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NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 747

Civil Monetary Penalty Inflation Adjustment

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: Congress, in the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, required all federal agencies with the authority to impose civil monetary penalties (CMPs) to regularly evaluate those CMPs to ensure that they continue to maintain their deterrent value. In order to comply with Congress' mandate to adjust CMPs for inflation at least every four years, NCUA is issuing this final rule to implement the required adjustments to the CMPs authorized by the Federal Credit Union Act and other relevant laws.

DATES: Effective November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Allan Meltzer, Associate General Counsel, or Jon Canerday, Trial Attorney, Office of General Counsel, NCUA, 1775 Duke Street, Alexandria, Virginia 22314, or telephone (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Debt Collection Improvement Act of 1996 [1] (DCIA) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 [2] (FCPIA Act) to require every Federal agency to enact regulations that adjust each civil monetary penalty (CMP) [3] provided by law under its jurisdiction by the rate of inflation pursuant to the inflation adjustment formula in section 5(b) of the FCPIA Act. Each Federal agency was required to issue these implementing regulations by October 23, 1996, and at least once every 4 years thereafter. Section 6 of the amended FCPIA Act specifies that inflation-adjusted CMPs will only apply to violations that occur after the effective date of the adjustment. The inflation adjustment is based on the percentage increase in the Consumer Price Index (CPI).[4] Specifically, section 5(b) of the FCPIA Act defines the term ''cost-of-living adjustment'' as ''the percentage (if any) for each civil monetary penalty by which—(1) The Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.'' Furthermore, each CMP that has been adjusted for inflation must be rounded to a number prescribed by section 5(a) of the FCPIA Act.[5]

The CMPs which NCUA is authorized to impose were last adjusted by NCUA in either 1996 or 2000. For those CMPs that were adjusted in 2000, the current adjustment will be the percentage by which the CPI for the month of June 2003 exceeds the CPI for the month of June 2000. According to the Bureau of Labor Statistics, the CPI for the month of June 2000 was 172.4 and the CPI for the month of June 2003 was 183.7. The percentage by which the 2003 figure exceeds the 2000 figure is 6.55 percent. Thus, the CMPs that were last adjusted in 2000 should be increased by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

For those CMPs that were adjusted in 1996, the current adjustment will be the percentage by which the CPI for the month of June 2003 exceeds the CPI for the month of June 1996. According to the Bureau of Labor Statistics, the CPI for the month of June 1996 was 156.7 and the CPI for the month of June 2003 was 183.7. The percentage by which the 2003 figure exceeds the 1996 figure is 17.23 percent. The CMPs that were last adjusted in 1996 should be increased by 17.23 percent to arrive at the new adjusted amounts (before required rounding).

B. Mathematical Calculations of the Adjustments

1. 12 U.S.C. 1782a(a)(3)

NCUA is authorized to require credit unions to periodically provide reports of condition. The failure to submit a required report or the submission of a false or misleading report subjects a credit union to three levels of CMPs, depending upon the reasons for noncompliance.

Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1782a(a)(3) were last adjusted by NCUA in 2000.[6] Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

The maximum CMP authorized by 12 U.S.C. 1782a(a)(3) for an inadvertent failure to submit a report or the inadvertent submission of a false or misleading report is $2,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to $2,200 for each day. Multiplying the current penalty of $2,200 by 6.55 percent results in an increase of $144.10. When that number is rounded as required by the FCPIA Act,[7] the inflation-adjusted maximum remains $2,200.

[1] Pub. L. 104–134, 31001(s), 110 Stat. 1321–373, (Apr. 26, 1996). The Provision is codified at 28 U.S.C. 2461 note.

[2] Pub. L. 101–410, 104 Stat. 890, (Oct. 5, 1990), also codified at 28 U.S.C. 2461 note.

[3] Section 3(2) of the amended FCPIA Act defines a CMP as any penalty, fine, or other sanction that: (1) Either is for a specific monetary amount as provided by Federal law or has a maximum amount provided for by Federal law; (2) is assessed or enforced by an agency pursuant to Federal law; and (3) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

[4] The CPI is published by the Department of Labor, Bureau of Statistics, and is available at its Web site: *http://data.bls.gov/cgi-bin/surveymost.*

[5] In 2000, NCUA recognized that the rounding provision of the FCPIA Act was capable of differing interpretations. Since then, the Comptroller General has interpreted the rounding requirements of the FCPIA Act the same way as NCUA did in calculating the 2000 inflation adjustments. Comp. Gen. B–290021, 2002 U.S. Comp. Gen. LEXIS 266, July 15, 2002.

[6] The previous inflation adjustments were made to 12 U.S.C. 1782. That provision has been redesignated as 1782a.

[7] ''Any increase determined under this subsection shall be rounded to the nearest– * * * (3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000.'' Section 5(a), FCPIA Act. Therefore, $144.10 is rounded to the nearest multiple of $1,000 or to $0.

The maximum CMP authorized by 12 U.S.C. 1782a(a)(3) for a non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report is $20,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to $22,000 for each day. Multiplying the current penalty of $22,000 by 6.55 percent results in an increase of $1,441. When that number is rounded as required by the FCPIA Act,[8] the inflation-adjusted maximum remains $22,000.

The maximum CMP authorized by 12 U.S.C. 1782a(a)(3) for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard is $1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to $1,100,000 for each day. Multiplying the current penalty of $1,100,000 by 6.55 percent results in an increase of $72,050. When that number is rounded as required by the FCPIA Act,[9] the inflation-adjusted maximum becomes $1,175,000 or 1 percent of the total assets of the credit union, whichever is less, per day.

2. 12 U.S.C. 1782a(d)(2)

In a provision similar to that discussed above, NCUA is authorized to require each credit union to provide periodic certified statements of the amount of insured shares in the credit union, as well as to pay required deposits into the National Credit Union Share Insurance Fund. The failure to submit a required certified statement or the submission of a false or misleading statement subjects a credit union to three levels or tiers of CMPs, depending upon the reasons for noncompliance.

Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1782a(d)(2) were last adjusted by NCUA in 2000. Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

First Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782a(d)(2)(A) for an inadvertent failure to timely submit a certified statement or an inadvertent submission of a false or misleading certified statement is $2,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to $2,200 for each day. Multiplying the current penalty of $2,200 by 6.55 percent results in an increase of $144.10. When that number is rounded as required by the FCPIA Act,[10] the inflation-adjusted maximum remains $2,200.

Second Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782a(d)(2)(B) for a non-inadvertent failure to timely submit a certified statement, or a non-inadvertent submission of a false or misleading certified statement, or the failure or refusal to pay any required deposit or premium for insurance is $20,000 for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to $22,000 for each day. Multiplying the current penalty of $22,000 by 6.55 percent results in an increase of $1,441. When that number is rounded as required by the FCPIA Act,[11] the inflation-adjusted maximum remains $22,000.

Third Tier CMPs

The maximum CMP authorized by 12 U.S.C. 1782a(d)(2)(C) for a failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard is $1,000,000 or 1 percent of the total assets of the credit union, whichever is less, for each day the failure continues or such false or misleading information is not corrected. After the required adjustment for inflation in 2000, the maximum penalty was increased to $1,100,000 for each day. Multiplying the current penalty of $1,100,000 by 6.55 percent results in an increase of $72,050. When that number is rounded as required by the FCPIA Act,[12] the inflation-adjusted maximum becomes $1,175,000 or 1 percent of the total assets of the credit union, whichever is less, per day.

3. 12 U.S.C. 1785(e)(3)

Pursuant to 12 U.S.C. 1785(e)(1), NCUA is authorized to promulgate regulations to provide minimum standards with which each insured credit union must comply with respect to security devices and procedures to discourage robberies, burglaries and larcenies and to assist in the identification and apprehension of persons who commit such acts. A credit union that violates such a regulation is subject to a CMP for each day the violation continues.

Calculation of the Adjustment

The CMPs authorized by 12 U.S.C. 1785(e)(3) were last adjusted by NCUA in 2000. Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

The maximum CMP authorized by 12 U.S.C. 1785(e)(3) for non-compliance with NCUA security regulations is $100 for each day the violation continues. After the required adjustment for inflation in 2000, the maximum penalty was increased to $110 for each day. Multiplying the current penalty of $110 by 6.55 percent results in an increase of $7.21. When that number is rounded as required by the FCPIA Act,[13] the inflation-adjusted maximum remains $110.

4. 12 U.S.C. 1786(k)(2)

NCUA is authorized to impose three levels or tiers of CMPs upon insured credit unions or institution-affiliated parties for certain conduct. First and second tier CMPs were not increased for inflation in 2000 because the amount of the increase was not large enough as a result of the rounding rules. Because these CMPs were last adjusted for inflation in 1996, they should now be increased by 17.23 percent to arrive at the new adjusted amounts (before

[8] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000.'' Section 5(a), FCPIA Act. Therefore, $1,441 is rounded to the nearest multiple of $5,000 or to $0.

[9] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (6) multiple of $25,000 in the case of penalties greater than $200,000.'' Section 5(a), FCPIA Act. Therefore, $72,050 is rounded to the nearest multiple of $75,000 or to $75,000.

[10] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000.'' Section 5(a), FCPIA Act. Therefore, $144.10 is rounded to the nearest multiple of $1,000 or to $0.

[11] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000.'' Section 5(a), FCPIA Act. Therefore, $1,441 is rounded to the nearest multiple of $5,000 or to $0.

[12] ''Any increase determined under this subsection shall be rounded to the nearest– * * * (6) multiple of $25,000 in the case of penalties greater than $200,000.'' Section 5(a), FCPIA Act. Therefore, $72,050 is rounded to the nearest multiple of $75,000 or to $75,000.

[13] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000.'' Section 5(a), FCPIA Act. Therefore, $7.21 is rounded to the nearest multiple of $100 or to $0.

required rounding). Third tier CMPs were increased for inflation in 2000 and therefore, should now be increased by 6.55 percent (before required rounding).

First Tier CMPs

First tier CMPs, 12 U.S.C. 1786(k)(2)(A), may be imposed for the violation of any law or regulation, the violation of certain final orders or temporary orders, the violation of conditions imposed in writing by the NCUA Board, or the violation of any written agreement between the credit union and NCUA. The statute provides that first tier CMPs shall not be more than $5,000 for each day the violation continues. After the required adjustment for inflation in 1996, the maximum penalty was increased to $5,500 for each day. Multiplying the current penalty of $5,500 by 17.23 percent results in an increase of $947.65. When that number is rounded as required by the FCPIA Act,[14] the inflation-adjusted maximum for a first tier CMP becomes $6,500.

