accomplishments to be achieved and, when quantification is not possible, a list of activities, in chronological order, to show the schedule of accomplishments and their target date; (4 points).

Applications will be evaluated based on the extent to which they describe the products to be developed during the implementation of the proposed project, such as questionnaires, interview guides, data collection instruments, software, internet applications, reports, article outcomes, evaluation results, and a dissemination plan for conveying the information; (4 points).

Applications will be evaluated based on the extent to which they cite factors which might accelerate or decelerate the work and provide reasons for taking this approach as opposed to others (3 points); and

Applications will be evaluated based on the extent to which they list each organization, operator, consultant, or other key individual who will work on the project along with a short description of the nature of their effort of contribution; (3 points).

Criterion 2: Objectives and Need for Assistance (Maximum 25 Points)

Applications will be evaluated based on the extent to which the applicant describes the context of the proposed demonstration project, including the geographic location, environment, magnitude and severity of the problem(s) to be solved and the needs to be addressed.

Applications will be evaluated based on the extent to which they demonstrate the need for assistance and describes the principal and subordinate objectives for the project; (10 points).

Applications will be evaluated based on the extent to which they specifically mention any relevant physical, economic, social, financial, institutional, or other problems requiring a solution; (5 points).

Applications will be evaluated based on the extent to which they provide supporting documentation or other testimonies from concerned interests other than the applicant; (5 points).

Applications will be evaluated based on the extent to which they provide relevant data based on planning studies (4 points); and

Applications will be evaluated based on the extent to which they provide relevant maps and other graphic aids; (1 point).

Criterion 3: Results or Benefits Expected (Maximum 20 Points)

Applications will be evaluated based on the extent to which they identify the results and benefits to be derived and the anticipated contribution to policy, practice, theory, and research.

Applications will be evaluated based on the extent to which they clearly describe the project benefits and results as they relate to the objectives of the project; (10 points).

Applications will be evaluated based on the extent to which they provide information regarding how the project will build on current theory, research, evaluation and best practices to contribute to increased knowledge and understanding of the problems, issues, or effective strategies and practices in family support; (10 points).

Criterion 4: Organizational Profile (15 Points)

Applications will be evaluated based on the extent to which they identify how the applicant organization (or the unit within the organization that will have responsibility for the project) is structured, the types and quantity of services, and the research and management capabilities it possesses. Applications will be evaluated based on the extent to which the applicant demonstrates a capacity to implement the proposed project including (1) experience with similar projects; (2) experience with the target population; (3) qualifications and experience of the project leadership; (4) commitment to developing and sustaining work among key stakeholders; (5) experience and commitment of any proposed consultants and subcontractors; and (6) appropriateness of the organizational structure, including its management information system, to carry out the project.

Application will be evaluated based on the extent to which they identify the background of the project director/principal investigator and key project staff (such as the inclusion of name, address, and training, educational background and other qualifying experience) and the extent to which they demonstrate that the experience of the organization is such that the applicant may effectively and efficiently administer this project, for example, this can include providing brief resumes of key project staff; (4 points).

Applications will be evaluated based on the extent to which they provide a brief background description of how the applicant organization is organized, the types and quantity of services it provides, and the research and management capabilities it possesses; (4 points). Applications will be evaluated based on the extent to which they describe the competence of the project team and its demonstrated ability to

produce a final product that is readily comprehensible and usable (4 points); and

Applications will be evaluated based on the extent to which they demonstrate the direct relationship of the project to the applicant organization such as an organizational chart that illustrates the relationship of the project to the current organization; (3 points).

Criterion 5: Budget and Budget Justification (5 Points)

Applications will be evaluated based on the extent to which the applicant presents a budget with reasonable project costs, appropriately allocated across component areas, and sufficient to accomplish the objectives, such as the inclusion of a justification for and documentation of the dollar amount requested.

Applications will be evaluated based upon the extent to which they include a narrative budget justification that describes how the categorical costs are derived and a discussion of the reasonableness and appropriateness of the proposed costs. Line item allocations and justifications are required for Federal funds.

Applicants have the option of omitting the Social Security Numbers and specific salary rates of the proposed project personnel from the two copies submitted with the original applications to ACF. For purposes of the outside review process, applicants may elect to summarize salary information on the copies of their application. All necessary salary information must, however, appear on the signed original application for ACF.

Applications will be evaluated based on the extent to which they discuss and justify the costs of the proposed project as being reasonable and programmatically justified in view of the activities to be conducted and the anticipated results and benefits (3 points); and

Applications will be evaluated based on the extent to which they describe the fiscal control and accounting procedures that will be used to ensure prudent use, proper disbursement, and accurate accounting of funds received under this program announcement; (2 points).

2. Review and Selection Process

Each application submitted under this program announcement will undergo a pre-review to determine that (1) the application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding. It is necessary that applicants state specifically which funding announcement they are applying for. Applications will be screened for appropriateness. If applications are found to be inappropriate for the funding announcement in which they are submitted, applicants will be contacted for verbal approval of redirection to a more appropriate priority area. Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The results of these reviews will assist the Commissioner and ADD program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications generally will be considered in order of the average scores assigned by reviewers. The evaluation criteria were designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement. Federal reviewers will be used for the review process.

VI. Award Administration Information

1. Award Notices

The successful applicants will be notified through the issuance of a Financial Assistance Award. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing by the Administration on Developmental Disabilities.

2. Administrative and National Policy Requirements

45 CFR part 74 or 45 CFR part 92.

3. Reporting

Programmatic Reports: Semi-annually.

Financial Reports: Semi-annually.

Special Reporting Requirements: None.

All grantees are required to submit semi-annual program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

VII. Agency Contacts

Program Office Contact: Margaret Schaefer, Administration for Children and Families, Administration on Developmental Disabilities, 370 L'Enfant Promenade, SW., Mail Stop HHH 405–D, Washington, DC 20447, Phone: (202) 690–5962, E-mail: *mschaefer@acf.hhs.gov.*

Grants Management Office Contact: Lois Hodge, Administration for Children and Families, Office of Grants Management, 370 Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401–2344, E-mail *LHodge@acf.hhs.gov.*

VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/add*; *http://www.nass.org.*

Dated: May 27, 2004.

Patricia Morrissey,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 04–12892 Filed 6–7–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003P–0296]

Romano Cheese for Manufacturing Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kerry, Inc., Eau Galle Cheese Factory, First District Association, and Mullins Cheese, Inc., jointly to market test romano cheese for manufacturing that deviates from the U.S. standard of identity for romano cheese § 133.183 (21 CFR 133.183). The purpose of the temporary permit is to allow the coapplicants to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

DATES: This permit is effective for 15 months, beginning on the date the permit holders introduced or caused the introduction of the test product into interstate commerce, but not later than September 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ritu Nalubola, Center for Food Safety and

Applied Nutrition (HFS–820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2371.

SUPPLEMENTARY INFORMATION: In accordance with § 130.17 (21 CFR 130.17) concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued jointly to Kerry, Inc., 352 East Grand Ave., Beloit, WI 53511; Eau Galle Cheese Factory, N6765 State Hwy., Durand, WI 54736; First District Association, 101 South Swift Ave., Litchfield, MN 55355; and Mullins Cheese, Inc., 598 Seagull Dr., Mosinee, WI 54455.

The permit covers limited interstate marketing tests of products identified as ''Romano cheese for manufacturing made from cow's milk.'' These products may deviate from the U.S. standard of identity for romano cheese (§ 133.183) in two ways. First, the product is formulated using an enzyme technology that fully cures the cheese in 2 months rather than 5 months and, second, the product is intended only for further manufacturing into food ingredients. Except for these two deviations, the test product meets all the requirements of the standard. The purpose of the temporary permit is to allow the coapplicants to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility.

FDA previously issued a temporary permit jointly to Kerry, Inc., Eau Galle Cheese Factory, and First District Association to market test this product, i.e., romano cheese for manufacturing made from cow's milk (68 FR 46198, August 5, 2003). In accordance with the provisions of § 130.17(b), the permit required the permit holders to introduce or cause the introduction of the test product into interstate commerce no later than November 5, 2003. Because the permit holders did not introduce or cause the introduction of the test product into interstate commerce within the assigned time period, that permit was terminated.

The current permit provides for the temporary marketing of a total of 9 million pounds (4.1 million kilograms) of the test product. The test product will be manufactured by Eau Galle Cheese Factory, N6765 State Hwy., Durand, WI 54736; First District Association, 101 South Swift Ave., Litchfield, MN 55355; and Mullins Cheese, Inc., 598 Seagull Dr., Mosinee, WI 54455. The test product then will be shipped to Kerry, Inc., plants in Wisconsin and Minnesota, where it will be further manufactured into food ingredients. The food ingredients will be distributed by Kerry, Inc., throughout the United States. Each of the ingredients used in the test product must be declared on the labels of the test product as required by the applicable sections of 21 CFR part 101. The permit is effective for 15 months, beginning on the date the permit holders introduced or caused the introduction of the product into interstate commerce, but not later than September 8, 2004.

Dated: May 25, 2004.

Laura Tarantino,

Acting Director, Office of Nutritional Products, Labeling, and Dietary Supplements, Center for Food Safety and Applied Nutrition.

[FR Doc. 04–12842 Filed 6–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2002D–0237]

International Conference on Harmonisation; Evaluation of Stability Data; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Q1E Evaluation of Stability Data.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). This guidance is a supplement to an ICH guidance entitled ''Q1A(R2) Stability Testing of New Drug Substances and Products,'' which was revised from Q1A(R) and published in the **Federal Register** of November 21, 2003 (68 FR 65717). It is intended to provide guidance on how to use stability data, generated in accordance with the principles outlined in Q1A(R2), to propose a retest period for the drug substance and a shelf life for the drug product.

DATES: The guidance is effective June 8, 2004. Submit written or electronic comments at any time.

ADDRESSES: Submit written comments on the guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit written requests for single copies of the guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844. Send two self-addressed adhesive labels to assist the office in processing your requests. Requests and comments should be identified with the docket number found in brackets in the heading of this document. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: Chi-wan Chen, Center for Drug Evaluation and Research (HFD–830), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2001; or Andrew Shrake, Center for Biologics Evaluation and Research (HFM–345), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1148, 301–402–4635.

Regarding the ICH: Janet Showalter, Office of International Programs (HFG–1), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION:

I. Background

In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of

pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health, Labour, and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research and Biologics Evaluation and Research, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, Health Canada's Health Products and Food Branch, and the European Free Trade Area.

In the **Federal Register** of June 14, 2002 (67 FR 40949), FDA published a draft tripartite guidance entitled ''Evaluation of Stability Data.'' The notice gave interested persons an opportunity to submit comments by August 1, 2002.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies in February 2003.

This guidance complements an ICH guidance entitled ''Q1A(R2) Stability Testing of New Drug Substances and Products,'' which was revised from Q1A(R) and published in the **Federal Register** of November 21, 2003. The guidance is intended to provide recommendations on how to use stability data, generated in accordance with the principles outlined in Q1A(R2), to propose a retest period for the drug substance and a shelf life for the drug product.

The recommendations on the evaluation and statistical analysis of stability data provided in Q1A(R2) are brief in nature and limited in scope. Although Q1A(R2) states that regression analysis is an acceptable approach to analyzing quantitative stability data for retest period or shelf life estimation and recommends that a statistical test for batch poolability be performed using a level of significance of 0.25, it includes few details. In addition, Q1A(R2) does not cover situations where multiple factors are involved in a full- or reduced-design study. This guidance provides a clear explanation of the expectations when proposing a retest period or shelf life and storage conditions based on the evaluation of stability data for both quantitative and qualitative test attributes. It outlines recommendations for establishing a retest period or shelf life based on stability data from single or multifactor and full- or reduced-design studies. The guidance further describes when and how limited extrapolation can be undertaken to propose a retest period or shelf life beyond the observed range of data from the long-term storage condition.

This guidance represents the agency's current thinking on this topic. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**) written or electronic comments on the guidance. 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. The guidance and received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm, http://www.fda.gov/cder/guidance/index.htm*, or *http://www.fda.gov/cber/publications.htm*.

Dated: May 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–12889 Filed 6–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Data System for Organ Procurement and Transplantation Network (42 CFR Part 121, OMB No. 0915–0184): Revision

The operation of the Organ Procurement and Transplantation Network (OPTN) necessitates certain recordkeeping and reporting requirements in order to perform the functions related to organ transplantation under contract to HHS. This is a request for an extension of the current record keeping and reporting requirements associated with the OPTN. These data will be used by HRSA in monitoring the contracts for the OPTN and the Scientific Registry of Transplant Recipients (SRTR) and in carrying out other statutory responsibilities. Information is needed to match donor organs with recipients, to monitor compliance of member organizations with OPTN rules and requirements, and to ensure that all qualified entities are accepted for membership in the OPTN.

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN

Section and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
121.3(b)(2) OPTN membership and application requirements for OPOs, hospitals, and histocompatibility laboratories	30	1	30	40	1,200

ESTIMATED ANNUAL REPORTING AND RECORD KEEPING BURDEN—Continued

Section and activity	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
121.6(c) (Reporting) Submitting criteria for organ acceptance	900	1	900	0.5	450
121.6(c) (Disclosure) Sending criteria to OPOs	900	1	900	0.5	450
121.7(b)(4) Reasons for Refusal	900	38	34,200	0.5	17,100
121.7(e) Transplant to prevent organ wastage	278	1.5	417	0.5	209
121.9(b) Designated Transplant Program Requirements	10	1	10	5.0	50
Total	944		36,457		19,459

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Desk Officer, Health Resources and Services Administration, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: June 1, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–12890 Filed 6–7–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Infant Mortality; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Infant Mortality (ACIM).

Dates and Times: July 13, 2004, 9 a.m.–5 p.m. July 14, 2004, 8:30 a.m.–3 p.m.

Place: The Hotel Washington, 15th & Pennsylvania Avenue, NW., Washington, DC 20004, (202) 638–5900.

Status: The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary of Health and Human Services on the following: Department programs that are directed at reducing infant mortality and improving the health status of pregnant women and infants; factors affecting the continuum of care with respect to maternal and child health care, including outcomes following childbirth; strategies to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and *Healthy People 2010* infant mortality objectives.

Agenda: Topics that will be discussed include the following: Low Birth Weight, Preterm Birth, U.S. and International Infant Mortality Data, the Healthy Start Program and Evaluation. Agenda items are subject to change as priorities are further determined.

For Further Information Contact: Anyone requiring information regarding the Committee should contact Peter C. van Dyck, M.D., M.P.H., Executive Secretary, ACIM, Health Resources and Services Administration (HRSA), Room 18–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, telephone: (301) 443–2170.

Individuals who are interested in attending any portion of the meeting or who have questions regarding the meeting should contact Ann M. Koontz, C.N.M., Dr.P.H., HRSA, Maternal and Child Health Bureau, telephone: (301) 443–6327.

Dated: June 1, 2004.

Tina M. Cheatham,

Director, Division of Policy Review and Coordination.

[FR Doc. 04–12891 Filed 6–7–04; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

OIG Draft Supplemental Compliance Program Guidance for Hospitals

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Notice and comment period.

SUMMARY: This **Federal Register** notice seeks the comments of interested parties on a draft supplemental compliance program guidance (CPG) for hospitals developed by the Office of Inspector General (OIG). When the final version of this document is published, it will supplement the OIG's prior compliance program guidance for hospitals issued in 1998. This draft contains new compliance recommendations and an expanded discussion of risk areas. The draft takes into account recent changes to hospital payment systems and regulations, evolving industry practices, current enforcement priorities, and lessons learned in the area of corporate compliance. When published, the final supplemental CPG will provide voluntary guidelines to assist hospitals and hospital systems in identifying significant risk areas and in evaluating and, as necessary, refining ongoing compliance efforts.

DATES: To ensure consideration, comments must be delivered to the address provided below by no later than 5 p.m. on July 23, 2004.

ADDRESSES: Please mail or deliver written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–9–CPG, Room 5246, Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

We do not accept comments by facsimile (FAX) transmission. In commenting, please refer to file code OIG–9–CPG. Comments received timely will be available for public inspection as they are received, generally beginning approximately 2 weeks after publication of a document, in Room 5541 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC 20201 on Monday through Friday of each week from 8 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Darlene M. Hampton or Paul Johnson, Office of Counsel to the Inspector General, (202) 619–0335.

SUPPLEMENTARY INFORMATION:

Background

Several years ago, the OIG embarked on a major initiative to engage the private health care community in preventing the submission of erroneous claims and in combating fraud and abuse in the Federal health care programs through voluntary compliance efforts. In the last several years, the OIG has developed a series of compliance program guidances (CPGs) directed at the following segments of the health care industry: Hospitals; clinical

laboratories; home health agencies; third-party billing companies; the durable medical equipment, prosthetics, orthotics, and supply industry; hospices; Medicare+Choice organizations; nursing facilities; physicians; ambulance suppliers; and pharmaceutical manufacturers. CPGs are intended to encourage the development and use of internal controls to monitor adherence to applicable statutes, regulations, and program requirements. The suggestions made in these CPGs are not mandatory, and the CPGs should not be viewed as exhaustive discussions of beneficial compliance practices or relevant risk areas. Copies of these CPGs can be found on the OIG webpage at *http://oig.hhs.gov.*

Supplementing the Compliance Program Guidance for Hospitals

The OIG originally published a CPG for the hospital industry on February 23, 1998.[1] Since that time, there have been significant changes in the way hospitals deliver, and are reimbursed for, health care services. In response to these developments, on June 18, 2002, the OIG published a notice in the **Federal Register**, titled a ''Solicitation of Information and Recommendations for Revising the Compliance Program Guidance for the Hospital Industry.'' [2] The OIG received 11 comments from various interested parties. In light of the public comments and our consideration of the issues, we have decided to supplement, rather than revise, the 1998 guidance.

Many public commenters sought guidance on the application of specific Medicare rules and regulations related to payment and coverage, an area beyond the scope of this OIG guidance. Hospitals with questions about the interpretation or application of payment and coverage rules or regulations should contact their Fiscal Intermediaries (FIs) or the national CMS office, as appropriate.

To ensure full and meaningful input from the industry, we are publishing this supplemental CPG in draft form with a 45-day comment period. We will then review the comments and publish a final supplemental CPG.

Draft Supplemental Compliance Program Guidance for Hospitals

I. Introduction

Continuing its efforts to promote voluntary compliance programs for the health care industry, the Office of Inspector General (OIG) of the Department of Health and Human Services (the Department) publishes this Supplemental Compliance Program Guidance for Hospitals.[3] This document supplements, rather than replaces, the OIG's 1998 CPG for the hospital industry, 63 FR 8987 (February 23, 1998), which addressed the fundamentals of establishing an effective compliance program.[4] Neither this supplemental CPG, nor the original 1998 CPG, is a model compliance program. Rather, collectively the two documents offer a set of guidelines that hospitals should consider when developing and implementing a new compliance program or evaluating an existing one.

We are mindful that many hospitals have already devoted substantial time and resources to compliance efforts. We believe that those efforts demonstrate the industry's good faith commitment to ensuring and promoting integrity. For those hospitals with existing compliance programs, this document may serve as a benchmark or comparison against which to measure ongoing efforts and as a roadmap for updating or refining their compliance plans.

In crafting this CPG, we considered, among other things, the public comments received in response to the solicitation notice published in the **Federal Register**,[5] as well as relevant OIG and Centers for Medicare & Medicaid Services (CMS) statutory and regulatory authorities (including the Federal anti-kickback statute, together with the safe harbor regulations and preambles,[6] and CMS transmittals and program memoranda); other OIG guidance (such as OIG advisory opinions, Special Fraud Alerts, bulletins, and other guidance); experience gained from investigations conducted by the OIG's Office of Investigations, the Department of Justice, and the State Medicaid Fraud Units; and relevant reports issued by the OIG's Office of Audit Services and Office of Evaluation and Inspections.[7] We also consulted generally with CMS, the Department's Office for Civil Rights, and the Department of Justice.

A. Benefits of a Compliance Program

A successful compliance program addresses the public and private sectors' mutual goals of reducing fraud and abuse; enhancing health care providers' operations; improving the quality of health care services; and reducing the overall cost of health care services. Attaining these goals benefits the hospital industry, the government, and patients alike. Compliance programs help hospitals fulfill their legal duty to refrain from submitting false or inaccurate claims or cost information to the Federal health care programs [8] or engaging in other illegal practices. A hospital may gain important additional benefits by voluntarily implementing a compliance program, including:

- Demonstrating the hospital's commitment to honest and responsible corporate conduct;
- increasing the likelihood of preventing, identifying, and correcting unlawful and unethical behavior at an early stage;
- encouraging employees to report potential problems to allow for appropriate internal inquiry and corrective action; and
- through early detection and reporting, minimizing any financial loss to government and taxpayers, as well as any corresponding financial loss to the hospital.

The OIG recognizes that implementation of a compliance

[1] *See* 63 FR 8987 (February 23, 1998), available on our webpage at *http://oig.hhs.gov/authorities/docs/cpghosp.pdf.*

[2] *See* 67 FR 41433 (June 18, 2002), available on our webpage at *http://oig.hhs.gov/authorities/docs/cpghospitalsolicitationnotice.pdf.*

[3] For purposes of convenience in this guidance, we use the term ''hospitals'' to refer to individual hospitals, multi-hospital systems, health systems that own or operate hospitals, academic medical centers, and any other organization that owns or operates one or more hospitals. Where applicable, the term ''hospitals'' is also intended to include, without limitation, hospital owners, officers, managers, staff, agents, and sub-providers. This guidance primarily focuses on hospitals reimbursed under the inpatient prospective payment system. While other hospitals should find this CPG useful, we recognize that they may be subject to different laws, rules, and regulations and, accordingly, may have different or additional risk areas and may need to adopt different compliance strategies. We encourage all hospitals to establish and maintain ongoing compliance programs.

[4] The 1998 OIG Compliance Guidance for Hospitals is available on our webpage at *http://oig.hhs.gov/authorities/docs/cpghosp.pdf.*

[5] *See* 67 FR 41433 (June 18, 2002), ''Solicitation of Information and Recommendations for Revising a Compliance Program Guidance for the Hospital Industry,'' available on our webpage at *http://oig.hhs.gov/authorities/docs/cpghospitalsolicitationnotice.pdf.*

[6] *See* 42 U.S.C. 1320a–7b(b). *See also* 42 CFR 1001.952. The safe harbor regulations and preambles are available on our webpage at *http://oig.hhs.gov/fraud/safeharborregulations.html#1.*

[7] OIG materials are available on our webpage at *http://oig.hhs.gov.*

[8] The term ''Federal health care programs,'' as defined in 42 U.S.C. 1320a–7b(f), includes any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government (other than the Federal Employees Health Benefit Plan described at 5 U.S.C. 8901–8914) or any State health plan (*e.g.*, Medicaid or a program receiving funds from block grants for social services or child health services). In this document, the term ''Federal health care program requirements'' refers to the statutes, regulations, and other rules governing Medicare, Medicaid, and all other Federal health care programs.

program may not entirely eliminate improper or unethical conduct from the operations of health care providers. However, an effective compliance program demonstrates a hospital's good faith effort to comply with applicable statutes, regulations, and other Federal health care program requirements, and may significantly reduce the risk of unlawful conduct and corresponding sanctions.

B. Application of Compliance Program Guidance

Given the diversity of the hospital industry, there is no single ''best'' hospital compliance program. The OIG recognizes the complexities of the hospital industry and the differences among hospitals and hospital systems. Some hospital entities are small and may have limited resources to devote to compliance measures; others are affiliated with well-established, large, multi-facility organizations with a widely dispersed work force and significant resources to devote to compliance.

Accordingly, this supplemental CPG is not intended to be one-size-fits-all guidance. Rather, the OIG strongly encourages hospitals to identify and focus their compliance efforts on those areas of potential concern or risk that are most relevant to their individual organizations. Compliance measures adopted by a hospital to address identified risk areas should be tailored to fit the unique environment of the organization (including its structure, operations, resources, and prior enforcement experience). In short, the OIG recommends that each hospital adapt the objectives and principles underlying this guidance to its own particular circumstances.

In section II below, titled ''Fraud and Abuse Risk Areas,'' we present several fraud and abuse risk areas that are particularly relevant to the hospital industry. Each hospital should carefully examine these risk areas and identify those that potentially impact the hospital. Next, in section III, ''Hospital Compliance Program Effectiveness,'' we offer recommendations for assessing and improving an existing compliance program to better address identified risk areas. Finally, in section IV, ''Self-Reporting,'' we set forth the actions hospitals should take if they discover credible evidence of misconduct.

II. Fraud and Abuse Risk Areas

This section is intended to help hospitals identify areas of their operations that present a potential risk of liability under several key Federal fraud and abuse statutes and regulations. This section focuses on areas that are currently of concern to the enforcement community and is not intended to address all potential risk areas for hospitals. Importantly, the identification of a particular practice or activity in this section is not intended to imply that the practice or activity is necessarily illegal in all circumstances or that it may not have a valid or lawful purpose underlying it.

This section addresses the following areas of significant concern for hospitals: (A) Submission of accurate claims and information; (B) the referral statutes; (C) payments to reduce or limit services; (D) the Emergency Medical Treatment and Labor Act (EMTALA); (E) substandard care; (F) relationships with Federal health care program beneficiaries; (G) HIPAA Privacy and Security Rules; and (H) billing Medicare or Medicaid substantially in excess of usual charges. In addition, a final section (I) addresses several areas of general interest that, while not necessarily matters of significant risk, have been of continuing interest to the hospital community. This guidance does not create any new law or legal obligations, and the discussions in this guidance are not intended to present detailed or comprehensive summaries of lawful and unlawful activity. Nor is this guidance intended as a substitute for consultation with CMS or a hospital's Fiscal Intermediary (FI) with respect to the application and interpretation of Medicare payment and coverage provisions, which are subject to change. Rather, this guidance should be used as a starting point for a hospital's legal review of its particular practices and for development or refinement of policies and procedures to reduce or eliminate potential risk.

A. Submission of Accurate Claims and Information

Perhaps the single biggest risk area for hospitals is the preparation and submission of claims or other requests for payment from the Federal health care programs. It is axiomatic that all claims and requests for reimbursement from the Federal health care programs—and all documentation supporting such claims or requests—must be complete and accurate and must reflect reasonable and necessary services ordered by an appropriately licensed medical professional who is a participating provider in the health care program from which the individual or entity is seeking reimbursement. Hospitals must disclose and return any overpayments that result from mistaken or erroneous claims.[9] Moreover, the knowing submission of a false, fraudulent, or misleading statement or claim is actionable. A hospital may be liable under the False Claims Act[10] or other statutes imposing sanctions for the submission of false claims or statements, including liability for civil monetary penalties or exclusion.[11] Underlying assumptions used in connection with claims submission should be reasoned, consistent, and appropriately documented, and hospitals should retain all relevant records reflecting their efforts to comply with Federal health care program requirements.

Common and longstanding risks associated with claims preparation and submission include inaccurate or incorrect coding, upcoding, unbundling of services, billing for medically unnecessary services or other services not covered by the relevant health care program, billing for services not provided, duplicate billing, insufficient documentation, and false or fraudulent cost reports. While hospitals should continue to be vigilant with respect to these important risk areas, we believe these risk areas are relatively well-understood in the industry and, therefore, they are not generally addressed in this section.[12] Rather, the following discussion highlights evolving risks or risks that appear to the OIG to be under-appreciated by the industry. The risks are grouped under the following topics: Outpatient procedure coding; admissions and discharges; supplemental payment considerations; and use of information technology. By

[9] *See* 42 U.S.C. 1320a-7b(a)(3).

[10] The False Claims Act (31 U.S.C. 3729–33), among other things, prohibits knowingly presenting or causing to be presented to the Federal government a false or fraudulent claim for payment or approval, knowingly making or using or causing to be made or used a false record or statement to have a false or fraudulent claim paid or approved by the government, and knowingly making or using or causing to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the government. The Act defines ''knowing'' and ''knowingly'' to mean that ''a person, with respect to the information (1) has actual knowledge of the information; (2) acts in deliberate ignorance of the truth or falsity of the information; or (3) acts in reckless disregard of the truth or falsity of the information, and no proof of specific intent to defraud is required.'' 31 U.S.C. 3729(b).

[11] In some circumstances, inaccurate or incomplete reporting may lead to liability under the Federal anti-kickback statute. In addition, hospitals should be mindful that many States have fraud and abuse statutes—including false claims, anti-kickback, and other statutes—that are not addressed in this guidance.

[12] To review the risk areas discussed in the original hospital CPG, *see* 63 FR 8987, 8990 (February 23, 1998), available on our webpage at *http://oig.hhs.gov/authorities/docs/cpghosp.pdf.*

necessity, this discussion is illustrative, not exhaustive, of risks associated with the submission of claims or other information. In all cases, hospitals should consult the applicable laws, rules, and regulations.

1. Outpatient Procedure Coding

The implementation of Medicare's Hospital Outpatient Prospective Payment System (OPPS)[13] increased the importance of accurate procedure coding for hospital outpatient services. Previously, hospital coding concerns mainly consisted of ensuring accurate ICD–9-CM diagnosis and procedure coding for reimbursement under the inpatient prospective payment system (PPS). Hospitals reported procedure codes for outpatient services, but were reimbursed for outpatient services based on their charges for services. With OPPS, procedure codes effectively became the basis for Medicare reimbursement. Under OPPS, each reported procedure code is assigned to a corresponding Ambulatory Payment Classification (APC) code. Hospitals are then reimbursed a predetermined amount for each APC, irrespective of the specific level of resources used to furnish the service. In implementing OPPS, CMS developed new rules governing the use of procedure code modifiers for outpatient coding.[14] Because incorrect procedure coding may lead to overpayments and subject a hospital to liability for the submission of false claims, hospitals need to pay close attention to coder training and qualifications.

Hospitals should also review their outpatient documentation practices to ensure that claims are based on complete medical records and that the medical record supports the level of service claimed. Under OPPS, hospitals must generally include on a single claim all services provided to the same patient on the same day. Coding from incomplete medical records may create problems in complying with this claim submission requirement. Moreover, submitting claims for services that are not supported by the medical record may also result in the submission of improper claims.

In addition to the coding risk areas noted above and in the 1998 hospital CPG, other specific risk areas associated with incorrect outpatient procedure coding include the following:

• *Billing on an outpatient basis for ''inpatient-only'' procedures*—CMS has identified several procedures for which reimbursement is typically allowed only if the service is performed in an inpatient setting.[15]

• *Submitting claims for medically unnecessary services by failing to follow the FI's local medical review policies*—Each FI publishes local medical review policies (LMRPs) that identify certain procedures that may only be rendered when specific conditions are present. In addition to relying on a physician's sound clinical judgment with respect to the appropriateness of a proposed course of treatment, hospitals should regularly review and become familiar with their individual FI's LMRPs. LMRPs should be incorporated into a hospital's regular coding and billing operations.[16]

• *Submitting duplicate claims or otherwise not following the National Correct Coding Initiative guidelines*—CMS developed the National Correct Coding Initiative (NCCI) to promote correct coding methodologies. NCCI identifies certain codes that should not be used together because they are either mutually exclusive or one is a component of another. If a hospital uses code pairs that are listed in the NCCI and those codes are not detected by the editing routines in the hospital's billing system, the hospital may submit duplicate or unbundled claims. Intentional manipulation of code assignments to maximize payments and avoid NCCI edits constitutes fraud. Unintentional misapplication of the NCCI coding and billing guidelines may also give rise to overpayments or civil liability for hospitals that have developed a pattern of inappropriate billing. To minimize risk, hospitals should ensure that their coding software includes up-to-date NCCI edit files.[17]

• *Submitting incorrect claims for ancillary services because of outdated Charge Description Masters*—Charge Description Masters (CDMs) list all of the hospital's charges for items and services and include the underlying procedure codes necessary to bill for those items and services. Outdated CDMs create significant compliance risk for hospitals. Because the Healthcare Common Procedure Coding System (HCPCS) codes and APCs are updated regularly, hospitals should pay particular attention to the task of updating the CDM to ensure the assignment of correct codes to outpatient claims. This should include timely updates, proper use of modifiers, and correct associations between procedure codes and revenue codes.[18]

• *Circumventing the multiple procedure discounting rules*—A surgical procedure performed in connection with another surgical procedure may be discounted. However, certain surgical procedures are designated as non-discounted, even when performed with another surgical procedure. Hospitals should ensure that the procedure codes selected represent the actual services provided, irrespective of the discounting status. They should also review the annual OPPS rule update to understand more fully CMS's multiple procedure discounting rule.[19]

• *Failing to follow CMS instructions regarding the selection of proper evaluation and management codes*—Hospitals should take steps to ensure that the evaluation and management (E/M) codes that are used to describe medical services provided to patients follow published CMS guidelines.[20]

• *Improperly billing for observation services*—In certain circumstances, Medicare provides a separate APC payment for observation services for patients with diagnoses of chest pain, asthma, or congestive heart failure. Claims for these observation services must correctly reflect the diagnosis and meet certain other requirements. Billing for observation services in situations that do not satisfy the requirements is inappropriate and may result in hospital liability. Hospitals should develop, and become familiar with, CMS's detailed

[13] Congress enacted the OPPS in section 4523 of the Balanced Budget Act of 1997. OPPS became effective on August 1, 2001. CMS promulgated regulations implementing the OPPS at 42 CFR Part 419. For more information regarding the OPPS, *see http://www.cms.gov/providers/hopps/.*

[14] The list of current modifiers is listed in the Current Procedural Terminology (CPT) coding manual. However, hospitals should pay particular attention to CMS transmittals and program memoranda that may introduce new or altered application of modifiers for claims submission and reimbursement purposes. *See* chapter 4, section 20.6 of the Medicare Claims Processing Manual at *http://www.cms.gov/manuals/104_claims/clm104c04.pdf.*

[15] The list of ''inpatient-only'' procedures appears in the annual update to the OPPS rule. For the 2004 final rule, the ''inpatient-only'' list is found in Addendum E. *See http://www.cms.gov/regulations/hopps/2004f.*

[16] A hospital may contact its FI to request a copy of the pertinent LMRPs, or visit CMS's webpage at *http://www.cms.gov/mcd* to search existing local and national policies.

[17] More information regarding NCCI can be obtained from CMS's webpage at *http://www.cms.gov/medlearn/ncci.asp.*

[18] For information relating to HCPCS code updates, *see http://www.cms.gov/medicare/hcpcs/.* For information relating to annual APC updates, *see http://www.cms.gov/providers/hopps/.*

[19] *See http://www.cms.gov/medlearn/refopps.asp.*

[20] Section 1848(c)(5) of the Social Security Act (42 U.S.C. 1395w-4(c)(5)) mandated the development of a uniform coding system to describe physician services. E/M documentation guidelines can be accessed at *http://www.cms.gov/medlearn/emdoc.asp.*

policies for the submission of claims for observation services.[21]

2. Admissions and Discharges

Often, the status of patients at the time of admission or discharge significantly influences the amount and method of reimbursement hospitals receive. Therefore, hospitals have a duty to ensure that admission and discharge policies are updated and reflect current CMS rules. Risk areas with respect to the admission and discharge processes include the following:

• *Failure to follow the ''same-day rule''*—OPPS rules require hospitals to include on the same claim all OPPS services provided at the same hospital, to the same patient, on the same day, unless certain conditions are met. Hospitals should review internal billing systems and procedures to ensure that they are not submitting multiple claims for OPPS services delivered to the same patient on the same day.[22]

• *Abuse of partial hospitalization payments*—Under OPPS, Medicare provides a *per diem* payment for specific hospital services rendered to behavioral and mental health patients on a partial hospitalization basis. Examples of improper billing under the partial hospitalization program include, without limitation: reducing the range of services offered; withholding services that are medically appropriate; billing for services not covered; and billing for services without a certificate of medical necessity.[23]

• *Same-day discharges and readmissions*—Same-day discharges and readmissions may indicate premature discharges, medically unnecessary readmissions, or incorrect discharge coding. Hospitals should have procedures in place to review discharges and admissions carefully to ensure that they reflect prudent clinical decision-making and are properly coded.[24]

• *Violation of Medicare's post-acute care transfer policy*—The post-acute care transfer policy provides that, for certain designated DRGs, a hospital will receive a per diem transfer payment, rather than the full DRG payment, if the patient is discharged to certain post-acute care settings.[25] There are currently 29 DRGs that are subject to CMS's post-acute care transfer policy; however, CMS may revise the list of designated DRGs periodically.[26] To avoid improperly billing for discharges, hospitals should pay particular attention to CMS's post-acute care transfer policy and keep an accurate list of all designated DRGs subject to that policy.

• *Improper churning of patients by long-term care hospitals co-located in acute care hospitals*—Long term care hospitals that are co-located within acute care hospitals may qualify for PPS-exempt status if certain regulatory requirements are satisfied.[27] Hospitals should not engage in the practice of churning, or inappropriately transferring, patients between the host hospital and the hospital-within-a-hospital.

3. Supplemental Payment Considerations

Under the Medicare program, in certain limited situations, hospitals may claim payments in addition to, or in some cases in lieu of, the normalreimbursement available to hospitals under the regular payment systems. Eligibility for these payments depends on compliance with specific criteria. Hospitals that claim supplemental payments improperly are liable for fines and penalties under Federal law. Examples of specific risks that hospitals should address include the following:

• *Improper reporting of the costs of ''pass-through'' items*—''Pass-through'' items are certain items of new technology and drugs for which Medicare will reimburse the hospital based on costs during a limited transitional period.[28]

• *Abuse of DRG outlier payments*—Recent investigations revealed substantial abuse of outlier payments by hospitals with Medicare patients. Hospital management, compliance staff, and counsel should familiarize themselves with CMS's new outlier rules and requirements intended to curb abuses.[29]

• *Improper claims for incorrectly designated ''provider-based'' entities*—Certain hospital-affiliated entities and clinics can be designated as ''provider-based,'' which allows for a higher level of reimbursement for certain services.[30] Hospitals should take steps to ensure that facilities or organizations are only designated as provider-based if they satisfy the criteria set forth in the regulations.

• *Improper claims for clinical trials*—Since September 2000, Medicare has covered items and services furnished during certain clinical trials, as long as those items and services would typically be covered for Medicare beneficiaries, but for the fact that they are provided in an experimental or clinical trial setting. Hospitals that participate in clinical trials should review the requirements for submitting claims for patients participating in clinical trials.[31]

• *Improper claims for organ acquisition costs*–Hospitals that are approved transplantation centers may receive reimbursement on a reasonable cost basis to cover the costs of acquisition of certain organs.[32] Organ acquisition costs are only reimbursable if a hospital satisfies several requirements, such as having adequate cost information, supporting documentation, and supporting medical records.[33] Hospitals must also ensure that expenses not related to organ acquisition, such as transplant and post-transplant activities and costs from

[21] *See* CMS Program Transmittal A–02–026, available on CMS's webpage at *http://www.cms.gov/manuals/pm_trans/A02026.pdf.*

[22] *See* chapter 1, section 50.2 of the Medicare Claims Processing Manual, available on CMS's webpage at *http://www.cms.gov/manuals/104_claims/clm104c01.pdf.*

[23] *See* chapter 4, section 260 of the Medicare Claims Processing Manual, available on CMS's webpage at *http://www.cms.gov/manuals/104_claims/clm104c04.pdf.*

[24] *See, e.g.*, OIG Audit Report A–03–01–00011, ''Review of Medicare Same-Day, Same-Provider Acute Care Readmissions in Pennsylvania During Calendar Year 1998,'' August 2002, available on our webpage at *http://oig.hhs.gov/oas/reports/region3/30100011.pdf.*

[25] *See* 42 CFR 412.4(c). *See, e.g.*, OIG Audit Report A–04–00–01220 ''Implementation of Medicare's Postacute Care Transfer Policy,'' October 2001, available on our webpage at *http://oig.hhs.gov/oas/reports/region4/40001220.pdf.*

[26] The initial 10 designated DRGs were selected by the Secretary, pursuant to section 1886(d)(5)(J) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(J)). With the 2004 fiscal year PPS rule, CMS revised the list of DRGs paid under CMS's post-acute care transfer policy, bringing the total number of designated DRGs to 29. *See* 68 FR 45346, 45406 (August 1, 2003). *See also* chapter 3, section 40.2.4 of the Medicare Claims Processing Manual, available on CMS's webpage at *http://www.cms.gov/manuals/104_claims/clm104c03.pdf.*

[27] *See* 42 CFR 412.22(e).

[28] For more information regarding CMS's APC ''pass-through'' payments, *see http://www.cms.gov/providers/hopps/apc.asp.*

[29] *See* 42 CFR 412.84; 68 FR 34493 (June 9, 2003).

[30] The criteria for determining whether a facility or organization is provider-based can be found at 42 CFR 413.65. In April 2003, CMS published Transmittal A–03–030, outlining changes to the criteria for provider-based designation. *See http://www.cms.gov/manuals/pm_trans/A03030.pdf.*

[31] To view Medicare's National Coverage Decision regarding clinical trials, *see http://www.cms.gov/coverage/8d2.asp.* Specific requirements for submitting claims for reimbursement for clinical trials can be accessed on CMS's webpage at *http://www.cms.gov/coverage/8d4.asp.*

[32] *See* 42 CFR 412.2(e)(4), 42 CFR 412.113(d), and 42 CFR 413.203. *See generally* 42 CFR Part 413 (setting forth the principles of reasonable cost reimbursement).

[33] *See* Medicare's Provider Reimbursement Manual (PRM), Part I, section 2304 and Part II, section 3610, available on CMS's webpage at *http://www.cms.gov/manuals/cmstoc.asp.*

other cost centers, are not included in the hospital's organ acquisition costs.[34]

• *Improper claims for cardiac rehabilitation services*—Medicare covers reasonable and necessary cardiac rehabilitation services under the hospital ''incident-to'' benefit, which requires that the services of non-physician personnel be furnished under a physician's direct supervision. In addition to satisfying the supervision requirement, hospitals must ensure that cardiac rehabilitation services are reasonable and necessary.[35]

• *Failure to follow Medicare rules regarding payment for costs related to educational activities*[36]—Hospitals should pay particular attention to these rules when implementing dental or other education programs, particularly those not historically operated at the hospital.

4. Use of Information Technology

The implementation of the OPPS increased the need for hospitals to pay particular attention to their computerized billing, coding, and information systems. Billing and coding under the OPPS is more data intensive than billing and coding under the inpatient PPS. When the OPPS began, many hospitals' existing systems were unable to accommodate the new requirements and required adjustments.

As the health care industry moves forward, hospitals will increasingly rely on information technology. For example, HIPAA Privacy and Security Rules (discussed below in section II.G), electronic claims submission,[37] electronic prescribing, networked information sharing among providers, and systems for the tracking and reduction of medical errors, among others, will require hospitals to depend more on information technologies. Information technology presents new opportunities to advance health care efficiency, but also new challenges to ensuring the accuracy of claims and the information used to generate claims. It is often difficult for purchasers of computer systems and software to know exactly how the system operates and generates information. Prudent hospitals will take steps to ensure that they thoroughly assess all new computer systems and software that impact coding, billing, or the generation or transmission of information related to the Federal health care programs or their beneficiaries.

B. The Referral Statutes: The Physician Self-Referral Law (the ''Stark'' Law) and the Federal Anti-Kickback Statute

1. The Physician Self-Referral Law

From a hospital compliance perspective, the physician self-referral law (section 1877 of the Social Security Act (Act), commonly known as the ''Stark'' law) should be viewed as a threshold statute. Simply put, hospitals face significant financial exposure unless their financial relationships with referring physicians fit squarely in statutory or regulatory exceptions to the statute. The statute prohibits hospitals from submitting—and Medicare from paying—any claim for a ''designated health service'' (DHS) if the referral of the DHS comes from a physician with whom the hospital has a prohibited financial relationship.[38] This is true even if the prohibited financial relationship is the result of inadvertence or error. In addition, hospitals and physicians that knowingly violate the statute may be subject to civil monetary penalties and exclusion from the Federal health care programs. Under certain circumstances, a knowing violation of the Stark law may also give rise to liability under the False Claims Act. Because all inpatient and outpatient hospital services (including services furnished directly by a hospital or by others ''under arrangements'' with a hospital) are DHS under the statute,[39] hospitals must diligently review all financial relationships with referring physicians for compliance with the Stark law.

For purposes of analyzing a financial relationship under the Stark law, the following three-part inquiry is useful:

• Is there a *referral* from a *physician* for a *designated health service?* If not, then there is no Stark law issue (although other fraud and abuse authorities, such as the anti-kickback statute, may be implicated). If the answer is ''yes,'' the next inquiry is:

• Does the physician (or an immediate family member) have a *financial relationship* with the entity furnishing the DHS (*e.g.*, the hospital)? Again, if the answer is no, the Stark law is not implicated. However, if the answer is ''yes,'' the third inquiry is:

• Does the financial relationship fit in an *exception?* If not, the statute has been violated.

Detailed definitions of the highlighted terms (and others) are set forth in regulations at 42 CFR 411.351 through 411.361 (substantial additional explanatory material appears in the regulatory preambles to the final regulations: 66 FR 856 (January 4, 2001); 69 FR 16054 (March 26, 2004); and 69 FR 17933 (April 6, 2004)). Importantly, a financial relationship can be almost any kind of direct or indirect ownership or investment relationship (*e.g.*, stock ownership, a partnership interest, or secured debt) or direct or indirect compensation arrangement, whether in cash or in-kind (*e.g.*, a rental contract, personal services contract, salary, gift, or gratuity), between a referring physician (or immediate family member) and a hospital. Moreover, the financial relationship need not relate to the provision of DHS (*e.g.*, a joint venture between a hospital and a physician to operate a hospice would create an indirect compensation relationship between the hospital and the physician for Stark law purposes).

The statutory and regulatory exceptions are the key to compliance with the Stark law. Any financial relationship between the hospital and a physician who refers to the hospital must fit in an exception. Exceptions

[34] *See* 42 CFR 412.100. *See also,* chapter 3, section 90 of the Medicare Claims Processing Manual, available on CMS's webpage at *http://www.cms.gov/manuals/104_claims/clm104c03.pdf. See, e.g.*, OIG Audit Report A–04–02–02017, ''Audit of Medicare Costs for Organ Acquisitions at Tampa General Hospital,'' April 2003, available on our webpage at *http://oig.hhs.gov/oas/reports/region4/40202017.pdf.*

[35] *See* section 35–25 of the Medicare Coverage Issues Manual. *See, e.g.*, OIG Audit Report A–01–03–00516, ''Review of Outpatient Cardiac Rehabilitation Services at the Cooley Dickinson Hospital,'' December 2003, available on our webpage at *http://oig.hhs.gov/oas/reports/region1/10300516.pdf.*

[36] Payments for direct graduate medical education (GME) and indirect graduate medical education (IME) costs are in part based upon the number of full-time equivalent (FTE) residents at each hospital and the proportion of time residents spend in training. Hospitals that inappropriately calculate the number of FTE residents risk receiving inappropriate medical education payments. Hospitals should have in place procedures regarding (i) resident rotation monitoring, (ii) resident credentialing, (iii) written agreements with non-hospital providers, and (iv) the approval process for research activities. For more information regarding medical education reimbursement, *see* 42 CFR 413.86 (GME requirements) and 42 CFR 412.105 (IME requirements). *See, e.g.*, OIG Audit Report A–01–01–00547 ''Review of Graduate Medical Education Costs Claimed by the Hartford Hospital for Fiscal Year Ending September 30, 1999,'' October 2003, available on our webpage at *http://oig.hhs.gov/oas/reports/region1/10100547.pdf.*

[37] For more information regarding Medicare's Electronic Data Interchange programs, *see http://www.cms.gov/providers/edi/.*

[38] The statute also prohibits physicians from referring DHS to entities, including hospitals, with which they have prohibited financial relationships. However, the billing prohibition and nonpayment sanction apply only to the DHS entity (*e.g.*, the hospital). *See* section 1877(a) of the Act. Section 1903(s) of the Act extends the statutory prohibition to Medicaid-covered services.

[39] The statute lists ten additional categories of DHS, including, among others, clinical laboratory services, radiology services, and durable medical equipment. *See* section 1877(h)(6) of the Act. Hospitals and health systems that own or operate free-standing DHS entities should be mindful of the ten additional DHS categories.

exist in the statute and regulations for many common types of business arrangements. To fit in an exception, an arrangement must squarely meet all of the conditions set forth in the exception. Importantly, it is the actual relationship between the parties, and not merely the paperwork, that must fit in an exception. Unlike the anti-kickback safe harbors, which are voluntary, fitting in an exception is mandatory under the Stark law.

Compliance with a Stark law exception does not immunize an arrangement under the anti-kickback statute. Rather, the Stark law sets a minimum standard for arrangements between physicians and hospitals. Even if a hospital-physician relationship qualifies for a Stark law exception, it should still be reviewed for compliance with the anti-kickback statute. The anti-kickback statute is discussed in greater detail in the next subsection.

Because of the significant exposure for hospitals under the Stark law, we recommend that hospitals implement systems to ensure that all conditions in the exceptions upon which they rely are fully satisfied. For example, many of the exceptions, such as the rental and personal services exceptions, require signed, written agreements with physicians. We are aware of numerous instances in which hospitals failed to maintain these signed written agreements, often inadvertently (*e.g.*, a holdover lease without a written lease amendment; a physician hired as an independent contractor for a short-term project without a signed agreement). To avoid a large overpayment, hospitals should ensure frequent and thorough review of their contracting and leasing processes. The final regulations contain a new limited exception for certain inadvertent, temporary instances of noncompliance with another exception. This exception may only be used on an occasional basis. Hospitals should be mindful that this exception is not a substitute for vigilant contracting and leasing oversight. In addition, hospitals should review the new reporting requirements at 42 CFR 411.361, which generally require hospitals to retain records that the hospitals know or should know about in the course of prudently conducting business. Hospitals should ensure that they have policies and procedures in place to address these requirements.

In addition, because many exceptions to the Stark law require fair market value compensation for items or services actually needed and rendered, hospitals should have appropriate processes for making and documenting reasonable, consistent, and objective determinations of fair market value and for ensuring that needed items and services are furnished or rendered. Other areas that may require careful monitoring include, without limitation, tracking the total value of non-monetary compensation provided annually to each referring physician, tracking the provision and value of medical staff incidental benefits, and monitoring the provision of professional courtesy.[40] As discussed further in the anti-kickback section below, hospitals should exercise care when recruiting physicians. Importantly, while the final regulations contain a limited exception for certain joint recruiting by hospitals and existing group practices, the exception strictly forbids the use of income guarantees that shift group practice overhead or expenses to the hospital or any payment structure that otherwise transfers remuneration to the group practice.

Further information about the Stark law and applicable regulations can be found on CMS's webpage at *http://cms.gov/medlearn/refphys.asp.* Information regarding CMS's Stark advisory opinion process can be found at *http://cms.gov/physicians/aop/default.asp.*

2. The Federal Anti-Kickback Statute

Hospitals should also be aware of the Federal anti-kickback statute, section 1128B(b) of the Act, and the constraints it places on business arrangements related directly or indirectly to items or services reimbursable by any Federal health care program, including, but not limited to, Medicare and Medicaid. The anti-kickback statute prohibits in the health care industry some practices that are common in other business sectors, such as offering gifts to reward past or potential new referrals.

The anti-kickback statute is a criminal prohibition against payments (in any form, whether the payments are direct or indirect) made purposefully to induce or reward the referral or generation of Federal health care program business. The anti-kickback statute addresses not only the offer or payment of anything of value for patient referrals, but also the offer or payment of anything of value in return for purchasing, leasing, ordering, or arranging for or recommending the purchase, lease, or ordering of any item or service reimbursable in whole or in part by a Federal health care program. The statute extends equally to the solicitation or acceptance of remuneration for referrals or the generation of other business payable by a Federal health care program. Liability under the anti-kickback statute is determined separately for each party involved. In addition to criminal penalties, violators may be subject to civil monetary penalties and exclusion from the Federal health care programs. Hospitals should also be mindful that compliance with the anti-kickback statute is a condition of payment under Medicare and other Federal health care programs. *See, e.g.,* Medicare Federal Health Care Provider/Supplier Application, CMS Form 855A, Certification Statement at section 15, paragraph A.3, available on CMS's webpage at *http://www.cms.gov/providers/enrollment/forms/.* As such, liability may arise under the False Claims Act where the anti-kickback statute violation results in the submission of a claim for payment under a Federal health care program.

Although liability under the anti-kickback statute ultimately turns on a party's intent, it is possible to identify arrangements or practices that may present a significant potential for abuse. For purposes of analyzing an arrangement or practice under the anti-kickback statute, the following two inquiries are useful:

- Does the hospital have any remunerative relationship between itself (or its affiliates or representatives) and persons or entities in a position to generate Federal health care program business for the hospital (or its affiliates) directly or indirectly? Persons or entities in a position to generate Federal health care program business for a hospital include, for example, physicians and other health care professionals, ambulance companies, clinics, hospices, home health agencies, nursing facilities, and other hospitals.
- With respect to any remunerative relationship so identified, could one purpose of the remuneration be to induce or reward the referral or recommendation of business payable in whole or in part by a Federal health care program? Importantly, under the anti-kickback statute, neither a legitimate business purpose for the arrangement, nor a fair market value payment, will legitimize a payment if there is also an

[40] Hospitals affiliated with academic medical centers should be aware that the regulations contain a special exception for certain academic medical center arrangements. *See* 42 CFR 411.353(e). Specialty hospitals should be mindful of certain limitations on new physician-owned specialty hospitals contained in section 507 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003. *See* CMS's One-Time Notification regarding the 18-month moratorium on physician investment in specialty hospitals, CMS Manual System Pub. 100–20 One-Time Notification, Transmittal 26 (March 19, 2004), available on CMS's webpage at *http://www.cms.gov/manuals/pm_trans/R62OTN.pdf.*

illegal purpose (*i.e.*, inducing Federal health care program business).

Although any arrangement satisfying both tests implicates the anti-kickback statute and requires careful scrutiny by a hospital, the courts have identified several potentially aggravating considerations that can be useful in identifying arrangements at greatest risk of prosecution. In particular, hospitals should ask the following questions, among others, about any potentially problematic arrangements or practices they identify:

- Does the arrangement or practice have a potential to interfere with, or skew, clinical decision-making?
- Does the arrangement or practice have a potential to increase costs to Federal health care programs, beneficiaries, or enrollees?
- Does the arrangement or practice have a potential to increase the risk of overutilization or inappropriate utilization?
- Does the arrangement or practice raise patient safety or quality of care concerns?

Hospitals that have identified potentially problematic arrangements or practices can take a number of steps to reduce or eliminate the risk of an anti-kickback violation. Detailed guidance relating to a number of specific practices is available from several sources. Most importantly, the anti-kickback statute and the corresponding regulations establish a number of ''safe harbors'' for common business arrangements. The following safe harbors are of most relevance to hospitals:

- Investment interests safe harbor, 42 CFR 1001.952(a),
- space rental safe harbor, 42 CFR 1001.952(b),
- equipment rental safe harbor, 42 CFR 1001.952(c),
- personal services and management contracts safe harbor, 42 CFR 1001.952(d),
- sale of practice safe harbor, 42 CFR 1001.952(e),
- referral services safe harbor, 42 CFR 1001.952(f),
- discount safe harbor, 42 CFR 1001.952(h),
- employment safe harbor, 42 CFR 1001.952(i),
- group purchasing organizations safe harbor, 42 CFR 1001.952(j),
- waiver of beneficiary coinsurance and deductible amounts safe harbor, 42 CFR 1001.952(k),
- practitioner recruitment safe harbor, 42 CFR 1001.952(n),
- obstetrical malpractice insurance subsidies safe harbor, 42 CFR 1001.952(o),
- cooperative hospital services organizations safe harbor, 42 CFR 1001.952(q),
- ambulatory surgical centers safe harbor, 42 CFR 1001.952(r),
- ambulance replenishing safe harbor, 42 CFR 1001.952(v), and
- safe harbors for certain managed care and risk sharing arrangements, 42 CFR 1001.952(m), (t), and (u).[41]

Safe harbor protection requires strict compliance with all applicable conditions set out in the relevant safe harbor.[42] Although compliance with a safe harbor is voluntary and failure to comply with a safe harbor does not mean an arrangement is illegal per se, we recommend that hospitals structure arrangements to fit in a safe harbor whenever possible. Arrangements that do not fit in a safe harbor must be evaluated on a case-by-case basis.

Other available guidance includes special fraud alerts and advisory bulletins issued by the OIG identifying and discussing particular practices or issues of concern and OIG advisory opinions issued to specific parties about their particular business arrangements.[43] A hospital concerned about an existing or proposed arrangement may request a binding OIG advisory opinion regarding whether the arrangement violates the Federal anti-kickback statute or other OIG fraud and abuse authorities, using the procedures set out at 42 CFR part 1008. The safe harbor regulations (and accompanying **Federal Register** preambles), fraud alerts and bulletins, advisory opinions (and instructions for obtaining them, including a list of frequently asked questions), and other guidance are available on the OIG webpage at *http://oig.hhs.gov.*

The following discussion highlights several known areas of potential risk under the anti-kickback statute. The propriety of any particular arrangement can only be determined after a detailed examination of the attendant facts and circumstances. The identification of a given practice or activity as ''suspect'' or as an area of ''risk'' does not mean it is necessarily illegal or unlawful, or that it cannot be properly structured to fit in a safe harbor; nor does it mean that the practice or activity is not beneficial from a clinical, cost, or other perspective. Rather, the areas identified below are areas of activity that have a potential for abuse and that should receive close scrutiny from hospitals. The discussion highlights potential risks under the anti-kickback statute arising from hospitals' relationships in the following five categories: (a) Joint ventures; (b) compensation arrangements with physicians; (c) relationships with other health care entities; (d) recruitment arrangements; (e) discounts; (f) medical staff credentialing; and (g) malpractice insurance subsidies. (In addition, the kickback risks associated with gainsharing arrangements are discussed below in section II.C of this guidance).

Physicians are the primary referral source for hospitals, and, therefore, most of the discussion below focuses on hospitals' relationships with physicians. Notwithstanding, hospitals also receive referrals from other health care professionals, including physician assistants and nurse practitioners, and from other providers and suppliers (such as ambulance companies, clinics, hospices, home health agencies, nursing facilities, and other hospitals). Therefore, in addition to reviewing their relationships with physicians, hospitals should also review their relationships with non-physician referral sources to ensure that the relationships do not violate the anti-kickback statute. The principles described in the following discussions can be used to assess the risk associated with relationships with both physician and non-physician referral sources.

a. Joint Ventures

The OIG has a long-standing concern about joint venture arrangements between those in a position to refer or generate Federal health care program business and those providing items or services reimbursable by Federal health care programs.[44] In the context of joint ventures, our chief concern is that remuneration from a joint venture might be a disguised payment for past or future referrals to the venture or to one

[41] Importantly, the anti-kickback statute safe harbors are not the same as the Stark law exceptions described above at section II.B.1 of this guidance. An arrangement's compliance with the anti-kickback statute and the Stark law must be evaluated separately.

[42] Parties to an arrangement cannot obtain safe harbor protection by entering into a sham contract that complies with the written agreement requirement of a safe harbor and appears, on paper, to meet all of the other safe harbor requirements, but does reflect the actual arrangement between the parties. In other words, in assessing compliance with a safe harbor, the OIG examines not only whether the written contract satisfies all of the safe harbor requirements, but also whether the actual arrangement satisfies the requirements.

[43] While informative for guidance purposes, an OIG advisory opinion is binding only with respect to the particular party or parties that requested the opinion. The analyses and conclusions set forth in OIG advisory opinions are very fact-specific. Accordingly, hospitals should be aware that different facts may lead to different results.

[44] *See* 1989 Special Fraud Alert on Joint Venture Arrangements, reprinted in the **Federal Register**, 59 FR 65372 (December 19, 1994), and available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html.*

or more of its participants. Such remuneration may take a variety of forms, including dividends, profit distributions, or, with respect to contractual joint ventures, the economic benefit received under the terms of the operative contracts.

When scrutinizing joint ventures under the anti-kickback statute, hospitals should examine the following factors, among others:

• *The manner in which joint venture participants are selected and retained.* If participants are selected or retained in a manner that takes into account, directly or indirectly, the value or volume of referrals, the joint venture is suspect. The existence of one or more of the following indicators suggests that there might be an improper nexus between the selection or retention of participants and the value or volume of their referrals:

—a substantial number of participants are in a position to make or influence referrals to the venture, other participants, or both;
—participants that are expected to make a large number of referrals are offered a greater or more favorable investment or business opportunity in the joint venture than those anticipated to make fewer referrals;
—participants are actively encouraged or required to make referrals to the joint venture;
—participants are encouraged or required to divest their ownership interest if they fail to sustain an ''acceptable'' level of referrals;
—the venture (or its participants) tracks its sources of referrals and distributes this information to the participants; or
—the investment interests are nontransferable or subject to transfer restrictions related to referrals.

• *The manner in which the joint venture is structured.* The structure of the joint venture is suspect if a participant is already engaged in the line of business to be conducted by the joint venture, and that participant will own all or most of the equipment, provide or perform all or most of the items or services, or take responsibility for all or most of the day-to-day operations. With this kind of structure, the co-participant's primary contribution is typically as a captive referral base.

• *The manner in which the investments are financed and profits are distributed.* The existence of one or more of the following indicators suggests that the joint venture may be a vehicle to disguise referrals:

—participants are offered investment shares for a nominal or no capital contribution;
—the amount of capital that participants invest is disproportionately small, and the returns on the investment are disproportionately large, when compared to a typical investment in a new business enterprise;
—participants are permitted to borrow their capital investments from another participant or from the joint venture, and to pay back the loan through deductions from profit distributions, thus eliminating even the need to contribute cash;
—participants are paid extraordinary returns on the investment in comparison with the risk involved; or
—a substantial portion of the gross revenues of the venture are derived from participant-driven referrals.

In light of the obvious risk inherent in joint ventures, whenever possible, hospitals should structure joint ventures to fit squarely in one of the following safe harbors for investment interests:

• the ''small entity'' investment safe harbor, 42 CFR 1001.952(a)(2), which applies to returns on investments as long as no more than 40 percent of the investment interests are held by investors who are in a position to make or influence referrals to, furnish items or services to, or otherwise generate business for the venture (interested investors), no more than 40 percent of revenues come from referrals or business otherwise generated from investors, and all other conditions are satisfied; [45]

• the safe harbor for investment interests in an entity located in an underserved area, 42 CFR 1001.952(a)(3), which applies to ventures located in medically underserved areas (as defined in regulations issued by the Department and set forth at 42 CFR part 51c), as long as no more than 50 percent of the investment interests are held by interested investors and all other conditions are satisfied; or

• the hospital-physician ambulatory surgical center (ASC) safe harbor, 42 CFR 1001.952(r)(4). This safe harbor only protects investments in Medicare-certified ASCs owned by hospitals and certain qualifying physicians. Importantly, it does not protect investments by hospitals and physicians in non-ASC clinical joint ventures, including, for example, cardiac catheterization or vascular labs, oncology centers, and dialysis facilities. Investors in such clinical ventures should look to other safe harbors and to the factors noted above.

These safe harbors protect remuneration in the form of returns on investment interests (*i.e.*, money paid by an entity to its owners or investors as dividends, profit distributions, or the like). However, they do not protect payments made by participating investors to a venture or payments made by the venture to other parties, such as vendors, contractors, or employees (although in some cases these arrangements may fit in other safe harbors).

As we originally observed in our 1989 Special Fraud Alert on Joint Venture Arrangements,[46] joint ventures may take a variety of forms, including a contractual arrangement between two or more parties to cooperate in a common and distinct enterprise providing items or services, thereby creating a ''contractual joint venture.'' We elaborated more fully on contractual joint ventures in our 2003 Special Advisory Bulletin on Contractual Joint Ventures.[47] Contractual joint ventures pose the same kinds of risks as equity joint ventures and should be analyzed similarly. Factors to consider include, for example, whether the hospital is expanding into a new line of business created predominately or exclusively to serve the hospital's existing patient base, whether a would-be competitor of the new line of business is providing all or most of the key services, and whether the hospital assumes little or no bona fide business risk. An example of a potentially problematic contractual joint venture would be a hospital contracting with an existing durable medical equipment (DME) supplier to operate the hospital's newly formed DME subsidiary (with its own DME supplier number) on essentially a turnkey basis, with the hospital primarily furnishing referrals and assuming little or no business risk.[48]

Hospitals should be aware that, for reasons described in our 2003 Special Advisory Bulletin on Contractual Joint Ventures,[49] safe harbor protection may

[45] There is also a safe harbor for investment interests in large entities (*i.e.*, entities with over fifty million dollars in assets), 42 CFR 1001.952(a)(1).

[46] *See* 1989 Special Fraud Alert on Joint Venture Arrangements, *supra* note 44.

[47] This Special Advisory Bulletin is available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/042303SABJointVentures.pdf.*

[48] Contractual ventures with existing clinical laboratories and outpatient therapy providers, among others, are also potentially problematic, particularly if the venture is functionally a turnkey operation that enables a hospital to use its captive referrals to expand into a new line of business with little or no contribution of resources or assumption of real risk.

[49] *See* 2003 Special Advisory Bulletin on Contractual Joint Ventures, *supra* note 47.

not be available for contractual joint ventures, and attempts to carve out separate contracts and qualify each separately for safe harbor protection may be ineffectual and leave the parties at risk under the statute.[50]

If a hospital is planning to participate, directly or indirectly, in a joint venture involving referring physicians and the venture does not qualify for safe harbor protection, the hospital should scrutinize the venture with care, taking into account the factors noted above, and consider obtaining advice from an experienced attorney. At a minimum, to reduce (but not necessarily eliminate) the risk of abuse, hospitals should consider (i) barring physicians employed by the hospital or its affiliates from referring to the joint venture; (ii) taking steps to ensure that medical staff and other affiliated physicians are not encouraged in any manner to refer to the joint venture; (iii) notifying physicians annually in writing of the preceding policy; (iv) refraining from tracking in any manner the volume of referrals attributable to particular referrals sources; (v) ensuring that no physician compensation is tied in any manner to the volume or value of referrals to, or other business generated for, the venture; (vi) disclosing all financial interests to patients;[51] and (vii) requiring that other participants in the joint venture adopt similar steps.

b. Compensation Arrangements With Physicians

Hospitals enter into a variety of compensation arrangements with physicians whereby physicians provide items or services to, or on behalf of, the hospital. Conversely, in some arrangements, hospitals provide items or services to physicians. Examples of these compensation arrangements include, without limitation, medical director agreements, personal or management services agreements, space or equipment leases, and agreements for the provision of billing, nursing, or other staff services. Although many compensation arrangements are legitimate business arrangements, compensation arrangements may violate the anti-kickback statute if one purpose of the arrangement is to compensate physicians for past or future referrals.[52]

The general rule of thumb is that any remuneration flowing between hospitals and physicians should be at fair market value for actual and necessary items furnished or services rendered based upon an arm's-length transaction and should not take into account, directly or indirectly, the value or volume of any past or future referrals or other business generated between the parties. Arrangements under which hospitals provide physicians with items or services for free or less than fair market value, relieve physicians of financial obligations they would otherwise incur, or inflate compensation paid to physicians for items or services pose significant risk. In such circumstances, an inference arises that the remuneration may be in exchange for generating business.

In particular, hospitals should review their physician compensation arrangements and carefully assess the risk of fraud and abuse using the following factors, among others:

- Are the items and services obtained from a physician legitimate, commercially reasonable, and necessary to achieve a legitimate business purpose of the hospital (apart from obtaining referrals)? Assuming that the hospital needs the items and services, does the hospital have multiple arrangements with different physicians, so that in the aggregate the items or services provided by all physicians exceed the hospital's actual needs (apart from generating business)?
- Does the compensation represent fair market value in an arm's-length transaction for the items and services? Could the hospital obtain the services from a non-referral source at a cheaper rate or under more favorable terms? Does the remuneration take into account, directly or indirectly, the value or volume of any past or future referrals or other business generated between the parties? Is the compensation tied, directly or indirectly, to Federal health care program reimbursement?
- Is the determination of fair market value based upon a reasonable methodology that is uniformly applied and properly documented? If fair market value is based on comparables, the hospital should ensure that the comparison entities are *not* actual or potential referral sources, so that the market rate for the services is not distorted.
- Is the compensation commensurate with the fair market value of a physician with the skill level and experience reasonably necessary to perform the contracted services?
- Were the physicians selected to participate in the arrangement in whole or in part because of their past or anticipated referrals?
- Is the arrangement properly and fully documented in writing? Are the physicians documenting the services they provide? Is the hospital monitoring the services?
- In the case of physicians staffing hospital outpatient departments, are safeguards in place to ensure that the physicians do not use hospital outpatient space, equipment, or personnel to conduct their private practice and that they bill the appropriate site-of-service modifier?

Whenever possible, hospitals should structure their compensation arrangements with physicians to fit in a safe harbor. Potentially applicable are the space rental safe harbor, 42 CFR 1001.952(b), the equipment rental safe harbor, 42 CFR 1001.952(c), the personal services and management contracts safe harbor, 42 CFR 1001.952(d), the sale of practice safe harbor, 42 CFR 1001.952(e), the referral services safe harbor, 42 CFR 1001.952(f), the employee safe harbor, 42 CFR 1001.952(i), the practitioner recruitment safe harbor, 42 CFR 1001.952(n), and the obstetrical malpractice insurance subsidies safe harbor, 42 CFR 1001.952(o). An arrangement must fit squarely in a safe harbor to be protected. Arrangements that do not fit in a safe harbor should be reviewed in light of the totality of all facts and circumstances. At minimum, hospitals should develop policies and procedures requiring physicians to document, and the hospital to monitor, the services or items provided under compensation arrangements (including, for example, by using written time reports). In some cases, particularly rentals, hospitals should consider obtaining an independent fair market valuation using appropriate health care valuation standards.

Arrangements between hospitals and hospital-based physicians (*e.g.*,

[50] The Medicare program permits hospitals to furnish services ''under arrangements'' with other providers or suppliers. Hospitals frequently furnish services ''under arrangements'' with an entity owned, in whole or in part, by referring physicians. Standing alone, these ''under arrangements'' relationships do not fall within the scope of problematic contractual joint ventures described in the Special Fraud Alert; however, these relationships will violate the anti-kickback statute if remuneration is purposefully offered or paid to induce referrals (*e.g.*, paying above-market rates for the services to influence referrals or otherwise tying the arrangements to referrals in any manner). These ''under arrangements'' relationships should be structured, when possible, to fit within an anti-kickback safe harbor. They must fit within a Stark exception, even if the service furnished ''under arrangements'' is not itself a DHS. *See* 66 FR 941–2 (January 4, 2001); 69 FR 16054, 16106 (March 26, 2004).

[51] While disclosure to patients does not offer sufficient protection against Federal health care program abuse, effective and meaningful disclosure offers some protection against possible abuses of patient trust.

[52] As previously noted, a hospital should ensure that each compensation arrangement with a referring physician fits squarely in a statutory or regulatory exception to the Stark law.

anesthesiologists, radiologists, and pathologists) raise some different concerns. In these arrangements, it is typically the hospitals making referrals to the physicians, rather than the physicians making referrals to the hospitals. Such arrangements may violate the anti-kickback statute if the arrangements: (i) Compensate physicians for less than the fair market value of goods or services provided by the physicians to the hospitals; or (ii) require physicians to pay more than the fair market value for services provided by the hospitals.[53] We are aware that hospitals have long provided for the delivery of certain hospital-based physician services through the grant of a contract to a physician or physician group akin to a franchise, which shifts management, staffing, and other administrative functions, and in some cases limited clinical duties, to physicians at no cost to the hospitals. Such arrangements are of value to the hospital as well as the physicians, value that may well have nothing to do with the value or volume of referrals flowing from the hospital to the hospital-based physicians. In an appropriate context, an arrangement that requires a hospital-based physician or physician group to perform reasonable administrative or clinical duties directly related to their hospital-based professional services at no charge to the hospital or its patients would not violate the anti-kickback statute. Whether a particular arrangement with hospital-based physicians runs afoul of the anti-kickback statute would depend on the specific facts and circumstances, including the intent of the parties.

c. Relationships With Other Health Care Entities

As addressed in the preceding subsection, hospitals may obtain referrals of Federal health care program business from a variety of health care professionals and entities. In addition, when furnishing inpatient, outpatient, and related services, hospitals often direct or influence referrals for items and services reimbursable by Federal health care programs. For example, hospitals may refer patients to, or order items or services from, home health agencies,[54] skilled nursing facilities, durable medical equipment companies, laboratories, pharmaceutical companies, and other hospitals. In cases where a hospital is the referral source for other providers or suppliers, it would be prudent for the hospital to scrutinize carefully any remuneration flowing to the hospital from the provider or supplier to ensure compliance with the anti-kickback statute, using the principles outlined above. Remuneration may include, for example, free or below-market-value items and services or the relief of a financial obligation.

Hospitals should also review their managed care arrangements to ensure compliance with the anti-kickback statute. Managed care arrangements that do not fit within one of the managed care and risk sharing safe harbors at 42 CFR 1001.952(m), (t), or (u) must be evaluated on a case-by-case basis.

d. Recruitment Arrangements

Many hospitals provide incentives to recruit a physician or other health care professional to join the hospital's medical staff and provide medical services to the surrounding community. When used to bring needed physicians to an underserved community, these arrangements can benefit patients. However, recruitment arrangements pose substantial fraud and abuse risk.

In most cases, the recruited physician establishes a private practice in the community instead of becoming a hospital employee.[55] Such arrangements potentially implicate the anti-kickback statute if one purpose of the recruitment arrangement is to induce referrals to the recruiting hospital. Safe harbor protection is available for certain recruitment arrangements offered by hospitals to attract primary care physicians and practitioners to health professional shortage areas (HPSAs), as defined in regulations issued by the Department.[56] The scope of this safe harbor is very limited. In particular, the safe harbor does not protect (a) recruitment arrangements in areas that are not designated as HPSAs, (b) recruitment of specialists, or (c) joint recruitment with existing physician practices in the area.

Because of the significant risk of fraud and abuse posed by improper recruitment arrangements, hospitals should scrutinize these arrangements with care. When assessing the degree of risk associated with recruitment arrangements, hospitals should examine the following factors, among others:

- *The size and value of the recruitment benefit.* Does the benefit exceed what is reasonably necessary to attract a qualified physician to the particular community? Has the hospital previously tried and failed to recruit or retain physicians?
- *The duration of payout of the recruitment benefit.* Total benefit payout periods extending longer than three years from the initial recruitment agreement should trigger heightened scrutiny.
- *The practice of the existing physician.* Is the physician a new physician with few or no patients or an established practitioner with a ready stream of referrals? Is the physician relocating from a substantial distance so that referrals are unlikely to follow or is it possible for the physician to bring an established patient base?
- *The need for the recruitment.* Is the recruited physician's specialty necessary to provide adequate access to medically necessary care for patients in the community? Do patients already have reasonable access to comparable services from other providers or practitioners in or near the community? An assessment of community need based wholly or partially on the competitive interests of the recruiting hospital or existing physician practices would subject the recruitment payments to heightened scrutiny under the statute.

Significantly, hospitals should be aware that the practitioner recruitment safe harbor does not protect ''joint recruitment'' arrangements between hospitals and other entities or individuals, such as solo practitioners, group practices, or managed care organizations, pursuant to which the hospital makes payments directly or indirectly to the other entity or individual. These joint recruitment arrangements present a high risk of fraud and abuse and have been the subject of recent government investigations and prosecutions. These arrangements can easily be used as vehicles to disguise payments from the hospital to an existing referral source—typically an existing physician practice—in exchange for the existing practice's referrals to the hospital. Suspect payments to existing referral sources may include, among other things, income guarantees that shift costs from the existing referral source to the recruited physician and overhead

[53] Arrangements between hospitals and hospital-based physicians were the topic of a Management Advisory Report (MAR) titled ''Financial Arrangements Between Hospitals and Hospital-Based Physicians,'' OEI–09–89–00330, available on our webpage at *http://oig.hhs.gov/oei/reports/oei-09–89–00330.pdf.*

[54] When referring to home health agencies, hospitals must comply with section 1861(ee)(2)(D) and (H) of the Act, requiring that Medicare participating hospitals, as part of the discharge planning process, (i) share with each beneficiary a list of Medicare-certified home health agencies that serve the beneficiary's geographic area and that request to be listed and (ii) identify any home health agency in which the hospital has a disclosable financial interest or that has a financial interest in the hospital.

[55] Properly structured, payments to physicians who become hospital employees may be protected by the employee safe harbor at 42 CFR 1001.952(i).

[56] *See* 42 CFR 1001.952(n).

and build-out costs funded for the benefit of the existing referral source. Hospitals should review all ''joint recruiting'' arrangements to ensure that remuneration does not inure in whole or in part to the benefit of any party other than the recruited physician.

e. Discounts

Public policy favors open and legitimate price competition in health care. Thus, the anti-kickback statute contains an exception for discounts offered to customers that submit claims to the Federal health care programs, if the discounts are properly disclosed and accurately reported.[57] However, to qualify for the exception, the discount must be in the form of a reduction in the price of the good or service based on an arm's-length transaction. In other words, the exception covers only reductions in the product's price. Moreover, the regulation provides that the discount must be given at the time of sale or, in certain cases, set at the time of sale, even if finally determined subsequent to the time of sale (*i.e.*, a rebate).

In conducting business, hospitals sell and purchase items and services reimbursable by Federal health care programs. Therefore, hospitals should thoroughly familiarize themselves with the discount safe harbor at 42 CFR 1001.952(h). In particular, depending on their role in the arrangement, hospitals should pay attention to the discount safe harbor requirements applicable to ''buyers,'' ''sellers,'' or ''offerors.'' Compliance with the safe harbor is determined separately for each party. In general, hospitals should ensure that all discounts—including rebates—are properly disclosed and accurately reflected on hospital cost reports. If a hospital offers a discount on an item or service to a buyer, it should ensure that the discount is properly disclosed on the invoice or other documentation for the item or service.

The discount safe harbor does not protect a discount offered to one payor but not to the Federal health care programs. Accordingly, in negotiating discounts for items and services paid from a hospital's pocket (such as those reimbursed under the Medicare Part A prospective payment system), the hospital should ensure that there is no link or connection, explicit or implicit, between discounts offered or solicited for that business and the hospital's referral of business billable by the seller directly to Medicare or another Federal health care program. For example, a hospital should not engage in ''swapping'' by accepting from a supplier an unreasonably low price on Part A services that the hospital pays for out of its own pocket in exchange for hospital referrals that are billable by the supplier directly to Part B (*e.g.*, ambulance services). Suspect arrangements include below-cost arrangements or arrangements at prices lower than the prices offered by the supplier to other customers with similar volumes of business, but without Federal health care program referrals.

Hospitals may also receive discounts on items and services purchased through group purchasing organizations (GPOs). Discounts received from a vendor in connection with a GPO to which a hospital belongs should be properly disclosed and accurately reported on the hospital cost reports. Although there is a safe harbor for payments made by a vendor to a GPO as part of an agreement to furnish items or services to a group of individuals or entities, 42 CFR 1001.952(k), the safe harbor does not protect the discount received by the individual or entity.[58]

f. Medical Staff Credentialing

Certain medical staff credentialing practices may implicate the anti-kickback statute. For example, conditioning privileges on a particular number of referrals or requiring the performance of a particular number of procedures, beyond volumes necessary to ensure clinical proficiency, potentially raise substantial risks under the statute. On the other hand, a credentialing policy that categorically refuses privileges to physicians with significant conflicts of interest would not appear to implicate the statute in most situations. Hospitals are advised to examine their credentialing practices to ensure that they do not run afoul of the anti-kickback statute. The OIG has solicited comments about, and is considering, whether further guidance in this area is appropriate.[59]

g. Malpractice Insurance Subsidies

The OIG historically has been concerned that a hospital's subsidy of malpractice insurance premiums for potential referral sources, including hospital medical staff, may be suspect under the anti-kickback statute, because the payments may be used to influence referrals. The OIG has established a safe harbor for medical malpractice premium subsidies provided to obstetrical care practitioners in primary health care shortage areas.[60] Depending on the circumstances, premium support may also be structured to fit in other safe harbors.

We are aware of the current disruption (*i.e.*, dramatic premium increases, insurers' withdrawals from certain markets, and/or sudden termination of coverage based upon factors other than the physicians' claims history) in the medical malpractice liability insurance markets in some States.[61] Notwithstanding, hospitals should review malpractice insurance subsidy arrangements closely to ensure that there is no improper inducement to referral sources. Relevant factors include, without limitation:

- Whether the subsidy is being provided on an interim basis for a fixed period in a State or States experiencing severe access or affordability problems;
- whether the subsidy is being offered only to current active medical staff (or physicians new to the locality or in practice less than a year, *i.e.*, physicians with no or few established patients);
- whether the criteria for receiving a subsidy is unrelated to the volume or value of referrals or other business generated by the subsidized physician or his practice;
- whether physicians receiving subsidies are paying at least as much as they currently pay for malpractice insurance (*i.e.*, are windfalls to physicians avoided);
- whether physicians are required to perform services or relinquish rights, which have a value equal to the fair market value of the insurance assistance; and
- whether the insurance is available regardless of the location at which the physician provides services, including, but not limited to, other hospitals.

No one of these factors is determinative, and this list is illustrative, not exhaustive, of potential considerations in connection with the provision of malpractice insurance subsidies. Parties contemplating malpractice subsidy programs that do not fit into one of the safe harbors may want to consider obtaining an advisory opinion. Parties should also be mindful

[57] *See* 42 U.S.C. 1320a–7b(b)(3)(A); 42 CFR 1001.952(h).

[58] To preclude improper shifting of discounts, the safe harbor excludes GPOs that wholly own their members or have members that are subsidiaries of the parent company that wholly owns the GPO. Hospitals with affiliated GPOs should be mindful of these limitations.

[59] *See* our ''Solicitation of New Safe Harbors and Special Fraud Alerts,'' 67 FR 72894 (December 9, 2002), available on our webpage at *http://oig.hhs.gov/authorities/docs/solicitationannsafeharbor.pdf.*

[60] *See* 42 CFR 1001.952(o).

[61] *See* OIG letter on hospital corporation's medical malpractice insurance assistance program, available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/MalpracticeProgram.pdf.*

that these subsidy arrangements also implicate the Stark law.

C. Payments To Reduce or Limit Services: Gainsharing Arrangements

The civil monetary penalty set forth in section 1128A(b)(1) of the Act prohibits a hospital from knowingly making a payment directly or indirectly to a physician as an inducement to reduce or limit items or services furnished to Medicare or Medicaid beneficiaries under the physician's direct care.[62] Hospitals that make (and physicians that receive) such payments are liable for civil monetary penalties (CMPs) of up to $2,000 per patient covered by the payments.[63] The statutory proscription is very broad. The payment need not be tied to an actual diminution in care, so long as the hospital knows that the payment may influence the physician to reduce or limit services to his or her patients. There is no requirement that the prohibited payment be tied to a specific patient or to a reduction in medically necessary care. In short, any hospital incentive plan that encourages physicians through payments to reduce or limit clinical services directly or indirectly violates the statute.

We are aware that a number of hospitals are engaged in, or considering entering into, incentive arrangements commonly called ''gainsharing.'' While there is no fixed definition of a ''gainsharing'' arrangement, the term typically refers to an arrangement in which a hospital gives physicians a percentage share of any reduction in the hospital's costs for patient care attributable in part to the physicians' efforts. We recognize that, properly structured, gainsharing arrangements can serve legitimate business and medical purposes, such as increasing efficiency, reducing waste, and, thereby, potentially increasing a hospital's profitability. However, the plain language of section 1128A(b)(1) of the Act prohibits tying the physicians' compensation for services to reductions or limitations in items or services provided to patients under the physicians' clinical care.[64]

In addition to the CMP risks described above, gainsharing arrangements can also implicate the anti-kickback statute if the cost-savings payments are used to influence referrals. For example, the statute is potentially implicated if a gainsharing arrangement is intended to influence physicians to ''cherry pick'' healthy patients for the hospital offering gainsharing payments and steer sicker (and more costly) patients to hospitals that do not offer gainsharing payments. Similarly, the statute may be implicated if a hospital offers a cost-sharing program with the intent to foster physician loyalty and attract more referrals. In addition, we have serious concerns about overly broad arrangements under which a physician continues for an extended time to reap the benefits of previously-achieved savings or receives cost-savings payments unrelated to anything done by the physician, whether work, services, or other undertaking (*e.g.*, a change in the way the physician practices).