Second Tier CMPs

Second tier CMPs, 12 U.S.C. 1786(k)(2)(B), are authorized for violations described in first tier CMPs, the reckless engaging in an unsafe or unsound practice in conducting the affairs of a credit union, or the breach of any fiduciary duty, when the violation, practice or breach is part of a pattern of misconduct, or causes or is likely to cause more than a minimal loss to the credit union, or results in pecuniary gain or other benefit. The statute provides a maximum second tier CMP of $25,000 for each day the violation, practice or breach continues. After the required 1996 adjustment for inflation, the maximum penalty was increased to $27,500 per day. Multiplying the current penalty of $27,500 by 17.23 percent results in an increase of $4,738.25. When that number is rounded as required by the FCPIA Act,[15] the inflation-adjusted maximum for a second tier CMP becomes $32,500.

Third Tier CMPs

Third tier CMPs, 12 U.S.C. 1786(k)(2)(C), may be imposed for any of the acts described in second tier CMPs that cause a substantial loss to the credit union or a substantial pecuniary gain or other benefit. The amount of third tier CMPs depends upon the status of the respondent required to pay the CMP, 12 U.S.C. 1786(k)(2)(D). For a person other than an insured credit union, under the statute, the maximum third tier CMP is $1,000,000 for each day the violation, practice or breach continues. For an insured credit union, the statute provides a daily maximum CMP of the lesser of $1,000,000 or 1 percent of the total assets of the credit union. In 2000, the maximum CMP for a person other than an insured credit union was increased for inflation to $1,175,000 per day. At the same time, the maximum CMP for an insured credit union was increased to the lesser of $1,175,000 or 1 percent of the total assets of the credit union. Multiplying the current penalty of $1,175,000 by 6.55 percent results in an increase of $76,962.50. When that number is rounded as required by the FCPIA Act,[16] the new maximum inflation-adjusted third tier CMP becomes $1,250,000.

5. 42 U.S.C. 4012a(f)

Pursuant to 42 U.S.C. 4012a(f), NCUA is authorized to impose CMPs against a credit union that is found to have a pattern or practice of committing certain specified actions in violation of the National Flood Insurance Program.

Calculation of the Adjustment

The CMPs authorized by 42 U.S.C. 4012a(f) were last adjusted by NCUA in 2000. Therefore, these CMPs should be multiplied by 6.55 percent to arrive at the new adjusted amounts (before required rounding).

The maximum CMP authorized by 42 U.S.C. 4012a(f) is $350 for each violation, up to a maximum of $100,000 per calendar year. After the required adjustments for inflation in 2000, the maximum penalty was increased to $385 for each day, up to a maximum of $110,000 per calendar year. Multiplying the current penalty of $385 by 6.55 percent results in an increase of $25.22. When that number is rounded as required by the FCPIA Act,[17] the inflation-adjusted maximum remains $385. Multiplying the current annual maximum of $110,000 by 6.55 percent results in an increase of $7,205. When that number is rounded as required by the FCPIA Act,[18] the inflation-adjusted annual maximum penalty becomes $120,000 per calendar year.

The NCUA Board now adopts this final rule to adjust the forgoing CMPs for the rate of inflation, as required by the FCPIA Act. As provided in the final rule, the revised CMP amounts will only apply to violations that occur after the effective date of the final rule.

C. Regulatory Procedures

Final Rule Under the Administrative Procedures Act

The FCPIA Act requires adjustments of CMPs for inflation to occur at least every four years. Additionally, the FCPIA Act provides federal agencies with no discretion in the adjustment of CMPs for inflation. Thus, NCUA is unable to vary the amount of the adjustments to reflect any views or suggestions provided by commenters. Further, the regulation is ministerial and technical. For all of these reasons, the NCUA Board finds good cause to determine that public notice and comment for this new regulation is unnecessary, impractical and contrary to the public interest, pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(B).

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact a proposed rule may have on a substantial number of small credit unions (those under ten million dollars in assets). The proposed rule would not have a significant economic impact on a substantial number of small credit unions, and, therefore, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

NCUA has determined that the proposed rule would not increase paperwork requirements under the Paperwork Reduction Act of 1995 and regulations of the Office of Management and Budget.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory

[14] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (3) multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000.'' Section 5(a), FCPIA Act. Therefore, $947.65 is rounded to the nearest multiple of $1,000 or to $1,000.

[15] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (4) multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000.'' Section 5(a), FCPIA Act. Therefore, $4,738.25 is rounded to the nearest multiple of $5,000 or to $5,000.

[16] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (6) multiple of $25,000 in the case of penalties greater than $200,000.'' Section 5(a), FCPIA Act. Therefore, $76,962.50 is rounded to the nearest multiple of $25,000 or to $75,000.

[17] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (2) multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000.'' Section 5(a), FCPIA Act. Therefore, $25.22 is rounded to the nearest multiple of $100 or to $0.

[18] ''Any increase determined under this subsection shall be rounded to the nearest- * * * (5) multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000.'' Section 5(a), FCPIA Act. Therefore, $7,205 is rounded to the nearest multiple of $10,000 or to $10,000.

actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the Executive Order. This final rule will apply to all federally-insured credit unions, but it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. NCUA has determined the final rule does not constitute a policy that has federalism implications for purposes of the Executive Order.

The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

NCUA has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–21) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, it is not a major rule.

List of Subjects in 12 CFR Part 747

Credit unions, Civil monetary penalties.

By the National Credit Union Administration Board on September 27, 2004.

Mary Rupp,

Secretary of the Board.

■ Accordingly, the NCUA amends 12 CFR part 747 as follows:

PART 747—ADMINISTRATIVE ACTIONS, ADJUDICATIVE HEARINGS, RULES OF PRACTICE AND PROCEDURE, AND INVESTIGATIONS

■ 1. The authority citation for part 747 continues to read as follows:

Authority: 12 U.S.C. 1766, 1782, 1784, 1785, 1786, 1787; 42 U.S.C. 4012a; Pub. L. 101–410; Pub. L. 104–134.

■ 2. Part 747, Subpart K is revised to read as follows:

Subpart K—Inflation Adjustment of Civil Monetary Penalties

§ 747.1001 Adjustment of civil money penalties by the rate of inflation.

(a) NCUA is required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, 104 Stat. 890, as amended (28 U.S.C. 2461 note)) to adjust the maximum amount of each civil money penalty within its jurisdiction by the rate of inflation. The following chart displays those adjustments, as calculated pursuant to the statute:

U.S. Code citation	CMP description	New maximum amount
(1) 12 U.S.C. 1782(a)(3)	Inadvertent failure to submit a report or the inadvertent submission of a false or misleading report.	$22,000.
(2) 12 U.S.C. 1782(a)(3)	Non-inadvertent failure to submit a report or the non-inadvertent submission of a false or misleading report.	$22,000.
(3) 12 U.S.C. 1782(a)(3)	Failure to submit a report or the submission of a false or misleading report done knowingly or with reckless disregard.	$1,175,000 or 1 percent of the total assets of the credit union, whichever is less.
(4) 12 U.S.C. 1782(d)(2)(A)	First tier	$2,200.
(5) 12 U.S.C. 1782(d)(2)(B)	Second tier	$22,000.
(6) 12 U.S.C. 1782(d)(2)(C)	Third tier	$1,175,000 or 1 percent of the total assets of the credit union, whichever is less.
(7) 12 U.S.C. 1785(e)(3)	Non-compliance with NCUA security regulations.	$110.
(8) 12 U.S.C. 1786(k)(2)(A)	First tier	$6,500.
(9) 12 U.S.C. 1786(k)(2)(B)	Second tier	$32,500.
(10) 12 U.S.C. 1786(k)(2)(C)	Third tier	For a person other than an insured credit union: $1,250,000; For an insured credit union $1,250,000 or 1 percent of the total assets of the credit union, whichever is less.
(11) 42 U.S.C. 4012a(f)	Per violation	$385
	Per calendar year	$120,000.

(b) The adjustments displayed in paragraph (a) of this section apply to acts occurring beginning on November 1, 2004.

[FR Doc. 04–22537 Filed 10–6–04; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–40–AD; Amendment 39–13795; AD 2004–19–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 206, P206, U206, TP206, TU206, 207, T207, 210, T210, 336, 337, and T337 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2004–19–04, which was published in the **Federal Register** on September 17, 2004 (69 FR 55943), and applies to certain Cessna Aircraft Company (Cessna) 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. We incorrectly referenced the AD number as AD 2004–19–04. The correct AD number is 2004–19–01. This action corrects the regulatory text.

DATES: The effective date of this AD remains November 1, 2004.

FOR FURTHER INFORMATION CONTACT: Gary D. Park, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4123; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Discussion

On September 8, 2004, FAA issued AD 2004–19–04, Amendment 39–13795 (69 FR 55943, September 17, 2004), which applies to certain Cessna 120, 140, 140A, 150, F150, 170, 172, F172, FR172, P172D, 175, 177, 180, 182, 185, A185E, 190, 195, 205, 205A, 206, P206, P206E, TP206A, TU206, TU206E, U206, U206E, 207, T207, 210, T210, 336, 337, and T337 series airplanes. This AD supersedes AD 86–26–04 with a new AD that requires you to inspect and, if necessary, modify the pilot/co-pilot upper shoulder harness adjusters that have certain Cessna accessory kits incorporated.

Need for the Correction

The FAA incorrectly referenced the AD number as 2004–19–04. The correct AD number is AD 2004–19–01. This correction is needed to ensure that the correct AD number is entered in the logbook and to eliminate misunderstanding in the field.

Correction of Publication

■ Accordingly, the publication of September 17, 2004 (69 FR 55943), of Amendment 39–13795; AD 2004–19–04, which was the subject of FR Doc. 04–20774, is corrected as follows:

§ 39.13 [Corrected]

■ On page 55945, in section 39.13 [Amended], replace 2004–19–04 with 2004–19–01.

Action is taken herein to correct this reference in AD 2004–19–04 and to add this AD correction to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The effective date remains November 1, 2004.

Issued in Kansas City, Missouri, on September 23, 2004.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21814 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–235–AD; Amendment 39–12861; AD 2002–16–22]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance With Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects an error that appeared in airworthiness directive (AD) 2002–16–22 (final rule, correction) that was published in the **Federal Register** on August 16, 2004 (69 FR 50299). The error resulted in an incorrect reference to certain supplemental type certificates. This AD is applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration. This AD requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

DATES: Effective September 19, 2002.

FOR FURTHER INFORMATION CONTACT: M. Hassan Amani, Aerospace Engineer, Airframe Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6080; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2002–16–22, amendment 39–12861, applicable to certain Boeing Model 727 series airplanes that have been converted from a passenger- to a cargo-carrying (''freighter'') configuration, was published in the **Federal Register** on August 15, 2002 (67 FR 53434). That AD requires, among other actions, installation of a fail-safe hinge, redesigned main deck cargo door warning and power control systems, and 9g crash barrier.

On August 16, 2004, we issued a final rule, correction (69 FR 50299, August 16, 2004), to AD 2002–16–22. The final rule, correction corrects an error that resulted in an incorrect reference to a supplemental type certificate. As published, the title of final rule, correction states ''Boeing Model 727 Series Airplanes Modified with Supplemental Type Certificate SA1767S0 or SA1768SO.'' However, the correct applicable supplemental type certificates (STC) are SA1444SO, SA1509SO, SA1543SO, or SA1896SO, as specified in AD 2002–16–22.

Since no other part of the regulatory information has been changed, the final rule is not being republished in the **Federal Register**.

The effective date of this AD remains September 19, 2002.

§ 39.13 [Corrected]

■ On page 50299, in the second column, the title of AD 2002–16–22 is corrected to read as follows:

* * * * *

Airworthiness Directives; Boeing Model 727 Series Airplanes Modified in Accordance with Supplemental Type Certificate SA1444SO, SA1509SO, SA1543SO, or SA1896SO.

* * * * *

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–21815 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

DEPARTMENT OF THE TREASURY

19 CFR Part 191

[CBP Dec. 04—33]

RIN 1505–AB44

Merchandise Processing Fees Eligible To Be Claimed as Certain Types of Drawback Based on Substitution of Finished Petroleum Derivatives

AGENCY: Customs and Border Protection, Homeland Security; Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs and Border Protection (CBP) Regulations to provide that merchandise processing fees are eligible to be claimed, in limited circumstances, as drawback based on substitution of finished petroleum derivatives. The changes implemented by this document are consistent with a court decision in which merchandise processing fees were found to be eligible to be claimed as unused merchandise drawback. As drawback based on substitution of finished petroleum derivatives is, in limited circumstances, treated in the same manner as unused merchandise drawback, this amendment reflects that merchandise processing fees are also eligible to be claimed as drawback in these circumstances.

DATES: Effective November 8, 2004.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Chief, Duty and Refund Determinations Branch, Office of Regulations and Rulings, U.S. Customs Service, Tel. (202) 572–8807.

SUPPLEMENTARY INFORMATION:

Background

Merchandise Processing Fees

Merchandise processing fees are fees the Secretary of the Treasury charges and collects for the processing of merchandise that is formally entered or released into the United States. *See* 19 U.S.C. 58c(a)(9)(A). Merchandise processing fees are assessed as a percentage of the value of the imported merchandise, as determined under 19 U.S.C. 1401a.

Merchandise Processing Fees Eligible To Be Claimed as Drawback

Section 313 of the Tariff Act of 1930, as amended, (19 U.S.C. 1313), concerns drawback and refunds. Drawback is a refund of certain duties, taxes and fees paid by the importer of record and granted to a drawback claimant under specific conditions.

In *Texport Oil* v. *United States,* 185 F.3d 1291 (Fed. Cir. 1999), the Court of Appeals for the Federal Circuit (CAFC) held that merchandise processing fees were assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

Subsection (p) of 19 U.S.C. 1313 authorizes drawback that is based on ''substitution of finished petroleum derivatives.'' Subsection (p)(4)(B) of 19 U.S.C. 1313, in pertinent part, limits the amount of drawback payable under this subsection to the amount of drawback that would be attributable to the article ''if imported under [subsection 1313(p)(2)(A)(iii) or (iv)] *had the claim qualified for drawback under subsection (j).*'' [emphasis added]

Subsection 1313(p)(2)(A)(iii) requires that the exporter of the exported article imported the qualified article in a quantity equal to or greater than the quantity of the exported article. Subsection 1313(p)(2)(A)(iv) requires that the exporter of the exported article purchased or exchanged, directly or indirectly, an imported qualified article from an importer in a quantity equal to or greater than the quantity of the exported article.

The language ''had the claim qualified for drawback under subsection (j)'' reflects that drawback is payable under 1313(p)(2)(A)(iii) or (iv) pursuant to the same formula set forth in subsection 1313(j), *i.e.,* the amount of drawback payable under 19 U.S.C. 1313(j) is not to exceed 99 percent of any duty, tax, or fee imposed under Federal law because of the imported article's importation. The term ''drawback payable'' under 19 U.S.C. 1313(p)(2)(A)(iii) and (iv) includes the merchandise processing fee.

Consistent with the determination of the CAFC that merchandise processing fees are eligible to be claimed as drawback pursuant to 19 U.S.C. 1313(j), such fees are also eligible to be claimed as drawback when drawback is based on substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

Amendment to CBP Regulations To Reflect the Texport Oil Decision

The *Texport Oil* decision is reflected in the CBP Regulations at §§ 191.3 and 191.51. *See* 67 FR 48547 (July 25, 2002), in which a final rule was published amending the CBP Regulations to reflect that merchandise processing fees are eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

On October 2, 2003, CBP published in the **Federal Register** (68 FR 56804) a proposal to amend §§ 191.3, 191.51 and 191.171 to reflect that the *Texport Oil* decision is applicable, in limited circumstances, to drawback based on substitution of finished petroleum derivatives.

Comments were solicited on the proposal.

Discussion of Comment

One comment was received in response to the solicitation of public comment in 68 FR 56804. The commenter supported CBP's proposal to reflect the *Texport Oil* court decision in part 191 of the CBP Regulations as regards drawback based on substitution of finished petroleum derivatives. The commenter noted that the proposed amendments contribute to the goal of offsetting the cost of raw materials.

Conclusion

After review of the one comment received, and upon consideration, CBP has decided to adopt as final the proposed rule published in the **Federal Register** (68 FR 56804) on October 2, 2003.

The Regulatory Flexibility Act and Executive Order 12866

Because these regulations serve to conform the CBP Regulations to reflect the full scope of a recent decision by the Court of Appeals for the Federal Circuit whereby, in limited circumstances, merchandise processing fees are eligible to be claimed as drawback, it is certified pursuant to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* that this amendment will not have a significant impact on a substantial number of small entities. Further, this amendment does not meet the criteria for a ''significant regulatory action'' as specified in Executive Order 12866.

Signing Authority

This document is being issued in accordance with 19 CFR 0.1(a)(1).

Drafting Information

The principal author of this document was Ms. Suzanne Kingsbury,

Regulations Branch, Office of Regulations and Rulings, U.S. Customs and Border Protection. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 191

Claims, Commerce, CBP duties and inspection, Drawback.

Amendments to the Regulations

■ For the reasons stated above, part 191 of the CBP Regulations (19 CFR part 191) is amended as follows:

PART 191 — DRAWBACK

■ 1. The general authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1313, 1624.

■ 2. Section 191.3(a)(4) and (b)(2) are revised as follows:

§ 191.3 Duties and fees subject or not subject to drawback.

(a) Duties and fees subject to drawback include:

* * * * *

(4) Merchandise processing fees (see § 24.23 of this chapter) for unused merchandise drawback pursuant to 19 U.S.C. 1313(j), and drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv).

(b) * * *

(2) Merchandise processing fees (*see* § 24.23 of this chapter), except where unused merchandise drawback pursuant to 19 U.S.C. 1313(j) or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv) is claimed; and

* * * * *

■ 3. In § 191.51, paragraph (b)(2) introductory text is revised to read as follows:

§ 191.51 Completion of drawback claims.

* * * * *

(b) * * *

(2) *Merchandise processing fee apportionment calculation.* Where a drawback claimant seeks unused merchandise drawback pursuant to 19 U.S.C. 1313(j), or drawback for substitution of finished petroleum derivatives pursuant to 19 U.S.C. 1313(p)(2)(A)(iii) or (iv), for a merchandise processing fee paid pursuant to 19 U.S.C. 58c(a)(9)(A), the claimant is required to correctly apportion the fee to that merchandise that provides the basis for drawback when calculating the amount of drawback requested on the drawback entry. This is determined as follows:

* * * * *

■ 4. In § 191.171, a new paragraph (c) is added to read as follows:

§ 191.171 General; drawback allowance.

* * * * *

(c) *Merchandise processing fees.* In cases where the requirements of paragraph (b)(1) of this section have been met, merchandise processing fees will be eligible for drawback.

Approved: October 4, 2004.

Robert C. Bonner,

Commissioner, U.S. Customs and Border Protection.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 04–22599 Filed 10–6–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 1 and 3

RIN 2900–AM09

Presumptions of Service Connection for Diseases Associated With Service Involving Detention or Internment as a Prisoner of War

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is issuing this interim final rule to establish guidelines for establishing presumptions of service connection for diseases associated with service involving detention or internment as a prisoner of war. In accordance with those guidelines, this interim final rule also establishes presumptions of service connection for atherosclerotic and hypertensive heart disease and for stroke disease arising in former prisoners of war. These rules are necessary because claims based on service involving detention or internment as a prisoner of war present unique medical issues and because factors including the lack of contemporaneous medical records during periods of captivity and the relatively small body of available medical information present obstacles to substantiating claims for service-connected benefits based on prisoner-of-war service. By establishing guidelines for identifying diseases associated with service involving detention or internment as a prisoner of war, these rules will help VA to ensure that claims for service-connected benefits for disability or death of former prisoners of war are decided fairly, consistently, and based on all available medical information concerning the diseases associated with detention or internment as a prisoner of war.

DATES: This interim final rule is effective October 7, 2004. Comments must be received on or before November 8, 2004.

ADDRESSES: Written comments may be submitted by: mail or hand-delivery to Director, Regulations Management (00REG1), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; e-mail to *VAregulations@mail.va.gov*; or, through *http://www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AM09.'' All comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 273–9515 for an appointment.

FOR FURTHER INFORMATION CONTACT: David Barrans, Deputy Assistant General Counsel (022D), Office of General Counsel, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–6332.