Wherever possible, hospitals should consider structuring cost-saving arrangements to fit in the personal services safe harbor. However, in many cases, protection under the personal services safe harbor is not available because gainsharing arrangements typically involve a percentage payment (*i.e.*, the aggregate fee will not be set in advance, as required by the safe harbor). Finally, gainsharing arrangements may also implicate the Stark law.

D. Emergency Medical Treatment and Labor Act (EMTALA)

Hospitals should review their obligations under EMTALA (section 1867 of the Act) to evaluate and treat individuals who come to their emergency departments and other facilities. Hospitals should pay particular attention to when an individual must receive a medical screening exam to determine whether that individual is suffering from an emergency medical condition. When such a screening or treatment of an emergency medical condition is required, it cannot be delayed to inquire about an individual's method of payment or insurance status. If the hospital's emergency department (ED) is ''on diversion'' and an individual comes to the ED for evaluation or treatment of a medical condition, the hospital is required to provide such services despite its diversionary status.

Hospital emergency departments may not transfer an individual with an unstable emergency medical condition unless the benefits of such a transfer outweigh the risks. In such circumstances, the hospital must arrange for a transfer that will minimize the risks to the individual and that has been prearranged with the facility to which the individual is being transferred. Moreover, when a hospital receives a call from another facility requesting that it accept an appropriate transfer of a patient with an emergency, it must accept that patient for transfer if it has specialized capabilities to treat the patient that the transferring hospital does not have and it has the capacity to treat the patient.

A hospital must provide appropriate screening and treatment services within the full capabilities of its staff and facilities. This includes access to specialists who are on call. Thus, hospital policies and procedures should be clear on how to access the full services of the hospital and all staff should understand the hospital's obligations to patients under EMTALA. In particular, on-call physicians need to be educated as to their responsibilities to emergency patients, including the responsibility to accept appropriately transferred patients from other facilities. In addition, all persons working in emergency departments should be periodically trained and reminded of the hospital's EMTALA obligations and hospital policies and procedures designed to ensure that such obligations are met.

For further information about EMTALA, hospitals are directed to: (i) The anti-dumping statute at section 1867 of the Act; (ii) the anti-dumping statute's implementing regulations at 42 CFR part 489; (iii) our 1999 Special Advisory Bulletin on the Patient Anti-Dumping Statute, 64 FR 61353 (November 10, 1999), available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/frdump.pdf;* and (iv) CMS's EMTALA resource webpage located at *http://www.cms.gov/providers/emtala/emtala.asp.*

E. Substandard Care

The OIG has authority to exclude any individual or entity from participation in Federal health care programs if the individual or entity provides unnecessary items or services (*i.e.*, items or services in excess of the needs of a patient) or substandard items or services (*i.e.*, items or services of a quality which fails to meet professionally recognized

[62] The prohibition applies only to reductions or limitations of items or services provided to Medicare and Medicaid fee-for-service beneficiaries. *See* section 1128A(b)(1)(A) of the Act. *See also* our August 19, 1999 letter regarding ''Social Security Act sections 1128A(b)(1) and (2) and hospital-physician incentive plans for Medicare or Medicaid beneficiaries enrolled in managed care plans,'' available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/gsletter.htm.*

[63] *See* sections 1128A(b)(1)(B) & (b)(2) of the Act.

[64] A detailed discussion of gainsharing can be found in our July 1999 Special Advisory Bulletin titled ''Gainsharing Arrangements and CMPs for Hospital Payments to Physicians to Reduce or Limit Services to Beneficiaries,'' available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/gainsh.htm.*

standards of health care).[65] Significantly, neither knowledge nor intent is required for exclusion under this provision. The exclusion can be based upon unnecessary or substandard items or services provided to any patient, even if that patient is not a Medicare or Medicaid beneficiary.

We are mindful that the vast majority of hospitals are fully committed to providing quality care to their patients. To achieve their quality-related goals, hospitals should continually measure their performance against comprehensive standards. For example, hospitals should meet all of the Medicare hospital conditions of participation (COP), including without limitation, the COP pertaining to a quality assessment and performance program at 42 CFR 482.21 and the hospital COP pertaining to the medical staff at 42 CFR 482.22. Hospitals that have elected to be reviewed by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) should maintain their JCAHO accreditation.[66] In addition, hospitals should develop their own quality of care protocols and implement mechanisms for evaluating compliance with those protocols.

Finally, in reviewing the quality of care provided, hospitals must not limit their review to the quality of their nursing and other ancillary services. Instead, hospitals must also take an active part in monitoring the quality of medical services provided at the hospital by appropriately overseeing the credentialing and peer review of their medical staffs.

F. Relationships With Federal Health Care Beneficiaries

Hospitals' relationships with Federal health care beneficiaries may also implicate the fraud and abuse laws. In particular, hospitals should be aware that section 1128A(a)(5) of the Act authorizes the OIG to impose CMPs on hospitals (and others) that offer or transfer remuneration to a Medicare or Medicaid beneficiary that the offeror knows or should know is likely to influence the beneficiary to order or receive items or services from a particular provider, practitioner, or supplier for which payment may be made under the Medicare or Medicaid programs. The definition of ''remuneration'' expressly includes the offer or transfer of items or services for free or other than fair market value, including the waiver of all or part of a Medicare or Medicaid cost-sharing amount.[67] In other words, hospitals may not offer valuable items or services to Medicare or Medicaid beneficiaries to attract their business. In this regard, hospitals should familiarize themselves with the OIG's August 2002 Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries.[68]

1. Gifts and Gratuities

Hospitals should scrutinize any offers of gifts or gratuities to beneficiaries for compliance with the CMP provision prohibiting inducements to Medicare and Medicaid beneficiaries. The key inquiry under the CMP is whether the remuneration is something that the hospital knows or should know is likely to influence the beneficiary's selection of a particular provider, practitioner, or supplier for Medicare or Medicaid payable services. As interpreted by the OIG, section 1128A(a)(5) does not apply to the provision of items or services valued at less than $10 per item and $50 per patient in the aggregate on an annual basis.[69] A special exception for incentives to promote the delivery of preventive care services is discussed below at section II.I.2.

2. Cost-Sharing Waivers

In general, hospitals are obligated to collect cost-sharing amounts owed by Federal health care program beneficiaries. Waiving owed amounts may constitute prohibited remuneration to beneficiaries under section 1128A(a)(5) of the Act or the anti-kickback statute. Certain waivers of Part A inpatient cost-sharing amounts may be protected by structuring them to fit in the safe harbor for waivers of beneficiary inpatient coinsurance and deductible amounts at 42 CFR 1001.952(k). In particular, under the safe harbor, waived amounts may not be claimed as bad debt; the waivers must be offered uniformly across the board, without regard to the reason for admission, length of stay, or DRG; and waivers may not be made as part of any agreement with a third party payer, unless the third party payer is a Medicare SELECT plan under section 1882(t)(1) of the Act.[70]

In addition, hospitals (and others) may waive cost-sharing amounts on the basis of a beneficiary's financial need, so long as the waiver is not routine, not advertised, and made pursuant to a good faith, individualized assessment of the beneficiary's financial need or after reasonable collection efforts have failed.[71] The OIG recognizes that what constitutes a good faith determination of ''financial need'' may vary depending on the individual patient's circumstances and that hospitals should have flexibility to take into account relevant variables. These factors may include, for example:

- The local cost of living;
- a patient's income, assets, and expenses;
- a patient's family size; and
- the scope and extent of a patient's medical bills.

Hospitals should use a reasonable set of financial need guidelines that are based on objective criteria and appropriate for the applicable locality. The guidelines should be applied uniformly in all cases. While hospitals have flexibility in making the determination of financial need, we do not believe it is appropriate to apply inflated income guidelines that result in waivers for beneficiaries who are not in genuine financial need. Hospitals should consider that the financial status of a patient may change over time and should recheck a patient's eligibility at reasonable intervals sufficient to ensure that the patient remains in financial need. For example, a patient who obtains outpatient hospital services several times a week would not need to be rechecked every visit. Hospitals should take reasonable measures to document their determinations of Medicare beneficiaries' financial need. We are aware that in some situations patients may be reluctant or unable to provide documentation of their financial status. In those cases, hospitals may be able to use other reasonable methods for determining financial need, including, for example, documented patient interviews or questionnaires.

In sum, hospitals should review their waiver policies to ensure that the policies and the manner in which they are implemented comply with all applicable laws. For more information about cost-sharing waivers, hospitals should review our February 2, 2004

[65] *See* section 1128(b)(6)(B) of the Act, which is available through the Internet at *http://www4.law.cornell.edu/uscode /42/1320a-7.html.*

[66] JCAHO's Comprehensive Accreditation Manual for Hospitals is available through the Internet at *http://www.jcrinc.com/subscribers/perspectives.asp?durki=6065 &site=10&return=2815.*

[67] *See* section 1128A(i)(6) of the Act.

[68] The Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries, 65 FR 24400, 24411 (April 26, 2000), is available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/SABGiftsandInducements.pdf.*

[69] *See id.*

[70] The OIG has proposed a rule to extend this safe harbor to protect waivers of Part B cost-sharing amounts pursuant to agreements with Medicare SELECT plans. *See* 67 FR 60202 (September 25, 2002), available on our webpage at *http://oig.hhs.gov/fraud/docs/safeharborregulations/MedicareSELECTNPRMFederalRegister.pdf.* However, the OIG is still considering comments on this rule, and it has not been finalized.

[71] *See* section 1128A(a)(6)(A) of the Act.

paper on ''Hospital Discounts Offered To Patients Who Cannot Afford To Pay Their Hospital Bills,'' containing a section titled ''Reductions or Waivers of Cost-Sharing Amounts for Medicare Beneficiaries Experiencing Financial Hardship'' and available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/2004/FA021904hospitaldiscounts.pdf.*[72]

3. Free Transportation

The plain language of the CMP prohibits offering free transportation to Medicare or Medicaid beneficiaries to influence their selection of a particular provider, practitioner, or supplier. Notwithstanding, hospitals can offer free local transportation of *low* value (*i.e.*, within the $10 per item and $50 annual limits).[73] Luxury and specialized transportation, such as limousines or ambulances, would exceed the low value threshold and are problematic, as are arrangements tied in any manner to the volume or value of referrals and arrangements tied to particularly lucrative treatments or medical conditions. However, we have indicated that we are considering developing a regulatory exception for some complimentary local transportation provided to beneficiaries residing in a hospital's primary service area.[74] Accordingly, until such time as we promulgate a final rule on complimentary local transportation under section 1128A(a)(5) or indicate our intention not to proceed with such rule, we have indicated that we will not impose administrative sanctions for violations of section 1128A(a)(5) of the Act in connection with hospital-based complimentary transportation programs that meet the following conditions:

- The program was in existence prior to August 30, 2002, the date of publication of the Special Advisory Bulletin on Offering Gifts and Other Inducements to Beneficiaries.
- Transportation is offered uniformly and without charge or at reduced charge to all patients of the hospital or hospital-owned ambulatory surgical center (and may also be made available to their families).
- The transportation is only provided to and from the hospital or a hospital-owned ambulatory surgical center and is for the purpose of receiving hospital or ambulatory surgery center services (or, in the case of family members, accompanying or visiting hospital or ambulatory surgical center patients).
- The transportation is provided only within the hospital's or ambulatory surgical center's primary service area.
- The costs of the transportation are not claimed directly or indirectly by any Federal health care program cost report or claim and are not otherwise shifted to any Federal health care program.
- The transportation does not include ambulance transportation.

Other arrangements are subject to a case-by-case review under the statute to ensure that no improper inducement exists.

G. HIPAA Privacy and Security Rules

As of April 14, 2003, all hospitals transmitting electronic transactions to health plans were required to comply with the privacy rules of the Health Insurance Portability and Accountability Act (HIPAA). Generally, the HIPAA privacy rule addresses the use and disclosure of individuals' health information (protected health information or PHI) by hospitals and other covered entities, as well as standards for individuals' privacy rights to understand and control how their health information is used. The privacy rule, 45 CFR parts 160 and 164, and other helpful information about how it applies, including frequently asked questions, can be found on the webpage of the Department's Office for Civil Rights (OCR) at *http://www.hhs.gov/ocr/hipaa/.* Questions about the privacy rule should be submitted to OCR. Hospitals can contact OCR by following the instructions on its webpage, *http://www.hhs.gov/ocr/contact.html,* or by calling the HIPAA toll-free number, (866) 627–7748.

To ease the burden of complying with the new requirements, the privacy rule gives hospitals and other covered entities flexibility to create their own privacy procedures. Each hospital should make sure that it is compliant with all applicable provisions of the privacy rule, including provisions pertaining to required disclosures (such as required disclosures to the Department when it is undertaking a compliance investigation or review or enforcement action) and that its privacy procedures are tailored to fit its particular size and needs.

The final HIPAA security rule was published in the **Federal Register** on February 20, 2003. It is available on CMS's webpage at *http://www.cms.gov/hipaa/hipaa2.* The security rule specifies a series of administrative, technical, and physical security procedures for hospitals that are covered entities and other covered entities to use to assure the confidentiality of electronic PHI. Hospitals that are covered entities must be compliant with the security rule by April 20, 2005. The security rule requirements are flexible and scalable, which allows each covered entity to tailor its approach to compliance based on its own unique circumstances. Covered entities can consider their organization and capabilities, as well as costs, in designing their security plans and procedures. Questions about the HIPAA security rules should be submitted to CMS. Hospitals can contact CMS by following the instructions on its webpage, *http://www.cms.gov/hipaa/hipaa2/contact,* or by calling the HIPAA toll-free number, (866) 627–7748.

H. Billing Medicare or Medicaid Substantially in Excess of Usual Charges

Section 1128(b)(6)(A) of the Act provides for the permissive exclusion from Federal health care programs of any provider or supplier that submits a claim based on costs or charges to the Medicare or Medicaid programs that is ''substantially in excess'' of its usual charge or cost, unless the Secretary finds there is ''good cause'' for the higher charge or cost. The exclusion provision does not require a provider to charge everyone the same price; nor does it require a provider to offer Medicare or Medicaid its ''best price.'' However, providers cannot routinely charge Medicare or Medicaid substantially more than they usually charge others. Hospitals have raised concerns regarding the impact of the exclusion authority on hospital services, and the OIG is considering those concerns in the context of the rulemaking process.[75] The OIG's policy regarding application of the exclusion authority to discounts offered to uninsured and underinsured patients is discussed below.

I. Areas of General Interest

Although in most cases the following areas do not pose significant fraud and abuse risk, the OIG has received numerous inquiries from hospitals and others on these topics. Therefore, we offer the following guidance to assist

[72] *See also* OIG's Special Fraud Alert on Routine Waiver of Copayments or Deductibles Under Medicare Part B, issued May 1991, republished in the **Federal Register** at 59 FR 65373, 65374 (December 19, 1994), and available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/121994.html.*

[73] Our position on local transportation of nominal value is more fully set forth in the preamble to the final rule enacting 42 CFR 1003.102(b)(13). *See* 65 FR 24400, 24411 (April 26, 2000).

[74] *See supra* note 68.

[75] *See* Notice of Proposed Rulemaking regarding ''Clarification of Terms and Application of Program Exclusion Authority for Submitting Claims Containing Excessive Charges,'' 68 FR 53939 (September 15, 2003), available on our webpage at *http://oig.hhs.gov/authorities/docs/FRSIENPRM.pdf.*

hospitals in their review of these arrangements.

1. Discounts to Uninsured Patients

No OIG authority, including the Federal anti-kickback statute, prohibits or restricts hospitals from offering discounts to uninsured patients who are unable to pay their hospital bills.[76] In addition, the OIG has never excluded or attempted to exclude any provider or supplier for offering discounts to uninsured or underinsured patients under the permissive exclusion authority at section 1128(b)(6)(A) of the Act. However, to provide additional assurance to the industry, the OIG recently proposed regulations that would define key terms in the statute.[77] Among other things, the proposed regulations would make clear that free or substantially reduced charges to uninsured persons would not affect the calculation of a provider's or supplier's ''usual'' charges, as the term ''usual charges'' is used in the exclusion provision. The OIG is currently reviewing the public comments to the proposed regulations. Until such time as a final regulation is promulgated or the OIG indicates its intention not to promulgate a final rule, it will continue to be the OIG's enforcement policy that when calculating their ''usual charges'' for purposes of section 1128(b)(6)(A), individuals and entities do not need to consider free or substantially reduced charges to (i) uninsured patients or (ii) underinsured patients who are self-paying patients for the items or services furnished. In offering such discounts, a hospital should reflect full uniform charges, rather than the discounted amounts, on its Medicare cost report and make the FI aware that it has reported its full charges.[78]

Under CMS rules, Medicare generally reimburses a hospital for a percentage of the ''bad debt'' of a Medicare beneficiary (*i.e.*, unpaid deductibles or coinsurance) as long as the hospital bills a patient and engages in reasonable, consistent collection efforts.[79] However, as explained in CMS's paper titled ''Questions On Charges For The Uninsured,'' a hospital can forgo any collection effort aimed at a Medicare patient, if the hospital, using its customary methods, can document that the patient is indigent or medically indigent.[80] In addition, if the hospital also determines that no source other than the patient is legally responsible for the unpaid deductibles and coinsurance, the hospital may claim the amounts as Medicare bad debts.

CMS rules provide that a hospital can determine its own individual indigency criteria as long as it applies the criteria to Medicare and non-Medicare patients uniformly. For Medicare patients, however, if a hospital wants to claim Medicare bad debt reimbursement, CMS requires documentation to support the indigency determination. To claim Medicare bad debt reimbursement, the hospital must follow the guidance stated in the Provider Reimbursement Manual.[81] A hospital should examine a patient's total resources, which could include, but are not limited to, an analysis of assets, liabilities, income, expenses, and any extenuating circumstances that would affect the determination. The hospital should document the method by which it determined the indigency and include all backup information to substantiate the determination. In addition, if collection efforts are made, Medicare requires the efforts to be documented in the patient's file with copies of the bill(s), follow-up letters, and reports of telephone and personal contacts. In the case of a dually-eligible patient (*i.e.*, a patient entitled to both Medicare and Medicaid), the hospital must include a denial of payment from the State with the bad debt claim.

2. Preventive Care Services

Hospitals, particularly non-profit hospitals, frequently participate in community-based efforts to deliver preventive care services. The Medicare and Medicaid programs encourage patients to access preventive care services. The prohibition against beneficiary inducements at section 1128A(a)(5) of the Act does not apply to incentives offered to promote the delivery of certain preventive care services, if the programs are structured in accordance with the regulatory requirements at 42 CFR 1003.101. Generally, to fit within the preventive care exception, a service must be a prenatal service or post-natal well-baby visit or a specific clinical service described in the current U.S. Preventive Services Task Force's *Guide to Clinical Preventive Services*[82] that is reimbursed by Medicare or Medicaid. Obtaining the service may not be tied directly or indirectly to the provision of other Medicare or Medicaid services. In addition, the incentives may not be in the form of cash or cash equivalents and may not be disproportionate to the value of the preventive care provided. From an anti-kickback perspective, the chief concern is whether an arrangement to induce patients to obtain preventive care services is intended to induce other business payable by a Federal health care program. Relevant factors in making this evaluation would include, but not be limited to: the nature and scope of the preventive care services; whether the preventive care services are tied directly or indirectly to the provision of other items or services and, if so, the nature and scope of the other services; the basis on which patients are selected to receive the free or discounted services; and whether the patient is able to afford the services.

3. Professional Courtesy

Although historically ''professional courtesy'' referred to the practice of physicians waiving the entire professional fee for other physicians, the term is variously used in the industry now to describe a range of practices involving free or discounted services (including ''insurance only'' billing) furnished to physicians and their families and staff. Some hospitals have used the term ''professional courtesy'' to describe various programs that offer free or discounted hospital services to

[76] Discounts offered to underinsured patients potentially raise a more significant concern under the anti-kickback statute, and hospitals should exercise care to ensure that such discounts are not tied directly or indirectly to the furnishing of items or services payable by a Federal health care program. For more information, *see* our February 2, 2004 paper on ''Hospital Discounts Offered To Patients Who Cannot Afford To Pay Their Hospital Bills,'' available on our webpage at *http://oig.hhs.gov/fraud/docs/alertsandbulletins/2004/FA021904hospitaldiscounts.pdf,* and CMS's paper titled ''Questions On Charges For The Uninsured,'' dated February 17, 2004, and available on CMS's webpage at *http://www.cms.gov/FAQ_Uninsured.pdf.*

[77] *See* 68 FR 53939 (September 15, 2003), available on our webpage at *http://oig.hhs.gov/authorities/docs/FRSIENPRM.pdf.*

[78] For more information, see CMS's paper titled ''Questions On Charges For The Uninsured,'' dated February 17, 2004, and available on CMS's webpage at *http://www.cms.gov/FAQ_Uninsured.pdf.*

[79] *See* 42 CFR 413.80 and Medicare's Provider Reimbursement Manual, Part II, chapter 11, section 1102.3.L, available on CMS's webpage at *http://www.cms.gov/manuals/pub152/PUB_15_2.asp.*

[80] *See* ''Questions On Charges For The Uninsured,'' dated February 17, 2004 and available on CMS's webpage at *http://www.cms.gov/FAQ_Uninsured.pdf.* In the paper, CMS further explains that hospitals may, but are not required to, determine a patient's indigency using a sliding scale. In this type of arrangement, the provider would agree to deem the patient indigent with respect to a portion of the patient's account (*e.g.*, a flat percentage of the debt based on the patient's income, assets, or the size of the patient's liability relative to their income). In the case of a Medicare patient who is determined to be indigent using this method, the amount the hospital decides, pursuant to its policy, not to collect from the patient can be claimed by the provider as Medicare bad debt. The hospital must, however, engage in a reasonable collection effort to collect the remaining balance. *Id.*

[81] *See* Medicare's Provider Reimbursement Manual, Part II, chapter 11, section 1102.3.L, available on CMS's webpage at *http://www.cms.gov/manuals/pub152/PUB_15_2.asp.*

[82] Available on the Internet at *http://www.ahrq.gov/clinic/cps3dix.htm.*

medical staff, employees, community physicians, and their families and staff. Although many professional courtesy programs are unlikely to pose a significant risk of abuse (and many may be legitimate employee benefits programs eligible for the employee safe harbor), some hospital-sponsored ''professional courtesy'' programs may implicate the fraud and abuse statutes.

In general, whether a professional courtesy program runs afoul of the anti-kickback statute turns on whether the recipients of the professional courtesy are selected in a manner that takes into account, directly or indirectly, any recipient's ability to refer to, or otherwise generate business for, the hospital. Also relevant is whether the physicians have solicited the professional courtesy in return for referrals. With respect to the Stark law, the key inquiry is whether the arrangement fits in the exception for professional courtesy at 42 CFR 411.357(s). Finally, hospitals should evaluate the method by which the courtesy is granted. For example, ''insurance only'' billing offered to a Federal program beneficiary potentially implicates the anti-kickback statute, the False Claims Act, and the CMP provision prohibiting inducements to Medicare and Medicaid beneficiaries (discussed in section II.F above). Notably, the Stark law exception for professional courtesy requires that insurers be notified if ''professional courtesy'' includes ''insurance only'' billing.

III. Hospital Compliance Program Effectiveness

Hospitals with an organizational culture that values compliance are more likely to have effective compliance programs and thus be better able to prevent, detect, and correct problems. Building and sustaining a successful compliance program rarely follows the same formula from organization to organization. However, such programs generally include: The commitment of the hospital's governance and management at the highest levels; structures and processes that create effective internal controls; and regular self-assessment and enhancement of the existing compliance program. The 1998 CPG provided guidance for hospitals on establishing sound internal controls.[83] This section discusses the important roles of corporate leadership and self-assessment of compliance programs.

A. Code of Conduct

Every effective compliance program necessarily begins with a formal commitment to compliance by the hospital's governing body and senior management. Evidence of that commitment should include active involvement of the organizational leadership, allocation of adequate resources, a reasonable timetable for implementation of the compliance measures, and the identification of a compliance officer and compliance committee vested with sufficient autonomy, authority, and accountability to implement and enforce appropriate compliance measures. A hospital's leadership should foster an organizational culture that values, and even rewards, the prevention, detection, and resolution of problems. Moreover, hospitals' leadership and management should ensure that policies and procedures, including, for example, compensation structures, do not create undue pressure to pursue profit over compliance. In short, the hospital should endeavor to develop a culture that values compliance from the top down and fosters compliance from the bottom up. Such an organizational culture is the foundation of an effective compliance program.

Although a clear statement of detailed and substantive policies and procedures—and the periodic evaluation of their effectiveness—is at the core of a compliance program, the OIG recommends that hospitals also develop a general organizational statement of ethical and compliance principles that will guide the entity's operations. One common expression of this statement of principles is a code of conduct. The code should function in the same fashion as a constitution, *i.e.*, as a document that details the fundamental principles, values, and framework for action within an organization. The code of conduct for a hospital should articulate a commitment to compliance by management, employees, and contractors, and should summarize the broad ethical and legal principles under which the hospital must operate. Unlike the more detailed policies and procedures, the code of conduct should be brief, easily readable, and cover general principles applicable to all members of the organization.

As appropriate, the OIG strongly encourages the participation and involvement of the hospital's board of directors, officers (including the chief executive officer (CEO)), members of senior management, and other personnel from various levels of the organizational structure in the development of all aspects of the compliance program, especially the code of conduct. Management and employee involvement in this process communicates a strong and explicit commitment by management to foster compliance with applicable Federal health care program requirements. It also communicates the need for all managers, employees, contractors, and medical staff members to comply with the organization's code of conduct and policies and procedures.

B. Regular Review of Compliance Program Effectiveness

Hospitals should regularly review the implementation and execution of their compliance program elements. This review should be conducted at least annually and should include an assessment of each of the basic elements individually, as well as the overall success of the program. This review should help the hospital identify any weaknesses in its compliance program and implement appropriate changes.

A common method of assessing compliance program effectiveness is measurement of various outcomes indicators (*e.g.*, billing and coding error rates, identified overpayments, and audit results). However, we have observed that exclusive reliance on these indicators may cause an organization to miss crucial underlying weaknesses. We recommend that hospitals examine program outcomes and assess the underlying structure and process of each compliance program element. We have identified a number of factors that may be useful when evaluating the effectiveness of basic compliance program elements. Hospitals should consider these factors, as well as others, when developing a strategy for assessing their compliance programs. While no one factor is determinative of program effectiveness, the following factors are often observed in effective compliance programs.

1. Designation of a Compliance Officer and Compliance Committee

The compliance department is the backbone of the hospital's compliance program. The compliance department should be led by a well-qualified compliance officer, who is a member of senior management, and should be supported by a compliance committee.

[83] Among other things, the 1998 hospital CPG includes a detailed discussion of the structure and processes that make up the recommended seven elements of a compliance program. The seven basic elements of a compliance program are: designation of a compliance officer and compliance committee; development of compliance policies and procedures, including standards of conduct; development of open lines of communication; appropriate training and education; response to detected offenses; internal monitoring and auditing; and enforcement of disciplinary standards.

The purpose of the compliance department is to implement the hospital's compliance program and to ensure that the hospital complies with all applicable Federal health care program requirements. To ensure that the compliance department is meeting this objective, each hospital should conduct an annual review of its compliance department. Some factors that the organization may wish to consider in its evaluation include the following:

- Does the compliance department have a clear, well-crafted mission?
- Is the compliance department properly organized?
- Does the compliance department have sufficient resources (staff and budget), training, authority, and autonomy to carry out its mission?
- Is the relationship between the compliance function and the general counsel function appropriate to achieve the purpose of each?
- Is there an active compliance committee, comprised of trained representatives of each of the relevant functional departments, as well as senior management?
- Are *ad hoc* groups or task forces assigned to carry out any special missions, such as conducting an investigation or evaluating a proposed enhancement to the compliance program?
- Does the compliance officer have direct access to the governing body, the president or CEO, all senior management, and legal counsel?
- Does the compliance officer have a good working relationship with other key operational areas, such as internal audit, coding, billing, and clinical departments?
- Does the compliance officer make regular reports to the board of directors and other hospital management concerning different aspects of the hospital's compliance program?

2. Development of Compliance Policies and Procedures, Including Standards of Conduct

The purpose of compliance policies and procedures is to establish bright-line rules that help employees carry out their job functions in a manner that ensures compliance with Federal health care program requirements and furthers the mission and objective of the hospital itself. Typically, policies and procedures are written to address identified risk areas for the organization. As hospitals conduct a review of their written policies and procedures, some of the following factors may be considered:

- Are policies and procedures clearly written, relevant to day-to-day responsibilities, readily available to those who need them, and re-evaluated on a regular basis?
- Does the hospital monitor staff compliance with internal policies and procedures?
- Have the standards of conduct been distributed to the Board of Directors, all officers, all managers, employees, contractors, and medical staff?
- Has the hospital developed a risk assessment tool, which is re-evaluated on a regular basis, to assess and identify weaknesses and risks in operations?
- Does the risk assessment tool include an evaluation of Federal health care program requirements, as well as other publications, such as OIG CPGs, Work Plans, Special Advisory Bulletins, and Special Fraud Alerts?

3. Developing Open Lines of Communication

Open communication is essential to maintaining an effective compliance program. The purpose of developing open communication is to increase the hospital's ability to identify and respond to compliance problems. Generally, open communication is a product of organizational culture and internal mechanisms for reporting instances of potential fraud and abuse. When assessing a hospital's ability to communicate potential compliance issues effectively, a hospital may wish to consider the following factors:

- Has the hospital fostered an organizational culture that encourages open communication, without fear of retaliation?
- Has the hospital established an anonymous hotline or other similar mechanism so that staff, contractors, patients, visitors, and medical staff can report potential compliance issues?
- How well is the hotline publicized; how many and what types of calls are received; are calls logged and tracked (to establish possible patterns); and does the caller have some way to be informed of the hospital's actions?
- Are all instances of potential fraud and abuse investigated?
- Are the results of internal investigations shared with the hospital governing body and relevant departments on a regular basis?
- Is the governing body actively engaged in pursuing appropriate remedies to institutional or recurring problems?
- Does the hospital utilize alternative communication methods, such as a periodic newsletter or compliance intranet web site?

4. Appropriate Training and Education

Hospitals that fail to train and educate their staff adequately risk liability for the violation of health care fraud and abuse laws. The purpose of conducting a training and education program is to ensure that each employee, contractor, or any other individual that functions on behalf of the hospital is fully capable of executing his or her role in compliance with rules, regulations, and other standards. In reviewing their training and education programs, hospitals may consider the following factors:

- Does the hospital provide qualified trainers to conduct annual compliance training to its staff, including both general and specific training pertinent to the staff s responsibilities?
- Has the hospital evaluated the content of its training and education program on an annual basis and determined that the subject content is appropriate and sufficient to cover the range of issues confronting its employees?
- Has the hospital kept up-to-date with any changes in Federal health care program requirements and adapted its education and training program accordingly?
- Has the hospital formulated the content of its education and training program to consider results from its audits and investigations; results from previous training and education programs; trends in hotline reports; and OIG, CMS, or other agency guidance or advisories?
- Has the hospital evaluated the appropriateness of its training format by reviewing the length of the training sessions; whether training is delivered via live instructors or via computer-based training programs; the frequency of training sessions; and the need for general and specific training sessions?
- Does the hospital seek feedback after each session to identify shortcomings in the training program, and does it administer post-training testing to ensure attendees understand and retain the subject matter delivered?
- Has the hospital s governing body been provided with appropriate training on fraud and abuse laws?
- Has the hospital documented who has completed the required training?
- Has the hospital assessed whether to impose sanctions for failing to attend training or to offer appropriate incentives for attending training?

5. Internal Monitoring and Auditing

Effective auditing and monitoring plans will help hospitals avoid the submission of incorrect claims to

Federal health care program payors. Hospitals should develop detailed annual audit plans designed to minimize the risks associated with improper claims and billing practices. Some factors hospitals may wish to consider include the following:

- Is the audit plan re-evaluated annually, and does it address the proper areas of concern, considering, for example, findings from previous years' audits, risk areas identified as part of the annual risk assessment, and high volume services?
- Does the audit plan include an assessment of billing systems, in addition to claims accuracy, in an effort to identify the root cause of billing errors?
- Is the role of the auditors clearly established and are coding and audit personnel independent and qualified, with the requisite certifications?
- Is the audit department available to conduct unscheduled reviews and does a mechanism exist that allows the compliance department to request additional audits or monitoring should the need arise?
- Has the hospital evaluated the error rates identified in the annual audits?
- If the error rates are not decreasing, has the hospital conducted a further investigation into other aspects of the hospital compliance program in an effort to determine hidden weaknesses and deficiencies?
- Does the audit include a review of all billing documentation, including clinical documentation, in support of the claim?

6. Response to Detected Deficiencies

By consistently responding to detected deficiencies, hospitals can develop effective corrective action plans and prevent further losses to Federal health care programs. Some factors a hospital may wish to consider when evaluating the manner in which it responds to detected deficiencies include the following:

- Has the hospital created a response team, consisting of representatives from the compliance, audit, and any other relevant functional areas, which may be able to evaluate any detected deficiencies quickly?
- Are all matters thoroughly and promptly investigated?
- Are corrective action plans developed that take into account the root causes of each potential violation?
- Are periodic reviews of problem areas conducted to verify that the corrective action that was implemented successfully eliminated existing deficiencies?
- When a detected deficiency results in an identified overpayment to the hospital, are overpayments promptly reported and repaid to the FI?
- If a matter results in a probable violation of law, does the hospital promptly disclose the matter to the appropriate law enforcement agency.[84]

7. Enforcement of Disciplinary Standards

By enforcing disciplinary standards, hospitals help create an organizational culture that emphasizes ethical behavior. Hospitals may consider the following factors when assessing the effectiveness of internal disciplinary efforts:

- Are disciplinary standards well-publicized and readily available to all hospital personnel?
- Are disciplinary standards enforced consistently across the organization?
- Is each instance involving the enforcement of disciplinary standards thoroughly documented?
- Are employees, contractors and medical staff checked routinely (*e.g.*, at least annually) against government sanctions lists, including the OIG's List of Excluded Individuals/Entities (LEIE)[85] and the General Services Administration's Excluded Parties Listing System.

In sum, while no single factor is conclusive of an effective compliance program, the preceding seven areas form a useful starting point for developing and maintaining an effective compliance program.

IV. Self-Reporting

Where the compliance officer, compliance committee, or a member of senior management discovers credible evidence of misconduct from any source and, after a reasonable inquiry, believes that the misconduct may violate criminal, civil, or administrative law, the hospital should promptly report the existence of misconduct to the appropriate Federal and State authorities[86] within a reasonable period, but not more than 60 days,[87] after determining that there is credible evidence of a violation.[88] Prompt voluntary reporting will demonstrate the hospital's good faith and willingness to work with governmental authorities to correct and remedy the problem. In addition, reporting such conduct will be considered a mitigating factor by the OIG in determining administrative sanctions (*e.g.*, penalties, assessments, and exclusion), if the reporting hospital becomes the subject of an OIG investigation.[89] To encourage providers to make voluntary disclosures, the OIG published the Provider Self-Disclosure Protocol.[90]

When reporting to the government, a hospital should provide all information relevant to the alleged violation of applicable Federal or State law(s) and the potential financial or other impact of the alleged violation. The compliance officer, under advice of counsel and with guidance from the governmental authorities, could be requested to continue to investigate the reported violation. Once the investigation is completed, and especially if the investigation ultimately reveals that criminal, civil or administrative violations have occurred, the compliance officer should notify the appropriate governmental authority of the outcome of the investigation, including a description of the impact of the alleged violation on the applicable Federal health care programs or their beneficiaries.

[84] For more information on when to self-report, *see* section IV, below.

[85] *See http://oig.hhs.gov/fraud/exclusions.html.* The OIG also makes available Monthly Supplements for Standard LEIE, which can be compared to existing hospital personnel lists.

[86] Appropriate Federal and State authorities include the OIG, CMS, the Criminal and Civil Divisions of the Department of Justice, the U.S. Attorney in relevant districts, the Food and Drug Administration, the Department's Office for Civil Rights, the Federal Trade Commission, the Drug Enforcement Administration, the Federal Bureau of Investigation, and the other investigative arms for the agencies administering the affected Federal or State health care programs, such as the State Medicaid Fraud Control Unit, the Defense Criminal Investigative Service, the Department of Veterans Affairs, the Health Resources and Services Administration, and the Office of Personnel Management (which administers the Federal Employee Health Benefits Program).

[87] In contrast, to qualify for the ''not less than double damages'' provision of the False Claims Act, the provider must provide the report to the government within 30 days after the date when the provider first obtained the information. *See* 31 U.S.C. 3729(a).

[88] Some violations may be so serious that they warrant immediate notification to governmental authorities prior to, or simultaneous with, commencing an internal investigation. By way of example, the OIG believes a provider should immediately report misconduct that: (1) Is a clear violation of administrative, civil, or criminal laws; (2) has a significant adverse effect on the quality of care provided to Federal health care program beneficiaries; or (3) indicates evidence of a systemic failure to comply with applicable laws or an existing corporate integrity agreement, regardless of the financial impact on Federal health care programs.

[89] The OIG has published criteria setting forth those factors that the OIG takes into consideration in determining whether it is appropriate to exclude an individual or entity from program participation pursuant to 42 U.S.C. 1320a-7(b)(7) for violations of various fraud and abuse laws. *See* 62 FR 67392 (December 24, 1997).

[90] *See* 63 FR 58399 (October 30, 1998), available on our webpage at *http://oig.hhs.gov/authorities/docs/selfdisclosure.pdf.*

V. Conclusion

In today's environment of increased scrutiny of corporate conduct and increasingly large expenditures for health care, it is imperative for hospitals to establish and maintain effective compliance programs. These programs should foster a culture of compliance that begins at the highest levels and extends throughout the organization. This supplemental CPG is intended as a resource for hospitals to help them operate effective compliance programs that decrease errors, fraud, and abuse and increase compliance with Federal health care program requirements for the benefit of the hospitals and public alike.

Dated: May 20, 2004.

Lewis Morris,

Chief Counsel to the Inspector General.

[FR Doc. 04–12829 Filed 6–7–04; 8:45 am]

BILLING CODE 4150–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute (NHLBI); Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Development of a Tilting Bed That Allows Horizontal Positioning and Lateral Rotation

AGENCY: National Institutes of Health, Public Health Services, DHHS

ACTION: Notice.

SUMMARY: The Pulmonary-Critical Care Medicine Branch (P-CCMB) in National Heart, Lung, and Blood Institute (NHLBI) conducts research on lung disease that includes development of new technologies for the prevention of nosocomial pneumonia and ventilator-induced injury.

Ventilator-associated pneumonia is the leading cause of death from nosocomial infection during mechanical ventilation with an endotracheal tube (ETT). The ETT is believed to facilitate bacterial colonization of the lower respiratory tract.

NHLBI has been investigating the role of horizontal orientation of the endotracheal tube and neck on bacterial colonization of the respiratory tract. Current clinical practice is to position the patient semirecumbent by elevating the head of the bed, to reduce gastric regurgitation. NHLBI tested whether horizontal positioning of the ETT and of the trachea combined with intermittent lateral body rotation could facilitate spontaneous removal (without tracheal suctioning) of contaminated respiratory tract secretion, whether bacteria had been introduced into the trachea during intubation or via leakage around the inflated ETT cuff. The ETT and trachea are kept horizontal through a tilting bed that allows lateral body rotation.

NHLBI's studies indicate that maintaining a patient's trachea and tracheal tube in the horizontal plane could be expected to: (1) Obviate the need for tracheal tube suctioning; (2) prevent tracheal/bronchial and pulmonary colonization with oropharyngeal/gastric flora; and (3) in a patient with pre-existing pneumonia, reduce incidence of antibiotic-resistant bacterial infection, as the gastric/oropharyngeal source of such bacteria is eliminated.

This CRADA project is with the Pulmonary and Cardiac Assist Devices Section within P-CCMB in NHLBI. The NHLBI is seeking capability statements from parties interested in entering into a CRADA to further develop, evaluate, and commercialize a tilting bed that allows lateral body rotation. The goals are to use the respective strengths of both parties to achieve the following:

(1) Assistance in conducting clinical trials to determine the performance of the tilting bed in the prevention of ventilator-associated pneumonia and improvement of care of patients intubated and mechanically ventilated; and (2) manufacture of the tilting bed.

The collaborator may also be expected to contribute financial support under this CRADA for personnel, supplies, travel, and equipment to support these projects.

Reference paper: Bacterial colonization of the respiratory tract following tracheal intubation—Effect of gravity: An experimental study. M. Panigada, MD; L. Berra, MD; G. Greco, MD; M. Stylianou, PhD; T. Kolobow, MD: Crit Care Med 2003; 31:729–737.

CRADA capability statements should be submitted to Marianne Lynch, JD, Technology Transfer Specialist, National Heart, Lung, and Blood Institute (NHLBI), Office of Technology Transfer and Development, National Institutes of Health, 6705 Rockledge Drive, Suite 6018, MSC 7992, Bethesda, MD 20892–7992; Phone: (301) 594–4094; Fax: (301) 594–3080; E-mail: *Lynchm@nhlbi.nih.gov.* Capability statements must be received on or before 60 days after **Federal Register** Notice is published.

Dated: May 26, 2004.

Carl Roth,

Director, Office of Science and Technology.

[FR Doc. 04–12859 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Review of R34 Applications.

Date: June 22, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call)

Contact Person: Martha Ann Carey, PhD, RN, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6151, MSC 9608, Bethesda, MD 20892–9608, 301–443–1606, *mcarey@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel Mental Health Interventions for Children, Families and Eating Disorders.

Date: July 8, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892–9608, 301–402–8152, *mbroitma@mail.nih.gov.*

Name of Committee: National Institute of Mental Health Special Emphasis Panel Attentional Research Centers.

Date: July 12, 2004.

Time: 10 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Peter J. Sheridan, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6142, MSC 9606, Bethesda, MD 20892–9606, 301–443–1513, *psherida@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12855 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, NINDS Clinical Collaboration Research Facility.

Date: June 14, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate contract proposals.

Place: Bethesda Marriott, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Katherine Woodbury, PhD., Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. (301) 496–5980, *kw47o@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS.)

Dated: May 28, 2003.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12856 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Neurological Disorders and Stroke, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Neurological Disorders and Stroke.

Date: June 6–8, 2004.

Closed: June 6, 2004, 7 p.m. to 10 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Open: June 7, 2004, 8:30 a.m. to 11:35 a.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: June 7, 2004, 11:35 a.m. to 1:25 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: June 7, 2004 1:25 p.m. to 3:20 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: June 7, 2004, 3:20 p.m. to 4:15 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Open: June 7, 2004 4:15 p.m. to 5:10 p.m.

Agenda: To discuss program planning and program accomplishments.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: June 7, 2004, 5:10 p.m. to 5:40 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852.

Closed: June 7, 2004, 6:30 p.m. to 9:30 p.m.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Closed: June 8, 2004, 8:30 a.m. to adjournment.

Agenda: To review and evaluate personnel qualifications and performance, and competence of individual investigators.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Story C. Landis, PhD, Director, Division of Intramural Research, NINDS, National Institutes of Health, Building 36, Room 5A05, Bethesda, MD 20892, 301–435–2232.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the

Neurosciences, National Institutes of Health, HHS)

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12857 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 PBC–02 M Biochemistry.

Date: June 8, 2004.

Time: 10 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Zakir Bengali, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892. (301) 435–1742, *bengaliz@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Therapeutic Developments for Dermatological Diseases.

Date: June 15, 2004.

Time: 10:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Jeffrey E. DeClue, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7814, Bethesda, MD 20892. (301) 594–6376, *decluej@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Diagnostic and Treatment.

Date: June 24–25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1700 Tysons Boulevard, McLean, VA 22102.

Contact Person: Hungyi Shau, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6214, MSC 7804, Bethesda, MD 20892. (301) 435–1720, *shauhung@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Neurobiology of Learning and Memory Study Section.

Date: June 24–25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892. (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Cognitive Neuroscience Study Section.

Date: June 24–25, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael A. Steinmetz, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892. 301–435–1247, *steinmem@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Physiology of Obesity and Diabetes Study Section.

Date: June 24–25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Reed A. Graves, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892. (301) 402–6297, *graves2csr.nih.gov.*

Name of Committee: Biochemical Sciences Integrated Review Group, Physiological Chemistry Study Section.

Date: June 24–25, 2004.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Richard Panniers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2212, MSC 7890, Bethesda, MD 20892. (301) 435–1741, *pannierr2csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Risk and Disease Prevention Study Section.

Date: June 24–25, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036.

Contact Person: Deborah L. Young-Hyman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7808, Bethesda, MD 20892. (301) 451–8008, *younghyd2csr.nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group, Development—2 Study section.

Date: June 24–25, 2004

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth St. NW., Washington, DC 20037.

Contact Person: Neelakanta Ravindranath, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7843, Bethesda, MD 20892. 301–435–1034, *ravindrn@csr.nih.gov.*

Name of Committee: Biobehavioral and Behavioral Processes Initial Review Group, Cognition and Perception Study Section.

Date: June 24–25, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Washington Terrace Hotel, 1515 Rhode Island Ave, NW., Washington, DC 20005.

Contact Person: Cheri Wiggs, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, MSC 7848, Bethesda, MD 20892. (301) 435–1261, *wiggsc@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group, Integrative Nutrition and Metabolic Processes Study Section.

Date: June 24–25, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sooja K. Kim, RD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6182, MSC 7892, Bethesda, MD 20892. (301)435–1780, *kims@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neuroimmunology and Brain Tumors.

Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Jay Joshi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7846, Bethesda, MD 20892. (301) 435–1184, *joshij@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/SBIR (11).
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Clinical Disorders and Aging Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Contact Person: Mary Ann Guadagno, PhD, Scientific Review Administrator, Center for Scientific Review, 6701 Rockledge Drive, Room 3170, MSC 7770, Bethesda, MD 20892, (301) 451–8011, *guadagma@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Diabetes, Kidney and Infectious Diseases.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Christopher Sempos, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3146, MSC 7770, Bethesda, MD 20892. (301) 451–1329, *semposch@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Microbial Physiology and Genetics Subcommittee 2.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Brookshire Suites, 120 East Lombard Street, Baltimore, MD 21202.
Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1225, *politisa@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Epidemiology of Cancer Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Washington Terrace Hotel, 1515 Rhode Island Avenue, NW., Washington, DC 20005.
Contact Person: Denise Wiesch, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Clinical Neuroplasticity and Neurotransmitters Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.
Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5206, MSC 7846, Bethesda, MD 20892, (301) 435–1254, *benzingw@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Modeling and Analysis of Biological Systems: Quorum.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 418, MSC 7849, Bethesda, MD 20892. (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Behavioral Medicine, Interventions and Outcomes Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Reston, 1800 Presidents Street, Reston, VA 20190.
Contact Person: Lee S. Mann, MA, JD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892. 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ASG 01 Q: Aging Systems and Geriatrics Quorum.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Lathan Hotel, 3000 M Street, NW., Washington, DC 2007.
Contact Person: Charles G. Hollingsworth, DRPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5179, MSC 7840, Bethesda, MD 20892. 301–435–2406, *hollinc@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Bacteriology and Mycology Subcommittee 2.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Swissotel Washington, The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.
Contact Person: Melody Mills, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3204, MSC 7808, Bethesda, MD 20892. 301–435–0903, *millsm@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Social Sciences and Population Studies Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.
Contact Person: Bob Weller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3160, MSC 7770, Bethesda, MD 20892. 301–435–0694, *wellerr@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Social Psychology, Personality and Interpersonal Processes Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hotel Washington, 515 15th Street, NW., Washington, DC 20004.
Contact Person: Michael Micklin, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892. 301–435–1258, *micklinm@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Health Services Organization and Delivery Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.
Contact Person: Charles N. Rafferty, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7816, Bethesda, MD 20892. 301–435–3562, *raffertc@csr.nih.gov.*

Name of Committee: Cardiovascular Sciences Integrated Review Group, Electrical Signaling, Ion Transport, and Arrhythmias Study Section.
Date: June 24–25, 2004.
Time: 8:30 a.m. to 1:30 p.m.
Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892. 301–435–1212. *kumarra@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group, Skeletal Muscle Biology and Exercise Physiology Study Section.

Date: June 24–25, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, DC, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Richard Bartlett, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892. 301–435–6809, *bartletr@csr.nih.gov.*

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Bio-Organic and Natural Products Chemistry Study Section.

Date: June 24–25, 2004.

Time: 8:30 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Mike Radtke, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4176, MSC 7806, Bethesda, MD 20892. 301–435–1728, *radtkem@csr.nih.gov.*

Name of Committee: Health of the Population Integrated Review Group, Behavioral Genetics and Epidemiology Study Section.

Date: June 24–25, 2004.

Time: 9 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Yvette M. Davis, VMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3152, MSC 7770, Bethesda, MD 20892. (301) 435–0906, *davisy@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Software Development and Maintenance.

Date: June 25, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Virginian Suites, 1500 Arlington Boulevard, Arlington, VA 22209.

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892. 301–402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, HIV and Other Infections Among Drug Users Involved with Justice System.

Date: June 25, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892. 301/435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SSPS R03 and R21 Applications.

Date: June 25, 2004.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: SSPS.

Date: June 25, 2004.

Time: 2 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814. (Telephone conference call.)

Contact Person: Valerie Durrant, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3148, MSC 7770, Bethesda, MD 20892. (301) 435–3554, *durrantv@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG–1 CDF–1 90S.

Date: June 25, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone conference call.)

Contact Person: Richard A. Currie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5128, MSC 7840, Bethesda, MD 20892. (301) 435–1219, *currieri@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Prokaryotic Chromosomal Replication.

Date: June 25, 2004.

Time: 12 p.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Brookshire Suites, 120 East Lombard Street, Baltimore, MD 21202.

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892. (301) 435–1150, *politisa@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: May 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12861 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: The Board of Scientific Counselors of the Warren Grant Magnuson Clinical Center.

Date: June 21–22, 2004..

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, Building 10, 10 Center Drive, CC Medical Board Rm 2C116, Bethesda, MD 20892.

Contact Person: David K Henderson, PhD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 2C146, Bethesda, MD 20892, 301/402–0244.

Dated: May 28, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–12854 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Human-Bovine Reassortant Rotavirus Vaccine

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license in the U.S., Europe, and Canada only to practice the invention embodied in U.S. Serial Number 60/094,425, filed July 28, 1998, PCT filed (PCT/US99/17036) on July 27, 1999, and National Stage filed in China, India, Korea, Australia, Canada, Europe, Japan, Brazil and the U.S., entitled ''Multivalent Human-Bovine Rotavirus Vaccine'' (DHHS ref. E–015–1998/0) to Aridis, LLC, having a place of business in Portola Valley, California. The patent rights in these inventions have been assigned to the United States of America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before September 7, 2004 will be considered.

ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan Ano, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Email: anos@od.nih.gov; Telephone: (301) 435–5515; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

This technology describes multivalent immunogenic compositions comprising at least four human-bovine reassortant rotaviruses, where the gene encoding VP7 protein from G1, G2, G3, or G4 human rotavirus strain is inserted into a bovine rotavirus backbone. These VP7 serotypes represent the clinically most important human rotavirus serotypes, which depends on VP4 and VP7 proteins, both found in the viral capsid and both of which independently induce neutralizing antibodies. Additionally, human-bovine reassortants for VP7 serotypes G5 and G9 and a bovine-bovine reassortant for VP7 G10 serotype are mentioned. Each of these reassortants is monovalent, and administered as a multivalent mixture. Compared to other human-bovine rotavirus reassortants, the compositions described in this technology induce an immunological response at significantly lower dosage than other human-bovine rotavirus reassortants (which required 10–100 times the dose of human-rhesus reassortants) and does not result in a low-grade, transient fever.

The field of use may be limited to development of human-bovine reassortant rotavirus vaccines.

The licensed territory will be exclusive in the U.S., Canada, and Europe.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

Dated: May 28, 2004.

Steven M. Ferguson,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 04–12860 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); Notice of a Meeting of the NTP Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Toxicology Program (NTP) Board of Scientific Counselors on June 29, 2004, at the Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703.

The NTP Board of Scientific Counselors (''the Board'') is composed of scientists from the public and private sector and provides primary scientific oversight to the NTP.

Agenda and Registration

The meeting on June 29, 2004 begins at 8:30 a.m. and is open to the public from 8:30 a.m. to approximately 3:30 p.m., when it will be closed to the public until adjournment. The closure is in accordance with the provisions set forth in section 552b(c)(4) ''disclosure of commercial or financial information,'' (c)(6) ''disclosure of information of personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy'' and (c)(9) ''disclosure of information of a premature nature which would significantly frustrate implementation of a proposed agency action'' of Title 5 U.S.C. for the review and evaluation of the Carcinogenic Potency Database.

Attendance at the public meeting will be limited only by the space available. Persons needing special assistance should contact the Executive Secretary (contact information below) at least 7 business days in advance of the meeting.

A draft agenda with a tentative schedule is provided below. Primary agenda topics include: (1) NTP activities for development of a roadmap (or framework) for implementation of the NTP Vision for the 21st Century (*http://ntp-server.niehs.nih.gov*), (2) report from the Board's Working Group on the review of statistical methods to analyze photocarcinogenicity studies, (3) planned NTP Studies on trimethylolpropane triacrylate (TMPTA), (4) activities of the NTP Board's Technical Reports Review Subcommittee, and (5) an update on the Report on Carcinogens, including the status of the Eleventh Edition, and on the public meeting held January 27, 2004, to receive comment on the review process and criteria used to evaluate nominations to the Report on Carcinogens.

The agenda and background materials on agenda topics, as available, will be posted on the NTP Web site (*http://ntp-server.niehs.nih.gov*, *see* What's New) or available upon request to the Executive Secretary (contact information below). Following the meeting, minutes will be prepared and available through the NTP Web site and upon request to Central Data Management, NIEHS, P.O. Box 12233, MD E1–02, Research Triangle Park, NC 27709; telephone: 919–541–3419, fax: 919–541–3687, and e-mail: *CDM@niehs.nih.gov*.

Public Comments Welcome

Time is allotted during the meeting for the public to present comments to the Board and NTP staff on any agenda topic. This meeting provides another

opportunity for the public to provide input to the NTP on its vision and important elements for the roadmap. At least 7 minutes will be allotted to each speaker, and if time permits, may be extended to 10 minutes. Each organization is allowed one time slot per agenda topic. Persons registering to make oral comments are asked to contact Dr. Barbara Shane, NTP Executive Secretary (NIEHS, P.O. Box 12233, MD A3–01, Research Triangle Park, NC 27709; telephone: 919–541–0530; and e-mail: *shane@niehs.nih.gov*), by June 21, 2004, and provide their name, affiliation, mailing address, phone, fax, e-mail, and sponsoring organization (if any). Individuals will also be able to register to give oral public comments on-site at the meeting. However, if registering on-site and reading from written text, please bring 30 copies of the statement for distribution to the Board and NTP staff and to supplement the record.

Persons may also submit written comments in lieu of making oral comments and these comments should be sent to the Executive Secretary and received by June 21, 2004, to enable review by the Board and NTP staff prior to the meeting. Written comments received in response to this notice will be posted on the NTP Web site along with other meeting information. Persons submitting written comments should include their contact information (name, affiliation, mailing address, phone, fax, e-mail) and sponsoring organization (if any) with the document.

NTP Board of Scientific Counselors

The Board is a federally chartered advisory committee comprised of scientists from the public and private sectors who provide primary scientific oversight to the NTP on its overall program and centers. Specifically, the Board advises the NTP on matters of scientific program content, both present and future, and conducts periodic review of the program for the purposes of determining and advising on the scientific merit of its activities and their overall scientific quality. Its members are selected from recognized authorities knowledgeable in fields, such as toxicology, pharmacology, pathology, biochemistry, epidemiology, risk assessment, carcinogenesis, mutagenesis, molecular biology, behavioral toxicology and neurotoxicology, immunotoxicology, reproductive toxicology or teratology, and biostatistics. The NTP strives for equitable geographic distribution and minority and female representation on the Board. The Secretary of Health and Human Services appoints members to the Board and they are invited to serve overlapping terms of up to four years. Meetings are held once or twice annually for the Board and its two standing subcommittees (the Report on Carcinogens Subcommittee and the Technical Reports Review Subcommittee).

Dated: May 28, 2004.

Samuel H. Wilson,

Deputy Director, National Toxicology Program.

Preliminary Agenda: National Toxicology Program (NTP) Board of Scientific Counselors

June 29, 2004

Marriott at Research Triangle Park, 4700 Guardian Drive, Durham, NC 27703, Hotel Telephone: 919–941–6200.

June 29, 2004

8:30 a.m. Welcome and Opening Comments
NTP Update
NTP Vision for the 21st Century
Working Group Report on Statistical Methods to Analyze Photocarcinogenicity Studies
11:45 a.m. Lunch
1 p.m. Updates
NTP Studies on Trimethylolpropane Triacrylate (TMPTA)
NTP Board's Technical Reports Subcommittee Meeting on February 17–18, 2004
Report on Carcinogens
3:30 p.m. Closed Session*
Review and Evaluation of the Carcinogenic Potency Database
5 p.m. Adjourn

[FR Doc. 04–12853 Filed 6–7–04; 8:45 am]

BILLING CODE 4140–01–P

*The closure is in accordance with the provisions set forth in section 552b(c)(4) ''disclosure of commercial or financial information,'' (c)(6) ''disclosure of information of personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy'' and (c)(9) ''disclosure of information of a premature nature which would significantly frustrate implementation of a proposed agency action'' of Title 5 U.S.C.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–39]

Notice of Submission of Proposed Information Collection to OMB; LOCCS Voice Response System Payment Vouchers for Public and Indian Housing Programs

AGENCY: Office of the Chief Information Officer.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

HUD is requesting extension of OMB approval for the application for grant funds disbursement through the LOCCS Voice Response System.

DATES: Comments Due Date: July 8, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0166) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the U.S. Department of Housing and Urban Development (HUD) has submitted to OMB, for emergency processing, a survey instrument to obtain information from faith based and community organizations on their likelihood and success at applying for various funding programs. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Application for Insurance of Advance of Mortgage Proceeds.

OMB Approval Number: 2577–0166.

Form Numbers: HUD–50080 series.

Description of the Need for the Information and its Proposed Use: Grant recipients use the applicable payment information to request funds from HUD through the LOCCS/VRS voice activated system. The information collected on the payment voucher will also be used as an internal control measure to ensure the lawful and appropriate disbursement of Federal funds as well as provide a service to program recipients.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden Hours
Reporting Burden	4,746	114,113		0.15		17,117

Total Estimated Burden Hours: 17,117.

Status: Request for extension of an existing information collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 28, 2004.

Wayne Eddins,

Departmental PRA Compliance Officer, Office of the Chief Information Officer.

[FR Doc. 04–12849 Filed 6–7–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4907–N–19]

Notice of Proposed Information Collection: Comment Request; Insurance for Home Equity Conversion Mortgages/Residential Loan Application for Reverse Mortgages; and Home Equity Conversion Mortgage (HECM) Program; Insurance for Mortgages to Refinance Existing HECMs (FR–4667); HECM Consumer Protection Measures Against Excessive Fees; and HECM anti-Churning Disclosure

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* August 9, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8202, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Single Family Housing, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the propose collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Insurance for Home Equity Conversion Mortgages/ Residential Loan Application for Reverse Mortgages; and Home Equity Conversion Mortgage (HECM) Program; Insurance for Mortgages to Refinance Existing HECMs (FR–4667); HECM Consumer Protection Measures Against Excessive Fees; and HECM Anti-Churning Disclosure.

OMB Control Number, if applicable: 2502–0524.

Description of the need for the information and proposed use: The documents requested are used to determine the eligibility of a loan application for FHA's mortgage insurance. Without these documents, HUD would have difficulty in determining the eligibility of a loan application and, thus, put in jeopardy the insurance fund. For the Insurance for Mortgage to Refinance Existing HECMs, control number 2502–0546 and HECM Consumer Protection Measures Against Excessive Fees, OMB control number 2502–0534, which is being replaced with this PRA package, please see the following language:

The Insurance for Mortgages to Refinance Existing HECMs, Section 255(k) of the National Housing Act establishes a ''Disclosure'' requirement, which is designed to ensure that homeowners are made aware of the costs associated with HECM refinancing. This regulator provision would require that the lender provide the mortgagor, a good faith estimate of: (a) Total cost of the refinancing; and (b) Increase in the mortgagor's principal limit as measured by the estimated initial principal limit on the mortgage to be insured less the current principal limit on the HECM that is being refinanced.

To assure that the homeowner is not obtaining a HECM mortgage under an obligation to pay excess fees for services, the lender must establish that the mortgagor will not have incurred such outstanding or unpaid obligations in connection with the mortgage; and that the initial payment from the HECM will not be used to pay to or on behalf of an estate planning service firm. At closing, the lender must assure that the homeowner has received full disclosure of all costs of obtaining the mortgage, including asking the mortgagor about any costs or other obligations that the mortgagor has incurred to obtain the mortgage, and confirm that the mortgagor will not use any part of the amount disbursed for payments to or on behalf of an estate planning firm.

Agency form numbers, if applicable: FNMA 1009 and HUD Form 92901.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Total hours for collecting information on an annual basis equals—

Number of respondents	Frequency of respondents	Hours of response	Burden hours	Hourly rate	Total cost
Residential Application					
17,000	1	1.0	17,000	$15.00	$255,000
Refinance					
17,000	1	.5	8,500	$25.00	$212,000
Consumer Measures Against Excessive Fees Disclosure					
Number of Disclosures 17,000	1	.10	17,000		
Counselor Information 17,000	2	.25	8,500		
Anti-Churning Disclosure					
Disclosure to Mortgagor 17,000	1	.25	4,250		
			14,450	$12.00	$173,400
Grand Total			39,950		$640,900

The $12,000 hourly rate reflects the cost paid to counselors for providing counseling services to the mortgagor regarding the fees associated with applying for the HECM program and refinancing existing HECM loans. The counselors are required to inquire of the mortgagor if have been contacted by an estate planning service firm and paying a fee at or after closing.

The 34,000 Counselor Information Respondents represents the number of potential applicants that will be counseled.

The $25 and $15 hourly rate is paid to mortgagees who are required to process the Residential Loan and Refinance Applications.

Status of the proposed information collection: Reinstatement of a currently approved collection OMB Control No. (2502–0524) and termination of OMB Control No. (2502–0546) and OMB Control No. (2502–0534).

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., chapter 35, as amended.

Dated: May 4, 2004

Sean G. Cassidy,

General Deputy Assistant Secretary for Housing-Deputy Federal Housing Commissioner.

[FR Doc. 04–12850 Filed 6–7–04; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary; Delaware & Lehigh National Heritage Corridor Commission Meeting

AGENCY: Department of the Interior, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware & Lehigh National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463).

DATES: *Meeting Date and Time:* Friday, June 18, 2004, 1:30 p.m. to 4 p.m.

ADDRESSES: Hugh Moore Park Pavilion, Hugh Moore Park, Easton, PA 18042.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware & Lehigh National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware & Lehigh National Heritage Corridor Commission was established by Pub. L. 100–692, November 18, 1988, and extended through Pub. L. 105–355, November 13, 1998.

FOR FURTHER INFORMATION CONTACT: C. Allen Sachse, Executive Director, Delaware & Lehigh National Heritage Corridor Commission, 1 South Third Street, 8th Floor, Easton, PA 18042; (610) 923–3548.

C. Allen Sachse,

Executive Director, Delaware & Lehigh National Heritage Corridor Commission.

[FR Doc. 04–12909 Filed 6–07–04; 8:45 am]

BILLING CODE 6820–PE–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–310–1310–PB–24 1A]

Extension of Approved Information Collections, OMB Control Numbers 1004–0145, 1004–0184, and 1004–0185

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is requesting the Office of Management and Budget (OMB) to extend existing approvals to collect certain information from lessees, operators, record title holders, operating rights owners, and the general public on oil and gas and operations on Federal lands.

DATES: You must submit your comments to BLM at the address below on or before August 9, 2004. BLM will not

necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov.* Please include ''ATTN: 1004–0145, 1004–0184, and 1004–0185'' and your name and return address in your Internet message.

You may deliver comments to the Bureau of Land Management, Administration Record, Room 401, 1620 L Street, NW., Washington, DC.

All comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, on (202) 452–0338 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a) requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(1) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(2) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(3) Ways to enhance the quality, utility, and clarity of the information collected; and

(4) Ways to minimize the information collection burden on those who are required to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (MLA), 30 U.S.C. *et seq.*, gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of public lands and national forests, and private lands where the mineral rights are reserved by the Federal Government. The Act of May 21, 1930 (30 U.S.C. 301–306), authorizes the leasing of oil and gas deposits under railroads and other rights-of-way. The Act of August 7, 1947, (Mineral Leasing Act of Acquired Lands), authorizes the Secretary to lease lands acquired by the United States (30 U.S.C. 341–359). The regulations under 43 CFR 3000 et al. authorize BLM to manage the oil and gas leasing and exploration activities. Without the information, BLM would not be able to analyze and approve oil and gas leasing and exploration activities.

BLM collects nonform information on oil and gas leasing and exploration activities when the lessee, record title holder, operating rights owner, or operator files any of the following information for BLM to adjudicate:

INFORMATION COLLECTION 1004–0145

43 CFR	Information collection requirements	Number of responses	Reporting hours per respondent	Total hours
3100.3–1	Notice of option holdings	30	1	30
3100.3–3	Option statement	50	1	50
3101.2–4(a)	Excess acreage petition	10	1	10
3101.2–6	Showings statement	10	1.5	15
3101.3–1	Joinder evidence statement	50	1	50
3103.4–1	Waiver, suspension, reduction of rental, etc.	20	2	40
3105.2	Communitization or drilling agreement	150	2	300
3105.3	Operating, drilling, development contracts interest statement.	50	2	100
3105.4	Joint operations; transportation of oil applications	20	1	20
3105.5	Subsurface storage application	50	1	50
3106.8–1	Heirs and devisee statement	40	1	40
3106.8–2	Change of name report	60	1	60
3106.8–3	Corporate merger notice	100	2	200
3107.8	Lease renewal application	30	1	30
3108.1	Relinquishments	150	.5	75
3108.2	Reinstatement petition	500	.5	250
3109.1	Leasing under rights-of-way application	20	1	20
3120.1–1(e)	Lands available for leasing	280	2.5	700
3120.1–3	Protests and appeals	90	1.5	135
3152.1	Oil and gas exploration in Alaska application	20	1	20
3152.6	Data collection	20	1	20
3152.7	Completion of operations report	20	1	20
Totals		1,770		2,235

INFORMATION COLLECTION 1004–0184

43 CFR	Information collection requirements	Total respondents	Reporting hours per respondent	Total burden hours
3121.12	Competitive leasing nomination	1,400	.25	350
3124.32	Lease consolidation	10	2	20
3125.11	Lease exchange	25	.25	6.25
3103.10(aa); 3153.37	LACT meter proving report	200	10 minutes	33.33
3103.10(bb); 3154.33	Gas charts; meter proving reports	1,000	.25	250
3103.10(dd)	Meter proving or calibration	5,000	5 minutes	416.67
3103	Oral notification	6,000	5 minutes	500

INFORMATION COLLECTION 1004–0184—Continued

43 CFR	Information collection requirements	Total respondents	Reporting hours per respondent	Total burden hours
3103.10(i)	&sbull Construction start-up			
3103.10(j)	Spud notice			
3103.10(m)	Running surface casing; BOP test			
3103.10(o)	Reserve pit closure			
3103.10(x)	Theft; production mishandling			
3103.10(z)	LACT meter proving			
	Leak detection system			
3103.10(ee)	Produced water pit completion			
3103.10(ff)	Spill; accident			
103.10(gg)	Well abandonment			
3103.10(ii)	Concentration of H_2S			
3103.10(ll); 3145.43				
3136.10	Drainage agreement	5	10	50
3137.13	Unit Agreement	60	40	2,400
3137.64	Participating Area	45	12	540
3145.18	Notice of Staking	1,500	.25	375
3145.51(a)(3)	Remediation	100	5	500
3151.10(c)	Off-lease measurement	300	1	300
3151.10(d)	Commingling	500	.5	250
3164.15	Civil penalties	100	.5	50
3107.53	Bond decrease	100	1	100
3107.56 and 3145.23	Bond increase	6,600	.5	3,300
	Total	22,945		9,441.25

BLM collects the information in the regulations that address oil and gas drainage and no form is required.

INFORMATION COLLECTION 1004–0185

Type of drainage analysis	Number of analyses	Hours
Preliminary	1,000	2,000
Detailed	100	2,400
Additional	10	200
Total	1,110	4,600

Based upon our experience managing oil and gas activities, we estimate for the combined information collection 25,825 responses per year and annual information burden is 16,276 hours.

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: June 1, 2004.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 04–12867 Filed 6–7–04; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–04–1320–EL; COC 67703]

Notice of Invitation for Coal Exploration License Application, Bowie Resources, LLC, COC 67703; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Bowie Resources, LLC, in a program for the exploration of unleased coal deposits owned by the United States of America consisting of approximately 1,560 acres in Delta County, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them by July 8, 2004.

ADDRESSES: Karen Purvis, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and Collin Stewart, Bowie Resources, LLC, P.O. Box 483, Paonia, Colorado 81428.

FOR FURTHER INFORMATION CONTACT: Karen Purvis at (303) 239–3795.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 67703 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. Any party electing to participate in this program must share all costs on a pro rata basis with Bowie Resources, LLC, and with any other party or parties who elect to participate.

Authority: 43 CFR, Subpart 3410.

Dated: April 26, 2004.

Karen Purvis,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. 04–12865 Filed 6–7–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–921–04–1320–EL; COC 67644]

Notice of Invitation for Coal Exploration License Application, Bowie Resources, LLC; COC 67644; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license application, Bowie Resources, LLC.

SUMMARY: Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Bowie Resources, LLC, in a program for the exploration of unleased coal deposits owned by the United States of America containing approximately 3,790.66 acres in Delta County, Colorado.

DATES: Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of this Notice of Invitation in the **Federal Register**.

ADDRESSES: Karen Purvis, CO–921, Solid Minerals Staff, Division of Energy, Lands and Minerals, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and Collin Stewart, Bowie Resources, LLC, P.O. Box 483, Paonia, Colorado 81428.

SUPPLEMENTARY INFORMATION: The application for coal exploration license is available for public inspection during normal business hours under serial number COC 67644 at the Bureau of Land Management, Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 South Townsend Avenue, Montrose, Colorado 81401. Any party electing to participate in this program must share all costs on a pro rata basis with Bowie Resources, LLC, and with any other party or parties who elect to participate.

Dated: April 6, 2004.

Karen Purvis,

Solid Minerals Staff, Division of Energy, Lands and Minerals.

[FR Doc. 04–12866 Filed 6–7–04; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1420–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Filing of Plats of Surveys.

SUMMARY: The Bureau of Land Management (BLM) has officially filed the plats of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, effective 9 a.m., on the dates specified.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho 83709–1657.

SUPPLEMENTARY INFORMATION: These surveys were executed at the request of the Bureau of Land Management to meet certain administrative and management purposes: The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of a portion of the west boundary, and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 25, 26, 27, 28, 29, 30, and 36, in T. 5 S., R. 24 E., Boise Meridian, Idaho, was accepted April 1, 2004. The plat, in 3 sheets, constitutes the entire survey record of the dependent resurvey of a portion of the north boundary, and a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 4, 9, 16, 21, 22, 25, 26, 27, 34, 35, and 36, in T. 5 S., R. 23 E., Boise Meridian, Idaho, was accepted April 2, 2004.

The plat, in 2 sheets, constitutes the entire survey record of the dependent resurvey of portions of the north and east boundaries, and subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 1, 12, 13, 14, 22, 23, 27, 28, and 33, in T. 4 S., R. 23 E., Boise Meridian, Idaho, was accepted April 6, 2004.

The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines, designed to restore the corners in their true original locations according to the best available evidence, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in section 6, in T. 4 S., R. 24 E., Boise Meridian, Idaho, was accepted April 7, 2004.

The plat representing the dependent resurvey of a portion of the south boundary and subdivisional lines, and the subdivision of sections 23, 25, 26, 28, 33, and 35, in T. 55 N., R. 3 W., Boise Meridian, Idaho, was accepted April 20, 2004.

The plat representing the dependent resurvey of portions of the south boundary and subdivisional lines, and the subdivision of section 34, in T. 7 S., R. 36 E., Boise Meridian, Idaho, was accepted April 21, 2004.

The plat, in 3 sheets, representing the dependent resurvey of a portion of the subdivisional lines, portions of the original 1879 meanders of the Snake River in sections 14, 22 and 27, and portions of Tract Numbers 37, 38 and 41, and the subdivision of section 15, a metes-and-bounds survey in section 22, the survey of portions of the 2000–2002 meanders of the Snake River in sections 14, 22 and 27, the survey of the 2000–2002 meanders of certain islands in the Snake River in sections 14, 15 and 22, and the survey of a 2000–2002 partition line in section 22, in T. 5 N., R. 37 E., Boise Meridian, Idaho, was accepted April 30, 2004.

SUMMARY: The Bureau of Land Management (BLM) will file the plat of survey of the lands described below in the BLM Idaho State Office, Boise, Idaho, 30 days from the date of publication in the **Federal Register**.

The plat, in 4 sheets, representing the dependent resurvey of portions of the Tenth Standard Parallel North (south boundary), subdivisional lines, and boundaries of certain mineral surveys, and the subdivision of section 33, in T. 48 N., R. 5 E., Boise Meridian, Idaho, was accepted April 30, 2004.

Dated: June 2, 2004.

Harry K. Smith,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 04–12915 Filed 6–7–04; 8:45 am]

BILLING CODE 4310–GG–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1059 (Final)]

Hand Trucks From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1059 (Final) under section 735(b) of the Act (19 U.S.C. 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of less-than-fair-value imports from China of hand trucks, provided for in subheadings 8716.80.50 and

8716.90.50 of the Harmonized Tariff Schedule of the United States.[1]

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: May 24, 2004.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of this investigation is being scheduled as a result of an affirmative preliminary determination by the Department of Commerce that hand trucks from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. § 1673b). The investigation was requested in a petition filed on November 13, 2003, by Gleason Industrial Products, Inc., Los Angeles, CA. On December 1, 2003, Gleason filed an amendment to the petition to include Precision Products Inc., Lincoln, IL, as a co-petitioner.

Participation in the investigation and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on September 23, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on October 7, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 30, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 5, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is September 30, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is October 15, 2004; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before October 15, 2004. On November 3, 2004, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 5, 2004, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise as ''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 Department of Commerce excluded from its definition of subject merchandise the following items: ''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 ⅝ 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.''

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: June 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–12923 Filed 6–7–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–511]

In the Matter of Certain Pet Food Treats; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 4, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Thomas J. Baumgartner and Hillbilly Smokehouse, Inc. An amendment to the complaint dated May 25, 2004 was also filed. The complaint, as amended, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain pet food treats by reason of infringement of U.S. Design Patent No. 383,886. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent general exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint and amendment, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2571.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on June 1, 2004 *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain pet food treats by reason of infringement of U.S. Design Patent 383,886, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are—

Thomas J. Baumgartner, 1801 S. 8th Street, Rogers, Arkansas 72765.

Hillbilly Smokehouse, Inc., 1801 S. 8th Street, Rogers, Arkansas 72765.

(b) The respondents are the following companies alleged to be in violation of Section 337 and upon which the complaint is to be served—

IMS Trading Corp., d/b/a IMS Pet Industries, Inc., 7001 Anpesil Drive, Annex D, North Bergen, New Jersey 07047.

LLB Holdings, LLC, 98–030 Hekaha Street, Suite 10, Aiea, Hawaii 96709.

Pet Center, Inc., 4105 W. Jefferson Blvd., Los Angeles, California 90016.

TsingTao ShengRong Seafood, Inc., 34 Fushan Road, Tsingtao, Shangdong 266003, China.

TsingTao ShengRong Seafood, Inc., U.S. Branch, 1309 Prentis House Court, Columbus, Ohio 43235.

Alan Lee Distributors, Inc., d/b/a ADI Pet, Inc., 211 Plumpointe Lane, San Ramon, California 94583.

(c) Thomas S. Fusco, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–E, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: June 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–12924 Filed 6–7–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–510]

In the Matter of Certain Systems for Detecting and Removing Viruses or Worms, Components Thereof, and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May

5, 2004, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Trend Micro Incorporated of Cupertino, Californa. Letters supplementing the complaint were filed on May 24 and June 1, 2004. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, and products containing same by reason of infringement of claims 1–22 of U.S. Patent No. 5,623,600. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at http://www.usitc.gov. The public record for this investigation may be viewed on the Commission's electronic docket imaging system (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2599.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2003).

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on June 1, 2004, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain systems for detecting and removing viruses or worms, components thereof, or products containing same, by reason of infringement of one or more of claims 1–22 of U.S. Patent No. 5,623,600, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Trend Micro Incorporated, 10101 North De Anza Boulevard, Cupertino, California 94015.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint is to be served: Fortinet, Inc., 920 Stewart Drive, Sunnyvale, California 94085.

(3) Rett Snotherly, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

A response to the complaint and the notice of investigation must be submitted by the named respondent in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such response will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting the response to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter a final determination containing such findings, and may result in the issuance of a limited exclusion order or cease and desist order or both directed against the respondent.

Issued: June 3, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–12925 Filed 6–7–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,609]

Akzo Nobel Coatings, Inc., Wood Coatings Division, High Point, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 29, 2004 in response to a worker petition filed by a company official on behalf of workers at Akzo Nobel Coatings, Inc., Wood Coatings Division, High Point, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 20th day of May 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12882 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,860]

American Express, Field Accounting; Phoenix, AZ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 6, 2004 in response to a petition filed on behalf of workers at American Express, Field Accounting, Phoenix, Arizona.

The petitioners have requested that the petition be withdrawn. Consequently, further investigation would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 21st day of May 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12880 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,242]

Badger Paper Mills, Inc., Peshtigo, WI; Notice of Revised Determination on Reconsideration

By letter dated April 19, 2004, a petitioner requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The negative determination was signed on March 22, 2004. The notice was published in the **Federal Register** on May 24, 2004 (69 FR 29578).

The workers of Badger Paper Mills, Inc., Peshtigo, Wisconsin were certified for Trade Adjustment Assistance (TAA) on March 22, 2004.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

The petitioner alleges in the request for reconsideration that the skills of the workers at the subject firm are not easily transferable.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Badger Mills, Inc., Peshtigo, Wisconsin, who became totally or partially separated from employment on or after February 9, 2003 through March 22, 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 in Washington, DC this 25th day of May 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12878 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,115; TA–W–54,115A]

California Amplifier, Inc.: KTI Division, Richland Center, WI; Components Division, Spring Green, WI; 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 California Amplifier, Inc., KTI Division, Richland Center, Wisconsin and California Amplifier, Inc., Components Division, Spring Green, Wisconsin. 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–54,115; California Amplifier, Inc., KTI Division, Richland Center, Wisconsin, (May 27, 2004).

TA–W–54,115A; California Amplifier, Inc., Components Division, Spring Green, Wisconsin, (May 27, 2004).

Signed at Washington, DC, this 27th day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–12870 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,595]

Crawford Knitting Company, Inc. Ramseur, NC; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on March 26, 2004 in response to a worker petition which was filed by a company official on behalf of workers at Crawford Knitting Company, Inc., Ramseur, North Carolina (TA–W–54,595).

The petitioners have requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 11th day of May 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12874 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,679]

General Cable, Taunton, MA; Notice of Negative Determination Regarding Application for Reconsideration

By application of February 4, 2004, the United Electrical, Radio and Machine Workers of America, District Council 2 requested administrative reconsideration regarding the Department's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to the workers of the subject firm. The denial notice was published in the **Federal Register** on February 6, 2004 (69 FR 5866).

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 misinterpretation of facts or of the law justified reconsideration of the decision.

The petition for the workers of General Cable, Taunton, Massachusetts was denied because criterion 2 of Section 222(b), as amended, was not met. The workers' firm was not a supplier or downstream producer to a firm 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. Other findings of the investigation determined that there were increases in General Cable sales and production of copper wire and unfinished PVC compounds from 2002 to 2003.

The petitioner states that the relevant period investigated by the Department is not an accurate measure in determining the workers eligibility for TAA and suggests that the Department should extend investigation back to the

beginning of 2000 to reveal the secondary impact of foreign trade on the subject firm.

In addressing the Trade Act worker group eligibility criteria for secondarily affected workers, the Department is required to conduct an investigation for the relevant time period, which is one year or the four quarters, prior to the date of the petition, to establish if the firm is secondary affected. In order to be eligible as secondarily affected, the workers' firm must be a supplier firm and the component parts it supplied to a primary firm whose worker group is certified for TAA accounted for at least 20 percent of the supplier firm sales; or the loss of business by the workers' firm contributed importantly to the workers' separation or threat of separation. Although there were employment declines at General Cable there was no loss of business to a primary firm whose workers were certified eligible to apply for TAA.

The petitioner states that the closure of the General Cable, Montoursville, Pennsylvania in August of 2001 reduced significantly the volume of production at the Taunton facility, and consequently was a reason of the subject company's closure on December 31, 2003.

While the Department agrees that the loss of business with Montoursville facility might have led to worker separations from the subject firm in 2001, there is no evidence that the subject firm was secondary impacted during the relevant period. The subject firm did not supply copper wire and unfinished PVC compounds to the primary firm engaged in production whose workers are currently certified as trade impacted during the relevant time period.

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 23rd day of March, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12884 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,288]

Hedstrom Corp., Ball, Bounce and Sport Division, Plant #1, Ashland, OH; 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 Hedstrom Corporation, Ball, Bounce and Sport Division, Plant 1, Ashland, Ohio. 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–54,288; Hedstrom Corporation, Ball, Bounce and Sport Division, Plant #1, Ashland, Ohio (May 27, 2004).

Signed at Washington, DC, this 27th day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 04–12869 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,386]

Interface Fabrics Group South, Inc., Interface Fabrics Group Marketing, Inc., Elkin, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on March 1, 2004, in response to a petition filed on behalf of workers at Interface Fabrics Group South, Inc., Interface Fabrics Group Marketing, Inc., Elkin, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 24th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12883 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,361]

Kimberly Clark Corporation, Kimtech Plant, Neenah, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 20, 2004, International Association of Machinists and Aerospace Workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on March 26, 2004. The Notice was published in the **Federal Register** on May 24, 2004 (69 FR 29575).

The Department reviewed the request for reconsideration and has determined that the petitioners have provided additional information regarding a shift in production to Mexico. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 25th day of May 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12876 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,791]

Meridian Automotive Systems, Inc., Lenoir, NC; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on April 27, 2004, in response to a petition filed by a company official on behalf of workers at Meridian Automotive Systems, Inc., Lenoir, North Carolina.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of May, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12871 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,849]

Minnesota Rubber, Minneapolis, MN; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2004 in response to a petition filed by a state agency representative on behalf of workers of Minnesota Rubber, a subsidiary of Quadion Corporation, Minneapolis, Minnesota.

The investigation revealed that the subject firm did not separate or threaten to separate a significant number or proportion of workers as required by Section 222 of the Trade Act of 1974. Significant number or proportion of the workers means that at least three workers in a firm with a workforce of fewer than 50 workers would have to be affected. Separations by the subject firm did not meet this threshold level; consequently the investigation has been terminated.

Signed at Washington, DC this 12th day of May 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12873 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistant

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 18, 2004.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than June 18, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 17th day of May, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 05/03/2004 and 05/07/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,831	Neese Industries (LA)	Gonzales, LA	05/03/2004	04/23/2004
54,832	Sun Microsystems (Wkrs)	Newark, CA	05/03/2004	05/02/2004
54,833	Bayer Clothing Group, Inc. (Comp)	Clearfield, PA	05/03/2004	05/03/2004
54,834	WesTan (Westfield Tanning) (WTEU)	Westfield, PA	05/03/2004	04/27/2004
54,835	IMS (Wkrs)	Georgetown, SC	05/03/2004	04/30/2004
54,836	Birdseye Foods, Inc. (Wkrs)	Fond Du Lac, WI	05/03/2004	04/30/2004
54,837	American Meter Company (Comp)	Calexico, CA	05/04/2004	05/03/2004
54,838	Swarovski North America, Ltd. (Comp)	Cranston, RI	05/04/2004	04/20/2004
54,839	Flextronics Int'l. (NJ)	Parsippany, NJ	05/04/2004	05/03/2004
54,840	Ivensys/Renco North America (Comp)	Plain City, OH	05/04/2004	05/03/2004
54,841	Elastic Corporation of America (Comp)	Asheboro, NC	05/04/2004	04/30/2004
54,842	Chicago Rawhide (Comp)	Franklin, NC	05/05/2004	05/04/2004
54,843	Trent Tube, A Div. of Crucible Materials (Comp).	Carrollton, GA	05/05/2004	04/24/2004
54,844	Kwikset (Comp)	Bristow, OK	05/05/2004	04/29/2004
54,845	Carhartt, Inc. (Comp)	Madisonville, KY	05/05/2004	05/04/2004
54,846	Our America Gift, Inc. (Comp)	Agawam, MA	05/05/2004	05/04/2004
54,847	Artex International, Inc. (Comp)	Highland, IL	05/05/2004	04/30/2004
54,848	Oshkosh B'Gosh, Inc. (Comp)	Oshkosh, WI	05/05/2004	05/04/2004
54,849	Minnesota Rubber (MN)	Minneapolis, MN	05/05/2004	04/28/2004
54,850	Burlington Industries (Wkrs)	New York, NY	05/05/2004	04/30/2004
54,851	Intex Corporation (Comp)	Pilot Mtn., NC	05/05/2004	05/04/2004
54,852	Danskin, Inc. (Comp)	Grenada, MS	05/06/2004	04/23/2004
54,853	Rockwell Automation (Wkrs)	Seattle, WA	05/06/2004	05/05/2004
54,854	Kentucky Apparel, LLP (Comp)	Tompkinsville, KY	05/06/2004	04/28/2004
54,855	Sara Lee Hosiery (Wkrs)	Rockingham, NC	05/06/2004	04/29/2004
54,856	EMI Group p/c (Wkrs)	Jacksonville, IL	05/06/2004	05/05/2004
54,857	Valley Mills (AL)	Valley Head, AL	05/06/2004	04/30/2004
54,858	Hope Valley Dyeing Corp. (Comp)	West Warwick, RI	05/06/2004	05/04/2004

APPENDIX—Continued

[Petitions Instituted Between 05/03/2004 and 05/07/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
54,859	Artistic Laces, Inc. (Comp)	Warwick, RI	05/06/2004	05/04/2004
54,860	American Express (Wkrs)	Phoenix, AZ	05/06/2004	04/27/2004
54,861	J.S. Technos (Wkrs)	Russellville, KY	05/06/2004	05/03/2004
54,862	Irwin Industrial Tool Co. (Comp)	Wilmington, OH	05/06/2004	05/05/2004
54,863	Ethan Allen, Inc. (Comp)	Boonville, NY	05/07/2004	04/29/2004
54,864	Cullman Apparel Mfg. Co., Inc. (Comp)	Cullman, AL	05/07/2004	05/06/2004
54,865	H.E. Services (Wkrs)	Flint, MI	05/07/2004	04/26/2004
54,866	National Textiles, LLC (NC)	China Grove, NC	05/10/2004	05/07/2004
54,867	Pennsylvania Resources Corp. (Wkrs)	Dunmore, PA	05/10/2004	05/05/2004
54,868	R and W Manufacturing, Inc. (Comp)	Avena, GA	05/10/2004	05/06/2004
54,869	GearBuck Aviation Maintenance (AR)	Blytheville, AR	05/10/2004	05/06/2004
54,870	J and L Specialty Steel, LLC (Comp)	Moon Township, PA	05/10/2004	05/07/2004
54,871	DeVlieg Bullard II, Inc. (UAW)	Frankenmuth, MI	05/10/2004	05/05/2004
54,872	Sanmina-SCI Corporation (Wkrs)	Salem, NH	05/10/2004	04/30/2004
54,873	Keane, Inc. (Wkrs)	Moosic, PA	05/10/2004	05/06/2004
54,874	Santa's Best (Comp)	Vineland, NJ	05/10/2004	04/30/2004
54,875	Thomson, Inc. (NPC)	Dunmore, PA	05/10/2004	05/06/2004
54,876	Amcor PET Packaging (Wkrs)	Erie, PA	05/10/2004	05/07/2004
54,877	Steele Mfg. A Div. of Calhoun Appl. (Comp)	Water Valley, MS	05/10/2004	05/07/2004
54,878	Smurfit Stone Container Corp. (Wkrs)	Anderson, IN	05/11/2004	04/29/2004
54,879	Vesuvius USA (USWA)	Buffalo, NY	05/11/2004	05/03/2004
54,880	Wehadkee Yarn Mills (Comp)	Rock Mills, AL	05/11/2004	05/05/2004
54,881	Bradford Soap Works, Inc. (Comp)	W. Warwick, RI	05/11/2004	05/10/2004
54,882	Intek (Wkrs)	Aberdeen, NC	05/11/2004	05/05/2004
54,883	Westpoint Stevens (Comp)	Drakes Branch, VA	05/11/2004	04/28/2004
54,884	American Airlines (Wkrs)	Las Vegas, NV	05/11/2004	05/03/2004
54,885	Dekko Technology (Wkrs)	Claypool, IN	05/11/2004	05/03/2004
54,886	Geron Furniture/Legett and Platt (Comp)	Carson, CA	05/11/2004	05/07/2004
54,887	Eaton Aerospace (FL)	Sarasota, FL	05/11/2004	05/03/2004
54,888	Cooper Power Systems (Comp)	Pewaukee, WI	05/11/2004	05/10/2004
54,889	3M (MN)	St. Paul, MN	05/11/2004	05/10/2004
54,890	Inamed Corp. (Comp)	Santa Barbara, CA	05/11/2004	05/04/2004
54,891	Johnson Diversey, Inc. (Wkrs)	Sharonville, OH	05/11/2004	04/30/2004
54,892	Information Resources, Inc. (IRI) (Wkrs)	Chicago, IL	05/11/2004	05/09/2004
54,893	Northwest Composites (Wkrs)	Marysville, WA	05/11/2004	05/04/2004
54,894	Royce Hosiery (Wkrs)	Martinsburg, WV	05/12/2004	05/11/2004
54,895	Armin Tool and Mfg. Company (Comp)	S. Elgin, IL	05/12/2004	05/06/2004
54,896	Phillips Plastics (Comp)	Eau Claire, WI	05/12/2004	05/03/2004
54,897	Tidewater Occupational Center (Comp)	Suffolk, VA	05/12/2004	05/05/2004
54,898	Ogden Manufacturing, Inc. (Comp)	Albany, WI	05/12/2004	05/04/2004
54,899	Zilog, Inc. (Comp)	Nampa, ID	05/12/2004	05/10/2004
54,900	G and F Industries (MA)	Sturbridge, MA	05/12/2004	05/12/2004
54,901	Springfield Plastics (Comp)	E. Springfield, PA	05/12/2004	05/11/2004
54,902	Solutia, Inc. (IL)	Sauget, IL	05/12/2004	05/11/2004
54,903	Nortel Networks (Wkrs)	RTP, NC	05/12/2004	04/29/2004
54,904	Envirco Corp. (Wkrs)	Albuquerque, NM	05/12/2004	04/27/2004
54,905	Compucom Systems, Inc. (NPW)	Dallas, TX	05/12/2004	05/11/2004
54,906	W.H. Stewart Co. (Comp)	Oklahoma City, OK	05/12/2004	05/08/2004
54,907	Ponsleep Products (Comp)	Compton, CA	05/13/2004	05/06/2004
54,908	In Gear Fashion, Inc. (FL)	Miami, FL	05/13/2004	05/12/2004
54,909	Atlantic Salmon of Maine (Wkrs)	Machias Port, ME	05/13/2004	05/04/2004
54,910	Earthlink (Wkrs)	Harrisburg, PA	05/13/2004	04/20/2004
54,911	Keller Manufacturing Co., Inc. (The) (Comp)	New Salisbury, IN	05/13/2004	05/12/2004
54,912	DeRoyal Industries, Inc. (Wkrs)	Dryden, VA	05/13/2004	04/26/2004
54,913	Travelocity.com (Comp)	San Antonio, TX	05/14/2004	05/10/2004

[FR Doc. 04–12868 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,993]

Newell Rubbermaid, Inc. Wooster, OH; Notice of Negative Determination on Reconsideration

On April 2, 2004, the United Steelworkers of America, Local 302L, requested administrative reconsideration of the Department's negative determination regarding the workers of Newell Rubbermaid, Inc., Wooster, Ohio. On May 3, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on May 13, 2004 (69 FR 26621). The workers at the subject firm produce plastic household goods and home organization products (totes, refuse and clear containers) and are not separately identifiable by product line.

The Department denied the initial petition because the ''contributed importantly'' and shift of production group eligibility requirements of Section 222(3) of the Trade Act of 1974, as amended, were not met. The initial investigation revealed that increased imports of plastic household goods and home organization products during the relevant time period did not contribute importantly to worker separations and that the subject company did not shift production abroad.

In the request for reconsideration, the union asserted that the customer survey conducted in the initial investigation identified the wrong products to be surveyed. The initial customer survey covered plastic household goods, including totes, refuse and clear containers. The union states that the subject facility ''primarily produces totes and clear storage containers * * * along with refuse containers.''

On reconsideration, the Department contacted the company for clarification concerning the types of goods produced at the subject facility and whether the product lines were separately identifiable. A company official explained that they do not separate workers by lines (such as totes and refuse and clear containers) since the machines could run almost any product line produced by the plant workers and thus the subject workers are not separately identifiable by product line. Therefore, the survey conducted by the U.S. Department of Labor aggregated all products produced by the Wooster, Ohio plant as ''Rubber Maid Home Products (plastic household goods)'' in order to reflect the products produced by the subject plant.

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 Newell Rubbermaid, Inc., Wooster, Ohio.

Signed at Washington, DC, this 26th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12877 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,846]

Our America Gift, Inc., Agawam, MA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 5, 2004, in response to a petition filed a company official on behalf of workers at Our America Gift, Inc., Agawam, Massachusetts.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 12th day of May, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12872 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–53,664]

Owens-Illinois, Inc., Hayward, CA; Notice of Revised Determination on Reconsideration

On May 21, 2004, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice will soon be published in the **Federal Register**.

On January 29, 2004 the Department initially denied Trade Adjustment Assistance (TAA) to workers of Owens-Illinois, Inc., Hayward, California producing glass containers (glass wine bottles) because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974 was not met.

On reconsideration, the department reviewed the information provided by the subject firm during the initial investigation. It was revealed that the company official did inform the Department about the shift of production from the subject facility to several domestic plants, including a meaningful shift in plant production to a facility located in Lavington. However, the official did not identify the Lavington plant as being located in Canada, thus this shift to Canada was not taken into consideration during the original investigation.

In accordance with Section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the facts obtained in the investigation, I determine that there was a shift in production from the workers firm or subdivision to Canada of articles that are like or directly competitive with those produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Owens-Illinois, Inc., Hayward, California who became totally or partially separated from employment on or after November 20, 2002 through two years from the date of certification 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 in Washington, DC, this 27th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12885 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,729A]

Piedmont Industries, Inc., Icard Plant, Connelly Springs, NC; Termination of Investigation

The investigation was initiated on April 16, 2004, in response to a petition filed on behalf of workers at Piedmont Industries, Inc., Connelly Springs, North Carolina. Workers at are in the production of hosiery and separately identifiable only by facility.

The workers of Piedmont Industries at the Icard plant are included in a certification issued by the Department on November 20, 2003, petition number TA–W–53,246. Consequently, further investigation would serve no purpose, and this investigation is terminated.

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

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12881 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–52,177]

Redman Knitting, Inc., Ridgewood, NY; Notice of Revised Determination on Remand

The United States Court of International Trade (USCIT) granted the Department of Labor's request for voluntary remand of the negative determination on reconsideration in *Former Employees of Redman Knitting, Inc.* v. *U.S. Secretary of Labor* (Court No. 03–00848).

The Department's denial of Trade Adjustment Assistance (TAA) for the workers of Redman Knitting, Inc., Ridgewood, New York was issued on July 29, 2003 and was published in the **Federal Register** on August 14, 2003 (68 FR 48643). That investigation indicated that Redman Knitting produced knitted fabric, and there were no increased imports of articles like or directly competitive with knitted fabric by either the subject company or its customers, and no shift of production abroad during the relevant period.

By letter dated September 2, 2003, a petitioner requested administrative reconsideration of the negative determination, alleging that imports of knitted sweaters adversely affected domestic production of knitted fabric. The Notice of Negative Determination Regarding Application for Reconsideration was issued on September 25, 2003 and was published in the **Federal Register** on October 10, 2003 (68 FR 58716).

The request for reconsideration was denied because a final product (sweaters) is not ''like or directly competitive'' with its raw material (knitted fabric) and, therefore, any increased imports of the final product cannot be used to certify workers producing the raw material. The Department also determined that the subject company's major declining customers are not TAA-certified, and that the subject worker group is therefore not eligible under secondary impact.

In response to the petitioner's appeal to the U.S. Court of International Trade, the Department requested, and was granted, a voluntary remand.

In the remand investigation, the Department requested from the company information about the article(s) produced at the subject facility, the plant production process, and additional customer information. A review of the information submitted during the remand investigation and previously submitted documents revealed that Redman Knitting, which was thought to have produced only knitted fabric, was in fact engaged in activities related to the production of knitted sweaters.

Since it has been determined that the workers were engaged in the production of sweaters, a customer survey was conducted to determine whether imports of sweaters increased during the relevant time period. The surveyed revealed that the subject company's major declining customers increased their reliance on imports of sweaters during the relevant period.

Conclusion

After careful review of the additional facts obtained on the current remand, I conclude that there were increased imports of knitted sweaters like or directly competitive with those produced at the subject firm, and that the increases contributed importantly to the worker separations and sales or production declines at the subject facility. In accordance with the provisions of the Trade Act, I make the following certification:

All workers of Redman Knitting, Inc., Ridgewood, New York, who became totally or partially separated from employment on or after May 20, 2002, through two years from the issuance of this revised determination, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 28th day of May, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12886 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,222]

Rohm & Haas Company, Elma, WA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of May 5, 2004, a petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers of the subject firm. The Department's determination notice was signed on March 16, 2004. The Notice was published in the **Federal Register** on April 6, 2004 (69 FR 18109).

The Department reviewed the request for reconsideration and has determined that the petitioners have provided additional information. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 25th day of May 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12875 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,901]

Springfield Plastics, Inc., East Springfield, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on May 12, 2004 in response to a petition filed by a company official on behalf of workers at Springfield Plastics, Inc., East Springfield, Pennsylvania.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 20th day of May 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. 04–12879 Filed 6–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Senior Community Service Employment Program—Division of Older Worker Programs; Solicitation for Grant Applications, Section 502(e)—Procedures for Program Year PY 2004

Announcement Type: New. Notice of Solicitation for Grant Applications.

Funding Opportunity Number: SGA/DFA–04–102.

Catalog of Federal Domestic Assistance (CFDA) Number: 17.235.

Key Dates: Deadline for submission of proposals, July 21, 2004.

Executive Summary

The Senior Community Service Employment Program (SCSEP), authorized under title V of the Older Americans Act of 1965 (OAA), as amended by the Older Americans Act Amendments of 2000 (Pub. L. 106–501), provides subsidized, part-time, community service employment for low-income persons age 55 and older who have poor employment prospects, 42 U.S.C. 3056 *et seq.* Through this program, older workers have access to a wide range of SCSEP services as well as other employment assistance services available through the One-Stop Centers of the workforce investment system. Seniors enrolled in SCSEP can work up to 20 hours per week, and are employed in a wide variety of community service positions at non-profit and public facilities, including day-care centers, senior centers, schools, hospitals, faith-based and community organizations. These community service experiences are intended to lead to other employment positions within the private sector.

This solicitation announces the availability of approximately $2 million in PY2004 funds for the Section 502(e) program. The Department plans to award 4 to 10 grants with a minimum amount of $25,000 for current SCSEP grantees and a minimum amount of $150,000 for non-current SCSEP grantees.

The purpose of Section 502(e) of the OAA is to provide eligible older workers with second career training and placement opportunities with private business concerns, thus demonstrating their capabilities and new skills. Section 502(e) provides opportunities to initiate or enhance seniors' relationships with the private sector, promotes collaboration with the One-Stop Delivery System, and encourages the use of innovative strategies, including new work modes such as flex-time, flex-place, job sharing, and other arrangements relating to reduced physical exertion (OAA § 502(e)(2)). In addition, the Section 502(e) program is one of the best vehicles for obtaining job placements in the private for-profit sector, where wages and fringe benefits often exceed those in the public or non-profit sector.

I. Funding Opportunity Description

This SGA seeks to fund projects that will provide eligible older workers with second career training and placement opportunities with private business concerns. Proposed projects must be for specific geographic areas and must identify employers that will participate in the project, or methods that will be used to attract employer involvement. Proposed projects must also include innovative strategies, including new work modes such as flex-time, flex-place, job sharing, and other arrangements relating to reduced physical exertion.

The purpose of this section is to provide potential applicants with the information needed to make an informed decision about whether to apply for funds and to give a better sense of how the Section 502(e) program operates, and what functions and responsibilities are important to the program. It is not intended to be an all-inclusive description and does not reflect all the requirements of the program. Applicants who wish to learn more about the SCSEP are encouraged to review the law at 42 U.S.C. 3056 *et seq.* An applicant's failure to demonstrate that its proposed program meets the criteria in this section will make the application non-responsive. Applicants should also review the current regulations at 20 CFR Part 641, which were published on April 9, 2004 (69 FR 19014) and are effective on May 9, 2004, and the Older Worker (OW) Bulletins, which may be found on ETA's Division of Older Worker Program's homepage at *http://www.doleta.gov/seniors.* This additional information will serve as background on the SCSEP program. Applicants may use this information when drafting their responses to the Rating Criteria in Section V of this SGA. Applicants may review ETA's homepage at *http://www.doleta.gov/sga/pdf/ApplyingGrants.pdf* for information on applying for ETA grants and *http://www.doleta.gov/sga/* for forms and information relating to competition for ETA grants. Program requirements include the following:

Seniors Served. Grantees must make sure that this project will promote useful part-time or full-time employment opportunities for unemployed low-income persons who are 55 years or older, and whose incomes are no higher than 125 percent of poverty level (OAA § 516(2)).

Priorities. There is a priority for service in all Department of Labor (DOL or Department) funded workforce development programs for veterans and certain eligible spouses under the Jobs for Veterans Act, Pub. L. 107–288 (2002). Section 516(2) of the OAA also sets a priority for workers over 60. The Department interprets the Jobs for Veterans Act to harmonize the two priority provisions. Under this interpretation, both priorities apply. That is, within the group of eligible individuals age 60 and over, who receive a priority over eligible individuals aged 55–59, the veteran or qualified spouse would receive SCSEP services before non-veterans. Within the group of individuals who are 55 to 59, veterans and qualified spouses would again receive a priority over other eligible individuals.

Recruiting. All grantees must recruit participants from the local SCSEP program. In doing so, Section 502(e) grantees that are not current SCSEP grantees may be exempt from conducting some of the program requirements, such as income certifications, assessments and IEPs and providing worker's compensation.

Individual Employment Plans (IEP). Each SCSEP Section 502(e) participant must have been assessed by the original

grantee as required under the general SCSEP program. A participant's IEP must indicate a goal of unsubsidized employment for the participant to be co-enrolled in the Section 502(e) program.

Training. Training is an important tool to make the most effective use of the skills and talents of participants, to facilitate placement of participants in unsubsidized employment and to help them succeed in that employment. How much and what type of training a grantee should provide is based on each individual participant's IEP. Training should also be related to high growth industries.

Other Training Resources. Grantees should seek training assistance from all available resources, and particularly from programs operated under the Workforce Investment Act of 1998 (WIA) or the Carl D. Perkins Vocational and Technical Education Act. Where possible, co-enrollment in Section 502(e) training and WIA activities is strongly encouraged to leverage program funds. In addition, grantees may use the on-the-job-experience option described in Older Worker Bulletin 04–4 to provide private sector training opportunities using Wages and Fringe Benefits. See Part II, section 5 for a discussion on Wages and Fringe Benefits requirements.

Services for Individuals with Multiple Barriers to Employment. One emphasis of this program is addressing the needs of minority, limited English-speaking, and, where applicable, Indian eligible individuals as well as eligible individuals who have the greatest economic need to remove their barriers to obtaining employment. (OAA § 502(b)(1)(M)). ''Greatest economic need'' is defined as need resulting from an income level at or below the poverty. (OAA § 101(27)).

Coordination with the Workforce Investment Act, One-Stop Career Centers and SCSEP grantees, such as the states Area Agencies on Aging. Section 502(e) projects must be coordinated with One-Stop centers operated under WIA (29 U.S.C. 2801 *et seq.*).

The Department also encourages the coordination of Section 502(e) activities with the State aging network. In addition, under OAA Section 502(b)(4), participant assessments of eligibility, needs, and competence under SCSEP will satisfy any condition for an assessment under WIA and vice versa.

Geographic Locations. Another major emphasis of the program is for participants located nationwide to have an equitable opportunity to participate. The Department encourages applicants to offer the program in different localities.

Other Program Considerations

New Work Modes. Grantees are required to utilize new work modes for the participants in the program, such as flex-place, flex-time, job sharing and reduced physical activity (OAA § 502(e)(2)(A)).

Part-time or Full-time Training. Training may be part-time or full-time. Participants may also work at regular SCSEP assignments during the non-training hours.

Regulations

Grantees must abide by the requirements that are in place at the time the grants are awarded, and will be responsible for adhering to any revised requirements that go into effect during the grant period. The applicable regulations may be found on the SCSEP Web site at: *http://www.doleta.gov/seniors.*

II. Award Information

Under this solicitation, DOL anticipates that approximately $2 million will be available for grant awards in Program Year (PY) 2004 (July 1, 2004, through June 30, 2005). The minimum grant that may be awarded will be $25,000 for current SCSEP grantees, and $150,000 for non-current SCSEP grantees. Proposals for less than $25,000 or $150,000, respectively, will not be reviewed. The Department plans to award between 4 and 10 grants. The Department reserves the right to negotiate the amounts to be awarded under this competition. The expected period of performance is from October 1, 2004, through June 30, 2005, although the Program Year is from July 1, 2004, through June 30, 2005.

DOL retains the right not to fund any or all ''eligible, responsive and responsible'' applicants.

III. Eligibility Information

1. Eligible Applicants

Eligible applicants are: (1) States; (2) public agencies; (3) private non-profit organizations, including faith-based and community organizations; and (4) private business concerns. An organization that is a private business concern may be a for-profit public service organization such as a hospital, a day-care facility, etc., as well as a private, for-profit company. All of these are examples of workplaces that have profit-generating capability.

Applicants may apply as a consortium, but *each* member of the consortium must meet all eligibility and responsibility tests established in Section 515 of the OAA. Entities applying as a consortium are also jointly and severally liable for meeting all requirements for administering this Federally-funded program, and for performing any resulting grant. As a part of its applications, a consortium applicant must submit a copy of its consortium agreement which clearly demonstrates joint and several liability.

Under the Lobbying Disclosure Act of 1995, section 18 (29 U.S.C. 1611), an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

2. Cost Sharing or Matching

Cost sharing is not required to be eligible to receive Section 502(e) funds. In-kind or cash contributions are, however, encouraged. If private sector or other appropriate non-Federal contributions are involved, these funds may be included as a non-Federal contribution. DOL may consider matching funds in rating cost reasonableness.

3. Other Eligibility Criteria

Applicants must meet the applicable eligibility criteria and responsibility tests established in Section 514 of the OAA. Any applicant that fails to meet either of these tests will not be funded. Except as specifically provided, DOL/ETA's acceptance of a proposal and an award of Federal funds to sponsor any program(s) does not provide a waiver of any grant requirement and/or procedure. For example, the OMB circulars stipulate that an entity's entire procurement procedures and transactions, including subcontracts, must provide for free and open competition. If a proposal identifies a specific entity to provide the services, the DOL/ETA's award does not provide the justification or basis to sole-source the procurement, *i.e.*, avoid competition, *unless the activity is regarded as the primary work of an official partner to the application.* The official partner must therefore identify the work it intends to do within the grant application and attach a letter of agreement to this effect.

IV. Application and Submission Information

1. Address To Request Application Package

This Solicitation for Grant Applications (SGA) includes all of the information needed to apply for Section 502(e) funds.

2. Content and Form of Application Submission

A cover letter, an original plus two (2) copies of the proposal, one (1) blue ink-signed original Standard Form (SF) 424 and one (1) blue ink signed original SF 424A must be submitted to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Eric Luetkenhaus, Ref. SGA/DFA–04–102, Room N–4438, 200 Constitution Avenue, NW., Washington, DC 20210, by the closing date identified in Section IV(3) below. This grant application must have two parts: (1) a technical proposal; and (2) a cost proposal.

Part I: Technical Proposal

The technical proposal must consist of a narrative not to exceed twenty (20) double-spaced pages, including all attachments except as noted below. The technical proposal must be organized in accordance with the evaluation criteria identified in Section V(1). Applicants who fail to follow the rating criteria format may be deemed non-responsive.

The narrative must be typed in a font size of no less than 12-pt., and printed on one side of the paper only. Attachments are to be placed in a separate appendix and should include any supporting documentation, but must be limited to meaningful information that contributes to, and/or verifies, the proposed activities. All attachments count against the 20-page limit, with the exception of required vitae or position descriptions, the list of current and prior government grants and contracts, recent audits, and employer Letters of Commitment. Any proposal that exceeds the page limit may be considered non-responsive. Non-responsive applications will not be rated.

The cost proposal must contain the required standard forms and budget information as described in Section IV (2) (Part II) below. It is required that all applicants use the Rating Criteria format when developing their proposals.

The Department will not read general letters of support. However, the Department expects applicants to provide employer Letters of Commitment indicating a willingness to partner with the program. The Department will accept all employer letters, but will only read up to 15.

Part II. Cost Proposal

The cost proposal must consist of a completed Standard Form (SF) 424 ''Application for Federal Assistance,'' SF 424A ''Budget Information Sheet,'' a detailed cost breakdown of each line item on the SF 424A, and supporting materials as listed below. Copies of all required forms, with instructions for completion, are included as appendices to this SGA. Additional copies can be downloaded from the SCSEP Web site at *http://www.doleta.gov/seniors.* Applicants can expect the cost proposal to be reviewed for allowability, how the money is allocated, and reasonableness of placement and enrollment costs. The cost proposal must include the following items:

(1) The Standard Form (SF) 424, ''Application for Federal Assistance'' (original signed in blue ink) (See Appendix A). Applicants must indicate on the SF 424 the organization's IRS Status, if applicable.

Please note that, effective October 1, 2003, all applicants for federal grant and funding opportunities are required to include a Dun and Bradstreet (DUNS) number with their application. See OMB Notice of Final Policy Issuance, 68 FR 38402 (June 27, 2003). The DUNS number is a nine-digit identification number that uniquely identifies business entities. There is no charge for obtaining a DUNS number (although it may take 14–30 days). To obtain a DUNS number, access the following Web site: *http://www.dunandbradstreet.com* or call 1–866–705–5711. Requests for exemption from the DUNS number requirement must be made to OMB. The Dun and Bradstreet number of the applicant should be entered in the ''Organizational Unit'' section of block 5 of the SF 424. The Catalog of Federal Domestic Assistance number for this program is 17.235. It must be entered on the SF 424, Block 10.

(2) A Standard Form (SF) 424A ''Budget Information Sheet'' (See Appendix B).

(3) A detailed cost breakout of each line item on the Budget Information Sheet, which should be labeled as ''Budget Narrative.'' Please ensure that costs reported on the SF 424A correspond accurately with the Budget Narrative. The budget narrative must include the following information at a minimum:

- A breakout of all personnel costs by position, title, salary rates, and percent of time of each position to be devoted to the proposed project (including awardees);
- An explanation and breakout of extraordinary fringe benefit rates and associated charges (*i.e.*, rates exceeding 35% of salaries and wages);
- An explanation of the purpose and composition of, and method used to derive the costs, of each of the following: travel, equipment, supplies, sub-awards/contracts, and any other costs. The applicant must include costs of any required travel described in this solicitation. Mileage charges may not exceed 37.5 cents per mile;
- A description/specification of and justification for equipment purchases, if any. Tangible, non-expendable personal property having a useful life of more than one year and a unit acquisition cost of $5,000 or more per unit must be specifically identified;
- The source of matching and in-kind funds, if any.

(4) Assurance and Certification signature page (See Appendix D);

(5) Evidence of satisfactory financial management capability, which must include recent financial and/or audit statements;

(6) A list, in a separate appendix, of all government grants and contracts that the applicant or any of its affiliates has had in the past three (3) years, including grant officer contact information. For purposes of this SGA, the term ''affiliate'' refers to the applicant's subsidiaries, divisions, predecessors, and successors;

(7) A copy of the applicant's most recent (within 12 months) audited financial statement.

3. Submission Dates, Times, and Addresses

All submissions, including hand-delivered grant proposals, must be received in the Department by 4:45 p.m., eastern time, on July 21, 2004 at the address listed in Section IV(2) above.

Dates stamped by private delivery service or by the U.S. Postal Service are unacceptable as proof of submission; however, applicants are advised to submit mailed documents by ''return receipt requested.''

Notice: All applicants are advised that U.S. mail delivery in the Washington, DC, area continues to be erratic due to the concerns involving anthrax and ricin contamination. All applicants must take this into consideration when preparing to meet the application deadline, as each applicant assumes the risk for ensuring a timely submission of its application. If, because of these mail problems, or for any other reason, the Department does not receive an application or receives it too late to give it proper consideration, even if the application was mailed or sent well before the closing date, the Department may choose not to consider the application.

Please note that faxed applications will not be accepted. Applications not received by the closing date may not be accepted.

Failure to adhere to any of the above instructions may be a basis for a determination of non-responsiveness.

4. Intergovernmental Review

This funding opportunity is not subject to *Executive Order (EO) 12372,* ''Intergovernmental Review of Federal Programs.''

5. Funding Restrictions

SCSEP is subject to legislated limitations on the expenditure of title V funds. The administrative cost limitation of a SCSEP project is 13.5 percent of the Federal share; however, the Grant Officer may increase this limit, but only up to 15 percent of the cost of the project. (OAA § 502(c)(3)). Any applicant requesting an administrative cost higher than 13.5 percent as part of this initial application must justify that request as part of its application. Note, however, that submission of a justification alone does not entitle the applicant to approval of a higher administrative cost limit. Any decision to approve a higher administrative limit will be made on a case-by-case basis.

Other Allowable Costs

Wages and Fringe Benefits. There is a minimum or ''floor'' on the grant funds that must be spent on participant wages and fringe benefits. That floor is 75 percent of the total Federal share, which reflects Congressional concern that low-income program participants be the primary beneficiaries of the funding. (OAA § 502(c)(6)(B)). If the applicant who is applying for Section 502(e) funding is also a grantee for the SCSEP program, the grantee is required to maintain the 75 percent requirement for the entire funding amount, *i.e.*, SCSEP plus Section 502(e) funding. In addition, grantees may use wages and fringe benefits to cover the costs of on-the-job-experience training.

Other Participant Costs. Costs that are to be used for participant training, counseling, job development, and similar activities are known as ''Other Participant Costs'' (OAA § 502(c)(6)(A)). The available Federal share for Other Participant Costs is that part of the Federal grant allocation that is not used for administrative costs or participant wages and fringe benefits. The difference between (1) the total grant allotment and (2) the sum of the administrative costs and participant wages and fringe benefits is called ''Other Participant Costs.'' The formula is: Total Grant Allotment—(Administrative Costs + Wages and Fringe Benefits) = Other Participant Costs.

Start-up Costs. Specific start-up costs are not statutorily provided for in SCSEP projects. However, according to Section 502(c)(4) of the OAA, the cost of administration (limited to 13.5 percent, or 15 percent with Department approval), includes the costs associated with such goods and services required for administration of the program as rental or purchase of equipment, utilities, office supplies, postage, and rental and maintenance of office space. Generally, these costs are incurred after the beginning of a grant period. However, the Department will allow awardees who are new to the program to obtain such items up to one month before the beginning of the start-up of the program, consistent with the applicable OMB circulars.

Workers' Compensation. Grantees must provide the participants in the program with workers' compensation benefits equal to that provided by the law for covered employment. The grantee must undertake to provide this benefit either through insurance by a recognized carrier or by self-insurance, as authorized by State law (Section 504(b) of the OAA).

6. Other Submission Requirements

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identify is made known and the representative signs a receipt for the proposal.

V. Application Review Information

1. Criteria

The following review criteria, totaling a maximum score of 100 points, apply to all applications. An applicant's technical proposal must be organized according to these criteria.

(A) Program Design—Approach, Population(s) and Area(s) Served (30 Points)

Overall Objectives. The applicant must describe the overall plan for how it will realize the purposes of the program, which are to assure second career training and the placement of eligible individuals in employment opportunities with private business concerns, with an emphasis on new work modes. The program seeks to promote employment opportunities for unemployed, low-income persons, to foster individual economic self-sufficiency, and to increase the number of persons who may enjoy the benefits of unsubsidized employment (5 points).

Characteristics of Geographic Locations. The applicant must describe the geographic area(s) that will be served by the proposed program. The applicant must include a detailed list of the locations broken down by (a) state, and (b) county or parish (or independent cities not within any county, if applicable) where the project will be conducted. Grantees that have previously conducted these projects are encouraged to conduct their projects in different localities from year-to-year. To receive full credit, the applicant must also discuss the rationale for choosing such location(s) including: (1) Location of intended employer(s), whether urban, suburban, or rural; (2) recent poverty and unemployment rates for those areas; (3) expected participant skills and education levels; (4) expected barriers to employment; and, (5) additional services that the program/employer will provide to those facing barriers to employment (12 points).

An applicant who fails to list the locations desired will be considered non-responsive and will not be rated.

Training. The applicant must describe the types of training it will engage in for the identified population(s) it will serve. To receive full credit, the applicant must describe how it plans to utilize training resources, such as those provided under the Workforce Investment Act of 1998 and though the registered Apprenticeship Program (see Web site at *http://www.doleta.gov/atels_bat*) (5 points).

Participant Recruitment, Selection and Income Certification. The applicant must describe its plan to recruit and select participants and must:

—Explain how eligibility will be determined and documented; and
—Describe efforts to assure participation of minority, limited English-speaking, and Indian eligible individuals, and individuals with greatest economic need and those with poor employment prospects.

Applicants who are not current SCSEP grantees must describe how they will coordinate with the SCSEP grantees to recruit participants (6 points).

Complaint Resolution System. The applicant must briefly discuss the complaint resolution system that it will use in cases where a participant wishes to dispute an adverse action or in cases where an applicant for enrollment wishes to dispute an unfavorable determination of eligibility. If available, provide as an attachment an example of the written explanation of the complaint

resolution system that is to be given to each participant (2 points).

(B) Participant Services and Unsubsidized Placements (30 Points)

The applicant must describe the services that will be provided to the participants, either directly, through the One-Stop Center System, or through other service providers.

Orientation and Supportive Services. Applicants must describe participant orientation procedures. Applicants must describe the supportive services to be provided to participants and the source(s) of these services. The supportive services offered must be geared to help participants obtain or retain employment, with emphasis on coordinating with networks of faith-based or community organizations that provide such services. Where applicable, applicants must describe the arrangements that will be made to provide transportation assistance to participants and/or the reimbursement rate for transportation. To receive full credit, the applicant must also identify the source for providing such supportive services (6 points).

Placement into Unsubsidized Employment. The applicants must:

—Describe the steps that will be taken to transition participants into unsubsidized employment.
—Include examples or anticipated content of the cooperative arrangements that will be made with the Workforce Investment Board and One-Stop centers to place participants into unsubsidized employment (OAA § 502(b)(1)(O)).
—Describe placement follow-up efforts that will be utilized.

Applicants must describe the procedures to be followed in developing assessments of participants, including assessing the job aptitudes, job readiness, and job preferences of participants, as well as their potential for transition into unsubsidized employment. Training should be related to the participant's assessment and IEP as well as to the unsubsidized employment goal. Training may also be developmental (*i.e.*, the skills developed will enhance the participants' unsubsidized employment opportunities). Non-SCSEP applicants must describe how they will ensure that the assessment and IEP are adequate for the training opportunities developed and the intended unsubsidized placement.

Applicants must describe how it will match participants to the appropriate employers and ensure that participants have the support they need to stay in their position, (*i.e.*, provide the needed supportive services). Applicants must also indicate what is expected to be the average wage at placement (12 points).

Work with Area Employers and New Work Modes. The applicant must describe how it plans to identify what the needs of area employers are, the skills in demand, how any skills gaps might be filled, the jobs expected to be available in the area, the strategies that it will use to provide participants with the skills needed by employers, and strategies it will use to match participants with employers. The applicant must use Labor Market Information and other resources to identify growth industries located in its areas of operation, in order to focus on them as a source of placement and must describe how it will obtain such information.

Applicants must describe how they will utilize new work modes such as flex-place, flex-time, job sharing and reduced physical activity (OAA § 502(e)(2)(A)). To receive full credit, applicants must describe how they will place participants in high growth industries such as healthcare, retail, manufacturing, construction, and/or transportation (12 points).

(C) Benefits to Employers (10 Points)

Applicants must describe the benefits that employers will enjoy from participating in the program, how their needs will be addressed, and how the service strategy will prepare participants with the skills employers need from their employees. Applicants must identify their project's Expected Employment Rates (EER), and show how they can place their participants in an unsubsidized job, at a rate of 75 percent or above. The EER is calculated by dividing the number of participants placed in unsubsidized jobs by the total number of project participants. This calculation must be based upon the expected retention rate 6 months after placement (10 points).

(D) Staffing and Fiscal Oversight (30 Points)

Staffing. The applicant must describe the management structure for the proposed project. The applicant must include a staffing plan or project organizational chart describing the relationship between the applicant and planned sub-grantees and/or key host agencies. The chart must identify staff with key management responsibilities and show their expected portion of time dedicated to the project (if less than 100 percent). The applicant must include a brief description of its specific, relevant experience (and, as appropriate, the experience of significant sub-grantees) in serving senior populations, serving people with barriers to employment, and/or in administering other employment-related or other Federal programs. The applicant must also include position descriptions and, if available, vitae for key staff in management and participant services (4 points).

Program Oversight and Sub-grants. The applicant must describe its procedures for managing any proposed sub-grantees or contractors, including training providers, to ensure effective program operations. The applicant must provide, for example, an explanation of how it will ensure that adequate resources are made available for local level operations, and how it will establish a mechanism for the tracing of funds to a level of expenditure adequate to ensure that funds have been spent lawfully.

The applicant must describe the methods and procedures to be used to monitor and evaluate project activities, sub-grantees, and contractors to determine if the project is being administered in accordance with Federal guidelines and regulations and if project goals and timetables are being met. Include in this explanation:

—How frequently monitoring/evaluation visits will be made to projects (generally local projects should be monitored no less than annually);
—Who will be responsible for monitoring/evaluation;
—What criteria will be used to monitor and evaluate project activities;
—What methods will be used to prescribe remedial action when necessary;
—What follow-up procedures will be used to ensure that any identified problem has been remedied; and
—How sub-grantee or project reports will be validated and made part of permanent files.

If applicable, applicants that are considering utilizing sub-grantees or sub-contractors are also required to submit the criteria they plan to use in selecting sub-grantees and sub-contractors. Such applicants must provide a timeframe for competing and/or awarding sub-grants and sub-contracts, whether awarded competitively or non-competitively, including the planned dates of the awards and performance (12 points).

Cost Reasonableness. Average costs per participant are estimated to be $2,500. The applicant must justify any higher cost per participant. The cost per placement is the Federal cost divided by

the number of participants. Applicants are required to address the following points:

—The expected cost per placement (total Federal cost of the project divided by the number of participants placed); and

—If provided, describe any in-kind donations, or contributions from states or the private sector (4 points).

Financial Monitoring. Applicants must describe how the financial management system of sub-grantees and projects will be monitored, including:

—Who will be responsible for monitoring sub-grantee and affiliate expenditures;

—How frequently monitoring of expenditures will be done;

—How financial reports will be validated; and

—What follow-up procedures will be used (6 points).

Audits. Applicants must describe coverage plans to audit projects as well as plans to audit the headquarters activities. The applicant must provide specific references to the most recent audit and include the name of the audit firm and the date of that audit (4 points).

Points Summary

(A) Program Design—Approach, Population(s) and Area(s) Served (30 points)

(B) Participant Services and Unsubsidized Placements (30 points)

(C) Benefits to Employers (10 points)

(D) Staffing and Fiscal Oversight (30 points)

Total = 100 points

2. Review and Selection Process

A technical review panel will evaluate applications against the rating criteria in Section V (1). Responding alone is not grounds enough for receiving a satisfactory score. Applications will be ranked based on the score assigned by the panel after careful evaluation by each panel member.

The ranking will be the primary basis used to identify applicants as potential grantees. Proposals that do not merit a minimum score of 80 out of 100 will not be considered for an award. The panels' conclusions are advisory in nature and not binding on the Grant Officer. In deciding whether to award a grant to an applicant, the Grant Officer will, when appropriate, also take into account the applicant's past performance in its prior Federal grants or contracts for the past three (3) years as it relates to the applicant's or its affiliate's demonstration of financial and administrative responsibility and program performance. The information the Grant Officer considers may include: (1) The applicant's level of cooperation with Grant Officer(s), the applicant's Federal technical representatives, and Federal auditors and investigators; and (2) the sufficiency of the administrative costs to sub-grantees, subcontractors, or other affiliates. (A list of the applicant's prior Federal grants and contracts must be attached to the proposal). The Department reserves the right to ask for clarification or to hold discussions, but is not obligated to do so. In awards without discussions, an award will be made on the applicant's signature on the SF 424, which constitutes a binding offer. The Department further reserves the right to select applicants out of rank order if such a selection would, in its opinion, result in: the most effective and appropriate combination of funding; the most effective administrative structure (*i.e.*, whether the organization is simply passing through funds, or whether it is also providing oversight coordination, monitoring, etc., for accountability purposes); meeting program goals (*i.e.*, serving the needs of: minorities, limited English speakers, Indian eligible individuals, those with poor employment prospects, and those of greatest economic need); and a broad distribution of geographical service areas. Such items may be negotiated before we award a grant. If the negotiations do not result in an acceptable submission, the Department has the right to decline to fund an applicant's proposal.

3. Anticipated Announcement and Award Dates

Award decisions will be made no later than September 30, 2004.

VI. Award Administration Information

1. Award Notices

All award notifications will be posted on the ETA Homepage at *http://www.doleta.gov*. Grant awards will be made no later than September 30, 2004. Any applicant that is not selected as a potential grantee or whose application has been denied in part or in whole by the Department will be notified in writing by the Grant Officer.

2. Administrative and National Policy Requirements

Grantees must comply with the provisions of the Older Americans Act, as amended, and its implementing regulations, including the administrative standards and limitations on title V funds identified in 20 CFR Part 641, subpart H (69 FR 19014). Additionally, all grants will be subject to the following administrative standards and provisions, if applicable to the particular grantee:

- 29 CFR part 31—Nondiscrimination in Federally Assisted Programs of the Department of Labor—Effectuation of title VI of the Civil Rights Act of 1964;
- 29 CFR part 32—Nondiscrimination on the Basis of Handicap In Programs and Activities Receiving or Benefiting from Federal Financial Assistance;
- 29 CFR part 35—Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance from the Department of Labor;
- 29 CFR part 37—Implementation of the Non-discrimination and Equal Protection Provisions of the Workforce Investment Act of 1998 (WIA) (to the extent that grantees are One-Stop partners and participants in the One-Stop delivery system, see 29 CFR 37.4).
- 29 CFR part 93—New Restrictions on Lobbying;
- 29 CFR part 95—Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, and with Commercial Organizations, Foreign Governments, Organizations under the Jurisdiction of Foreign Governments, and International Organizations;
- 29 CFR part 96—Audit Requirements for Grants, Contracts and Other Agreements;
- 29 CFR part 97—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments; and
- 29 CFR part 98—Government-wide Debarment and Suspension (Non-procurement) and Government-wide Requirement for a Drug-Free Workplace.

In accordance with 20 CFR 641.836, projects funded under this SGA may not involve political activities. Additionally, in accordance with Section 18 of the Lobbying Disclosure Act of 1995, Public Law 104–65 (2 U.S.C. 1611), non-profit entities covered by Section 501(c)(4), of the Internal Revenue Code of 1986 that engage in lobbying activities are not eligible to receive Federal funds and grants. Further, this program is subject to the provisions of 38 U.S.C. 4215, as amended by the ''Jobs for Veterans Act,'' Pub. L. 107–288, which provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training and placement services in any job training program directly funded, in whole or in part, by the Department of Labor. Please note that, to obtain priority of service, a veteran must meet the program's eligibility requirements. ETA Training

and Employment Guidance Letter (TEGL) No. 5–03 (September 16, 2003) provides general guidance on the scope of the veteran's priority statute and its effect on current employment and training programs. The TEGL can be found at: *http://ows.doleta.gov/dmstree/tegl/tegl2K1/tegl_05–03.htm.* The Department anticipates updating this guidance at the time of WIA reauthorization and issuing individual guidance on each affected employment and training program.

3. Reporting

The Department wants to ensure that all eligible participants are well served by the grantees. It is strongly committed to a system-wide continuous improvement approach, based on quality principles and practices. Performance accountability ensures that the program is successful and that it is aligned with the One-Stop system and with the WIA performance measures. All selected applicants must agree to be evaluated on performance measures as a condition of the grant award (OAA § 513(a)(5)).

New performance measures will go into effect with the new SCSEP regulations, that were published on April 9, 2004. The Department intends to apply common measures to all its employment and training programs. The common measures are: (1) Entered employment; (2) retention; and (3) earnings increase. Please refer to Training and Employment Guidance Letter (TEGL) number 7–01 for additional information and definitions for the common measures. TEGLs can be accessed on the DOL Web site at: *http://www.ows.doleta.gov/dmstree/tegl/tegl2k1/tegl_07.01.htm.* For purposes of the Section 502(e) program, the goal for unsubsidized placements is at least 75% of participants, although grantees should try to place 100% of the participants.

The grantee may be asked to collect new data during this performance cycle. For the purposes of Section 502(e), grantees will report progress towards their goals on a quarterly basis, as part of their progress reports. If grantees also have a non-502(e) grant, they will submit a separate report for their Section 502(e) grants entitled ''Private Sector Projects.'' Multiple private sector projects may be combined into one report. Other reports may be requested as needed.

Applicants must have current computer technology and ensure that their organizations have the capability to link to the Internet. Reporting must be done through the EIMS system, accessed through the Internet. The Department will provide all of the necessary instructions to facilitate the grantee's access to the system.

Quarterly Progress Reports

In accordance with 29 CFR 97.40 or 29 CFR 95.51, each grantee must submit a Senior Community Service Employment Program Quarterly Progress Report (QPR). This report must be prepared to coincide with the ending dates for Federal fiscal year quarters and must be submitted to the Department no later than 30 days after the end of the quarterly reporting period. If the grant period ends on a date other than the last day of a federal fiscal year quarter, the last quarterly report covering the entire grant period must be submitted no later than 30 days after the ending date. The Department will provide the format and instructions for the preparation of this report.

Financial Status Reports

The following financial reporting requirements apply to title V grants:

—An SF–269, Financial Status Report (FSR), must be submitted to the Department within 30 days after the ending of each quarter of the program year.

—A final FSR must be submitted within 90 days after the end of the grant.

—All FSRs must be prepared on an accrual basis.

Should a current SCSEP grantee be a successful applicant, its Section 502(e) costs will be collected in a separate report. Progress reports will be required on a quarterly basis. The Department will provide the format for the quarterly progress report.

VI. Agency Contacts

Questions should be faxed to Eric Luetkenhaus, Grant Officer, Division of Federal Assistance at (202) 693–2705 [This is not a toll free number]. All inquiries should include the SGA/DFA 04–102 and a contact name, fax and phone number. For more information contact Mr. Luetkenhaus at (202) 693–3109 [This is not a toll free number]. This solicitation will also be published on the Internet, on ETA's SCSEP homepage at *http://www.doleta.gov/seniors*, and the ETA homepage at *http://www.doleta.gov.*

If assistance is needed, non-title V grantee applicants should fax questions on identifying existing SCSEP programs and location of current positions.

VIII. Other Information

Other Applicant Considerations

An applicant may submit multiple proposed projects within a single proposal; however, the applicant must submit a separate budget for each project and the narrative in the technical proposal must sufficiently identify the services to be provided for each project. For instance, if an applicant proposes to run a computer-related training course and a separate furniture manufacturing training course, a separate budget must be submitted that identifies the costs associated with each training. The Department may choose to fund one or the other, or both. Proposals including multiple projects must comply with the 20 page limit for total proposal length (this is, all projects must be discussed within 20 pages).

Signed at Washington, DC, this 28 day of May, 2004.

Emily Stover DeRocco,

Assistant Secretary of Labor, Employment and Training Administration.

Appendices

Appendix A: *Application for Federal Assistance, Standard Form 424* SF–424 *In MS Word*

Appendix B: *Budget Information Sheet, Standard Form 424–A* SF–424A *In MS Word*

Appendix C: *Standard Form 424–A Clarifying Instructions*

Appendix D: *Assurances and Certifications Signature Page*

Appendix E: *OMB No. 1890–0014: Survey on Ensuring Equal Opportunity For Applicants*

BILLING CODE 4510–30–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	Preapplication
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State	H. Independent School Dist.
B. County	I. State Controlled Institution of Higher Learning
C. Municipal	J. Private University
D. Township	K. Indian Tribe
E. Interstate	L. Individual
F. Intermunicipal	M. Profit Organization
G. Special District	N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ 0 .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$ 0.00
2.						0.00
3.						0.00
4.						0.00
5. Totals		$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total
	(1)	(2)	(3)	(4)	(5)
a. Personnel	$	$	$	$	$ 0.00
b. Fringe Benefits					0.00
c. Travel					0.00
d. Equipment					0.00
e. Supplies					0.00
f. Contractual					0.00
g. Construction					0.00
h. Other					0.00
i. Total Direct Charges *(sum of 6a-6h)*	0.00	0.00	0.00	0.00	0.00
j. Indirect Charges					0.00
k. TOTALS *(sum of 6i and 6j)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00
7. Program Income	$	$	$	$	$ 0.00

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Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$ 0.00
9.				0.00
10.				0.00
11.				0.00
12. TOTAL *(sum of lines 8-11)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$ 0.00	$	$	$	$
14. Non-Federal	0.00				
15. TOTAL *(sum of lines 13 and 14)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$ 0.00	$ 0.00	$ 0.00	$ 0.00

SECTION F - OTHER BUDGET INFORMATION	
21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page 2

INSTRUCTIONS FOR THE SF-424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0044), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1-4 Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line in *Column* (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 - Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a-i - Show the totals of Lines 6a to 6h in each column.

Line 6j - Show the amount of indirect cost.

Line 6k - Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount, Show under the program

INSTRUCTIONS FOR THE SF-424A (continued)

narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16-19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED
	June 3, 2004

Standard Form 424B (Rev. 7-97) Back

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 2202-4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, SW, ROB-3, Room 3671, Washington, D.C. 20202-4725

OMB No. 1890-0014 Exp. 1/31/2006

[FR Doc. 04–12896 Filed 6–7–04; 8:45 am]
BILLING CODE 4510–30–C

MERIT SYSTEMS PROTECTION BOARD

Agency Information Collection Activities; Proposed Collection

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: The U.S. Merit Systems Protection Board (MSPB) is requesting a three year renewal of OMB clearance of its soon to expire Generic Clearance Request for Voluntary Customer Surveys Under Executive Order 12862 ''Setting Customer Service Standards'' from the Office of Management and Budget (OMB) under section 3506 of the Paperwork Reduction Act of 1995, OMB Control Number: 3124–0012.

In this regard, we are soliciting comments on the public reporting burden. The reporting burden for the collection of information on this request is estimated to vary from 5 minutes to 30 minutes per response, with an average of 15 minutes, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

ESTIMATED ANNUAL REPORTING BURDEN

5 CFR section	Annual number of respondents	Frequency per response	Total annual responses	Hours per response (average)	Total hours
1201 and 1209	2,000	1	1,500	.25	375

In addition, the MSPB invites comments on (1) whether the proposed collection of information is necessary for the proper performance of MSPB's functions, including whether the information will have practical utility; (2) the accuracy of MSPB's estimate of burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate and other forms of information technology.

DATES: Comments must be received on or before August 9, 2004.

ADDRESSES: Comments concerning the paperwork burden should be address to Dr. Dee Ann Batten, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419 or by calling (202) 653–6772, ext. 1411.

Bentley M. Roberts, Jr.,

Clerk of the Board.

[FR Doc. 04–12843 Filed 6–7–04; 8:45 am]

BILLING CODE 7401–01–P

NATIONAL SCIENCE FOUNDATION

NSF–NASA—Astronomy and Astrophysics Advisory Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: NSF–NASA—Astronomy and Astrophysics Advisory Committee (#13883).

Date and Time: June 21–22, 2004, 8 a.m.–5 p.m.

Place: Room 595, Stafford II Building, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. G. Wayne Van Citters, Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4908.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF) and the National Aeronautics and Space Administration (NASA) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the two agencies.

Agenda: To hear presentations of current programming by representatives from NSF and NASA; to discuss current and potential areas of cooperation between the two agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: June 3, 2004.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. 04–12914 Filed 6–7–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–220 AND 50–410]

Constellation Energy Group, Nine Mile Point Nuclear Station, Units 1 and 2; Notice of Receipt and Availability of Application for Renewal of Facility Operating License Nos. DPR–63 and NPF–69 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (NRC or Commission) has received an application, dated May 26, 2004, from Constellation Energy Group, filed pursuant to section 103 (Operating License Numbers DPR–63 and NPF–69) of the Atomic Energy Act of 1954, as amended, and 10 CFR part 54, to renew the operating licenses for the Nine Mile Point Nuclear Station, Units 1 and 2, respectively. Renewal of the licenses would authorize the applicant to operate each facility for an additional 20-year period beyond the period specified in the respective current operating licenses. The current operating license for Nine Mile Point Unit 1 (DRP–63) expires on August 22, 2009, and the current operating license for Nine Mile Point Unit 2 (NPF–69) expires on October 31, 2026. The Nine Mile Point Nuclear Station, Units 1 and 2 are boiling water reactors designed by General Electric. Both units are located near Lycoming, New York. The acceptability of the tendered application for docketing, and other matters including an opportunity to request a hearing, will be the subject of subsequent **Federal Register** notices.

Copies of the application are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland 20582 or

electronically from the NRC's Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room under Accession Number ML041490211. The ADAMS Public Electronic Reading Room is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* In addition, the application is available on the NRC Web page at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications.html,* while the application is under review. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC's PDR Reference staff at 1–800–397–4209, or 301–45–4737, or by e-mail to *pdr@nrc.gov.*

A copy of the license renewal application for the Nine Mile Point Nuclear Station, Units 1 and 2, is also available to local residents near the Nine Mile Point Nuclear Station at the Penfield Library (Selective Depository), Reference and Documents Department, State University of New York, Oswego, New York 13126.

Dated in Rockville, Maryland, this 1st day of June, 2004.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Program Director, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 04–12863 Filed 6–7–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of June 7, 14, 21, 28, July 5, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of June 7, 2004

Thursday, June 10, 2004

1:30 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of June 14, 2004—Tentative

There are no meetings scheduled for the Week of June 14, 2004.

Week of June 21, 2004—Tentative

There are no meetings scheduled for the Week of June 21, 2004.

Week of June 28, 2004—Tentative

There are no meetings scheduled for the Week of June 28, 2004.

Week of July 5, 2004—Tentative

There are no meetings scheduled for the Week of July 5, 2004.

Week of July 12, 2004—Tentative

Tuesday, July 13, 2004

2:15 p.m. Discussion of Security Issues (Closed—Ex. 1)

*The schedule for Commission meetings is subject to change on short notice: To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Dave Gamberoni, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/what-we-do/policy-making/schedule.html*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in this meeting, or need this meeting notice or the transcript or other information from the meeting in another format (*e.g.* braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at 301–415–7080, TDD: 301–415–2100, or by e-mail at *aks@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: June 3, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–13018 Filed 6–4–04; 11:31 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, May 14 through May 27, 2004. The last biweekly notice was published on May 25, 2004 (69 FR 29761).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this

proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-

mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: April 26, 2004.

Description of amendment request: The proposed amendment would revise the Completion Time for Required Action A.1 of Technical Specification 3.8.7, ''Inverters—Operating,'' from the current 24 hours for a Division 1 or 2 Nuclear System Protection System (NSPS) inverter inoperable to 7 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change revises the Completion Time for Required Action A.1 associated with the Division 1 and 2 NSPS inverters. Specifically, the proposed action allows continued unit operation, for up to 7 days, with an inoperable Division 1 or 2 NSPS inverter.

The proposed change does not affect the design of the NSPS inverters, the operational characteristics or function of the inverters, the interfaces between the inverters and other plant systems, or the reliability of the inverters. An inoperable NSPS inverter is not considered as an initiator of any analyzed event. In addition, Required Actions and the associated Completion Times are not initiators of any previously evaluated accidents. Extending the Completion Time for an inoperable NSPS inverter would not have a significant impact on the frequency of occurrence for any accident previously evaluated. The proposed change will not result in changes to the plant activities associated with NSPS inverter maintenance, but rather will allow increased flexibility in the scheduling and performance of preventive maintenance. Therefore, this change will not significantly increase the probability of occurrence of any event previously analyzed.

The consequences of a previously analyzed event are dependent on the initial conditions assumed in the analysis, the availability and successful functioning of equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. With an NSPS inverter inoperable, the affected instrument bus is capable of being fed from its dedicated safety-related alternate power supply, which is powered from a Class 1E 480 VAC bus through a step-down transformer and an isolation transformer. In the event of a Loss of Offsite Power (LOOP), the affected instrument bus will experience a momentary loss of power until the associated diesel generator (DG) re-energizes the 480 VAC bus. A LOOP with an inoperable NSPS inverter (*i.e.*, instrument bus being powered by its alternate power supply) will result in a loss of power to the associated instrument bus until the associate DG re-energizes the Class 1E 480 VAC bus. All instruments supplied by the instrument bus would be restored with no adverse impact to the unit because no other instrument channels in the opposite train would be expected to be inoperable or in a tripped condition during this time, with the exception of routine surveillances. In the event of a failure to re-energize the 480 VAC bus or of a transformer failure, the most significant impact on the unit is the failure of one train of Engineered Safety Feature (ESF) equipment to actuate. In this condition, the redundant train of ESF equipment will automatically actuate to mitigate the accident, and the affected unit would remain within the bounds of the accident analyses. In addition, there would be no adverse impact to the unit because no other instrument channels in the opposite train would be expected to be inoperable or in a tripped condition during this time, with the exception of routine surveillances.

To fully evaluate the effect of the proposed NSPS inverter Completion Time extension, probabilistic risk assessment (PRA) methods and a deterministic analysis were utilized. The Incremental Conditional Core Damage Probability (ICCDP) and Incremental Conditional Large Early Release Probability (ICLERP) for each inverter division are sufficiently below the regulatory guidelines to be able to call the risk change small. Hence, the guidelines of Regulatory Guide 1.177, ''An Approach for Plant-Specific, Risk-Informed Decision-Making: Technical Specifications,'' for the increased inverter Completion Time have been met. Furthermore, the evaluation of changes in Core Damage Frequency (CDF) and Large Early Release Frequency (LERF) due to the expected increased inverter unavailability, as mitigated by the compensating measures assumed in the analysis, have been shown to meet the risk significance criteria of Regulatory Guide 1.174, ''An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis,'' with substantial margin. This calculation supports the increase in the Division 1 and 2 inverter Completion Times from a quantitative risk-informed perspective consistent with the plant operational and maintenance practices. Therefore, the request for extending the Completion Time will not significantly increase the consequences of an accident previously evaluated.

In summary, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed action does not involve physical alteration of the station. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There is no change being made to the parameters within which CPS is operated. There are no setpoints at which protective or mitigative actions are initiated that are affected by this proposed action. The use of the alternative Class 1E power source for the instrument bus is consistent with the CPS plant design. The change does not alter assumptions made in the safety analysis. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a marge of safety?

Response: No.

Margins of safety are established in the design of components, the configuration of components to meet certain performance parameters, and in the establishment of setpoints to initiate alarms or actions. There is no change in the design of the affected systems, no alteration of the setpoints at which alarms or actions are initiated, and no change in plant configuration from original design. With one of the required instrument buses being powered from the alternate class 1E power supply, there is no significant reduction in the margin of safety. Testing of the DGs and associated electrical distribution equipment provides confidence that the DGs will start and provide power to the associated

equipment in the unlikely event of a LOOP during the extended 7-day Completion Time.

Applicable regulatory requirements will continue to be met, adequate defense-in-depth will be maintained, sufficient safety margins will be maintained, and any increases in risk are small and consistent with the NRC Safety Goal Policy Statement (**Federal Register**, Vol. 51, p. 30028 (51 FR 30028), August 4, 1986, as interpreted by NRC Regulatory Guides 1.174 and1.177). Furthermore, increases in risk posed by potential combinations of equipment out of service during the proposed NSPS inverter extended Completion Time will be managed under a configuration risk management program (CRMP) consistent with 10CFR50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants.'', paragraph (a)(4).

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60666.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: April 30, 2004.

Description of amendment request: The proposed amendments would incorporate the oscillation power range monitor (OPRM) instrumentation into the technical specifications (TS). The proposed changes would revise: (1) TS 3.3.1.3, ''Oscillation Power Range Monitor (OPRM) Instrumentation,'' to insert a new TS section for the OPRM instrumentation, (2) TS 3.4.1, ''Recirculation Loops Operating,'' to delete the current thermal hydraulic instability administrative requirements, and (3) TS 5.6.5, ''Core Operating Limits Report (COLR),'' to add the appropriate references for the OPRM trip setpoints and methodology.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This proposed change has no impact on any of the existing neutron monitoring functions.

Activation of the OPRM scram function will replace the current methods that require operators to insert an immediate manual reactor scram in certain reactor operating regions where thermal hydraulic instabilities could potentially occur. While these regions will continue to be avoided during normal operation, certain transients, such as a reduction in reactor recirculation flow, could place the reactor in these regions. During these transient conditions, with the OPRM instrumentation scram function activated, an immediate manual scram will no longer be required. This may potentially cause a marginal increase in the probability of occurrence of an instability event. This potential increase in probability is acceptable because the OPRM function will automatically detect the instability condition and initiate a reactor scram before the Minimum Critical Power Ratio (MCPR) Safety Limit is reached. Consequences of the potential instability event are reduced because of the more reliable automatic detection and suppression of an instability event, and the elimination of dependence on the manual operation actions. Operators will continue to monitor for indications of thermal hydraulic instability when the reactor is operating in regions of potential instability as a backup to the OPRM instrumentation. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. The proposed changes replace procedural actions that were established to avoid operating conditions where reactor instabilities might occur with an NRC approved automatic detect and suppress function (*i.e.*, OPRM).

Potential failure in the OPRM trip function could result in either a failure to take the required mitigating action or an unintended reactor scram. These are the same potential effects of failure of the operator to take the correct appropriate action under the current procedural actions. The effects of failures of the OPRM equipment are limited to reduced or failed mitigation, but such failure cannot cause an instability event or other type of accident.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. The OPRM trip function is being implemented to automate the detection and subsequent suppression of an instability event prior to exceeding the MCPR Safety Limit. The OPRM trip provides a trip output of the same type as currently used for the [average power range monitor] APRM. Its failure modes and types are identical to those for the present APRM output. Since the MCPR Safety Limit will not be exceeded as a result of an instability event following implementation of the OPRM trip function, it is concluded that the proposed change does not reduce the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: April 13, 2004.

Description of amendment request: The proposed amendment deletes requirements from the Technical Specifications to maintain hydrogen recombiners and hydrogen and oxygen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for combustible gas control system in light-water-cooled power reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The

licensee affirmed the applicability of the model NSHC determination in its application dated March 4, 2004.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2 and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the SAMGs, the emergency plan (EP), the emergency operating procedures (EOP), and site survey monitoring that support modification of emergency plan protective action recommendations (PARs).

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors. Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Thomas S. O'Neill, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Section Chief: James W. Clifford.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: May 5, 2004.

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for instrumentation setpoints, allowable values, and calibration requirements based on updated calculations and reviews, and add a definition of ''annual'' frequency for use in the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed new DVR [degraded voltage relay] voltage and minimum time delay Allowable Values are more restrictive than the existing TS limits. The proposed new DVR maximum time delay is based on the existing analytical limit, and is only increased to the extent permitted by the methods endorsed by Regulatory Guide (RG) 1.105. Annual channel calibrations are already performed, and adding them to TS ensures from a regulatory perspective that the relay drift is consistent with the setpoint calculations. The proposed new LVR [loss of voltage relay] voltage upper Allowable Value is based on a comprehensive EDG [emergency diesel generator] transient analysis, and is only increased to the extent permitted by the methods endorsed by Regulatory Guide (RG) 1.105. The proposed new LVR time delay allowable values are more restrictive than the existing TS limits, and are within the existing TS range of allowable values. Accident initial conditions, probability, and assumptions remain as previously analyzed. The remaining portions of the amendment request are administrative changes that will have no effect on operations of the relays. The Degraded Voltage and Loss of Voltage Relays are not

accident initiators; therefore, a malfunction of these relays will have no significant effect on accident initiation frequency. The proposed changes do not invalidate the assumptions used in evaluating the radiological consequences of any accident. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed new DVR voltage and minimum time delay Allowable Values are more restrictive than the existing TS limits. The proposed new DVR maximum time delay is based on the existing analytical limit, and is only increased to the extent permitted by the methods endorsed by Regulatory Guide (RG) 1.105. Annual channel calibrations are already performed, and adding them to TS ensures from a regulatory perspective that the relay drift is consistent with the setpoint calculations. The proposed new LVR voltage upper Allowable Value is based on a comprehensive EDG transient analysis, and is only increased to the extent permitted by the methods endorsed by Regulatory Guide (RG) 1.105. The proposed new LVR time delay allowable values are more restrictive than the existing TS limits, and are within the existing TS range of allowable values. Accident initial conditions and assumptions remain as previously analyzed. The remaining portions of the amendment request are administrative changes that will have no effect on operations of the relays.

The proposed changes do not introduce any new or different accident initiators. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed changes to the DVR Allowable Values will ensure an adequate margin of safety is maintained between the lowest allowable voltage setpoint and the highest per unit voltage required by safety-related equipment, while at the same time establishing an Allowable Value, not previously provided, that ensures a sufficient margin of safety between the highest allowable voltage setpoint and the lowest expected per unit source voltages.

The proposed changes to the DVR Allowable Values will ensure an adequate margin of safety is maintained between the longest allowable time delay and the longest time delay assumed by the accident analyses, while at the same time establishing an Allowable Value, not previously provided, that ensures a sufficient margin of safety between the shortest allowable time delay and the longest acceleration time for 4160 Volt continuously energized Safety Features Actuation System motors.

The proposed new LVR voltage upper Allowable Value is based on a comprehensive EDG transient analysis, and is only increased to the extent permitted by the methods endorsed by Regulatory Guide (RG) 1.105. In addition, the new Allowable Value reflects improvements in channel uncertainties that were made possible by upgrading the relays to solid state units.

The proposed new LVR time delay allowable values are more restrictive than the existing TS limits, and are within the existing TS range of allowable values.

A new requirement to perform an annual channel calibration of the Degraded Voltage and Loss of Voltage Relays is proposed. This new requirement to demonstrate proper channel operations will not adversely affect a margin of safety. The remaining changes are administrative, and will have no effect on margin of safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Anthony J. Mendiola.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 21, 2004.

Description of amendment request: The proposed amendment would revise the following in the technical specifications (TSs): (1) adding a new figure (Figure 2–3) to the table of contents that shows the volume of Trisodium Phosphate (TSP) required over the operating cycle; (2) Section 2.3(4), ''Emergency Core Cooling System—Trisodium Phosphate (TSP),'' regarding volume and form of TSP; and (3) Section 3.6(2)d.(i), ''Safety Injection and Containment Cooling Systems Tests,'' regarding the surveillance requirement for TSP volume. The amendment also proposes modifications to the corresponding Basis of TS 2.3 and TS 3.6.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

There are no changes to the design or operation of the plant that could affect system, component, or accident functions as a result of deleting the requirement for the ''dodecahydrate'' form of TSP, or replacing the volume of active TSP required during Operating Modes 1 and 2 with an amount dependent upon HZP [hot zero power] CBC [critical boron concentration] as shown in Figure 2–3. All systems and components function as designed and the performance requirements have been evaluated and found to be acceptable. Hydrated TSP in the range of 45–57% moisture content will maintain pH ≥ 7.0 in the recirculation water following a LOCA [loss-of-coolant accident]. This function is maintained with the proposed change. Allowing the required volume of active TSP to decrease over the operating cycle as HZP CBC decreases will ensure that the pH of the containment sump is ≥ 7.0 yet provides additional margin for EEQ [equipment environmental qualification] concerns as containment sump pH is less likely to exceed 7.5.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of the proposed change. All systems, structures, and components previously required for mitigation of an event remain capable of fulfilling their intended design function with this change to the TS. The proposed change has no adverse effects on any safety-related systems or component and does not challenge the performance or integrity of any safety related system. The proposed change has evaluated the TSP configuration such that no new accident scenarios or single failures are introduced.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Deleting the requirement for the ''dodecahydrate'' form of TSP and allowing the required volume of active TSP to decrease as HZP CBC decreases still ensures that the pH of the containment sump is ≥ 7.0. Hydrated TSP in the range of 45–57% moisture content will maintain pH ≥ 7.0 in the recirculation water following a LOCA. This change provides additional margin for EEQ concerns as containment sump pH is less likely to exceed 7.5. Therefore, this change does not involve a significant reduction in the margin of safety. Evaluations were made that indicate that the margin for pH control is not altered by the proposed changes. A TSP volume that is dependent on HZP CBC has been evaluated with respect to neutralization of all borated water and acid sources. These evaluations concluded that there would be no impact on pH control, and hence no reduction in the margin of safety related to post LOCA conditions.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 31, 2004.

Description of amendment request: The proposed amendment would revise the reactor pressure vessel pressure-temperature limits and extend the validity of the limits to 32 effective full power years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The revised curves are based on uprated fluence projections and are applicable for the service period up to 32 effective full power years (EFPY). There are no changes being made to the reactor coolant system (RCS) pressure boundary or to RCS material, design or construction standards. The proposed heatup and cooldown curves define limits that continue to ensure the prevention of nonductile failure of the RCS pressure boundary. The design-basis events that were evaluated have not changed. The modification of the heatup and cooldown curves does not alter any assumptions previously made in the radiological consequence evaluations since the integrity of the RCS pressure boundary is unaffected. Therefore, the proposed changes will not significantly increase the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Revisions to the heatup and cooldown curves do not involve any new components or plant procedures. The proposed changes do not create any new single failure or cause any systems, structures, or components to be operated beyond their design bases. Therefore, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed figures define the limits for ensuring prevention of nonductile failure for the reactor coolant system based on the methods described in 1989 ASME Code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code] Section XI Appendix G, 10 CFR 50 Appendix G, and ASME Code Cases N–640 and N–588. The effect of the change is to permit plant operation within different pressure-temperature limits, but still with adequate margin to assure the integrity of the reactor coolant system pressure boundary. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Carolina Power & Light Company, Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: December 15, 2003.

Brief Description of amendments: The amendments revise Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' for the condition of having one or more SDV vent or drain lines with one valve inoperable.

Date of issuance: May 17, 2004.

Effective date: May 17, 2004.

Amendment Nos.: 232 and 259.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments change the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 16, 2004 (69 FR 12364).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 17, 2004.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 19, 2003, supplements dated October 23, 2003, and January 28, 2004.

Brief description of amendments: The amendments revised the Technical Specifications to modify the requirements for the containment pressure control system to eliminate a problem with circuit fluctuation as a result of electronic noise.

Date of issuance: May 12, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 214 and 208.

Renewed Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** September 18, 2003 (68 FR 54749).

The supplements dated October 23, 2003, and January 28, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register** on September 18, 2003 (68 FR 54749).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 2004.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: May 14, 2002, as supplemented by letters dated June 27, 2002, July 9, 2003, and April 7 and May 12, 2004.

Brief description of amendment: The amendment revises the Updated Safety Analysis Report (USAR) Appendix 3B and Sections 6.2.1.1.3.2.1, ''Reactor Water Cleanup Break'' and 6.2.1.2 ''Containment Subcompartments'' to change the method of analysis for high energy line breaks inside and outside of containment. The change will replace the current THREED code for room pressure-temperature analyses with the GOTHIC (Generation of Thermal-Hydraulic Information for Containments) code.

Date of issuance: May 20, 2004.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 139.

Facility Operating License No. NPF–47: The amendment revised the USAR Appendix 3B and Sections 6.2.1.1.3.2.1 and 6.2.1.2.2.

*Date of initial notice in **Federal Register:*** July 9, 2002 (67 FR 45563). The June 27, 2002, July 9, 2003, and April 7 and May 12, 2004, supplemental letters provided clarifying information that did not expand the scope of the original **Federal Register** notice or the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 20, 2004.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 12, 2003, as supplemented by letter dated April 22, 2004.

Brief description of amendment: The amendment changes the heater acceptance criteria contained in surveillance requirements 4.6.6.1d.5, 4.7.6.1d.3, and 4.7.7d.4, performed to verify that the heat dissipated by the heaters is within a given band, for the shield building ventilation, control room ventilation, and controlled ventilation area systems, respectively. The changes increase the upper limit of the acceptance criteria from rated capacity plus 5 percent to rated capacity plus 10 percent and without any change for the lower limit of the band of rated capacity minus 10 percent.

Date of issuance: May 24, 2004.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 194.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** October 14, 2003 (68 FR 59217). The April 22, 2004, supplemental letter provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 2004.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2 (BVPS–1 and 2), Beaver County, Pennsylvania

Date of application for amendments: January 28, 2004, as supplemented May 3, 2004

Brief description of amendments: The amendments eliminated the requirements in BVPS–1 and BVPS–2 Technical Specifications (TSs) associated with hydrogen recombiners and relocate the requirements for hydrogen monitors to the Licensing Requirements Manuals.

Date of issuance: May 19, 2004.

Effective date: As of the date of issuance, and shall be implemented within 120 days.

Amendment Nos.: 259 and 142.

Facility Operating License Nos. DPR–66 and NPF–73: The amendments revised the TSs.

*Date of initial notice in **Federal Register:*** March 16, 2004 (69 FR 12370). The supplement dated May 3, 2004, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 2004.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: July 14, 2003, as supplemented November 20, 2003, March 25, 2004, and April 27, 2004.

Brief description of amendment: The amendment allows a one-time increase in the completion time for restoring an inoperable nuclear services seawater system train to operable status.

Date of issuance: May 18, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 212.

Facility Operating License No. DPR–72: Amendment revises the License and Technical Specifications.

*Date of initial notice in **Federal Register:*** August 5, 2003 (68 FR 42644). The November 20, 2003, March 25, 2004, and April 27, 2004, supplements contained clarifying information only and did not change the initial no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 26, 2003, as supplemented January 7, 2004.

Brief description of amendments: The amendments modify Technical Specifications (TS) requirements to adopt the provisions of Industry/TS

Task Force (TSTF) change TSTF–359, ''Increased Flexibility in Mode Restraints.''

Date of issuance: May 12, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: Unit 1–169; Unit 2–170.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register***: December 9, 2003 (68 FR 68671). The supplemental letter dated January 7, 2004, provided clarifying information that did not change the scope of the original **Federal Register** notice or the original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 2004.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendment: July 31, 2002 (superseded November 24, 1999, application) and its supplements dated August 15 and December 23, 2003.

Brief description of amendments: The amendments revise the technical specifications to relocate the pressure-temperature limits and low temperature overpressure protection system limit setpoints into a plant-specific pressure temperature limits report that will be administratively controlled by the technical specifications.

Date of issuance: May 13, 2004.

Effective date: May 13, 2004, and shall be implemented within 30 days from the date of issuance.

Amendment No.: Unit 1–170; Unit 2–171.

Facility Operating License Nos. DPR–80 and DPR–82: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 17, 2002 (67 FR 58648). The supplemental letters dated August 15 and December 23, 2003, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 13, 2004.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: February 2, 2004.

Brief description of amendments: The amendments revised the Technical Specification 3.1.8, ''Scram Discharge Volume (SDV) Vent and Drain Valves,'' for the condition of having one or more SDV vent or drain lines with one valve inoperable.

Date of issuance: May 25, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 240 and 183.

Renewed Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 16, 2004 (69 FR 12372). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 2004.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: March 23, 2004, as supplemented April 30, 2004.

Brief description of amendment: The amendments allow both trains of control room air-conditioning system (CRACS) to be inoperable for up to 7 days provided control room temperatures are verified every 4 hours to be less than or equal to 90 degrees Fahrenheit. If this temperature limit cannot be maintained or both CRACS trains are inoperable for more than seven days, the requirements of Technical Specification Section 3.0.3 must be implemented.

Date of issuance: May 21, 2004.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No.: 292 and 282.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revised the technical specifications.

Date of initial notice in Federal Register: April 14, 2004 (69 FR 19880). The April 30, 2004, letter provided clarifying information that did not expand the scope of the original application or change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 21, 2004.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units 1 and 2, Louisa County, Virginia

Date of application for amendment: December 13, 2002, as supplemented by letters dated May 8, 2003, December 17, 2003, February 12, 2004, and March 9, 2004.

Brief description of amendment: These amendments revise the completion time of Required Action A.1 of Technical Specification 3.8.7, ''Inverters—Operating,'' from 24 hours to 7 days for an inoperable instrument bus inverter.

Date of issuance: May 12, 2004.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 235 and 217.

Renewed Facility Operating License Nos. NPF–4 and NPF–7: Amendments change the Technical Specifications.

Date of initial notice in Federal Register: April 15, 2003 (68 FR 18289). The May 8, 2003, December 17, 2003, February 12, 2004, and March 9, 2004, supplementary letters contained clarifying information only and did not change the initial proposed no significant hazards consideration determination or expand the scope of the initial application. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 12, 2004.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I,

which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register**media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1–800–397–4209, 301–415–4737, or by e-mail to *pdr@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of flaw or fact.[1] Contentions shall be limited to matters within the scope of the amendment

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within on of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff; (3) e-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer or the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 7, 2004.

Brief description of amendment: The amendment restores the licensed thermal power from 1524 megawatts thermal (MWt), as approved in Amendment No. 224, to the previous value of 1500 MWt.

Date of issuance: May 14, 2004.

Effective date: May 14, 2004.

Amendment No.: 227.

Renewed Facility Operating License No. DPR–40: The amendment revised the Operating License and the Technical Specifications. Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. Omaha-World Herald. The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The Commission's related evaluation of the amendment, finding of exigent circumstances, State consultation, and final NSHC determination are contained in a safety evaluation dated May 14, 2004.

Attorney for licensee: James R. Curtiss, Esq. Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

Dated at Rockville, Maryland, this 28th day of May, 2004.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–12671 Filed 6–7–04; 8:45 am]

BILLING CODE 7590–01–P

PEACE CORPS

Proposed Information Collection Requests

AGENCY: Peace Corps.

ACTION: Notice of public use form review request to the Office of Management and Budget (OMB Control Number 0402–0529).

SUMMARY: Pursuant to the Paperwork Reduction Act of 1981 (44 U.S.C., chapter 35), the Peace Corps has submitted to the Office of Management and Budget a request for approval of information collections, OMB Control Number 0420–0529, the Peace Corps Day Brochure Registration Form. The purpose of this notice is to allow for public comments on whether the proposed collection of information is necessary for the proper performance of the functions of the Peace Corps, including whether their information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collections information, including the validity of the methodology and assumptions used; ways to enhance the quality, utility and the clarity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology. A copy of the information collection may be obtained from Agnes Ousley, Office of Domestic Programs, Peace Corps, 1111 20th Street, NW., Room 2163, Washington, DC 20526., Ms. Ousley may be contacted by telephone at (202) 692–1429 or 800–424–8580, Peace Corps Headquarters, ext 1429, by e-mail at *aousley@peacecorps.gov.* Comments on the form should also be addressed to the attention of Ms. Ousley by August 9, 2004.

Information Collection Abstract

Title: Peace Corps Day Brochure Registration Form.

Need for and Use of This Information: This collection of information is necessary because the Peace Corps' Office of Domestic Programs builds awareness of the continuing benefits that former Volunteers bring back to the

United States after their service through its Coverdell World Wise Schools program, the Fellows/USA graduate fellowship program, Returned Volunteers Services, and through Peace Corps Day. This program is in support of the third goal of the Peace Corps. For more than 10 years, programs and publications have aimed to harness the cross-cultural experiences of returned Peace Corps Volunteers (RPCVs) to foster better global understanding among Americans, and particularly students, throughout the United States. The information is used by the Office of Domestic Programs to send presentation and educational materials to RPCVs, which enhances the quality of the presentations. Information is also used by Public Affairs Specialists to promote Peace Corps Day regionally, broadly raising awareness for the Peace Corps and augmenting recruiting efforts. Parents of currently serving Volunteers may also receive Peace Corps Day packages.

Respondents: Returned Peace Corps Volunteers.

Respondent's Obligation To Reply: Voluntary.

Burden on the Public:

a. Annual reporting burden: 500 hours.
b. Annual recordkeeping burden: 0.
c. Estimated average burden per response: 3 minutes.
d. Frequency of response: One time.
e. Estimated number of likely respondents: 10,000.
f. Estimated cost to respondents: $1.29

Responses will be returned by postage-paid business reply card, fax, e-mail, and downloaded from the Peace Corps Web site. (*http://www.peacecorps.gov*).

This notice is issued in Washington, DC on May 28, 2004.

Ed Anderson,

Chief Information Officer.

[FR Doc. 04–12834 Filed 6–7–04; 8:45 am]

BILLING CODE 6051–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 19d–3; SEC File No. 270–245; OMB Control No. 3235–0204.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Rule 19d–3 under the Securities Exchange Act of 1934 (the ''Exchange Act'') prescribes the form and content of applications to the Commission for review of final disciplinary sanctions, denials of membership, participation or association or prohibitions or limitations of access to services that are imposed by self-regulatory organizations (''SROs''). The Commission uses the information provided in the application filed pursuant to Rule 19d–3 to review final actions taken by SROs including: (1) Disciplinary sanctions; (2) denials of membership, participation or association; and (3) prohibitions on or limitations of access to SRO services.

It is estimated that approximately 15 respondents will utilize this application procedure annually, with a total burden for all respondents of 270 hours, based upon past submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–3, to complete each submission, is 18 hours. The average cost per hour for completion of each submission is approximately $101. Therefore, the total cost of compliance for all respondents, per year is $27,270. (15 submissions × 18 hours × $101 per hour).