SUPPLEMENTARY INFORMATION: VA is revising its regulations to include a new provision, codified at 38 CFR 1.18, establishing guidelines for determining whether to establish new presumptions of service connection for any disease associated with service involving detention or internment as a prisoner of war. VA is also amending its adjudication regulations at 38 CFR 3.309(c) to add atherosclerotic heart disease or hypertensive vascular disease and stroke to the list of diseases VA will presume to be associated with service involving detention or internment as a prisoner of war (POW), and to reflect statutory changes. These new presumptions of service connection reflect VA's determination that presumptions for heart disease and stroke are warranted by application of the guidelines set forth in § 1.18.

Guidelines for Identifying POW Presumptive Conditions

Statutory and regulatory standards currently exist to guide VA in identifying diseases associated with exposure to herbicide agents, hazards of service in the Gulf War, and ionizing radiation. *See* 38 U.S.C. 1116 and 1118; 38 CFR 1.17. VA has determined that it would be helpful to establish standards to guide VA in identifying diseases

associated with service involving detention or internment as a POW and establishing new presumptions of service connection for such diseases. We are establishing a new provision at 38 CFR 1.18 setting forth guidelines for such determinations. The guidelines are substantially similar to the above-referenced existing guidelines, with minor differences necessary to reflect considerations unique to former POWs.

VA is authorized to provide compensation and other benefits for disability or death due to disease or injury incurred in or aggravated by service. To establish service connection for a disease or injury, a claimant ordinarily must provide evidence, with VA's assistance, establishing that the claimed disease or injury was incurred in or aggravated by service. Statutory and regulatory presumptions of service connection relieve claimants of this evidentiary burden in certain circumstances by directing VA adjudicators to presume that certain diseases were incurred in or aggravated by service unless evidence shows otherwise. These presumptions are generally based on scientific and medical data that provide a basis for inferring a connection between a particular disease and some circumstance regarding the veteran's service.

Evidentiary presumptions of service connection serve a number of purposes. By codifying medical findings and principles that otherwise may not be familiar to VA adjudicators, they promote the efficient resolution of issues of service connection without the need for case-by-case investigation and interpretation of the available medical literature. They promote fair and consistent decision making by establishing simple adjudicatory rules to govern the claims of similarly situated veterans. They also may assist claimants who would otherwise face substantial difficulties in obtaining direct proof of service connection due to the complexity of the factual issues, the lack of contemporaneous medical records during service, or other circumstances.

Currently, 38 U.S.C. 1112(b) establishes presumptions of service connection for sixteen categories of disease that are deemed to be associated with detention or internment as a POW. Eleven of those conditions are presumed to be service connected only if the veteran was detained or interned for a period of at least thirty days, and the remaining five are presumed to be service connected if the veteran was detained or interned for any period.

The Secretary of Veterans Affairs is authorized by 38 U.S.C. 501(a) to prescribe all rules and regulations that are necessary or appropriate to carry out the laws administered by VA, including regulations with respect to the nature and extent of proof necessary to establish entitlement to benefits under such laws. Pursuant to that authority, the Secretary may establish reasonable evidentiary presumptions of service connection for diseases. The Secretary has determined that presumptions of service connection are particularly appropriate for former POWs.

Veterans who were detained or interned as POWs generally were subjected to unique hardships including malnutrition, torture, physical and psychological abuse, and a lack of adequate medical care. Although POW experiences have varied with time, place, and other factors, certain hardships are so prevalent across the spectrum of POW experience as to support the presumption that POWs as a group have incurred similar health risks. The lack of contemporaneous personnel and health records to document events, injuries, or diseases during periods of captivity also provides a strong justification for relying on evidentiary presumptions rather than requiring direct proof of service connection. Further, presumptions may simplify and expedite the claims adjudication process, a particularly significant consideration for former POWs, more than ninety percent of whom served in World War II and are now, on average, over eighty years old.

Additionally, although several health effects associated with prisoner-of-war experiences are well known and reflected in existing presumptions of service connection, determining whether other health effects may be associated with prisoner-of-war experience is not a simple task. This is due in part to the discrete nature of the POW experience. The effects of certain other service-related risk factors such as exposure to ionizing radiation or herbicide agents have been extensively studied in relation to exposures occurring in occupational and other civilian settings in addition to studies of veteran populations. In contrast, the effects of the POW experience have been less extensively studied, because there generally are not comparable civilian populations and the number of former POWs available for study is comparatively small. Although studies of former POWs do exist, the limited amount of information available complicates the task of identifying diseases associated with the POW experience. In view of these circumstances, VA has determined that it is appropriate to establish guidelines for VA's review of the medical evidence concerning the association between the POW experience and particular diseases and to establish presumptions of service connection when the evidence reasonably establishes an association.

We are setting forth the guidelines VA will apply in a new regulation at 38 CFR 1.18. Paragraph (a) of § 1.18 states VA's policy to establish presumptions of service connection for former POWs when necessary to prevent denials of benefits in significant numbers of meritorious claims.

Paragraph (b) of § 1.18 states the standard VA will apply in determining whether a presumption of service connection is warranted. That paragraph states that the Secretary may establish a presumption of service connection for a disease when there is ''at least limited/suggestive evidence that an increased risk of such disease is associated with service involving detention or internment as a prisoner of war and an association between such detention or internment and the disease is biologically plausible.'' We define the term ''limited/suggestive evidence'' in paragraph (b)(1) to refer to ''evidence of a sound scientific or medical nature that is reasonably suggestive of an association between prisoner-of-war experience and the disease, even though the evidence may be limited because matters such as chance, bias, and confounding could not be ruled out with confidence or because the relatively small size of the affected population restricts the data available for study.'' Paragraph (b)(2) states, for purposes of illustration, that ''limited/suggestive evidence'' may be found where one high-quality study detects a statistically significant association or where several smaller studies detect an association that is consistent in magnitude and direction.

The ''limited/suggestive evidence'' standard is essentially the same standard that the Institute of Medicine (IOM) of the National Academy of Sciences employs in reports it prepares for VA analyzing the health effects of exposure to herbicide agents. In those reports, which are mandated by statute, the IOM classifies the association between a particular disease and the hazard in question as belonging to one of the following four categories: ''Sufficient evidence of an association,'' ''limited/suggestive evidence of an association,'' ''inadequate or insufficient evidence to determine whether an association exists,'' and ''sufficient evidence of no association.'' VA has established presumptions of service connection for each of the diseases the IOM has classified as having at least

''limited/suggestive evidence'' of an association. The ''limited/suggestive evidence'' standard employed by the IOM is familiar to VA and has proven to be a useful analytical framework for assessing scientific evidence and determining whether a presumption of service connection may be warranted. Accordingly, we will use that standard for determining when a presumption may be warranted for former POWs.

The IOM defines the ''limited/suggestive evidence'' standard to refer to circumstances in which evidence is suggestive of an association but is limited because matters of chance, bias, and confounding cannot be ruled out with confidence. Our definition adds that the evidence may be limited because the relatively small size of the affected population may restrict the data available for study. We believe this additional consideration is significant with respect to former POWs. As noted above, the lack of a comparable civilian population for study may limit the amount of data available for discerning the health effects of the POW experience. The data available for study are also severely restricted by the fact that there is often little or no information about veterans' health status or adverse exposures during captivity. Moreover, opportunities for future studies are increasingly limited because the population of surviving former POWs, most of whom served in World War II, is declining rapidly. Although we intend that any presumptions VA establishes will be based on sound scientific and medical evidence, we believe that VA's analysis of the evidence should take account of the unique circumstances and evidentiary hurdles affecting this deserving group of veterans. It may be unrealistic to expect the same degree of data or the same number of corroborative studies that may exist with respect to the health effects of herbicide exposure or other areas of investigation. We believe that fairness to former POWs requires that VA fully evaluate the available data and not accord undue significance to the fact that such data are comparatively limited by the small size of the affected population.

The requirement that the association be biologically ''plausible'' does not require proof of a casual relationship. This is further clarified by § 1.18(d), discussed below. Rather, it requires only a determination that there is a possible biological mechanism, consistent with sound scientific evidence, by which the suspected precipitating event (POW experience) could lead to the health outcome. The IOM routinely applies the concept of biologic plausibility in its reviews of the literature concerning the health effects of herbicide exposure and hazards of Gulf War service and is required by statute to consider biologic plausibility. *See* Pub. L. 102–4, § 3(d)(1)(C), and Pub. L. 105–277, § 1603(e)(1)(C).

Paragraph (c) of § 1.18 states that, in establishing a presumption of service connection for a disease, the Secretary may specify a minimum period of detention or internment necessary to qualify for the presumption. As noted above, some of the current statutory presumptions apply only to former POWs who were detained or interned for a period of at least thirty days. That requirement apparently reflects the determination that certain conditions, such as certain diseases associated with vitamin deficiency, ordinarily may arise only after a prolonged period of food deprivation during confinement. Our rule is intended to allow the Secretary to establish a similar requirement concerning the length of detention or internment for new presumptions established in the future, if warranted by sound scientific or medical evidence.

Paragraph (d) of § 1.18 explains that the requirement in paragraph (b) that a disease be ''associated'' with the POW experience may be satisfied by evidence demonstrating either a statistical or a causal association. Paragraph (e) of the rule specifies the types of evidence the Secretary will consider in deciding whether a presumption is warranted. This paragraph makes clear that the Secretary need not rely exclusively on studies of former POWs, but may consider studies concerning the health effects of circumstances or hardships similar to those experienced by POWs, if available, as well as any other sound scientific or medical evidence the Secretary considers relevant.

Paragraph (f) of § 1.18 states several factors that VA will consider in evaluating any scientific study concerning diseases possibly associated with the POW experience. The specified factors are similar to the factors VA considers in assessing studies relating to herbicide exposure and other hazards. See 38 U.S.C. 1116(b)(2) and 1118(b)(2)(B); 38 CFR 1.17(b).

Paragraph (g) of § 1.18 states that the Secretary may contract with an appropriate expert body, such as the IOM, to review and summarize the scientific evidence or for any other purpose relevant to the Secretary's determinations under this rule.

Evidence of Association Between POW Experience and Stroke

There are very few studies investigating the possible relationship between POW experience and stroke. In September 2000, the VA Advisory Committee on Former Prisoners of War received the report of an Expert Panel on Stroke in Former Prisoners of War, which, based on review of the existing scientific literature, found only one relevant study. That 1996 study examined records of 475 former World War II POWs and a control group of 81 non-POW World War II veterans who had been followed as part of a long-term study by the Medical Follow-up Agency of the National Academy of Sciences' IOM. The study found a seven-fold increase in the incidence of stroke among the POWs as compared to the control group (relative risk = 7.03), and a statistically significant nearly ten-fold increase in stroke incidence among POWs who had suffered extreme malnutrition during captivity (relative risk = 9.76). (Brass LM, Page WF. Stroke in Former Prisoners of War. J Stroke and Cerebrovascular Diseases 1996; 6:72–78.) The study also found that the risk of stroke was higher among former POWs suffering from post-traumatic stress disorder (PTSD) than among former POWs without PTSD (relative risk = 1.67). The strength of those findings is limited by the small size of the study population.