A respondent is not required to retain the Rule 19d–3 submission for any specified period of time. The filing of a motion seeking review of a final action is mandatory only if the respondent wants Commission review. The submission does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 1, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12898 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 19h–1, SEC File No. 270–0247; OMB Control No. 3235–0259

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 19h–1 under the Securities Exchange Act of 1934 (the ''Exchange Act'') prescribes the form and content of notices and applications by self-regulatory organizations (''SROs'') regarding proposed admissions to, or continuances in, membership, participation or association with a member of any person subject to a statutory disqualification.

The Commission uses the information provided in the submissions filed pursuant to Rule 19h–1 to review decisions of SROs to permit the entry into or continuance in the securities business of persons who have committed serious misconduct. The filings submitted pursuant to the Rule also permit inclusion of an application to the Commission for consent to associate with a member of an SRO notwithstanding a Commission order barring such association.

The Commission reviews filings made pursuant to the Rule to ascertain whether it is in the public interest to permit the employment in the securities business of persons subject to statutory disqualification. The filings contain information that is essential to the staff's review and ultimate determination on whether an association or employment is in the public interest and consistent with investor protection.

It is estimated that approximately 5 respondents will make submissions pursuant to this Rule annually, with a total burden of 200 hours for all respondents, to complete all

submissions. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19h–1 is 8 hours per submission. The average cost per hour is approximately $101, for completion of each submission. Therefore, the total cost of compliance for all respondents is $20,200. (25 responses × 8 hours per response × $101 per hour).

A respondent is not required to retain the Rule 19h–1 submission for any specified period of time. The filing of notices is mandatory but does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 1, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12899 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 19d–1; SEC File No. 270–242; OMB Control No. 3235–0206.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

Rule 19d–1 (''Rule'') under the Securities Exchange Act of 1934 (''Exchange Act'') prescribes the form and content of notices to be filed with the Commission by self-regulatory organizations (''SROs'') for which the Commission is the appropriate regulatory agency concerning the following final SRO actions: (1) Disciplinary sanctions (including summary suspensions); (2) denials of membership, participation or association with a member; and (3) prohibitions or limitations on access to SRO services.

The Rule enables the Commission to obtain reports from the SROs containing information regarding SRO determinations to discipline members or associated persons of members, deny membership or participation or association with a member, and similar adjudicated findings. The Rule requires that such actions be promptly reported to the Commission. The Rule also requires that the reports and notices supply sufficient information regarding the background, factual basis and issues involved in the proceeding to enable the Commission (1) to determine whether the matter should be called up for review on the Commission's own motion and (2) to ascertain generally whether the SRO has adequately carried out its responsibilities under the Exchange Act.

It is estimated that 10 respondents will utilize this application procedure annually, with a total burden of 1175 hours, based upon past submissions. This figure is based on 10 respondents, spending approximately 117.5 hours each. Each respondent submitted approximately 235 responses. The staff estimates that the average number of hours necessary to comply with the requirements of Rule 19d–1 for each submission is 0.5 hours. The average cost per hour, per each submission is approximately $101. Therefore, the total cost of compliance for all the respondents is $118,675. (10 respondents × 235 responses per respondent × .5 hrs per response × $101 per hour).

The filing of notices pursuant to the Rule is mandatory for the SROs, but does not involve the collection of confidential information. Please note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Rule 19d–1 does not have a retention of records requirement.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send and e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/CIO, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 1, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12900 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 23c–3; SEC File No. 270–373; OMB Control No. 3235–0422;
Form N–23c–3; SEC File No. 270–373; OMB Control No. 3235–0422.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 350 *et seq.*), the Securities and Exchange Commission (the ''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for extension and approval of the collections of information discussed below.

Rule 23c–3 under the Investment Company Act of 1940 (17 CFR 270.23c–3) is entitled: ''Repurchase of Securities of Closed-End Companies.'' The rule permits certain closed-end investment companies (''closed-end funds'' or ''funds'') periodically to offer to repurchase from shareholders a limited number of shares at net asset value. The rule includes several reporting and recordkeeping requirements. The fund must send shareholders a notification that contains specified information each time the fund makes a repurchase offer (on a quarterly, semi-annual, or annual basis, or for certain funds, on a discretionary basis not more often than every two years). The fund also must file copies of the shareholder notification with the Commission (electronically through the Commission's Electronic Data Gathering, Analysis and Retrieval System (''EDGAR'')) attached to Form

N–23c–3 (17 CFR 274.221), a cover sheet that provides limited information about the fund and the type of offer the fund is making.[1] The fund must describe in its annual report to shareholders the fund's policy concerning repurchase offers and the results of any repurchase offers made during the reporting period. The fund's board of directors must adopt written procedures designed to ensure that the fund's investment portfolio is sufficiently liquid to meet its repurchase obligations and other obligations under the rule. The board periodically must review the composition of the fund's portfolio and change the liquidity procedures as necessary. The fund also must file copies of advertisements and other sales literature with the Commission as if it were an open-end investment company subject to section 24 of the Investment Company Act (15 U.S.C. 80a–24) and the rules that implement section 24.[2]

The requirement that the fund send a notification to shareholders of each offer is intended to ensure that a fund provides material information to shareholders about the terms of each offer, which may differ from previous offers on such matters as the maximum amount of shares to be repurchased (the maximum repurchase amount may range from 5% to 25% of outstanding shares). The requirement that copies be sent to the Commission is intended to enable the Commission to monitor the fund's compliance with the notification requirement. The requirement that the shareholder notification be attached to Form N–23c–3 is intended to ensure that the fund provides basic information necessary for the Commission to process the notification and to monitor the fund's use of repurchase offers. The requirement that the fund describe its current policy on repurchase offers and the results of recent offers in the annual shareholder report is intended to provide shareholders current information about the fund's repurchase policies and its recent experience. The requirement that the board approve and review written procedures designed to maintain portfolio liquidity is intended to ensure that the fund has enough cash or liquid securities to meet its repurchase obligations, and that written procedures are available for review by shareholders and examination by the Commission. The requirement that the fund file advertisements and sales literature as if it were an open-end investment company is intended to facilitate the review of these materials by the Commission or the NASD to prevent incomplete, inaccurate, or misleading disclosure about the special characteristics of a closed-end fund that makes periodic repurchase offers.

Compliance with the collection of information requirements of the rule and form is mandatory only for those funds that rely on the rule in order to repurchase shares of the fund. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or e-mail to: *David_Rostker@omb.eop.gov;* and (ii) R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: June 1, 2004.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12901 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

[1] Form N–23c–3 requires the fund to state its registration number, its full name and address, the date of the accompanying shareholder notification, and the type of offer being made (periodic, discretionary, or both).

[2] Rule 24b–3 under the Investment Company Act (17 CFR 270.24b–3), however, would generally exempt the fund from that requirement when the materials are filed instead with the National Association of Securities Dealers (''NASD''), as nearly always occurs under NASD procedures, which apply to the underwriter of every fund.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49796; File No. SR–NASD–2004–083]

Self-Regulatory Organizations; National Association of Securities Dealers; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Non-Standard Settlement Trades

June 2, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on May 24, 2004, the National Association of Securities Dealers (''NASD'') 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 primarily by NASD. NASD filed the proposal pursuant to Section 19(b)(3)(A) of the Act[2] and Rule 19b–4(f)(6)[3] thereunder, whereby the proposal is effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change allows members to submit to the Nasdaq Market Center trade reporting service trades that settle on other than the standard T+3 basis for comparison and transmission to the National Securities Clearing Corporation (''NSCC''). Non-standard settlement trades include cash, next day, and sellers-option transactions.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD 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. NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Nasdaq proposes to amend the NASD rules that govern the use of the Nasdaq Market Center trade reporting service to allow members to submit non-standard settlement trades for comparison in the service and to allow Nasdaq to transmit such trades to NSCC. The Commission recently approved a proposal by NSCC to accept non-standard settlement input of over-the-counter trades from, among others, self-regulatory organizations submitting such information on behalf of their members.[5] The current Nasdaq Market Center trade reporting service rules state that non-standard settlement

[2] 15 U.S.C. 78s(b)(3)(A).

[3] 17 CFR 240.19b–4(f)(6).

[4] The Commission has modified parts of these statements.

[5] Securities Exchange Act Release No. 49685 (May 11, 2004), 69 FR 27964 (May 17, 2004) [File No. SR–NSCC–2004–02].

trades will not be compared by the service or be transmitted to NSCC. By removing this language, Nasdaq will be able to accept such trades from members for comparison and transmit the trades to NSCC. As a result, NSCC and NASD members will be able to realize the full benefits of NSCC's new service.

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A of the Act[6] and with Section 15A(b)(6) in particular because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. The proposed rule change will allow members to submit non-standard settlement trades to the Nasdaq Market Center trade reporting service for comparison and transmission to NSCC, which will improve the comparison of these trades. The proposal also allows NSCC and NASD members to achieve the full benefits of NSCC's new service.

(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, as amended.

(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. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and Rule 19b–4(f)(6)[8] promulgated thereunder because Nasdaq has designated the proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. The NASD gave the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The NASD has requested a waiver of the 30-day operative delay. The Commission believes that such a waiver is consistent with the protection of investors and the public interest, will permit NASD to put the proposed rule change into effect prior to June 2, 2004, which is the first date that NASD will transmit non-standard settlement trades for comparison to NSCC, and that such a waiver will also permit NASD to provide adequate advance notice of this change to its members prior to that date. For these reasons, the Commission designates the proposal to be effective and operative upon filing with the Commission.[9]

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–NASD–2004–083 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–2004–083. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2004–083 and should be submitted on or before June 29, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–12897 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78c–3.

[7] 15 U.S.C. 78s(b)(3)(A)(iii).

[8] 17 CFR 240.19b–4(f)(6).

[9] For purposes only of waiving the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49779; File No. SR–NYSE–2004–16]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. Relating to Revised Uniform Application for Securities Industry Registration or Transfer (Form U4) and Revised Uniform Termination Notice for Securities Industry Registration (Form U5)

May 27, 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 March 17, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The NYSE amended the proposed rule change on April 30, 2004.[3] The Commission is

[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 Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2004 (''Amendment No. 1''). In Amendment No. 1, the NYSE amended the proposed rule change to file it pursuant to Section 19(b)(2) of the Act and to request that the

publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes for its use revised Forms U4 and U5 [4] (collectively, the ''Forms'').

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 NYSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The NYSE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange hereby proposes to use the revised Forms. The revised Forms were filed by the National Association of Securities Dealers, Inc. (''NASD'') with the Commission on April 8, 2003, and approved by the Commission on July 10, 2003.[5] The Exchange uses these Forms as part of its registration and oversight of persons associated with members and member organizations. In addition, these Forms are used in connection with the Central Registration Depository (''CRD'') system in which the Exchange participates. The CRD is an industry-wide automated system, which allows for the efficient review and tracking of registered persons in the securities industry, as well as changes in their work and disciplinary histories.

The effective date for the Forms is July 14, 2003. The Exchange believes that the NASD's filing was based on its efforts to enhance the CRD and the registration and termination process of individuals in the securities industry. The Exchange also believes that the Forms were amended to provide additional enhancements and information for more meaningful and detailed disclosure. The Forms are to be submitted electronically through the Internet.

The revisions to the Forms include, among other things: (1) Additional disclosure questions to the ''Regulatory Disciplinary Actions'' subsection of Section 14 (Disclosure Questions) of the Form U4 to elicit information regarding events that might cause a person to be subject to a statutory disqualification as a result of additional categories of disqualification enumerated in certain sections of the Act [6] created by the enactment of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley Act'');[7] (2) adding a Disclosure Reporting Page (''DRP'') and a question to the Form U5 that parallels the DRP and the Form U4 question relating to terminations for cause; and (3) certain technical, clarifying, and conforming changes to the Forms to facilitate accurate reporting.[8]

New Disclosure Questions Required by Enactment of the Sarbanes-Oxley Act

Specific revisions that affect NYSE members and member organizations include new disclosure questions required by the enactment of the Sarbanes-Oxley Act. Section 604 of the Sarbanes-Oxley Act created new categories of ''statutory disqualification,'' enumerated in Section 15(b)(4)(H) of the Act.[9] Under the expanded definition, members, member organizations, and their associated persons may be subject to a disqualification (*i.e.*, may be required to obtain regulatory approval before becoming a member of the NYSE or becoming associated with an NYSE member or member organization) if they are subject to certain orders issued by a state securities commission or state insurance commissioner (or any agency or officer performing like functions), state authorities that supervise or examine banks, savings associations, or credit unions, an appropriate federal banking authority, or the National Credit Union Administration. Specifically, persons (including members and member organizations) may be subject to a statutory disqualification based on orders issued by the above agencies that: (1) Bar a person from association or from engaging in the business of securities, insurance, banking, savings association activities, or credit union activities; or (2) are based on violations of any laws or regulations that prohibit fraudulent, manipulative, or deceptive conduct.[10]

The Form U4 has historically been the vehicle for the reporting of events that may cause a person to become subject to a statutory disqualification. With the concurrence of a working group of regulators, including state regulators, representatives of other self-regulatory organizations (''SROs''), and Commission observers, Section 14 (Disclosure Questions) of the Form U4 was amended to elicit reporting of regulatory actions that may now make individuals subject to a statutory disqualification under the expanded definition of ''statutory disqualification'' in the Act created by the passage of the Sarbanes-Oxley Act.

The changes include renumbering current Regulatory Action Disclosure Question 14D on the Form U4 as Question 14D(1), adding Question 14D(2) to mirror the language in Section 15(b)(4)(H) of the Act,[11] and modifying the ''Regulatory Action DRP'' on the Forms. To aid in reporting events under Question 14D(2), the ''Specific Instructions'' section of the Form U4 has been amended with respect to Section 14 (Disclosure Questions). In addition, two new defined terms, ''final order'' and ''federal banking agency,'' have been added to the ''Explanation of Terms'' section of the Form U4. The ''Regulatory Action'' DRP on the Form U4 has also been amended to aid in reporting events required to be reported pursuant to the Sarbanes-Oxley Act.

Modifications to the Form U4 Relating to Fingerprinting Requirements

The language associated with questions under Section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms) on the Form U4 has been amended to clarify fingerprinting requirements, including electronic filing representations and exceptions to the fingerprint requirement.[12]

Under Section 2 of the Form U4, the ''Electronic Filing Representation'' subsection was modified to address two situations that were not adequately covered by the previous language. The first situation involves a member or member organization submitting

Commission grant accelerated approval of the proposed rule change.

[4] Form U4 is the form for ''Uniform Application for Securities Industry Registration or Transfer'' and Form U5 is the form for ''Uniform Termination Notice for Securities Industry Registration.''

[5] *See* Securities Exchange Act Release No. 48161 (July 10, 2003), 68 FR 42444 (July 17, 2003) (SR–NASD–2003–57).

[6] 15 U.S.C. 78a *et seq.*

[7] 15 U.S.C. 78o–6.

[8] On April 6, 2003, the North American Securities Administrators Association, Inc., voted to approve the revised Forms at its membership meeting.

[9] 15 U.S.C. 78o(b)(4)(H).

[10] *See* Section 15(b)(4)(H) of the Act, 15 U.S.C. 78o(b)(4)(H).

[11] 15 U.S.C. 78o(b)(4)(H).

[12] In conjunction with these changes relating to the fingerprint questions, the ''Specific Instructions'' section of the Form U4 with respect to Section 2 (Fingerprint Information) and Section 6 (Registration Requests with Affiliated Firms) was amended.

fingerprint results on behalf of an individual whose fingerprints were processed through another SRO, in lieu of submitting fingerprint cards. The second situation is when a member or member organization is seeking registration for an individual who: (1) Is currently employed by the member or member organization (usually in an unregistered capacity), and (2) previously has been fingerprinted (through the NYSE or another SRO).

The current electronic filing representation states that the member or member organization is submitting or will promptly submit fingerprint cards as required by applicable SRO rules. In the two situations described above, members or member organizations will not be submitting fingerprint cards contemporaneously with, or within 30 days of, filing a Form U4. The amended language will allow members or member organizations and individuals to represent that the filing member or member organization has continuously employed the individual since the last submission of a fingerprint card to the NYSE (and therefore is not required to resubmit a card at this time) or has continuously employed the individual since the individual has had his or her fingerprints processed through another SRO, and the individual will submit (or has submitted) the processed results to the CRD system.

Furthermore, under Section 2, the ''Exceptions to the Fingerprint Requirement'' subsection has been modified. Currently, members or member organizations can claim an exception to the fingerprint requirement by affirming that the individual has been continuously employed by the filing member or member organization in an unregistered capacity (and had previously submitted a fingerprint card in connection with that employment) or meets one or more exemptions under Rule 17f–2 of the Act.[13] The modifications to the ''Exceptions to the Fingerprint Requirement'' questions will allow a member or member organization to select the specific permissive exemption under Rule 17f–2(a)(1)(iii).[14]

Section 6 (Registration Requests With Affiliated Firms) of the Form U4 has been amended to add a fingerprint question to create appropriate options for individuals requesting new registrations with a member or member organization affiliated with the filing member or member organization.[15] The proposed ''Electronic or Other Filing Representation'' subsection will provide three additional radio buttons.[16] Filers can select the current standard representation (*i.e.*, ''I am submitting, have submitted, or promptly will submit to the appropriate SRO a fingerprint card''). In the alternative, the proposed representations will enable the individual to indicate that: (1) He or she has been employed continuously by the filing member or member organization since the last submission of a fingerprint card, and he or she is not required to resubmit a fingerprint card; or (2) the individual has been employed continuously by the filing member or member organization, his or her fingerprints have been processed by an SRO other than the NYSE, and the individual is submitting, has submitted, or promptly will submit the processed results for posting to the CRD. Section 6 will also contain a radio button that allows the applicant to select an exemption to the fingerprint requirement pursuant to Rule 17f–2 of the Act.[17]

Conforming Changes

(1) A new disclosure question was added to Form U5 (Question 7F) and corresponding DRP to mirror Question 14J on the Form U4. This question will allow firms to report that an individual was terminated after allegations of certain violations, fraud, wrongful taking of property, or failure to supervise, and will further clarify the individual's obligation to report the termination on the Form U4. Currently, the NYSE staff must rely on the reason for termination or an internal review initiated by the member or member organization as reported (by the former employing firm) on an individual's Form U5 to determine whether that individual is required to answer Question 14J affirmatively. The new Question 7F on the Form U5 should clarify for NYSE staff and terminated individuals the basis for and circumstances surrounding the termination (and whether it requires an affirmative answer on the corresponding Form U4 question) and will enable members and member organizations to appropriately identify and provide supporting details regarding terminations for cause. The term ''resign or resigned'' was also added as an explained term on the Form U5 to parallel the same term on the Form U4 for purposes of the new Question 7F.

(2) The Customer Complaint DRP was modified on both Forms to distinguish the fields that are required for reporting a customer complaint, arbitration, and/or litigation. The amended changes also added instructions and rearranged the questions in a more logical order. However, the content of the customer complaint disclosure question and DRP fields were not changed.

(3) The language in Question 14F was revised to clarify the intent of the reporting obligation.[18]

(4) Current hair and eye color codes were changed to match the codes used by the Federal Bureau of Investigation's fingerprint system.

(5) Other consistency changes were also made that relate to bolding or highlighting certain instructions in the DRPs to facilitate appropriate reporting on the Forms.

(6) Grammatical and other modifications have been made to the Forms to make them more consistent and to better clarify the disclosure information required to be reported on the Forms. For example, the summary field of the DRPs on the Forms was reworded to emphasize that those fields are optional for comments by registered representatives, members, and member organizations, respectively.

The revised technical and formatting amendments do not alter the reporting or disclosure requirements applicable to broker-dealers or their registered persons. Therefore, members and member organizations are not required to ''re-file'' disclosure or administrative information for their associated persons.

The Exchange believes that the amendments will enhance the utility of the Forms as part of the Exchange's registration and oversight function by providing more detailed reporting concerning persons associated with members and member organizations as well as enhancements to electronic filing through the Internet.

[13] 17 CFR 240.17f–2. Rule 17f–2 of the Act governs the fingerprinting requirements of securities personnel. Rule 17f–2(a)(1)(i) permits an exemption for persons who are not engaged in the sale of securities; do not regularly have access to the keeping, handling, or processing of securities, monies, or books and records; and do not have supervisory responsibility over persons engaged in such activities. Rule 17f–2(a)(1)(iii) generally exempts the partners, directors, officers, and employees of a broker-dealer that are engaged exclusively in the sales of certain securities, such as variable contracts, limited partnership interests, and unit investment trusts.

[14] 17 CFR 240.17f–2(a)(1)(iii).

[15] ''Affiliated firm'' has been added to the ''Explanation of Terms'' to clarify the use and meaning of the term on the Form U4.

[16] A ''radio button'' is a navigation and selection device that allows a filer to select a particular option in an electronic filing environment.

[17] 17 CFR 240.17f–2.

[18] Formerly, Question 14F asked, ''Has your authorization to act as an attorney, accountant or federal contractor ever been revoked or suspended?'' As amended, Question 14F asks, ''Have you ever had an authorization to act as an attorney, accountant or federal contractor that was revoked or suspended?''

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with the requirements under Section 6(b)(5) of the Act [19] in that the proposal is designed 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. Additionally, the Exchange believes that the information reported on the Forms will assist the Exchange in its responsibilities under Section 6(c)(3)(B) of the Act [20] in denying membership to those subject to a statutory disqualification or who cannot meet such standards of training, experience and competence as are prescribed by the rules of the Exchange or those who have engaged in acts or practices inconsistent with just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change, as amended, will not 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

The Exchange has neither solicited nor received written comments on the proposed rule change, as amended.

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–NYSE–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–NYSE–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 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–2004–16 and should be submitted on or before June 29, 2004.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The NYSE has requested that the Commission grant accelerated approval to the proposed rule change, as amended, based on the fact that the revised Forms were filed by the NASD and have been approved by the Commission,[21] and that the Exchange's proposal is substantively similar to the NASD's proposal, except for certain nomenclature/terms utilized that are specific to the NYSE.

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 exchange.[22] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act [23] 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. In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[24] for approving the proposed rule change, as amended, prior to the thirtieth day after the date of publication of notice in the **Federal Register**. The Commission does not believe that the proposed rule change raises novel regulatory issues. Consequently, the Commission believes that it is appropriate to permit the NYSE to use the Forms as soon as possible. Accordingly, the Commission finds that there is good cause, consistent with Section 6(b)(5) of the Act,[25] to approve the proposal on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[26] that the proposed rule change (SR–NYSE–2004–16), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–12904 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(c)(3)(B).

[21] *See supra* note .

[22] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] 15 U.S.C. 78f(b)(5).

[24] 15 U.S.C. 78s(b)(2).

[25] 15 U.S.C. 78s(b)(5).

[26] *Id.*

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49786; File No. SR–PCX–2004–40]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, and Amendment No. 1 Thereto, by the Pacific Exchange, Inc. Relating to Post-Trade Anonymity to its ETP Holders.

May 28, 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 28, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange''), through its wholly owned subsidiary PCX Equities, Inc. (''PCXE''), submitted to the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on May 28, 2004.[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 PCX is proposing to provide post-trade anonymity to its ETP Holders[4] and to modify PCXE Rule 7.41 accordingly. The text of the proposed rule change is as follows: Proposed rule language is *italicized.*

Rule 7.41, Clearance and Settlement

Rule 7.41. *(a)* The details of each transaction executed within the Archipelago Exchange shall be automatically processed for clearance and settlement on a locked-in basis. ETP Holders need not separately report their transactions to the Corporation for trade comparison purposes. All transactions effected by a Sponsored Participant shall be cleared and settled, using the relevant Sponsoring ETP Holder's mnemonic (or its clearing firm's mnemonic as applicable).

(b) Except as provided herein, transactions executed on the Archipelago Exchange will be processed anonymously. The transaction reports will indicate the details of the transaction, but will not reveal contra party identities. The anonymity process is not available for Directed Orders.

(c) The Archipelago Exchange will reveal the identity of an ETP Holder or ETP Holder's clearing firm in the following circumstances:

(1) For regulatory purposes or to comply with an order of a court or arbitrator;

(2) when the National Securities Clearing Corporation (''NSCC'') ceases to act for an ETP Holder or the ETP Holder's clearing firm; and NSCC determines not to guarantee the settlement of the ETP Holder's trades; or

(3) on risk management reports provided to the contra party of the ETP Holder or ETP Holder's clearing firm each day by 4 p.m. (E.S.T.) which disclose trading activity on an aggregate dollar value basis.

(d) The Archipelago Exchange will reveal to an ETP Holder, no later than the end of the day on the date an anonymous trade was executed, when that ETP Holder submits an order that has executed against an order submitted by that same ETP Holder.

(e) In order to satisfy the ETP Holder's record keeping obligations under SEC Rules 17a–3(a)(1) and 17a–4(a), (i) the Archipelago Exchange shall, with the exception of those circumstances described below in (ii), retain for the period specified in Rule 17a–4(a) the identity of each ETP Holder that executes an anonymous transaction described in paragraph (b) of this rule, and (ii) ETP Holders shall retain the obligation to comply with SEC Rule 17–3(a)(1) and 17–4(a) whenever they possess the identity of their contra-party. In either case, the information shall be retained in its original form or a form approved under Rule 17a–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, the 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. The 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 the Archipelago Exchange (''ArcaEx'') facility, the Exchange is proposing to extend anonymity through to post settlement. Currently, Users[5] may display and execute orders on an anonymous basis pursuant to PCXE Rules 7.36 and 7.37, respectively. Accordingly, during the execution process, Users' orders are executed without knowledge of the contra-party's identity. At the end of the trading day, the contra-party's identity on a trade-by-trade basis is revealed to ETP Holders for their respective trades through web-based reports.[6] Therefore, anonymity is maintained through execution, but not through the end-of-day settlement process.

The Exchange proposes to modify PCXE Rule 7.41 to clarify that except as specifically provided, the transactions executed on the Exchange will be processed anonymously and that transaction reports will indicate the details of the transaction, but will not reveal contra party identities.[7] Rule 7.41 expressly provides that the anonymity process is not available for Directed Orders. In the Directed Order Process as provided in PCXE Rule 7.37, any market or limit order to buy or sell could be directed to a particular market maker as a ''Directed Order.'' At the present time, Users are not permitted by ArcaEx's functionality to direct or ''preference'' orders to ETP Holders. If in the future Users are permitted to direct or preference orders to ETP Holders through ArcaEx, PCX understands that any exemptive relief[8] provided by the Commission would not apply to ETP Holders engaging directly (or indirectly through a Sponsored Participant) in any such activity.[9] The Exchange also understands that it would be required to

[3] *See* letter from Mai S. Shiver, Acting Director Senior Counsel, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated May 27, 2004 (''Amendment No. 1''). Amendment No. 1 replaces and supercedes the original 19b–4 filing in its entirety.

[4] *See* PCXE Rule 1.1(n) (definition of ''ETP Holder'').

[5] *See* PCXE Rule 1.1(yy) for the definition of ''User'' which includes Sponsored Participants (as defined in PCXE Rule 1.1 (tt)).

[6] Currently, only the identity of an ETP Holder or the ETP Holder's clearing firm is revealed at the end of the trading day, not the identity of a Sponsored Participant, since Sponsored Participants trade on the Exchange using the Sponsoring ETP Holder's mnemonic. The proposed rule change intends to retain this process, by not revealing the identity of the Sponsored Participant in the limited circumstances where the identity of the contra-party is revealed. Therefore, all references to ETP Holder in the proposed rule would also include trades by Sponsored Participants using the ETP Holder's mnemonic. Footnote added pursuant to telephone conversation between Mai S. Shiver, Acting Director/Senior Counsel, PCX, and Marc McKayle, Special Counsel, Division, Commission, on May 28, 2004.

[7] Currently, where an Attributed Order on ArcaEx is executed against another Attributed Order, these executions are treated like other orders in that they receive post-trade anonymity until the end of the trading day. Under the proposed rule change, Attributable Orders will continue to be treated like other orders and receive post-trade anonymity through clearance and settlement. Footnote added pursuant to telephone conversation between Mai S. Shiver, Acting Director/Senior Counsel, Regulatory Policy, PCX, and Marc McKayle, Special Counsel, Division, Commission, on May 28, 2004.

[8] In connection with this rule filing, the Commission has granted ETP Holders of the Exchange a limited exemption pursuant to Rule 10b–10(f) under the Act from the requirements in Rule 10b–10(a)(2)(i)(A) to disclose to their customers the name of the person from whom a security was purchased, or to whom it was sold or the fact that such information will be provided upon a customer's written request. See letter from Brian A. Bussey, Assistant Chief Counsel, Division, Commission, to Mai S. Shiver, Acting Director/Senior Counsel, Regulatory Policy, PCX, dated April 30, 2004.

[9] It would also not apply if a Sponsored Participant engaged in such activity. Footnote added pursuant to telephone conversation between Mai S. Shiver, Acting Director/Senior Counsel, Regulatory Policy, PCX, and Terri Evans, Assistant Director, Division, Commission, on May 28, 2004.

notify the Commission and amend its rules to address the applicability of the anonymity feature to Directed Orders.

As proposed, the Exchange will reveal the identity of an ETP Holder or ETP Holder's clearing firm [10] in the following circumstances: (1) For regulatory purposes or to comply with an order of a court or arbitrator; (2) when the National Securities Clearing Corporation (''NSCC'') [11] ceases to act for an ETP Holder or the ETP Holder's clearing firm, and NSCC determines not to guarantee the settlement of the ETP Holder's trades; or (3) on risk management reports provided to the contra party of the ETP Holder or ETP Holder's clearing firm each day by 4 p.m. (E.S.T.) which disclose trading activity on an aggregate dollar value basis. In the event an ETP Holder submits an order that happens to execute against an order submitted by that same ETP Holder, the Exchange will disclose this information to the ETP Holder no later than the end of the day on the date the trade was executed. The Exchange will be able to maintain anonymity with respect to disputed or erroneous trades because the Exchange resolves disputes through a centralized process and conducts the process on behalf of its ETP Holders.[12]

The trade reports that the NSCC receives from ArcaEx for anonymous trades contain the identities of the parties to the trade. This measure enables the NSCC to conduct its risk management functions and settle anonymous trades. The trade report sent to the NSCC will contain an indicator noting that the trade is anonymous. On the contract sheets the NSCC issues to its participants, the NSCC will substitute ANON for the acronym of the contra-party. The purpose of this masking is to preserve anonymity through settlement.

ArcaEx offers ETP Holders additional risk management tools for monitoring their exposure to members with whom they trade on an anonymous basis. First, ArcaEx provides ETP Holders or ETP Holders' clearing firms with intra-day concentration reports that disclose an ETP Holder's aggregate dollar value of purchases and sales with other members with whom it has traded anonymously. Second, ArcaEx will reveal by 4 p.m. Eastern Time the identities of the ETP Holders or ETP Holders' clearing firms listed on the intra-day concentration report. With this information, ETP Holders would know the exact dollar value of their aggregate purchases and sales with individual contra-parties. Third, once the NSCC ceases to act for a participant, that firm, and any other firm that clears through the participant, would not be able to continue trading. When the NSCC has ceased to act for a participant and determined not to guarantee the settlement of the participant's trades, ArcaEx would coordinate actions with NSCC to suspend the ETP Holder's trading privileges or the trading privileges of all ETP Holders that clear through that particular clearing firm. ArcaEx would promptly disclose to other ETP Holders and clearing firms that the NSCC has ceased to act via an ArcaEx Bulletin disseminated via email and through ArcaEx Clearing Updates disseminated via the ArcaEx's website. ArcaEx would also promptly disclose each trade executed anonymously with the firm that NSCC ceased to act for as well as for any firms clearing through that NSCC participant. Such information would be disclosed through web-based reports.

In order to satisfy the ETP Holder's record keeping obligations under SEC Rules 17a–3(a)(1) and 17a–4, (i) the Exchange shall, with the exception of the stated circumstances above, retain for a period specified in Rule 17a–4(a), the identity of each ETP Holder that executes an anonymous transaction. As proposed, the ETP Holders shall retain the obligation to comply with SEC Rule 17a–3(a)(1) and 17–4(a) whenever they possess the identity of their contra-party. In either case, the information must be retained in its original form or a form approved under Rule 17a–6.

The Exchange believes that post-trade anonymity will benefit investors because preserving anonymity through settlement limits the potential market impact that disclosing the Users' identity may have. Specifically, when the contra-party's identity is revealed, Users can detect trading patterns and make assumptions about the potential direction of the market based on the User's presumed client-base. By eliminating the User's identity and mitigating market impact, the Exchange believes that it will help Users meet best execution obligations.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) [13] of the Act, in general, and furthers the objectives of Section 6(b)(5),[14] 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 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 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 on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act,[15] and subparagraph (f)(6) of Rule 19b–4,[16] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. 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.[17]

[10] PCXE Rule 7.14 requires that each ETP Holder either be a clearing firm or clear transactions through a clearing firm. Each ETP Holder has an obligation to disclose the name of the clearing firm to the Exchange.

[11] ArcaEx will submit clearing records to NSCC, which, pursuant to its rules (SR–NSCC–2003–14), will report trades executed on ArcaEx back to its clearing firms utilizing the unique clearing number for the contra-party rather than reveal that contra-party's acronym.

[12] *See* PCXE Rules 7.10 and 7.11 (Revisions of Transactions and Clearly Erroneous Policy). The Exchange represents that revealing a contra-party's identity so that an ETP Holder may pursue its right to arbitrate is consistent with the Exchange's authority under proposed rule PCXE 7.41(c)(1) to reveal a contra-party's identity for regulatory purposes.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] For the purposes of determining the effective date and calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on May 28, 2004; the date PCX filed Amendment No. 1.

The PCX has requested that the Commission waive the five-day pre-filing requirement and the 30-day operative delay so that the proposed rule change will become immediately effective upon filing. The Commission believes waiving the five-day pre-filing notice and the 30-day operative delay is consistent with the protection of investors and the public interest. The Commission believes that waiving the pre-filing requirement and accelerating the operative date will permit the Exchange to implement its post trade anonymity feature without undue delay. The Commission notes that it previously approved a proposed rule change providing post-trade anonymity through clearance and settlement and therefore the instant proposed rule change should not raise any new regulatory issues.[18] Accordingly, the Commission designates the proposal to be effective and operative upon filing with the Commission.[19]

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–PCX–2004–40 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–2004–40. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the 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–2004–40 and should be submitted on or before June 29, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[20]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–12902 Filed 6–7–04; 8:45 am]

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[18] *See* Securities Exchange Act Release No. 48527 (September 23, 2003), 68 FR 56361 (September 30, 2003)(SR–NASD 2003–85).

[19] For the purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49785; File No. SR–Phlx–2003–68]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 Thereto Relating to Options Transactions Resulting From Obvious Errors

May 28, 2004.

On September 29, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' 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 adopt new Phlx Rule 1092, which would permit the Exchange to nullify or adjust a transaction resulting from an obvious error. On November 25, 2003, Phlx filed Amendment No. 1 to the proposed rule change.[3] On January 15, 2004, Phlx filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended, was published for comment in the **Federal Register** on March 29, 2004.[5] The Commission received no comments on the proposal. On May 26, 2004, Phlx filed Amendment No. 3 to the proposed rule change.[6]

This order approves Phlx's proposed rule change, as amended, publishes notice of Amendment No. 3 to the proposed rule change, and grants accelerated approval to Amendment No. 3.

I. Description of the Proposal

The Exchange proposes to adopt Phlx Rule 1092, which would allow the Exchange to either nullify or adjust an options transaction resulting from an obvious error. Phlx Rule 1092(a) would define an ''obvious error'' transaction price, which would be based on the ''Theoretical Price'' of the option. The definition of ''Theoretical Price'' would be set forth in Phlx Rule 1092(b).

Absent the mutual agreement of the parties to a trade, Phlx Rule 1092(c) would permit a Floor Official(s) to adjust or nullify a transaction in the following circumstances: (1) The trade resulted from a verifiable Exchange system disruption or malfunction that caused a quote/order to trade in excess of its disseminated size (in which case trades in excess of the disseminated size would be nullified); (2) the trade resulted from a verifiable Exchange system disruption or malfunction that prevented a member from updating or canceling a quote/order; (3) the trade resulted from an erroneous print in the underlying market which is later cancelled or corrected; (4) the trade resulted from an erroneous quote in the underlying market; (5) the trade resulted in an execution price in a series quoted no bid (in which case the trade would be nullified); (6) the trade is automatically executed at a price where the specialist or ROT sells $0.10 or more below parity; or (7) the trade occurred at a price that is deemed to be an obvious error as defined in Phlx Rule

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 24, 2003.

[4] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Susie Cho, Special Counsel, Division, Commission, dated January 14, 2004.

[5] *See* Securities Exchange Act Release No. 49435 (March 17, 2004), 69 FR 16327.

[6] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Susie Cho, Special Counsel, Division, Commission, dated May 25, 2004 (''Amendment No. 3''). In Amendment No. 3, the Exchange revised the rule text to clarify that an obvious error as defined in paragraph (a) of Phlx Rule 1092 is also covered under paragraph (c) of Phlx Rule 1092.

1092(a). In addition to the circumstances described above, the determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction.

The proposed rule change also sets forth the procedures the Exchange's Market Surveillance Department (''Market Surveillance'') must follow when it is determined that a transaction is the result of an obvious error, including standards for adjusting or nullifying trades, and how an affected party may request a review of obvious error determinations. Phlx Rule 1092(d) would provide criteria for determining the adjusted price of an obvious error trade. Under Phlx Rule 1092(e), when a member or member organization believes it has participated in a transaction that was the result of an obvious error, it must notify Market Surveillance within a specified time of the execution in order to allow the transaction to be nullified or adjusted. Once Market Surveillance has been timely notified of a participant's belief that he or she has participated in a transaction that was the result of an obvious error, Market Surveillance would be required to determine the ''Theoretical Price'' of the option series in question, against which the price at which the trade was executed would be compared to determine if there was indeed an obvious error. Phlx Rule 1092(f) would set forth the procedures for seeking review of an obvious error determination made by a Floor Official.

Finally, the Exchange proposes to amend Phlx Rule 124(a) to state that Phlx Rule 124(a) would not apply to options transactions that are the result of an obvious error (as defined in Phlx Rule 1092). Options transactions that are the result of an obvious error would be subject to the provisions and procedures set forth in Phlx Rule 1092.

II. Discussion

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 [7] and, in particular, the requirements of Section 6(b) of the Act [8] and the rules and regulations thereunder. The Commission finds that the proposed rule change is consistent with Section 6(b)(5) [9] of the Act, which requires that the rules of an exchange 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 of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission considers that in most circumstances trades that are executed between parties should be honored. On rare occasions, the price of the executed trade indicates an ''obvious error'' may exist, suggesting that it is unrealistic to expect that the parties to the trade had come to a meeting of the minds regarding the terms of the transaction. In the Commission's view, the determination of whether an ''obvious error'' has occurred, and the adjustment or nullification of a transaction because an obvious error is considered to exist, should be based on specific and objective criteria and subject to specific and objective procedures. The Commission believes that Phlx's proposed obvious error rule establishes specific and objective criteria for determining when a trade is an ''obvious error.'' Moreover, the Commission believes that the Exchange's proposal establishes specific and objective procedures governing the adjustment or nullification of a trade that resulted from an ''obvious error.'' Finally, the Commission notes that the Exchange's proposed obvious error rule for options is similar to the rules of other exchanges that Commission has previously approved with respect to the adjustment or nullification of transactions resulting from obvious error.[10]

Pursuant to Section 19(b)(2) of the Act,[11] the Commission may not approve any proposed rule change, or amendment thereto, prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding. The Commission hereby finds good cause for approving Amendment No. 3 to the proposal, prior to the 30th day after publishing notice of Amendment No. 3 in the **Federal Register**. The revisions made to the proposal in Phlx's Amendment No. 3 merely clarify the operation of the proposed obvious error rule. The Commission further believes that accelerating approval of Amendment No. 3 would expedite the implementation of the obvious error rule. Accordingly, pursuant to Section 19(b)(2) of the Act,[12] the Commission finds good cause to approve Amendment No. 4 prior to the thirtieth day after notice of the Amendment is published in the **Federal Register**.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether the proposed amendment 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–Phlx–2003–68 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–Phlx–2003–68. 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 Phlx. 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–Phlx–

[7] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] *See, e.g.*, Securities Exchange Act Release No. 48827 (November 24, 2003), 68 FR 67498 (December 2, 2003) (File No. SR–CBOE–2001–04).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

2003–68 and should be submitted on or before June 29, 2004.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [13], that the proposed rule change (File No. SR–Phlx–2003–68), as amended, be, and hereby is, approved, and that Amendment No. 3 to the proposed rule change be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 04–12903 Filed 6–7–04; 8:45 am]

BILLING CODE 8010–01–P

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3579]

Commonwealth of Pennsylvania

York County and the contiguous counties of Adams, Cumberland, Dauphin, and Lancaster in the Commonwealth of Pennsylvania, and Baltimore, Carroll, and Harford counties in the State of Maryland constitute a disaster area due to damages caused by heavy rain, high winds, and flooding that occurred on May 9 and 10, 2004. Applications for loans for physical damage may be filed until the close of business on July 26, 2004 and for economic injury until the close of business on February 28, 2005 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	5.750
Homeowners Without Credit Available Elsewhere	2.875
Businesses With Credit Available Elsewhere	5.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	2.750
Others (Including Non-Profit Organizations) With Credit Available Elsewhere	4.875
For Economic Injury:	
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	2.750

The number assigned to this disaster for physical damage is 357906 for Pennsylvania; 358006 for Maryland; and for economic damage is 9ZF500 for Pennsylvania and 9ZF600 for Maryland.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 27, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–12847 Filed 6–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3581]

Commonwealth of Pennsylvania

Beaver and Lawrence Counties and the contiguous counties of Alleghany, Butler, Mercer and Washington in the Commonwealth of Pennsylvania; Columbiana, Mahoning, and Trumbull in the State of Ohio; and Hancock County in the State of West Virginia constitute a disaster area as a result of heavy rain, high winds and flooding that occurred from May 18 through May 22, 2004. Applications for loans for physical damage as a result of the disaster may be filed until the close of business on August 2, 2004 and for economic injury until the close of business on March 2, 2005 at the address listed below or other locally announced locations:

Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	5.750
Homeowners without credit available elsewhere	2.875
Businesses with creidt available elsewhere	5.500
Businesses and non-profit organizations without credit available elsewhere	2.750
Others (including non-profit organizations) with credit available elsewhere	4.875
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	2.750

The numbers assigned to this disaster for physical damage are 358111 for Pennsylvania; 358211for Ohio; and 358311 for West Virginia. For economic injury, the numbers are 9ZF700 for Pennsylvania; 9ZF800 for Ohio; and 9ZF900 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: June 2, 2004.

Hector V. Barreto,

Administrator.

[FR Doc. 04–12946 Filed 6–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Hearing; Region VII Regulatory Fairness Board

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Thursday, June 24, 2004, at 8:30 a.m. at the State Library—Ola Babcock Miller Building, 1112 East Grand Avenue, Iowa Communications Network Classroom, Room 310, Third Floor, Des Moines, IA 50319 P: (515) 281–4316 with interactive videos—satellite locations at: (1) Fort Dodge National Guard Armory, 1659 Nelson Avenue, Fort Dodge, IA 50501 P: (515) 573–3851, (2) Central Campus Individual Learning Center, 1121 Jackson Street, Sioux City, IA 51105 P: (712) 279–6736, (3) Scott Community College, 500 Belmont Road, Room #210, Bettendorf, IA 52722 P: (563) 441–4137, (4) Kirkwood Community College, 6301 Kirkwood Blvd. WW, Room #203B, Cedar Rapids, IA 52406 P: (319) 398–1248, (5) Iowa Western Community College, 2700 College Road, Room # 3, Council Bluffs, IA 51402 P: (712) 325–3200, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by Federal agencies.

Anyone wishing to attend or to make a presentation must contact Dave Lentell in writing or by fax, in order to be put on the agenda. Dave Lentell, Public Affairs Specialist, U.S. Small Business Administration Des Moines District Office, 210 Walnut Street, Room 749, Des Moines, IA 50309, phone (515) 284–4522, fax (515) 284–4572, e-mail: *Thomas.lentell@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: June 2, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–12864 Filed 6–7–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the nonmanufacturer rule

AGENCY: Small Business Administration.

ACTION: Notice of waiver of the nonmanufacturer rule for aluminum, sheet, plate, and foil manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is granting a waiver of the Nonmanufacturer Rule for Aluminum, Sheet, Plate, and Foil Manufacturing. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program.

DATES: This waiver is effective on June 23, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 205–7280; or by e-mail at *edith.butler@sba.gov.*

SUPPLEMENTARY INFORMATION: Section 8(a)(17) of the Small Business Act, 15 U.S.C. 637(A)(17), requires that recipients of Federal contracts set aside for small businesses or SBA 8(a) Business Development Program provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.406 (b). Section 8(a)(17)(b)(iv) of the Act authorizes SBA to waive the Nonmanufacturer Rule for any ''class of products'' for which there are no small business manufacturers or processors in the Federal market.

As implemented in SBA's regulations at 13 CFR 121.1204, in order to be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines ''class of products'' based on six digit coding systems. The first coding system is the Office of Management and Budget *North American Industry Classification System (NAICS).* The second is the Product and Service Code established by the Federal Procurement Data System.

The SBA received a request on April 16, 2004 to waive the Nonmanufacturer Rule for Aluminum, Sheet, Plate, and Foil Manufacturing. In response, on May 4, 2004, SBA published in the Federal Register a notice of intent to grant the waiver of the Nonmanufacturer Rule for Aluminum, Sheet, Plate, and Foil Manufacturing. SBA explained in the notice that it was soliciting comments and sources of small business manufacturers of this class of products. In response to this notice, no comments were received from any interested party. SBA has determined that there are no small business manufacturers of this class of products, and is therefore granting a waiver of the Nonmanufacturer Rule for Aluminum, Sheet, Plate, and Foil Manufacturing, NAICS 331315.

Dated: June 2, 2004.

Barry S. Meltz,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–12848 Filed 6–7–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Los Angeles County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Los Angeles County, California.

FOR FURTHER INFORMATION CONTACT: César Pérez, Team Leader—South Region, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, California 95814, Telephone (916) 498–5065.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans) and the Alameda Corridor Transportation Authority (ACTA), will reinitiate environmental studies and prepare an Environmental Impact Statement (EIS) on a proposal to improve State Route 47 (SR–47) in Los Angeles County, California. The proposed improvement would involve replacing the seismically deficient Schuyler Heim bridge with a new fixed-span bridge and the construction/extension of SR–47 as a new four-lane elevated expressway from the new Heim bridge along Alameda Street to Pacific Coast Highway (State Route 1). The new fixed-span bridge would change the current vertical and horizontal clearances through the Cerritos Channel. The elevated expressway would provide a direct route from Terminal Island to Alameda Street, resulting in the elimination of five at-grade railroad crossings and ultimately reduce truck traffic on Interstates 710 and 110.

During 2002, Caltrans and ACTA began formal public scoping and initiation of environmental studies for the proposed project. Notice letters were sent to federal, state and local agencies on January 28, 2002. Notices were prepared in the **Federal Register** and local newspapers, advertising public scoping and open house meetings, on February 13, 2002, at 2:30 p.m. and 4:30 p.m., respectively. Public comments were received until February 28, 2002. A review of subsequent environmental studies led the FHWA to conclude that an EIS would be required. Budgetary constraints then led Caltrans to temporarily suspend the project.

Major project elements to be evaluated in the EIS include: Replacement of the vertical-lift Schuyler Heim Bridge with a fixed-span bridge; construction of an elevated four-lane expressway to State Route 1; and, potential realignment of surface roads and ramps. The EIS will consider a variety of possible alignments for these improvements, as well as the ''no-build'' alternative.

Letters describing the re-initiation of studies and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed, or are known to have, an interest in this proposal. Additional public scoping meeting(s) for the EIS will be provided, as appropriate. Comments received during the prior scoping period (January 28 through February 28, 2002) will also be considered. In addition, a public hearing will be held following completion of the draft EIS. Public notice will be given of the time and place for the hearing. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372

regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 2, 2004.

César E. Pérez,

South Region Team Leader, Federal Highway Administration, California Division.

[FR Doc. 04–12907 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Suffolk County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Suffolk County, New York.

FOR FURTHER INFORMATION CONTACT: Subimal Chakraborti, P.E., Regional Director, NYSDOT Region 10; State Office Building; 250 Veterans Memorial Highway; Hauppauge, NY 11788; Telephone: (631) 952–6632.

or

Robert E. Arnold, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, Room 719, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 431–4127.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) will prepare an environmental impact statement (EIS) on a proposal to reconstruct NYS Route 347 (Project Identification Number 0054.05) in Suffolk County, New York. The proposed improvements will involve the reconstruction of approximately 15 miles of the existing route from Northern State Parkway to RTE 25A in the Towns of Smithtown, Islip and Brookhaven and through the incorporated Village of Lake Grove. The improvements considered are necessary to provide for the existing and projected traffic demand along Route 347 and to improve safety. Also, included in this proposal are two new ramps on Northern State Parkway and three new grade separation improvements on Route 347 at the intersections of Route 454, Route 25 and Nicolls Road.

Alternatives under consideration include: (1) Taking no action; (2) Eight lane Arterial from Northern State Parkway to Route 454 and six lane arterial east of Route 454 to Route 25A with three grade separations and two new ramps on Northern State Parkway.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. Public information meetings will be held in the Towns of Smithtown and Brookhaven between winter of 2004 and summer of 2006. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS, when prepared, will be available for public and agency review and comment. Early public involvement and coordination efforts to identify the range of reasonable alternatives and social, economic and environmental issues to be addressed resulted in a Route 347 Corridor Study Report completed in December 2001. Also, public meetings were held for this project in May of 2002 as part of the scoping process. No additional NEPA scoping meetings are planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

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

Authority: 23 U.S.C. 315; 23 CFR 771.123

Issued on: May 26, 2004.

Douglas P. Conlan,

District Operations Engineer, Federal Highway Administration, Albany, New York.

[FR Doc. 04–12911 Filed 6–7–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34505]

East Brookfield & Spencer Railroad, LLC—Lease and Operation Exemption—CSX Transportation, Inc.

East Brookfield & Spencer Railroad, LLC (EB&SR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease, from CSX Transportation, Inc. (CSXT), and operate approximately 4 miles of rail line. The line is a portion of CSXT's passing track located between mileposts 60 and 64 in East Brookfield and Spencer, Worcester County, MA, together with approximately 270 feet of lead track running from the passing track at milepost 63.08 to the property line of the proposed New England Automotive Gateway Facility (Facility) in East Brookfield, MA.[1]

EB&SR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and states that such revenues will not exceed $5 million annually. The transaction was scheduled to be consummated on May 19, 2004.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34505, must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Betty Jo Christian, Steptoe & Johnson, LLP, 1330 Connecticut Ave., NW., Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: June 1, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–12766 Filed 6–7–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federa-

[1] As part of the lease agreement between CSXT and EB&SR, CSXT will retain certain rights to operate over the line to serve the Facility, and to use the track in the event of an operating emergency.

agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension of an information collection titled, ''Transfer Agent Registration and Amendment Form TA–1.''

DATES: You should submit written comments by August 9, 2004.

ADDRESSES: You should direct all written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0124, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Transfer Agent Registration and Amendment Form B Form TA–1.

OMB Number: 1557–0124.

Description: The OCC is requesting comment on its proposed extension, without change, of the information collection titled Transfer Agent Registration and Amendment Form B Form TA–1. This collection covers Form TA–1 and Form TA–W (Withdrawal of Transfer Agent Registration.) Section 17A(c) of the Securities Exchange Act of 1934 (Act), as amended by the Securities Act Amendments of 1975, provides that all those authorized to transfer securities registered under Section 12 of the Act (transfer agents) shall register by filing with the appropriate regulatory agency an application for registration in such form and containing such information and documents as such appropriate regulatory agency may prescribe to be necessary or appropriate in furtherance of the purposes of this section. These forms were developed by the OCC, Federal Deposit Insurance Corporation, and the Board of Governors of the Federal Reserve to satisfy this statutory requirement.

National bank transfer agents use Form TA–1 to register or amend registration as transfer agents. The OCC uses the information to determine whether to allow, deny, accelerate, or postpone an application. The OCC also uses the data to more effectively schedule and plan transfer agent examinations.

National bank transfer agents must file an amendment to Form TA–1 with the OCC within 60 calendar days following the date on which any information reported on Form TA–1 becomes inaccurate, misleading, or incomplete.

National bank transfer agents must file Form TA–W to withdraw their transfer agent registration.

The Securities and Exchange Commission maintains complete files on the registration data of all transfer agents registered pursuant to the Act. It utilizes the data to identify transfer agents and to facilitate development of rules and standards applicable to all registered transfer agents.

Type of Review: Extension of OMB approval.

Affected Public: Businesses or other for-profit.

Number of Respondents: 120.

Total Annual Responses: 60.

Frequency of Response: On occasion.

Total Estimated Annual Burden: 30 burden hours.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 1, 2004.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 04–12846 Filed 6–7–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Extension of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension without change of an information collection titled, ''Examination Questionnaire.''

DATES: You should submit written comments by August 9, 2004.

ADDRESSES: You should direct all written comments to the Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0199, 250 E Street, SW., Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–4448, or by electronic mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW., Washington, DC. You can make an appointment to inspect the comments by calling (202) 874–5043.

FOR FURTHER INFORMATION CONTACT: You can request additional information or a copy of the collection from John Ference or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Examination Questionnaire.

OMB Number: 1557–0199.

Description: This notice covers an extension without change of a currently approved collection of information titled Examination Questionnaire. The OCC has updated the estimated burden numbers and compensated for a

reduction in the number of national banks, but has made no changes to the underlying collection of information. Completed Examination Questionnaires provide the OCC with information needed to properly evaluate the effectiveness of the examination process and agency communications. The OCC will use the information to identify problems or trends that may impair the effectiveness of the examination process, to identify ways to improve its service to the banking industry, and to analyze staff and training needs. A questionnaire is provided to each national bank at the conclusion of their supervisory cycle (12 or 18-month period). A banker may now choose to complete this questionnaire on National BankNet, the OCC's secure extranet site.

Respondents: Businesses or other for-profit.

Number of Respondents: 2,100.

Total Annual Responses: 1,869.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 312 burden hours.

Type of Review: Extension of OMB approval.

An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number.

Comments submitted in response to this notice will be summarized and 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 has 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 on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 3, 2004.

Stuart Feldstein,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 04–12994 Filed 6–7–04; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0002]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine entitlement to disability pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail: *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0002'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Income-Net Worth and Employment Statement (In support of Claim for Total Disability Benefits), VA Form 21–527.

OMB Control Number: 2900–0002.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–527 is used by claimants who have previously filed a claim for compensation and/or pension and wish to file a new claim for disability pension or reopen a previously denied claim for disability pension.

Affected Public: Individuals or households.

Estimated Annual Burden: 104,440.

Estimated Average Burden Per Respondent: 60 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 104,440.

Dated: May 28, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12948 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0260]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the need to obtain written consent from a patient to disclose his or her medical record to private insurance companies, physicians and other third party.

DATES: Written comments and recommendations on the proposed

collection of information should be received on or before August 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (19E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0260'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for and Consent to Release of Medical Records Protected by 38 U.S.C. 7332, VA Form 10–5345.

OMB Control Number: 2900–0260.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 10–5345 is used to obtain prior written consent from a patient before information concerning treatment for alcoholism or alcohol abuse, drug abuse, sickle cell anemia, or infection with the human immunodeficiency virus (HIV) can be disclosed from his or her medical record. This special consent must indicate the name of the facility permitted to make the disclosure, name of the individual or organization to whom the information is being released, specify the particular records or information to be released, and be under the signature of the veteran and dated. It must reflect the purpose the information is to be used, and include a statement that the consent is subject to revocation and the date, event or condition upon which the consent will expire if not revoked before.

VA personnel complete 50 percent of the form and the patient completes the remaining 50 percent. If VA did not collect this information, the information could not be released from the patient's records. This would have a negative impact on patients who need and want information released to private insurance companies, physicians and other third parties.

Affected Public: Business or other for profit and Individuals or households.

Estimated Total Annual Burden: 16,667 hours.

Estimated Average Burden Per Respondent: 2 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 500,000.

Dated: May 28, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12949 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0442]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to verify military service.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420 or e-mail comments to *irmnkess@vba.gov.* Please refer to ''OMB Control No. 2900–0442'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Armed Forces Separation Records from Veterans, VA Form Letter 21–80e.

OMB Control Number: 2900–0442.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form Letter 21–80e is completed by the veteran to furnish additional information about his/her military service. In order to establish entitlement to compensation or pension benefits, a veteran must have had active military service that resulted in separation under other than dishonorable conditions. Benefits are not payable without verification of service.

Affected Public: Individuals or households.

Estimated Annual Burden: 17,000 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 102,000.

Dated: May 28, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12950 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0188]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to determine eligibility and authorize funding for various prosthetic services.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Ann Bickoff, Veterans Health Administration (19E1), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *ann.bickoff@mail.va.gov.* Please refer to ''OMB Control No. 2900–0188'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann Bickoff at (202) 273–8310.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Titles:

a. Request to Submit Estimate, Form Letter 10–90.

b. Loan Follow-up Letter, Form Letter 10–426.

c. Veterans Application for Assistance in Acquiring Home Improvement and Structural Alterations, VA Form 10–0103.

d. Application for Adaptive Equipment Motor Vehicle, VA Form 10–1394.

e. Prosthetic Authorization for Items or Services, VA Form 10–2421.

f. Prosthetic Service Card Invoice, VA Form 10–2520.

g. Prescription and Authorization for Eyeglasses, VA Form 10–2914.

OMB Control Number: 2900–0188.

Type of Review: Extension of a currently approved collection.

Abstract: The following forms will be used to determine eligibility, prescribe, authorize prosthetic devices, and obtain follow'up information on loaned prosthetic items, glasses, and adaptation to house and automobile:

a. VA Form Letter 10–90 is used to obtain to estimated price for prosthetic devices.

b. Form Letter 10–426 is used to inventory prosthetic devices loaned to eligible veterans. The form letter inventories the loaned items and solicits information from the beneficiary to determine the current status, the need to replace, extend the loan period or terminate the loaned items.

c. VA Form 10–0103 is used to determine eligibility/entitlement and reimbursement of individual claims for home improvement and structural alterations.

d. VA Form 10–1394 is used to determine eligibility/entitlement and reimbursement of individual claims for automotive adaptive equipment.

e. VA Form 10–2421 is used for the direct procurement of new prosthetic appliances and/or services. The form standardizes the direct procurement authorization process, eliminating the need for separate purchase orders, expedites patient treatment and improves the delivery of prosthetic services.

f. VA Form 10–2520 is used by the vendors as an invoice and billing document. The form standardizes repair/treatment invoices for prosthetic services rendered and standardizes the verification of these invoices. The veteran certifies that the repairs were necessary and satisfactory. This form is furnished to vendors upon request.

g. VA Form 10–2914 is used as a combination prescription, authorization and invoice for eyeglasses.

Affected Public: Business or other for profit and Individuals or households.

Estimated Total Annual Burden: 48,522 hours.

a. Form Letter 10–90—708.
b. Form Letter 10–426—17.
c. VA Form 10–0103—583.
d. VA Form 10–1394—2,500.
e. VA Form 10–2421—4,667.
f. VA Form 10–2520—47.
g. VA Form 10–2914—40,000.

Estimated Average Burden Per Respondent:

a. Form Letter 10–90—5 minutes.
b. Form Letter 10–426—1 minute.
c. VA Form 10–0103—5 minutes.
d. VA Form 10–1394—15 minutes.
e. VA Form 10–2421—4 minutes.
f. VA Form 10–2520—4 minutes.
g. VA Form 10–2914—4 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 697,200.

a. Form Letter 10–90—8,500.
b. Form Letter 10–426—1,000.
c. VA Form 10–0103—7,000.
d. VA Form 10–1394—10,000.
e. VA Form 10–2421—70,000.
f. VA Form 10–2520—700.
g. VA Form 10–2914—600,000.

Dated: May 28, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12951 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0138]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This

notice solicits comments on information needed to determine a claimant's appropriate rate of pension.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 9, 2004.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or e-mail *irmnkess@vba.va.gov.* Please refer to ''OMB Control No. 2900–0138'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Request for Details of Expenses, VA Form 21–8049.

OMB Control Number: 2900–0138.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8049 is used to gather the necessary information to determine the amounts of any deductible expenses paid by the claimant and/or commercial life insurance received in order to adjust the annual income. Pension is an income-based program, and the payable rate depends on annual income. Without this information, VA would be unable to authorize pension benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 5,700 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 22,800.

Dated: May 28, 2004.

By direction of the Secretary:

Loise Russell,

Director, Records Management Service.

[FR Doc. 04–12952 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research Advisory Committee on Gulf War Veterans' Illnesses; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 (Federal Advisory Committee Act) that the Research Advisory Committee on Gulf War Veterans' Illnesses will meet on June 28–29, 2004, at the VA Medical Center located at 385 Tremont Avenue, East Orange, NJ. The meeting will be held in Room 11137, War Related Illness and Injuries Study Center (WRIISC). The session on June 28 will convene at 9 a.m. and adjourn at 5:30 p.m. The session on June 29 will convene at 9 a.m. and adjourn at 2:30 p.m. Both sessions will be open to the public.

The purpose of the Committee is to provide advice and make recommendations to the Secretary of Veterans Affairs on proposed research studies, research plans and research strategies relating to the health consequences of military service in the Southwest Asia theater of operations during the Gulf War.

On June 28, the Committee will be briefed on a number of research presentations from the staff of the East Orange WRIISC. In the afternoon there will be clinical presentations and a roundtable discussion. On June 29, the Committee will hear a presentation on ''Understanding the Biochemical Basis of Gulf War Illnesses'' by Sharon Mates, PhD, and Allen Feinberg, PhD, of Intra-Cellular Therapies, Inc. In the afternoon, the Committee will receive an update on recent research and discuss the Committee's 2004 report. Time will be available for public comment on both days.

Members of the public may submit written statements for the Committee's review to Ms. Laura O'Shea, Designated Federal Officer, Department of Veterans Affairs (008A1), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public seeking additional information should contact Ms. Laura O'Shea at (202) 273–5031.

Dated: June 1, 2004.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–12953 Filed 6–7–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Tuesday,
June 8, 2004

Part II

Department of Energy

Federal Energy Regulatory Commission

Order Accepting and Suspending Tariff Sheets, Rejecting Tariff Sheets, Setting Timelines and Establishing Procedures for Certain Grandfathered Contracts; Notices

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER04–691–000 and EL04–104–000]

Order Accepting and Suspending Tariff Sheets, Rejecting Tariff Sheets, Setting Timelines and Establishing Procedures for Certain Grandfathered Contracts

Issued May 26, 2004.

Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Suedeen G. Kelly.

Midwest Independent Transmission System Operator, Inc., Public Utilities With Grandfathered Agreements in the Midwest ISO Region

1. On March 31, 2004, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) filed a proposed Open Access Transmission and Energy Markets Tariff (TEMT) pursuant to section 205 of the Federal Power Act (FPA), 16 U.S.C. 824d (2000). The proposed TEMT contains the terms and conditions necessary to implement a market-based congestion management program, including a Day-Ahead Energy Market, Real-Time Energy Market and Financial Transmission Rights (FTR) Market, on December 1, 2004. It also presents the Commission with the critical threshold issue of how to treat approximately 300 grandfathered agreements (GFAs) currently in force in the Midwest ISO region.[1]

2. The Midwest ISO states that the integration of the GFAs into its energy markets is ''important to the success and reliability'' of those markets, and that absent the integration of the GFAs, third parties may be subject to substantial costs that could threaten the markets' viability.[2] As discussed below, it proposes a methodology, for approval under section 205, that it argues would enable the GFAs to function within the Midwest ISO's proposed energy markets.

3. The Midwest ISO's proposed method of congestion management is a high priority for the Commission, due to its reliability benefits and its economic efficiency benefits, but we firmly believe that it should not start until the GFA issue is more completely addressed. As a stepping stone to our consideration of the proposed TEMT, this order initiates a three-step process to address the GFAs and offers an option for settling the GFAs. In addition, this order presents a revised timeline to guide us, and the parties to this proceeding, through the process of considering the TEMT filing and implementing the Midwest ISO's proposed energy markets. We wish to emphasize that setting out this timeline does not amount to preapproval or prejudgment of the merits of the Midwest ISO's TEMT filing. Rather, we recognize that the Midwest ISO has been attempting to implement its congestion management proposal for some time, and that resolution of this critical issue is required. We wish to provide more time for the parties to complete these intermediate steps. To provide sufficient due process for GFA parties, allow appropriate allocation of FTRs and ensure that market participants have sufficient time to perform market trials, the Commission moves the date for implementation of the energy markets to March 1, 2005.

4. Today's order benefits customers by clarifying the procedural steps that will be necessary to open the Midwest ISO energy markets by March 1, 2005, and by taking measures necessary to ensure that the GFAs and other market participants are treated fairly and reasonably if the TEMT is approved.

I. Background

5. In an order dated December 20, 2001, the Commission found that the Midwest ISO's proposal to become a Regional Transmission Organization (RTO) satisfied the requirements of Order No. 2000,[3] and thus granted the Midwest ISO RTO status.[4] The Commission also determined that the Midwest ISO's proposal for congestion management was a reasonable initial approach to managing congestion and satisfied the requirements of Order No. 2000 for Day 1 operation of an RTO. It directed the Midwest ISO to coordinate its Day 2 congestion management efforts with the pending rulemaking on Standard Market Design.

6. To address the Commission's instruction that the Midwest ISO remain mindful of the proposed Standard Market Design in developing its Day 2 congestion management proposal, the Midwest ISO filed a Petition for Declaratory Order that sought the Commission's endorsement of the general approach represented in three proposed market rules (Market Rules). The Market Rules would provide for: (1) A security-constrained, centralized bid-based scheduling and dispatch system (*i.e.*, day-ahead and real-time market rules); (2) FTRs for hedging congestion costs; and (3) market settlement rules. The Commission approved the general direction of the Midwest ISO's energy markets proposals, reserving judgment on some issues and providing guidance on others as discussed below.[5] The Commission affirmed many of its conclusions on rehearing.[6]

7. On July 25, 2003, the Midwest ISO filed a proposed TEMT pursuant to FPA section 205 (July 25 Filing). Like the instant filing, the July 25 Filing included terms and conditions necessary to implement the Midwest ISO's Day-Ahead Energy Market, Real-Time Energy Market and FTR Market. The filing met with numerous protests, many of which alleged that the proposed tariff was incomplete and that its filing was premature. The Midwest ISO filed a motion to withdraw the proposed TEMT, but it requested ''any and all guidance the Commission can give the Midwest ISO and its stakeholders on the matters presented in the July 25th Filing.''[7]

8. The Commission granted the Midwest ISO's motion to withdraw the July 25 Filing and provided, on an advisory basis, guidance on a number of issues raised in that filing.[8] The Commission stated in the TEMT Order that it expected its guidance to better enable the Midwest ISO to prepare and file a complete version of the TEMT or a similar proposal.

II. Revised Transmission and Energy Markets Tariff

9. Through the revised TEMT filed on March 31, 2004, the Midwest ISO again proposes to implement real-time energy imbalance services and a market-based congestion management system via a centralized platform for the dispatch of generation resources throughout the Midwest ISO region. It plans to implement day-ahead and real-time energy markets with locational marginal pricing (LMP), and allocate and auction FTRs to allow market participants to hedge against the costs of congestion in

[1] The public utilities providing service under these GFAs are listed by contract in Appendix B.

[2] Transmittal Letter at 11.

[3] Regional Transmission Organizations, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 (2000), *order on reh'g*, Order No. 2000–A, 65 FR 12088 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd*, Public Utility District No. 1 of Snohomish County, *Washington* v. *FERC*, 272 F.3d 607 (D.C. Cir. 2001).

[4] Midwest Independent Transmission System Operator, Inc., 97 FERC ¶ 61,326 (2001), *order on reh'g*, 103 FERC ¶ 61,169 (2003).

[5] Midwest Independent Transmission System Operator, Inc., 102 FERC ¶ 61,196 (2003) (Declaratory Order).

[6] Midwest Independent Transmission System Operator, Inc., 103 FERC ¶ 61,210 (2003) (Declaratory Order Rehearing).

[7] Motion to Withdraw Without Prejudice the July 25 Energy Markets Tariff Filing at 5 (Docket No. ER03–1118–000, Oct. 17, 2003).

[8] Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,145 (2003) (TEMT Order), *reh'g dismissed*, 105 FERC ¶ 61,272 (2003).

the Day-Ahead Market. The Midwest ISO seeks an effective date of December 1, 2004, for its new tariff.

10. The Midwest ISO explains that it would like to implement limited sections of the TEMT on an earlier schedule in order to resolve two issues that will be critical to starting the markets. First, the Midwest ISO notes that a large number of GFAs are in force in its region, and that in order to accommodate GFA transactions in the energy markets, it needs the parties to the GFAs to decide how transactions pursuant to their agreements will be treated in the energy markets. The Midwest ISO proposes an Expedited Dispute Resolution (EDR) process that will allow parties to GFAs to decide which party to each GFA will serve as the Market Participant for that GFA. It asks the Commission to make the portions of its tariff relevant to EDR effective on June 7, 2004.

11. The Midwest ISO also requests that the Commission make effective on June 7, 2004, all portions of the TEMT that pertain to FTRs. The Midwest ISO has developed a four-tiered nomination method that will allow Market Participants to nominate Candidate FTRs (CFTRs) associated with point-to-point or network transmission service subject to the TEMT. The Midwest ISO plans for the FTR nomination process to begin in July 2004 and continue through the fall of 2004.

III. Discussion

A. Procedural Matters

12. Notice of the Midwest ISO's filing was published in the **Federal Register**, 69 FR 18893–94 (2004), with interventions and protests due on or before May 7, 2004. The parties listed in Appendix A filed interventions, protests and comments. Otter Tail Power Company (Otter Tail) filed a supplemental protest on May 17, 2004. The Midwest ISO filed an answer to the protests on May 19, 2004, and an amendment to its answer on May 20, 2004. The Midwest TDUs [9] and Cinergy Services, Inc. (Cinergy) filed comments responding to the protests on May 21, 2004; the Midwest TDUs' filing included an answer to the Midwest ISO's answer. National Rural Electric Cooperative Association (NRECA) and Dairyland Power Cooperative, Inc. (Dairyland) filed answers to the Midwest ISO's answer on May 24, 2004.

13. Pursuant to rule 214 of the Commission's rules of practice and procedure, 18 CFR 385.214 (2003), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. We will accept the motions of Manitoba Hydro and Xcel Energy Services, Inc. (Xcel) to intervene out of time. Given the early phase of the proceeding and the parties' interest, the late interventions will not disrupt the proceeding. For the same reasons, we will accept Otter Tail's supplemental protest.

14. Rule 213(a)(2) of the Commission's rules of practice and procedure, 18 CFR 385.213(a)(2) (2003), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

B. Treatment and Analysis of GFAs

1. The Midwest ISO's Proposal

a. Description of GFAs

15. The TEMT identifies GFAs as ''agreements executed or committed to prior to September 16, 1998, or ITC Grandfathered Agreements that are not subject to the specific terms and conditions of the [TEMT] consistent with the Commission's policies,'' [10] and that are listed in Attachment P to the Midwest ISO's open access transmission tariff (OATT).[11] The Midwest ISO notes the Commission's prior approval of special treatment for transmission service under GFAs for a six-year transition period, and states that transmission service taken under GFAs is separate from transmission service taken under the OATT.[12] The Midwest ISO states, however, that allowing holders of GFAs similar scheduling rights to current GFA practice would require a physical reservation, or ''carve out,'' of transmission capacity in the day-ahead market and until the scheduling deadline prior to real-time dispatch. The Midwest ISO day-ahead energy market would be scheduled around this reservation and adjustments to the reliability unit commitment (RUC) would also be required to support reliability. This ''cannot be accomplished without negatively impacting the Midwest ISO's ability to reliably operate the Energy Markets and without placing excessive financial burden on other Market Participants.'' [13] Accordingly, as described below, the Midwest ISO proposes a tariff methodology to allow the GFAs to function under the TEMT, and advocates that this treatment be used until at least February 1, 2008. Two years before that time, it proposes to begin to evaluate the GFAs' impact on the energy markets under this tariff proposal; one year before that time, it will file a new proposal for the treatment of the GFAs.[14]

16. The Midwest ISO states that it has reviewed all contracts listed in Attachment P to the OATT. It says that specific details of the contracts, such as usage, scheduling requirements and megawatt quantity or capacity, are not readily apparent on the face of some of the contracts.[15] The Midwest ISO adds, however, that about half the contracts had a specific megawatt value associated with them, and that in the aggregate those contracts accounted for approximately 20,000 megawatts of capacity. The Midwest ISO projects that the remaining half of the GFAs are likely to be associated with a similar number of megawatts. As a result, it says that up to 40,000 megawatts of capacity—about 40 percent of total load in the region—are likely to be associated with the GFAs.[16] It concludes that the treatment of GFAs will have a significant impact on the total load serviced within the region and that a physical carve-out of the GFAs from the proposed energy markets is not feasible.

17. The Midwest ISO avers that operation of wholesale energy markets

[9] Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities and Wisconsin Public Power, Inc.

[10] Module A, Section 1.126, Original Sheet No. 82. An ITC Grandfathered Agreement is ''an agreement under which an [independent transmission company] will perform pursuant to its terms and conditions, consistent with the Commission's policies, rather than under the terms of this tariff or the ITC Rate Schedule.'' Module A, Section 1.161, Original Sheet No. 89.

[11] *See id.* We note that in a separate proceeding, the Midwest ISO filed to revise Attachment P. The proposed revisions were meant to update and clean up the list of GFAs in the attachment. The Commission accepted the filing and ordered the Midwest ISO to make further revisions. *See* Midwest Independent Transmission System Operator, Inc., 105 FERC ¶ 61,387 (2003), further order, 106 FERC ¶ 61,288 (2004).

[12] *See* Midwest Independent Transmission System Operator, Inc., *et al.*, 84 FERC ¶ 61,231 at 62,167, 62,169–70 (1998) (Formation Order) (granting conditional approval for ten public utilities to transfer operational control of their jurisdictional transmission facilities to the Midwest ISO, and deferring placement of existing wholesale loads and bilateral agreements for six years).

[13] Transmittal Letter at 9.

[14] *See* Module C, Section 38.8.4, Original Sheet No. 454.

[15] *See* Transmittal Letter at 9–10; McNamara testimony at 82–83.

[16] The Midwest ISO's analysis assumed a peak capacity of 97,000 megawatts. Since the time of the analysis, Ameren Corporation has announced that it will purchase Illinois Power, and that Illinois Power will join the Midwest ISO. *See* McNamara Testimony at 84 n.5. Ameren itself was successfully integrated into the Midwest ISO on May 1, 2004.

without information related to the flows of energy pursuant to GFAs would pose ''substantial reliability risks.'' [17] It also asserts that not requiring parties to the GFAs to schedule consistent with scheduling rules proposed in the TEMT would prevent the Midwest ISO from fulfilling its requirement under Order No. 2000 to develop a market-based congestion management mechanism. Finally, the Midwest ISO emphasizes that the GFAs' extensive impact on the Midwest ISO region makes a physical carve-out of the GFAs unduly burdensome for third parties. It cautions that ''absent the integration of [GFAs] into the market, third parties may be subject to substantial costs which may ultimately threaten the viability of the market.'' [18]

b. Scheduling and Settlement Options

18. The Midwest ISO states that, working in conjunction with a task force, it developed a solution to treat GFAs in a way that would: (1) Leave the parties to the GFAs ''financially indifferent upon implementation of the energy markets;'' as described below; (2) avoid negatively impacting the Midwest ISO's ability to operate energy markets; and (3) avoid placing undue burdens on third parties.[19] The Midwest ISO argues that its proposal, described below, does not abrogate the terms of the agreements; therefore, the proposed treatment should be reviewed under the just and reasonable standard.[20] In the alternative, the Midwest ISO argues that if the Commission determines that any portion of the Midwest ISO's proposed treatment of the GFAs amounts to reformation of those agreements, Commission should consider such treatment to be in the public interest pursuant to section 206 of the FPA and the *Mobile-Sierra* doctrine.[21]

19. The Midwest ISO proposes to include all schedules and transactions, including those associated with GFAs, in its optimization and pricing procedures. It will allow parties to convert their GFAs to agreements under the TEMT at any time before or after the implementation of the energy markets. It also proposes to require parties that do not voluntarily convert their GFAs to select from among three options—to remain in place for a three-year transition period that will end coincident with the six-year transition period initially approved in 1998 [22]—that will determine what rights and obligations the Midwest ISO will assign to market participants on behalf of the GFAs. All three options for unconverted GFAs will require the parties to submit to the Midwest ISO the following GFA information: (1) The name of the GFA Responsible Entity; [23] (2) the name of the GFA Scheduling Entity; [24] (3) the source and sink points applicable to the GFA; and (4) the maximum megawatt capacity permissible under the GFA.[25] The parties must submit this information no later than June 7, 2004. If they cannot agree on the information before then, the Midwest ISO proposes to require them to enter EDR and provide the GFA information to the Midwest ISO no later than July 14, 2004.[26] At the time they submit their GFA information, GFA parties that do not convert their agreements to TEMT service also must select the scheduling and settlement option that will apply to their GFAs.[27]

20. Under Option A, the GFA Responsible Entity will be entitled to nominate the capacity under the GFA for an allocation of FTRs. It will hold the FTRs it receives in the allocation and assume responsibility for credits, debits, rights and responsibilities associated with those FTRs. The Midwest ISO will assess congestion charges and the cost of losses for all transactions under the GFA.[28]

21. Option B provides that the GFA Responsible Entity will not nominate or receive FTRs.[29] The Midwest ISO will charge the GFA Responsible Entity the cost of congestion for all transactions pursuant to the GFA, but—if the GFA Scheduling Entity submits the bilateral transaction schedule a day ahead, in keeping with section 39.1.4—the Midwest ISO will credit back to the GFA Responsible Entity the costs of congestion resulting from day-ahead schedules that the GFA Responsible Entity clears in the day-ahead market.[30] The Midwest ISO will also charge the GFA Responsible Entity the cost of losses for all transactions under the GFA, then—as before, if the GFA Scheduling Entity has timely submitted a conforming schedule for the GFA—credit back to the GFA Responsible Entity the difference between marginal losses and system losses at the GFA source and sink points.[31]

22. Market Participants that select Option C will neither nominate nor receive FTRs. The GFA Responsible Entity will pay marginal losses and the cost of congestion for all transactions pursuant to GFAs without receiving reimbursements as in Option B; they will, however, receive an allocation of excess marginal losses revenue.[32]

b. Schedule 16 and 17 Charges

23. The Midwest ISO notes that Schedules 16 and 17 of the TEMT—which provide for the recovery of costs associated with the administration and allocation of, respectively, FTR services and energy market services—are the subject of a paper hearing in Docket No. ER02–2595–000. The Midwest ISO states that any Commission decisions concerning these schedules ultimately will be incorporated into the TEMT. To

[17] Transmittal Letter at 11.

[18] Transmittal Letter at 11.

[19] Transmittal Letter at 11–12.

[20] In support of this proposition, the Midwest ISO cites Northeast Utilities Service Company, 66 FERC ¶ 61,332, *reh'g denied,* 68 FERC ¶ 61,041 (1994), *aff'd sub nom. Northeast Utilities Service Company* v. *FERC,* 55 F.3d 686 (1st Cir. 1995).

[21] *See United Gas Pipeline Company* v. *Mobile Gas Service Corp.,* 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Company,* 350 U.S. 348 (1956).

[22] *See* Formation Order at 62,167, 62,169–70.

[23] The GFA Responsible Entity, which must be a Market Participant under the TEMT, will be financially responsible for Market Activities charges, Schedule 16 and 17 charges, Transmission Usage Charges and debits or credits associated with FTRs held by the GFA Responsible Entity. *See* Module C, Section 38.8.1, Original Sheet No. 443.

[24] The GFA Scheduling Entity—which can be the GFA Responsible Entity or its agent—will submit bilateral transaction schedules under the TEMT for sales or purchases of energy under the GFA. *See* Module C, Section 38.8.2, Original Sheet No. 444.

[25] *See* Module C, Section 38.2.5.j, Original Sheet No. 402.

[26] *See* Module C, section 38.2.5.j, Original Sheet Nos. 400–02. EDR will address disputes involving the designation of GFA information in the event that parties cannot resolve the disputes informally or pursuant to dispute resolution procedures specified in their GFAs. *See* Module A, section 12A.1, Original Sheet No. 212. Each party (or group of parties) to GFAs for which GFA information has not been submitted to the Midwest ISO by June 7, 2004, will select an arbitrator, and the two arbitrators will select a third arbitrator to chair the arbitration panel. *See* Module A, section 12A.2, Original Sheet No. 213. The arbitrators will have 25 days to render a decision, and the parties must notify the Midwest ISO of that decision by August 1, 2004. The Midwest ISO proposes that the arbitrators' decision will be final and binding; appeal will lie only on the grounds that the arbitrators' conduct, or their decision, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. *See* Module A, section 12A.3, Original Sheet No. 214.

[27] *See* Module C, section 38.2.5.j, Original Sheet No. 400–02.

[28] *See* Module C, section 38.8.3.a, Original Sheet Nos. 445–46.

[29] *See* Module C, section 38.3.3.b.i, Original Sheet No. 447.

[30] If a revenue inadequacy results, the Midwest ISO will compensate the GFA Responsible Entity for the costs of congestion by assessing debits on all Market Participants on a *pro rata* basis. *See* Module C, Section 38.8.3.b.ii, Original Sheet Nos. 448–50.

[31] The TEMT states that the Midwest ISO will determine the difference between marginal losses and system losses ''on an equitable basis.'' Module C, section 38.8.3.b.iii, Original Sheet No. 451. The Midwest ISO further notes that this mechanism will be different from the mechanism used to refund overcollections of loss revenues to parties to non-GFA transactions. *See* Transmittal Letter at 14.

[32] *See* Module C, section 38.8.3.c, Original Sheet No. 452.

the extent that the determinations apply Schedule 16 and 17 charges to GFA transactions, the Midwest ISO believes that the market participant assessed these charges for GFA transactions should be able to recover those costs in its rates.

2. Protests and Comments

24. The Midwest ISO TOs maintain that the Midwest ISO's proposal is effectively seeking to revise existing contracts without the appropriate legal requirements being satisfied, or it is seeking to impose charges on public utilities to those GFAs without those utilities having a reasonable opportunity to recover the costs. They believe that the Midwest ISO has failed to make the necessary showing under the *Mobile-Sierra* doctrine that revision of the existing contracts meets the public interest standard. Xcel adds that it believes that GFA customers will be unwilling to pay Schedule 16 and 17 charges for the portion of their load served under the GFA or to participate in the proposed EDR process. Alternately, the Midwest ISO TOs assert that the proposal would impose trapped costs on parties to the contracts and that the Midwest ISO has failed to propose a regulatory mechanism to allow these charges to be recovered by these parties. The Midwest ISO TOs argue that the TEMT provisions regarding grandfathered agreements should be rejected. Further, the Midwest ISO TOs state that there is no operational reason for the Midwest ISO's position that it cannot operate by excluding the GFAs, much as PJM operates its market. The Midwest ISO TOs state that they are willing to provide the Midwest ISO with the operational information that it needs in order to implement the market with a carve-out for the GFAs that would hold the GFAs harmless from any market related costs and charges.

25. FirstEnergy requests that the Commission either amend the GFAs to change the price term in the contract or allow transmission owners to recover TEMT costs through a surcharge in their transmission rates. FirstEnergy states that without these changes, all market participants would subsidize individual contracts while the transmission owner still would bear some uncompensated costs for Schedule 16 and 17 charges. WPS Resources states that the Midwest ISO's proposal discriminatorily favors GFA parties at the expense of the majority of the Midwest ISO's load contrary to the anti-discrimination provisions of the FPA. WPS Resources and WUMS Load Serving Entities assert that such treatment perversely results in transfer of GFA-related costs from parties who retained their GFAs, inconsistent with Commission policy, to those, such as the WUMS utilities, who converted to OATT service. WPS Resources suggests that Option B should be given to all load or GFA parties should be limited to Options A and C.

26. OMS is concerned that the proposed insertion of Option B GFAs into Tier I and II of the FTR allocation process will offset the available CFTRs for non-GFA loads.[33] OMS describes the Midwest ISO's proposal as allowing 100 percent of FTRs for Option B GFAs to be allocated first in Tier I and Tier II.[34] OMS request that the Commission instruct the Midwest ISO that the GFA nominations for GFA holders that select Option B should not be allowed to exceed the tier limits of Tier I (35 percent) or Tier II (50 percent). On the matter of the Midwest ISO's proposed GFA scheduling and settlement options, OMS states that while it believes treating GFAs the same as other network and point-to-point transmission service contracts would be the best alternative, it recognizes that compromises must be made in the transition to an organized energy market. In this regard, OMS requests that the Commission open an investigation of the justness and reasonableness of the impact of the Midwest ISO's proposed GFA options on other market participants and on the overall efficiency of the market in order to inform the Commission on the treatment of the GFAs following the transition period ending February 1, 2008.

27. EPSA concurs with the Midwest ISO's threshold determination that any attempt to physically carve out the capacity associated with the GFAs would threaten reliability and place an unacceptable financial burden on Market Participants. But EPSA, Dynegy, Reliant, PSEG and Cinergy also assert that GFA Option B places an unacceptable financial burden on Market Participants through uplift costs by creating added benefits for the GFAs under Option B that go beyond preserving the material benefits and obligations of the pre-existing contracts. EPSA and Cinergy quote Professor Hogan's Midwest ISO-sponsored testimony in describing these added benefits for GFAs under Option B. Professor Hogan states that under Option B the GFA customer's use-it-or-lose-it feature of physical schedules would be eliminated or substantially reduced; the chance of curtailment under TLR rules would be reduced; the costs of redispatch to accommodate GFA transactions would be shifted to non-GFA parties through uplift charges; and the costs of marginal losses would be reduced to average losses. Dynegy contends that the lack of comparable treatment between grandfathered and non-grandfathered contracts will deter new members from joining the Midwest ISO and deter the development of new generation. Dynegy requests that the Commission reject the Midwest ISO's proposed treatment of the GFAs and direct the Midwest ISO to allocate the market costs of the GFAs to the transmission owners that are parties to the GFAs. Reliant states that since some of the GFAs may not have provisions for paying redispatch costs, that the Commission should reject the Midwest ISO GFA option that provides for a perfect hedge in the Day-Ahead Market. Alternatively, Reliant states that GFA holders should bear the responsibility for congestion costs created by GFA transactions unless these costs are specifically addressed and allocated in the GFA. PSEG states that the Commission should encourage voluntary conversion of the GFAs to OATT service by expediting review of the contract filed at the Commission for conversion. Cinergy states that if the Commission is unprepared to reject Option B outright, that the Commission should require the Midwest ISO to quantify the scope and impact of the uplift under Option B and justify the justness and reasonableness of the uplift to non-GFA market participants.

28. Cinergy asserts that mandatory, binding EDR is unlawful. It states that as the Midwest ISO will not make an Attachment P compliance filing until May 26, 2004, there will only be seven business days for GFA holders to reach agreement before the proposed start of the EDR process. Cinergy states that seven days to resolve GFA issues prior to mandatory EDR is manifestly unjust and unreasonable and should be rejected by the Commission. In addition, Cinergy states that the proposed twenty-five-day window for arbitrators to make their decision, as well as the lack of technically qualified arbitrators, creates a high probability of error in the decision-making process. Further,

[33] Market Participants will nominate in four tiers: (1) Tier 1 nomination, for up to 35 percent of entitlement; (2) Tier II nomination, for up to 50 percent of entitlement; (3) Tier III nomination, for up to 75 percent of entitlement; and (4) Tier IV nomination, for up to 100 percent of entitlement.

[34] *See* Gribik testimony at 30. A Market Participant with 700 MW of Network Integration Transmission Service peak load and 500 MW of GFA Option B service would be eligible to nominate 420 MW in Tier I ((700 MW + 500MW) x .35). The Tier I nomination would be for the full amount of GFA Option B service with 80 MW of GFA Option B service setting nominations in Tier II.

Cinergy states that the Midwest ISO's proposal is unclear as to whether the proposed EDR is voluntary and non-binding or mandatory and binding. Cinergy concludes that the Commission alone has jurisdiction over matters related to the relationship between a FERC-filed tariff and a FERC-filed GFA and cannot allow an arbitrator's decision to bind the Commission. Cinergy asserts that the appropriate venue for dispute resolution is at the Commission unless both parties agree to arbitration.

29. Contrary to Cinergy's position, EPSA supports the Midwest ISO's request to approve the proposed EDR process to ensure that all load provide the necessary information for allocation of FTRs. Dairyland believes that any proposed EDR process for GFAs must be voluntary under the *Mobile-Sierra* doctrine. Midwest TDUs assert that the EDR procedures fail to protect the substantive rights of parties to the GFAs because the EDR process addresses too broad an array of disputes on too tight a timeline and imposes costs that TDUs may pay twice—once through their half of the arbitration costs and again as passed through the transmission owners' rates. They state that the EDR process should be reformed to be more like the Appendix D arbitration process for transmission owner disputes, including allowing informal dispute resolution followed by non-binding mediation, followed by arbitration.

30. The Midwest TDUs, Basin, Midwest Municipal Transmission Group, and others state that the Midwest ISO's proposal would change both the pricing and the economically consequential operational terms of the grandfathered agreements through a generic filing that would not examine the individual contracts being rewritten. These protestors assert that the benefits of an LMP market do not justify taking the rights of GFA holders without compensation. The protestors assert that although the proposed treatment is preferable to the treatment the Midwest ISO proposed in 2003, it still has not provided for real consistency with contractual rights. They state that although Option B comes closest to preserving existing rights it falls short of honoring these rights by: (1) Requiring that average losses be purchased at market prices where in the past they were self-provided; (2) imposing congestion charges for any change between day-ahead and real-time schedules where the contract contains provisions allowing for no-fee schedule changes later than the Midwest ISO's deadlines; (3) applying marginal losses to GFA real-time transactions where average losses applied in the past; (4) requiring parties to follow Midwest ISO-proposed EDR procedures where the contract has different dispute resolution provisions (including preclusion of unilateral rate changes); and (5) allocating a share of the costs of keeping the GFA Option B holders harmless from day-ahead congestion costs to the GFA holders where no such uplift costs were allocated to the contracts in the past.

31. The Midwest TDUs state that if the Midwest ISO substantiates that GFAs impinge on its ability to successfully operate the LMP market and show that the GFAs represent a large share of the transmission capacity, the Midwest TDUs would forego their legal objections on certain conditions. These conditions include: (1) No reduction in FTR allocation for GFA holders that accept Option B later than the start of the FTR allocation process; (2) assurances that Option B will fully hedge against increased loss charges; (3) assurances that Option B allows holders to schedule their full entitlement in the Day-Ahead market and allows submission of virtual bids; (4) clarification by the Commission that the transition period does not bind the Midwest ISO to make a filing that would eliminate Option B by 2008, but only that MISO will make a 205 filing in 2007 to address the GFA issue; and (5) all GFA holders accept Option A, B or C. MMTG states that its members are open to discussions with the Midwest ISO about modifying the contracts, but that the Midwest ISO cannot make a unilateral section 205 filing to modify the GFAs *en masse.*

32. Many GFA holders state that the Midwest ISO has not made the ''practically insurmountable'' public interest showing that is required under the *Mobile-Sierra* doctrine before altering existing contracts through a section 205 or 206 filing.[35] They request that the Commission reject the Midwest ISO proposal and direct the Midwest ISO to adopt procedures that ensure that both the physical and financial rights under the GFAs are preserved. WPPI supports a complete carve-out of the GFAs from the TEMT. The Midwest TDUs state that *Central Hudson* is particularly instructive in this situation because, like the Midwest ISO's proposal, it concerned the initial implementation of a regional LMP market. Additionally, the Midwest TDU and other parties request that the Commission suspend the proposed tariff sheets and establish hearing procedures to determine the justness and reasonableness of the Midwest ISO's proposal.

33. Absent assurances that the GFAs' parties will be held financially harmless for the duration of the GFA, Nebraska Public Power District and Omaha Public Power District state that they will not be able to join the Midwest ISO. Nebraska Intervenors state that there are no business or reliability reasons that parties to the GFAs should be assigned additional costs due to the TEMT. None of the Nebraska Intervenors are willing to have their contract rights—either the physical delivery or the financial costs—affected due to participation in the TEMT. Nebraska Intervenors are concerned that the Midwest ISO does not guarantee that the GFA parties will be financially indifferent, only that financial indifference is intended. Great Lakes adds that if the present market redesign does not scrupulously honor existing contracts, financial markets will have no confidence in the sanctity of the arrangement entered into under the new market structure, and access to capital needed to support investment will thereby be degraded.

34. Dairyland, Minnesota Municipal Power Agency (Minnesota Municipal) and Minnkota Power Cooperative, Inc. state that the options the Midwest ISO proposes, including Option B, fail to hold the GFA parties financially indifferent. Dairyland states that GFA parties will be exposed to: (1) Real-time congestion and loss costs for energy imbalance; (2) costs of establishing credit with a third party; (3) increased internal costs to provide information to the Midwest ISO and review billing settlements; and (4) Schedule 16 and 17 charges. Dairyland has a grandfathered contract with Xcel that provides for losses to be repaid in kind and for congestion costs to be shared based on a load ratio cost of redispatch based on true marginal cost of units redispatched on a least-cost basis. Dairyland asserts that it would incur new labor and administrative costs for tracking the costs of Xcel's losses in serving the Dairyland load under this contract. Dairyland also asserts that under the TEMT, redispatch costs would likely be higher than costs under its Xcel contract since they will be based on bids rather than true marginal costs. Dairyland proposes that GFAs be physically carved out of the Midwest ISO's dispatch model and not be held accountable for congestion costs, marginal losses, energy imbalance costs, and Schedule 16 and 17 costs associated with the Midwest ISO market. In order

[35] Midwest TDUs, Basin, Midwest Municipal Transmission Group, Corn Belt, Minnesota MPA, Manitoba Hydro, Montana-Dakota, NRECA, Detroit Edison, Wisconsin Transmission Customer Group and Alliant.

to address the Midwest ISO's concerns about a physical carve-out, Dairyland proposes that GFA parties be required to give load forecast information to the Midwest ISO on a day-ahead basis and be directed to enter settlement discussions on the issue of market manipulation by the GFA holders.

35. Montana-Dakota Utilities Company (Montana-Dakota) expresses concern that it will incur market costs on behalf of its GFAs with Western Area Power Authority (WAPA) and Basin since the Commission has no authority to order non-jurisdictional, non-Midwest ISO members to comply with the TEMT provisions. Montana-Dakota also suggest that grandfathered transmission service serving load that does not have a Midwest ISO member as its power supplier should be excluded from market impacts. Montana-Dakota states that the Midwest ISO proposal for treatment of GFAs should be rejected and GFAs and Grandfathered Integrated Transmission Agreements should be left intact.

36. Midwest SATCs state that the allocation of functions between GFA parties is a potentially seminal issue, particularly for stand-alone transmission companies that have structured their organizations to avoid certain Market Participant functions that may be implicated by GFAs. The Midwest SATCs request that the proposed EDR process be made voluntary and that load-serving entities be designated for an interim period to act on behalf of the Midwest SATCs in negotiations regarding FTR allocation for the GFAs.

37. Manitoba Hydro states that it is a party to several GFAs that contain provisions for imports and exports from Canada in the same agreement and thus are only partially jurisdictional. In such cases, Manitoba states that it is questionable how the Commission could modify portions of the agreements without altering the non-jurisdictional aspects of the GFA. Manitoba Hydro requests that the Commission clarify that the Midwest ISO's proposed GFA treatment does not apply to any GFAs involving non-jurisdictional entities to the extent such agreements relate to power exported from Canada.

38. Tennessee Valley Authority (TVA) requests that the Commission direct the Midwest ISO to include provisions in the TEMT for TVA to continue to dynamically schedule energy to serve its grandfathered load in the Midwest ISO footprint.

3. The Midwest ISO's Answer and Intervenors' Reply Comments

39. In its Answer, the Midwest ISO reiterates its concern that the creation of a physical carve-out of the capacity associated with the GFAs cannot be accomplished without negatively impacting the Midwest ISO's ability to reliably operate the energy markets and without placing excessive financial burdens on other Market Participants. The Midwest ISO states that it is vital that the GFA transactions be required to meet the same scheduling deadlines and requirements as other transactions.

40. The Midwest ISO states that the EDR process is not intended to supersede the contract rights of the parties, but only to serve as a procedural mechanism to enable the Midwest ISO to obtain the information necessary to initially allocate FTRs. The Midwest ISO states that the EDR process is not binding upon the parties and that it merely provides a recommended data input to enable FTRs to be initially allocated to parties.

41. In answer to protestors' contentions that Option B should be rejected, the Midwest ISO states that its proposed treatment of GFAs appropriately meets both the Commission's general directive to address phantom congestion in a way that is consistent with GFA contractual rights and the specific need to ensure reliable operation of the Energy Markets.

42. The Midwest TDUs endorse OMS's arguments that the costs of fully honoring GFAs should be uplifted broadly. They say that OMS takes a step toward better allocation of the associated costs by proposing to hold back in Tier I 35 percent, rather than 100 percent, of non-issued FTRs. They add, however, that it would be simpler and fairer to hold back nothing and uplift all of the Option B refund costs.

43. The Midwest TDUs rebut the assertions of Cinergy, Constellation, Dynegy and EPSA that Option B will leave GFA holders better off than they are under their existing contracts. The Midwest TDUs also note that any potential advantages that could be attributed to Option B are offset by disadvantages, mostly in the form of increased costs.

44. Dairyland argues that the Midwest ISO's representations in the Transmittal Letter and in its Answer regarding EDR are inconsistent with the wording of section 12A of the proposed TEMT. Dairyland notes that section 12A allows for more than data gathering necessary to allocate FTRs, and that it would make EDR mandatory and binding. Dairyland states that it understands the Midwest ISO's need to gather data necessary to allocate FTRs, but that the EDR proposal goes beyond that need and seeks for GFA holders to resolve unrelated issues—specifically, those of the GFA Responsible Entity and Scheduling Entity. Dairyland urges the Commission to reject section 12A of the TEMT.

4. Discussion

45. In Order No. 2000, the Commission affirmed that RTOs must ensure the development and operation of market-based mechanisms to manage congestion.[36] The Commission declined to prescribe a specific congestion pricing mechanism, but observed that markets based on LMP and financial rights for firm transmission service ''appear to provide a sound framework for efficient congestion management.''[37] The Commission further encouraged the Midwest ISO to create an LMP-based approach to congestion management since the time the Midwest ISO was approved as an RTO.[38]

46. The Commission has also indicated that it wants to preserve the rights of existing users of the Midwest ISO's transmission grid. The Declaratory Order noted that the Midwest ISO must strive to keep existing customers whole following implementation of a new market-based congestion management system.[39] Accordingly, the Commission directed the Midwest ISO to continue to seek broad consensus among its participants regarding the future allocation of existing rights.[40] The Commission made a similar statement in the TEMT Order, noting that:

> Understanding what rights grandfathered contracts convey and the impact the contracts might have on the proposed markets is essential to develop a fair resolution of the grandfathering issue. We expect * * * that the Midwest ISO will work to resolve the issue of FTR allocation in tandem with the issue of the treatment of grandfathered contracts, as the two issues are linked.[41]

47. The Midwest ISO's congestion management proposal and the preservation of all aspects of the GFAs may be incompatible. The Midwest ISO states several times in the TEMT filing that allowing GFA holders to schedule only in real time, which will require reservation or carve-out of substantial

[36] *See* Order No. 2000 at 31,126.

[37] *Id.* at 31,126–27.

[38] *See* Declaratory Order at P 29–32; Declaratory Order Rehearing at P 27–31; TEMT Order at P 22 (encouraging the Midwest ISO to resubmit its energy markets proposal).

[39] Declaratory Order at P 64. (''We continue to believe that customers under existing contracts, both real or implicit, should continue to receive the same level and quality of service under a standard market design.'').

[40] *See id.* at 68.

[41] TEMT Order at P 60.

transmission capacity until the GFA schedules are submitted, may threaten the markets' operation, impair reliability and shift GFA-related costs to third parties. In light of its concerns, it states that, should the Commission find any portion of its proposed treatment of GFAs to constitute a reformation of the GFAs, the Commission should consider such treatment in the public interest pursuant to the *Mobile-Sierra* doctrine.

48. While we note the Midwest ISO's preference for voluntary conversions or the assignment of scheduling responsibility under section 205 of the FPA,[42] we are concerned that these proposed approaches will not be sufficient to resolve the issue. We cite to the numerous protests to the Midwest ISO's process and the lack of interest, if not opposition of parties, to the proposed scheduling and settlement options or to the concept of assigning the scheduling responsibility to transmission owners.

49. The Commission has a responsibility under the FPA to ensure that jurisdictional rates in wholesale power markets remain just and reasonable. We must ensure that public utility sellers do not charge unjust and unreasonable wholesale rates, and that the market structures and market rules affecting the wholesale rates of public utility sellers do not result in, or have the potential to result in, wholesale rates, charges or classifications that are unjust, unreasonable, unduly discriminatory or preferential. However, we also regard any potential modification of the GFAs with great seriousness, and we are unwilling to decide an issue of such magnitude without more information.

50. The Midwest ISO has proposed EDR in order to gather the GFA information. EDR, as described above, is an expedited arbitration proceeding designed to identify the GFA information and report it to the Midwest ISO. While the Commission agrees that identifying the GFA information is critical, we find that the proposed EDR process is fatally flawed. We agree with Dairyland that the Midwest ISO's proposal must be voluntary because it could affect the substance of GFAs. We are sympathetic to Cinergy's and Midwest TDUs' assertions that EDR provides for resolution of too many issues in too short a time frame, and we want to provide the parties more time (and options) to identify and address disputes regarding the GFA information. We also note that the proposed EDR provisions do not adequately address our own need for the GFA information, and that the GFA information is critical to our consideration of the merits of the TEMT filing.

51. For the reasons described below, we will institute a proceeding under section 206 of the FPA, for the initial purpose of enhancing our understanding of the GFAs and to determine whether any of the GFAs need to be modified. Our goal is to ensure that the GFAs are accommodated in the Midwest ISO's energy markets in a way that will not harm reliability or third parties, yet preserves the commercial bargain between the parties. In order to achieve this end, our procedure for the GFAs will elicit the GFA information directly from the parties, without need for arbitrators, and thereby supersede the Midwest ISO's EDR proposal.

52. We acknowledge Dairyland's concerns about the costs of EDR, the Midwest TDUs' desire for multilayer dispute resolution processes, and several commenters' concerns about resolving many issues in a short time frame. We have designed the GFA process to allow parties to focus their attention and their resources on the issue or issues that most need their attention. We also intend to allow parties to take advantage of all dispute resolution procedures available to them so that they may make the most effective use of the time available and minimize their dispute resolution costs. We strongly encourage parties to work together and to reach agreements informally.

a. Concerns Regarding Provision of Reliable Service

i. Lack of Information Regarding GFAs

53. The Commission is very concerned about the effect that a physical carve-out of the GFAs will have on the reliability of the Midwest ISO's dispatch and transmission operations. As an initial matter, we note that there is very little transparency regarding transactions that take place under the terms of GFAs. The Midwest ISO is unsure how many megawatts of capacity the GFAs represent,[43] or where the source and sink points of the GFA transactions will be. As the transmission provider, the Midwest ISO will also need to know the schedules for net power injections and withdrawals in order to coordinate scheduling and redispatch functions.[44] In terms of economic and reliability impact, the lack of information makes it difficult to forecast which parts of the Midwest ISO region will be adversely affected and whether some areas will be clearly disproportionately impacted.[45] The Commission therefore believes that having parties to GFAs produce GFA information will better enable the Midwest ISO to reliably operate the transmission system.

ii. GFA Scheduling Requirements and Reliability

54. Our primary concern with scheduling GFAs in the Midwest ISO Day 2 market using physical carve-out methods is its potential impact on reliability. We anticipate reliability benefits associated with the Day 2 market, some flowing from ongoing system operational improvements subsequent to the August 14, 2003, blackout and some from the better regional coordination and reduction in frequency of Transmission Line-Loading Relief (TLRs) that can be expected from the Day 2 market's centralized, security-constrained scheduling and dispatch and the use of LMP.[46] We believe that the carve-out approach could undercut some of these reliability benefits.

55. One reliability implication of the carve-out approach is the greater degree of uncertainty that not scheduling GFAs in the day-ahead market will introduce into the overall Midwest ISO scheduling and dispatch process. As Professor Hogan points out in his testimony, if GFAs are exempt from day-ahead scheduling, then the Midwest ISO has to make assumptions about the GFA schedules that are likely to flow in real time. At one extreme, the Midwest ISO could decide not to set aside any capacity for GFAs in the day-ahead schedule, then adjust that schedule to accommodate real-time GFA schedules. Alternatively, the Midwest ISO could reserve some capacity a day ahead, in anticipation of the actual GFA schedules. In either case, the Midwest ISO is left with some level of uncertainty regarding real-time schedules and some possible threat to reliability. For example, if the Midwest ISO forecasts in its day-ahead schedule and reliability unit commitment substantially more GFA schedules or load than actually flows, then real-time demand could exceed available supply and in some instances require load shedding. In other cases, last-minute physical scheduling could require resort to TLRs to manage congestion if there is not sufficient generation available for redispatch. Hence, as Professor Hogan points out with regard to this issue, ''if the Midwest ISO did not forecast correctly, as could easily and often be the case, then the consequences could be more serious * * * and, in the extreme, [have] reliability impacts on the system as a whole.'' [47]

56. We are concerned that the Midwest ISO not create conditions for TLRs in the Day 2 markets due to scheduling of GFAs using the physical carve-out when there are better alternatives. The Final Report on the August 14, 2003, Blackout recommends that TLRs should not be used in situations involving an actual violation of an Operating Security Limit.[48] The

[42] *See* Hogan testimony at 8–9 (''[V]oluntary conversion of the GFAs to revised agreements consistent with the Midwest ISO [TEMT] should be preferred and encouraged.''), 32–34, 54.

[43] *See* McNamara testimony at 84–85.

[44] *See* Hogan testimony at 23–24.

[45] About 55 percent of the capacity associated with the 145 GFAs for which the Midwest ISO could develop data is located in the eastern half of the Midwest ISO region and about 45 percent is located in the western half. *See* Transmittal Letter at 10.

[46] *See* McNamara testimony at 17–23, 31–32.

[47] *See* Hogan testimony at 26–28.

[48] U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003, Blackout in the United States and Canada: Causes and Recommendations at 163 (2004) (Blackout Report).

Blackout Report finds that ''the TLR procedure is cumbersome, perhaps unnecessarily so, and not fast and predictable enough for use [in] situations in which an Operating Security Limit is close to or actually being violated.'' [49] In addition, reliance on TLR and curtailments events to manage congestion shifts decision-making responsibility from the Midwest ISO to individual control areas. Dr. McNamara testifies that most control area operators perform the dispatch function for their respective control areas, and they are able to coordinate flows with neighboring control areas only to a limited extent.[50] He adds that the Midwest ISO cannot accommodate requests for transmission service by assuming that redispatch will be available, because individual control areas are not required to accommodate all transactions.[51] Dr. McNamara further testifies that TLRs are an imprecise tool for managing congestion and ensuring reliability because each control area affected by a TLR has a choice of how to respond, and they may not all respond the same way. As such, it is not possible for reliability coordinators to use TLRs to maintain power flows at operating security limits on a sustained basis.[52] In short, TLRs tend to degrade reliability.

57. Recently PJM's LMP-based market has expanded into Illinois such that there are significant interactions between the grids of the Midwest ISO and PJM, and reliability and efficiency will be improved if these two markets use a common platform.

58. Reliability could be impaired under the carve-out approach not just through the scheduling uncertainty, but by the sheer volume of scheduling changes in real time. We are concerned about requiring the Midwest ISO operations personnel to schedule a significant number of GFA transactions within minutes before the trading hour begins—especially for a market in initial startup over a 15-state footprint, with 12,000 price nodes and extensive seams.[53] Our concern is heightened by the fact that when the market starts, the Midwest ISO will be handling GFA transaction scheduling for the first time for the portion of GFAs not originally incorporated into the Open-Access Same-Time Information System (OASIS).

b. Undue Discrimination Concerns

59. The Midwest ISO states that the energy markets will be severely compromised if it must carve the GFAs out of the market, and therefore concludes that the GFAs should be modified to meet the requirements of the energy markets.[54] Numerous GFA holders argue, however, that modification of the GFAs will contravene Commission policy in favor of the sanctity of contracts. We are instituting this proceeding to determine whether carving out the contracts may have unduly discriminatory results.

60. The Midwest ISO's filing estimates that GFAs account for at least 20 percent, and perhaps more than 40 percent, of the capacity of the Midwest ISO transmission system. Analysis submitted by the Midwest ISO in the July 25th Filing and answer thereto shows that a majority of the GFAs do not explicitly allocate the costs of congestion to contract parties, and none of the GFAs require marginal losses (although many GFA holders pay average losses). If the GFAs are not interpreted consistent with the regional market rules, non-parties to the GFA contracts may be required to bear a disproportionate percentage of the market costs, including the costs of administering the markets under Schedules 16 and 17.

61. One major problem with simply physically carving out GFAs and allowing them to schedule flexibly in real time (similar to current practice) is that this may create ''phantom'' congestion, congestion in the day-ahead market caused by the need to accommodate the scheduling of the GFAs. Such congestion may shift additional costs to parties transacting under non-GFA contracts. Scheduling for GFAs under a physical carve-out would not be tied to energy market scheduling requirements; therefore, parties to these contracts may schedule on short notice, with greater flexibility than non-GFA transmission users. The Midwest ISO must therefore assume that all capacity represented in GFAs will be used and, in the day-ahead market, reserve that capacity for GFA transactions even if it is unlikely that all the capacity will be utilized. As a result, transmission paths may become artificially congested more quickly than they would if all transactions were scheduled at the same time. The result—phantom congestion—would be reflected in LMP prices; consequentially, those prices may become artificially elevated.[55]

62. We are instituting this proceeding to determine whether, if we require the Midwest ISO to carve the GFAs out of the market without conforming those contracts to the regional market rules, there is potential for unduly discriminatory results. The Commission takes seriously the Midwest ISO's concern that the sheer volume of capacity subject to unique scheduling requirements under GFAs may produce unduly discriminatory effects. While the Midwest ISO proposes to offer options to GFA holders that will, for the most part, hold them financially indifferent in the new markets, we believe that the Midwest ISO's proposal may impact the physical and financial rights between GFA holders. We cannot thoroughly evaluate the proposed TEMT unless we develop a full understanding of the effect of the Midwest ISO's proposed tariff changes on the GFAs, and the magnitude of the GFAs' impact on the proposed energy markets.

c. Effects on Economic Efficiency

63. The physical carve-out method of scheduling GFAs can also adversely impact the anticipated economic efficiency gains in the Day 2 market by allowing entities that schedule in this way to increase market prices for energy and congestion. This is due to more expensive generation being settled through the Midwest ISO energy markets to resolve the apparent congestion. Also, the release of unused physical transmission reservations may not happen with sufficient time for an efficient dispatch over the operating day. Moreover, to the extent that the holder of the GFA can benefit from the impact of its scheduling on market prices, it has little incentive to participate in the market efficiently.

64. As stated above, TLRs could occur under some methods for scheduling GFAs under carve-out scenarios. This will produce adverse economic effects in addition to the adverse reliability effects discussed above.[56] Also, the

[49] *Id.*

[50] *See* McNamara testimony at 11–14.

[51] *See id.* at 12–13.

[52] *See id.* at 14–15.

[53] *See* California Independent System Operator Corporation, 106 FERC ¶ 63,026 at P 82–83 (2004) (Initial Decision) (''Considering that the ISO typically has 1300 Schedule changes in the hour-ahead market, significant computing time is necessary to produce final hour-ahead schedules; even if those schedules could be provided to scheduling coordinators within the twenty minutes prior to the trading hour, that time would be too short for market participants to modify and coordinate their schedules.'').

[54] *See* McNamara testimony at 82; Hogan testimony at 25–29.

[55] *See id.* The opposite circumstance, underestimating GFA scheduling, results in unnecessary day-ahead redispatch costs on other parties. *See* Hogan testimony at 28.

[56] As an example of inefficiencies related to TLRs, TLR curtailment quantities have been more than three times larger on average than the potential redispatch amounts. As well, the Market Monitor notes the increased utilization of real-time redispatch in energy markets *See*, 2003 State of the

Continued

Commission has been encouraging the Midwest ISO to develop alternatives to TLRs for managing congestion. In light of the Blackout Report's findings, this goal takes on increased urgency. We continue to favor an approach to reliability coordination that will enable the Midwest ISO to rely more on price signals, and less on curtailment, in its Day 2 markets. We believe that the LMP mechanism will be much more effective at providing the economic benefits of efficient congestion management in the Midwest ISO region if all transactions—including those under GFAs—are scheduled in the day-ahead market.

C. Three-Step Analysis of GFAs

65. As described above, the Commission believes that the development of the Midwest ISO as an RTO has reached a point at which the Commission must examine the potential conflict between our desire to preserve the GFAs and our instructions that the Midwest ISO should develop a market-based system of congestion management. We propose to analyze the GFAs in order to give us a more comprehensive understanding of their effects on the energy markets, and the effect of the energy markets on the GFAs. We believe that the Midwest ISO TOs have accurately identified the risk of litigating the GFA issue: The Commission's options include modifying contracts or requiring the TOs to bear the cost of taking service to fulfill the contracts as they exist today. We prefer, and strongly encourage, settlement of the GFAs. As described below, parties may choose to settle their GFAs by voluntarily accepting the treatment of GFAs that the Midwest ISO proposes in its tariff.

66. We have three goals for our analysis of the GFAs. First, we hope that the investigation will clarify the contracts in such a way to add specificity. To that end, we will require that jurisdictional public utility parties to GFAs produce relevant GFA information and we will invite any non-jurisdictional parties to GFAs to do likewise on a voluntary basis. Second, we hope to isolate third parties from costs caused by GFAs. Knowing more about the GFA information will help us evaluate the magnitude of the phantom congestion and cost shifts that GFAs could cause. Third, we hope to preserve the commercial bargain between the parties and we plan to ensure that the Midwest ISO's proposed energy markets can operate reliably at their inception. The greater our understanding of GFAs, the more confident we can be of achieving these goals.

67. Today we will initiate, in Docket No. EL04–104–000, a narrowly-focused, three-step analysis designed to provide the basis for us to decide whether GFA operations can be coordinated with energy market operations, whether and to what extent the TOs should bear the costs of taking service to fulfill the existing contracts and whether and to what extent the GFAs should be modified. We note that this process does not foreclose parties to GFAs agreeing at any time to voluntarily convert their transmission and energy markets service to service under the TEMT, thereby making them eligible for the FTR nomination process in accord with other customers currently served under the Midwest ISO OATT. We note that FTR allocation for such conversion could only occur on the regular Midwest ISO annual allocation schedule or on an otherwise-available basis.

1. Step 1: Paper Hearing

a. Contract Information

68. The Commission cannot fully analyze the proposed TEMT, its effect on the GFAs or the GFAs' effect on it without additional GFA information. As stated above, it is imperative that we know the number and location of megawatts represented under GFAs, and how the GFAs are used in practice. This will help us to understand the effect of the GFAs on the proposed energy markets. Accordingly, the first step of our analysis will require jurisdictional public utilities providing or taking service under GFAs, and invite any non-jurisdictional parties on a voluntary basis, who provide or take service under GFAs, to submit the following GFA information to the Commission: (1) The name of the GFA Responsible Entity, as defined in the proposed TEMT; (2) the name of the GFA Scheduling Entity, as defined in the proposed TEMT; (3) the source point(s) applicable to the GFA; (4) the sink point(s) applicable to the GFA; (5) the maximum number of megawatts transmitted pursuant to the GFA for each set of source and sink points;[57] and (6) whether any modification to the GFA is subject to a ''just and reasonable'' standard of review or a *Mobile-Sierra* ''public interest'' standard of review.[58] If the parties agree that their GFA will not be in effect as of the March 1, 2005, start date of the Midwest ISO's energy markets, the parties are directed to jointly file a statement to that effect in lieu of the above information. This information must be filed with the Commission, in Docket Nos. ER04–691–000 and EL04–104–000, on or before June 25, 2004.

69. If parties to each GFA are able to agree on the GFA information, they should file the GFA information jointly. Parties with multiple GFAs between them are encouraged to submit a single filing that covers all GFAs on which they can agree. Joint filings should clearly specify, in the title or in a transmittal letter, that the filing is a joint interpretation of GFAs and identify the subject GFAs by the number associated with each agreement in Attachment B to this order.[59] The parties should make a simple statement in their joint filings to indicate whether or not they are willing to voluntarily convert their contract to TEMT service or settle their GFA by accepting the Midwest ISO's proposed treatment of GFAs.

70. GFAs that are the subject of joint filings will not be included in the hearing described in Step 2. Instead, the Commission will evaluate these joint filings as a group to help determine the effects of the GFAs on the proposed energy markets and, in the order described in Step 3, determine whether GFAs that are not converted or settled can be incorporated into the energy markets as written.

71. If parties to a particular GFA or GFAs are not able to agree on the GFA information, then the Commission will require each party to file its own interpretation of the GFA. (If the parties have agreed on some, but not all, GFA information, they should note in their separate filings their areas of agreement and disagreement.) The title or transmittal letter on a single-party filing should indicate the name of the party making the interpretation and identify the subject GFAs by the number associated with each agreement in Attachment B to this order. Parties that

Market Report (p. 20) prepared by the Midwest ISO Independent Market Monitor, April 2004. Also, Dr. McNamara notes that following NERC procedures, the Midwest ISO has had to curtail a 135 MW transaction to achieve as little as 7 MW of relief on a constrained flowgate. McNamara testimony at 16.

[57] Note that this is somewhat different from the TEMT's requirements, which call for ''the maximum megawatt capacity *permissible* under the GFA.'' Module C, section 38.2.5j, Original Sheet No. 402 (emphasis added). For GFAs that do not contain language specifying a maximum number of megawatts, the parties to the GFA should submit at least three years' worth of historical data, to demonstrate what transactions they have made pursuant to the GFA.

[58] *See United Gas Pipeline Company* v. *Mobile Gas Service Corp.,* 350 U.S. 332 (1956); *FPC* v. *Sierra Pacific Power Company,* 350 U.S. 348 (1956).

[59] Attachment B includes the Midwest ISO's Attachment P, List of Grandfathered Agreements, that is currently effective in the Midwest ISO tariff, modified to number each agreement. This version of Attachment P is subject to a further compliance filing. *See* 106 FERC ¶ 61,288 (2004).

submit such filings will proceed to Step 2 of the Commission's analysis.

b. Additional Evidence and Comments

72. In addition, to assist the Commission in determining whether to modify GFAs that are not settled (see settlement discussion below), we will require the Midwest ISO to provide additional information as to the reliability and economic benefits of its proposed congestion management system with GFAs included in the market. As we noted in Order No. 2000, an LMP-based congestion management system appears to provide a sound framework for efficient congestion management. In its filing, the Midwest ISO provided general information and testimony on the impact of TLRs in the Midwest ISO region, including the reliability impacts of TLRs and curtailment events on the coordination of flows between neighboring control areas. We seek specific evidence for the record in the Docket No. EL04–104–000 proceeding. Thus, we direct the Midwest ISO and its Independent Market Monitor to submit evidence of the historical reliability impact of TLRs in the Midwest ISO region. Additionally, the Midwest ISO is directed to submit evidence that examines in detail how a carve-out of the GFAs would impede the reliability of the proposed Day 2 markets.

73. Further, the Midwest ISO did not file information that quantified the cost savings in moving from its current congestion management process (that relies predominantly on TLRs) to its proposed LMP-based congestion management system as applied to GFAs. We direct the Midwest ISO to file information on the economic impacts of TLRs in its region and quantify the benefits of the proposed congestion management system, focusing on how a carve-out of the GFAs would impede these costs savings. We also direct the Midwest ISO to include all workpapers and assumptions supporting its quantification of the economic benefits of the proposed congestion management system as it applies to the GFAs. We direct the Midwest ISO to file this evidence on reliability and economic impacts by June 25, 2004. Parties will have 14 days to comment on the Midwest ISO analysis.

74. The Commission also seeks comments from all affected parties on: (1) Whether keeping the GFAs separate from the market would negatively impact reliability; (2) the extent to which GFAs shift costs to third parties; and (3) whether keeping the GFAs separate from the market would result in undue discrimination. These comments should not be repetitive of the protests already filed in this docket, and must be filed directly with the Commission no later than June 25, 2004. We encourage parties with similar interests to combine their responses into a single pleading; however, these responses should not be combined with the GFA information filings described above. Parties will have 14 days to submit reply comments.

2. Step 2: Trial-Type Hearing

75. The Commission will consider all GFA information on which parties cannot agree to be disputed issues of material fact. Accordingly, we will set such GFAs for hearing before one or more administrative law judges (ALJs) under section 206 of the FPA. The sole objective of the trial-type hearing will be to identify GFA information for every GFA on which the parties have not agreed by June 25, 2004.

76. In order to accommodate the March 1, 2005, implementation of the energy markets, as well as the schedule we will set forth below for nomination of FTRs under the proposed TEMT, hearing proceedings will be narrowly focused and expedited. Hearing proceedings will begin on June 28, 2004, and terminate on July 23, 2004. The Commission will require the presiding ALJ or ALJs to issue written findings, and to orally present these written findings at the Commission meeting of July 28, 2004, on the following: (1) The name of the GFA Responsible Entity, as defined in the proposed TEMT; (2) the name of the GFA Scheduling Entity, as defined in the proposed TEMT; (3) the source point(s) applicable to the GFA; (4) the sink point(s) applicable to the GFA;

(5) the maximum number of megawatts transmitted pursuant to the GFA for each set of source and sink points; and (6) whether the GFA is subject to a ''just and reasonable'' standard of review or a *Mobile-Sierra* standard of review. Parties will be allowed to file written exceptions to ALJ findings by August 17, 2004. Briefs opposing exceptions will not be allowed.

77. In the event that GFA parties reach agreement on their GFA information prior to the conclusion of the ALJ proceeding, they should immediately seek the ALJ's permission to withdraw from the hearing proceeding. If the ALJ grants permission, the parties must immediately make a joint filing with the Commission as described in Step 1. Parties may voluntarily agree to convert or settle their GFAs in this filing. Such filings are due no later than July 27, 2004, the day before the ALJ's report issues.

3. Step 3: Order on the Merits

78. Following the ALJ's oral presentation, the Commission will use the GFA information provided by the parties or the ALJ, together with the parties' evidence and comments, discussed in paragraphs 72–74 above, and information on voluntary conversion of GFAs to transmission and energy market service or GFA service under the TEMT, to determine in a subsequent order: (1) Whether the GFAs can function as written within the proposed energy markets; (2) whether the GFAs can function within the energy markets under the Midwest ISO's proposed treatment (which the Commission retains the right to amend); or (3) whether modifications to the GFAs should be required. The Commission will make every attempt to expedite this order, keeping in mind the timeline described below, so that all Midwest ISO market participants may begin their FTR nominations on October 1, 2004.

D. Opportunity to Settle

79. At this time, we do not make a finding on the justness and reasonableness of the Midwest ISO's proposed scheduling and settlement options for treatment of GFA transactions under the TEMT. Protests on this proposed treatment and particularly on the proposed Option B indicate that some GFA parties, as well as non-GFA parties, believe that the proposed treatment creates added benefits for the GFAs that go beyond preserving the material benefits and obligations of the pre-existing contract, thereby shifting costs to non-GFA parties or non-GFA loads. Other GFA parties assert that while Option B provides some assurance that they will be kept financially indifferent, Option B does not go far enough in preserving the benefit of the bargain in their contracts. The Commission will not know the extent of the benefits and obligations under each GFA unless and until the Commission examines each contract in a hearing context.

80. To avoid the expensive and time-consuming hearing process that would otherwise be necessary and to provide all parties the benefits of a functional organized market in a more timely manner than would otherwise be possible, the Commission strongly encourages GFA settlements and intends to process such settlements expeditiously. We would be receptive to GFA parties voluntarily agreeing, in settlement, to accept one of the Midwest

ISO's proposed scheduling and settlement options for treatment of GFA transactions, or to convert their contracts to TEMT service. Further, we clarify that, if the Commission approves a settlement, it does not intend to later revisit its decision when it addresses the non-settling parties' GFAs.

81. Although we note Dr. Hogan's concern that Option B of the Midwest ISO's proposed GFA treatment could undermine the efficient scheduling properties of the LMP-based tariff,[60] we believe that the Midwest ISO's proposed GFA treatment provides a fair basis for GFA holders to settle and incorporate the GFAs into the Day 2 markets. We also expect that parties that settle on the GFA scheduling provisions provided in the proposed GFA treatment, including the proposed Option B, will schedule transactions consistent with legitimate business purposes.[61]

82. The optional GFA scheduling and settlement treatment, including Option B, as drafted in the Midwest ISO proposal,[62] will be available to GFA parties that jointly provide GFA information to the Commission in Step 1 (or prior to the conclusion of Step 2) of our three-step analysis, and that jointly indicate that they want to accept this treatment. Such settlements avoid litigation of GFA issues and further the Commission's goals in facilitating voluntary resolution of these issues prior to the start of the Midwest ISO energy markets.

83. Such settlements also preserve the parties' rights to comment on the Midwest ISO's section 205 proposal for treatment of the GFAs after the transition period, which it proposes to file no later than 12 months prior to the end of the transition period. We instruct the Midwest ISO to provide a report no later than 12 months prior to the end of the transition period to examine the impact of the initial GFA treatment, as selected by GFA parties through this settlement process, on other market participants and the overall efficiency of the market.

E. Revised TEMT Processing and Energy Markets Startup Timelines

1. The Midwest ISO's Proposal

84. The Midwest ISO requests an effective date of June 7, 2004, for sections of the tariff pertaining to the EDR process and the initial FTR allocation. It states that the requested effective date for the FTR allocation provisions coincides with the requested effective date for the EDR process and will allow all Market Participants and the Midwest ISO certainty as to the final FTR allocation methodology prior to the start of the initial FTR allocation process on July 15, 2004.

85. The Midwest ISO proposes an FTR process developed with significant input from stakeholders that features several rounds of nominations and restoration of FTRs for base load generation. All FTR nominations and restoration are subject to a single Simultaneous Feasibility test. The Midwest ISO proposes that the first nomination of FTRs take place on July 15, 2004. It will provide an initial FTR allocation to market participants on September 30, 2004, and begin the auction process on October 4, 2004.[63] The October auctions will then be used as a basis for market trials prior to market startup on December 1, 2004.

86. The Midwest ISO raises non-tariff concerns related to the December 1, 2004, start date. These concerns include matters related to the impact of a December 1, 2004, energy market start date in light of the reporting requirements contained in the Sarbanes-Oxley Act of 2002;[64] the readiness of the Midwest ISO to begin market operations; the existence of seams agreements between the Midwest ISO and its neighboring entities; and the integrated nature of certain transmission systems in the Mid-Continent Area Power Pool (MAPP) region.

87. The Midwest ISO notes that prior to the TEMT filing, many of its stakeholders raised concerns associated with meeting the requirements of the Sarbanes-Oxley Act. Under section 404 of the Sarbanes-Oxley Act, all companies registered with the Securities and Exchange Commission (SEC) must report on the effectiveness of the company's internal controls over financial reporting, as well as obtain a report from an outside auditor attesting to the effectiveness of the internal controls.[65] These assessments will cover the reporting year ending December 31, 2004, and must be submitted to the SEC in early 2005. With a market start date of December 1, 2004, SEC-registered companies within the Midwest ISO would report on controls governing one month's worth of market transactions.

88. The Midwest ISO states that it has repeatedly committed to its stakeholders that it will not commence the Energy Markets on December 1, 2004, unless it is ready to operate effectively. The Midwest ISO also states that if it is unable to substantially accomplish metrics related to its market implementation plan, it will announce a delay in the commencement of the Energy Markets.[66]

89. The Midwest ISO notes that prior to the TEMT filing, many of its stakeholders raised concerns associated with the seams between the Midwest ISO and its neighbors. The Midwest ISO acknowledges the importance of developing seams agreements or operating agreements similar to the Joint Operating Agreement between the Midwest ISO and PJM Interconnection, L.L.C.;[67] however, it does not believe that the lack of these agreements bar the initiation of market operations. The Midwest ISO states that it is discussing seams issues with Midwest ISO members and non-members in the MAPP region in an effort to address the treatment of the integrated transmission systems of those entities in the energy markets. The Midwest ISO has agreed to provide the integrated transmission agreements of the MAPP region similar treatment to the treatment it offers GFAs.

2. Protests and Comments

90. A number of parties want to delay the market startup, and they cite a wide range of reasons to support this view. The most common argument is that the Sarbanes-Oxley audit requires delay. The Midwest ISO's Answer indicates that it would not oppose such a delay.

91. Detroit Edison, Xcel Energy Services and Consumers Energy recommend that market startup be conditioned on readiness approval from NERC. They cite NERC's concerns from the August 14, 2003, blackout and the significant reliability challenges associated with the control area interfaces. Montana-Dakota states the market should not start until Midwest ISO demonstrates that reliability, as

[60] *See* Hogan testimony at 54.

[61] *See generally* Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorizations, 105 FERC ¶ 61,218 (2003), *reh'g granted in relevant part,* 107 FERC ¶ 61,175 (2004).

[62] This includes the Option B treatment as described in the Midwest ISO's proposed tariff under Module C, Section 38.8.3(b), Original Sheet Nos. 447–51 and Module C, Section 43.2.4(a) ''(d), Original Sheet Nos. 613–25.

[63] We note that the Midwest ISO filed on April 28, 2004 an illustrative allocation of the FTRs. The Midwest ISO states that it filed the illustrative allocation to comply with the Declaratory Order and an order issued on March 28, 2003. *See* Midwest Independent System Operator, Inc. 102 FERC ¶ 61,338 (2003) (March 28 Order). In the March 28 Order, the Commission directed the Midwest ISO to file FTR information at least 60 days prior to the Midwest ISO's final TEMT filing.

[64] Pub. L. 107–204, 116 Stat. 745 (2002) (to be codified in scattered sections of 15 U.S.C.).

[65] Pub. L. 107–204 § 404, 116 Stat. 745, 789 (to be codified at 15 U.S.C. 7262).

[66] *See* Transmittal Letter at 22–23.

[67] *See* Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., 106 FERC ¶ 61,251 (2004).

measured by network model and state estimator accuracy and successful completion of reliability metrics, is better than the level achieved before the Midwest ISO was formed.

92. A number of parties, including Midwest TDUs, the Wisconsin Commission and Nebraska Intervenors contend that market delay is warranted due to reliability concerns associated with many control areas. They argue that the market should not start until the seam issue between jurisdictional and non-jurisdictional members of MAPP is resolved with a comprehensive agreement. Midwest TDUs and Cinergy also consider the American Electric Power seam a problem. They request a delay until either a seams agreement is executed (in the Midwest TDUs' opinion) or American Electric Power is integrated into PJM (in Cinergy's opinion). A number of these same parties also contend that the markets should not start until the flaws associated with initial FTR allocations are resolved and several market trials are run. In contrast, Exelon and Coalition MTC state that the Midwest ISO market start must stay on schedule to ensure, respectively, that the joint and common market with PJM can be realized and that customers receive the benefits of the energy market.

93. The Midwest ISO responds in its Answer that while the proposed milestones are still appropriate, there would be benefits from additional system training, performance and testing activities.

3. Discussion

94. Recognizing the impact that the above-detailed procedures for interpreting the GFAs will have on the schedule for apportioning FTRs, and the need to have sufficient market trials in advance of implementation of the Day 2 market, the Commission directs the Midwest ISO to move the start of the energy market from December 1, 2004, to March 1, 2005. Extension of the start date will allow more time to complete the initial allocation of FTRs, including an update of the model to include changes to the system occurring up to June 2004. This extension will also address the Sarbanes-Oxley Act compliance issue mentioned by commenters.

95. The illustrative FTR allocation filed by the Midwest ISO does not meet the requirement set forth in the Declaratory Order. The Declaratory Order directed information showing ''each market participant's *expected* allocation of FTRs based on the proposed tariff allocation method, the Candidate FTRs, and any proposed pro rata reduction in the Candidate FTRs.'' We will expect the Midwest ISO to file an initial FTR allocation with the expected allocation of FTRs, not an illustrative allocation, 90 days prior to the start of the market. The filing should be made concurrent with, or prior to the beginning of, market trials. If the Midwest ISO believes this information to be commercially sensitive, it may file such information with the Commission and request that it be kept confidential. The Commission will act on the request for confidential treatment at that time.

96. We will also revise the schedule for FTR nominations. The later time frame will permit the Commission time to complete its analysis of the GFAs and the Midwest ISO time to continue to refine its FTR allocation model. We expect Tier I nomination to take place on October 1, 2004, and Tier IV nomination to be completed by December 1, 2004.

97. Given the new schedule for the FTR allocation process, we anticipate that the Midwest ISO will begin initial market trials in early December 2004 and complete them in January 2005. We will also expect the Midwest ISO to provide a report to the Commission on the results of initial market trials, no later than 45 days prior to the start of the energy markets. We share the parties' concerns that the market needs to be at a high level of readiness on the start date. Accordingly, our assessment of whether the market is ready to start will be based on our ongoing analysis of market trials, readiness metrics and NERC reliability reports throughout this pre-market period.

98. We direct the Midwest ISO to continue to pursue seams agreements with neighboring entities, regardless of the outcome of this proceeding.

99. In addition, we direct the Midwest ISO to (work with its stakeholders to) develop default mechanisms and procedures for instances where communication failures cause a loss of the Midwest ISO dispatch signal to any Control Area. Such fail-safe procedures must be in place prior to the start of the energy markets.

100. Given the change to the start date for the Energy Markets, the Commission finds that it is no longer necessary to act by June 7, 2004, on the FTR or the EDR provisions of the proposed TEMT. We will accept and suspend the FTR provisions contained in Module C, Section IV, Original Sheet Nos. 602–77, as described below. We will reject the EDR provisions contained in Module A, Section 12A, Original Sheet Nos. 212–15, and any other tariff sheets proposed to become effective June 7, 2004. The Commission recognizes the need for a timely order on the GFAs and the FTR allocation proposal to permit nominations to begin on October 1, 2005.

101. Our preliminary review of the proposed FTR provisions indicates that the Midwest ISO's proposal has not been shown to be just and reasonable, and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will accept the FTR provisions contained in Module C, Section IV, Original Sheet Nos. 602–77, for filing and suspend them, to become effective on or before November 7, 2004, subject to refund and further orders in this proceeding.

The Commission orders:

(A) Module A, section 12A, Original Sheet Nos. 212–15, pertaining to Expedited Dispute Resolution, is hereby rejected, as described in the body of this order.

(B) Module C, Section IV, Original Sheet Nos. 602–77, pertaining to Financial Transmission Rights, is hereby accepted and suspended, to become effective on or before November 7, 2004, subject to refund and further orders in this proceeding.

(C) Pursuant to the authority contained in, and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by, section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR chapter I), the Commission sets for hearing all GFAs under which jurisdictional public utilities provide or take service in the Midwest ISO region, as discussed in the body of this order.

(D) The Secretary shall promptly publish this order in the **Federal Register.**

(E) The refund effective date established pursuant to section 206(b) of the FPA will be 60 days following publication in the **Federal Register** of this order, as directed in Ordering Paragraph (D) above.

(F) Parties to this proceeding that are providing or taking service under GFAs enumerated in Appendix B to this order are directed to file GFA information no later than June 25, 2004, as described in the body of this order.

(G) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections

205 and 206 thereof, and pursuant to the Commission's rules of practice and procedure and the regulations under the Federal Power Act (18 CFR chapter 1), a public hearing shall be held in Docket Nos. ER04–691–000 and EL04–104–000 to investigate the GFAs for which parties do not jointly submit GFA information, as discussed in the body of this order. As discussed in the body of this order, we will hold the proceeding in abeyance until June 28, 2004, to allow GFA parties time to make their GFA information submissions.

(H) A presiding administrative law judge, designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding, to be held as soon as practicable after the date on which the Chief Judge designates the presiding judge, in a hearing room of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Such conference shall be held for the purpose of establishing a procedural schedule. The presiding administrative law judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss), as provided in the Commission's rules of practice and procedure.

(I) The presiding administrative law judge is directed to issue written findings summarizing the result of the hearing proceeding, and to present these findings to the Commission at its public meeting on July 28, 2004.

(J) The Midwest ISO is hereby directed to continue to pursue seams agreements with neighboring entities and to develop default mechanisms and procedures as described in the body of this order.

(K)The Midwest ISO is hereby directed to file the reports described in the body of this order.

By the Commission.

Linda Mitry,

Acting Secretary.

Appendix A

Parties Filing Interventions

BP Energy Company
Central Iowa Power Cooperative
Clay Electric Cooperative, Inc.
ConocoPhillips Company
Coral Power, L.C.C.
The Energy Authority
Environmental Law and Policy Center of the Midwest
Illinois Commerce Commission
Illinois Municipal Electric Agency
Indiana Office of Utility Consumer Counselor
Indianapolis Power & Light
Iowa Utilities Board
Michigan Public Power Agency and Michigan South Central Power Agency
Minnesota Office of the Attorney General
TVA—Tennessee Valley Authority
WAPA—Western Area Power Administration

Parties Filing Interventions and Protests or Comments

Alliant—Alliant Energy Corporate Services, Inc.
Ameren—Ameren Services Company
American Forest & Paper Association
AMP-Ohio—American Municipal Power-Ohio, Inc.
Archer-Daniels-Midland—Archer-Daniels-Midland Company
ATCLLC—American Transmission Company LLC
Basin, *et al.*—Basin Electric Power Cooperative, East River Electric Power Cooperative, Inc., Central Power Electric Cooperative, Inc. and Capital Electric Cooperative, Inc.
Cinergy—Cinergy Services, Inc.
Cleveland—City of Cleveland, Ohio
Coalition MTC—Coalition of Midwest Transmission Customers
Constellation—Constellation Power Source, Inc., Constellation Generation Group, LLC and Constellation NewEnergy, Inc.
Consumers—Consumers Energy Company
Corn Belt—Corn Belt Power Cooperative
Crescent Moon Utilities—Basin Electric Power Cooperative, Heartland Consumers Power District, Minnkota Power Cooperative, Inc., NorthWestern Energy, Sunflower Electric Power Corporation and the Upper Great Plains Region of the Western Area Power Administration
Dairyland—Dairyland Power Cooperative
Detroit Edison—Detroit Edison Company
Dominion—Dominion Retail, Inc., Dominion Energy Marketing, Inc. and Troy Energy, LLC
Duke—Duke Energy North America, LLC
Dynegy—Dynegy Power Marketing, Inc. and Dynegy Midwest Generation, Inc.
Edison Mission—Edison Mission Energy, Edison Mission Marketing & Trading, Inc., and Midwest Generation EME, LLC
ELCON/AISI/ACC—Electricity Consumers Resource Council, American Iron and Steel Institute and American Chemistry Council
Epic and SESCO—Epic Merchant Energy LP and SESCO Enterprises LLC
EPSA—Electric Power Supply Association
Exelon—Exelon Corporation
FirstEnergy—FirstEnergy Service Company
Great Lakes—Great Lakes Utilities
Great River—Great River Energy
IMEA—Illinois Municipal Electric Agency
Indianapolis P&L—Indianapolis Power & Light Company
LG&E—LG&E Energy LLC
Manitoba Hydro
Manitowoc Public Utilities
MAPP—Mid-Continent Area Power Pool
Marshfield—Marshfield Electric & Water Department
Michigan Commission—Michigan Public Service Commission
MidAmerican—MidAmerican Energy Company
Midwest Municipal Transmission Group
Midwest ISO TOs—Ameren Services Company, as agent for Union Electric Company d/b/a AmerenUE, Central Illinois Public Service Company d/b/a AmerenCIPS, and Central Illinois Light Co. d/b/a AmerenCilco; Aquila, Inc. d/b/a Aquila Networks (f/k/a Utilicorp United, Inc.); City Water, Light & Power (Springfield, Illinois); Hoosier Energy Rural Electric Cooperative, Inc.; Indianapolis Power & Light Company; LG&E Energy Corporation (for Louisville Gas and Electric Co. and Kentucky Utilities Co.); Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company and Northern States Power Company (Wisconsin), subsidiaries of Xcel Energy, Inc.; Northwestern Wisconsin Electric Company; Otter Tail Corporation d/b/a Otter Tail Power Company; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana); and Wabash Valley Power Association, Inc.
Midwest SATCs—American Transmission Company LLC, GridAmerica LLC, International Transmission Company and Michigan Electric Transmission Company, LLC
Midwest TDUs—Great Lakes Utilities, Indiana Municipal Power Agency, Lincoln Electric System, Madison Gas and Electric Company, Midwest Municipal Transmission Group, Missouri Joint Municipal Electric Utility Commission, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, Upper Peninsula Transmission Dependent Utilities and Wisconsin Public Power, Inc.
Minnesota Municipal—Minnesota Municipal Power Agency
Minnesota Entities—Minnesota Public Utilities Commission and Minnesota Department of Commerce
Minnkota—Minnkota Power Cooperative, Inc.
Mirant—Mirant Americas Energy Marketing, LP, Mirant Zeeland, LLC and Mirant Sugar Creek, LLC
Montana-Dakota—Montana-Dakota Utilities Company
Municipal Participants—Michigan Public Power Agency, Michigan South Central Power Agency, Department of Municipal Services of Wyandotte, Michigan and City of Hamilton, Ohio
Nebraska Intervenors—Lincoln Electric System, Omaha Public Power District and Nebraska Public Power District
Nebraska Public Power District
NiSource Companies—Northern Indiana Public Service Company, EnergyUSA–TPC Corp. and Whiting Clean Energy, Inc.
North Dakota Commission—North Dakota Public Service Commission
NRECA—National Rural Electric Cooperative Association
Ohio Commission—Public Utilities Commission of Ohio
Ohio REC—Ohio Rural Electric Cooperatives, Inc. and Buckeye Power, Inc.
OMS—Organization of MISO States
Otter Tail—Otter Tail Power Company
PSEG—PSEG Energy Resources & Trade LLC
Reliant—Reliant Energy, Inc.
Southern Minnesota—Southern Minnesota Municipal Power Agency
Southwestern—Southwestern Electric Cooperative, Inc.
Soyland—Soyland Power Cooperative, Inc.

Steel Producers—Steel Dynamics—Bar Products Division and Nucor Steel
Strategic Energy, LLC
TVA—Tennessee Valley Authority
WEPCO—Wisconsin Electric Power Company
Wisconsin Commission—Public Service Commission of Wisconsin
Wisconsin Retail Customers Group—Citizens'' Utility Board, Wisconsin Industrial Energy Group, Inc., Wisconsin Paper Council and Wisconsin Merchants Federation
Wisconsin Transmission Customer Group
WPPI—Wisconsin Public Power Inc.
Wolverine—Wolverine Power Supply Cooperative, Inc.
WPS Resources—WPS Resources Corporation
WUMS Load-Serving Entities—Wisconsin Electric Power Company, Edison Sault Electric Company, Wisconsin Public Service Corporation, Upper Peninsula Power Company, Wisconsin Power and Light Company, Madison Gas and Electric Company, Wisconsin Public Power, Inc. and Manitowoc Public Utilities
Xcel—Xcel Energy Services Inc.

Appendix B

BILLING CODE 6717–01–P

ATTACHMENT P

LIST OF GRANDFATHERED AGREEMENTS

ALLIANT ENERGY CORPORATION

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")[1/]

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
1. MAPP	MAPP Restated Agreement Schedule F		3 years' advance notice. Notice has been given.	Transmission Service Under Schedule F
2. Fairbank Electric Dept.		IPC 499 Full Req.	Rolling	Network transmission & all ancillaries
3. Grafton Electric Dept.		IPC 499 Partial Req.	Rolling	Network transmission & all ancillaries
4. Hanover		IPC 499 Full Req.	Rolling	Network transmission & all ancillaries
5. Sabula Municipal Electric Dept.		IPC 499 Full Req.	Rolling	Network transmission & all ancillaries
6. West Point Utility System		IES RES-4 Full Req.	Rolling	Network transmission & all ancillaries
7. Alta Vista Electric Dept.		IPC 499 Full Req.	Rolling	Network transmission & all ancillaries
8. Readlyn Electric Dept.		IPC 499 Full Req.	Rolling	Network transmission & all ancillaries
9. Dundee MN		IPC 499 Full Req.	Rolling	Network transmission & all ancillaries

1/ Iowa Southern Utilities Company and Iowa Electric Light and Power Company merged to become IES Utilities, Inc. ("IES"). Alliant Energy Corporate Services, Inc. is a service company affiliate of the Alliant Energy Operating Companies (*i.e.*, Wisconsin Power and Light Company, IES Utilities Inc. and Interstate Power Company ("IPC")), and is authorized to act as their agent with respect to execution and administration of certain contracts and in proceedings at the Commission. On January 1, 2002, IPC merged into IES; IES was the surviving corporation. Subsequent to the effective time of the IPC/IES merger, IES changed its name to Interstate Power and Light Company.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
10. City of Springfield	Electric Service Agreement Between Interstate Power Company and the City of Springfield, Minnesota	IPC Rate Schedule 136. ER92-713-000.	12 months' written notice is required to terminate. Notice given – contract expires 06-30-04.	Transmission service at $3.96 per MWh.
11. City of Truman	Electric Service Agreement Between Interstate Power Company and the City of Truman, Minnesota	IPC Rate Schedule 107	12 months' written notice is required to terminate.	Transmission service at $3.96 per MWh
12. Great River Energy (formerly Cooperative Power Association)	Transmission Utilization Agreement between Cooperative Power Association and Interstate Power Company and Amendment No. 1	IPC Rate Schedule No. 131	Effective through 8-31-03. Requires 3-year written notice to cancel.	Transmission Service to defined points of delivery and agreement to minimize duplication of facilities.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
13. Central Iowa Power Cooperative ("CIPCO")	Agreement for Integrated Transmission Area	IPC Rate Schedule 125	25-year term (through 2004), which can be canceled after year 15 with a 5-year written notice.	Transmission service. Annual under investment charge.
14. Northeast Missouri Electric Power Cooperative ("NEMO")	Interconnection and Transmission Service Agreement between Northeast Missouri Electric Power Cooperative and Iowa Southern Utilities Company, including First Amendment	IES Rate Schedule 85	2-years' written notice.	Transmission Service and interconnection.
15. Northeast Missouri Electric Power Cooperative ("NEMO")	Transmission Agreement between Northeast Missouri Electric Power Cooperative and Iowa Electric Light and Power, dated 09-03-92	Iowa Electric Light and Power Company, Rate Schedule ___	2-years' written notice.	Transmission Service and interconnection.
16. Central Iowa Power Cooperative	IE/CIPCO Operating and Transmission Agreement and Appendices	ER94-247-000, ER95-1244-000 and ER96-1091-000	45-year term from 1-1-91.	Integrated transmission area and transmission service.
17. Corn Belt Power Cooperative	Contract	IES Rate Schedule 12 ER94-437-000	25-year initial term and then a 36-month written notice. Contract dated 5-25-56	Joint use of transmission facilities.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
18. Associated Electric Cooperative, Inc.	Interconnection and Joint Construction Agreement and Amendatory Agreement Number One	Rate Schedule FERC No. 35 and Supplement No. 3 to Rate Schedule No.35 ER85-427-000.	3-years' written notice.	Transmission service, joint construction, and interconnection.
19. Union Electric	Interchange Agreement and Appendix I	Docketed Under Iowa Electric Light and Power Company ER92-537-000	5-years' written notice for the main agreement, unless the sales contract is terminated (then 30 days). Certain interconnections are in perpetuity.	Transmission service and interconnection.
20. Dairyland Power Cooperative	General Transmission Facilities Installation Agreement		24-months' written notice.	Transmission service. Service is based upon equalized investment.
21. Iowa-Illinois Gas and Electric, Iowa Power and Light Co., Iowa Public Service Co., Central Iowa Power Cooperative, Interstate Power Company, City of Tipton, City of Harlan, and City of Waverly	Louisa Transmission Operating Agreement and First and Second Amendments to Louisa Transmission Facilities Agreement	ER96-741-000	40-year term. May be canceled with written consent of Parties.	Provides transmission capacity rights on discrete line sections towards a particular service area or transmission system. Generation Outlet.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
22. Iowa Public Service Co., Interstate Power Company, Northwestern Public Service, Co. Corn Belt Power Cooperative, Northwest Iowa Power Cooperative, Algona Municipal Utilities, Bancroft Municipal Utilities, Coon Rapids Municipal Utilities, Graettinger Municipal Utilities, Laurens Municipal Light & Power Milford Municipal Utilities Spencer, and City of Webster City.	Transmission Facilities and Operating Agreement George Neal Generating Unit No. 4 Transmission dated 10-24-1984. First Amendment dated 12-31-84. Second amendment dated 12-30-96.	ER86-672-000 Interstate Power Company, Rate Schedule FERC No. 142	30-year term. May be cancelled by written agreement of all Parties prior to the end of 30 years.	Specifies transmission capacity rights from generation out of Neal 4 Generating Unit. Generation outlet.
23. Iowa-Illinois Gas and Electric, Iowa Power and Light Co., Iowa Public Service Co. Iowa Southern Utilities Co.	Operating Agreement Neal 3 Transmission dated 1-2-78 and Amendment No. 1 to Operating Agreement Neal 3 Transmission	ER86-83-000 IES Utilities, Rate Schedule FERC No. 73	Requires 4-years' written notice.	Specifies transmission capacity rights from generation out of Neal 3 Generating Unit. Generation Outlet.
24. Iowa-Illinois Gas and Electric, Iowa Power and Light Co., Iowa Public Service Co., Iowa Southern Utilities Co. and Waverly Municipal Electric Utility, Waverly, Iowa	Neal 3 Transmission Assignment for Capacity Schedule Dated October 15, 1985	Iowa Southern Utilities Company, Rate Schedule __	None	Assignment of Transmission Capacity.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
25. Iowa Southern Utilities Company, Iowa Public Service Company, Iowa-Illinois Gas and Electric Company, Iowa Power and Light Co., and Iowa Electric Light and Power Co.	Facilities and Operating Agreement Ottumwa Generating Station Unit 1 Electric Transmission and Substation Facilities - dated 5-22-81	ER87-454-000 Iowa Southern FERC Rate Schedule 44	30-year term. May be terminated by written agreement by all Parties.	Specifies Unit 1 transmission ownership and capacity schedules out of specific units over discrete line sections to or toward a particular service area or transmission system. Generation Outlet.
26. Interstate Power Company, Iowa Electric Light and Power Company, Iowa-Illinois Gas and Electric Company, Iowa Public Service Co., Iowa Southern Utilities Company, Northern States Power Company, and Union Electric Company.	Twin Cities-Iowa- St. Louis 345 KV Interconnection Coordinating Agreement	Interstate Power Company, FERC No. 77 ER82-728-000, ER83-163-000, ER87-560-000 and ER94-655-000	20-year term. 4-years' written notice to cancel.	Allocates the transmission capacity of the interconnection among the owners.
27. Eldridge, Iowa and Geneseo, Illinois	Louisa Transmission Operating Agreement			Transmission assignments.
28. Central Iowa Power Cooperative (CIPCO)	Agreement for Interconnection of Transmission Facilities	Iowa Southern Utilities Company, Rate Schedule FERC No. 8	Requires 6-months' written notice.	Interconnection and transmission service.
29. Southwestern Federated Power Cooperative	Interconnection and Joint Construction Agreement	Iowa Southern, Rate Schedule FERC No. 9 and (Supplement No. 1), approved in Docket No. E-7280	Requires 3-years' written notice to terminate.	Interconnection and transmission service.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
30. Eastern Iowa Light and Power Cooperative	Interconnection and Joint Construction Agreement Between Eastern Iowa Light and Power Company	Iowa Southern Utilities Company Rate Schedule FERC No. 27	Requires 3 years' written notice to terminate	Interconnection and transmission service.
31. Eastern Iowa Light and Power Cooperative	Operating Agreement Between Iowa Southern Utilities Company and Eastern Iowa Light and Power Cooperative	Supplement No. 1 to Rate Schedule FERC No. 27	Remains in effect as long as the agreement designated as Iowa Southern Utilities Company, Rate Schedule FERC No. 27 is in effect.	Interconnection and transmission service.
32. Central Iowa Power Cooperative and Corn Belt Power Cooperative	Duane Arnold Energy Center Agreement for Transmission, Transformation, Switching, and Related Facilities			Interconnection and transmission service. Generation Outlet.
33. Central Iowa Power Cooperative and Corn Belt Power Cooperative	Duane Arnold Energy Center Amendment to Provide for 70% Ownership by Company and 20% Ownership by CIPCO			Interconnection and transmission service.
34. Southern Minnesota Municipal Power Agency ("SMMPA")	Termination of Shared Transmission Agreement, dated January 15, 1998 and Settlement Agreement per FERC Letter Order in Dockets Nos. EL02-68-000, ER02-330-000 and -001, and ER02-863-000 and -001, dated January 16, 2003	Supplement No. 2 to Service Agreement No. 138 under FERC Electric Tariff, IEC TIRI	By (i) SMMPA with 2 years' written notice; (ii) SMMPA if IPC changes it tariff; or (iii) mutual consent.	Shared transmission services.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
35. Central Iowa Power Company ("CIPCO")	Interchange Agreement dated 11-05-68	Iowa Electric Light and Power Company, Rate Schedule 43	Two years' written notice	Transmission Service.
36. Central Iowa Power Company (formerly Southwestern Federal Power Cooperative)	Contract dated 11-17-54	Iowa Southern Utilities Company, Rate Schedule ___	One-year written notice prior to anniversary date	Transmission Service.
37. Central Iowa Power Company (formerly Southwestern Federal Power Cooperative)	CIPCO-ISU Transmission Facility Memorandum of Intent, dated 10-25-77	Iowa Southern Utilities Company, Rate Schedule ___	Not Stated	Transmission Service.
38. City of Ames, Iowa	Interconnection Agreement Between City of Ames, Iowa and Iowa Electric Light and Power Company, dated 3-17-1987	Iowa Electric Light and Power Company, Rate Schedule ___	Terminates 6-30-2016 with 5 years' written notice	Reserved Transformer Capacity and Integrated Transmission Facilities Use.
39. City of Guttenberg, Iowa and Wisconsin Power and Light Company ("WPL")	Power Supply Agreement between City of Guttenberg, Iowa and Wisconsin Power and Light Company		Initial term is through 12-31-06	WPL shall provide all transmission service, including ancillary services, necessary to deliver power and energy to the City.
40. Northwest Iowa Power Cooperative ("NIPCO")	Participation Power Purchase Agreement and Option to Purchase Agreement, dated 08-01-88, and Transmission Service Agreement dated 07-29-88		12-31-03, at which time, Interstate Power Company ("IPC") has option to purchase 4.167% ownership in Neal 4 Generating Station. IPC has notified party of its intent to exercise that option.	Transmission and Energy Delivery.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
41. Dairyland Power Cooperative	Interconnection and Interchange Agreement between Dairyland Power Cooperative and Interstate Power Company, dated 08-17-66, including Exhibits A-F, as amended	Interstate Power Company Rate Schedule No. 80	2 years' written notice.	Transmission Service
42. Corn Belt Power Cooperative (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Sycamore to Lehigh Dated 10-24-79		None Stated	Assignment of Transmission Capacity
43. Corn Belt Power Cooperative (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh Dated 3-14-94		None Stated	Assignment of Transmission Capacity
44. Corn Belt Power Cooperative (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
45. Corn Belt Power Cooperative (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Sycamore to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
46. Corn Belt Power Cooperative (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity

1/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Public Service Co., and Iowa Southern Utilities Co.

2/ Assignors: Iowa-Illinois Gas and Electric Co., Midwest Power Systems, Inc. and IES Utilities Inc.

3/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co, and Iowa Southern Utilities Co.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
47. Bancroft Municipal Utilities (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
48. Bancroft Municipal Utilities (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
49. Bancroft Municipal Utilities (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
50. Coon Rapids Municipal Utilities (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
51. Coon Rapids Municipal Utilities (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
52. Coon Rapids Municipal Utilities (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity

1/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Public Service Co., and Iowa Southern Utilities Co.

2/ Assignors: Iowa-Illinois Gas and Electric Co., Midwest Power Systems, Inc. and IES Utilities Inc.

3/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co, and Iowa Southern Utilities Co.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
53. City of Webster City (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
54. City of Webster City (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
55. City of Webster City (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
56. Graettinger Municipal Light Plant (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
57. Graettinger Municipal Light Plant (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
58. Graettinger Municipal Light Plant (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity

1/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Public Service Co., and Iowa Southern Utilities Co.

2/ Assignors: Iowa-Illinois Gas and Electric Co., Midwest Power Systems, Inc. and IES Utilities Inc.

3/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co, and Iowa Southern Utilities Co.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
59. Laurens Municipal Light & Power Plant (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
60. Laurens Municipal Light & Power Plant (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
61. Laurens Municipal Light & Power Plant (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
62. Milford Municipal Utilities (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
63. Milford Municipal Utilities (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
64. Milford Municipal Utilities (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity

1/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Public Service Co., and Iowa Southern Utilities Co.

2/ Assignors: Iowa-Illinois Gas and Electric Co., Midwest Power Systems, Inc. and IES Utilities Inc.

3/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co, and Iowa Southern Utilities Co.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
65. Spencer Municipal Utilities (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
66. Spencer Municipal Utilities (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
67. Spencer Municipal Utilities (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
68. Board of Trustees of Municipal Electric Utility of the City of Cedar Falls, Iowa (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Sycamore to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
69. Board of Trustees of Municipal Electric Utility of the City of Cedar Falls, Iowa (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Sycamore to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity

1/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Public Service Co., and Iowa Southern Utilities Co.
2/ Assignors: Iowa-Illinois Gas and Electric Co., Midwest Power Systems, Inc. and IES Utilities Inc.
3/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co, and Iowa Southern Utilities Co.

ALLIANT ENERGY CORPORATION – CONT'D.

I. ALLIANT ENERGY – INTERSTATE POWER AND LIGHT COMPANY ("IPL")

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
70. Iowa Public Service Company (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity
71. Algona Municipal Utilities (Assignee) See footnote #2 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Raun to Lehigh, dated 3-14-94		None Stated	Assignment of Transmission Capacity
72. Algona Municipal Utilities (Assignee) See footnote #1 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Raun to Lehigh, dated 10-15-85		None Stated	Assignment of Transmission Capacity
73. Algona Municipal Utilities (Assignee) See footnote #3 for Assignors	Neal 3 Transmission Assignments for Capacity Schedule - Raun to Lehigh, dated 10-24-79		None Stated	Assignment of Transmission Capacity

1/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co., Iowa Public Service Co., and Iowa Southern Utilities Co.

2/ Assignors: Iowa-Illinois Gas and Electric Co., Midwest Power Systems, Inc. and IES Utilities Inc.

3/ Assignors: Iowa-Illinois Gas and Electric Co., Iowa Power and Light Co, and Iowa Southern Utilities Co.

Midwest ISO
FERC Electric Tariff, Second Revised Volume No. 1

First Revised Sheet No. 407
Superseding Original Sheet No. 407

AMERICAN TRANSMISSION COMPANY, LLC

I. ALLIANT-EAST (i.e., Wisconsin Power & Light Co.)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
74. Wisconsin Public Power Inc.	Agreement between WP&L and the Wisconsin Public Power Inc. SYSTEM Concerning Siting, Construction and Operation of Combine Turbine Generation entered into June 5, 1989	Rate Schedule FERC No. 158 (approved in Docket No. ER90-319-000)	Expires until such time as the CT is permanently retired from service, or sold by WPPI to WPL or a third party, unless the Agreement is terminated. Also, in the event of a breach, the affected party can terminate upon 60-days' notice.	Transmission services.
75. Village of Belmont	Wholesale Power Contract	W-3 FULL REQUIREMENTS	10/30/06	Network transmission & all ancillaries
76. Village of Benton	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
77. City of Elkhorn	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
78. Evansville Water & Light	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
79. Village of Hazel Green	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
80. Village of Mount Horeb	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
81. Village of New Glarus	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
82. City of Shullsburg	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
83. Village of Black Earth	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
84. Village of Mazomanie	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries

Issued by: James P. Torgerson, Issuing Officer
Issued on: October 30, 2003

Effective: October 31, 2003

AMERICAN TRANSMISSION COMPANY, LLC – CONT'D.

I. ALLIANT-EAST (i.e., Wisconsin Power & Light Co.)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
85. Village of Sauk City	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
86. City of Wisconsin Dells	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
87. Village of Wonewoc	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
88. Village of Gresham	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
89. City of Juneau	Wholesale Power Contract	W-3 FULL REQUIREMENTS	9/1/06	Network transmission & all ancillaries
90. Menominee Indian Tribe of WI	Power Supply Agreement	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
91. Pioneer Power & Light	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
92. City of Princeton	Wholesale Power Contract	W-3 FULL REQUIREMENTS	Rolling	Network transmission & all ancillaries
93. City of Sheboygan Falls	Wholesale Power Contract	W-3 FULL REQUIREMENTS	9/1/06	Network transmission & all ancillaries

AMERICAN TRANSMISSION COMPANY, LLC – CONT'D.

II. WISCONSIN ELECTRIC POWER COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
94. City of Geneva, Illinois	Power Service Agreement	Rate Schedule FERC No. 84 (approved in FERC Docket No. ER96-186-000)	Ending 12/31/05 with an additional 5-year extension upon notification by the City within 2 years of expiration of initial term	Full requirements service, Curtailable Load Service, Economic Development Power, Litigation Support and Other Energy-Related Services.
95. City of Crystal Falls, Michigan	Power Service Agreement	Rate Schedule FERC No. 86 (approved in FERC Docket No. ER96-514-000)	Ending 11/14/05 with an additional 5-years' extension upon notification by the City within 1 year of expiration of initial term	Partial requirements service.
96. Alger Delta Cooperative Electric Association	Power Service Agreement	Rate Schedule FERC No. 88 (approved in FERC Docket No. ER96-883-000)	Ending 12/31/05 with an additional 5-year extension upon notification by the City within 1 year of expiration of initial term	Full requirements service.
97. Ontonagon County Electrification Association	Power Service Agreement	Rate Schedule FERC No. 89 (approved in FERC Docket No. ER96-1057-000)	Ending 01/15/06	Full requirements service.
98. City of Norway, Michigan	Reregulation Agreement Menominee River	Rate Schedule FERC No. 4 (approved in FERC Docket No. ER94-1645-000)	Ending 07/01/04	Norway provides river reregulation at Norway Hydro in return for peaking from WEPCO.
99. Badger Power Marketing Authority of Wisconsin, Inc.	Electric Service Agreement	Rate Schedule FERC No. 25	Ending 05/31/03	Full requirements service.

AMERICAN TRANSMISSION COMPANY, LLC – CONT'D.

III. EDISON SAULT ELECTRIC COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
100. Cloverland Electric Cooperative	Contract for Electric Service	Rate Schedule FERC No. 15	Initial term through 12-31-03 with year-to-year extension and 12-month notice provision.	Bundled partial requirements.

AMERICAN TRANSMISSION COMPANY, LLC – CONT'D.

IV. UPPER PENINSULA POWER COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
101. Alger Delta Cooperative Electric Association	Full Requirements Service Agreement	FERC Rate Schedule 32	24 months' notice, but cannot be terminated before 12/31/05 by UPPCo.	Bundled Full Requirements Service
102. Village of Baraga	Full Requirements Service Agreement	FERC Rate Schedule 35	24 months' notice, but cannot be terminated before 12/31/05 by either Party. Customer may extend beyond 2005 for at least 5 years with 12-months' notice at indexed pricing. Customer may terminate prior to 2005 with 12-months' notice, but is subject to penalties.	Bundled Full Requirements Service
103. City of Gladstone	Full Requirements Service Agreement	FERC Rate Schedule 36	24 months' notice, but cannot be terminated before 12/31/05 by either Party. Customer may extend beyond 2005 for at least 5 years with 12-months' notice at indexed pricing. Customer may terminate prior to 2005 with 12-months' notice, but is subject to penalties.	Bundled Full Requirements Service

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AMERICAN TRANSMISSION COMPANY, LLC – CONT'D.

IV. UPPER PENINSULA POWER COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
104. Village of L'Anse	Full Requirements Service Agreement	FERC Rate Schedule 38	24-months' notice, but cannot be terminated before 09/30/06 by either Party. Customer may extend beyond September 2006 for at least 5 years with 12-months' notice at indexed pricing. Customer may terminate prior to September 2006 with 12-months' notice, but is subject to penalties.	Bundled Full Requirements Service
105. City of Negaunee	Full Requirements Service Agreement	FERC Rate Schedule 37	09/30/06. Customer may extend beyond September 2006 with 12-months' notice at indexed pricing. Customer may terminate prior to September 2006 with 12-months' notice, but is subject to penalties.	Bundled Full Requirements Service
106. Ontonagon County Rural Electrification Association	Full Requirements Service Agreement	FERC Rate Schedule 33	24-months' notice, but cannot be terminated before 12/31/05 by UPPCo.	Bundled Full Requirements Service
107. City of Escanaba	Partial Requirements Service Agreement	FERC Rate Schedule 26 (WR-1)	36-months' notice by either Party.	Bundled Partial Requirements Service

Issued by: James P. Torgerson, Issuing Officer
Issued on: March 29, 2002

Effective: April 1, 2002

AMERICAN TRANSMISSION COMPANY, LLC – CONT'D.

V. WISCONSIN PUBLIC SERVICE CORP.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
108. Village of Daggett	Full Requirements Service Agreement	FERC Electric Tariff, Volume No. 2, Service Agreement No. 3	3-years' notice by either Party.	Bundled Full Requirements Service
109. City of Stephenson	Full Requirements Service Agreement	FERC Electric Tariff, Volume No. 2, Service Agreement No. 4	3-years' notice by either Party - June 2008 termination moratorium for WPSC.	Bundled Full Requirements Service
110. Alger Delta Cooperative Electric Association	Full Requirements Service Agreement	FERC Electric Tariff, Volume No. 2, Service Agreement No. 8	3-years' notice by either Party.	Bundled Full Requirements Service
111. City of Marshfield	Agreement Concerning Combustion Turbine & Purchased Power Arrangements	FERC Rate Schedule 51	Expires 04/30/13.	Bundled Partial Requirements Service
112. Oconto Electric Cooperative	Coordination Sales/Service Agreement	FERC Electric Tariff, Volume No. 10, Service Agreement No. 1	Expires 04/30/06.	Bundled Full Requirements Service

AQUILA, INC. (d/b/a AQUILA NETWORKS)

I. MISSOURI PUBLIC SERVICE COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
113. Kansas City Power & Light Company and Missouri Public Service Company	Sibley-Overton 345 KV Missouri Interconnection/Missouri Coordination Agreement dated April 22, 1968		Indefinitely and upon 42-months' written notice.	Interchange of power and energy
114. Kansas Power and Light Company and Missouri Public Service Company	Jeffrey Energy Center Transmission Agreement dated June 1, 1978	FERC Rate Schedule No. 256	Effective until retirement of the last generating unit in which West Plains Energy has an ownership share at Jeffrey Energy Center.	Transmission services
115. Kansas City Power & Light Company and Missouri Public Service Company	Multiple Interconnection and Transmission Contract dated April 28, 1966	FERC Rate Schedule No. 20	Indefinitely and upon 48-months' written notice.	Interchange of power and energy
116. Kansas City Power & Light Company and Missouri Public Service Company	Interchange Agreement dated May 7, 1965	FERC Rate Schedule No. 17	Indefinitely and upon 42-months' written notice.	Interchange of power and energy
117. Kansas City Power & Light Company and Missouri Public Service Company	Electric Interchange Agreement dated June 11, 1965	FERC Rate Schedule No. 18	Indefinitely and upon 36-months' written notice.	Interchange of power and energy
118. Kansas Gas & Electric Company and Missouri Public Service Company	Power Interchange Agreement dated July 8, 1964	FERC Rate Schedule No. 19	Indefinitely and upon 3-years' written notice.	Interchange of power and energy

AQUILA, INC. (d/b/a AQUILA NETWORKS) – CONT'D.