Two more recent studies have also addressed the relationship between POW experience and stroke. A 2001 study used Federal death records to obtain death data through 1996 for a study population of 9,457 former POWs and 7,178 controls. The study found that former POWs aged 75 years and older had an increased risk of stroke mortality (hazard ratio = 1.13), although the risk was not statistically significant. (Page WF, Brass LM. Long-Term Heart Disease and Stroke Mortality Among Former American Prisoners of War of World War II and the Korean Conflict: Results of a 50-Year Follow-Up. Military Medicine 2001; 166:803–08.) A subsample of the overall study population had completed a questionnaire in 1967 indicating the presence or absence of certain symptoms during their captivity. The study authors found a statistically significant increase in death due to stroke among veterans who had experienced visual symptoms, such as night blindness, during their captivity (hazard ratio = 3.10). Because the presence of visual symptoms during captivity may be associated with vitamin A deficiency (Page WF. The

Health of Former Prisoners of War: Results from the Medical Examination Survey of Former Prisoners of World War II and the Korean Conflict, p. 75. Washington DC, National Academies Press, 1992.), this finding is consistent with the 1996 Brass and Page study in suggesting an association between malnutrition during POW captivity and subsequent stroke.

On the recommendation of the Expert Panel on Strokes in Former Prisoners of War, VA's Environmental Epidemiology Service in 2003 conducted a study using medical and death data from records of VA and the Health Care Financing Administration (HCFA) of the Department of Health and Human Services for the period from 1991 to 2002. This study, which has not yet been published, included 16,641 World War II POWs and 1,051 Korean War POWs, as well as 8,406 World War II controls and 3,816 Korean War controls. This study found that POWs had a significantly higher incidence of PTSD than the controls and that POWs with PTSD had a higher incidence of stroke than POWs without PTSD (odds ratio = 1.12 for World War II and 1.25 for Korean War). (Kang HK, Bullman TA. Ten Year Mortality and Morbidity Follow-up of Former World War II and Korean War Prisoners of War (unpublished VA Study 2003).) Although the study did not find a significantly increased risk of stroke among POWs as compared to non-POWs, the evidence for an association between PTSD and stroke among POWs is consistent with findings stated in the 1996 study by Brass and Page.

The 1996 Brass and Page study noted that several studies have provided evidence suggesting an association between stress and stroke, although the evidence overall is not conclusive. The authors also noted that the effects of stress on stroke may vary depending upon individual reactions to stress. As stated in paragraph (e)(2) of § 1.18, the Secretary will consider evidence concerning the effects of circumstances or hardships similar to those experienced by POWs, including stress, in assessing the evidence for establishing presumptions of service connection.

Based on the evidence discussed above, the Secretary has determined that a presumption of service connection is warranted for stroke among former prisoners of war. The 1996 and 2001 POW studies both found an increased risk of stroke among former POWs. Although there is an absence of other directly corroborating studies, the lack of additional data is due in part to the small size of the POW population available for study and the limited number of studies generally undertaken in this field. Accordingly, the lack of corroborating data does not imply the absence of an association under these circumstances.

The evidence that the risk of stroke is increased among POWs who suffered extreme malnutrition or visual symptoms during captivity or who have been diagnosed with PTSD also lends support to the finding of an association between POW experience and stroke. As indicated in § 1.18, VA considers stress and malnutrition to be among the hardships ordinarily associated with POW experience. Evidence suggesting that the risk of stroke increases with the severity of those hardships supports the conclusion that stroke is associated with POW experience.

Under the standards set forth in § 1.18, the Secretary finds that the available evidence is suggestive of an association between POW experience and stroke because sound scientific studies provide evidence of an association that is consistent in magnitude and direction, even though it is limited in some respects by the small size of the affected population and the correspondingly limited data available for study. The Secretary further finds that an association between stroke and POW experience is biologically plausible, as discussed below. Accordingly, the Secretary is establishing a presumption of service connection for stroke in former POWs.

The interim final rule establishing this presumption refers generally to ''stroke and its complications'' and thus will apply to any type of stroke. The associations detected in the 1996 and 2001 POW studies were based on diagnoses of all types of stroke, and the studies did not state separate findings for specific types of stroke. Although there are known differences in the three major categories of stroke (ischemic, hemorrhagic, and embolic) that may suggest etiological differences in some circumstances, the existing data do not provide a basis for excluding any category of stroke from the presumption, and we believe that any uncertainty regarding the strength of the association for these closely related diseases should be resolved in favor of the former POWs. Further, VA believes that the requirements of biologic plausibility are satisfied for each of the major categories of stroke. Presumptions of service connection for former POWs can be rebutted as provided in 38 U.S.C. 1113(a) and 38 CFR 3.307(d). Accordingly, if evidence in a case supports a finding that a particular presumptive condition was not actually caused by a veteran's POW experience, VA may consider the presumption to be rebutted.

Evidence of Association Between POW Experience and Heart Disease

As with stroke, there are relatively few studies addressing the association between POW experience and heart disease. A series of older studies did not find consistent evidence of an association, as summarized in Page WF, Ostfeld AM. Malnutrition and Subsequent Ischemic Heart Disease in Former Prisoners of War of World War II and the Korean Conflict. (J Clin Epidemiol 1994; 47:1437–41.) A 1954 study found an excess of cardiovascular deaths among World War II POWs (Cohen BM, Cooper MZ. A Follow-up Study of World War II Prisoners of War. Veterans Administration Medical Monograph, Washington DC: Government Printing Office; 1954.), although subsequent mortality studies in 1970 and 1980 found no excess deaths due to cardiovascular diseases (Nefzger, MD. Follow-up Studies of World War II and Korean War Prisoners. I. Study Plan and Mortality Findings. Am J Epidemiol 1970; 91:123–38; Keehn RJ. Follow-up Studies of World War II and Korean War Prisoners III. Mortality to January 1, 1976. Am J Epidemiol 1980; 111:194–211.) A 1975 morbidity study found a significantly higher rate of hospitalization for heart disease among World War II Pacific Theater POWs as compared to controls. (Beebe GW. Follow-up Studies of World War II and Korean War Prisoners: II. Morbidity, Disability, and Maladjustments. Am J Epidemiol 1975; 101:400–22.) Studies of POWs from other countries also yielded inconsistent results.

More recent studies have yielded intriguing findings concerning the association between heart disease and POW experience. The 1994 study by Page and Ostfeld found a statistically significant increase in deaths due to ischemic heart disease among former POWs who experienced edema (swelling) in their lower limbs during captivity (odds ratio = 2.83). Because localized edema is a symptom of thiamine deficiency, the authors theorized that the findings may suggest an association between malnutrition during captivity and subsequent ischemic heart disease. Current VA regulations provide for presumptive service connection of ischemic heart disease in former POWs who experienced localized edema during captivity. 38 CFR 3.309(c).

The 2001 study by Page and Brass analyzed the increased risk of heart disease among former POWs by age

group and found a trend of increased excess risk with advanced age, with a statistically significant increased risk for former POWs aged 75 years or over (hazard ratio = 1.25). The authors stated that the findings may indicate that the sequelae of serious, acute malnutrition may not appear until after many decades.

The 2003 VA study analyzed records of inpatient and outpatient treatment from VA and HCFA records to determine whether POWs had an increased incidence of certain diseases in comparison to the non-POW controls. The study detected small increases in the incidence of hypertension and myocardial infarction among some, but not all of the subpopulations examined, and not all of the findings were statistically significant. However, the study did find a statistically significant increased incidence of hypertension and chronic heart disease among World War II veterans with PTSD (odds ratio = 1.25 for hypertension and 1.19 for chronic heart disease).

The conclusion that PTSD may be associated with cardiovascular disorders is also supported by a 1997 study finding that Vietnam veterans diagnosed with PTSD had a significantly increased risk of circulatory disease many years after service. (Boscarino JA. Diseases Among Men 20 Years After Exposure to Severe Stress: Implications for Clinical Research and Medical Care. Psychosom Med 1997; 59:605–14.)

Based on the evidence discussed above, the Secretary has determined that a presumption of service connection is warranted for atherosclerotic heart disease and hypertensive vascular disease among former POWs. The 2001 study by Page and Brass found a statistically significant increased risk of mortality due to heart disease in former POWs aged 75 and older, based on a relatively large population of former POWs and controls, many of whom had been followed for as many as fifty years by the Medical Follow-up Agency of the National Academy of Sciences' IOM. The 1994 Page and Ostfeld study also found a statistically significant increased risk of heart disease in former POWs who experienced edema, a consequence of malnutrition, and the 2003 VA study found a statistically significant increased risk of heart disease among former POWs with PTSD. As noted above with respect to stroke, the Secretary concludes that the evidence suggesting an association between heart disease and specific hardships of POW experience—malnutrition and stress—is significant. Although the available data concerning the health effects of POW experience are limited, the link to specific aspects of POW experience strengthens the evidence for an association between heart disease and POW service. Accordingly, the Secretary concludes that sound scientific studies provide limited/suggestive evidence of an association between POW experience and heart disease. As discussed below, the Secretary has also determined that the association between POW experience and heart disease is biologically plausible. Accordingly, the Secretary is establishing a presumption of service connection for heart disease in former POWs.

The studies discussed above did not all investigate the same range of heart diseases and thus do not clearly resolve the question of which types of heart disease may be associated with POW experience. For purposes of this presumption, we will include all cardiovascular diseases that are consistent, in terms of biologic plausibility, with the findings in the relevant studies in that the diseases are potentially capable of being caused by the circumstances or hardships of POW service such as extreme stress or malnutrition. We describe these diseases as atherosclerotic heart disease or hypertensive vascular disease (to include hypertensive heart disease). Atherosclerotic heart disease is a term used to refer to a heart disease involving progressive narrowing and hardening of the arteries over time and encompasses ischemic heart disease, coronary artery disease, and other diseases that may be described by a more specific diagnosis. Hypertensive vascular disease refers to disease associated with elevated blood pressure. The presumption would not extend to diseases that arise from viral or bacterial causes, because we conclude that the relevant studies, and the evidence concerning biologic plausibility, do not support a finding at this time that such heart diseases are associated with POW experience.