I. MISSOURI PUBLIC SERVICE COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
119. UtiliCorp United Inc., d/b/a Missouri Public Service, and Associated Electric Cooperative, Inc.	Agreement for Interchange of Power & Interconnected Operation dated August 24, 1988	Rate Schedule FERC No. 60	Indefinitely and upon 4-years' written notice.	Interchange of power and energy
120. Union Electric Company and Missouri Public Service Company	Interchange Agreement dated April 11, 1967	Rate Schedule FERC No. 24	Indefinitely and upon 4-years' written notice.	Interchange of power and energy
121. City of Independence, Missouri and Missouri Public Service Company	Municipal Participation Agreement dated December 2, 1968		Indefinitely and upon 48-months' written notice.	Interchange of power and energy
122. Empire District Electric Company and Missouri Public Service Company	Emergency Service Agreement dated August 3, 1967	FERC Rate Schedule No. 45	Indefinitely and upon 30-days' written notice.	Emergency service
123. Missouri Power & Light Company and Missouri Public Service Company	Agreement dated May 15, 1956		Indefinitely and upon 90-days' written notice.	Transmission service
124. Kansas City Power & Light Company and Missouri Public Service Company	Wholesale Firm Power Agreement dated February 25, 1975	Rate Schedule FERC No. 74	Indefinitely and upon 18-months' written notice.	Transmission service
125. Kansas City Power & Light Company and Missouri Public Service Company	Border Customer Service Agreement dated November 7, 1960		Indefinitely and upon 6-months' written notice.	Transmission service to border customers

AQUILA, INC. (d/b/a AQUILA NETWORKS) – CONT'D.

II. ST. JOSEPH LIGHT & POWER

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
126. Northern States Power Company, Interstate Power Company, Iowa Public Service Company, Omaha Public Power District, St. Joseph Light & Power Company and Kansas City Power & Light Company	Twin Cities-Iowa-Omaha-Kansas City 345 KV Interconnection Coordination Agreement dated January 22, 1968		Indefinitely and upon 4-years' written notice.	Interchange of power and energy
127. Kansas City Power & Light Company, St. Joseph Light & Power Company, Nebraska Public Power District, Omaha Public Power District, and Iowa Power Inc.	Coordinating Agreement for the Cooper-Fairport-St. Joseph 345 KV Interconnection March 5, 1990		Indefinitely and upon 4-years' written notice.	Interchange of power and energy
128. Iowa Power and Light Company and St. Joseph Light & Power Company	Electric Interconnection and Interchange Agreement dated December 31, 1968		Indefinitely and upon 1-year's written notice.	Interchange of power and energy
129. Iowa Power and Light Company and St. Joseph Light & Power Company	Interconnection Agreement dated November 20, 1968		Indefinitely and upon 3-years' written notice.	Interchange of power and energy
130. Union Electric Company and St. Joseph Light & Power Company	Interchange Agreement dated May 2, 1969		Indefinitely and upon 5-years' written notice.	Interchange of power and energy

AQUILA, INC. (d/b/a AQUILA NETWORKS) – CONT'D.

III. WESTPLAINS ENERGY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
131. Kansas Power and Light Company and WestPlains Energy (formerly Central Telephone and Utilities Corporation)	Jeffrey Energy Center Transmission Agreement dated June 1, 1978	FERC Rate Schedule No. 256	Effective until retirement of the last generating unit in which West Plains Energy has an ownership share at Jeffrey Energy Center.	Transmission services
132. Southwestern Public Service Company and WestPlains Energy (formerly Central Telephone and Utilities Corporation)	Interconnection Agreement dated December 15, 1976	FERC Rate Schedule No. 63	Indefinitely.	Interchange of power and energy
133. Sunflower Electric Cooperative, Inc. and WestPlains Energy (formerly Central Telephone and Utilities Corporation)	Electric Interconnection and Interchange Agreement dated April 9, 1980		Effective until 05/01/14 and thereafter until terminated by 4-years' written notice.	Interchange of power and energy
134. Kansas Electric Power Cooperative, Inc. and WestPlains Energy (formerly Centel Corporation)	Electric Sales, Transmission and Service Contract dated May 16, 1988	FERC Rate Schedule No. 71	Indefinitely and upon 5-years' written notice.	Transmission services
135. Midwest Energy, Inc. and WestPlains Energy (formerly Centel Corporation)	Interconnection Contract dated May 29, 1987	FERC Rate Schedule No. 70	Indefinitely and upon 1-year's written notice.	Interchange of power and energy
136. Kansas Gas and Electric Company and WestPlains Energy (formerly Western Light and Telephone Company)	Electric Interconnection Contract dated June 28, 1960	FERC Rate Schedule No. 19	Indefinitely.	Interchange of power and energy

AQUILA, INC. (d/b/a AQUILA NETWORKS) – CONT'D.

III. WESTPLAINS ENERGY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
137. Kansas Power and Light Company and WestPlains Energy (formerly Western Light and Telephone Company)	Electric Interconnection Contract dated March 2, 1964		Indefinitely and upon 3-years' written notice.	Interchange of power and energy
138. City of Beloit, Kansas and WestPlains Energy	Amendatory Agreement No. 1 to Municipal Interconnection Contract			

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CENTRAL ILLINOIS LIGHT COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
139. Corn Belt Electric Cooperative	Firm Point-to-Point Transmission Service under Central Illinois Light Company's Open Access Transmission Tariff	FERC Electric Tariff No. 4, Service Agreement No. 26, effective 6-1-97 (approved in FERC Docket No. ER97-3568-000)	5 years beginning 6/1/97 (terminates 6/1/02).	Firm point-to-point transmission service, 69KV delivery service, ancillary services, and real-power loss service.
140. City Water, Light & Power (Springfield, Illinois)	Borderline customer energy payback	None	None	Payback of the net amount of energy consumed by borderline customers on a periodic basis based on a mutually agreed upon schedule.

Issued by: James P. Torgerson, Issuing Officer
Issued on: October 30, 2003

Effective: October 31, 2003

CINERGY SERVICES, INC.

I. PSI ENERGY, INC.

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
141. Interconnection and Facilities Agreement with Hoosier Energy Rural Electric Cooperative, Inc. Dated: 3/9/71	222	Initial term ending on 3/9/96; thereafter requires 5-years' notice.	Local Facilities Service pursuant to Section 1 F - Wheeling.
142. Power Coordination Agreement with Wabash Valley Power Association Dated: 3/1/96	267	Initial term ending on 12/31/14; thereafter requires 3-years' notice.	
143. Interconnection and Facilities Agreement with American Municipal Power - Ohio, Inc. Dated: 9/1/83	237	Initial term ending on 12/31/86; with automatic annual renewals; termination requires 1-year's notice.	Transmission Service Agreement.
144. Transmission and Local Facilities Ownership, and Maintenance Agreement with WVPA and IMPA Dated: 11/5/85	253	21st anniversary after the death of the last surviving Kennedy grandchild.	Bulk Transmission System Use, Common Transmission System Use and Local Facilities.
145. Supply of Electric Service to Municipal Electric System (Towns of Brooklyn, Coatesville, Dublin, Dunreith, Hagerstown, Knightstown, Lewisville, Montezuma, New Ross, Rockville, South Whitely, Spiceland, Staughn, Thorntown, Veedersburg and Williamsport) Dated: 8/23/95	MUN	Initial term of 5 years with automatic 12-month renewals; either party may terminate with 12-months' written notice by either party.	FERC Electric Tariff Original Vol. No. 1.
146. Supply of Electric Service to Jackson County REMC Dated: 8/23/95	REMC-1	Initial term of 5 years with automatic 12-month renewals; either party may terminate with 12-months' written notice by either party.	FERC Electric Tariff Original Vol. No. 2.

CINERGY SERVICES, INC. – CONT'D.

I. PSI ENERGY, INC.

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
147. City of Logansport Dated: 7/2/93	256	Initial term ending on 12/31/02 thereafter requires 4-years' notice prior to the expiration date. If not terminated in 2002, the agreement continues for 8 years thereafter and requires 4-years' notice prior to the expiration date.	

II. THE CINCINNATI GAS AND ELECTRIC COMPANY

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
148. Lease of Conesville-Corridor 345kv Transmission Line with Columbus Southern Power Company & DP&L (CCD) Dated: 8/26/74	37	21st anniversary after the death of the last survivor of long list of children.	Lease terms spell out the billings by AEP to CG&E/DP&L.

CINERGY SERVICES, INC. – CONT'D.

II. THE CINCINNATI GAS AND ELECTRIC COMPANY

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
149. Interconnection Agreement with East Kentucky Power Cooperative, Inc. Dated: 3/1/84	43	Initial term ending on 12/31/92; continues thereafter unless terminated with 4-years' notice on any anniversary date.	Concurrent Exchange Service per the 138kv Interconnection Agreement.
150. Facility Agreement with Ohio Valley Electric Cooperation Dated: 5/1/92	49	Continues in effect annually unless terminated with at least 1-year's notice.	Facility Agreement.
151. Interconnection Agreement with American Municipal Power - Ohio, Inc. Dated: 4/1/94	53	Continues in effect annually unless terminated with at least one 1-year's notice.	E-Bulk Transmission Service.
152. Transmission Agreement with Ohio Valley Electric Corp. Dated: 7/10/53		Until the termination of the Inter-Company Power Agreement.	Basic Transmission Agreement - Miami Fort Units #7 & #8.

CINERGY SERVICES, INC. – CONT'D.

II. THE CINCINNATI GAS AND ELECTRIC COMPANY

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
153. Basic Transmission & Facility Agreements with Dayton Power & Light Company (CD) Dated: 3/1/84		Initial term ending on 3/1/34; thereafter continues automatically for successive 5-year periods, termination requires at least 2-years' notice.	
154. Basic Transmission & Facility Agreements with Dayton Power & Light Company and Columbus Southern Company (CCD) Dated: 10/1/64		Initial term ends 50 years from execution; thereafter continues automatically for successive 5-year periods, termination requires at least 2-years' notice for Basic Agreements Transmission Agreements #1 and #2.	Basic Transmission Agreement #1 - Beckjord-Greene Line.
155. Dated: 12/29/66		Same as Basic Transmission Agreement #1 above.	Basic Transmission Agreement #2 - Stuart Station (Five Lines).
156. Dated: 7/17/73		21st anniversary after the death of the last survivor of long list of children.	Lease of Conesville Unit 4 Common Facilities.
157. Dated: 3/1/73		Same as Basic Transmission Agreements #1 above.	Basic Transmission Agreement #3 - Conesville Corridor.

CINERGY SERVICES, INC. – CONT'D.

II. THE CINCINNATI GAS AND ELECTRIC COMPANY

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
158. Dated: 8/15/77		Same as Basic Transmission Agreements #1 above.	Basic Transmission Agreement #4 - Zimmer Transmission.

III. UNION LIGHT, HEAT AND POWER COMPANY

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
159. Interconnection Agreement with East Kentucky Power Cooperative, Inc. Dated: 3/1/84	13	Initial term ending on 12/31/92; continues thereafter unless terminated with 4-years' notice on any anniversary date.	Concurrent Exchange Service per the 138kv Interconnection Agreement (per letter of concurrence).

CITY WATER, LIGHT & POWER (SPRINGFIELD, ILLINOIS)

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
160. Central Illinois Light Company		None	Borderline customer energy payback

HOOSIER ENERGY REC[2]/

Customer Name	Contract Title	Term of Agreement	Services and Transaction Terms
161. Western Indiana Energy REMC	Wholesale Power Contract (10/6/97)	01/01/20	Full Requirements.
162. Henry County REMC	Wholesale Power Contract (4/16/84)	01/01/20	Full Requirements.
163. Clark County REMC	Wholesale Power Contract (7/10/78)	01/01/20	Full Requirements.
164. Morgan County REMC	Wholesale Power Contract (3/26/60)	01/01/20	Full Requirements.
165. Harrison County REMC	Wholesale Power Contract (3/22/60)	Original 40 years; 01/01/20 by 12/28/76 amendment.	Full Requirements.
166. Johnson County REMC	Wholesale Power Contract (3/22/60)	Original 40 years; 01/01/20 by 12/28/76 amendment.	Full Requirements.
167. Whitewater Valley REMC	Wholesale Power Contract (1/1/94)	01/01/20	Full Requirements.
168. Dubois REC, Inc.	Wholesale Power Contract (3/17/60)	Original 40 years; 01/01/20 by 12/11/76 amendment.	Full Requirements.
169. Southern Indiana REC, Inc.	Wholesale Power Contract (4/9/60)	Original 40 years; 01/01/20 by 12/10/76 amendment.	Full Requirements.
170. Southeastern Indiana REMC	Wholesale Power Contract (3/25/60)	Original 40 years; 01/01/20 by 1/17/77 amendment.	Full Requirements.
171. Utilities District of Western Indiana REMC	Wholesale Power Contract (4/9/60)	Original 40 years; 01/01/20 by 12/10/76 amendment.	Full Requirements.
172. Daviess-Martin County	Wholesale Power Contract (3/22/60)	Original 40 years; 01/01/20 by 12/28/76 amendment.	Full Requirements.
173. Decatur County REMC	Wholesale Power Contract (3/25/60)	Original 40 years; 01/01/20 by 3/24/77 amendment.	Full Requirements.

[2]/ Please note that because Hoosier Energy REC is not regulated by the Commission, its contracts do not have FERC rate schedule numbers.

HOOSIER ENERGY REC – CONT'D.

Customer Name	Contract Title	Term of Agreement	Services and Transaction Terms
174. Bartholomew County REMC	Wholesale Power Contract (3/26/60)	Original 40 years; 01/01/20 by 2/8/77 amendment.	Full Requirements.
175. Shelby County REMC	Wholesale Power Contract (3/21/60)	Original 40 years; 01/01/20 by 12/20/76 amendment.	Full Requirements.
176. Rush County REMC	Wholesale Power Contact (4/19/60)	Original 40 years; 01/01/20 by 12/28/76 amendment.	Full Requirements.
177. Orange County REMC	Wholesale Power Contract (3/26/60)	Original 40 years; 01/01/20 by 12/30/76 amendment.	Full Requirements.
178. Troy Utilities Service Board	Agreement for Supply of Electric Energy (6/18/96)	Initial 10-year term with 1-year's notice.	Full Requirements.
179. PECO Energy Co. (2 agreements)	Unit Power Sales Agreement (2/10/97) Unit Power Sales Agreement (7/24/97)	1/1/97 through 12/31/06 1/1/98 through 12/31/07	Unit power sale - includes transmission service to Cinergy.
180. Southern Indiana Gas & Electric Co.	Agreement for Sale of Firm Power (6/14/89) Revised Agreement for Sale of Firm Power (1/23/92)	6/14/89 through 3/15/00 1/23/92 through 3/15/00	Firm power purchase - includes transmission service to Hoosier Energy interconnection (through Sigeco).
181. Big Rivers Electric Corp. (2 agreements)	Unit Power Agreement (9/14/90) Peaking Power Agreement (3/11/93)	12/31/00 6/1/93 through 9/30/99	Unit power purchase and firm power purchase - both include transmission service to Hoosier Energy interconnection.

HOOSIER ENERGY REC – CONT'D.

Customer Name	Contract Title	Term of Agreement	Services and Transaction Terms
182. United States of America, Indiana Statewide Rural Electric Coop., Inc., Public Service Company of Indiana, Inc., and Southern Indiana Gas & Electric Co.	Interconnection Agreement (3/19/71), Rate Schedule FERC No. 222	25 years with 5-years' notice.	Interconnection agreement - transmission service.
183. Hoosier Energy Division of Indiana Statewide Rural Electric Cooperative, Inc., Public Service Company of Indiana, Inc., and Southern Indiana Gas & Electric Co.	Interconnection Agreement (4/15/77)	25 years with 5-years' notice.	Interconnection agreement.
184. Virginia Electric & Power Co.	Unit Power Sales Agreement (3/12/84)	12/31/99	Unit power sale - includes transmission service to PSI.
185. Wabash Valley Power Assoc., Inc.	Power Sales Agreement (10/28/87)	12/31/17	Firm power sale - includes transmission service to PSI.
186. Indianapolis Power & Light Co.	Interconnection Agreement (12/1/81)	12/31/10	Transmission service.
187. East Kentucky Power Cooperative	System Power Sales Agreement (3/31/97)	12/31/02	Firm power sale – includes transmission service to PSI.

INDIANA MUNICIPAL POWER AGENCY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
188. PSI Energy, Inc. and Wabash Valley Power Association, Inc.	Transmission and Local Facilities Ownership, Operation and Maintenance Agreement between Wabash Valley Power Association, Inc., Indiana Municipal Power Agency and PSI Energy, Inc., as amended and supplemented	PSI Energy Rate Schedule FERC No. 253	21st anniversary after the death of the last surviving Kennedy grandchild.	Bulk Transmission System Use, Common Transmission System Use and Local Facilities
189. Advance, IN; Anderson, IN; Bainbridge, IN; Bargersville, IN; Centerville, IN; Columbia City, IN; Covington, IN; Crawfordsville, IN; Darlington, IN; Edinburgh, IN; Flora, IN; Frankfort, IN; Frankton, IN; Greendale, IN; Greenfield, IN; Jamestown, IN; Ladoga, IN; Lawrenceburg, IN; Lebanon, IN; Linton, IN; Middletown, IN; Paoli, IN; Pendleton, IN; Peru, IN; Rensselaer, IN; Richmond, IN; Rising Sun, IN; Scottsburg, IN; Tipton, IN; Washington, IN; and Waynetown, IN	Member Power Sales Contracts	N/A	04/01/32	Full requirements service.
190. Pittsboro, IN	Power Supply Agreement	N/A	12/31/06	Full requirements service.

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INDIANA MUNICIPAL POWER AGENCY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
191. Central Illinois Public Service Co.	Interconnection Agreement		12/31/05 and thereafter until either party provides 3-years' written termination notice.	
192. Louisville Gas & Electric Co.	Interconnection Agreement		03/31/98 and thereafter until either party provides 2-years' written termination notice.	
193. Wabash Valley Power Association Inc.	Interconnection Agreement		12/31/98 and thereafter until either party provides 2-years' written termination notice.	
194. Indianapolis Power & Light Co.	Interconnection Agreement		12/31/10 and thereafter for 3-year terms until either party provides 2-years' written termination notice.	
195. Indiana Michigan Power Company (AEP)	Agreement between IMPA and Indiana and Michigan Electric Co.		12/31/85 and thereafter until either party provides 1-year written termination notice.	
196. City of Columbia City, IN and Indiana Michigan Power Co.	Municipal Resale Service Agreement		05/14/03 and thereafter for 3-year terms until either party provides 3-years' written termination notice.	Full requirements service.

Issued by: James P. Torgerson, Issuing Officer
Issued on: October 30, 2003

Effective: October 31, 2003

INDIANA MUNICIPAL POWER AGENCY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
197. Indiana Michigan Power Co.	Operating and Facilities Agreement		12/31/08 and thereafter until either party provides 1-year written termination notice.	
198. Northern Indiana Public Service Co.	Service Agreement for IMPA Member, Rensselaer		12/31/02	

INDIANAPOLIS POWER & LIGHT COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
199. Hoosier Energy Rural Electric Cooperative, Inc.	Interconnection Agreement, dated December 1, 1981, as amended and supplemented	Rate Schedule FERC No. 18	12/31/10	Transmission services.
200. Wabash Valley Power Association, Inc.	Amendment No. 7 to the Agreement for Supply of Electric Energy for Wholesale-For-Resale, dated as of July 1, 1997	Supplement No. 8 to Rate Schedule FERC No. 21	Initial five (5)-year term expires 07-01-02; however, agreement may be renewed for a successive (5) five-year term, unless terminated in writing. Thereafter, agreement may be renewed yearly unless terminated in writing 120 days before the date of agreement expires.	Wholesale to retail power for Boone County REMC.

INTERNATIONAL TRANSMISSION COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
201. Consumers Power Company, The Detroit Edison Company, Toledo Edison Company	Operating Agreement, dated March 1, 1966, including Amendments	International Transmission Rate Schedule #11	8/1/05	Emergency Energy
202. Consumers Power Company, The Detroit Edison Company, and Indiana & Michigan Electric Company (American Electric Power Corporation)	Operating Agreement, dated March 1, 1966	International Transmission Rate Schedule #12	8/1/05	Emergency Energy
203. Consumers Power Company, The Detroit Edison Company, and Northern Indiana Public Service Company	Operating Agreement, dated May 1, 1979	International Transmission Rate Schedule #26	5/8/14	Emergency Energy
204. Consumers Power Company, The Detroit Edison Company, Toledo Edison Company, Ohio Power Company, and Indiana & Michigan Electric Company (American Electric Power Corporation)	Facilities Agreement, dated September 1, 1967		8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice.	Facility Coordination

INTERNATIONAL TRANSMISSION COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
205. Consumers Power Company and The Detroit Edison Company	Ludington Pumped Storage Hydroelectric Generating Plant Ownership and Operating Agreements, both dated August 20, 1969	P-2680	2020	Plant Ownership, Transmission and Energy Delivery
206. Consumers Power Company and The Detroit Edison Company	Ludington Project Transmission Facilities Agreement, dated August 20, 1969		Upon termination of Ludington Ownership Agreement, dated 08/20/1969	Ownership, design, construction, operation, use and maintenance of Ludington Project Facilities, including sharing of expenses.
207. Consumers Power Company and The Detroit Edison Company	Transmission Facilities Agreement, dated August 20, 1969		Upon termination of Ludington Ownership Agreement, dated 08/20/1969	Ownership, design, construction, operation, use and maintenance of Ludington Non-Project Facilities, including sharing of expenses.
208. Consumers Power Company, The Detroit Edison Company and The Toledo Edison Company	Facilities Agreement, dated March 1, 1973	International Transmission Rate Schedule #19	8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice.	Facility Coordination

INTERNATIONAL TRANSMISSION COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
209. Michigan Public Power Agency	Belle River Participation Agreement between The Detroit Edison Company and Michigan Public Power Agency, dated December 1, 1982	International Transmission Rate Schedule #31	Upon Retirement of Belle River Power Plant	Transmission and Energy Delivery
210. Michigan Public Power Agency	Belle River Transmission Ownership and Operating Agreement between The Detroit Edison Company and Michigan Public Power Agency, dated December 1, 1982		Upon Retirement of Belle River Power Plant	
211. Michigan South Central Power Agency	Limited Term Transmission Service Agreement between The Detroit Edison Company and The Village of Clinton, Michigan, dated September 21, 1987, including Interconnection Agreement between MSCPA and Detroit Edison, dated December 1, 1982	International Transmission Rate Schedule #28	Open Ended, 12-month notice	Interconnection
212. City of Wyndotte	Interconnection Agreement between The City of Wyndotte and The Detroit Edison Company, dated March 1, 1978	International Transmission Rate Schedule #23	Open Ended – 6 –month notice	Energy Exchange
213. The City of Detroit, Michigan	Power Supply Agreement between The City of Detroit, Michigan and The Detroit Edison Company, dated October 23, 1991	International Transmission Rate Schedule #32		

Midwest ISO
FERC Electric Tariff, Second Revised Volume No. 1

First Revised Sheet No. 431
Superseding Original Sheet No. 431

LG&E ENERGY COMPANIES

I. LOUISVILLE GAS & ELECTRIC COMPANY

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services & Transaction Terms Grandfathered
214. Implementing Agreement between Louisville Gas & Electric and Indiana Municipal Power Agency	31	Existing transaction ends in 2002.	Limited term sale of capacity and energy under Service Schedule E of IMPA Interconnection Agreement.
215. Interconnection Agreement between Louisville Gas & Electric and East Kentucky Power Cooperative	25	Term of existing transaction ends in 2005.	Sale of capacity and energy under service Schedule E (Interruptible Sales of Capacity and Energy) to Supplement No. 8 to the EKPC Interconnection Agreement.
216. Interconnection Agreement between Louisville Gas & Electric and East Kentucky Power Cooperative	25	Evergreen year-to-year service with 2-years' notice for termination.	Exchange of capacity and energy from EKPC including losses to serve the Salt River load station.
217. Interconnection Agreement between Louisville Gas & Electric and Indiana Municipal Power Agency	31	Evergreen year-to-year service with 2-years' notice for termination.	A 20 MW Limited Term transaction ending in 2002 under Service Schedule E3. Service Schedule H of the IMPA Interconnection Agreement is the transmission delivery of capacity and energy from Trimble County Unit 1, as well as Backup Power and/or Replacement Energy purchased under Service Schedules G or J.

Issued by: James P. Torgerson, Issuing Officer
Issued on: October 30, 2003

Effective: October 31, 2003

LG&E ENERGY COMPANIES – CONT'D.

II. KENTUCKY UTILITIES

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services & Transaction Terms Grandfathered
218. Transmission Lease Agreement between Louisville Gas & Electric and East Kentucky Power Cooperative	Docket No. ER98-13-000	Term through 2019.	Include the whole agreement which covers the lease of a transmission facility.
219. Interconnection Agreement with TVA, CG&E and Louisville Gas & Electric Company Dated: 9/23/57	29 (FERC Docket No. ER95-50-000)	Initial term ending on 6/30/97; thereafter continues for successive annual terms, termination requires 1-year's notice.	Transmission services provided under Article III - Tolls Applicable to all Energy Transactions.
220. Interconnection Agreement Between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc.	203, ER94-209-000	Agreement is extended until 4-years' notice is given.	Services considered grandfathered include the ability to establish delivery points to serve load on the other party's transmission system and to charge for such service at the agreed upon rates. Also included as grandfathered should be the exchange of energy including losses to serve are loads stations for the delivery points established.
221. Transmission Agreement Between Kentucky Utilities Company and East Kentucky Power Cooperative, Inc. dated February 9, 1995	ER95-580-000	Initial term of 10 years with continuation thereafter until 2-years' prior written notice.	Established a delivery point for a thin-slab steel mill plant, located near Warsaw, Kentucky in Gallatin County, Kentucky to serve the Gallatin Steel load. Services considered grandfathered include this complete agreement and the exchange of energy including losses to serve the load station for the above mentioned delivery points.
222. Agreement between Electric Energy, Inc. and Central Illinois Public Service Company, Illinois Power Company, Kentucky Utilities Company, Middle South Utilities, Inc. and Union Electric Company	199	Shall remain in force through 12/31/05 or with a minimum of 5-years' notice of cancellation.	Delivery of Firm Additional power to EEI; Receipt of Surplus power from EEI; Delivery of Supplemental power to EEI; Receipt of Permanent power from EEI; Receipt of Released Capacity from EEI.

LG&E ENERGY COMPANIES – CONT'D.

II. KENTUCKY UTILITIES

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services & Transaction Terms Grandfathered
223. City of Owensboro City Utility Commission and Kentucky Utilities Company	Supplement No. 3 to Rate Schedule FPC No. 74	In effect until at least 2020 unless earlier terminated by either party giving 4 years' advance notice of termination, but early termination only allowed if OMU's system demand and reserve reach 80% of Station 2 net capacity.	Purchases from Owensboro; Sales to Owensboro; Purchase of SEPA power and energy for Owensboro and delivery to Owensboro.
224. Inter-Company Power Agreement among Ohio Valley Electric Corp., et al.	13	Indefinitely.	Purchase of Surplus Power and Surplus Energy from OVEC; Delivery of Supplemental Power to OVEC; Receipt and Delivery of Transmission Losses; Receipt of Permanent Power from OVEC.

LG&E ENERGY COMPANIES – CONT'D.

II. KENTUCKY UTILITIES

Customer Name and Contract Title	Rate Schedule No.	Termination Provisions	Services & Transaction Terms Grandfathered
225. Interconnection Agreement between Tennessee Valley Authority and Kentucky Utilities Company	FERC Rate Schedule 93, Last Filing ER95-1478-000	Agreement is extended until a 2-years' notice is given.	The ability to establish delivery points to serve load on the other party's transmission system and to charge for such service at the agreed upon rates. Also included should be the exchange of energy including losses to serve area loads stations for the above mentioned delivery points.

In addition, Louisville Gas & Electric Company indicates that it has entered into the following contracts:

Contract executed by The United States of America acting by and through the Southeastern Power Administration and Kentucky Utilities Company. May be terminated on June 30th of any year where written notice was given at least 37 months in advance. Grandfathered service shall include Purchases of Capacity and Energy Allocated for Customers in Kentucky Utilities Service Area: Barbourville, Bardstown, Bardwell, Benham, Corbin, Falmouth, Frankfort, Madisonville, Nicholasville, Paris Providence and Owensboro. Filed in FERC Docket No. ER97-1075.

SEPA Power Supply Contracts grandfathered for delivery of purchased power and energy purchased for the following cities in Kentucky Utilities Service Area: Barbourville, Bardstown, Bardwell, Benham, Corbin, Falmouth, Frankfort, Madisonville, Nicholasville, Paris and Providence. May be terminated by the Municipal with 36 months notice and by KU 60 months notice and 37 months under certain circumstances. Filed in FERC Docket No. ER97-1075.

Bundled Municipal Contracts with: City of Bardwell, City of Madisonville (6 agreements), City of Providence (2 agreements), City of Bardstown, City of Frankfort, City of Nicholasville (3 agreements), City of Paris, City of Falmouth, City of Barbourville, City of Corbin, City of Benham and Berea College. Rate Schedule is Rate Schedule WPS-87(M). Contracts require 5 years' written notice to terminate.

LINCOLN ELECTRIC SYSTEM

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
226. Auburn, Grand Island, KBR Rural Public Power District, Lincoln Electric System, Municipal Energy Agency of Nebraska, Nebraska Public Power District	Participation and Cost Sharing Agreement dated May 8, 1998	N/A	Initial term of 20 years ending on 05/08/18 with 4-years' written notice.	Transmission services related to the Springview Wind Turbines.
227. City of Lincoln and Omaha Public Power District	Electric Interconnection and Interchange Agreement dated June 20, 1988	N/A	Initial term ending 01/01/15 and thereafter from year-to-year with 4-years' written notice.	Interconnection agreement - transmission service.
228. Nebraska Public Power District ("NPPD")	Sheldon Station Participation Power Sales Agreement dated August 7, 1980	N/A	In effect until December 31 of the year in which either (a) the final maturity occurs on any debt, including refunding debt, incurred by NPPD or (b) NPPD permanently retires and removes Sheldon Station from operation, whichever occurs last.	Transmission services related to the Sheldon Generating Station.
229. Nebraska Public Power District ("NPPD")	Interconnection Agreement dated May 1, 1977	N/A	Initial term of 30 years or until termination of all service schedules (whichever occurs last), with 4 years' written notice	Interconnection agreement and transmission service schedules between Lincoln and NPPD.

LINCOLN ELECTRIC SYSTEM – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
230. Consumers Public Power District	Power Sales Contract dated June 1, 1968	N/A	In effect until 09/22/03 with 18 months' notice of intent to continue to operate nuclear facility; thereafter, termination notice is 1-year's advance notice. (Note: Schedule 4 of LES/NPPD Interconnection Agreement amended certain transmission services to 05/01/07 or the date Cooper Nuclear Station ("CNS") is decommissioned, whichever is later.	Transmission services related to the CNS.
231. Nebraska Public Power District ("NPPD")	Gerald Gentleman Generating Station ("GGGS") Participation Power Sales Agreement dated August 7, 1980	N/A	In effect until December 31 of the year in which either (a) the final maturity occurs on any debt, including refunding debt, incurred by NPPD or (b) NPPD permanently retires and removes GGGS from operation, whichever occurs last.	Transmission services related to the GGGS.
232. U.S. Department of Energy, Western Area Power Administration ("WAPA")	Contract for Electric Service dated December 27, 1993	N/A	Pursuant to Amendment No. 1, in effect until 12/31/20.	Transmission services related to WAPA Firm Power Contracts.

LINCOLN ELECTRIC SYSTEM – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
233. Nebraska Public Power District and Basin Electric Power Cooperative	Transmission Service Contract dated April 29, 1977	N/A	In effect until 12/31/40, unless otherwise terminated by various contract Articles.	Transmission services related to the Missouri Basin Power Project-Laramie River Station.
234. Basin Electric Power Cooperative; Tri-State Generation and Transmission Association, Inc.; Missouri Basin Public Power Financing Corporation; City of Lincoln; Heartland Consumers Power District; and Wyoming Municipal Power Agency	Missouri Basin Power Project, Laramie River Electric Generation Station and Transmission System Participation Agreement dated May 25, 1977 (with supplements and amendments), including, the Power and Energy Sales Supplement dated January 25, 1982 and the Operating Supplement dated November 15, 1979	N/A	Indefinitely.	Transmission services related to the Missouri Basin Power Project-Laramie River Station.
235. Associated Electric Cooperative, Inc.; Kansas City Power & Light Company; St. Joseph Light & Power Company; Nebraska Public Power District; Omaha Public Power District; City of Lincoln; Iowa Power Inc.	Coordinating Agreement dated March 5, 1990	N/A	Initial term of 50 years with 4-years' written notice thereafter.	Transmission services related to the Cooper-Fairport-St. Joseph 345 kv Interconnection.
236. Nebraska Public Power District; Omaha Public Power District; City of Lincoln; Iowa Power Inc.	Transmission Line Terminal Facilities Agreement dated March 5, 1990	N/A	Initial term of 50 years with 4-years' written notice thereafter.	Transmission services for the Cooper Station Terminal of the Cooper-Fairport-St. Joseph 345 kv interconnection.

LINCOLN ELECTRIC SYSTEM – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
237. Nebraska Public Power District	MINT Transmission Rights Exchange Agreement dated February 15, 1990	N/A	For as long as the MINT Coordinating Agreement remains in effect and LES remains a participant in MINT project.	Transmission services for the Cooper-Fairport-St. Joseph 345 kv interconnection.
238. Associated Electric Cooperative, Inc.	Letter Agreement Concerning the Reservation of Firm Transmission Service between Associated Electric Cooperative, Inc. and Lincoln Electric Service	N/A	Initial term is for 5 years commencing 11/1/96 and beginning on first anniversary; and each anniversary thereafter, the term will extend automatically for one additional year. One month's notice required to withdraw commitment of firm capacity.	Transmission services related to the Cooper-Fairport-St. Joseph 345 kv Interconnection.
239. State of Nebraska, Health and Human Services System ("HHSS")	Power Supply and Wheeling Agreement dated January 1, 1999, which supplements Contract #1-07-60-P0117 (in which HHSS receives power and energy from the United States through the U.S. Dept. of Energy-Western Area Power Administration)	N/A	At the time of termination of the HHSS-WAPA Contract No. 1-07-60-P0117 or upon one year's notice, whichever occurs first.	Transmission services related to the WAPA State of Nebraska-HHSS Contract

LINCOLN ELECTRIC SYSTEM – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
240. University of Nebraska at Lincoln ("UNL")	Power Supply and Wheeling Agreement dated January 1, 1999, which supplements Contract #1-07-60-P0109 (in which UNL receives power and energy from the United States through the U.S. Dept. of Energy-Western Area Power Administration)	N/A	At the time of termination of the WAPA-UNL Contract No. 1-07-60-P0109 or upon one year's notice, whichever occurs first.	Transmission services related to the WAPA-UNL Contract
241. Municipal Energy Agency of Nebraska ("MEAN")	Laramie River Station Ownership Representation Agreement between City of Lincoln and MEAN, dated February 1983	N/A	At termination of the Missouri Basin Power Project, Laramie River Electric Generation and Transmission System Participation Agreement, dated 03/15/77, or pursuant to Article 23, whichever occurs first.	Transmission services related to the Missouri Basin Power Project-Laramie River Station.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
242. The Detroit Edison Company, Indiana & Michigan Electric Company and First Energy (Successor to The Toledo Edison Company and Ohio Power Company)	Facilities Agreement dated September 1, 1967, effective 6/2/1969	Rate Schedule No. 1	8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice.	Construction and operation of Interconnection Facilities. No cost sharing.
243. The Detroit Edison Company and First Energy (Successor to The Toledo Edison Company)	Operating Agreement dated March 1, 1966, effective 6/2/1969	Rate Schedule No. 2	8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice	Interconnected operations with reference to transmission services under open access tariffs of the parties.
244. The Detroit Edison Company and Indiana & Michigan Electric Company (American Electric Power Service Corporation)	Operating Agreement dated 3/1/1966, effective 6/2/1969	Rate Schedule No. 3	8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice	Interconnected operations with reference to transmission services under open access tariffs of the parties.
245. Indiana & Michigan Electric Company (American Electric Power Service Corporation)	Facilities Agreement, 9/1/1971, effective on or about 9/1/1971	Rate Schedule No. 4	8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice	Construction and operation of Interconnection Facilities. No cost sharing.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC – cont'd.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
246. Detroit Edison Company and First Energy (Successor to The Toledo Edison Company)	Facilities Agreement dated 3/1/1973, effective 9/1/1974	Rate Schedule No. 5	8/1/2005 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice.	Construction and operation of Interconnection Facilities. No cost sharing.
247. Northern Indiana Public Service Company	Barton Lake/Batavia 12/1/1977 Facilities Agreement, First Revised Rate Schedule, effective 5/1/2001	Rate Schedule No. 6	5/8/2014 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice	Construction and operation of Interconnection Facilities. No cost sharing since 5/1/2001.
248. The Detroit Edison Company and Northern Indiana Public Service Company	Operating Agreement dated 5/1/1979, effective 5/1/1979	Rate Schedule No. 7	5/8/2014 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice.	Interconnected operations with reference to transmission services under open access tariffs of the parties.
249. City of Holland, MI	Coordinated Operating Agreement, dated and effective on or about 4/1/1981; Black River Interconnection Agreement, dated and effective on or about 2/20/1980	Rate Schedule No. 8	For both agreements, by mutual agreement or upon 60 months notice.	For COA, interconnected operations with reference to transmission services under open access tariffs of METC. For FA, construction and operation of Interconnection Facilities. Holland reimburses METC for O&M costs incurred.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC – cont'd.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
250. Michigan South Central Power Agency ("MSCPA")	MSCPA (Coordinated Operating Agreement, dated 11/6/1981, effective 12/3/1982); Village of Clinton (Facilities Agreement, dated and effective 12/1/1982); City of Coldwater (Facilities Agreement, dated and effective 12/31/1996); Marshall (Facilities Agreement, dated 11/20/1980, effective 12/3/1982); Hughes Road (Facilities Agreement, dated 11/20/1980, effective 4//1/1982); Moore Rd-Batavia (Facilities Agreement, dated 11/20/1980, effective 4/1/1982).	Rate Schedule No. 9	For COA, by mutual agreement or upon 60 months notice. For FAs, earlier of (a) retirement of jointly-owned transmission lines or (b) retirement of related generating plant.	For COA, interconnected operations with reference to transmission services under open access tariffs of METC. For FAs, construction and operation of Interconnection Facilities. Depending on the FA O&M costs are either (a) shared by the parties in proportion to the ownership interests in the jointly-owned facilities or (b) MSCPA reimburses METC for O&M costs incurred.
251. City of Lansing, Board of Water and Light ("City of Lansing")	City of Lansing (Facilities Agreement-Oneida, dated and effective on or about 12/1/1982)	Rate Schedule No. 10	12/1/2017 and year to year thereafter until terminated by a party giving the other parties at least 4 years' notice.	Construction and operation of Interconnection Facilities. Lansing reimburses METC for certain O&M costs incurred.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC – cont'd.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
252. Wolverine Power Supply Cooperative, Inc. (WPSC") and the City of Grand Haven, Michigan ("Grand Haven")	Sternberg Road Interconnection Facilities Agreement, dated 4/19/1990 and effective 11/26/1990	Rate Schedule No. 10	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. Grand Haven reimburses METC for certain O&M costs incurred.
253. Wolverine Power Supply Cooperative, Inc. ("WPSC")	Bradley Interconnection Facilities Agreement, dated 7/17/1989 and effective 10/5/1989.	Rate Schedule No. 10	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. WPSC reimburses METC for O&M costs incurred.
254. Wolverine Power Supply Cooperative, Inc. ("WPSC")	Campbell Unit No. 3 Transmission Ownership and Operating Agreement, dated 8/15/1980	Rate Schedule No. 10	Earlier of (a) retirement of jointly-owned transmission facilities or (b) retirement of related generating plant.	Provides (a) Joint ownership of designated line and (b) specific capacity rights to use of METC transmission system. Parties share line O&M costs in proportion to their ownership interests.
255. Wolverine Power Supply Cooperative, Inc. ("WPSC")	Wolverine Transmission Ownership and Operating Agreement, dated 7/27/1992	Rate Schedule No. 10	Earlier of (a) retirement of jointly owned transmission facilities or (b) termination of related firm requirements agreement.	Provides (a) Joint ownership of designated line and (b) specific capacity rights to use of METC transmission system. Parties share line O&M costs in proportion to their ownership interests.
256. Michigan Public Power Agency ("MPPA")	Campbell Unit No. 3 Transmission Ownership and Operating Agreement, dated 10/1/1979	Rate Schedule No. 10	Earlier of (a) retirement of jointly-owned transmission facilities or (b) retirement of related generating plant.	Provides (a) Joint ownership of designated line and (b) specific capacity rights to use of METC transmission system. Parties share line O&M costs in proportion to their ownership interests.
257. Michigan Public Power Agency ("MPPA")	Belle River Transmission Ownership and Operating Agreement, dated 12/1/1982	Rate Schedule No. 10	Earlier of (a) retirement of jointly-owned transmission facilities or (b) retirement of related generating plant.	Provides (a) Joint ownership of designated line and (b) specific capacity rights to use of METC transmission system. Parties share line O&M costs in proportion to their ownership interests.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC – cont'd.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
258. City of Lansing, Board of Water and Light	Facilities Agreement - Delhi Interconnection, dated and effective on or about 2/1/1981	Rate Schedule No. 11	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. No cost sharing.
259. Wolverine Power Supply Cooperative, Inc.	Facilities Agreement - Redwood Interconnection, dated 9/1/1981, effective 4/1/1982	Rate Schedule No. 12	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. No cost sharing.
260. Wolverine Power Supply Cooperative, Inc.	Facilities Agreement - Alba Interconnection, dated 9/1/1981, effective 4/1/1982	Rate Schedule No. 13	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. No cost sharing.
261. Wolverine Power Supply Cooperative, Inc., Successor to Northern Michigan Electric Cooperative, Inc.	Facilities Agreement - Livingston Interconnection, dated 9/1/1981, effective 4/1/1982	Rate Schedule No. 14	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. WPSC reimburses METC for certain O&M costs incurred.
262. Wolverine Power Supply Cooperative, Inc., Successor to Northern Michigan Electric Cooperative, Inc.	Facilities Agreement - Airport Interconnections, dated 1/26/1982, effective 4/1/1982	Rate Schedule No. 15	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. WPSC reimburses METC for certain O&M costs incurred.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC – cont'd.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
263. Wolverine Power Supply Cooperative, Inc., Successor to Northern Michigan Electric Cooperative, Inc.	Facilities Agreement - Pere Marquette Interconnection, dated 12/30/1982, effective 1/1/1983	Rate Schedule No. 16	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. WPSC reimburses MET for certain O&M costs incurred.
264. Wolverine Power Supply Cooperative, Inc. and City of Zeeland, Board of Public Works	Blendon Interconnections Facilities Agreement, dated 5/22/1996, and effective 8/1/1996	Rate Schedule No. 17	8/1/2031 and year to year thereafter until terminated by (a) mutual consent or (b) a party giving the other parties at least one year's written notice upon the expiration of the term or upon December 31 of any successive year thereafter.	Construction and operation of Interconnection Facilities. WPSC reimburses METC for certain O&M costs incurred.
265. Wolverine Power Supply Cooperative, Inc. ("WPSC")	Grand Traverse Interconnections Facilities Agreement, dated 8/1/1998, effective 1/23/1999	Rate Schedule No. 18	By mutual agreement or upon 60 months' notice.	Construction and operation of Interconnection Facilities. WPSC reimburses METC for certain O&M costs incurred.
266. Michigan South Central Power Agency ("MSCPA")	Project I Transmission Ownership and Operating Agreement, dated 11/20/1980	Rate Schedule No. 30	Earlier of (a) retirement of jointly-owned transmission facilities or (b) termination of related generating plant.	Provides (a) joint ownership of designated line and (b) specific capacity rights to use of METC transmission system. Parties share line O&M costs in proportion to ownership interests.

MICHIGAN ELECTRIC TRANSMISSION COMPANY LLC – cont'd.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
267. The Detroit Edison Company	Ludington Project Transmission Facilities Agreement, dated 08/20/1969	Rate Schedule No. 32	Upon termination of Ludington Ownership Agreement, dated 08/20/1969	Ownership, design, construction, operation, use and maintenance of Ludington Project Facilities, including sharing of expenses.
268. The Detroit Edison Company	Transmission Facilities Agreement, dated 08/20/1969	Rate Schedule No. 33	Upon termination of Ludington Ownership Agreement, dated 08/20/1969	Ownership, design, construction, operation, use and maintenance of Ludington Non-Project Facilities, including sharing of expenses.
269. The Detroit Edison Company	Ludington Pumped Storage Plant Ownership and Operating Agreements, dated 08/20/1969	Rate Schedule No. 34	For Ownership Agreement, upon termination of license to operate the Plant. For Operating Agreement, upon termination of Ownership Agreement.	For Ownership Agreement, respective ownership interests, obligations and rights of parties concerning design and construction of the Plant and sharing of Plant capability. For Operating Agreement, respective obligations and rights concerning operation and maintenance of the Plant. Note: Plant contains some transmission facilities.
270. Wolverine Power Supply Cooperative, Inc.	Facilities Agreement - Oden Interconnection Agreement, dated 1/31/96, as amended and effective 4/1/2001	Service Agreement No. 33 under METC OATT	By mutual agreement or upon 60 months notice.	Construction and operation of Interconnection Facilities. WPSC reimburses METC for certain O&M costs incurred.

MONTANA-DAKOTA UTILITIES CO.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
271. Western Area Power Administration and Montana-Dakota Utilities Co.	Electric Service Contract with Montana-Dakota Utilities Co.	FERC No. 19	Shall remain in effect until 12/31/15. Either party may terminate at any time after 12/31/06 by 4-years' advance written notice of the effective date of such termination.	Reciprocal transmission service to MDU and Western's native load. Transmission charge is 1 mill/kWh. Service is firm, and is for a rolling 4-year period. Interconnection requirements and associated obligations of each party. Various facility charges are defined. Provision for non-firm energy transactions and the associated pricing. Control Area service and charges.
272. Basin Electric Power Cooperative and Montana-Dakota Utilities Co.	Interconnection and Common Use Agreement	FERC No. 30	Shall remain in effect through 01/12/07 and continuing year-to-year thereafter until terminated by either party giving the other party 5-years' advance written notice.	Provides mechanism to build joint transmission facilities to serve MDU and Basin load that is interconnected to the MDU transmission system. Also freezes the transmission payments for the load served prior to the signing of the agreement.
273. Minnkota Power Cooperative, Montana-Dakota Utilities Co., Northwestern Public Service Company, and Otter Tail Power Company	Coyote 1 Station Transmission Facilities Agreement by and between Minnesota Power and Light Company, Minnkota Power Cooperative, Inc., Montana-Dakota Utilities CO., Northwestern Public Service Company, and Otter Tail Power Company	None. There are no transmission payments in the agreement.	Terminate upon the termination of the Coyote Station Agreement for Sharing Ownership of Generating Unit No. 1, which is 12/31/21.	Establishes specific transmission facilities to be constructed by each plant owner to provide delivery of each owner's output to their individual system. Provides transmission service at no charge over the transmission systems of each owner for the purpose of delivering Coyote 1 power to specific delivery points on the transmission system of each owner. Also provides for the repayment of losses in kind.

MONTANA-DAKOTA UTILITIES CO. – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
274. Montana-Dakota Utilities Co., Northwestern Public Service Company, and Otter Tail Power Company	Big Stone Plant Transmission Facilities Agreement by and between Otter Tail Power Company, Montana-Dakota Utilities Co., and Northwestern Public Service Company.	None. There are no transmission payments in the agreement.	Terminate upon the termination of the Agreement for Sharing Ownership of Generating Plant, which is 12/31/15.	Establishes specific transmission facilities to be constructed by each plant owner to provide delivery of each owner's output to their individual system. Provides transmission service at no charge over the transmission systems of each owner for the purpose of delivering Big Stone power to specific delivery points on the transmission system of each owner. Also provides for the repayment of losses in kind.
275. Northern States Power Company, Basin Electric Power Cooperative, and Montana-Dakota Utilities Co.	Interconnection & Interchange Agreement at the Northern States Power Company's Mallard Substation	NSP FERC No. 505	12/31/15 and perpetual thereafter unless terminated by any party's 48-months' notice.	Provides an interconnection point at Mallard between MDU, Basin, NSP, WAPA, and Central Power Electric Cooperative. Provides for priority of use and right to use the interconnection. No transmission service charges are specified.
276. Montana-Dakota Utilities Co., Basin Electric Power Cooperative, and Western Area Power Administration	Miles City New Underwood 230 kV Transmission Line	None. There are no transmission payments in the agreement	12/31/15 and continuing perpetually unless terminated by any party with no less than 2-years' written notice.	Construction, ownership, maintenance, and interconnection of facilities associated with the 230 kV transmission line. Provides annual fees for compensation of each party for certain equipment maintenance. Provides firm capacity entitlements to the project, and MDU grants Western a license to use MDU's portion of the project at no charge.

MONTANA-DAKOTA UTILITIES CO. – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
277. Otter Tail Power Company and Northwestern Public Service	Interconnection Agreement	FERC No. 20	Remains in effect for the life of joint owned generation constructed by the parties and thereafter unless terminated with 12-months' written notice by any of the parties.	Provides for the recognition of the Ellendale, ND 230 kV interconnection point between the parties and its use for transmission of energy from the parties joint owned generation to the parties. Interconnection/Interchange
278. Minnkota Power Cooperative (assigned from United Power Association, which is now Great River Energy)	Interconnection Agreement	FERC No. 8	1/1/2001 and, if not terminated then, continuing in full force until terminated with 4 years' notice.	Interconnection at Heskett Station with each party allowing the other to transmit electric power and energy through its system to the extent that such system has capacity in excess of that required for its own needs and prior commitments.
279. Montana-Dakota Utilities Co. Oliver-Mercer Electric Cooperative	Emergency Service Interconnection Agreement	FERC No. 30.	10 years from 10/26/83, and year-to-year thereafter, unless terminated by either party with 12-months' advance notice of anniversary date.	Provides emergency service to Montana-Dakota Utilities Co.'s Hazen, ND substation at no charge over the transmission system of Oliver-Mercer, and provides emergency service at no charge to Oliver-Mercer's North Star substation over the Montana-Dakota Utilities Co. transmission system (per the Basin/MDU Common Use Agreement – FERC No. 30).
280. Mor-Gran-Sou Electric Cooperative	Emergency Interconnection Agreement	FERC No. 25	12/31/16, and thereafter until terminated by either party giving 2-years' written notice.	Provides an emergency interconnect point for Mor-Gran-Sou's NW Mandan substation. Transmission service is provided under FERC Nos. 19 and 30.

MONTANA-DAKOTA UTILITIES CO. – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
281. Capital Electric Cooperative	Joint Facilities Agreement dated November 17, 1977 with Montana-Dakota Utilities Co. (Northwest Bismarck Substation).	FERC No. 28	35 years, except in the event Cooperative fails to pay fees and costs specified; however, 60 days' notice is required if Cooperative defaults.	Provides for ownership, operation and maintenance and transmission service with no wheeling fees.
282. Capital Electric Cooperative	Agreement (for construction of 115 kV transmission between NW Bismarck substation and East Bismarck substation)	None	January 2018, except that either party can terminate with 60-days' notice for failure of the other party to fulfill its obligations.	Provides for construction, ownership division, and capacity rights in the 115 kV line. Does not provide directly for transmission service charges.
283. Capital Electric Cooperative	Agreement (Joint facilities at East Bismarck substation)	FERC 29	12/17/06, except in the event Cooperative fails to pay fees.	Provides for reimbursement and capacity rights in 115 kV facilities in Montana-Dakota Utilities Co. East Bismarck substation. Transmission service charges are not directly addressed.

MINNESOTA POWER, INC.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
284. Square Butte Electric Cooperative and Minnkota Power Cooperative, Inc.	Delivery Agreement Between and Among Minnesota Power & Light Company, Square Butte Electric Cooperative, and Minnkota Power Cooperative, Inc., dated as of June 1, 1998	Effective Date June 1, 1998 FERC Rate Schedule No. ___	01/01/27	Transmission services.
285. Wisconsin Public Power Incorporated	Clay Boswell Steam Electric Generating Station Unit No. 4 Operation, Ownership and Power Sales Agreement between Minnesota Power and Wisconsin Public Power Incorporated System, dated as of January 12, 1990	Effective Date January 12, 1990	Until Boswell Unit No. 4 is retired from service.	Provides prepaid transmission service to the Minnesota Power border.
286. Cyprus Silver Bay Power Corporation	Transmission Service Agreement, dated as of July 1, 1991	Effective Date July 1, 1991 FERC Rate Schedule No. 161	06/30/11	Transmission services.
287. Wisconsin Power & Light Company	Negotiated Capacity Option Agreement with Wisconsin Power & Light Company to purchase firm capacity (75 MW)	Effective Date August 31, 1993 FERC Rate Schedule No. 160	01/01/07	The agreement provides a limited and variable reimbursement to WP&L for transmission charges it incurs in delivering firm capacity for the 1998-2007 period from Minnesota Power to its system.
288. Wisconsin Power & Light Company	Unit Participation Power Sales Agreement between Minnesota Power and Wisconsin Power & Light Company (formerly IPW) to purchase firm capacity (55 MW)	Effective Date August 14, 1991 FERC Rate Schedule No. ___	05/01/02	Bundled transmission service to Minnesota Power's interconnections to other MAPP participants.

MINNESOTA POWER, INC. – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
289. Cities of Staples and Wadena, Minnesota	Transmission Service Agreement, dated June 11, 1975 and Supplement to Settlement Agreement dated October 6, 1982	Effective Dates June 11, 1975 and November 1981 FERC Rate Schedule Nos. 133 and 120	4-year cancellation notice	Transmission services.
290. Dairyland Power Cooperative, Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin) and Superior Water, Light & Power Company	Cost Sharing Agreement for the Phase Angle Regulating Transformer	Effective Date May 30, 1985	By unanimous vote of the Coordination Committee, but no longer than the period during which the transformer is in service.	Cost sharing agreement.
291. Superior Water, Light & Power Company	Interchange Service Agreement, including Supplement Nos. 1, 2 and 3	March 31, 1988	48-months' written notice by either party, but not before 12/31/10.	SWL&P leases its transmission system to Minnesota Power, which establishes an integrated transmission system. Minnesota Power provides SWL&P with its electric requirements.
292. Great River Energy and Minnesota Power	NITS Agreement and Operating Agreement under Midwest ISO Tariff, including Amendment No. 1.	S.A. #28 under Midwest ISO Tariff	2 years' prior written notice	Network integration transmission service.

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NORTHWESTERN WISCONSIN ELECTRIC COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
293. Dairyland Power Cooperative	Interconnection and Facility Use Agreement dated September 16, 1983		Continuing indefinitely until 48-months' prior written notice by either party to the other.	Transmission Service Agreement
294. MAPP	MAPP Restated Agreement Schedule F	OASIS #546298, 546299	5/1/2004	Transmission Service Under Schedule F.

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Issued on: October 30, 2003

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Midwest ISO
FERC Electric Tariff, Second Revised Volume No. 1

First Revised Sheet No. 452
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OTTER TAIL POWER COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
295. Baker Electric Cooperative, Inc. (member of Central Power Electric Coop.)	Agreement	RS 149	Indefinitely.	Transmission/Wheeling and Emergency Service.
296. Capital Electric Cooperative, Inc.	Emergency Interconnection at Regan, North Dakota	RS 109	Automatically continuing from year –to-year until either party serves written notice 2 months prior to the termination of the contract year.	Emergency Service.
297. Central Power Electric Cooperative	Contract for Electric Service Integrated Systems Supplement No. 7 (original contract w/5 amendments)	RS 171 ER82-368 ER83-340 ER85-333 ER87-31	12/31/15	Transmission/Wheeling, Interconnection/Interchange, and Joint use transmission rights.
298. Central Power Electric Cooperative	Integrated Systems Scheduling and Dispatching Agreement		12 months' prior written notice to either party.	System control, dispatching, operation and maintenance.
299. City of Newfolden, MN	Agreement for Distribution Substation (Local Transformation Service)	RS 174 ER80-278	Continuing month-to-month with 18-months termination notice required.	Transmission/Wheeling.
300. City of Newfolden, MN	Application by the City of Newfolden, Minnesota and Agreement for Firm Wheeling (Transmission) Service	ER84-38	None.	Transmission/Wheeling.
301. City of Nielsville, MN	Agreement for Connection and Distribution Facilities (Local Transformation Service)	RS 175 ER80-277	Continuing until written notice not less than 4 years in advance of desired termination date.	Transmission/Wheeling.
302. City of Nielsville, MN	Application by the City of Nielsville, Minnesota and Agreement for Firm Wheeling (Transmission) Service	ER84-38	None.	Transmission/Wheeling.

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OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
303. City of Shelly, MN	Agreement for Connection and Distribution Facilities (Local Transformation Service)	RS 176 ER80-279	Continuing until written notice not less than 4 years in advance of desired termination date.	Transmission/Wheeling.
304. City of Shelly, MN	Application by the City of Shelly, Minnesota and Agreement for Firm Wheeling (Transmission) Service	ER84-38	None.	Transmission/Wheeling.
305. Cooperative Power Association United Power Association (Great River Energy)	Interconnection and Interchange Agreement		01/01/10; if not then terminated, continuing in full force and effect until terminated by 24-months' prior written notice.	Power and energy flows between the systems of the Coal Creek Interconnection considered exchange between CPA and OTP (CPA 56% UPA 44%)
306. Cooperative Power Association (Great River Energy)	Integrated Transmission Agreement	RS 154 ER80-135 ER83-340 ER84-299 ER85-333 ER87-433	11/20/27.	Transmission/Wheeling and Joint use transmission rights.
307. Cooperative Power Association (Great River Energy)	Integrated Transmission System Scheduling and Dispatching Agreement		In full force and effect until terminated by not less than 12-months' prior written notice.	Scheduling.
308. East River Electric Power Cooperative, Inc.	Interconnection and Transmission Service Agreement	RS 168 ER84-626	11/20/12; if not then terminated, continuing in full force and effect until terminated by 24-months' prior written notice.	Transmission/Wheeling, Interchange/Interconnection, Emergency, and Transmission service for Traverse` & Lake Region Electric Assn.

OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
309. Manitoba Hydro Minnkota Power Cooperative Northern States Power Company (Xcel Energy)	Winnipeg – Grand Forks 230 kV Interconnection Coordinating Agreement	RS 159 ER91-400	Indefinitely until so terminated by not less than 48-months' prior written notice.	Transmission/Scheduling, Interconnection/Interchange, and Emergency Service.
310. Manitoba Hydro-Electric Board	MH-OTP Power Services Agreement		04/30/05; no termination provisions for transmission service, only for the energy delivery.	MHEB shall provide to OTP 50 MW of Participation Power Capacity and associated energy (up to 40% capacity factor), includes provisions for joint AGC (+or- 25 MW).
311. Minnesota Power & Light Company Minnkota Power Cooperative Northwestern Public Service Company Montana-Dakota Utilities	Coyote Station Transmission Facilities Agreement		Terminate upon termination of Coyote-Stanton Agreement for sharing ownership of Generating Unit #1 (July 1977 agreement).	Establishes specific transmission facilities to be constructed by each plant owner to provide delivery of each owner's output to their individual system. Provides transmission service at no charge over the transmission systems of each owner for the purpose of delivering Coyote 1 power to specific delivery points on the transmission system of each owner. Also provides for the repayment of losses in kind.
312. Minnesota Power and Light	Interconnection and Interchange Agreement	RS 128	Indefinitely until terminated in writing by not less than 48-months' notice.	Transmission/Wheeling.

OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
313. Minnkota Power Cooperative Northern Municipal Power Agency	230 kV Interconnection Agreement Between Otter Tail Power Company, Minnkota Power Cooperative, and Northern Municipal Power Agency	RS 151 ER81-781	If not terminated with 48-months' written notice by any of the parties by 01/01/05, continuing in full force and effect until so terminated.	Interconnection/Interchange, Transmission/Wheeling, and Joint use of MPC & OTP 230kV system.
314. Minnkota Power Cooperative	Interconnection and Transmission Service Agreement Between Otter Tail Power Company and Minnkota Power Cooperative, Inc.		If not terminated with 48-months' written notice by either party by 07/01/05, continuing in full force and effect until so terminated.	Interconnection/wheeling. Provides for the interconnection and use of excess capacity of the MPC and OTP 115, 69, and 41.6 kV systems by each of the parties to the agreement.
315. Minnkota Power Cooperative	MPC-OTP Swing Compensation		None defined (likely to remain in place as long as MPC is within the OTP control area).	MPC provides to OTP 2 MW of capacity and energy any time the MPC Young 1 unit is on line as compensation for load swing services for MPC.
316. Minnkota Power Cooperative Minnesota Power and Light	Interconnection Agreement Between Minnkota Power Cooperative and Minnesota Power & Light Company		If not terminated with 48-months' written notice by any of the parties by 07/01/02, continuing in full force and effect until so terminated.	Agreement is not with OTP but establishes CA Tie. Interconnection.

OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
317. Minnkota Power Cooperative, Inc. Minnesota Power and Light Company Northern States Power Company (Xcel Energy)	North Dakota-Western Minnesota 230 kV Facilities Coordinating Agreement Between Minnkota Power Cooperative, Inc., Otter Tail Power Company, Minnesota Power & Light Company, and Northern States Power Company	RS 150	If not terminated with 48-months' written notice by any of the parties by 11/01/05, continuing in full force and effect until so terminated.	Excess capacity of the parties 230 kV transmission system. Interconnection/Interchange, and Emergency Service.
318. Missouri Basin Municipal Power Agency (Missouri River Energy Services) Western Minnesota Municipal Power Agency	Integrated Transmission Agreement Among Missouri Basin Municipal Power Agency, Western Minnesota Municipal Power Agency, and Otter Tail Power Company Dated As Of March 31, 1986		If not terminated with 60-months' written notice by any of the parties by 01/01/16, continuing in full force and effect until so terminated.	Provides for the use by all parties of the integrated transmission system of the parties for the purpose of serving each parties native load. Amendment 1: December 28, 1988. Joint use transmission rights.
319. Montana-Dakota Utilities Northwestern Public Service Company	Systems Interconnection Agreement	RS 198 ER88-501	Remains in full force and effect for the life of joint owned generation constructed by the parties and thereafter unless terminated with 12-months' written notice by any of the parties.	Provides for the recognition of the Ellendale, ND 230 kV interconnection point between the parties and its use for transmission of energy from the parties joint owned generation to the parties. Interconnection/Interchange
320. Montana-Dakota Utilities Northwestern Public Service Company	Big Stone Plant Transmission Facilities Agreement By and Between Otter Tail Power Company, Montana-Dakota Utilities Company and Northwestern Public Service Company Dated As Of April 3, 1972		Remains in full force and effect until termination of the Big Stone Basic Construction and Ownership Agreement.	Establishes specific transmission facilities to be constructed by each plant owner to provide delivery of each owner's output to their individual system. Provides transmission service at no charge over the transmission systems of each owner for the purpose of delivering Big Stone power to specific delivery points on the transmission system of each owner. Also provides for the repayment of losses in kind.

OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
321. Mountrail Electric Cooperative, Inc.	Interconnection Agreement between Mountrail Electric Cooperative, Inc. and Otter Tail Power Company	RS 165	10 years after effective date (2/29/72) and if not then terminated, shall automatically continue in full force and effect for 1-year successive terms until terminated pursuant to written notice not less than 3 years before expiration of contract term specified in notice.	Transmission/Wheeling, and Emergency Service.
322. Nodak Rural Electric Cooperative, Inc. Minnkota Power Cooperative, Inc.	Emergency and/or Standby Electric Service Agreement	Replaces Rate Schedule 178 (1964)	Automatically continues in full force and effect from year to year until either party serves written notice 2 months prior to the termination of the contract year.	Transmission/Wheeling, and Emergency Service.
323. Northern Minnesota Power Association Rural Cooperative Power Association United Power Association (GRE) Northern States Power Company (Xcel Energy)	Transmission Service Agreement, including Supplements thereto	RS 110 ER84-189	08/17/2017; and if not then terminated, continuing in full force and effect by not less than 42-months' prior written notice.	Economy Service, Partial Requirements Service, and Transmission/Wheeling.
324. Northern States Power Company (Xcel Energy)	Interconnection and Interchange Agreement	RS 111	In full force and effect until terminated by not less than 48-months' prior written notice.	Interconnection/Interchange, Transmission/Wheeling, and Joint use transmission rights.

OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
325. Northern States Power Company (Xcel Energy) Minnesota Power and Light Company Cooperative Power Association (GRE)	Outlet Facilities Agreement – No. 1		12/31/82; and if not then terminated, continuing in full force and effect with not less than 48-months' prior written notice.	Transmission service. CPA's allocated Capacity: 33,190 kW 8,000 kW.
326. Northern States Power Company (Xcel Energy)	OTP-NSP Diversity Exchange Agreement	RS 196 ER85-575	Continues through 10/31/04; unless 5-years' written notice by either party (termination must be on October 31st of a given year).	OTP shall provide to NSP 75 MW of System Participation Power during each summer season; NSP shall provide to OTP 75 MW of System Participation Power during each winter season; no charges to either party for capacity exchanges. Short-term Power Service.
327. Red Lake Electric Cooperative, Inc.	Agreement for Emergency and Standby Electric Service	RS 127	Automatically continuing in full force and effect from year to year until either party serves written notice 2 months prior to the termination of the contract year.	Standby and Emergency Service.

OTTER TAIL POWER COMPANY – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
328. U.S. Dept. Interior, Bureau of Reclamation (WAPA)	Interconnection Contract (230 kV – Gary) (115 kV – Forman)	RS 169	Indefinitely.	Schedule up to 100 MW at the Gary 230 kV Interconnection for redelivery to Northwestern. Interconnection/Interchange, and Transmission/Wheeling.
329. WAPA	Interim Agreement to Maintain Interconnections and Scheduling Procedures with WAPA	RS 172 ER80-289	May be terminated by either party.	Scheduling, Facilities Agreement, and Interconnection/Interchange.
330. Whetstone Electric Cooperative, Inc.	Agreement for Emergency and Standby Electric Service	RS 148	Automatically continuing in full force and effect from year to year until either party serves written notice 2 months prior to the termination of the contract year.	Standby and Emergency Service.

SOUTHERN ILLINOIS POWER COOPERATIVE

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
331. United States of America (acting by and through the Southeastern Power Administration)	Contract No. 89-00-1501-1139, executed as of June 30, 1998	N/A	Contract shall continue until terminated on June 30th of any year by SIPC of not less than 37 months in advance of the date of termination requested or by SEPA of not less than 36 months in advance of the date of termination requested.	SEPA shall make available each contract year to SIPC from the Cumberland Projects through TVA's delivery points with Big Rivers, and SIPC will schedule and accept an allocation of 1,500 kwhs of energy delivered at the TVA border for each kilowatt of contract demand.
332. Big River Electric Corporation	1981 Transmission Line Agreement, dated February 1, 1981	N/A	The term of the contract is perpetual, or until such time as SIPC shall no longer use the Kentucky line and, in such an event, SIPC shall give Big Rivers 12-months' advance notice.	Big Rivers grants SIPC exclusive right to a the Ohio River to Barkley Dam 161 kV transmission line and leases to SIPC all capacities of said transmission line not used by Big Rivers for its own internal loads
333. Southeastern Illinois Electric Cooperative	Wholesale Power Contract, dated December 8, 1959	Schedule "A"	December 31, 2033	Full requirements service.
334. Egyptian Electric Cooperative Association	Wholesale Power Contract, dated December 8, 1959	Schedule "A"	December 31, 2033	Full requirements service.
335. Southern Illinois Electric Cooperative	Wholesale Power Contract, dated December 8, 1959	Schedule "A"	December 31, 2033	Full requirements service.

SOUTHERN ILLINOIS POWER COOPERATIVE – CONT'D.

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
336. Monroe County Electric Cooperative	Wholesale Power Contract, dated June 25, 1998	Schedule "A"	December 31, 2033	Full requirements service.
337. City of McLeansboro	Interconnection Contract, dated March 30, 1967	N/A	December 31, 2007	Full requirements service.
338. City of Red Bud	Interconnection Contract, dated July 19, 1976	N/A	December 31, 2007	Full requirements service.
339. Illinois Power Company	Interconnection Agreement, dated March 1, 1983, and Amendment No. 1 dated June 24, 1983	N/A	N/A	Interchange Agreement
340. Central Illinois Public Service Company	Interconnection Agreement, dated May 2, 1972	N/A	N/A	Interchange Agreement
341. Indiana Statewide Rural Electric, Inc., Big Rivers Rural Electric Cooperative Corporation, and City of Henderson, Kentucky	Interconnection Agreement, dated April 1, 1968, with Supplements	N/A	N/A	Interchange Agreement

SOUTHERN INDIANA GAS & ELECTRIC COMPANY

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
342. Hoosier Energy	Partial Interconnection Agreement between Indiana Statewide Rural Electric Cooperative, Inc., Public Service Company of Indiana, Inc. and SIGECO to serve Hoosier Energy, dated as of March 9, 1971	FERC Rate Schedule No. 27	5-years' advance notice.	Energy Transfer under Service Schedule A and Wheeling Service under Service Schedule F
343. Alcoa Power Generating Inc. ("APGI")	Electric Power Agreement between SIGECO and Alcoa Power Generating Inc., which was originally executed May 28, 1971, as amended.	SIGECO Rate Schedule No. 29 and APGI Rate Schedule No. 2	3 months' advance written notice, but not prior to April 30, 2004.	Provides for the flow through from SIGECO to APGI of administrative and/or tax costs imposed on SIGECO by the Midwest ISO by virtue of the APGI load.

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WABASH VALLEY POWER ASSOCIATION

Customer Name and Contract Title	Rate Schedule No.	Term of Agreement	Services and Transaction Terms
344. Power Sales Agreements with Boone County REMC, Carroll County REMC, Central Indiana Power, Fruit Belt Elec. Coop., Fulton County REMC, Hendricks County REMC, Jasper County REMC, Jay County REMC, Kankakee County REMC, Kosciusko County REMC, LaGrange County REMC, Marshall County REMC, Miami-Cass County REMC, Newton County REMC, Noble REMC, Northeastern REMC, Park County REMC, Paulding-Putman Elec. Coop., Steuben County REMC, Tipmont REMC, United REMC, Wabash County REMC, Warren County REMC, White County REMC	N/A	04/14/28	Bundled wholesale power and transmission service agreements.
345. Memorandum of Understanding dated March 2, 1994 by and between PSI and Wabash Valley, providing Wabash Valley with transmission rights over facilities owned by Cincinnati Gas & Electric Co.	N/A	Indefinitely	Transmission rights and revenue sharing over the Cinergy transmission system.
346. PSI/IMPA Power Coordination Agreement	N/A	12/31/14	Agreement on use of Joint Transmission System
347. Transmission and Local Facilities Ownership Agreement between PSI/WVPA/IMPA	FERC Rate Schedule No. 253	Indefinitely	Joint Transmission System Ownership Agreement.

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Second Revised Sheet No. 464
Superseding First Revised Sheet No. 464

XCEL ENERGY

I. NORTHERN STATES POWER COMPANY and NORTHERN STATES POWER COMPANY (WISCONSIN)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
348. City of Windom, MN	Transmission Capacity and Planning Agreement	NSP 455	After 8/15/08 with 3-years' notice	Transmission services.
349. City of Springfield, MN	Transmission Capacity and Planning Agreement	NSP 454	After 8/15/08 with 3-years' notice	Transmission services.
350. Cooperative Power Association (now Great River Energy)	Transmission Capacity and Planning Agreement	NSP 457	After 8/31/08 with 4-years' notice	Transmission Services.
351. Missouri Basin Municipal Power Agency (now Missouri River Electric Services)	Transmission Capacity and Planning Agreement	NSP 456	After 8/31/08 with 4-years' notice	Transmission Services.
352. City of Ada, MN	Municipal Interconnection & Interchange Agreement	NSP 474	After 12/31/12 with 3-years' notice	Transmission and Interconnection Services.
353. City of East Grand Forks, MN	Municipal Interconnection & Interchange Agreement	NSP 483	After 12/31/12 with 3-years' notice	Transmission and Interconnection Services.
354. City of Fairfax, MN	Municipal Interconnection & Interchange Agreement	NSP 477	After 12/31/12 with 3-years' notice	Transmission and Interconnection Services.
355. City of Hillsboro, ND	Municipal Transmission Service Agreement	NSP 414	On or after 12/31/97 with 4-years' notice	Transmission Services.
356. City of Marshall, MN	Transmission Service Agreement	NSP 513	After 01/01/95 with 4-years' notice	Transmission Services.
357. City of Melrose, MN	Interconnection & Interchange Agreement	NSP 482	After 12/31/12 with 3-years' notice	Transmission and Interconnection Services.

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XCEL ENERGY – CONT'D.

I. NORTHERN STATES POWER COMPANY and NORTHERN STATES POWER COMPANY (WISCONSIN)

358. City of Sauk Centre, MN	Transmission Service Agreement	NSP 449	2-years' notice	Transmission services.
359. City of St James, MN	Municipal Transmission Service Agreement	NSP 412	After 04/29/96 with 4-years' notice	Transmission services.
360. City of Sioux Falls, SD	Municipal Interconnection & Interchange Agreement	NSP 484	12/31/12 with 3-years' notice	Transmission services.
361. City of Sleepy Eye, MN	Interconnection & Interchange Agreement	NSP 393	09/01/04	Transmission and Interconnection services and power sales.
362. Minnesota Municipal Power Agency	Interconnection & Interchange Agreement	3-NSP	4/30/12 with 5-years' notice	Transmission and Interconnection services.
363. South Dakota State Penitentiary	Restated Transmission Service Agreement between NSP and the State of South Dakota	NSP 385	After 10/20/87 with 4-years' notice	Transmission services for WAPA allocation.
364. University of North Dakota	Transmission and Transformation Agreement	NSP 440	After 06/22/94 with 4-years' notice	Transmission services for WAPA allocation.
365. City of Granite Falls, MN	Transmission Service Agreement	NSP 436	After 12/31/00 with 2-years' notice	Transmission services.
366. Northwestern Wisconsin Electric Company (Blackbrook Hydro)	Interconnection & Interchange Agreement	NSP 451	2-years' notice	Transmission and Interconnection services.

XCEL ENERGY – CONT'D.

I. NORTHERN STATES POWER COMPANY and NORTHERN STATES POWER COMPANY (WISCONSIN)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
367. United Power Association (now Great River Energy)	Resolution Agreement		4/30/15	Joint ownership and transmission capacity allocation agreement.
368. Manitoba Hydro	Diversity Exchange	N/A	10/31/16	200 MW
369. Manitoba Hydro	Diversity Exchange	N/A	4/30/19	200/400/150 MW
370. United Power Association	Diversity Exchange	NSP 442	4/30/09 with 5-years' notice	50 MW
371. Otter Tail Power	Diversity Exchange	NSP 488	10/30/04 with 5-years' notice	75 MW
372. Wisconsin Public Power Inc.	Eastern Transmission Agreement	NSP Companies 465	5-years' notice	Transmission service for up to 62 MW for WPPI loads in eastern Wisconsin.
373. Wisconsin Public Power Inc.	Western Transmission Agreement	NSP Companies 466	5-years' notice	Transmission service for WPPI loads in western Wisconsin.
374. City of Marshfield, WI, Wisconsin Power & Light Company, Wisconsin Public Service Corporation	Arpin Substation Benefit Area Joint Operating, Planning and Cost Sharing Agreement	NSPW 473	4-years' notice to terminate after 12-31-08	Transmission capacity and cost allocation agreement.
375. Cooperative Power Association (now Great River Energy)	Service Agreement for Network Integration Transmission Service, dated 11-1-96	NSP Companies, Volume 2, No. 96	2-years' notice	Network integration transmission service. Rate Moratorium terminates on 09/30/04.

XCEL ENERGY – CONT'D.

I. NORTHERN STATES POWER COMPANY and NORTHERN STATES POWER COMPANY (WISCONSIN)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
376. United Power Association (now Great River Energy)	Service Agreement for Network Integration Transmission Service, dated 2-1-97	NSP Companies, Volume 2	2-years' notice	Network integration transmission service. Rate Moratorium terminates on 09/30/04.
377. Dairyland Power Cooperative	Service Agreement for Network Integration Transmission Service, dated 11-1-96	NSP Companies, Volume 2, No. 94, and Supplement No. 1	2-years' notice	Network integration transmission service. Rate Moratorium terminates on 09/30/04.
378. Southern Minnesota Municipal Power Agency	Service Agreement for Network Integration Transmission Service, dated 11-1-96	NSP Companies, Volume 2, No. 95	2-years' notice	Network integration transmission service. Rate Moratorium terminates on 09/30/04.
379. Central Minnesota Municipal Power Agency	Service Agreement for Network Integration Transmission Service, dated 6-14-96	NSP, Volume 1, No. 78	2-years' notice	Network integration transmission service. Rate Moratorium terminates on 09/30/04.

XCEL ENERGY – CONT'D.

I. NORTHERN STATES POWER COMPANY and NORTHERN STATES POWER COMPANY (WISCONSIN)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
380. GEN~SYS Energy	Service Agreement for Network Integration Transmission Service, dated 4-1-98	Supplement No. 1 to NSP Companies, Volume 3, No. 96	1-year's notice	Network integration transmission service. Rate Moratorium terminates on 09/30/04.
381. City of Bangor, WI	Power and Energy Supply Agreement	NSPW 112	After 03/31/02 with 3-years' notice	Full requirements bundled sale.
382. City of Barron, WI	Power and Energy Supply Agreement	NSPW 103	After 08/30/02 with 3-years' notice	Full requirements bundled sale.
383. City of Bloomer, WI	Amended and Restated Power and Energy Supply Agreement	NSPW 106	After 08/08/05 with 10-years' notice	Full requirements bundled sale.
384. City of Cadott, WI	Amended and Restated Power and Energy Supply Agreement	NSPW 104	After 08/31/05 with 10-years' notice	Full requirements bundled sale.
385. City of Cornell, WI	Power and Energy Supply Agreement	NSPW 113	After 12/31/02 with 5-years' notice	Full requirements sale.
386. City of Spooner, WI	Power and Energy Supply Agreement	NSPW 105	Evergreen year-to-year service with 3-years' notice	Full requirements bundled sale.
387. City of Trempeleau, WI	Amended and Restated Power and Energy Supply Agreement	NSPW 108	11/1/06 and if not terminated by 5-years' notice, continuing on until terminated	Full requirements bundled sale.
388. City of Wakefield, WI	Amended and Restated Power and Energy Supply Agreement	NSPW 107	After 10/31/05 with 10-years' notice	Full requirements bundled sale.

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XCEL ENERGY – CONT'D.

I. NORTHERN STATES POWER COMPANY and NORTHERN STATES POWER COMPANY (WISCONSIN)

Customer Name	Contract Title	Rate Schedule No.	Termination Provisions	Services and Transaction Terms Grandfathered
389. East River Electric Cooperative	Transmission Service Exchange Agreement	Supplement No. 16 to NSP 331	4-years' written notice or 3 years if wheeling contract cancelled	Transmission exchange service.
390. United Power Association, Northern Minn. Power Association, Rural Cooperative Power Association	Transmission Service Agreement (Stanton)	Supplement No. 1 to NSP 309	42-months' written notice	Transmission service and cost allocation agreement.
391. East River Electric Power Cooperative, Inc. (formerly Renville/Sibley Cooperative Power Association)	Transmission Service Agreement, dated 10/1/1966	NSP 331	4-years' written notice	Transmission service.
392. Southern Minnesota Municipal Power Agency	Settlement Agreement, dated 06/01/96 (Docket Nos. EC95-16-000; ER95-1357-000 and ER95-1358-000; and EL91-43-000 and EL91-13-000)			The Settlement Agreement calls for SMMPA to receive future network transmission service under NSP's network service tariff as well as load following service from NSP's system based on SMMPA's portion of Sherco Unit 3 automatic generation control capabilities.

Issued by: James P. Torgerson, Issuing Officer
Issued on: January 28, 2004

Effective: October 31, 2003

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Tuesday,
June 8, 2004

Part III

Department of Agriculture

Rural-Business Cooperative Service

Rural Utilities Service

7 CFR Part 4290

Rural Business Investment Program; Interim Rule

Announcement of Competitive Application Round for the Rural Business Investment Program (RBIP); Notice

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Part 4290

RIN 0570–AA35

Rural Business Investment Program

AGENCY: Rural Business-Cooperative Service and Rural Utilities Service, U.S. Department of Agriculture.

ACTION: Interim final rule with request for comments.

SUMMARY: In this interim final rule with comment period, the U.S. Department of Agriculture (USDA) is adding a new part 4290 to implement the Rural Business Investment Program (RBIP) which is designed to promote economic development and create wealth and job opportunities among individuals living in rural areas and help to meet the equity capital investment needs primarily of smaller enterprises located in such areas. Under the RBIP, for-profit Rural Business Investment Companies (RBIC) will make venture capital investments in rural areas with the objectives of fostering economic development in such areas and returning maximum profits to the RBIC's investors. These regulations set forth the criteria which the USDA will use to select and license RBICs, guarantee its debentures, and make grants to RBICs.

DATES: *Effective date:* This rule is effective on June 8, 2004.

Comment date: We will consider comments on the new part 4290 if we receive them at the appropriate address, as provided below, no later than 4 p.m. on July 8, 2004. Late filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments on this rule by any of the following methods:

Agency Web site: http://rdinit.usda.gov/regs/; follow the instructions for submitting comments on the Web site.

E-mail: comments@usda.gov; include the RIN number (RIN 0570–AA35) in the subject line of the email.

Federal e-Rulemaking portal: http://www.regulations.gov; follow the instructions for submitting comments.

Mail: Submit written comments via the U.S. Postal Service to Cheryl Thompson, Management Analyst, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, STOP 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742.

Hand-delivery/courier: Submit written comments via Federal Express Mail or other courier service requiring a street address to Cheryl Thompson, Management Analyst, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, 300 7th Street, SW., Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Special Projects/Programs Oversight Division, U.S. Department of Agriculture, (202) 690–4100.

SUPPLEMENTARY INFORMATION:

I. Background

Section 6029 of the Farm Security and Rural Investment Act of 2002, Pub. L. 107–171, amended the Consolidated Farm and Rural Development Act by adding Subtitle H—Rural Business Investment Program (7 U.S.C. 2009cc *et seq.*) (the ''Act''). Section 6029 requires the Secretary of the USDA to establish the Rural Business Investment Program (RBIP). Section 384B of the Act, as amended, states that the purpose of the RBIP is—

(1) To promote economic development and the creation of wealth and job opportunities in rural areas and among individuals living in those areas by encouraging developmental venture capital investments in smaller enterprises primarily located in rural areas; and

(2) To establish a developmental venture capital program with the mission of addressing the unmet equity investment needs of small enterprises located in rural areas.

Section 384Q of the Act, as amended, requires the Secretary of Agriculture to enter into an interagency agreement under the Economy Act, 31 U.S.C. 1535, with ''another Federal agency'' that has ''considerable expertise in operating a program under which capital is provided for equity investments in private sector companies.'' The Joint Explanatory Statement of the Conference Committee of the Farm Security and Rural Investment Act of 2002 states on page 150 that, ''Sec. 384 Q requires the Secretary to enter into an interagency agreement with the U.S. Small Business Administration (SBA) to carry out the day-to-day management and operation of the RBIP.'' House Report 107–424. Responsibility for the RBIP on behalf of the USDA has been assigned to the Rural Business-Cooperative Service (RBS), which is one of the USDA agencies reporting to the Under Secretary for Rural Development.

The mission of the RBIP is to encourage economic growth, innovation, and entrepreneurship by encouraging privately owned and managed venture capital investment funds to achieve financial success by investing in America's rural enterprises, for the benefit of the businesses and the customers and communities they serve. USDA and SBA believe that the RBIP represents an opportunity to supplement the considerable impact on jobs and economic growth made in rural areas from venture capital financings of the Small Business Investment Company (SBIC) program administered by the SBA. With a rigorous business focus, this new program can contribute significantly to the Federal government's efforts to encourage private risk-taking and investment in rural America.

The RBIP will accomplish its mission by: (1) Licensing experienced venture capital fund managers with exceptional ''deal flow'' who are capable of raising equity capital from sophisticated private investors; (2) creating strong multiple lines of defense to manage risk to taxpayers; (3) communicating understandable ground rules to program participants; (4) offering applicants time to raise their required private equity capital; (5) allowing RBICs to develop results based on traditional cycles of venture investing; and (6) focusing on profit maximization as the key to success, while providing for a grant assistance component as provided in the Act.

As you read the section-by-section analysis of the regulations in section III of this preamble, you will note that many of the provisions of these regulations are modeled after regulations governing SBA's SBIC and New Markets Venture Capital (NMVC) programs. In addressing the challenge of implementing the RBIP, the USDA was able to draw upon the experience that SBA has gained in administering the SBIC program.

The Small Business Investment Act of 1958 created the SBIC program in response to a Federal Reserve study finding that small businesses were generally unable to obtain the long-term debt and equity funds that they needed to succeed. The basic objective of the SBIC program is to attract and supplement private capital, managed by private investment managers, to meet that need. SBA licenses such companies as SBICs, regulates their activities to ensure that they are financially sound and serve the program's public policy objectives, and supplements their private capital by guaranteeing debentures or other securities that they issue.

Congress created the NMVC program in December 2000, to address the unmet equity capital needs of small business

concerns located in low-income geographic areas. SBA enters into a participation agreement with each NMVCC that details, among other things, the specific low-income areas that it will serve, how it will serve those areas, what results it expects to achieve, and how its success will be measured.

Because of the many similarities among the SBIC, NMVC, and RBIP programs, USDA will incorporate into the RBIP those SBIC and NMVC regulations that USDA believes are fundamental to the safety and soundness of the RBIP.

II. Justification for Publication of Interim Final Status Rule

USDA generally publishes a proposed rule and invites public comment before issuing a final rule pursuant to the Administrative Procedures Act (APA) (5 U.S.C. 553). However, the APA provides for exceptions to the general rule if the agency finds ''good cause'' to omit advance notice and public participation. The ''good cause'' requirement is satisfied when prior public procedure is ''impractical, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)). For the following reasons, USDA has determined that it would be impractical, unnecessary and contrary to the public interest to delay the effectiveness of this rule in order to solicit prior public comments.

As intended by Congress and noted in the Conference Manager's Report, this program is modeled after two existing SBA programs: the SBIC and NMVC programs, except this program has a rural emphasis. Changes to already existing regulations were made when mandated by statutory differences. All other changes were minimized and were intended to assure technical compliance. While USDA has oversight of this program, SBA has day-to-day management and operation of the program using its staff, procedures, and forms, pursuant to an interagency agreement, as required by the Act.

Given the degree of similarity between this program and SBA's SBIC and NMVC programs, little was to be gained from a delay in implementing the program for public comment. USDA has attempted to minimize the administrative burden by adopting as much of the SBA's SBIC and NMVC programs as possible. Accordingly, the interim rule imposes a minimum number of unfamiliar requirements from the SBIC and NMVC programs and the rule should be very familiar to applicants currently participating in either of those programs.

We are not publishing this rule as a final rule. Instead, we are waiving notice of proposed rulemaking and publishing this rule as an interim final rule with comment period. As we develop this rule, we welcome comments from the public on all issues set forth in this rule to assist us in fully considering the issues and any associated regulatory impacts.

III. Section-by-Section Analysis

The following is a section by section analysis of USDA's regulations to add a new part 4290 to Title 7 of the Code of Federal Regulations to implement the Act.

Sections 4290.10 through 4290.50 briefly describe the RBIP, state the legal basis for the program, define terms, and provide guidance on how to read part 4290. Section 4290.45 states that pursuant to a delegation of authority, SBA will exercise on behalf of USDA all responsibilities and authorities assigned to the Secretary in the new part 4290, unless specifically stated otherwise in a particular section in part 4290.

Section 4290.50 contains the definitions applicable to the program. Most of the defined terms come directly from the Act and USDA did not supplement or modify them. USDA also establishes several new definitions specific to the RBIP. Several of the definitions are based on Title 13 of the Code of Federal Regulations which governs SBA's programs, including the SBIC (13 CFR part 107) and NMVC (13 CFR part 108) programs, and sets forth size standards for determining the size of a smaller enterprise.

''Enterprise'' is a newly defined term that describes all potential recipients of RBIC financings. The term ''primarily operating'' has been adapted from section 384A(13) of the Act to help define rural business concerns. It will be defined as the place where the principal office of the enterprise is located; that term, in turn, is defined as the location where the greatest number of employees is located. The definitions also comprise several terms incorporating the concept of a rural area. They are unique to this program and specify an area located outside a standard metropolitan statistical area or a community with a population of 50,000 or fewer inhabitants. The definition of a ''smaller enterprise'' is different from the definition employed in the SBIC and NMVC programs. In those programs the application of the term was limited to for-profit business concerns as defined by SBA. In the RBIP, the term specifically includes rural business concerns which may include, among other things, non-profit entities. The definition of the phrase, ''subordinated debt with equity features,'' is also unique to this program because, pursuant to section 384A(4) of the Act, this is a type of equity capital that RBICs are permitted to invest in smaller enterprises. ''Urban area'' is also defined in this section in order to implement section 384(I)(c)(3)(C) of the Act, which limits a RBIC's ability to make financings to enterprises located in such areas.

Sections 4290.100 through 4290.165 describe the organizational basis for a RBIC. An applicant for a RBIC license must be a newly formed for-profit entity or, subject to § 4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State solely for the purpose of performing the functions and conducting the activities contemplated under the Act: to make venture capital investments in rural areas with the objectives of fostering economic development in such areas and returning maximum profits to the RBIC's investors and to provide operational assistance to eligible smaller enterprises. It must have qualified management and agree that it will (i) make such investments, (ii) have a plan to invest in rural areas, and (iii) identify particular rural areas in which it proposes to focus its investment activities. USDA models these regulations on similar regulations governing the SBIC and NMVC programs, including the requirements that RBICs must have management and ownership diversity and that USDA will require pre-approval of all management expenses of a RBIC.

Sections 4290.200 through 4290.240 address capitalization of a RBIC, including minimum capital requirements, allowable sources of private capital, and limitations on non-cash contributions to capital. These regulations are modeled on similar regulations in the SBIC and NMVC programs.

Sections 4290.300 through 4290.330 set forth policies and procedures for the application and approval process for obtaining a RBIC license. USDA will allow submission of applications for participation in the RBIP only during a specific application period to be set forth in a Notice of Funds Availability published in the **Federal Register**, as opposed to a ''rolling admissions'' process. USDA will use this method of selecting applicants for three reasons. First, the USDA believes this method will enable USDA to achieve the objective of ensuring, to the extent possible and given the applications received, nationwide geographic distribution of developmental venture capital. USDA will compare

applications both for quality and other criteria described in the regulations, and for the geographic areas they intend to cover so as to choose the best applications for each geographic area and avoid duplication within specific geographic areas. Second, USDA has a limited amount of funds available with which to license RBICs, based on a one-time authorization of funds. A competitive process will allow USDA to utilize those funds expeditiously and efficiently. Third, USDA believes this procedure will allow it to orderly administer appropriated funds it may receive in subsequent fiscal years by allowing USDA to open up the RBIP to new rounds of applicants.

USDA will require applicants for participation in the RBIP to submit an application, similar to the applications for SBA's SBIC and NMVC programs. Key application requirements include management team experience, an indication of the amount of regulatory capital an applicant has raised or proposes to raise, and a comprehensive business plan. The application submission requirements are outlined in section 384D of the Act. Based in part on the experience of other Federal agencies with similar economic development programs, USDA believes these application requirements will allow USDA to ensure that applicants understand the objectives of the RBIP and have a sound plan for accomplishing those objectives and for creating and maintaining a viable investment fund. USDA also will assess a ''grant issuance fee'' for applications to the RBIP.

Sections 4290.340 through 4290.390 describe USDA's evaluation criteria and the selection and licensing process for participation in the RBIP. In considering applicants for licensing, USDA will review an applicant's application materials, conduct interviews or site visits (if applicable) with the applicant, and perform background investigations. Most of the specified criteria are set forth in the Act. The Secretary will not consider any application that is not complete or that is submitted by an applicant that does not meet the eligibility criteria in subpart C of this part. The Secretary will perform an initial review of an applicant's management team qualifications to determine whether the team meets the minimum requirements deemed by the Secretary in his or her sole discretion to be critical to successful venture capital investing. From among the applicants that have submitted eligible and complete applications and that have qualified management teams, the Secretary on behalf of USDA and the Administrator on behalf of SBA will select some, all, or none of such applicants to participate in the RBIP. Selection will entitle the applicant to proceed with obtaining a license as a RBIC, but only if and when the applicant meets the conditions set forth in § 4290.390.

Sections 4290.400 through 4290.480 describe USDA's requirements in the event of changes in ownership, control, or structure of a RBIC. These regulations are modeled after similar regulations for the SBIC and NMVC programs.

Sections 4290.500 through 4290.585 describe USDA's requirements for managing the operations of a RBIC. These regulations are modeled after similar regulations for the SBIC and NMVC programs.

Sections 4290.600 through 4290.680 describe USDA's recordkeeping, record retention, reporting, and examination requirements for RBICs. These regulations are modeled after similar regulations for the SBIC and NMVC programs. USDA will require each RBIC to provide reports concerning the economic development impact of each investment it makes, as well as reports on its administration and use of grant funds as required by Circular A–110 of the Office of Management and Budget (OMB), ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations.'' USDA anticipates that to the extent not inconsistent with USDA's regulations for the RBIP, RBICs' administration and use of grant funds will be subject to OMB Circular A–110. OMB Circular A–110 is optional for use in connection with grants to commercial organizations. USDA will apply it to RBICs in order to take advantage of existing and well-known grant administrative procedures and policies to facilitate USDA's orderly administration of grants to RBICs.

Sections 4290.690 through 4290.692 describe USDA's requirements for examinations of RBICs for regulatory compliance. These regulations are modeled after similar regulations for the SBIC and NMVC programs, and require RBICs to submit to annual examinations.

Section 4290.700 is key to effectuating the Act's directive to promote rural development. This section requires RBICs to invest at least 75 percent of their financings in rural business concerns and to have more than 50 percent of its investments in smaller enterprises (and, of those, at least 50 percent must be in small business concerns). A separate section (§ 4290.740) addresses the need for portfolio diversification. No more than 10 percent of a RBIC's financings may be in urban areas.

RBICS are prohibited by § 4290.720 from investing in enterprises that do no more than re-lend or re-invest the RBIC's funds or are passive enterprises, subject to certain highly specific exceptions. Section 4290.730 contains a prohibition on financings which constitute conflicts of interest.

Sections § 4290.810 through § 4290.880 address a series of issues involved in structuring eligible RBIC financings. These sections govern various forms and durations of financings, applicable amortization and interest rates, allowable fees and expenses, and the subject of disposing of assets, among other issues. Although these regulations are largely modeled after similar regulations for the SBIC and NMVC programs in several aspects, in other aspects they are unique to the RBIP and highlight its emphasis on rural investment and economic development.

Sections 4290.1100 through 4290.1720 describe USDA's requirements and procedures for RBICs to obtain leverage from USDA, the procedures governing USDA's funding of that leverage, and the use of Trust Certificates. These regulations are modeled after similar regulations for the SBIC and NMVC programs.

Section 4290.1500 imposes certain constraints on a RBIC's powers to make distributions to its investors. At the same time a RBIC makes such a distribution, it also must make a prepayment to or for the benefit of the third-party holder of the debenture, ratably with the distribution to the RBIC's equity investors. Although this provision differs from existing repayment clauses in existing SBA Investment Division debenture programs, it is consistent with the creditor nature of the Government's exposure (no profit participation), and the cash flow nature of venture investing. This provision will reduce the Government's risk and thereby have a positive effect on the subsidy model and risk profile of the program.

Sections 4290.1810 through 4290.1840 describe events of default and capital impairment and USDA's remedies upon such defaults. These regulations are modeled after similar regulations for the SBIC and NMVC programs.

Section 4290.1900 concerns termination by a RBIC of its participation in the RBIP. This regulation is modeled after a similar regulation for the SBIC and NMVC programs.

Sections 4290.1910 through 4290.1930 address miscellaneous issues, including application for an exemption from regulatory requirements and the effect of regulatory changes on transactions previously consummated. These regulations are modeled after similar regulations for the SBIC and NMVC programs. Section 4290.1940 refers to other USDA regulations applicable to the RBIP.

Section 4290.2000 sets forth requirements and procedures for operational assistance grants to RBICs. USDA will award such grants only after receiving and evaluating applications in response to a Notice of Funds Availability published in the **Federal Register**. Each qualified RBIC will receive a grant. This rule does not cover grants to non-RBICs; USDA will do so at a later date.

USDA also will require RBICs to provide reports on its administration and use of grant funds as required by OMB Circular A–110. USDA anticipates that to the extent not inconsistent with these regulations, RBICs' administration and use of grant funds will be subject to OMB Circular A–110.

IV. Justification for Immediate Effective Date of Interim Final Rule

Interim rules published by USDA generally take effect 30 days after publication. However the APA provides that when the Agency finds good cause exists, the rule may take effect immediately (*see* 5 U.S.C. 553(d)(3)). For the reasons set forth in the Justification of Publication for Interim Final Status Rule and in this part, USDA finds that good cause exists for making this interim final rule effective immediately, instead of observing the 30-day period between publication and effective date.

Venture capital is needed in rural areas. This is the first authorization for this Department to provide venture capital funds to rural areas. While the SBIC and NMVC programs make a significant impact on non-metropolitan areas, SBA's programs are not exclusively targeted on rural areas. Historically most venture capital funds have not gone to rural areas. Rural areas have suffered significant economic declines over the past years and this program is needed to help offset those declines as soon as possible.

The purpose of the 30 day delay in a published rule taking effect is to provide interested and affected members of the public sufficient time to adjust their behavior before the rule takes effect. There is no reason to delay implementation in this case because the interested and affected members of the public that this rule affects are either already participating in SBA's existing SBIC and NMVC programs or are familiar with the provisions of these programs. This program is modeled after and virtually identical to these programs and for that reason will require minimal changes in applicant behavior.

Based on the long period of time before any investments can be made by RBICs, it is critical to initiate a fair and competitive application process as soon as possible. Applicants will need several months to assemble a qualified management team, develop their strategic investment objectives, prepare and submit their RBIC applications prior to October 1, 2004, the date which, under current congressional authority, the funding for licensed RBICs becomes available. The subsequent application review and evaluation process will require several more months time before selected applicants can confidently begin raising the requisite capital, which can take up to an additional year before being awarded a RBIC license. All of this has to be done before a licensed RBIC can make its first investment. Additionally, over two years has lapsed since Congress recognized the need for developmental venture capital in rural areas and the Act became law in May 2002. It would be a disservice to the public to unnecessarily delay the implementation of the RBIP any further given that the public already knows the detailed provisions of the authorizing statute and its similarity to the SBIC and NMVC programs and the need for developmental venture capital in rural America.

V. Regulatory Compliance Section—Compliance With Executive Orders 12866 (Regulatory Planning and Review), 12988 (Civil Justice Reform) and 13132 (Federalism); Paperwork Reduction Act; Government Paperwork Elimination Act; Intergovernmental Review; Environmental Impact Statement; and Unfunded Mandates Reform Act

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule does not constitute a ''significant'' regulatory action under Executive Order 12866. Therefore, a regulatory assessment is not required.

Compliance With Executive Order 12988

USDA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 3 of Executive Order 12988. In accordance with this Executive Order: (1) All State and local laws and regulations that are in conflict with this rule will be preempted, (2) no retroactive effect will be given to this rule, and (3) administrative proceedings in accordance with RBS regulations at 7 CFR part 11 must be exhausted before bringing litigation challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

Compliance With Executive Order 13132

For purposes of Executive Order 13132, USDA has determined that this rule has no federalism implications warranting preparation of a federalism assessment.

Intergovernmental Review

The Business and Industry loan programs are subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. RBS will conduct intergovernmental consultation in the manner delineated in 7 CFR part 3015, subpart V.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RBS has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq,* an Environmental Impact Statement is not required.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RBS must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of UMRA generally requires RBS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective, or least burdensome alternative that achieves the objectives of the rule. This rule contains no

Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Thus, this rule does not trigger the requirements of sections 202 and 205 of the UMRA.

Compliance With Paperwork Reduction Act

USDA has determined that this rule imposes additional reporting or recordkeeping requirements for purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35. The collection of information (''collection'') for the RBIP includes the RBIC application package and reporting and recordkeeping requirements. USDA previously requested from the Office of Management and Budget (''OMB'') an emergency clearance of this collection. OMB reviewed and approved the collection and assigned OMB control number 0570–0051.

Simultaneously with the publication of this rule in the **Federal Register**, USDA will make available to the public the collection on SBA's Web site at *http://www.sba.gov/INV/RBIP* or you may request a copy by calling Austin J. Belton, Director of New Markets Venture Capital, Investment Division, SBA, at (202) 205–6510.

The following is a list of sections of this regulation that describe generally the collection requirements for the RBIP and reasons why USDA believes it needs to collect such information.

A. Applying for a License as a RBIC

As referenced in § 4290.310 (Contents of application) and § 4290.320 (Contents of a comprehensive business plan), USDA will request information such as basic identifying data and core data, management and organization information, descriptions of past and present performance in developmental venture capital investments in smaller enterprises and in rural areas, technical qualifications of the applicant, descriptions of activities proposed using debentures issued by RBICs, and reporting capabilities.

USDA needs this information to evaluate applicants and to ensure that selections are made in furtherance of the RBIP's objectives. USDA understands that the respondents to these requests will be limited to those organizations meeting the requirements set forth in § 4290.100 (Business form); § 4290.110 (Qualified management); § 4290.120 (Plan to invest in rural areas); and § 4290.150 (Management and ownership diversity requirement). Based upon USDA's knowledge of the industry, USDA estimates that approximately 25 applicants will apply to participate in the RBIP. Respondents will need to submit the information referenced in §§ 4290.310 and 4290.320 only at the time of application to participate in the RBIP. USDA estimates that it will take respondents 291.75 hours to complete an application and to fulfill the reporting and record keeping requirements referenced below.

B. RBIC Reporting and Recordkeeping Requirements

As referenced in §§ 4290.600 to 4290.680, USDA will request financial information including, but not limited to, financial statements, economic impact and economic development information, and portfolio financing reports and valuations.

USDA needs this information to evaluate the performance and success of RBICs in fulfilling the objectives of their participation agreements and their actual venture capital investments in smaller enterprises located in rural areas.

C. Request for Comments

With regard to each collection of information discussed above and contained in the collection itself, USDA is seeking your comment on the following issues:

(a) Whether the information USDA will request on the application is necessary for USDA's proper implementation and measurement of the performance of the RBIP;

(b) The accuracy of the burden estimate (time estimated to complete each collection of information request);

(c) Ways to minimize the burden estimates, and

(d) Ways to enhance the quality of the information being collected.

Please send written comments on or before August 9, 2004, on the data collection requirements to Austin J. Belton, Director of New Markets Venture Capital, Investment Division, SBA, 409 Third Street, SW., Washington, DC 20416.

Government Paperwork Elimination Act

USDA is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies in general to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

List of Subjects in 7 CFR Part 4290

Community development, Government securities, Grant programs—business, Securities, Small businesses.

■ For the reasons stated in the preamble, the Secretary is amending 7 CFR chapter XLII by adding part 4290 to read as follows:

PART 4290—RURAL BUSINESS INVESTMENT COMPANY (''RBIC'') PROGRAM

Subpart A—Introduction to Part 4290

Sec.
4290.10 Description of the Rural Business Investment Company Program.
4290.20 Legal basis and applicability of this part 4290.
4290.30 Amendments to Act and regulations.
4290.40 How to read this part 4290.
4290.45 Responsibility for implementing this part 4290.

Subpart B—Definition of Terms Used in Part 4290

4290.50 Definition of terms.

Subpart C—Qualifications for the RBIC Program

Organizing a RBIC

4290.100 Business form.
4290.110 Qualified management.
4290.120 Plan to invest in Rural Areas.
4290.130 Identified Rural Areas.
4290.140 Approval of initial Management Expenses.
4290.150 Management and ownership diversity requirement.
4290.160 Special rules for Partnership RBICs and LLC RBICs.
4290.165 Obligations of Control Persons.

Capitalizing a RBIC

4290.200 Adequate capital for RBICs.
4290.210 Minimum capital requirements for RBICs.
4290.230 Private Capital for RBICs.
4290.240 Limitations on non-cash capital contributions in Private Capital.

Subpart D—Application and Approval Process for RBIC Licensing

4290.300 When and how to apply for a RBIC License.
4290.310 Contents of application.
4290.320 Contents of comprehensive business plan.
4290.330 Grant issuance fee.

Subpart E—Evaluation and Selection of RBICs

4290.340 Evaluation and selection—general.
4290.350 Eligibility and completeness.
4290.360 Initial review of Applicant's management team's qualifications.
4290.370 Evaluation criteria.
4290.380 Selection.
4290 390 Licensing as a RBIC.

Subpart F—Changes in Ownership, Structure, or Control

Changes in ControL or Ownership of a RBIC

4290.400 Changes in ownership of 10 percent or more of RBIC but no change of Control.

4290.410 Changes in Control of RBIC (through change in ownership or otherwise).
4290.420 Prohibition on exercise of ownership or Control rights in RBIC before approval.
4290.430 Notification of transactions that may change ownership or Control.
4290.440 Standards governing prior approval for a proposed transfer of Control.
4290.450 Notification of pledge of RBIC's shares.

Restrictions on Common Control or Ownership of Two or More RBICs

4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.

Change in Structure of RBIC

4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.
4290.480 Prior approval of changes to RBIC's business plan.

Subpart G—Managing the Operations of a RBIC

General Requirements

4290.500 Lawful operations under the Act.
4290.502 Representations to the public.
4290.503 RBIC's adoption of an approved valuation policy.
4290.504 Equipment and office requirements.
4290.506 Safeguarding the RBIC's assets/Internal controls.
4290.507 Violations based on false filings and nonperformance of agreements with the Secretary or SBA.
4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.
4290.509 Employment of USDA or SBA officials.

Management and Compensation

4290.510 Approval of RBIC's Investment Adviser/Manager.
4290.520 Management Expenses of a RBIC.

Cash Management by a RBIC

4290.530 Restrictions on investments of idle funds by RBICs.

Secured Borrowing by RBICs

4290.550 Prior approval of secured third-party debt of RBICs.

Voluntary Decrease in Regulatory Capital

4290.585 Voluntary decrease in RBIC's Regulatory Capital.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

Recordkeeping Requirements for RBICs

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Authority: 7 U.S.C. 1989 and 2009cc *et seq.*

Subpart A—Introduction to Part 4290

§ 4290.10 Description of the Rural Business Investment Company Program.

The Rural Business Investment Company (''RBIC'') Program is a Developmental Venture Capital program for the purpose of promoting economic development and the creation of wealth and job opportunities in Rural Areas and among individuals living in such Areas. To this end, the Secretary will select and license RBIC Applicants that will agree to address the unmet Equity Capital needs of Smaller Enterprises primarily located in Rural Areas.

§ 4290.20 Legal basis and applicability of this part 4290.

The regulations in this part implement Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) (''Act''). All RBICs must comply with all applicable regulations, accounting guidelines and valuation guidelines for RBICs.

§ 4290.30 Amendments to Act and regulations.

A RBIC is subject to all existing and future provisions of the Act and part 4290 of title 7 of the Code of Federal Regulations.

§ 4290.40 How to read this part 4290.

(a) *Center Headings.* Center headings are descriptive and are used for convenience only. They have no regulatory effect.

(b) *Capitalizing defined terms.* Terms defined in § 4290.50 have initial capitalization in this part 4290.

(c) *''You.''* The pronoun ''you'' as used in this part 4290 means a RBIC unless otherwise noted.

(d) *Forms.* All references in this part to forms, and instructions for their preparation, are to the current issue of such forms.

§ 4290.45 Responsibility for implementing this part 4290.

The Secretary has delegated to the U.S. Small Business Administration (SBA), pursuant to an agreement under the Economy Act (31 U.S.C. 1535), the authority to implement the RBIC program, including implementing and enforcing the regulations in this part 4290. Therefore, unless specifically stated otherwise, SBA will exercise on behalf of the Secretary all responsibilities and authorities assigned to the Secretary in this part 4290.

Subpart B—Definition of Terms Used in Part 4290

§ 4290.50 Definition of terms.

Act means Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*).

Administrator means the Administrator of SBA.

Affiliate or *Affiliates* has the meaning set forth in title 13 CFR 121.103.

Applicant means any entity submitting an application to be licensed as a RBIC.

Articles mean articles of incorporation or charter and bylaws for a Corporate RBIC, the certificate and limited partnership agreement for a Partnership RBIC, and the operating agreement or other organizational documents for an LLC RBIC.

Assistance or *Assisted* means Financing of or management services rendered to a Portfolio Concern by or through a RBIC pursuant to the Act and this part.

Associate of a RBIC means any of the following:

(1)(i) An officer, director, employee or agent of a Corporate RBIC;

(ii) A Control Person, employee or agent of a Partnership RBIC;

(iii) A managing member of an LLC RBIC;

(iv) An Investment Adviser/Manager of any RBIC, including any Person who contracts with a Control Person of a RBIC to be the Investment Adviser/Manager of such RBIC; or

(v) Any Person regularly serving a RBIC on retainer in the capacity of attorney at law.

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate RBIC or 10 percent of the membership interests of an LLC RBIC, or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership RBIC. However, neither a limited partner in a Partnership RBIC nor a non-managing member in an LLC RBIC is considered an Associate if such Person is an Entity Institutional Investor whose investment in the Partnership, including commitments, represents no more than 33 percent of the capital of the RBIC and no more than five percent of such Person's net worth.

(3) Any officer, director, partner (other than a limited partner), manager, agent, or employee of any Associate described in paragraph (1) or (2) of this definition.

(4) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, a RBIC.

(5) Any Person that directly or indirectly Controls, or is Controlled by, or is under Common Control with, any Person described in paragraphs (1) and (2) of this definition.

(6) Any Close Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(7) Any Secondary Relative of any Person described in paragraphs (1), (2), (4), and (5) of this definition.

(8) Any concern in which—

(i) Any person described in paragraphs (1) through (6) of this definition is an officer; general partner, or managing member; or

(ii) Any such Person(s) singly or collectively Control or own, directly or indirectly, an equity interest of at least 10 percent (excluding interests that such Person(s) own indirectly through ownership interests in the RBIC).

(9) Any concern in which any Person(s) described in paragraph (7) of this definition singly or collectively own (including beneficial ownership) a majority equity interest, or otherwise have Control. As used in this paragraph (9), ''collectively'' means together with any Person(s) described in paragraphs (1) though (7) of this definition.

(10) For the purposes of this definition, any Associate relationship described in paragraphs (1) through (7) of this definition that exists at any time within six months before or after the date that a RBIC provides Financing, will be considered to exist on the date of the Financing.

Capital Impairment has the meaning set forth in § 4290.1830(b).

Central Registration Agent or *CRA* means one or more agents appointed for the purpose of issuing Trust Certificates (TCs) and performing the functions enumerated in § 4290.1620 and performing similar functions for Debentures funded outside the pooling process.

Close Relative of an individual means:

(1) A current or former spouse;

(2) A father, mother, guardian, brother, sister, son, daughter; or

(3) A father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, or daughter-in-law.

Commitment means a written agreement between a RBIC and an Enterprise that obligates the RBIC to provide Financing (except a guarantee) to that Enterprise in a fixed or determinable sum, by a fixed or determinable future date. In this context

the term ''agreement'' means that there has been agreement on the principal economic terms of the Financing. The agreement may include reasonable conditions precedent to the RBIC's obligation to fund the Commitment, but these conditions must be outside the RBIC's control.

Common Control means a condition such that two or more Persons, either through ownership, management, contract, or otherwise, are under the Control of one group or Person. Two or more RBICs are presumed to be under Common Control if they are Affiliates of each other by reason of common ownership or common officers, directors, or general partners; or if they are managed or their investments are significantly directed either by a common independent Investment Advisor/Manager or managerial contractor, or by two or more such advisors or contractors that are Affiliates of each other. This presumption may be rebutted by evidence satisfactory to the Secretary.

Community Development Finance means debt or equity-type investments in Rural Areas.

Control means the possession, direct or indirect, of the power to direct or cause, or the power to stop or hinder (also referred to as ''negative Control''), the direction of the management and policies of a RBIC or other concern, whether through the ownership of voting securities, by contract, or otherwise.

Control Person means any Person that controls a RBIC, either directly or through an intervening entity. A Control Person includes:

(1) A general partner of a Partnership RBIC;

(2) Any Person serving as a general partner (in the case of a partnership), an officer or director (in the case of a corporation), or a manager (in the case of a limited liability company) of any entity that controls a RBIC, either directly or through an intervening entity;

(3) Any Person that—

(i) Controls or owns, directly or through an intervening entity, at least 10 percent of a Partnership RBIC, a LLC RBIC, or any entity described in paragraphs (1) or (2) of this definition; and

(ii) Participates in the investment decisions of a general partner of such Partnership RBIC or of a managing member of such LLC RBIC;

(4) Any Person that controls or owns, directly or through an intervening entity, at least 50 percent of a RBIC or any entity described in paragraphs (1) or (2) of this definition.

Corporate RBIC has the meaning set forth in the definition of RBIC in this section.

Debenture means a debt obligation issued by RBICs pursuant to section 384E of the Act and held or guaranteed by the Secretary.

Debt Securities means instruments evidencing a loan with an option or any other right to acquire Equity Securities in an Enterprise or its Affiliates, or a loan which by its terms is convertible into an equity position. Consideration must be paid for all options acquired.

Developmental Venture Capital means Equity Capital invested in Rural Business Concerns, with an objective of fostering economic development in Rural Areas.

Distribution means any transfer of cash or non-cash assets to the Secretary, the Secretary's agent or Trustee, or to partners in a Partnership RBIC, or to shareholders in a Corporate RBIC, or to members in an LLC RBIC. Capitalization of Retained Earnings Available for Distribution constitutes a Distribution to the RBIC's partners, shareholders, or members.

Enterprise means a Person engaged in a business or commercial activity which charges for the goods and services it provides, whether such Person is operating for profit or is subject to any legal restrictions on the distribution of profits to its owners, members, or suppliers of its equity or quasi-equity capital. An Enterprise includes:

(1) A public, private, or cooperative for-profit or non-profit organization;

(2) A for-profit or nonprofit business controlled by an Indian tribe on a Federal or State reservation or other federally recognized Indian tribal group; or

(3) Any other Person.

Entity General Partner has the meaning set forth in § 4290.160.

Entity Managing Member has the meaning set forth in § 4290.160.

Equity Capital means Equity Securities or Subordinated Debt With Equity Features.

Equity Securities means stock of any class in a corporation, stock options, warrants, limited partnership interests in a limited partnership, membership interests in a limited liability company, or joint venture interests.

Farm Credit System Institution means an institution defined in section 1.2(a) of the Farm Credit Act of 1971 (12 U.S.C. 2002(a)).

Financing or *Financed* means outstanding financial assistance provided to a Portfolio Concern by a RBIC, whether through:

(1) Loans, with or without a right to acquire Equity Securities;

(2) Debt Securities;

(3) Equity Securities;

(3) Subordinated Debt With Equity Features;

(4) Guarantees; or

(5) Purchases of securities of an Enterprise through or from an underwriter as permitted by § 4290.825.

Guaranty Agreement means the contract entered into by the Secretary which is a guarantee backed by the full faith and credit of the United States Government as to timely payment of principal and interest on Debentures and the Secretary's rights in connection with such guarantee.

Includible Non-Cash Gains means those non-cash gains (as reported on SBA Form 468) that are realized in the form of Publicly Traded and Marketable securities or investment grade debt instruments. For purposes of this definition, investment grade debt instruments means those instruments that are rated ''BBB'' or ''Baa'', or better, by Standard & Poor's Corporation or Moody's Investors Service, respectively. Non-rated debt may be considered to be investment grade if a RBIC obtains a written opinion from an investment banking firm acceptable to the Secretary stating that the non-rated debt instrument is equivalent in risk to the issuer's investment grade debt.

Institutional Investor means Entity Institutional Investor or Individual Institutional Investor, each defined as follows:

(1) *Entity Institutional Investors.* Any of the following entities if the entity has a net worth (exclusive of unfunded commitments from investors) of at least $1 million, or such higher amount as is specified in this paragraph (1). (*See also* § 4290.230(c)(4) for limitations on the amount of an Entity Institutional Investor's commitment that may be included in Private Capital.)

(i) A State or National bank, Farm Credit System Institution, trust company, savings bank, or savings and loan association.

(ii) An insurance company.

(iii) A 1940 Act Investment Company or Business Development Company (each as defined in the Investment Company Act of 1940, as amended (15 U.S.C. 80a–1 *et seq.*).

(iv) A holding company of any entity described in paragraph (l)(i), (ii) or (iii) of this definition.

(v) An employee benefit or pension plan established for the benefit of employees of the Federal government, any State or political subdivision of a State, or any agency or instrumentality of such government unit.

(vi) An employee benefit or pension plan (as defined in the Employee

Retirement Income Security Act of 1974, as amended (Public Law 93–406, 88 Stat. 829), excluding plans established under § 401(k) of the Internal Revenue Code of 1986 (26 U.S.C. 401(k)), as amended).

(vii) A trust, foundation or endowment exempt from Federal income taxation under the Internal Revenue Code of 1986, 26 U.S.C. 1, as amended.

(viii) A corporation, partnership or other entity with a net worth (exclusive of unfunded commitments from investors) of more than $10 million.

(ix) A State, a political subdivision of a State, or an agency or instrumentality of a State or its political subdivision.

(x) An entity whose primary purpose is to manage and invest non-Federal funds on behalf of at least three Institutional Investors described in paragraphs (l)(i) through (ix) of this definition, each of whom must have at least a 10 percent ownership interest in the entity.

(xi) Any other entity that the Secretary determines to be an Institutional Investor.

(2) *Individual Institutional Investor.* (i) Any of the following individuals if he/she is also a permanent resident of the United States:

(A) An individual who is an Accredited Investor (as defined in the Securities Act of 1933, as amended (15 U.S.C. 77a–77aa)) and whose commitment to the RBIC is backed by a letter of credit from a State or National bank acceptable to the Secretary.

(B) An individual whose personal net worth is at least $2 million and at least ten times the amount of his or her commitment to the RBIC. The individual's personal net worth must not include the value of any equity in his or her most valuable residence.

(C) An individual whose personal net worth, not including the value of any equity in his or her most valuable residence, is at least $10 million.

(ii) Any individual who is not a permanent resident of the United States but who otherwise satisfies paragraph (2)(i) of this definition provided such individual has irrevocably appointed an agent within the United States for the service of process.

Investment Adviser/Manager means any Person who furnishes advice or assistance with respect to operations of a RBIC under a written contract executed in accordance with the provisions of § 4290.510.

Lending Institution means a concern that is operating under regulations of a state or Federal licensing, supervising, or examining body, or whose shares are publicly traded and listed on a recognized stock exchange or is listed in the Automated Quotation System of the National Association of Securities Dealers (NASDAQ) and which has assets in excess of $500 million; and which, in either case, holds itself out to the public as engaged in the making of commercial and industrial loans and whose lending operations are not for the purpose of financing its own or an Associate's sales or business operations.

Leverage means financial assistance provided to a RBIC by the Secretary either through the purchase or guaranty of a RBIC's Debentures and any other SBA financial assistance evidenced by a security of the RBIC.

Leverageable Capital means Regulatory Capital, excluding unfunded commitments.

LLC RBIC has the meaning set forth in the definition of RBIC in this section.

Loan means a transaction evidenced by a debt instrument with no provision for you to acquire Equity Securities.

Loans and Investments means Portfolio securities, assets acquired in liquidation of Portfolio securities, operating Enterprises acquired, and notes and other securities received, as set forth in the Statement of Financial Position on SBA Form 468.

Management Expenses has the meaning set forth in § 4290.520.

NAICS Manual means the latest issue of the North American Industrial Classification System (NAICS) Manual, prepared by the Office of Management and Budget, and available from the U.S. Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250–7954.

1940 Act Company means a RBIC which is registered under the Investment Company Act of 1940.

1980 Act Company means a RBIC which is registered under the Small Business Investment Incentive Act of 1980.

Operational Assistance means management, marketing, and other technical assistance that assists a Smaller Enterprise with its business development.

Original Issue Price means the price paid by the purchaser for securities at the time of issuance.

Participation Agreement means an agreement between the Secretary and an Applicant licensed as a RBIC pursuant to § 4290.390 of this part, that details the RBIC's operating plan and investment criteria and requires the RBIC to operate pursuant to the Act and this part.

Partnership RBIC has the meaning set forth in the definition of RBIC in this section.

Person means a natural person or legal entity.

Pool means an aggregation of guaranteed Debentures approved by the Secretary.

Portfolio means the securities representing a RBIC's total outstanding Financings of Enterprises. It does not include idle funds or assets acquired in liquidation of Portfolio securities.

Portfolio Concern means any Enterprise Assisted by a RBIC.

Principal Office means the location where the greatest number of the Enterprise's employees at any one location perform their work. However, for those Enterprises whose ''primary industry'' (*see* 13 CFR 121.107) is service or construction (*see* 13 CFR 121.201), the determination of principal office excludes the Enterprise's employees who perform the majority of their work at job-site locations to fulfill specific contract obligations.

Private Capital has the meaning set forth in § 4290.230.

Publicly Traded and Marketable means securities that are salable without restriction or that are salable within 12 months pursuant to Rule 144 (17 CFR 230.144) of the Securities Act of 1933, as amended, by the holder thereof, and are of a class which is traded on a regulated stock exchange, or is listed in NASDAQ, or has, at a minimum, at least two market makers as defined in the relevant sections of the Securities Exchange Act of 1934, as amended (15 U.S.C. 77b *et seq.*), and in all cases the quantity of which can be sold over a reasonable period of time without having an adverse impact upon the price of the stock.

Qualified Non-private Funds means:

(1) Funds directly or indirectly invested in any RBIC or Applicant on or after May 13, 2002 by any Federal agency other than USDA under a provision of law explicitly mandating the inclusion of those funds in the definition of ''Private Capital;'' and

(2) The aggregate amount of funds invested in any Applicant or RBIC by one or more States, or any political subdivisions, agencies or instrumentalities thereof, including any guarantee extended by such entities.

Regulatory Capital means Private Capital, excluding non-cash assets contributed to a RBIC or an Applicant unless such assets have been converted to cash or have been approved by the Secretary for inclusion in Regulatory Capital. For purposes of this definition, sales of contributed non-cash assets with recourse or borrowings against such assets shall not constitute a conversion to cash.

Relevant Venture Capital Finance means Equity Capital in Rural Business Concerns or benefiting Rural Areas.

Retained Earnings Available for Distribution means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468), and represents the amount that a RBIC may distribute to investors as a profit Distribution, or transfer to Private Capital.

Rural Area means an area that is located outside a standard metropolitan statistical area, or within a community that has a population of 50,000 or less inhabitants. As used in this definition, ''community'' means any area outside of a metropolitan statistical area (MSA) or any territory within an MSA that is not within an urbanized area, all as defined by the Bureau of the Census of the United States Department of Commerce (Census Bureau) at the last decennial census.

Rural Business Concern means an Enterprise whose Principal Office is located in a Rural Area.

Rural Business Concern Investment means a Financing in a Rural Business Concern whose Principal Office was located in a Rural Area at the time of the initial Financing.

Rural Business Investment Company or *RBIC* means a corporation organized as required by § 4290.100 (Corporate RBIC), a limited partnership organized as required by §§ 4290.100 and 4290.160 (Partnership RBIC), or a limited liability company organized as required by §§ 4290.100 and 4290.160 (LLC RBIC), that has been licensed as a RBIC pursuant to § 4290.390.

SBA means the U.S. Small Business Administration, an agency of the Federal Government headquartered at 409 Third Street, SW, Washington, DC 20416.

Secondary Relative of an individual means:

(1) A grandparent, grandchild, or any other ancestor or lineal descendent who is not a Close Relative;

(2) An uncle, aunt, nephew, niece, or first cousin; or

(3) A spouse of any person described in paragraph (1) or (2) of this definition.

Secretary means the Secretary of Agriculture.

Small Business Concern means a for-profit Smaller Enterprise that meets the definition of ''business concern'' in 13 CFR 121.105 and that, together with its Affiliates, meets the small business size standards set forth in 13 CFR 121.201 or 13 CFR 121.301(c) for the industry in which it is primarily engaged on the date the Financing is made (the term ''primarily engaged'' for purposes of this definition is defined in 13 CFR 121.107).

Small Business Concern Investments means a Financing in the form of Equity Capital in an Enterprise that qualified as both a Smaller Enterprise and a Small Business Concern at the time of the initial Financing.

Small Business Investment Company or *SBIC* means a Licensee, as that term is defined in 13 CFR 107.50.

Smaller Enterprise means any Rural Business Concern that, together with its Affiliates and by itself—

(1) Meets the size standard established by SBA in 13 CFR 121.201, corresponding to each type of economic activity or industry described in the NAICS Manual for the industry in which it is primarily engaged on the date on which the Financing is made (the term ''primarily engaged'' for purposes of this definition is defined in 13 CFR 121.107); or

(2) Has—

(i) A net financial worth of not more than $6,000,000 as of the date on which the Financing is made; and

(ii) An average net income for the two year period preceding the date on which the Financing is made of not more than $2,000,000, after Federal income taxes (excluding any carryover losses), except that, for purposes of this clause, if the Rural Business Concern is not required by law to pay Federal income taxes at the enterprise level, but is required to pass income through to the shareholders, partners, beneficiaries, or other equitable owners of the Rural Business Concern, its net income is determined by allowing a deduction in an amount equal to the total of—

(A) If it is not required by law to pay State (and local, if any) income taxes at the enterprise level, the net income (determined without regard to this paragraph (2)(ii)(A)) multiplied by the marginal State income tax rate (or by the combined State and local income tax rates, as applicable) that would have applied if the Rural Business Concern were a corporation; and

(B) The net income (so determined) less any deduction for State (and local) income taxes calculated under paragraph (2)(ii)(A) of this definition multiplied by the marginal Federal income tax rate that would have applied if the Rural Business Concern were a corporation.

Smaller Enterprise Investment means a Financing in the form of Equity Capital in an Enterprise that qualified as a Smaller Enterprise at the time of the initial Financing.

State means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and the Federated States of Micronesia.

Subordinated Debt means a debt of a debtor, common to more than one creditor, that is the subject of an agreement between two groups of creditors (whose claims would otherwise be in parity) setting forth the circumstances under which the claims of one group (senior creditors) shall be satisfied out of the resources of the common debtor that would otherwise be available for the payment of the claims of the other group (junior creditors).

Subordinated Debt With Equity Features means a Subordinated Debt obligation that gives to the junior creditor such additional compensation as warrants, conversion rights, any other interest in the debtor's equity, profits, increased future revenue, or a royalty interest.

Trust means a legal entity created for the purpose of holding guaranteed Debentures and the guaranty agreement related thereto, receiving, holding and making any related payments, and accounting for such payments.

Trust Certificate Rate means a fixed rate determined at the time Debentures are pooled.

Trust Certificates (TCs) means certificates issued by the Secretary, the Secretary's agent or Trustee and representing ownership of all or a fractional part of a Trust or Pool of Debentures.

Trustee means the trustee or trustees of a Trust.

Undistributed Net Realized Earnings means Undistributed Realized Earnings less Non-cash Gains/Income, each as reported on SBA Form 468.

Unrealized Appreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, exceeds the cost basis thereof.

Unrealized Depreciation means the amount by which a RBIC's valuation of each of its Loans and Investments, as determined by its board of directors, general partner(s), or managing member(s) in accordance with the RBIC's valuation policies, is below the cost basis thereof.

Unrealized Gain (Loss) on Securities Held means the sum of the Unrealized Appreciation and Unrealized Depreciation on all of a RBIC's Loans and Investments, less estimated future income tax expense or estimated

realizable future income tax benefit, as appropriate.

Urban Area means an area containing a city (or its equivalent), or any equivalent geographic area determined by the Census Bureau and adopted by the Secretary for purposes of this definition (about which the Secretary will publish a document in the **Federal Register** from time to time), which had a population of over 150,000 in the last decennial census and the urbanized areas containing or adjacent to that city, both as determined by the Census Bureau for the last decennial census.

Urban Area Investment means a Financing in an Enterprise whose Principal Office was located in an Urban Area at the time of the initial Financing.

USDA means the U.S. Department of Agriculture, a department of the Federal government headquartered at 1400 Independence Avenue, SW., Washington, DC 20250.

Subpart C—Qualifications for the RBIC Program

Organizing a RBIC

§ 4290.100 Business form.

(a) *Newly-formed for-profit.* An Applicant for a RBIC license must be a newly formed for-profit entity or, subject to § 4290.150, a newly formed for-profit subsidiary of an existing entity. It must be organized under the law of a State. An Applicant may be organized as a corporation (''Corporate RBIC''), a limited partnership (''Partnership RBIC''), or a limited liability company (''LLC RBIC'').

(b) *Purpose.* An Applicant must be organized solely for the purpose of performing the functions and conducting the activities contemplated under the Act: making Developmental Venture Capital investments and providing Operational Assistance to eligible Smaller Enterprises.

(c) *Articles.* The RBIC's Articles—

(1) Must specify in general terms:

(i) The purposes for which the RBIC is formed;

(ii) The name of the RBIC;

(iii) The Rural Area or Areas in which it will operate;

(iv) The place where the RBIC's headquarters will be located; and

(v) The amount and classes of the RBIC's ownership interests.

(2) May contain any other provisions consistent with the Act that the RBIC may determine is appropriate to adopt to regulate its business and the conduct of its affairs.

(3) Are subject to the Secretary's approval.

(d) *Duration.* (1) *Partnership RBICs.* If you are a Partnership RBIC:

(i) You must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the Partnership RBIC may be terminated by a vote of your partners;

(ii) None of your general partner(s) may be removed or replaced by your limited partners without prior written approval of the Secretary;

(iii) Any transferee of, or successor in interest to, your general partner shall have only the rights and liabilities of a limited partner prior to the Secretary's written approval of such transfer or succession; and

(iv) You must incorporate all the provisions in this paragraph (d) in your limited partnership agreement.

(2) *LLC RBICs.* If you are a LLC RBIC, you must have a minimum duration of 10 years, or two years following the maturity of your last-maturing Leverage security, whichever is longer. After 10 years, if all Leverage has been repaid or redeemed and all amounts due the Secretary, his or her agent, or Trustee have been paid, the LLC RBIC may be terminated by a vote of your members.

(3) *Corporate RBICs.* If you are a Corporate RBIC, you must have a duration of not less than 30 years unless earlier dissolved by the shareholders, except that the Corporate RBIC must not dissolve until at least two years following the maturity of your last-maturing Leverage security.

§ 4290.110 Qualified management.

An Applicant must show, to the satisfaction of the Secretary, that its current or proposed management team is qualified and has the knowledge, experience, and capability in Community Development Finance or Relevant Venture Capital Finance, necessary for investing in the types of Enterprises contemplated by the Act, regulations in this part, and its business plan. In determining whether an Applicant's current or proposed management team has sufficient qualifications, the Secretary will consider information provided by the Applicant and third parties concerning the background, capability, education, training and reputation of its general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant must designate at least one individual as the official responsible for contact with the Secretary.

§ 4290.120 Plan to invest in Rural Areas.

An Applicant must agree that if licensed as a RBIC, it will make Developmental Venture Capital investments in Enterprises that will create wealth and job opportunities in Rural Areas and among individuals living in those areas.

§ 4290.130 Identified Rural Areas.

A RBIC must identify the specific Rural Area or Areas in which it intends to make Developmental Venture Capital investments and provide Operational Assistance under the RBIC program. The scope of the identified areas must be consistent with Applicant's business plan, especially as the plan relates to the Applicant's ability to operate actively, soundly, and profitably in such areas.

§ 4290.140 Approval of initial Management Expenses.

A RBIC must have its Management Expenses approved by the Secretary at the time it is licensed. (*See* § 4290.520 for the definition of Management Expenses.)

§ 4290.150 Management and ownership diversity requirement.

(a) *Diversity requirement.* You must have diversity between management and ownership in order to be licensed as a RBIC and to maintain your license. To establish diversity, you must meet the requirements in paragraphs (b) and (c) of this section.

(b) *Percentage ownership requirement.* No Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(c) *Non-affiliation requirement.* At least 30 percent of your Regulatory Capital and Leverageable Capital must be owned and controlled by Persons unaffiliated with your management and unaffiliated with each other, and whose investments are significant in dollar and percentage terms as determined by the Secretary. Such Persons must not be your Associates (except for their status as your shareholders, limited partners or members) and must not Control, be Controlled by, or be under Common Control with any of your Associates. A single ''acceptable'' Institutional Investor may be substituted for two or three of the three investors who are otherwise required. The following Institutional Investors are ''acceptable'' for this purpose:

(1) Entities whose overall activities are regulated and periodically examined by State, Federal or other governmental authorities satisfactory to the Secretary;

(2) Entities listed on the New York Stock Exchange;

(3) Entities that are publicly-traded and that meet both the minimum numerical listing standards and the corporate governance listing standards of the New York Stock Exchange;

(4) Public or private employee pension funds;

(5) Trusts, foundations, or endowments, but only if exempt from Federal income taxation; and

(6) Other Institutional Investors satisfactory to the Secretary.

(d) *Voting requirement.* The investors relied upon to satisfy the diversity requirement may not delegate their voting rights to any Person who is your Associate, or who Controls, is Controlled by, or is under Common Control with any of your Associates, without prior approval by the Secretary.

(e) *Requirement to maintain diversity.* You must maintain management-ownership diversity while you are a RBIC. If, at any time, you no longer have the required management-ownership diversity, you must:

(1) Notify the Secretary within 10 days; and

(2) Re-establish diversity within six months after loss of diversity.

§ 4290.160 Special rules for Partnership RBICs and LLC RBICs.

(a) *Entity General Partner or Entity Managing Member.* (1) A general partner of a Partnership RBIC which is a corporation, limited liability company or partnership (an ''Entity General Partner''), or a managing member of an LLC RBIC which is a corporation, limited liability company, or partnership (an ''Entity Managing Member'') shall be organized under State law solely for the purpose of serving as the general partner or managing member of one or more RBICs, and shall be organized for profit.

(2) The Secretary must approve any person who will serve as an officer, director, manager, or general partner of the Entity General Partner or Entity Managing Member and of an entity that Controls the Entity General Partner or Entity Managing Member. This provision must be stated in an Entity General Partner's or Entity Managing Member's articles of incorporation or charter and bylaws if a corporation, operating agreement if a limited liability company, or partnership agreement if a partnership.

(3) An Entity General Partner or Entity Managing Member is subject to the same examination and reporting requirements as a RBIC under sections 384K and 384L of the Act. The restrictions and obligations imposed upon a RBIC by §§ 4290.1810, 4290.30, 4290.410 through 4290.450, 4290.470, 4290.500, 4290.510, 4290.585, 4290.600, 4290.680, 4290.690 through 4290.692, and 4290.1910 apply also to an Entity General Partner or Entity Managing Member of a RBIC.

(4) The general partner(s) of your Entity General Partner(s) or Entity Managing Member(s) will be considered your general partner.

(5) If your Entity General Partner or Entity Managing Member is a limited partnership, its limited partners may be considered your Control Person(s) if they meet the definition for Control Person in § 4290.50.

(b) *Liability of general partner of Partnership RBIC.* Subject to section 384O(b) of the Act, your general partner(s) is not liable solely by reason of its status as a general partner for repayment of any Leverage or debts you owe to the Secretary unless the Secretary, in the exercise of reasonable investment prudence, and with regard to your financial soundness, determines otherwise prior to the purchase or guaranty of your Leverage. The conditions specified in § 4290.1810 and § 4290.1910 apply to all general partners.

(c) *Special Leverage requirement for Partnership RBICs and LLC RBICs.* Before your first issuance of Leverage, you must furnish the Secretary with evidence that you qualify as a partnership for tax purposes, either by a ruling from the Internal Revenue Service or by an opinion of counsel.

§ 4290.165 Obligations of Control Persons.

All Control Persons are bound by the provisions of sections 384O and 384P of the Act and by the conflict-of-interest rules under § 4290.730. The term RBIC, as used in §§ 4290.30, 4290.460, and 4290.680, includes all of the RBIC's Control Persons.

Capitalizing a RBIC

§ 4290.200 Adequate capital for RBICs.

You must meet the requirements of §§ 4290.200 through 4290.230 in order to qualify as a RBIC and to receive Leverage.

§ 4290.210 Minimum capital requirements for RBICs.

(a) *General Rule.* You must have Regulatory Capital of at least $10,000,000, or such lesser amount (but not less than $5,000,000) as the Secretary may prescribe by notice published from time to time in the **Federal Register**, and Leverageable Capital of at least $500,000, to become a RBIC.

(b) *Exception.* (1) The Secretary in his or her sole discretion and based on a showing of special circumstances and good cause may license an Applicant with Regulatory Capital of at least $2,500,000, but only if the Applicant:

(i) Has satisfied all eligibility criteria for licensing as a RBIC as described in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Secretary;

(ii) Has a viable business plan reasonably projecting profitable operations; and

(iii) Has a reasonable timetable for achieving Regulatory Capital of at least $10,000,000.

(2) A RBIC licensed under this exception is not eligible to receive Leverage until it has complied with paragraph (a) of this section.

§ 4290.230 Private Capital for RBICs.

(a) *General.* Private Capital means the contributed capital of a RBIC, plus unfunded binding commitments by Institutional Investors (including commitments evidenced by a promissory note) to contribute capital to a RBIC.

(b) *Contributed capital.* For purposes of this section, contributed capital means the paid-in capital and paid-in surplus of a Corporate RBIC, the members' contributed capital of a LLC RBIC, or the partners' contributed capital of a Partnership RBIC, in each case subject to the limitations in paragraph (c) of this section.

(c) *Exclusions from Private Capital.* Private Capital does not include:

(1) Funds borrowed by an Applicant or a RBIC from any source.

(2) Funds obtained through the issuance of Leverage.

(3) Funds obtained directly or indirectly from the Federal government or any State (including by a political subdivision, agency or instrumentality of the Federal government or a State), except that the following categories of such funds are not excluded from Private Capital—

(i) Funds obtained directly or indirectly from the business revenues (excluding any governmental appropriation) of any federally-chartered or government-sponsored enterprise established prior to May 13, 2002;

(ii) Funds invested by an employee welfare benefit plan or pension plan; and

(iii) Qualified Non-private Funds in an amount not to exceed 33 percent of the total Private Capital of any Applicant or RBIC, *provided, however,* that in no event may any investor or

investors of Qualified Non-private Funds have the power to Control, directly or indirectly, the management, board of directors, general partners, or members of the RBIC.

(4) Any portion of an unfunded commitment from an Institutional Investor with a net worth of less than $10 million that exceeds 10 percent of such Institutional Investor's net worth.

(5) An unfunded commitment from an investor if the Secretary determines that the collectibility of the commitment is questionable.

(d) *Non-cash capital contributions.* Capital contributions in a form other than cash are subject to the limitations in § 4290.240 of this part.

(e) *Contributions with borrowed funds.* You may not accept any capital contribution made with funds borrowed by a Person seeking to own an equity interest (whether direct or indirect, beneficial or of record) of at least 10 percent of your Private Capital. This exclusion does not apply if:

(1) Such Person's net worth is at least twice the amount borrowed; or

(2) The Secretary gives his or her prior written approval of the capital contribution.

§ 4290.240 Limitations on non-cash capital contributions in Private Capital.

Non-cash capital contributions to a RBIC or Applicant are included in Private Capital only if they are approved by the Secretary and they fall into one of the following categories:

(a) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States having a term of no more than one year.

(b) Services rendered or to be rendered to you, priced at no more than their fair market value.

(c) Other non-cash assets approved by the Secretary.

Subpart D—Application and Approval Process for RBIC Licensing

§ 4290.300 When and how to apply for a RBIC License.

(a) *Notice of Funds Availability (''NOFA'').* The Secretary will publish a NOFA in the **Federal Register** advising potential applicants of the availability of funds for the RBIC program and inviting the submission of applications. The NOFA may specify limitations, special rules, procedures, and restrictions for a particular funding round. When submitting its application, an Applicant must comply with both this part 4290 and any requirements specified in the NOFA, including the opening and closing dates for submission of an application.

(b) *Application form.* An Applicant must apply for a RBIC license using the application packet provided by the Secretary. Upon receipt of a completed application packet, the Secretary may request clarifying or technical information on the materials submitted as part of the application.

§ 4290.310 Contents of application.

Each Applicant must submit a complete application, including the following:

(a) *Management team experience.* The Applicant must provide information generally as to the background, capability, education, reputation and training of its management team, including general partners, managers, officers, key personnel, and investment committee and governing board members. The Applicant also must provide information specifically on these individuals' qualifications and reputation in the areas of Community Development Finance and/or Relevant Venture Capital Finance, including the impact of these individuals' activities in these areas.

(b) *Amount of Regulatory Capital.* The Applicant must indicate the amount of Regulatory Capital it has raised or proposes to raise, which amount must satisfy the requirements of § 4290.210(a) of this part, unless the Applicant indicates that it has raised or proposes to raise at least $2,500,000 and is applying for an exception pursuant to § 4290.210(b) of this part and includes in its application—

(1) A showing of special circumstances and good cause for the exception:

(2) Will satisfy all eligibility criteria for licensing as a RBIC as set forth in § 4290.390(a) of this part, except the capital requirement specified in paragraph (a)(1) of that section, as determined solely by the Secretary;

(3) Has a viable business plan reasonably projecting profitable operations; and

(4) Has a reasonable timetable for achieving Regulatory Capital in an amount that satisfies the requirements of § 4290.210(a) of this part.

(c) *Comprehensive business plan.* The Applicant must submit a comprehensive business plan covering at least a five-year period, addressing the specific items described in § 4290.320, and which demonstrates that the Applicant has the capacity to operate successfully as a RBIC.

§ 4290.320 Contents of comprehensive business plan.

(a) *Plan for Developmental Venture Capital investing.* The Applicant must describe its plans and strategies for how it proposes to make successful Developmental Venture Capital investments in identified Rural Areas.

(b) *Working with Rural Area community-based organizations.* The Applicant must describe how it intends to work with community-based organizations and local entities (including local economic development companies, local lenders, and local investors) in order to facilitate its Developmental Venture Capital investments.

(c) *Market analysis.* The Applicant must provide an analysis of the Rural Areas in which it intends to focus its Developmental Venture Capital investments and Operational Assistance to Smaller Enterprises, demonstrating that the Applicant understands the market and the unmet Equity Capital needs in such areas and how its activities will meet these unmet needs and will have a positive economic impact on those areas. The Applicant also must analyze the extent of the demand in such areas for Developmental Venture Capital investments and any factors or trends that may affect the Applicant's ability to make effective Developmental Venture Capital investments.

(d) *Operational capacity and investment strategies.* The Applicant must submit information concerning its policies and procedures for underwriting and approving its Developmental Venture Capital investments, monitoring its portfolio, and maintaining internal controls and operations.

(e) *Plan to raise Regulatory Capital.* The Applicant must include a detailed description of how it plans to raise its Regulatory Capital if it has not yet done so at the time of application. The Applicant must discuss its potential sources of Regulatory Capital, the estimated timing for raising such funds, and the extent of the expressions of interest to commit such funds to the Applicant.

(f) *Plan for providing Operational Assistance.* The Applicant must describe how it plans to use its grant funds to provide Operational Assistance to Smaller Enterprises in which it makes or expects to make Developmental Venture Capital investments. Its plan must address the types of Operational Assistance it proposes to provide, and how it plans to provide the Operational Assistance through the use of licensed professionals, when necessary, either from its own staff or from outside entities.

(g) *Projected amount of investment in Rural Areas.* The Applicant must

describe how it proposes to meet the requirements set forth in § 4290.700. An Applicant must project the amount of its total Regulatory Capital and Leverage that it proposes to invest in Smaller Enterprises and in Rural Business Concerns that are not Smaller Enterprises. The Applicant also must describe the amount of its total Regulatory Capital and Leverage that it proposes to invest in Urban Area Investments.

(h) *Projected impact.* The Applicant must describe the criteria and economic measurements to be used to evaluate whether and to what extent it has met the objectives of the RBIC program. It must include:

(1) A description of the extent to which it will concentrate its Developmental Venture Capital investments and Operational Assistance activities in identified Rural Areas;

(2) An estimate of the economic development benefits to be created within identified Rural Areas over the next five years or more as a result of its activities;

(3) A description of the criteria to be used to measure the benefits created as a result of its activities;

(4) A discussion about the amount of such benefits created that it will consider to constitute successfully meeting the objectives of the RBIC program.

(i) *Affiliates and business relationships.* The Applicant must submit information describing the management and financial strength of any parent or holding entity, affiliated firm or entity, or any other firm or entity essential to the success of the Applicant's business plan.

§ 4290.330 Grant issuance fee.

The Applicant must pay to the Secretary a grant issuance fee of $5,000. An Applicant must submit this fee in advance, at the time of application submission.

Subpart E—Evaluation and Selection of RBICs

§ 4290.340 Evaluation and selection—general.

The Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant to participate in the RBIC program based on a review of the Applicant's application materials, interviews or site visits with the Applicant (if any), and background investigations conducted by the Secretary and other Federal agencies. The Secretary's evaluation and selection process is intended to—

(a) Ensure that Applicants are evaluated on a competitive basis and in a fair and consistent manner;

(b) Take into consideration the unique proposals presented by Applicants;

(c) Ensure that each Applicant licensed as a RBIC can fulfill successfully the goals of its comprehensive business plan; and

(d) Ensure that the Secretary selects Applicants in such a way as to promote nationwide geographic distribution of Developmental Venture Capital investments.

§ 4290.350 Eligibility and completeness.

The Secretary will not consider any application that is not complete or that is submitted by an Applicant that does not meet the eligibility criteria described in subpart C of this part. The Secretary at his or her sole discretion, may request from an Applicant additional information concerning eligibility criteria or easily completed portions of the application in order to facilitate consideration of its application.

§ 4290.360 Initial review of Applicant's management team's qualifications.

The Secretary will review the information submitted by the Applicant concerning the qualifications of the Applicant's management team to determine in his or her sole discretion whether the team meets the minimum requirements deemed by the Secretary to be critical to successful venture capital investing. In making this determination, the Secretary will consider, among other things, the general business reputation of the owners and managers of the Applicant. Only those Applicants considered to have a management team qualified for venture capital investing will be further considered for selection as a RBIC.

§ 4290.370 Evaluation criteria.

Of those Applicants whose management team is considered qualified for venture capital investing and who have submitted an eligible and complete application, the Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will evaluate and select an Applicant for participation in the RBIC program by considering the following criteria—

(a) Whether the Applicant's management team has the knowledge, experience, and capability necessary to manage a sound, economically viable RBIC and to comply with the Act;

(b) The quality of the Applicant's comprehensive business plan in terms of meeting the objectives of the RBIC program;

(c) The likelihood that the Applicant will achieve the goals described in its comprehensive business plan;

(d) The strength and likelihood for success of the Applicant's operations and investment strategies, including whether the Applicant has projected adequate profitability and financial soundness;

(e) Whether the Applicant will be able to operate soundly and profitably over the long term;

(f) Whether the Applicant will be able to operate actively in its identified Rural Areas in accordance with its business plan;

(g) The need for Developmental Venture Capital investments in the Rural Areas in which the Applicant intends to invest;

(h) The extent to which the Applicant will concentrate its activities on serving Smaller Enterprises and Small Business Concerns located in the Rural Areas in which it intends to invest, including the ratio of resources that it proposes to invest in such Enterprises as compared to other Enterprises;

(i) The Applicant's demonstrated understanding of the markets in the Rural Areas in which it intends to focus its activities;

(j) The likelihood that and the time frame within which the Applicant will be able to raise the Regulatory Capital it proposes to raise for its investments;

(k) The strength of the Applicant's proposal to provide Operational Assistance to Smaller Enterprises in which it plans to invest;

(l) The extent to which the activities proposed by the Applicant will promote economic development and the creation of wealth and job opportunities in the Rural Areas in which it intends to invest and among individuals living in such Areas; and

(m) The strength of the Applicant's application compared to applications submitted by other Applicants intending to invest in the same or proximate Rural Areas.

§ 4290.380 Selection.

From among the Applicants that have submitted eligible and complete applications, the Secretary on behalf of USDA and the Administrator on behalf of SBA, in their sole discretion, will select some, all, or none of such Applicants to participate in the RBIC program. Selection will entitle the Applicant to proceed with obtaining a license as a RBIC but only if the Applicant also meets the conditions set forth in § 4290.390.

§ 4290.390 Licensing as a RBIC.

(a) *Eligibility criteria for licensing as a RBIC.* Each selected Applicant must

meet the following conditions before it is eligible to be licensed as a RBIC:

(1) Raise, within a time period specified by the Secretary but not to exceed 12 months after selection under § 4290.380 the specific amount of Regulatory Capital that the Applicant had projected in its application that it would raise (*see* § 4290.210 for additional information);

(2) Raise $500,000 in Leverageable Capital as required by § 4290.210;

(3) Complete and submit to the Secretary all legal and other documentation concerning the RBIC, including but not limited to its Articles and updated financial information concerning the RBIC in order to qualify for a Leverage commitment; and

(4) Enter into a Participation Agreement with the Secretary.

(b) *Licensing as a RBIC.* If the selected Applicant has satisfactorily met all the conditions specified in paragraph (a) of this section, as determined within the sole discretion of the Secretary, then the Secretary on behalf of USDA and the Administrator on behalf of SBA will license the Applicant as a RBIC.

(c) *Failure to meet eligibility criteria for licensing.* Each selected Applicant that does not meet the eligibility criteria for licensing described in paragraph (a) of this section, within a time period specified by the Secretary, will not be licensed as a RBIC. Failure to meet any of those conditions, including but not limited to failure to raise the projected Regulatory Capital within the required time period, will cause the Applicant's selection to lapse. The Secretary will not restore the selection of such an Applicant after the expiration of that time period. After the expiration of that time period, an Applicant that is not licensed as a RBIC must cease to represent itself as a participant or potential participant in the RBIC program.

(d) *Effect of a RBIC license.* The Participation Agreement executed by the Secretary with each Applicant licensed as a RBIC will include the following:

(1) Approval to operate as a RBIC under the Act;

(2) A commitment of Leverage; and

(3) An Operational Assistance grant award.

Subpart F—Changes in Ownership, Structure, or Control

Changes in Control or Ownership of RBIC

§ 4290.400 Changes in ownership of 10 percent or more of RBIC but no change of Control.

You must obtain the Secretary's prior written approval for any proposed transfer or issuance of ownership interests that results in the ownership (beneficial or of record) by any Person, or group of Persons acting in concert, of at least 10 percent of any class of your stock, partnership capital or membership interests.

§ 4290.410 Changes in Control of RBIC (through change in ownership or otherwise).

You must obtain the Secretary's prior written approval for any proposed transaction or event that results in Control by any Person(s) not previously approved by the Secretary.

§ 4290.420 Prohibition on exercise of ownership or Control rights in RBIC before approval.

Without the Secretary's prior written approval, no change of ownership or Control may take effect and no officer, director, employee or other Person acting on your behalf shall:

(a) Register on your books any transfer of ownership interest to the proposed new owner(s);

(b) Permit the proposed new owner(s) to exercise voting rights with respect to such ownership interest (including directly or indirectly procuring or voting any proxy, consent or authorization as to such voting rights at any meeting of shareholders, partners or members);

(c) Permit the proposed new owner(s) to participate in any manner in the conduct of your affairs (including exercising control over your books, records, funds or other assets; participating directly or indirectly in any disposition thereof; or serving as an officer, director, partner, manager, employee or agent); or

(d) Allow ownership or Control to pass to another Person.

§ 4290.430 Notification of transactions that may change ownership or Control.

You must promptly notify the Secretary as soon as you have knowledge of transactions or events that may result in a transfer of Control or ownership of at least 10 percent of your Regulatory Capital. If the effect of a particular transaction or event is unclear, you must report all pertinent facts to the Secretary.

§ 4290.440 Standards governing prior approval for a proposed transfer of Control.

The Secretary's approval of a proposed transfer of Control is contingent upon full disclosure of the real parties in interest, the source of funds for the new owners' interest, and other data requested by the Secretary. As a condition of approving a proposed transfer of control, the Secretary may:

(a) Require an increase in your Regulatory Capital;

(b) Require the new owners or the transferee's Control Person(s) to assume, in writing, personal liability for your Leverage, effective only in the event of their direct or indirect participation in any transfer of Control not approved by the Secretary; or

(c) Require compliance with any other conditions set by the Secretary, including compliance with the requirements for minimum capital and management-ownership diversity in effect at such time for new RBICs.

§ 4290.450 Notification of pledge of RBIC's shares.

(a) You must notify the Secretary in writing, within 30 calendar days, of the terms of any transaction in which:

(1) Any Person, or group of Persons acting in concert, pledges shares of your stock (or equivalent ownership interests) as collateral for indebtedness; and

(2) The shares pledged constitute at least 10 percent of your Regulatory Capital.

(b) If the transaction creates a change of ownership or Control, you must comply with § 4290.400 or § 4290.410, as appropriate.

Restrictions on Common Control or Ownership of Two or More RBICs

§ 4290.460 Restrictions on Common Control or ownership of two (or more) RBICs.

Without the Secretary's prior written approval, you must not have an officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) who is also:

(a) An officer, director, manager, Control Person, or owner (with a direct or indirect ownership interest of at least 10 percent) of another RBIC; or

(b) An officer or director of any Person that directly or indirectly controls, or is controlled by, or is under Common Control with, another RBIC.

Change in Structure of RBIC

§ 4290.470 Prior approval of merger, consolidation, or reorganization of RBIC.

You may not merge, consolidate, change form of organization

(corporation, limited liability company, or limited partnership) or reorganize without the Secretary's prior written approval. Any such merger, consolidation, or change of form is subject to § 4290.440.

§ 4290.480 Prior approval of changes to RBIC's business plan.

Without the Secretary's prior written approval, no change in your business plan, upon which you were selected and licensed as a RBIC, may take effect.

Subpart G—Managing the Operations of a RBIC

General Requirements

§ 4290.500 Lawful operations under the Act.

You must engage only in the activities permitted by the Act and in no other activities.

§ 4290.502 Representations to the public.

You may not represent or imply to anyone that the Secretary, the U.S. Government, or any of its agencies or officers has approved any ownership interests you have issued, obligations you have incurred, or Financings you have made. You must include a statement to this effect in any solicitation provided to investors. Example: You may not represent or imply that ''USDA stands behind the RBIC'' or that ''Your capital is safe because the Secretary's experts review proposed investments to make sure they are safe for the RBIC.''

§ 4290.503 RBIC's adoption of an approved valuation policy.

(a) *Valuation guidelines.* You must prepare, document and report the valuations of your Loans and Investments in accordance with the Valuation Guidelines for SBICs issued by SBA. These guidelines may be obtained from SBA's Investment Division or at *http://www.sba.gov/INV/valuation.pdf.*

(b) *The Secretary's approval of valuation policy.* You must have a written valuation policy approved by the Secretary for use in determining the value of your Loans and Investments. You must either:

(1) Adopt without change the model valuation policy set forth in section III of the Valuation Guidelines for SBICs; or

(2) Obtain the Secretary's prior written approval of an alternative valuation policy.

(c) *Responsibility for valuations.* Your board of directors, managing member(s), or general partner(s) will be solely responsible for adopting your valuation policy and for using it to prepare valuations of your Loans and Investments for submission to the Secretary. If the Secretary reasonably believes that your valuations, individually or in the aggregate, are materially misstated, he or she reserves the right to require you to engage, at your expense, an independent third party acceptable to the Secretary to substantiate the valuations.

(d) *Frequency of valuations.* (1) You must value your Loans and Investments at the end of the second quarter of your fiscal year, and again at the end of your fiscal year.

(2) On a case-by-case basis, the Secretary may require you to perform valuations more frequently.

(3) You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

(e) *Review of valuations by independent public accountant.* (1) For valuations performed as of the end of your fiscal year, your independent public accountant must review your valuation procedures and the implementation of such procedures, including adequacy of documentation.

(2) The independent public accountant's report on your audited annual financial statements (SBA Form 468) must include a statement that your valuations were prepared in accordance with your approved valuation policy.

§ 4290.504 Equipment and office requirements.

(a) *Computer capability.* You must have a personal computer with access to the Internet and be able to use this equipment to prepare reports, for which you will receive the necessary software, and transmit such reports to the Secretary. In addition, you must have the capability to send and receive electronic mail.

(b) *Facsimile capability.* You must be able to receive facsimile messages 24 hours per day at your primary office.

(c) *Accessible office.* You must maintain an office that is convenient to the public and is open for business during normal working hours.

§ 4290.506 Safeguarding the RBIC's assets/Internal controls.

You must adopt a plan to safeguard your assets and monitor the reliability of your financial data, personnel, Portfolio, funds and equipment. You must provide your bank and custodian with a certified copy of your resolution or other formal document describing your control procedures.

§ 4290.507 Violations based on false filings and nonperformance of agreements with the Secretary or SBA.

The following shall constitute a violation of this part:

(a) *Nonperformance.* Failure to perform any of the requirements of any Debenture or of any written agreement with the Secretary or SBA.

(b) *False statement.* In any document submitted to the Secretary or SBA:

(1) Any false statement knowingly made; or

(2) Any misrepresentation of a material fact; or

(3) Any failure to state a material fact.

(4) A material fact is any fact that is necessary to make a statement not misleading in light of the circumstances under which the statement was made.

§ 4290.508 Compliance with non-discrimination laws and regulations applicable to federally-assisted programs.

In conducting your operations and providing Assistance to your Portfolio Concerns, you must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-1 *et seq.*), the Age Discrimination Act of 1975 (Pub. L. 94–135, Title III), and Title V of the Equal Credit Opportunity Act (15 U.S.C. 1691 *et seq.*) and the following regulations promulgated by USDA to implement and enforce such laws: 7 CFR part 15.

§ 4290.509 Employment of USDA or SBA officials.

(a) Without the Secretary's prior written approval, for a period of two years after the date of your most recent issuance of Leverage or after the receipt of any assistance as defined in paragraph (b) of this section, you are not permitted to employ, offer employment to, or retain for professional services, any person who:

(1) Served as an officer, attorney, agent, or employee of SBA or USDA within one year before such date; and

(2) In that capacity, occupied a position or engaged in activities which, in SBA's or the Secretary's determination, involved discretion with respect to the issuing of Leverage or the granting of such assistance.

(b) For purposes of this section, ''assistance'' means financial, contractual, grant, managerial, or other aid, including licensing, certifications, and other eligibility determinations made by USDA or SBA, and any express decision to compromise or defer possible litigation or other adverse action.

Management and Compensation

§ 4290.510 Approval of RBIC's Investment Adviser/Manager.

(a) *General.* You may employ an Investment Adviser/Manager who will be subject to the supervision of your board of directors, managing member(s), or general partner(s). If you have Leverage or plan to seek Leverage, you must obtain the Secretary's prior written approval of the management contract. Approval of an Investment Adviser/Manager for one RBIC does not indicate approval of that manager for any other RBIC.

(b) *Management contract.* The contract must:

(1) Specify the services the Investment Adviser/Manager will render to you and to your Portfolio Concerns; and

(2) Indicate the basis for computing Management Expenses.

(c) *Material change to approved management contract.* Any proposed material change must be approved by both you and the Secretary in advance. If you are uncertain whether the change is material, submit the proposed revision to the Secretary.

§ 4290.520 Management Expenses of a RBIC.

The Secretary must approve your initial Management Expenses and any increases in your Management Expenses.

(a) *Definition of Management Expenses.* Management Expenses include:

(1) Salaries;

(2) Office expenses;

(3) Travel;

(4) Business development, including finders' fees;

(5) Office and equipment rental;

(6) Bookkeeping; and

(7) Expenses related to developing, investigating and monitoring investments.

(b) Management Expenses do not include services provided by specialized outside consultants, outside lawyers and independent public accountants, if they perform services not generally performed by a venture capital company.

Cash Management by a RBIC

§ 4290.530 Restrictions on investments of idle funds by RBICs.

(a) *Permitted investments of idle funds.* Funds not invested in Portfolio Concerns must be maintained in:

(1) Direct obligations of, or obligations guaranteed as to principal and interest by, the United States, which mature within 15 months from the date of the investment; or

(2) Repurchase agreements with federally insured institutions, with a maturity of seven days or less. The securities underlying the repurchase agreements must be direct obligations of, or obligations guaranteed as to principal and interest by, the United States. The securities must be maintained in a custodial account at a federally insured institution; or

(3) Certificates of deposit with a maturity of one year or less, issued by a federally insured institution; or

(4) A deposit account in a federally insured institution, subject to a withdrawal restriction of one year or less; or

(5) A checking account in a federally insured institution; or

(6) A reasonable petty cash fund.

(b) *Deposit of funds in excess of the insured amount.* (1) *General rule.* You are permitted to deposit in a federally insured institution funds in excess of the institution's insured amount, but only if the institution is ''well capitalized'' in accordance with the definition set forth in regulations of the Federal Deposit Insurance Corporation (12 CFR 325.103).

(2) *Exception.* You may make a temporary deposit (not to exceed 30 days) in excess of the insured amount, in a transfer account established to facilitate the receipt and disbursement of funds or to hold funds necessary to honor Commitments issued.

(c) *Deposit of funds in Associate institution.* A deposit in, or a repurchase agreement with, a federally insured institution that is your Associate is not considered a Financing of such Associate under § 4290.730, provided the terms of such deposit or repurchase agreement are no less favorable than those available to the general public.

Secured Borrowing by RBICs

§ 4290.550 Prior approval of secured third-party debt of RBICs.

(a) *Definition.* In this § 4290.550, ''secured third-party debt'' means any debt that is secured by any of your assets and not guaranteed by the Secretary, including secured guarantees and other contingent obligations that you voluntarily assume and secured lines of credit.

(b) *General rule.* You must get the Secretary's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual SBA Form 468) are comparable.

(c) *Conditions for approval.* As a condition of granting its approval under this § 4290.550, the Secretary may impose such restrictions or limitations as he or she deems appropriate, taking into account your historical performance, current financial position, proposed terms of the secured debt and amount of aggregate debt you will have outstanding (including Leverage). The Secretary will not favorably consider any requests for approval which include a blanket lien on all your assets, or a security interest in your investor commitments in excess of 125 percent of the proposed borrowing.

(d) *Thirty-day approval.* Unless the Secretary notifies you otherwise within 30 days after he or she receives your request, you may consider your request automatically approved if:

(1) You are in regulatory compliance;

(2) The security interest in your assets is limited to either those assets being acquired with the borrowed funds or an asset coverage ratio of no more than 2:1;

(3) Your request is for approval of a secured line of credit that would not cause your total outstanding borrowings (not including Leverage) to exceed 50 percent of your Leverageable Capital.

Voluntary Decrease in Regulatory Capital

§ 4290.585 Voluntary decrease in RBIC's Regulatory Capital.

You must obtain the Secretary's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and § 4290.210, and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 384E(d) of the Act.

Subpart H—Recordkeeping, Reporting, and Examination Requirements for RBICs

Recordkeeping Requirements for RBICs

§ 4290.600 General requirement for RBIC to maintain and preserve records.

(a) *Maintaining your accounting records.* You must establish and maintain your accounting records using SBA's standard chart of accounts for SBICs, unless the Secretary approves otherwise. You may obtain this chart of accounts from SBA or at *http://www.sba.gov/INV/chartof.pdf.*

(b) *Location of records.* You must keep the following records at your principal place of business or, in the case of paragraph (b)(3) of this section, at the branch office that is primarily responsible for the transaction:

(1) All your accounting and other financial records;

(2) All minutes of meetings of directors, stockholders, executive committees, partners, members, or other officials; and

(3) All documents and supporting materials related to your business transactions, except for any items held by a custodian under a written agreement between you and a Portfolio Concern or lender, or any securities held in a safe deposit box, or by a licensed securities broker in an amount not exceeding the broker's per-account insurance coverage.

(c) *Preservation of records.* You must retain all the records that are the basis for your financial reports. Such records must be preserved for the periods specified in this paragraph (c) and must remain readily accessible for the first two years of the preservation period.

(1) You must preserve for at least 15 years or, in the case of a Partnership RBIC or LLC RBIC, at least two years beyond the date of liquidation:

(i) All your accounting ledgers and journals, and any other records of assets, asset valuations, liabilities, equity, income, and expenses;

(ii) Your Articles, bylaws, minute books, and RBIC application; and

(iii) All documents evidencing ownership of the RBIC including ownership ledgers and ownership transfer registers.

(2) You must preserve for at least six years all supporting documentation (such as vouchers, bank statements, or canceled checks) for the records listed in paragraph (b)(l) of this section.

(3) After final disposition of any item in your Portfolio, you must preserve for at least six years:

(i) Financing applications and Financing instruments;

(ii) All loan, participation, and escrow agreements;

(iii) All certifications listed in § 4290.610 of this part;

(iv) Any capital stock certificates and warrants of the Portfolio Concern that you did not surrender or exercise; and

(v) All other documents and supporting material relating to the Portfolio Concern, including correspondence.

(4) You may substitute a microfilm or computer-scanned or generated copy for the original of any record covered by this paragraph (c).

(d) *Additional requirement.* You must comply with the recordkeeping and record retention requirements set forth in Circular A–110 of the Office of Management and Budget. (OMB Circulars are available from the addresses listed in 5 CFR 1310.3 and at *http://www.whitehouse.gov/omb/circulars/index.html.)*

§ 4290.610 Required certifications for Loans and Investments.

For each of your Loans and Investments, you must have the documents listed in this section. You must keep these documents in your files and make them available to the Secretary upon request.

(a) For each Financing made to a Rural Business Concern or Smaller Enterprise, a certification by the Portfolio Concern stating the basis for its qualification as a Rural Business Concern or Smaller Enterprise.

(b) For each Financing made to a Small Business Concern, Size Status Declaration (SBA Form 480), executed both by you and by the Portfolio Concern certifying that the concern is a Small Business Concern. For securities purchased from an underwriter in a public offering, you may substitute a prospectus showing that the concern is a Small Business Concern.

(c) A certification by the Portfolio Concern that it will not discriminate in violation of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975, and Title V of the Equal Credit Opportunity Act.

(d) A certification by the Portfolio Concern of the intended use of the proceeds. For securities purchased from an underwriter in a public offering, you may substitute a prospectus indicating the intended use of proceeds.

§ 4290.620 Requirements to obtain information from Portfolio Concerns.