With respect to certain types of atherosclerotic heart disease or hypertensive vascular disease that are to be covered by these presumptions, there is little available evidence upon which to rule in or rule out the possibility that the condition is capable of being caused by the hardships of POW service. In those cases, we have chosen to resolve the doubt in favor of veterans and include the condition within the scope of the presumption. Although the necessity of inclusion of some conditions may be uncertain from a purely scientific perspective, VA has decided as a policy matter to resolve this issue in favor of veterans because there is a reasonable basis for doing so. Presumptions of service connection for former POWs can be rebutted as provided in 38 U.S.C. 1113(a) and 38 CFR 3.307(d). Accordingly, if evidence in a case supports a finding that a particular presumptive condition was not actually caused by a veteran's POW experience, VA may consider the presumption to be rebutted.

The interim final rule also states that the presumption of service connection applies to the complications of atherosclerotic heart disease and hypertensive vascular disease, to make clear that congestive heart failure, myocardial infarction, arrhythmias, and similar complications may be service connected if they result from atherosclerotic heart disease or hypertensive vascular disease.

Biologic Plausibility

The Secretary has concluded that an association between POW experience and both heart disease and stroke is biologically plausible. The concept of biologic plausibility refers to knowledge of the biological mechanism by which a particular event can lead to a health outcome. It does not require conclusive proof of a causal relationship between the event and the health outcome, but requires a determination as to whether there is a possible biological mechanism that is consistent with sound scientific evidence by which the event could lead to the health outcome. Accordingly, to be biologically plausible, an association must be consistent with existing scientific and medical knowledge, even if current evidence does not conclusively identify a specific known mechanism by which the circumstances in question cause the diseases associated with such circumstances. Current medical literature suggests plausible, though not established, biological mechanisms by which stress and/or malnutrition during POW captivity could contribute to heart disease or stroke.

A number of authorities have postulated that stress may contribute to cardiovascular disease through a concept referred to as ''allostatic load,'' which is described as the long-term effect of the physiological response to stress. Through the process of allostasis, the autonomic nervous system, the hypothalamic-pituitary-adrenal (HPA) axis, and the cardiovascular, metabolic, and immune systems protect the body by responding to stress with adaptive changes. Those adaptations can cause wear and tear on the systems involved in this response and may produce a variety of cardiovascular changes associated with atherosclerosis, hypertension, cardiac arrhythmias,

compromised coronary function, and increased risk of myocardial infarction and stroke. (McEwen BS. Protective and Damaging Effects of Stress Mediators. N Engl J Med 1998; 338:171–79; Brunner E. Stress Mechanisms in Coronary Artery Disease. In: Stansfeld S, Marmot M (eds.). Stress and the Heart: Psychosocial Pathways to Coronary Heart Disease. London. BMJ Books 2002.)

Support for the biologic plausibility of an association between malnutrition and heart disease and stroke comes from evidence that vitamin deficiencies may cause elevated plasma levels of homocysteine, a naturally occurring amino acid. A number of studies suggest that elevated homocysteine levels may produce effects on the cardiovascular system that can lead to heart disease or stroke. (Stein, JH, McBride PE. Hyperhomocysteinemia and Atherosclerotic Vascular Disease: Pathophysiology, Screening, and Treatment. Arch Int Med 1998; 158:1301–06; Tsai J, Perrella MA, Yoshizumi M, Hseih C, Haber E, Schlegel R, Lee M. Promotion of Vascular Smooth Muscle Cell Growth by Homocysteine: A Link to Atherosclerosis. 91 Proc Natl Acad Sci 1994; 91:6369–73.) Although the available evidence is not conclusive, it satisfies the requirement of biologic plausibility for purposes of the Secretary's determination.

Presumptions of Service Connection

VA's regulation at 38 CFR 3.309(c) identifies the diseases VA presumes to be service connected for former POWs. We are amending this list of diseases by adding atherosclerotic heart disease, hypertensive vascular disease (including hypertensive heart disease), stroke, and their complications.

We are removing the note in current § 3.309(c) specifying that the term ''beriberi heart disease'' includes ischemic heart disease in a former POW who experienced localized edema during captivity. This note was added based on the 1994 Page and Ostfeld study finding an association between the presence of lower-limb edema during POW captivity and subsequent ischemic heart disease. This interim final rule establishes a presumption of service connection for heart disease, including ischemic heart disease, without regard to whether localized edema was present in service. Accordingly, we are removing the current note to make clear that the presence of edema is no longer required in order to establish service connection for ischemic heart disease.

Other Changes to § 3.309(c)

We are making one other change to § 3.309(c). Section 3.309(c) states that the presumptions of service connection apply only to veterans who were interned or detained for not less than 30 days. The 30-day requirement was formerly mandated by the governing statutory provisions at 38 U.S.C. 1112(b). Effective December 16, 2003, however, section 201 of the Veterans Benefits Act of 2003, Pub. L. No. 108–183, 117 Stat. 2651, amended 38 U.S.C. 1112(b) to eliminate the 30-day requirement for psychosis, any anxiety states, dysthymic disorders, organic residuals of frostbite and post-traumatic osteoarthritis. We are revising § 3.309(c) to conform to the current provisions of section 1112(b). We are including heart disease and stroke among the conditions that will be presumed to be service connected following any period of POW captivity. The diseases that remain subject to a 30-day detention or internment requirement generally are those that would be expected to be incurred only over a prolonged period of detention or internment, such as diseases associated with malnutrition. Because the evidence indicates that heart disease and stroke potentially may be associated either with malnutrition during prolonged captivity or with stress due to circumstances such as torture or abuse, which may occur during even brief periods of captivity, we do not believe a minimum period of detention or internment is warranted for these presumptions.

As part of a VA project to rewrite all of its adjudication regulations in part 3 of title 38, Code of Federal Regulations, we published a notice of proposed rule making in the **Federal Register** of July 27, 2004 (69 FR 44614), proposing a new regulation that would implement the provisions of section 201 of the Veterans Benefits Act of 2003 removing the 30-day detention or internment requirement for certain POW diseases. Because we are now issuing this interim final rule to amend the list of diseases in § 3.309(c) effective immediately, we believe it is desirable to make these additional changes at this time to bring the regulation into conformity with the current statute.

Administrative Procedure Act

VA has determined that it is appropriate to issue this rule as an interim final rule without providing an opportunity for prior public comment. The provisions of this rule to be codified at 38 CFR 1.18 specify the procedures VA intends to follow in exercising its discretionary authority under 38 U.S.C. 501(a) to establish new presumptions of service connection for former POWs. These portions of the rule constitute a general statement of VA policy or, alternatively, rules of VA procedure and practice. Accordingly, they are exempt under 5 U.S.C. 553(b)(3)(A) from the notice and comment requirements of the Administrative Procedure Act. The portions of this rule revising 38 CFR 3.309(c) to conform to the provisions of 38 U.S.C. 1112(b), as amended by the Veterans Benefits Act of 2003, do not involve any change in law, but merely restate the statutory provisions of 38 U.S.C. 1112(b). Accordingly, these portions of the rule are, at most, interpretative rules that are also exempt under 5 U.S.C. 553(b)(3)(A) from the notice and comment requirements of the Administrative Procedure Act. Alternatively, pursuant to 5 U.S.C. 553(b)(3)(B), the Secretary for good cause finds that notice and an opportunity for prior public comment is unnecessary with respect to this portion of the rule because it merely tracks a statutory provision that VA is required to follow.

In accordance with 5 U.S.C. 553(b)(3)(B), the Secretary finds that there is good cause for dispensing with the opportunity for prior comment with respect to the portions of this rule establishing new presumptions of service connection for atherosclerotic heart disease, hypertensive vascular disease, and stroke among former POWs. The Secretary concludes that providing an opportunity for prior comment is unnecessary because this portion of the rule is unlikely to generate any adverse public comment, inasmuch as it confers a benefit on a deserving class of veterans based on sound scientific evidence. The Secretary further finds that it is impracticable to delay this regulation for the purpose of soliciting prior public comment because the class of veterans affected by this rule is elderly and rapidly dwindling. More than 90% of all POWs served in World War II and are now, on average, over eighty years old. As of January 1, 2003, this population of World War II veterans had an annual mortality rate of nine percent. Delay in implementing these rules would have a significant adverse effect and frustrate the beneficial purpose of this rule in view of the high mortality rate among the POW population and the fact that the majority of former POWs are at an age where their medical and financial needs are likely to be at their greatest.

For the foregoing reasons, the Secretary is issuing this rule as an interim final rule. The Secretary will

consider and address comments that are received within 30 days of the date this interim final rule is published in the **Federal Register**.

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 will have no such effect on State, local, or tribal governments, or the private sector.

Executive Order 12866

The Office of Management and Budget has reviewed this document under Executive Order 12866.

Paperwork Reduction Act

This document 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 (RFA), 5 U.S.C. 601–612. The reason for this certification is that these amendments will not directly affect any small entities. Only VA beneficiaries and their survivors will be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), these amendments are exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance program numbers are 64.109, and 64.110.

List of Subjects

38 CFR Part 1

Administrative practice and procedure, Claims.

38 CFR Part 3

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

Approved: September 8, 2004.

Anthony J. Principi,

Secretary of Veterans Affairs.

■ For the reasons set forth in the preamble, the Department of Veterans Affairs amends 38 CFR parts 1 and 3 as follows:

PART 1—GENERAL PROVISIONS

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

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 2. Section 1.18 is added to read as follows:

§ 1.18 Guidelines for establishing presumptions of service connection for former prisoners of war.

(a) *Purpose.* The Secretary of Veterans Affairs will establish presumptions of service connection for former prisoners of war when necessary to prevent denials of benefits in significant numbers of meritorious claims.

(b) *Standard.* The Secretary may establish a presumption of service connection for a disease when the Secretary finds that there is at least limited/suggestive evidence that an increased risk of such disease is associated with service involving detention or internment as a prisoner of war and an association between such detention or internment and the disease is biologically plausible.

(1) *Definition.* The phrase ''limited/suggestive evidence'' refers to evidence of a sound scientific or medical nature that is reasonably suggestive of an association between prisoner-of-war experience and the disease, even though the evidence may be limited because matters such as chance, bias, and confounding could not be ruled out with confidence or because the relatively small size of the affected population restricts the data available for study.

(2) *Examples.* ''Limited/suggestive evidence'' may be found where one high-quality study detects a statistically significant association between the prisoner-of-war experience and disease, even though other studies may be inconclusive. It also may be satisfied where several smaller studies detect an association that is consistent in magnitude and direction. These examples are not exhaustive.

(c) *Duration of detention or internment.* In establishing a presumption of service connection under paragraph (b) of this section, the Secretary may, based on sound scientific or medical evidence, specify a minimum duration of detention or internment necessary for application of the presumption.

(d) *Association.* The requirement in paragraph (b) of this section that an increased risk of disease be ''associated'' with prisoner-of-war service may be satisfied by evidence that demonstrates either a statistical association or a causal association.

(e) *Evidence.* In making determinations under paragraph (b) of this section, the Secretary will consider, to the extent feasible:

(1) Evidence regarding the increased incidence of disease in former prisoners of war;

(2) Evidence regarding the health effects of circumstances or hardships similar to those experienced by prisoners of war (such as malnutrition, torture, physical abuse, or psychological stress);

(3) Evidence regarding the duration of exposure to circumstances or hardships experienced by prisoners of war that is associated with particular health effects; and

(4) Any other sound scientific or medical evidence the Secretary considers relevant.

(f) *Evaluation of studies.* In evaluating any study for the purposes of this section, the Secretary will consider:

(1) The degree to which the study's findings are statistically significant;

(2) The degree to which any conclusions drawn from the study data have withstood peer review;

(3) Whether the methodology used to obtain the data can be replicated;

(4) The degree to which the data may be affected by chance, bias, or confounding factors; and

(5) The degree to which the data may be relevant to the experience of prisoners of war in view of similarities or differences in the circumstances of the study population.

(g) *Contracts for Scientific Review and Analysis.* To assist in making determinations under this section, the Secretary may contract with an appropriate expert body to review and summarize the scientific evidence, and assess the strength thereof, concerning the association between detention or internment as a prisoner of war and the occurrence of any disease, or for any other purpose relevant to the Secretary's determinations.

Authority: 38 U.S.C. 501(a), 1110.

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

■ 3. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

■ 4. Section 3.309 (c) is amended by removing the ''Note'' immediately following the list of diseases and by revising the paragraph and its authority citation to read as follows:

§ 3.309 Disease subject to presumptive service connection.

* * * * *

(c) *Diseases specific as to former prisoners of war.* (1) If a veteran is a former prisoner of war, the following diseases shall be service connected if manifest to a degree of disability of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

Psychosis.

Any of the anxiety states.

Dysthymic disorder (or depressive neurosis).

Organic residuals of frostbite, if it is determined that the veteran was interned in climatic conditions consistent with the occurrence of frostbite.

Post-traumatic osteoarthritis.

Atherosclerotic heart disease or hypertensive vascular disease (including hypertensive heart disease) and their complications (including myocardial infarction, congestive heart failure, arrhythmia).

Stroke and its complications.

(2) If the veteran:

(i) Is a former prisoner of war and;

(ii) Was interned or detained for not less than 30 days, the following diseases shall be service connected if manifest to a degree of 10 percent or more at any time after discharge or release from active military, naval, or air service even though there is no record of such disease during service, provided the rebuttable presumption provisions of § 3.307 are also satisfied.

Avitaminosis.

Beriberi (including beriberi heart disease).

Chronic dysentery.

Helminthiasis.

Malnutrition (including optic atrophy associated with malnutrition).

Pellagra.

Any other nutritional deficiency.

Irritable bowel syndrome.

Peptic ulcer disease.

Peripheral neuropathy except where directly related to infectious causes.

Cirrhosis of the liver.

Authority: 38 U.S.C. 1112(b).

* * * * *

[FR Doc. 04–22543 Filed 10–6–04; 8:45 am]

BILLING CODE 8320–01–P

POSTAL SERVICE

39 CFR Part 501

Authorization to Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations that define a postage meter and its components and a manufacturer and/or distributor of postage meters. The rule also puts forth the responsibilities of any authorized person or entity to notify the Postal Service upon a change in ownership or control, or bankruptcy or insolvency, and identifies factors the Postal Service will consider in acting upon requests for changes of approval, ownership, or control of an approved manufacturer or distributor.

DATES: This rule is effective on October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, manager of Postage Technology Management, by fax at 703–292–4050.

SUPPLEMENTARY INFORMATION: A proposed rule was published in the **Federal Register** on May 10, 2004, pages 25864–25865, with comments due on or before July 9, 2004. Written comments were received from the vendor community.

The Postal Service gave thorough consideration to these comments, and incorporated as appropriate with only minor, non-material exception. You may review comments received by submitting a request of the office of Postage Technology Management at 703–292–3691 or by fax at 703–292–4073.

The final plan follows.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

The Amendment

■ For the reasons set out in this document, the Postal Service is amending 39 CFR Part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

■ 1. The authority citation for Part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95'452, as amended), 5 U.S.C. App. 3.

■ 2. Revise § 501.1 to read as follows:

§ 501.1 Postage evidencing system/infrastructure authorization.

(a) Postage evidencing systems produce evidence of prepayment of U.S. postage by any method other than postage stamps or permit imprint. They include but are not limited to postage meters and PC Postage'' systems. The Postal Service considers the infrastructure associated with such systems to be essential to the exercise of its specific powers to prescribe postage and provide evidence of payment of postage under 39 U.S.C. 404(a)(2) and (4).

(b) Due to the potential for adverse impact upon Postal Service revenue, the following activities may not be engaged in by any person or concern without prior, written approval of the Postal Service:

(1) Producing or distributing any postage evidencing system that generates U.S. postage.

(2) Repairing, distributing, refurbishing, remanufacturing, or destroying any component of a postage evidencing system that accounts for or authorizes the printing of U.S. postage.

(3) Owning or operating an infrastructure that maintains operating data for the production of U.S. postage, or accounts for U.S. postage purchased for distribution through a postage evidencing system.

(4) Owning or operating an infrastructure that maintains operating data that is used to facilitate licensing or registration with the Postal Service of users of a postage evidencing system.

(c) Any person or entity seeking authorization to perform any activity described in paragraph (b) of this section must submit a request to the Postal Service in person or in writing.

(d) Approval shall be based upon satisfactory evidence of the applicant's integrity and financial responsibility, and commitment to the security of the postage evidencing system, and a determination that disclosure to the applicant of the Postal Service customer, financial, or other data of a commercial nature necessary to perform the function for which approval is sought would be appropriate and consistent with good business practices within the meaning of 39 U.S.C. 410 (c)(2). The Postal Service may condition its approval on the agreement to undertakings by the applicant that would give the Postal Service appropriate assurance of the applicant's ability to meet its obligations under this section, including but not limited to the method and manner of performing certain financial, security, and servicing functions and the need to maintain sufficient financial reserves to guarantee

uninterrupted performance of not less than 3 months of operation.

(e) Qualification and approval may be based upon conditions agreed to by the Postal Service and the applicant. The applicant is approved in writing to engage in the function(s) for which authorization was sought and approved.

■ 3. Revise § 501.3 to read as follows:

§ 501.3 Changes in ownership or control, bankruptcy, or insolvency.

(a) Any person or entity authorized under § 501.1 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in its ownership or control including changes in the ownership of an affiliate which exercises control over its postage evidencing system operations in the United States. A change of ownership or control within the meaning of this section includes entry into a strategic alliance or other agreement whereby the third party has access to data related to the security of the system or the third party is a competitor to the Postal Service. Any person or entity seeking to acquire ownership or control of a person or entity authorized under § 501.1 must provide the Postal Service satisfactory evidence that it satisfies the conditions for approval stated in § 501.1. Early notification of a proposed change in ownership or control will facilitate expeditious review of an application to acquire ownership or control under this section.

(b) Any person or entity authorized under § 501.1 must promptly notify the Postal Service when it has a reasonable expectation that there may be a change in the status of its financial condition either through bankruptcy, insolvency, assignment for the benefit of creditors, or other similar financial action. Any person or entity authorized under § 501.1 who experiences a change in the status of its financial condition may, at the discretion of the Postal Service, have its authorization under § 501.1 modified or terminated.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 04–22234 Filed 10–6–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7825–5]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Delaware has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these revisions satisfy all requirements needed to qualify for final authorization and is authorizing Delaware's revisions through this immediate final action. EPA is publishing this rule to authorize the revisions without a prior proposal because we believe this action is not controversial and do not expect comments that oppose it. Unless we receive written comments that oppose this authorization during the comment period, the decision to authorize Delaware's revisions to its hazardous waste program will take effect. If we receive comments that oppose this action, or portions thereof, we will publish a document in the **Federal Register** withdrawing the relevant portions of this rule, before they take effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize revisions to Delaware's program that were the subject of adverse comments.

DATES: This final authorization will become effective on December 6, 2004, unless EPA receives adverse written comments by November 8, 2004. If EPA receives any such comment, it will publish a timely withdrawal of this immediate final rule in the **Federal Register** and inform the public that this authorization, or portions thereof, will not take effect as scheduled.

ADDRESSES: Submit your comments, identified by FRL–7825–5 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. E-mail: *ellerbe.lillie@epamail.epa.gov*
3. Mail: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
4. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy Delaware's application from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Delaware Department of Natural Resources & Environmental Control, Division of Air & Waste Management, Solid and Hazardous Waste Management Branch, 89 Kings Highway, Dover, DE 19901, Phone number (302) 739–3689, Attn: Karen J'Anthony, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

Instructions: Direct your comments to FRL–7825–5. EPA's policy is that all comments received will be included in the public file 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 *http://www.regulations.gov* or e-mail. The Federal *http://www.regulations.gov* Web site is an ''anonymous access'' system which means that 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 *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public file 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 and any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5454.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States that have received final authorization from EPA under RCRA

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

B. What Decisions Have We Made in This Rule?

EPA concludes that Delaware's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Delaware final authorization to operate its hazardous waste program with the revisions described in its application for program revisions, subject to the procedures described in section E, below. Delaware has responsibility for permitting treatment, storage, and disposal facilities (TSDFs) within its borders and for carrying out the aspects of the RCRA program described in its application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those HSWA requirements and prohibitions for which Delaware has not been authorized, including issuing HSWA permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision serves to authorize revisions to Delaware's authorized hazardous waste program. This action does not impose additional requirements on the regulated community because the regulations for which Delaware is being authorized by today's action are already effective and are not changed by today's action. Delaware has enforcement responsibilities under its state hazardous waste program for violations of its program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Perform inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits; and
- Take enforcement actions regardless of whether Delaware has taken its own actions.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change and do not expect comments that oppose this approval. We are providing an opportunity for public comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize Delaware's program revisions. If EPA receives comments that oppose this authorization, or portions thereof, that document will serve as a proposal to authorize the revisions to Delaware's program that were the subject of adverse comment.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, or portions thereof, we will withdraw this rule, or portions thereof, by publishing a document in the **Federal Register** before the rule would become effective. EPA will base any further decision on the authorization of Delaware's program revisions on the proposal mentioned in the previous section. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose the authorization of a particular revision to the State's hazardous waste program, we will withdraw that part of this rule, but the authorization of the program revisions that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Delaware Previously Been Authorized for?