All the information required by this section is subject to the requirements of § 4290.600 and must be in English.

(a) *Information for initial Financing decision.* Before extending any Financing, you must require the Enterprise to submit such financial statements, plans of operation (including intended use of financing proceeds), cash flow analyses, projections, and such economic development information about the Enterprise, as are necessary to support your investment decision. The information submitted must be consistent with the size and type of the Enterprise and the amount of the proposed Financing.

(b) *Updated financial and economic development information.* (1) The terms of each Financing must require the Portfolio Concern to provide, at least annually, sufficient financial and economic development information to enable you to perform the following required procedures:

(i) Evaluate the financial condition of the Portfolio Concern for the purpose of valuing your investment;

(ii) Determine the continued eligibility of the Portfolio Concern;

(iii) Verify the use of Financing proceeds;

(iv) Evaluate the economic development impact of the Financing; and

(v) In the case of any Portfolio Concern that is not a Rural Business Concern, the number and percentage of its employees residing in Rural Areas.

(2) The president, chief executive officer, treasurer, chief financial officer, general partner, or proprietor of the Portfolio Concern must certify the information submitted to you.

(3) For financial and valuation purposes, you may accept a complete copy of the Federal income tax return filed by the Portfolio Concern (or its proprietor) in lieu of financial statements, but only if appropriate for the size and type of the Enterprise involved.

(4) The requirements in this paragraph (b) do not apply when you acquire securities from an underwriter in a public offering (*see* § 4290.825). In that case, you must keep copies of all reports furnished by the Portfolio Concern to the holders of its securities.

(c) *Information required for examination purposes.* You must obtain any information requested by the Secretary's examiners for the purpose of verifying the certifications made by a Portfolio Concern under § 4290.610. In this regard, your Financing documents must contain provisions requiring the Portfolio Concern to give you and/or the Secretary's examiners access to its books and records for such purpose.

Reporting Requirements for RBICs

§ 4290.630 Requirement for RBICs to file financial statements and supplementary information with the Secretary (SBA Form 468).

(a) *Annual filing of SBA Form 468.* For each fiscal year, you must submit financial statements and supplementary information prepared on SBA Form 468. You must file Form 468 on or before the last day of the third month following the end of your fiscal year, except for the information required under paragraphs (e) and (f) of this section, which must be filed on or before the last day of the fifth month following the end of your fiscal year.

(1) *Audit of Form 468.* An independent public accountant

acceptable to the Secretary must audit the annual Form 468.

(2) *Insurance requirement for public accountant.* Unless the Secretary approves otherwise, your independent public accountant must carry at least $1,000,000 of Errors and Omissions insurance, or be self-insured and have a net worth of at least $1,000,000.

(b) *Interim filings of Form 468.* When requested by the Secretary, you must file interim reports on Form 468. The Secretary may require you to file the entire form or only certain statements and schedules. You must file such reports on or before the last day of the month following the end of the reporting period. When you submit a request for a draw under a Leverage commitment, you must also comply with any applicable filing requirements set forth in § 4290.1220.

(c) *Standards for preparation of Form 468.* You must prepare SBA Form 468 in accordance with SBA's Accounting Standards and Financial Reporting Requirements for SBICs, which you may obtain from SBA or at *http://www.sba.gov/INV/standards.pdf.*

(d) *Where to file Form 468.* Submit all filings of Form 468 to the Investment Division of SBA.

(e) *Reporting of economic development impact information for each Financing on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic development impact of each Financing. This assessment must specify the fulltime equivalent jobs created, the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees, and a listing of the number and percentage of employees who reside in Rural Areas.

(f) *Reporting of economic development information for certain Financings.* For each Rural Business Concern Investment and each Smaller Enterprise Investment, your Form 468 must include an assessment of each such Financing with respect to:

(1) The economic development benefits achieved as a result of the Financing;

(2) How and to what extent such benefits fulfilled the goals of your comprehensive business plan and Participation Agreement; and

(3) Whether you consider the Financing or the results of the Financing to have fulfilled the objectives of the RBIC program.

§ 4290.640 Requirement to file portfolio financing reports with the Secretary (SBA Form 1031).

For each Financing you make (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date.

§ 4290.650 Requirement to report portfolio valuations to the Secretary

You must determine the value of your Loans and Investments in accordance with § 4290.503. You must report such valuations to the Secretary within 90 days of the end of the fiscal year in the case of annual valuations, and within 30 days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 30 days following the close of the quarter.

§ 4290.660 Other items required to be filed by RBIC with the Secretary.

(a) *Reports to owners.* You must give the Secretary a copy of any report you furnish to your investors, including any prospectus, letter, or other publication concerning your financial operations or those of any Portfolio Concern.

(b) *Documents filed with SEC.* You must give the Secretary a copy of any report, application or document you file with the Securities and Exchange Commission.

(c) *Litigation reports.* When you become a party to litigation or other proceedings, you must give the Secretary a report within 30 days that describes the proceedings and identifies the other parties involved and your relationship to them.

(1) The proceedings covered by this paragraph (c) include any action by you, or by your security holder(s) in a personal or derivative capacity, against an officer, director, Investment Adviser/Manager or other Associate of yours for alleged breach of official duty.

(2) The Secretary may require you to submit copies of the pleadings and other documents he or she may specify.

(3) Where proceedings have been terminated by settlement or final judgment, you must promptly advise the Secretary of the terms.

(4) This paragraph (c) does not apply to collection actions or proceedings to enforce your ordinary creditors' rights.

(d) *Notification of criminal charges.* If any officer, director, general partner, or managing member of the RBIC, or any other person who was required by the Secretary to complete a personal history statement, is charged with or convicted of any criminal offense other than a misdemeanor involving a minor motor vehicle violation, you must report the incident to the Secretary within 5 calendar days. Such report must fully describe the facts that pertain to the incident.

(e) *Reports concerning Operational Assistance grant funds.* You must comply with all reporting requirements set forth in Circular A–110 of the Office of Management and Budget and any grant award document executed between you and the Secretary.

(f) *Other reports.* You must file any other reports the Secretary may require in writing.

§ 4290.680 Reporting changes in RBIC not subject to prior approval.

(a) *Changes to be reported for post-approval.* This section applies to any changes in your Articles, ownership, capitalization, management, operating area, or investment policies that do not require the Secretary's prior approval. You must report such changes to the Secretary within 30 days after the change, for post approval.

(b) *Approval by the Secretary.* You may consider any change submitted under this § 4290.680 to be approved unless the Secretary notifies you to the contrary within 90 days after receiving it. Approval is contingent upon your full disclosure of all relevant facts and is subject to any conditions the Secretary may prescribe.

Examinations of RBICs by the Secretary for Regulatory Compliance

§ 4290.690 Examinations.

All RBICs must submit to annual examinations by or at the direction of the Secretary for the purpose of evaluating regulatory compliance.

§ 4290.691 Responsibilities of RBIC during examination.

You must make all books, records and other pertinent documents and materials available for the examination, including any information required by the examiner under § 4290.620(c). In addition, the agreement between you and the independent public accountant performing your audit must provide that any information in the accountant's working papers be made available to the examiners upon request.

§ 4290.692 Examination fees.

(a) *General.* The Secretary will assess fees for examinations in accordance with this § 4290.692. Unless the Secretary determines otherwise on a case by case basis, he or she will not assess fees for special examinations to obtain specific information.

(b) *Base fee.* A base fee of $9,200 + 0.015 percent of your assets will be assessed, subject to adjustment in

accordance with paragraph (c) of this section.

(c) *Adjustments to base fee.* The base fee will be decreased based on the following criteria:

(1) If you have no outstanding regulatory violations at the time of the commencement of the examination or the Secretary did not identify any violations as a result of the most recent prior examination, you will receive a 15% discount on your base fee; and

(2) If you were fully responsive to the letter of notification of examination (that is, you provided all requested documents and information within the time period stipulated in the notification letter in a complete and accurate manner, and you prepared and had available all information requested by the examiner for on-site review), you will receive a 10% discount on your base fee.

(d) *Delay fee.* If, in the sole discretion of the Secretary, the time required to complete your examination is delayed due to your lack of cooperation or the condition of your records, the Secretary may assess an additional fee of up to $500 per day.

Subpart I—Financing of Enterprises by RBICs

Determining Eligibility of an Enterprise for RBIC Financing

§ 4290.700 Requirements concerning types of Enterprises to receive Financing.

(a) *Rural Business Concern Investments.* At the close of each of your fiscal years—

(1) At least 75 percent of your Portfolio Concerns must have received a Rural Business Concern Investment; and

(2) For all Financings you have extended, you must have invested at least 75 percent (in total dollars) in Rural Business Concern Investments.

(b) *Smaller Enterprise Investments.* At the close of each of your fiscal years—

(1) More than 50 percent of your Portfolio Concerns must be Smaller Enterprises that, at the time of the initial Financing to such Enterprise, meet either the net worth/net income test or the size standard set forth in the ''Smaller Enterprise'' definition in § 4290.50 of this part; and

(2) For all Financings that you have extended, you must have invested more than 50 percent (in total dollars) in Financings in the form of Equity Capital in such Enterprises.

(c) *Small Business Concern Investments.* At the close of each of your fiscal years—

(1) At least 50 percent of the Portfolio Concerns referenced in paragraph (b)(1) of this section must be Small Business Concerns; and

(2) For all Financings referenced in paragraph (b)(2) of this section, you must have invested at least 50 percent (in total dollars) in Small Business Concerns.

(d) *Urban Area Investments.* At the close of each of your fiscal years—

(1) No more than 10 percent of your Portfolio Concerns must have received Urban Area Investments; and

(2) For all Financings you have extended, you must not have invested more than 10 percent (in total dollars) in Urban Area Investments.

(e) *Non-compliance with this section.* If you have not met the percentages required in paragraphs (a), (b), (c), or (d) of this section at the end of any fiscal year, then you must be in compliance by the end of the following fiscal year. However, you will not be eligible for additional Leverage until such time as you meet the required percentages (*see* § 4290.1120).

§ 4290.720 Enterprises that may be ineligible for Financing.

(a) *Re-lenders or re-investors.* You are not permitted to finance any Enterprise that is a re-lender or re-investor. The primary business activity of re-lenders or re-investors involves, directly or indirectly, providing funds to others, purchasing debt obligations, factoring, or long-term leasing of equipment with no provision for maintenance or repair.

(b) *Passive Enterprises.* You are not permitted to finance a passive Enterprise.

(1) *Definition.* An Enterprise is passive if:

(i) It is not engaged in a regular and continuous business operation (for purposes of this paragraph (b), the mere receipt of payments such as dividends, rents, lease payments, or royalties is not considered a regular and continuous business operation); or

(ii) Its employees are not carrying on the majority of day to day operations, and the Enterprise does not provide effective control and supervision, on a day to day basis, over persons employed under contract; or

(iii) It passes through substantially all of the proceeds of the Financing to another entity.

(2) *Exception for pass-through of proceeds to subsidiary.* With the prior written approval of the Secretary, you may finance a passive Enterprise if it passes substantially all of the proceeds through to one or more subsidiary companies, each of which is an eligible Enterprise that is not passive. For the purpose of this paragraph (b)(2), ''subsidiary company'' means a company in which at least 50 percent of the outstanding voting securities are owned by the Financed passive Enterprise.

(3) *Exception for certain Partnership RBICs or LLC RBICs.* With the prior written approval of the Secretary, if you are a Partnership RBIC or LLC RBIC, you may form one or more wholly owned corporations in accordance with this paragraph (b)(3). The sole purpose of such corporation(s) must be to provide Financing to one or more eligible, unincorporated Enterprise. You may form such corporation(s) only if a direct Financing to such Enterprise would cause any of your investors to incur unrelated business taxable income under section 511 of the Internal Revenue Code of 1986, as amended (26 U.S.C. 511). Your investment of funds in such corporation(s) will not constitute a violation of § 4290.730(a).

(c) *Real Estate Enterprises.* (1) You are not permitted to finance:

(i) Any Enterprise classified under sector 233 (Building, Developing, and General Contracting) of the NAICS Manual, or

(ii) Any Enterprise listed under sector 531 (Real Estate) unless at least 80 percent of its revenue is derived from non-Affiliate sources.

(2) You are not permitted to finance an Enterprise, regardless of NAICS classification, if the Financing is to be used to acquire or refinance real property, unless the Enterprise:

(i) Is acquiring an existing property and will use at least 51 percent of the usable square footage for an eligible business or commercial purpose; or

(ii) Is constructing or renovating a building and will use at least 67 percent of the usable square footage for an eligible business or commercial purpose; or

(iii) Occupies the subject property and uses at least 67 percent of the usable square footage for an eligible business or commercial purpose.

(d) *Project Financing.* You are not permitted to finance an Enterprise if:

(1) The assets of the Enterprise are to be reduced or consumed, generally without replacement, as the life of the Enterprise progresses, and the nature of the Enterprise requires that a stream of cash payments be made to the Enterprise's financing sources, on a basis associated with the continuing sale of assets. Examples include real estate development projects, oil and gas wells, wind farms, or power facilities (including solar, geothermal, hydroelectric, or biomass power facilities); or

(2) The primary purpose of the Financing is to fund production of a

single item or defined limited number of items, generally over a defined production period, and such production will constitute the majority of the activities of the Enterprise. Examples include motion pictures.

(e) *Farm land purchases.* You are not permitted to finance the acquisition of farmland. Farmland means land which is or is intended to be used for agricultural or forestry purposes such as the production of food, fiber, or wood, or is so taxed or zoned.

(f) *Public interest.* You are not permitted to finance any business if the proceeds are to be used for purposes contrary to the public interest, including but not limited to or activities which are in violation of law, or inconsistent with free competitive enterprise.

(g) *Foreign investment.* (1) *General rule.* You are not permitted to finance an Enterprise if:

(i) The funds will be used substantially for a foreign operation; or

(ii) At the time of the Financing or within one year thereafter, more than 49 percent of the employees or tangible assets of the Enterprise are located outside the United States (unless you can show, to the Secretary's satisfaction, that the Financing was used for a specific domestic purpose).

(2) *Exception.* This paragraph (g) does not prohibit a Financing used to acquire foreign materials and equipment or foreign property rights for use or sale in the United States.

(h) *Financing RBICs, SBICs, or New Markets Venture Capital Companies (NMVC Companies).* (1) You are not permitted to provide funds, directly or indirectly, that will be used:

(i) To purchase stock in or otherwise provide capital to a RBIC, SBIC or NMVC Company; or

(ii) To repay an indebtedness incurred for the purpose of investing in a RBIC, SBIC, or NMVC Company.

(2) ''NMVC Company'' is defined in 13 CFR 108.50.

(i) *Entities ineligible for Farm Credit System Assistance.* If one or more Farm Credit System Institutions or their Affiliates owns 15 percent or more of your Regulatory Capital, you may not provide Financing to any entity that is not otherwise eligible to receive Financing from the Farm Credit System under the Farm Credit Act of 1971 (12 U.S.C. 2001 *et seq.*).

(j) *Gaming establishments.* You are not permitted to Finance an Enterprise that derives, or is expected to derive, more than one-third of its gross annual revenue from legal gaming activities.

(k) *Change of ownership of an Enterprise.* You are not permitted to Finance a change of ownership of an Enterprise unless otherwise approved by the Secretary.

§ 4290.730 Financings which constitute conflicts of interest.

(a) *General rule.* You must not self-deal to the prejudice of an Enterprise, the RBIC, its shareholders, partners or, members, or the Secretary. Unless you obtain a prior written exemption from the Secretary for special instances in which a Financing may further the purposes of the Act despite presenting a conflict of interest, you must not directly or indirectly:

(1) Provide Financing to any of your Associates, except for an Enterprise that satisfies all of the following conditions:

(i) Your Associate relationship with the Enterprise is described by paragraph (8) or (9) of the definition of *Associate* in § 4290.50,

(ii) No Person triggering the Associate relationship identified in paragraph (a)(1)(i) of the definition of Associate in § 4290.50 is a Close Relative or Secondary Relative of any Person described in paragraphs (1), (2), (4), or (5) of the definition of *Associate* in § 4290.50, and

(iii) No single Associate of yours has either a voting interest or an economic interest in the Enterprise exceeding 20 percent, and no two or more of your Associates have either a voting interest or an economic interest exceeding 33 percent. Economic interests shall be computed on a fully diluted basis, and both voting and economic interests shall exclude any interest owned through the RBIC.

(2) Provide Financing to an Associate of another RBIC if one of your Associates has received or will receive any direct or indirect Financing or a Commitment from that RBIC or any other RBIC (including Financing or Commitments received under any understanding, agreement, or cross dealing, reciprocal or circular arrangement).

(3) Borrow money from:

(i) An Enterprise Financed by you;

(ii) An officer, director, or owner of at least a 10 percent equity interest in such Enterprise; or

(iii) A Close Relative of any such officer, director, or equity owner.

(4) Provide Financing to an Enterprise to discharge an obligation to your Associate or free other funds to pay such obligation. This paragraph (a)(4) does not apply if the obligation is to an Associate Lending Institution and is a line of credit or other obligation incurred in the normal course of business.

(b) *Rules applicable to Associates.* Without the Secretary's prior written approval, your Associates must not, directly or indirectly:

(1) Borrow money from any Person described in paragraph (a)(3) of this section.

(2) Receive from an Enterprise any compensation or anything of value in connection with Assistance you provide (except as permitted under § 4290.825(c)), or anything of value for procuring, attempting to procure, or influencing your action with respect to such Assistance.

(c) *Applicability of other laws.* You are also bound by Federal or State laws applicable to you that govern conflicts of interest and fiduciary obligations.

(d) *Financings with Associates.* (1) *Financings with Associates requiring prior approval.* Without the Secretary's prior written approval, you may not Finance any Enterprise in which your Associate has either a voting equity interest or total equity interests (including potential interests) of at least five percent, or effective control, except as otherwise permitted under paragraph (a)(1) of this section.

(2) *Other Financings with Associates.* If you and an Associate provide Financing to the same Enterprise, either at the same time or at different times, you must be able to demonstrate to the Secretary's satisfaction that the terms and conditions are (or were) fair and equitable to you, taking into account any differences in the timing of each party's financing transactions.

(3) *Exceptions to paragraphs (d)(1) and (d)(2) of this section.* A Financing that falls into one of the following categories is exempt from the prior approval requirement in paragraph (d)(1) of this section or is presumed to be fair and equitable to you for the purposes of paragraph (d)(2) of this section, as appropriate:

(i) Your Associate is a Lending Institution that is providing financing under a credit facility in order to meet the operational needs of the Enterprise and the terms of such financing are usual and customary.

(ii) Your Associate invests in the Enterprise on the same terms and conditions and at the same time as you.

(iii) Both you and your Associate are RBICs.

(e) *Use of Associates to manage Portfolio Concerns.* To protect your investment, you may designate an Associate to serve as an officer, director, or other participant in the management of a Portfolio Concern. You must identify any such Associate in your records available for the Secretary's review under § 4290.600. Without the Secretary's prior written approval, such Associate must not:

(1) Have any other direct or indirect financial interest in the Portfolio Concern that exceeds, or has the potential to exceed, the percentages of the Portfolio Concern's equity set forth in paragraph (a)(1) of this section.

(2) Receive any income or anything of value from the Portfolio Concern unless it is for your benefit, with the exception of director's fees, expenses, and distributions based upon the Associate's ownership interest in the Concern.

(f) *1940 and 1980 Act Companies: SEC exemptions.* If you are a 1940 or 1980 Act Company and you receive an exemption from the Securities and Exchange Commission for a transaction described in this § 4290.730, you need not obtain the Secretary's approval of the transaction. However, you must promptly notify the Secretary of the transaction.

(g) *Restriction on options obtained by RBIC's management and employees.* Your employees, officers, directors, managing members or general partners, or the general partners or managing members of the Investment Adviser/Manager that is providing services to you or to your general partner or managing member, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Secretary gives prior written approval; or

(3) The options received are compensation for service as a member of the board of directors of the Portfolio Concern, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar companies.

§ 4290.740 Portfolio diversification ("overline" limitation).

(a) Without the Secretary's prior written approval, you may provide Financing or a Commitment to an Enterprise only if the resulting amount of your aggregate outstanding Financings and Commitments to that Enterprise and its Affiliates does not exceed 20 percent of the sum of:

(1) Your Regulatory Capital as of the date of the Financing or Commitment; plus

(2) Any permitted Distribution(s) you made during the five years preceding the date of the Financing or Commitment which reduced your Regulatory Capital.

(b) For the purposes of paragraph (a) of this section, you must measure each outstanding Financing at its current cost plus any amount of the Financing that was previously written off.

§ 4290.760 How a change in size or activity of a Portfolio Concern affects the RBIC and the Portfolio Concern.

(a) *Effect on RBIC of a change in size of a Portfolio Concern.* If a Portfolio Concern was a Smaller Enterprise or Small Business Concern at the time of the initial Financing but no longer qualifies as such under the size standard applicable to such entity, you may keep your investment in the Portfolio Concern and:

(1) Subject to the overline limitations of § 4290.740, you may provide additional Financing to the Portfolio Concern up to the time it makes a public offering of its securities.

(2) Even after the Portfolio Concern makes a public offering, you may exercise any stock options, warrants, or other rights to purchase Equity Securities which you acquired before the public offering, or fund Commitments you made before the public offering.

(b) *Effect of a change in business activity occurring within one year of RBIC's initial Financing.* (1) *Retention of Financing.* Unless you receive the Secretary's written approval, you may not keep your Financing in a Portfolio Concern which becomes ineligible for financing by a RBIC by reason of a change in its business or commercial activity or for any other reason within one year of your initial Financing in the Portfolio Concern.

(2) *Request for approval to retain Financing.* If you request that the Secretary approve the retention of your investment, your request must include sufficient evidence to demonstrate that the change in business or commercial activity was caused by an unforeseen change in circumstances and was not contemplated at the time the Financing was made.

(3) *Additional Financing.* If the Secretary approves your request to retain a Financing under paragraph (b)(2) of this section, you may provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

(c) *Effect of a change in business activity occurring more than one year after the initial Financing.* If a Portfolio Concern becomes ineligible because of a change in business activity more than one year after your initial Financing you may:

(1) Retain your investment; and

(2) Provide additional Financing to the Portfolio Concern to the extent necessary to protect against the loss of the amount of your original investment, subject to the overline limitations of § 4290.740.

Structuring RBIC Financing of Eligible Enterprises—Types of Financings

§ 4290.800 Financings in the form of Equity Securities.

You may purchase the Equity Securities of an Enterprise. You may not, inadvertently or otherwise:

(a) Become a general partner in any unincorporated business; or

(b) Become jointly or severally liable for any obligations of an unincorporated business.

§ 4290.810 Financings in the form of Loans.

You are permitted to make Loans to an Enterprise only if:

(a) The maturity or term of the Loan is five years or less; and

(b) You determine that making the Loan is necessary to preserve an existing Financing (other than a Loan) in that same Enterprise.

§ 4290.815 Financings in the form of Debt Securities.

(a) *General rule.* You may purchase Debt Securities from an Enterprise.

(b) *Restriction of options obtained by RBIC's management and employees.* If you have outstanding Leverage or plan to obtain Leverage, your employees, officers, directors, general partners, or managing members, or the general partners or managing members of your Investment Advisor/Manager, may obtain options in a Portfolio Concern only if:

(1) They participate in the Financing on a *pari passu* basis with you; or

(2) The Secretary gives its prior written approval; or

(3) The options received are compensation for services as a member of the board of directors of the Enterprise, and such compensation does not exceed that paid to other outside directors. In the absence of such directors, fees must be reasonable when compared with amounts paid to outside directors of similar Enterprises.

§ 4290.820 Financings in the form of guarantees.

(a) *General rule.* At the request of an Enterprise or where necessary to protect your existing Financing in a Portfolio Concern, you may guarantee the monetary obligation of an Enterprise to any non-Associate creditor.

(b) *Exception.* You may not issue a guaranty if:

(1) You would become subject to State regulation as an insurance, guaranty or surety business; or

(2) The amount of the guaranty plus any direct Financings to the Enterprise

exceed the overline limitations of § 4290.740, except that a pledge of the Equity Securities of the issuer or a subordination of your lien or creditor position does not count toward your overline.

(c) *Pledge of RBIC's assets as guaranty.* For purposes of this section, a guaranty with recourse only to specific asset(s) you have pledged is equal to the fair market value of such asset(s) or the amount of the debt guaranteed, whichever is less.

§ 4290.825 Purchasing securities from an underwriter or other third party.

(a) *Securities purchased through or from an underwriter.* You may purchase the securities of an Enterprise through or from an underwriter if:

(1) You purchase such securities within 90 days of the date the public offering is first made;

(2) Your purchase price is no more than the original public offering price; and

(3) The amount paid by you for the securities (less ordinary and reasonable underwriting charges and commissions) has been, or will be, paid to the issuer, and the underwriter certifies in writing that this requirement has been met.

(b) *Recordkeeping requirements.* You must keep records available for the Secretary's inspection which show the relevant details of the transaction, including but not limited to, date, price, commissions, and the underwriter's certifications required under paragraphs (a)(3) and (c) of this section.

(c) *Underwriter's requirements.* The underwriter must certify whether it is your Associate. You may pay reasonable and customary commissions and expenses to an Associate underwriter for the portion of an offering that you purchase.

(d) *Securities purchased from another RBIC.* You may purchase from, or exchange with, another RBIC, Portfolio securities (or any interest therein). Such purchase or exchange may only be made on a non-recourse basis. You may not have more than one-third of your total assets (valued at cost) invested in such securities. If you have previously sold Portfolio securities (or any interest therein) on a recourse basis, you must include the amount for which you may be contingently liable in your overline computation.

(e) *Purchases of securities from other non-issuers.* You may purchase securities of an Enterprise from a non-issuer not previously described in this § 4290.825 if such acquisition is a reasonably necessary part of the overall sound Financing of the Enterprise.

§ 4290.830 Minimum term of Financing.

(a) *General rule.* The minimum term of each of your Financings is one year.

(b) *Restrictions on mandatory redemption of Equity Securities.* If you have acquired Equity Securities, options, or warrants on terms that include redemption by the Portfolio Concern, you must not require redemption by the Portfolio Concern within the first year of your acquisition except as permitted in § 4290.850.

(c) *Special rules for Loans and Debt Securities.* (1) *Term.* The minimum term for Loans and Debt Securities starts with the first disbursement of the Financing.

(2) *Prepayment.* You must permit voluntary prepayment of Loans and Debt Securities by the Portfolio Concern. You must obtain the Secretary's prior written approval of any restrictions on the ability of the Portfolio Concern to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

(3) *Prepayment penalties.* You may charge a reasonable prepayment penalty which must be agreed upon at the time of the Financing. If the Secretary determines that a prepayment is unreasonable, you must refund the entire penalty to the Portfolio Concern. A prepayment penalty equal to five percent of the outstanding balance during the first year of any Financing, declining by one percentage point per year through the fifth year, is considered the maximum reasonable amount.

§ 4290.835 Exceptions to minimum term of Financing.

You may make a Financing with a term of less than one year but only if such Financing is in contemplation of another Financing, with a term of one year or more, to the same Enterprise.

§ 4290.840 Maximum term of Financing.

The maximum term of any Debt Security must be no longer than 20 years.

§ 4290.845 Maximum rate of amortization on Loans and Debt Securities.

The principal of any Loan, or the loan portion of any Debt Security, with a term of one year or less, cannot be amortized faster than straight line. If the term is greater than one year, the principal cannot be amortized faster than straight line for the first year.

§ 4290.850. Restrictions on redemption of Equity Securities.

(a) *Restriction on redemption.* A Portfolio Concern cannot be required to redeem Equity Securities earlier than one year from the date of the first closing unless:

(1) The Portfolio Concern makes a public offering, or has a change of management or control, or files for protection under the provisions of the Bankruptcy Code, or materially breaches your Financing agreement; or

(2) You make a follow-on Financing, in which case the new securities may be redeemed in less than one year, but no earlier than the redemption date associated with your earliest Financing of the Portfolio Concern.

(b) *Redemption price.* The redemption price must be either:

(1) A fixed amount that is no higher than the price you paid for the securities; or

(2) An amount that cannot be fixed or determined before the time of the redemption. In this case, the redemption price must be based on:

(i) A reasonable formula that reflects the performance of the Portfolio Concern (such as one based on earnings or book value); or

(ii) The fair market value of the Portfolio Concern at the time of redemption, as determined by a professional appraisal performed under an agreement acceptable to both parties.

(c) *Method.* Any method for determining the redemption price must be agreed upon no later than the date of the first (or only) closing of the Financing.

§ 4290.860 Financing fees and expense reimbursements a RBIC may receive from an Enterprise.

(a) *General rule.* You may collect Financing fees and receive expense reimbursements from an Enterprise only as permitted under this § 4290.860.

(b) *Application fee.* You may collect a nonrefundable application fee from an Enterprise to review its Financing application. The application fee may be collected at the same time as the closing fee under paragraph (d) or (e) of this section, or earlier. The fee must be:

(1) No more than one percent of the amount of Financing requested (or, if two or more RBICs participate in the Financing, their combined application fees are no more than one percent of the total Financing requested); and

(2) Agreed to in writing by the Financing applicant.

(c) *The Secretary's review of application fees.* For any fiscal year, if the number of application fees you collect is more than twice the number of Financings closed, the Secretary in its sole discretion may determine that you are engaged in activities not contemplated by the Act, in violation of § 4290.500.

(d) *Closing fee—Loans.* You may charge a closing fee on a Loan if:

(1) The fee is no more than two percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than two percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(e) *Closing fee—Debt or Equity Financings.* You may charge a Closing Fee on a Debt Security or Equity Security Financing if:

(1) The fee is no more than four percent of the Financing amount (or, if two or more RBICs participate in the Financing, their combined closing fees are no more than four percent of the total Financing amount); and

(2) You charge the fee no earlier than the date of the first disbursement.

(f) *Limitation on dual fees.* If another RBIC or an Associate of yours collects a transaction fee under § 4290.900(e) in connection with your Financing of an Enterprise, the sum of the transaction fee and your application and closing fees cannot exceed the maximum application and closing fees permitted under this § 4290.860.

(g) *Expense reimbursements.* You may charge an Enterprise for the reasonable out-of-pocket expenses, other than Management Expenses, that you incur to process its Financing application. If the Secretary determines that any of your reimbursed expenses are unreasonable or are Management Expenses, the Secretary will require you to refund them to the Enterprise.

(h) *Breakup fee.* If an Enterprise accepts your Commitment and then fails to close the Financing because it has accepted funds from another source, you may charge a ''breakup fee'' equal to the closing fee that you would have been permitted to charge under paragraph (d) or (e) of this section.

§ 4290.880 Assets acquired in liquidation of Portfolio securities.

(a) *General rule.* You may acquire assets in full or partial liquidation of a Portfolio Concern's obligation to you under the conditions permitted by this § 4290.880. The assets may be acquired from the Portfolio Concern, a guarantor of its obligation, or another party.

(b) *Timely disposition of assets.* You must dispose of assets acquired in liquidation of a Portfolio security within a reasonable period of time.

(c) *Permitted expenditures to preserve assets.* (1) You may incur reasonably necessary expenditures to maintain and preserve assets acquired.

(2) You may incur reasonably necessary expenditures for improvements to render such assets saleable.

(3) You may make payments of mortgage principal and interest (including amounts in arrears when you acquired the asset), pay taxes when due, and pay for necessary insurance coverage.

(d) *The Secretary approval of expenditures.* This paragraph (d) applies if you have outstanding Leverage or are applying for Leverage. Any application for the Secretary's approval under this paragraph must specify all expenses estimated to be necessary pending disposal of the assets. Without the Secretary's prior written approval:

(1) Your total expenditures under paragraphs (c)(1) and (c)(2) of this section plus your total Financing(s) to the Portfolio Concern must not exceed your overline limit under § 4290.740; and

(2) Your total expenditures under paragraph (b) of this section plus your total Financing(s) to the Portfolio Concern must not exceed 35 percent of your Regulatory Capital.

Limitations on Disposition of Assets

§ 4290.885 Disposition of assets to RBIC's Associates or to competitors of Portfolio Concerns.

Except with the Secretary's prior written approval, you are not permitted to dispose of assets (including assets acquired in liquidation) to any Associate or to competitors of Portfolio Concerns if you have outstanding Leverage. As a prerequisite to such approval, you must demonstrate that the proposed terms of disposal are at least as favorable to you as the terms obtainable elsewhere.

§ 4290.900 Management fees for services provided to an Enterprise by RBIC or its Associate.

(a) *General.* This § 4290.900 applies to management services that you or your Associate provide to a Portfolio Concern during the term of a Financing or prior to Financing. It does not apply to management services that you or your Associate provide to an Enterprise that you do not finance.

(b) *The Secretary's approval.* You must obtain the Secretary's prior written approval of any management services fees and other fees described in this section that you or your Associate charge.

(c) *Permitted management fees.* You or your Associate may provide management services to a Portfolio Concern financed by you if:

(1) You or your Associate have entered into a written contract with the Portfolio Concern;

(2) The fees charged are for services actually performed;

(3) Services are provided on an hourly fee, project fee, or other reasonable basis;

(4) You can demonstrate to the Secretary, upon request, that the rate does not exceed the prevailing rate charged for comparable services by other organizations in the geographic area of the Portfolio Concern; and

(5) All of the management services fees paid to your Associate by a Portfolio Concern for management services provided by the Associate are allocated back to you for your benefit.

(d) *Fees for service as a board member.* You or your Associate may receive fees in the form of cash, warrants, or other payments, for services provided as members of the board of directors of a Portfolio Concern Financed by you. The fees must not exceed those paid to other outside board members. In the absence of such board members, fees must be reasonable when compared with amounts paid to outside directors of similar companies. At least 50 percent of any board member services fees paid to your Associate by a Portfolio Concern for board member services provided by the Associate must be allocated back to you for your benefit.

(e) *Approval required.* You must obtain the Secretary's prior written approval of any management contract that does not satisfy paragraphs (c) or (d) of this section.

(f) *Transaction fees.* (1) You or your Associate may charge reasonable transaction fees for work performed preparing an Enterprise for a public offering, private offering, or sale of all or part of the business, and for assisting with the transaction. Compensation may be in the form of cash, notes, stock, and/or options. All of the transaction services fees paid to your Associate by a Portfolio Concern for transaction services provided by the Associate must be allocated back to you for your benefit.

(2) Your Associate may charge market rate investment banking fees to a Portfolio Concern on that portion of a Financing that you do not provide.

(g) *Recordkeeping Requirements.* You must keep a record of hours spent and amounts charged to the Portfolio Concern, including expenses charged.

Subpart J—Financial Assistance for RBICs (Leverage)

General Information About Obtaining Leverage

§ 4290.1100 Type of Leverage and application procedures.

(a) *Type of Leverage available.* You may apply for Leverage from the

Secretary in the form of a guarantee of your Debentures.

(b) *Applying for Leverage.* The Leverage application process has two parts. You must first apply for the Secretary's conditional commitment to reserve a specific amount of Leverage for your future use. You may then apply to draw down Leverage against the commitment. *See* §§ 4290.1200 through 4290.1240.

(c) *Where to send your application.* Send all Leverage draw-down applications to Funding Control Officer, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Suite 6300, Mail Code 7050, Washington, DC 20416.

§ 4290.1120 General eligibility requirements for Leverage.

To be eligible for Leverage, you must be in compliance with the Act, the regulations in this part, and your Participation Agreement.

§ 4290.1130 Leverage fees payable by RBIC.

(a) *Leverage fee.* You must pay the Secretary a non-refundable leverage fee for each issuance of a Debenture. The fee is 3 percent of the face amount of the Debenture issued, and will be deducted from the proceeds remitted to you.

(b) *Additional charge.* You must pay the Secretary an additional annual charge of 1 percent of the outstanding amount of your Debenture.

(c) *Other Leverage fees.* The Secretary may establish a fee structure for services performed by the Central Registration Agent (CRA). The Secretary will not collect any fee for its guarantee of TCs.

§ 4290.1140 RBIC's acceptance of remedies under § 4290.1810.

If you issue Leverage, you automatically agree to the terms and conditions in § 4290.1810 as it exists at the time of issuance. The effect of these terms and conditions is the same as if they were fully incorporated in the terms of your Leverage.

Maximum Amount of Leverage for Which a RBIC Is Eligible

§ 4290.1150 Maximum amount of Leverage for a RBIC.

The face amount of a RBIC's outstanding Debentures may not exceed the lesser of 200 percent of its Leverageable Capital or $105,000,000.

Conditional Commitments To Reserve Leverage for a RBIC

§ 4290.1200 Leverage commitment to a RBIC—application procedure, amount, and term.

(a) *General.* Under the provisions in §§ 4290.1200 through 4290.1240, you may apply for the Secretary's conditional commitment to reserve a specific amount of Leverage and type of Debenture (standard or discounted) for your future use. You may then apply to draw down Leverage against the commitment.

(b) *Applying for a Leverage commitment.* The Secretary will notify you when requests for Leverage commitments are being accepted, and upon receipt of your request, will send you a complete application package.

(c) *Limitations on the amount of a Leverage commitment.* The amount of a Leverage commitment must be a multiple of $5,000. The Secretary in his or her discretion may determine a minimum dollar amount for Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

(d) *Term of Leverage commitment.* Your Leverage commitment will automatically lapse on the expiration date stated in the commitment letter issued to you by the Secretary. The Secretary's Leverage commitment will be included in the Participation Agreement at the time of your licensing as a RBIC, under § 4290.390.

§ 4290.1220 Requirement for RBIC to file financial statements at the time of request for a draw.

(a) If you submit a request for a draw against your Leverage commitment more than 90 days following your submission of an annual SBA Form 468 or a SBA Form 468 (Short Form), you must:

(1) Give the Secretary a financial statement on Form 468 (Short Form), and

(2) File a statement of no material adverse change in your financial condition since your last filing of SBA Form 468.

(b) You will not be eligible for a draw if you are not in compliance with this § 4290.1220.

§ 4290.1230 Draw-downs by RBIC under Leverage commitment.

(a) *RBIC's authorization of the Secretary to guarantee securities.* By submitting a request for a draw against the Leverage commitment, you authorize the Secretary, or the Secretary's designated agent or trustee, to guarantee your Debenture and to sell it with the Secretary's guarantee.

(b) *Limitations on amount of draw.* The amount of a draw must be a multiple of $5,000. The Secretary, in his or her discretion, may determine a minimum dollar amount for draws against Leverage commitments. Any such minimum amounts will be published in Notices in the **Federal Register** from time to time.

(c) *Effect of regulatory violations on RBIC's eligibility for draws.* (1) *General rule.* You are eligible to make a draw against your Leverage commitment only if you are in compliance with all applicable provisions of the Act and this part (*i.e.*, no unresolved statutory or regulatory violations) and your Participation Agreement.

(2) *Exception to general rule.* If you are not in compliance, you may still be eligible for draws if:

(i) The Secretary determines that your outstanding violations are of non-substantive provisions of the Act or this part or your Participation Agreement and that you have not repeatedly violated any non-substantive provisions; or

(ii) You have agreed with the Secretary in writing on a course of action to resolve your violations and such agreement does not prevent you from issuing Leverage.

(d) *Procedures for funding draws.* You may request a draw at any time during the term of the commitment. With each request, submit the following documentation:

(1) A statement certifying that there has been no material adverse change in your financial condition since your last filing of SBA Form 468 (*see* also § 4290.1220 for SBA Form 468 filing requirements).

(2) If your request is submitted more than 30 days following the end of your fiscal year, but before you have submitted your annual filing of SBA Form 468 in accordance with § 4290.630(a), a preliminary unaudited annual financial statement on SBA Form 468 (Short Form).

(3) A statement certifying that to the best of your knowledge and belief, you are in compliance with all provisions of the Act and this part (*i.e.*, no unresolved regulatory or statutory violations) and your Participation Agreement, or a statement listing any specific violations you are aware of. Either statement must be executed by one of the following:

(i) An officer of the RBIC;

(ii) An officer of a corporate general partner or managing member of the RBIC;

(iii) An individual who is authorized to act as or for a general partner of the RBIC; or

(iv) An individual who is authorized to act as or for a managing member of the RBIC.

(4) A statement that the proceeds are needed to fund one or more particular Enterprises or to provide liquidity for your operations. If required by the Secretary, the statement must include the name and address of each Enterprise, and the amount and

anticipated closing date of each proposed Financing.

(e) *Reporting requirements after drawing funds.* (1) Within 30 calendar days after the actual closing date of each Financing funded with the proceeds of your draw, you must file an SBA Form 1031 confirming the closing of the transaction.

(2) If the Secretary required you to provide information concerning a specific planned Financing under paragraph (d)(4) of this section, and such Financing has not closed within 60 calendar days after the anticipated closing date, you must provide a written explanation of the failure to close.

(3) If you do not comply with this paragraph (e), you will not be eligible for additional draws. The Secretary may also determine that you are not in compliance with the terms of your Leverage under § 4290.1810.

§ 4290.1240 Funding of RBIC's draw request through sale to third-party.

(a) *RBIC's authorization of the Secretary to arrange sale of Debentures to third-party.* By submitting a request for a draw of Debenture Leverage, you authorize the Secretary, or any agent or trustee the Secretary designates, to enter into any agreements (and to bind you to such agreements) necessary to accomplish:

(1) The sale of your Debenture to a third-party at a price approved by the Secretary; and

(2) The purchase of your Debenture from the third-party and the pooling of your Debenture with other Debentures with the same maturity date.

(b) *Sale of Debentures to a third-party.* If the Secretary arranges for the sale of your Debenture to a third-party, the sale price may be an amount discounted from the face amount of the Debenture.

Distributions by RBICs With Outstanding Leverage

§ 4290.1500 Restrictions on distributions to RBIC investors while RBIC has outstanding Leverage.

(a) *Restriction on distribution.* If you have outstanding Leverage, whenever you make a distribution to your investors you must make, at the same time, a prepayment to or for the benefit of the third-party holder of the Debenture sold pursuant to § 4290.1240 of this part, accrued unpaid interest and the principal, in whole or in part, of one or more of your Debentures outstanding as of the date of the distribution (subject to the terms of such Debentures).

(b) *Amount of prepayment.* You must calculate the amount due the third-party holder by multiplying the total amount you intend to distribute by a fraction whose numerator is the outstanding principal of your Debenture(s) immediately preceding your distribution, and whose denominator is the sum of your Leverageable Capital as of that time plus the outstanding principal amount of your Debentures. For purposes of the preceding sentence ''principal'' means both the net proceeds and interest accrued to date of a discounted Debenture. The amount of any payment received under this section will be credited first against unpaid interest accrued to the date of distribution and then to the principal in whole or in part of the first Debenture you select to prepay and then to the interest and principal in whole or in part of such other Debenture(s) as you select to prepay. You may elect to prepay in whole any discounted Debenture under this section only within five years of its maturity date. Payments under this section must be made on the next occurring March 1 or September 1.

(c) *Effect of prepayment.* Subject to the terms of the Debenture(s), you may voluntarily prepay additional principal, but neither mandatory nor voluntary prepayment will increase your future Leverage eligibility.

Funding Leverage by Use of Guaranteed Trust Certificates (''TCs'')

§ 4290.1600 Secretary's authority to issue and guarantee Trust Certificates.

(a) *Authorization.* Section 384F of the Act authorizes the Secretary to issue TCs and to guarantee the timely payment of the principal and interest thereon. Any such guarantee of such TC is limited to the principal and interest due on the Debentures in any Trust or Pool backing such TC. The full faith and credit of the United States is pledged to the payment of all amounts due under the guarantee of any TC.

(b) *Authority to arrange public or private fundings of Leverage.* The Secretary in his or her discretion may arrange for public or private financing under his or her guarantee authority. Such financing may be accomplished by the sale of individual Debentures, aggregations of Debentures, or Pools or Trusts of Debentures.

(c) *Pass-through provisions.* TCs shall provide for a pass-through to their holders of all amounts of principal and interest paid on the Debentures in the Pool or Trust against which they are issued.

(d) *Formation of a Pool or Trust holding Leverage Securities.* The Secretary shall approve the formation of each Pool or Trust. The Secretary may, in his or her discretion, establish the size of the Pools and their composition, the interest rate on the TCs issued against Trusts or Pools, fees, discounts, premiums and other charges made in connection with the Pools, Trusts, and TCs, and any other characteristics of a Pool or Trust he or she deems appropriate.

§ 4290.1610 Effect of prepayment or early redemption of Leverage on a Trust Certificate.

(a) The rights, if any, of a RBIC to prepay any Debenture is established by the terms of such security, and no such right is created or denied by the regulations in this part.

(b) The Secretary's rights to purchase or prepay any Debenture without premium are established by the terms of the Guaranty Agreement relating to the Debenture.

(c) Any prepayment of a Debenture pursuant to the terms of the Guaranty Agreement relating to such security shall reduce the Secretary's guarantee of timely payment of principal and interest on a TC in proportion to the amount of principal that such prepaid Debenture represents in the Trust or Pool backing such TC.

(d) The Secretary shall be discharged from his or her guarantee obligation to the holder or holders of any TC, or any successor or transferee of such holder, to the extent of any such prepayment, whether or not such successor or transferee shall have notice of any such prepayment.

(e) Interest on prepaid Debentures shall accrue only through the date of prepayment.

(f) In the event that all Debentures constituting a Trust or Pool are prepaid, the TCs backed by such Trust or Pool shall be redeemed by payment of the unpaid principal and interest on the TCs; provided, however, that in the case of the prepayment of a Debenture pursuant to the provisions of the Guaranty Agreement relating to the Debenture, the Central Registration Agent (CRA) shall pass through pro rata to the holders of the TCs any such prepayments including any prepayment penalty paid by the obligor RBIC pursuant to the terms of the Debenture.

§ 4290.1620 Functions of agents, including Central Registration Agent, Selling Agent and Fiscal Agent.

(a) *Agents.* The Secretary may appoint or cause to be appointed agent(s) to perform functions necessary to market and service Debentures or TCs pursuant to this part.

(1) *Selling Agent.* As a condition of guaranteeing a Debenture, the Secretary may cause each RBIC to appoint a

Selling Agent to perform functions that include, but are not limited to:

(i) Selecting qualified entities to become pool or Trust assemblers (''Poolers'').

(ii) Receiving guaranteed Debentures as well as negotiating the terms and conditions of sales or periodic offerings of Debentures and/or TCs on behalf of RBICs.

(iii) Directing and coordinating periodic sales of Debentures and/or TCs.

(iv) Arranging for the production of Offering Circulars, certificates, and such other documents as may be required from time to time.

(2) *Fiscal Agent.* The Secretary shall appoint a Fiscal Agent to:

(i) Establish performance criteria for Poolers.

(ii) Monitor and evaluate the financial markets to determine those factors that will minimize or reduce the cost of funding Debentures.

(iii) Monitor the performance of the Selling Agent, Poolers, CRA, and the Trustee.

(iv) Perform such other functions as the Secretary, from time to time, may prescribe.

(3) *Central Registration Agent.* Pursuant to a contract entered into with the Secretary, the CRA, as the Secretary's agent, will do the following with respect to the Pools or Trust Certificates for the Debentures:

(i) Form an approved Pool or Trust;

(ii) Issue the TCs in the prescribed form;

(iii) Transfer the TCs upon the sale of original issue TCs in any secondary market transaction;

(iv) Receive payments from RBICs;

(v) Make periodic payments as scheduled or required by the terms of the TCs, and pay all amounts required to be paid upon prepayment of Debentures;

(vi) Hold, safeguard, and release all Debentures constituting Trusts or Pools upon instructions from the Secretary;

(vii) Remain custodian of such other documentation as the Secretary shall direct by written instructions;

(viii) Provide for the registration of all pooled Debentures, all Pools and Trusts, and all TCs; and

(ix) Perform such other functions as the Secretary may deem necessary to implement the provisions of this section.

(b) *Functions.* Either the Secretary or an agent appointed by the Secretary may perform the function of locating purchasers, and negotiating and closing the sale of Debentures and TCs. Nothing in the regulations in this part shall be interpreted to prevent the CRA from acting as the Secretary's agent for this purpose.

§ 4290.1630 Regulation of Brokers and Dealers and disclosure to purchasers of Leverage or Trust Certificates.

(a) *Brokers and Dealers.* Each broker, dealer, and Pool or Trust assembler approved by the Secretary pursuant to these regulations shall either be regulated by a Federal financial regulatory agency, or be a member of the National Association of Securities Dealers (NASD), and shall be in good standing in respect to compliance with the financial, ethical, and reporting requirements of such body. It also shall be in good standing with the Secretary as determined by the SBA official with delegated authority to made this determination (*see* paragraph (c) of this section) and shall provide a fidelity bond or insurance in such amount as the Secretary may require.

(b) *Suspension and/or termination of Broker or Dealer.* The Secretary shall exclude from the sale and all other dealings in Debentures or TCs any broker or dealer:

(1) If such broker's or dealer's authority to engage in the securities business has been revoked or suspended by a supervisory agency. When such authority has been suspended, the Secretary will suspend such broker or dealer for the duration of such suspension by the supervisory agency.

(2) If such broker or dealer has been indicted or otherwise formally charged with a misdemeanor or felony bearing on its fitness, such broker or dealer may be suspended while the charge is pending. Upon conviction, participation may be terminated.

(3) If such broker or dealer has suffered an adverse final civil judgment holding that such broker or dealer has committed a breach of trust or violation of law or regulation protecting the integrity of business transactions or relationships, participation in the market for Debentures or TCs may be terminated.

(c) *Termination/suspension proceedings.* A broker's or dealer's participation in the market for Debentures or TCs will be conducted in accordance with 7 CFR part 11. The Secretary may, for any of the reasons stated in paragraphs (b)(1) through (3) of this section, suspend the privilege of any broker or dealer to participate in this market. The Secretary shall give written notice at least ten business days prior to the effective date of such suspension. Such notice shall inform the broker or dealer of the opportunity for a hearing pursuant to 7 CFR part 11.

§ 4290.1640 Secretary's access to records of the CRA, Brokers, Dealers and Pool or Trust assemblers.

The CRA and any broker, dealer and Pool or Trust assembler operating under the regulations in this part shall make all books, records and related materials associated with Debentures and TCs available to the Secretary for review and copying purposes. Such access shall be at such party's primary place of business during normal business hours.

Miscellaneous

§ 4290.1700 Secretary's transfer of interest in a RBIC's Leverage security.

Upon such conditions and for such consideration as he or she deems reasonable, the Secretary may sell, assign, transfer, or otherwise dispose of any Debenture held by or on behalf of the Secretary. Upon notice by the Secretary, a RBIC will make all payments of principal and interest as shall be directed by the Secretary. A RBIC will be liable for all damage or loss which the Secretary may sustain by reason of the RBIC's failure to follow such payment instructions, up to the amount of the RBIC's liability under such security, plus court costs and reasonable attorney's fees incurred by the Secretary.

§ 4290.1710 Secretary's authority to collect or compromise claims.

The Secretary may, upon such conditions and for such consideration as he or she deems reasonable, collect or compromise all claims relating to obligations he or she holds or has guaranteed, and all legal or equitable rights accruing to him or her.

§ 4290.1720 Characteristics of Secretary's guarantee.

If the Secretary agrees to guarantee a RBIC's Debentures, such guarantee will be unconditional, irrespective of the validity, regularity or enforceability of the Debentures or any other circumstances that might constitute a legal or equitable discharge or defense of a guarantor. Pursuant to its guarantee, the Secretary will make timely payments of principal and interest on the Debentures.

Subpart K—RBIC's Noncompliance With Terms of Leverage

§ 4290.1810 Events of default and the Secretary's remedies for RBIC's noncompliance with terms of Debentures.

(a) *Applicability of this section.* By issuing Debentures, you automatically agree to the terms, conditions and remedies in this section, as in effect at the time of issuance and as if fully set forth in the Debentures.

(b) *Automatic events of default.* The occurrence of one or more of the events in this paragraph (b) causes the remedies in paragraph (c) of this section to take effect immediately.

(1) *Insolvency.* You become equitably or legally insolvent.

(2) *Voluntary assignment.* You make a voluntary assignment for the benefit of creditors without the Secretary's prior written approval.

(3) *Bankruptcy.* You file a petition to begin any bankruptcy or reorganization proceeding, receivership, dissolution or other similar creditors' rights proceeding, or such action is initiated against you and is not dismissed within 60 days.

(c) *Remedies for automatic events of default.* Upon the occurrence of one or more of the events in paragraph (b) of this section:

(1) Without notice, presentation or demand, the entire indebtedness evidenced by your Debentures, including accrued interest, and any other amounts owed with respect to your Debentures, is immediately due and payable; and

(2) You automatically consent to the appointment of the Secretary or his or her designee, as your receiver under section 384M of the Act.

(d) *Events of default with notice.* For any occurrence (as determined by the Secretary) of one or more of the events in this paragraph (d), the Secretary may avail him or herself of one or more of the remedies in paragraph (e) of this section.

(1) *Fraud.* You commit a fraudulent act that causes detriment to the Secretary's position as a creditor or guarantor.

(2) *Fraudulent transfers.* You make any transfer or incur any obligation that is fraudulent under the terms of 11 U.S.C. 548.

(3) *Willful conflicts of interest.* You willfully violate § 4290.730.

(4) *Willful non-compliance.* You willfully violate one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act or any substantive provision of your Participation Agreement.

(5) *Repeated Events of Default.* At any time after being notified of the occurrence of an event of default under paragraph (f) of this section, you engage in similar behavior that results in another occurrence of the same event of default.

(6) *Transfer of Control.* You willfully violate § 4290.410, and as a result of such violation you undergo a transfer of Control.

(7) *Non-cooperation under § 4290.1810(h).* You fail to take appropriate steps, satisfactory to the Secretary, to accomplish any action the Secretary may have required under paragraph (h) of this section.

(8) *Non-notification of Events of Default.* You fail to notify the Secretary as soon as you know or reasonably should have known that any event of default exists under this section.

(9) *Non-notification of defaults to others.* You fail to notify the Secretary in writing within ten days from the date of a declaration of an event of default or nonperformance under any note, debenture or indebtedness of yours, issued to or held by anyone other than the Secretary.

(e) *Remedies for events of default with notice.* Upon written notice to you of the occurrence (as determined by the Secretary) of one or more of the events in paragraph (d) of this section:

(1) The Secretary may declare the entire indebtedness evidenced by your Debentures, including accrued interest and/or any other amounts owed the Secretary with respect to your Debentures, immediately due and payable: and

(2) The Secretary may avail himself or herself of any remedy available under the Act, specifically including institution of proceedings for his or her, or his or her designee's appointment as your receiver under section 384M(c) of the Act.

(f) *Events of default with opportunity to cure.* For any occurrence (as determined by the Secretary) of one or more of the events in this paragraph (f), the Secretary may avail him or herself of one or more of the remedies in paragraph (g) of this section.

(1) *Excessive Management Expenses.* Without the Secretary's prior written consent, you incur Management Expenses in excess of those permitted under §§ 4290.510 and 4290.520.

(2) *Improper Distributions.* You make any Distribution to your shareholders or partners, except with the Secretary's prior written consent, other than:

(i) Distributions permitted under § 4290.585; and

(ii) Payments from Retained Earnings Available for Distribution based on either the shareholders' or members' pro-rata interests or the provisions for profit distributions in your partnership agreement, as appropriate.

(3) *Failure to make payment.* Unless otherwise approved by the Secretary, you fail to make timely payment of any amount due under any security or obligation of yours that is issued to, held or guaranteed by the Secretary.

(4) *Failure to maintain Regulatory Capital.* You fail to maintain the minimum Regulatory Capital required under these regulations or, without the Secretary's prior written consent, you reduce your Regulatory Capital except as permitted by § 4290.585.

(5) *Capital Impairment.* You have a condition of Capital Impairment as determined under § 4290.1830.

(6) *Cross-default.* An obligation of yours that is greater than $100,000 becomes due or payable (with or without notice) before its stated maturity date, for any reason including your failure to pay any amount when due. This provision does not apply if you pay the amount due within any applicable grace period or contest the payment of the obligation in good faith by appropriate proceedings.

(7) *Nonperformance.* You violate or fail to perform one or more of the terms and conditions of any security or obligation of yours that is issued to, held or guaranteed by the Secretary, or of any agreement (including your Participation Agreement) with or conditions imposed by the Secretary in the administration of the Act and the regulations promulgated under the Act.

(8) *Noncompliance.* Except as otherwise provided in paragraph (d)(5) of this section, the Secretary determines that you have violated one or more of the substantive provisions of the Act or any substantive regulation promulgated under the Act.

(9) *Failure to maintain diversity.* You fail to maintain diversity between management and ownership as required by § 4290.150.

(g) *Remedies for events of default with opportunity to cure.* (1) Upon written notice to you of the occurrence (as determined by the Secretary) of one or more of the events of default in paragraph (f) of this section, and subject to the conditions in paragraph (g)(2) of this section:

(i) The Secretary may declare the entire indebtedness evidenced by your Debentures, including accrued interest, and/or any other amounts owed the Secretary with respect to your Debentures, immediately due and payable; and

(ii) The Secretary may avail himself or herself of any remedy available under the Act, specifically including institution of proceedings for the appointment of the Secretary or a designee as your receiver under § 348M of the Act.

(2) The Secretary may invoke the remedies in paragraph (g)(1) of this section only if:

(i) You have been given at least 15 days to cure the default(s); and

(ii) You fail to cure the default(s) to the Secretary's satisfaction within the allotted time.

(h) *Repeated non-substantive violations.* If you repeatedly fail to comply with one or more of the non-substantive provisions of the Act or any non-substantive regulation promulgated under the Act, the Secretary, after written notification to you and until you cure such condition to the Secretary's satisfaction, may deny you additional Leverage and/or require you to take such actions as the Secretary may determine to be appropriate under the circumstances.

(i) *Consent to removal of officers, directors, or general partners and/or appointment of receiver.* The Articles of each RBIC must include the following provisions as a condition to the purchase or guarantee of Leverage. Upon the occurrence of any of the events specified in paragraphs (d)(1) through (d)(6) or (f)(l) through (f)(3) of this section as determined by the Secretary, the Secretary shall have the right, and you consent to the Secretary's exercise of such right:

(1) With respect to a Corporate RBIC, upon written notice, to require you to replace, with individuals approved by the Secretary, one or more of your officers and/or such number of directors of your board of directors as is sufficient to constitute a majority of such board; or

(2) With respect to a Partnership RBIC or an LLC RBIC, upon written notice, to require you to remove the person(s) responsible for such occurrence and/or to remove the general partner or manager of the RBIC, which general partner or manager shall then be replaced in accordance with the RBIC's Articles by a new general partner or manager approved by the Secretary; and/or

(3) With respect to a Corporate RBIC, Partnership RBIC, or LLC RBIC, to obtain the appointment of the Secretary or his or her designee as your receiver under section 384M of the Act for the purpose of continuing your operations. The appointment of a receiver to liquidate an RBIC is not within such consent, but is governed instead by the relevant provisions of the Act.

Computation of RBIC'S Capital Impairment

§ 4290.1830 RBIC's Capital Impairment definition and general requirements.

(a) *Significance of Capital Impairment condition.* If you have a condition of Capital Impairment, you are not in compliance with the terms of your Leverage. As a result, the Secretary has the right to impose the applicable remedies for noncompliance in § 4290.1810(g).

(b) *Definition of Capital Impairment condition.* You have a condition of Capital Impairment if your Capital Impairment Percentage, as computed pursuant to the procedures set forth in § 4290.1840, exceeds 70 percent.

(c) *Quarterly computation requirement and procedure.* You must determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. You must notify the Secretary promptly if you are Capitally Impaired.

(d) *The Secretary's right to determine RBIC's Capital Impairment condition.* The Secretary may make his or her own determination of your Capital Impairment condition at any time.

§ 4290.1840 Computation of RBIC's Capital Impairment Percentage.

(a) *General.* This section contains the procedures you must use to determine your Capital Impairment Percentage. You must compare your Capital Impairment Percentage to the maximum permitted under § 4290.1830(b) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and you do not have to perform any more procedures in this § 4290.1840. Otherwise, you must continue with paragraph (c) of this section. You satisfy the test if each of the following amounts is zero or greater:

(1) The sum of Undistributed Net Realized Earnings, as reported on SBA Form 468, and Includible Non-Cash Gains.

(2) Unrealized Gain (Loss) on Securities Held.

(c) *How to compute your Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, continue with paragraph (c)(2) of this section.

(2) Add together your Undistributed Net Realized Earnings, your Includible Non-cash Gains, and either your Unrealized Loss on Securities Held or your Adjusted Unrealized Gain.

(3) If the sum in paragraph (c)(2) of this section is zero or greater, your Capital Impairment Percentage is zero.

(4) If the sum in paragraph (c)(2) of this section is less than zero, drop the negative sign, divide by your Regulatory Capital (excluding Treasury Stock), and multiply by 100. The result is your Capital Impairment Percentage.

(d) *How to compute your Adjusted Unrealized Gain.*

(1) Subtract Unrealized Depreciation from Unrealized Appreciation. This is your ''Net Appreciation''.

(2) Determine your Unrealized Appreciation on Publicly Traded and Marketable securities. This is your ''Class I Appreciation''.

(3) Determine your Unrealized Appreciation on securities that are not Publicly Traded and Marketable and meet the following criteria, which must be substantiated to the Secretary's satisfaction (this is your ''Class 2 Appreciation''):

(i) The Portfolio Concern that issued the security received a significant subsequent equity financing by an investor whose objectives were not primarily strategic and at a price that conclusively supports the Unrealized Appreciation;

(ii) Such financing represents a substantial investment in the form of an arm's-length transaction by a sophisticated new investor in the issuer's securities; and

(iii) Such financing occurred within 24 months of the date of the Capital Impairment computation, or the Portfolio Concern's pre-tax cash flow from operations for its most recent fiscal year was at least 10 percent of its average contributed capital for such fiscal year.

(4) Perform the appropriate computation from the table in 13 CFR 107.1840(d)(4).

(5) Reduce the gain computed in paragraph (d)(4) of this section by your estimate of related future income tax expense. Subject to any adjustment required by paragraph (d)(6) of this section, the result is your Adjusted Unrealized Gain for use in paragraph (c)(2) of this section.

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, you must reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

Subpart L—Ending Operations as a RBIC

§ 4290.1900 Termination of participation as a RBIC.

You may not terminate your participation as a RBIC without the Secretary's prior written approval. Your request for approval must be accompanied by an offer of immediate repayment of all of your outstanding

Leverage (including any prepayment penalties thereon), or by a plan satisfactory to the Secretary for the orderly liquidation of the RBIC.

Subpart M—Miscellaneous

§ 4290.1910 Non-waiver of rights or terms of Leverage security.

The Secretary's failure to exercise or delay in exercising any right or remedy under the Act or the regulations in this part does not constitute a waiver of such right or remedy. The Secretary's failure to require you to perform any term or provision of your Leverage does not affect the Secretary's right to enforce such term or provision. Similarly, the Secretary's waiver of, or failure to enforce, any term or provision of your Leverage or of any event or condition set forth in § 4290.1810 does not constitute a waiver of any succeeding breach of such term or provision or condition.

§ 4290.1920 RBIC's application for exemption from a regulation in this part 4290.

(a) *General.* You may file an application in writing with the Secretary to have a proposed action exempted from any procedural or substantive requirement, restriction, or prohibition to which it is subject under this part, unless the provision is mandated by the Act. The Secretary may grant an exemption for such applicant, conditionally or unconditionally, provided the exemption would not be contrary to the purposes of the Act.

(b) *Contents of application.* Your application must be accompanied by supporting evidence that demonstrates to the Secretary's satisfaction that:

(1) The proposed action is fair and equitable; and

(2) The exemption requested is reasonably calculated to advance the best interests of the RBIC program in a manner consistent with the policy objectives of the Act and the regulations in this part.

§ 4290.1930 Effect of changes in this part 4290 on transactions previously consummated.

The legality of a transaction covered by the regulations in this part is governed by the regulations in this part in effect at the time the transaction was consummated, regardless of later changes. Nothing in this part bars enforcement action with respect to any transaction consummated in violation of provisions applicable at the time, but no longer in effect.

§ 4290.1940 Integration of this part with other regulations applicable to USDA's programs.

(a) *Intergovernmental review.* To the extent applicable to this part, the Secretary will comply with subpart V of 7 CFR part 3015, ''Intergovernmental Review of Department of Agriculture Programs and Activities.'' The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(b) *National flood insurance.* To the extent applicable to this part, the Secretary will comply with subpart B of 7 CFR part 1806. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(c) *Clean Air Act and Water Pollution Control Act requirements.* To the extent applicable to this part, the Secretary will comply with the requirements of the Clean Air Act, section 306; the Clean Water Act, section 508; Executive Order 11738; and 40 CFR part 32. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(d) *Historic preservation requirements.* To the extent applicable to this part, the Secretary will comply with subpart F of 7 CFR part 1901. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(e) *Lead-based paint requirements.* To the extent applicable to this part, the Secretary will comply with subpart A of 7 CFR part 1924. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(f) *Conflict of interest.* To the extent applicable to this part, the Secretary will comply with subpart D of 7 CFR part 1900 and RD Instruction 2045–BB. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(g) *Civil rights impact analysis.* To the extent applicable to this part, the Secretary will comply with RD Instruction 2006–P, ''Civil Rights Impact Analysis.'' The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(h) *Environmental requirements.* To the extent applicable to this part, the Secretary will comply with subpart G of 7 CFR part 1940. The Secretary has not delegated this responsibility to SBA pursuant to § 4290.45 of this part.

(i) *Appeals to the National Appeals Division for review of adverse decisions.* Applicants and RBICs have the right to request review by the National Appeals Division within the USDA of adverse decisions, as defined in 7 CFR 11.1, pursuant to 7 CFR part 11.

Subpart N—Requirements for Operational Assistance Grants to RBICs

§ 4290.2000 Operational Assistance Grants to RBICs.

(a) *Regulations governing.* Regulations governing Operational Assistance grants to RBICs may be found in subparts D and E of this part 4290 and in this § 4290.2000.

(b) *Restrictions on use.* A RBIC must use Operational Assistance grant funds only to provide Operational Assistance to Smaller Enterprises to which it either has made, or expects to make, a Financing.

(c) *Amount of grant.* Each RBIC will receive an Operational Assistance grant award equal to the lesser of 10 percent of the Regulatory Capital raised by the RBIC at the time of licensing or $1,000,000.

(d) *Term.* Operational Assistance grants made under this part will be made for a multiyear period (not to exceed 10 years) under such terms as the Secretary may require.

(e) *Reporting and recordkeeping requirements.* Policies governing reporting, record retention, and recordkeeping requirements applicable to RBICs may be found in subpart H of this part 4290.

Dated: June 1, 2004.

Gilbert Gonzalez,

Acting Under Secretary for Rural Development.

[FR Doc. 04–12731 Filed 6–3–04; 3:09 pm]

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DEPARTMENT OF AGRICULTURE

Office of the Secretary

Announcement of Competitive Application Round for the Rural Business Investment Program (RBIP)

AGENCY: Office of the Secretary, USDA.

ACTION: Notice.

SUMMARY: The Department of Agriculture (USDA) will select and license applicants to become Rural Business Investment Companies (RBIC), and provide financial assistance and grant awards under the RBIP. The Secretary of the USDA invites applications from newly-formed venture capital companies seeking to be licensed as a RBIC. USDA has delegated to the U.S. Small Business Administration (SBA) receipt of applications under this Notice of Funds Availability (NOFA).

DATES: *Application window opening date:* SBA will begin accepting applications on June 8, 2004.

Application deadline date: The application deadline is 4 p.m. EST on Friday, September 17, 2004. *See* **SUPPLEMENTARY INFORMATION** for rules concerning application submission.

ADDRESSES: *Address for application submission:* Completed applications must be sent to Associate Administrator (or his or her designee), Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

Address for requesting information: Applications materials and other information may be requested by writing to Director of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Detailed information on the RBIP, including information, materials, and instructions concerning application for the program, can be found on SBA's Web site at *http://www.sba.gov/INV/RBIP* and at the specific URLs listed in this NOFA. You also may request information from SBA by contacting Austin J. Belton, Director of New Markets Venture Capital, Investment Division, U.S. Small Business Administration, 409 Third Street, SW., Washington, DC 20416, at (202) 205–6510.

SUPPLEMENTARY INFORMATION:

Background: Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*) (the ''Act'') establishes the RBIP. The purpose of the Act is to promote economic development and the creation of wealth and job opportunities in rural areas and among individuals living in those areas through venture capital investments by for-profit RBICs. Pursuant to the Act, USDA licenses newly formed for-profit entities as RBICs and provides financial assistance in the form of debenture guarantees to such RBICs to fund their rural area investment activities. Additionally, USDA awards OA grants to RBICs for the purpose of providing operational assistance to smaller enterprises in which the RBIC invests or expects to invest and that are located in rural areas. RBICs must have raised private equity capital of $10,000,000 and must obtain debenture leverage (in the amount of 200 percent of its private capital, or $20,000,000 per RBIC) through the RBIP, to fund their investment activities. USDA will not be granting exceptions to the $10,000,000 private equity capital requirement, pursuant to 7 CFR 4290.210(b), under this funding opportunity.

Available funding: Section 384S(b) of the Act makes funds for the RBIP available until expended. USDA's first competitive application round for licensing as an RBIC will end on September 17, 2004.

The amount currently available for debenture guaranty authority in FY 2004 is $280 million. Subject to funding availability, under this NOFA, USDA intends to select up to three new RBICs and to obligate up to approximately $60,000,000 in debenture guarantee authority and approximately $3,000,000 in Operational Assistance (OA) grant funds to RBICs. However, applicants should note that pursuant to USDA's FY 2004 appropriations act (section 759 of the Consolidated Appropriations Act of 2004, Pub. L. 108–199 (Jan. 23, 2004)), no selection of any RBICs will be made during FY04.

USDA reserves the right to select and fund some, all, or none of the applicants for licensing as an RBIC under this NOFA.

Application materials: A program announcement, the ''Rural Business Investment Program—Program Announcement (June 2004),'' provides guidance on the contents of the necessary application materials, evaluation criteria, and other program requirements. The program announcement also states the critical deadline dates applicable to this funding opportunity. This document is available at *http://www.sba.gov/INV/RBIP* or by contacting USDA at the address and phone number set forth in this NOFA. Applicants for licensing as an RBIC can obtain detailed application materials and instructions at *http://www.sba.gov/INV/RBIP* or by contacting USDA at the address and phone number set forth in this NOFA.

USDA has delegated to SBA many of the day-to-day responsibilities for the RBIP, including receipt of applications and most of the selection process for licensing as a RBIC, under 7 CFR 4290.45. More information about all aspects of the RBIP is available in the regulations authorizing the RBIP, at 7 CFR part 4290.

Application submission rules: Applications must be received personally by the Associate Administrator for the Investment Division (AA/I), or by specific individuals designated by the AA/I, by the deadline date and time. Applications received after that date and time will be rejected and returned to the sender. Applications must be submitted in accordance with the application instructions, which include but are not limited to a requirement that applications be submitted in hard copy form. Applications sent electronically or by facsimile will not be accepted.

Applicants must enclose in their submission a grant issuance fee of $5,000 in the form of a check payable to SBA.

USDA recommends that potential applicants who plan to request application materials via mail request such materials as soon as possible but in any event no later than 60 days before the application due date, in order to assure that such applicants have sufficient time to prepare a responsive application.

Summary of review and selection process: Selection for licensing as an RBIC will be made on a competitive basis using a multi-tiered application and approval process.

SBA staff will screen applications for timely submission, eligibility, and completeness. Only those applications that SBA receives before the deadline, that are complete, and that are eligible will be processed further. On those applications, SBA then will perform an initial review of the applicant's management team's qualifications.

Applications considered qualified as a result of the initial review process then will be evaluated, scored and ranked by panels consisting of qualified, experienced USDA/SBA staff. The panels will assess the applications against specific evaluation criteria described in the program announcement, with emphasis on successful investing track records in relation to the proposed investment strategy and targeted rural areas. USDA/SBA will invite those applicants with

the highest rankings to interview in person with the Portfolio Committee.

The Portfolio Committee, which shall be comprised of both USDA and SBA officials, will score applicants and make final recommendations for selection as RBICs. The SBA Administrator and USDA Secretary will separately consider but mutually concur on the selection of applicants. Selected applicants will be given 12 months to raise their private equity capital. Once a selected applicant has raised its $10,000,000 in private equity capital and has achieved full compliance with the regulations governing licensing as an RBIC, the SBA Administrator and USDA Secretary will jointly license the RBIC.

Assuming private capital of $10 million and compliance with all program requirements, USDA/SBA will award each RBIC an OA grant of $1 million at the time of licensing. Terms of the OA grant will be subject to guidelines on Federal grants issued by OMB. OA grants will be awarded only to licensed RBICs pursuant to this funding opportunity. Subject to the availability of funds, this would not preclude USDA from making OA grants to ''other entities'' pursuant to section 384H of the Act at some point in the future.

Program authority: Subtitle H of the Consolidated Farm and Rural Development Act, as amended (7 U.S.C. 2009cc *et seq.*).

Dated: June 1, 2004.

Gilbert Gonzalez,

Acting Under Secretary for Rural Development.

[FR Doc. 04–12732 Filed 6–3–04; 3:09 pm]

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Federal Register

Tuesday,
June 8, 2004

Part IV

The President

Memorandum of June 3, 2004—Secret Service Protection for Distinguished Foreign Visitors to the 2004 Group of Eight (“G8”) Summit

Federal Register
Vol. 69, No. 110
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Presidential Documents

Title 3—

The President

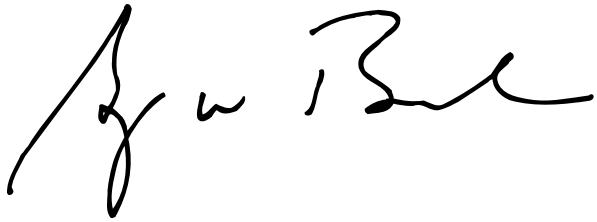
Memorandum of June 3, 2004

Secret Service Protection for Distinguished Foreign Visitors to the 2004 Group of Eight (''G8'') Summit

Memorandum for the Secretary of Homeland Security

By the authority vested in me as President by the Constitution and the laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to you the functions and authority of the President contained in section 3056 of title 18, United States Code, with respect to protecting distinguished foreign visitors to the 2004 Group of Eight (''G8'') Summit.

You are further authorized and directed to make necessary arrangements to fund this activity from the proper appropriation and to publish this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, June 3, 2004.

[FR Doc. 04–13106
Filed 6–7–04; 9:45 am]
Billing code 4410–10–M

Federal Register

Tuesday,
June 8, 2004

Part V

The President

Proclamation 7792—D-Day National Remembrance Day, 2004

Proclamation 7793—National Child's Day, 2004

Proclamation 7794—Announcing the Death of Ronald Reagan

Executive Order 13343—Providing for the Closing of Government Departments and Agencies on June 11, 2004

Federal Register
Vol. 69, No. 110
Tuesday, June 8, 2004

Presidential Documents

Title 3—

The President

Proclamation 7792 of June 5, 2004

D-Day National Remembrance Day, 2004

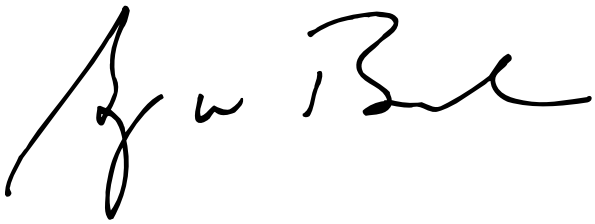
By the President of the United States of America

A Proclamation

Sixty years ago, the soldiers, sailors, and airmen of the Allied Expeditionary Force invaded Normandy in northern France to open a new front in our war against Nazism and tyranny. The courage of these troops turned the tide of World War II and changed the fate of the world forever. Their extraordinary service in the face of great danger demonstrated the finest qualities of our Nation and of our Allies, and millions around the world today live in freedom because of their sacrifice. By remembering the heroic actions of our Armed Forces at Utah, Omaha, Gold, Juno, and Sword beaches in 1944, we honor a generation who served this country and saved liberty for people everywhere.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim June 6, 2004, as D-Day National Remembrance Day. I call upon all Americans to observe this occasion with appropriate activities, ceremonies and programs designed to honor those who served and sacrificed to liberate Europe and defend America's freedom and security.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–13120
Filed 6–7–04; 12:01 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 7793 of June 5, 2004

National Child's Day, 2004

By the President of the United States of America

A Proclamation

Children are a precious gift and a source of great hope for our future. National Child's Day celebrates children and reminds us of the importance of nurturing a child's personal development and providing a safe environment in which to grow.

Children need our guidance and support. During this time in America's history, teaching our children to love our Nation and its values remains a critical responsibility. We need to help young people understand that freedom is God's gift to every man and woman and that America's legacy is one of ensuring liberty for all. Our children also need to know about what other generations have done to build and preserve this great country, including the service and sacrifice of the men and women who have defended our Nation. To help prepare our next generation of leaders to carry on America's tradition of freedom, my Administration has launched the ''We the People'' initiative to improve the teaching of history and civics in America's schools, along with the ''Our Documents'' initiative to help make the treasures in our Nation's archives more accessible to students and teachers.

Building a solid foundation of character education for our young people helps to keep our country strong. We live by the immutable values that families, schools, and religious congregations instill in us. To assist these fundamental institutions as they shape generations of Americans, my Administration is supporting Partnerships in Character Education, which helps establish educational programs that focus on caring, civic virtue, citizenship, justice, fairness, respect, responsibility, and trustworthiness. It is essential to teach these morals with confidence and conviction, as they will guide America's children through their lives.

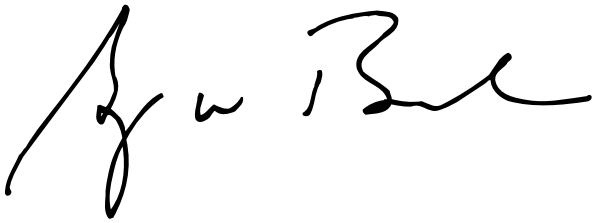
Government cannot replace the love of a family in a child's life, but it can help create an environment where children can grow into healthy, responsible adults. My Administration has taken several steps to strengthen education and promote the safety and well-being of America's children. I signed the No Child Left Behind Act of 2001 to transform education and open the door of opportunity to all of our children. We have also strengthened laws to protect children from criminals and expanded the AMBER Alert system to help recover abducted children. And because the decisions young people make now can affect their health and character for the rest of their lives, my Administration is working to send positive messages to children to help them make healthy lifestyle choices, avoid the dangers of drug use, and to develop healthy eating and exercise habits early in life.

On National Child's Day, we recognize the importance of working together to create a society that is safe for our children, and we renew our commitment to helping families build a bright future for young people and our Nation.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim June 6, 2004, as National

Child's Day. I urge all Americans to set a positive example for children and to work to ensure that their communities are safe and supportive places that help young people grow and reach their full potential. I also call upon citizens to observe this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–13121
Filed 6–7–04; 12:01 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 7794 of June 6, 2004

Announcing the Death of Ronald Reagan

By the President of the United States of America

A Proclamation

TO THE PEOPLE OF THE UNITED STATES:

It is my sad duty to announce officially the death of Ronald Reagan, the fortieth President of the United States, on June 5, 2004.

We are blessed to live in a Nation, and a world, that have been shaped by the will, the leadership, and the vision of Ronald Reagan.

With an unshakable faith in the values of our country and the character of our people, Ronald Reagan renewed America's confidence and restored our Nation. His optimism, strength, and humility epitomized the American spirit. He always told us that for America the best was yet to come.

Ronald Reagan believed that God takes the side of justice and that America has a special calling to oppose tyranny and defend freedom. Through his courage and determination, he enhanced America's security and advanced the spread of peace, liberty, and democracy to millions of people who had lived in darkness and oppression. As America's President, Ronald Reagan helped change the world.

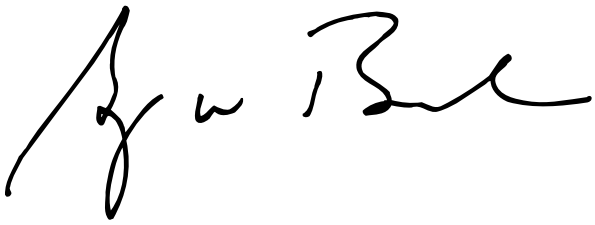
President Reagan has left us, but he has left us stronger and better. We take comfort in the knowledge that he has left us for a better place, the shining city that awaits him.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, in honor and tribute to the memory of Ronald Reagan, and as an expression of public sorrow, do hereby direct that the flag of the United States be displayed at half-staff at the White House and on all buildings, grounds, and Naval vessels of the United States for a period of 30 days from the day of his death. I also direct that for the same length of time, the representatives of the United States in foreign countries shall make similar arrangements for the display of the flag at half-staff over their Embassies, Legations, and other facilities abroad, including all military facilities and stations.

I hereby order that suitable honors be rendered by units of the Armed Forces under orders of the Secretary of Defense.

I do further appoint Friday, June 11, 2004, as a National Day of Mourning throughout the United States. I call on the American people to assemble on that day in their respective places of worship, there to pay homage to the memory of President Reagan. I invite the people of the world who share our grief to join us in this solemn observance.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of June, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



[FR Doc. 04–13122
Filed 6–7–04; 12:01 pm]
Billing code 3195–01–P

Presidential Documents

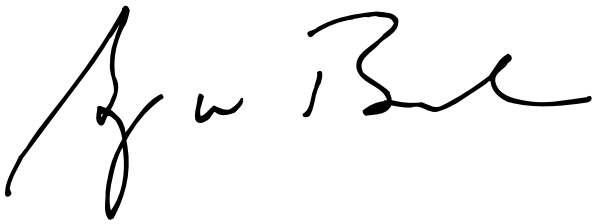
Executive Order 13343 of June 6, 2004

Providing for the Closing of Government Departments and Agencies on June 11, 2004

By the authority vested in me as President by the Constitution and laws of the United States of America, it is hereby ordered as follows:

Section 1. All executive departments, independent establishments, and other governmental agencies shall be closed on June 11, 2004, as a mark of respect for Ronald Reagan, the fortieth President of the United States. That day shall be considered as falling within the scope of Executive Order 11582 of February 11, 1971, and of 5 U.S.C. 5546 and 6103(b) and other similar statutes insofar as they relate to the pay and leave of employees of the United States.

Sec. 2. The first sentence of section 1 of this order shall not apply to those offices and installations, or parts thereof, in the Department of State, the Department of Defense, the Department of Justice, the Department of Homeland Security, or other departments, independent establishments, and governmental agencies that the heads thereof determine should remain open for reasons of national security or defense or other essential public business.



THE WHITE HOUSE,
June 6, 2004.

[FR Doc. 04–13123
Filed 6–7–04; 12:02 pm]
Billing code 3195–01–P

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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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H.R. 408/P.L. 108–229
To provide for expansion of Sleeping Bear Dunes National Lakeshore. (May 28, 2004; 118 Stat. 645)

H.R. 708/P.L. 108–230
To require the conveyance of certain National Forest System lands in Mendocino National Forest, California, to provide for the use of the proceeds from such conveyance for National Forest purposes, and for other purposes. (May 28, 2004; 118 Stat. 646)

H.R. 856/P.L. 108–231
To authorize the Secretary of the Interior to revise a repayment contract with the Tom Green County Water and Control and Improvement District No. 1, San Angelo project, Texas, and for other purposes. (May 28, 2004; 118 Stat. 648)

H.R. 923/P.L. 108–232
Premier Certified Lenders Program Improvement Act of

2004 (May 28, 2004; 118 Stat. 649)

H.R. 1598/P.L. 108–233
Irvine Basin Surface and Groundwater Improvement Act of 2004 (May 28, 2004; 118 Stat. 654)

H.R. 3104/P.L. 108–234
To provide for the establishment of separate campaign medals to be awarded to members of the uniformed services who participate in Operation Enduring Freedom and to members of the uniformed services who participate in Operation Iraqi Freedom. (May 28, 2004; 118 Stat. 655)

Last List May 20, 2004

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