Initially, Delaware received final authorization to implement its hazardous waste management program effective June 22, 1984 (53 FR 23837). EPA granted authorization for revisions to Delaware's regulatory program effective October 7, 1996 (61 FR 41345); October 19, 1998 (63 FR 44152); September 11, 2000 (65 FR 42871); August 8, 2002 (67 FR 51478), and May 3, 2004 (69 FR 10171).

G. What Revisions Are We Authorizing With Today's Action?

On August 23, 2004, Delaware submitted a program revision application, seeking authorization of additional revisions to its program in accordance with 40 CFR 271.21. Delaware's revision application includes various regulations that are equivalent to, and no less stringent than, revisions to the Federal hazardous waste program, as published in the **Federal Register** through April 26, 2004. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Delaware's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Therefore, EPA grants Delaware's final authorization for the following program revisions:

1. Program Revision Changes for Federal Rules

Delaware seeks authority to administer the Federal requirements that are listed in Table 1. This Table lists the State analogs that are being recognized as no less stringent than the analogous Federal requirements. Unless otherwise stated, the State's statutory references are to the Delaware Regulations Governing Hazardous Waste (DRGHW), amended and effective July 1, 2002, July 11, 2002, March 21, 2004 and August 21, 2004. The statutory references are to 7 Delaware Code Annotated (1991).

TABLE 1

Description of federal requirement (revision checklists [1])	Analogous Delaware authority
RCRA Cluster XI [2], Non-HSWA:	
Mixed Waste Rule, 66 *FR* 27218–27266, 5/16/01, Checklist 191 ...	7 Delaware Code (7 Del. Code) Chapter 63, §§ 6304, 6305, 6306, 6307; Delaware Regulations Governing Hazardous Waste (DRGHW) New Subpart N to Part 266 (§§ 266.210 through 266.360)

TABLE 1—Continued

Description of federal requirement (revision checklists [1])	Analogous Delaware authority
RCRA Cluster XI, HSWA /Non-HSWA:	
Mixture and Derived-From Rules Revisions, 66 *FR* 27266–27297, 5/16/01, Checklist 192A.	7 Del. Code, §§ 6304, 6305; DRGHW 261.3(a)(2)(iii), 261.3(a)(2)(iv), 261.3(c)(2)(i), 261.3(g)(1)–(3), 261.3(h)
RCRA Cluster XI, HSWA:	
Land Disposal Restrictions Correction, 66 *FR* 27266–27297, 5/16/01, Checklist 192B.	7 Del. Code, §§ 6304, 6305; DRGHW Appendix VII to Part 268, Table 1
RCRA Cluster XII, HSWA/Non-HSWA:	
Mixture and Derived-From Rules Revision II, 66 *FR* 50332–50334, 10/03/01, Checklist 194.	7 Del. Code, §§ 6304, 6305; DRGHW 261.3(a)(2)(iv)
RCRA Cluster XII, HSWA:	
CAMU Amendments, 67 *FR* 2962–3029, 01/22/02, Checklist 196 ..	7 Del. Code, §§ 6304, 6305, 6306, 6307; DRGHW 260.10, 264.550, 264.551, 264.552, 264.554(a)(1)–(2), 264.555
RCRA Cluster XII, Non-HSWA:	
Vacatur of Mineral Processing Spent Materials Being Reclaimed as Solid Wastes and TCLP Use with MGP Waste, 67 FR 11251–11254, 03/13/02, Checklist 199.	7 Del. Code, §§ 6304, 6305, 6306; DRGHW 261.2(c)(3), 261.4(a)(17)
RCRA Cluster XIII, HWSA/Non-HSWA:	
Zinc Fertilizer Rule, 67 *FR* 48393–48415, 07/24/02, Checklist 200	7 Del. Code, §§ 6304, 6305, 6306, 6307; DRGHW 266.20, 268.40 More stringent provisions: 261.4(a)(20)–(21), 266.20(d)
RCRA Cluster XIII, HWSA:	
Treatment Variance for Radioactively Contaminated Batteries, 67 *FR* 62618–62625, 10/07/02, Checklist 201.	7 Del. Code, §§ 6304, 6305, 6306, 6307; DRGHW 268.40/Table

[1] A Revision Checklist is a document that addresses the specific revisions made to the Federal regulations by one or more related final rules published in the FEDERAL REGISTER. EPA develops these checklists as tools to assist States in developing their authorization applications and in documenting specific State analogs to the Federal Regulations. For more information see EPA's RCRA State Authorization web page at *http://www.epa.gov/epaoswer/hazwaste/state*.

[2] A RCRA "Cluster" is a set of Revision Checklists for Federal rules, typically promulgated over a 12-month period starting on July 1 and ending on June 30 of the following year.

2. State-Initiated Revisions

In addition, Delaware will be authorized to carry out, in lieu of the Federal program, State-initiated revisions to provisions of the State's Program. These State-initiated revisions to some of Delaware's existing regulations are for the purpose of correcting errors and adding consistency or clarification to the existing regulations. The following State-initiated revisions are equivalent and analogous to the numerically-identical RCRA provisions found at Title 40 of the Code of Federal Regulations: DRGHW 260.10; 261.1(c)(8); 261.32; Part 261, Appendix VIII; 264.145(a)(1); 264.1050(h); and 265.1050(g). One other State-initiated revision being authorized by this notice is DRGHW 122.20 title and paragraph (a)(1), which is equivalent and analogous to 40 CFR 270.20 title and paragraph (a)(1).

H. Where Are the Revised Delaware Rules Different From the Federal Rules?

1. Delaware Requirements That Are Broader in Scope Than the Federal Program

The Delaware hazardous waste program contains certain provisions that are beyond the scope of the Federal program. These broader in scope provisions are not part of the program being authorized by today's action. EPA cannot enforce requirements that are broader in scope, although compliance with such provisions is required by Delaware law. Examples of broader in scope provisions of Delaware's program include, but are not limited to, the following:

(a) Delaware's regulation at DRGHW 263.102(c) amends requirements for permit termination, etc.

(b) Delaware's regulation at DRGHW 263.103(d) increases the time an application to replace an expiring permit must be submitted from 60 days to 90 days.

(c) Delaware's regulation at DRGHW 265.55 adds language clarifying that the emergency coordinator must receive annual training in assessing possible hazards to human health and the environment that may result from a release, fire or explosion.

2. Delaware Requirements That Are More Stringent Than the Federal Program

The Delaware hazardous waste program contains some provisions that are more stringent than is required by the RCRA program. The more stringent provisions are being recognized as a part of the Federally-authorized program and include the following:

(a) Delaware's regulations at DRGHW 265.195(c) and 265.201(c) are more stringent because the State adds a requirement for written inspection records for tanks.

(b) Delaware's regulation at DRGHW 273.19 is more stringent because the State adds a requirement for written records for shipments of universal waste.

I. Who Handles Permits After This Authorization Takes Effect?

After authorization, Delaware will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits that we issued prior to the effective date of this authorization until the timing and process for effective transfer to the State are mutually agreed upon. Until such time as formal transfer of EPA permit responsibility to the State occurs and EPA terminates its permit, EPA and the State agree to coordinate the administration of permits in order to maintain consistency. We will not issue any more new permits or new portions of permits for the provisions listed in section G above after the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which Delaware is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 115) in Delaware?

Delaware is not seeking authorization to operate the program on Indian lands, since there are no Federally-recognized Indian lands in Delaware.

K. What Is Codification and Is EPA Codifying Delaware's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart I, for this authorization of Delaware's program revisions until a later date.

L. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA section 3006 and imposes no requirements other than those imposed by State law (see Supplementary Information: section A. Why are Revisions to State Programs Necessary?). Therefore, this rule complies with applicable executive orders and statutory provisions as follows. 1. Executive Order 12866: Regulatory Planning Review—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866. 2. Paperwork Reduction Act—This rule does not impose an information collection burden under the Paperwork Reduction Act. 3. Regulatory Flexibility Act—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act, I certify that this rule will not have a significant economic impact on a substantial number of small entities. 4. Unfunded Mandates Reform Act—Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act. 5. Executive Order 13132: Federalism—Executive Order 13132 does not apply to this rule because it will not have federalism implications (*i.e.,* substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government). 6. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments—Executive Order 13175 does not apply to this rule because it will not have tribal implications (*i.e.,* substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes). 7. Executive Order 13045: Protection of Children From Environmental Health & Safety Risks—This rule is not subject to Executive Order 13045 because it is not economically significant and it is not based on health or safety risks. 8. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use—This rule is not subject to Executive Order 13211 because it is not a significant regulatory action as defined in Executive Order 12866. 9. National Technology Transfer and Advancement Act—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act does not apply to this rule. 10. Congressional Review Act—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 et seq.) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective on December 6, 2004.

List of Subjects in 40 CFR Part 271

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

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 17, 2004.

Thomas C. Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 04–22592 Filed 10–6–04; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2551, 2552, and 2553

Senior Corps

AGENCY: Corporation for National and Community Service.

ACTION: Final rule; correction.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), hereby amends its regulations for three programs (Senior Companions, Foster Grandparents and RSVP). These amendments make technical corrections to the final rules issued on April 14, 2004, for the Foster Grandparent Program, and on April 19, 2004, for the Retired and Senior Volunteer Program. They also clarify the eligibility of and requirements for faith-based organizations to serve as Senior Corps sponsors and volunteer stations under all three programs.

DATES: Effective on October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Boynton at (202) 606–5000, ext. 499 or by e-mail: *pboynton@cns.gov*.

List of Subjects in 45 CFR Parts 2551, 2552, and 2553

Aged, Grant programs-social programs, Volunteers.

■ For the reasons set forth in the preamble, the Corporation for National and Community Service amends 45 CFR parts 2551, 2552, and 2553 as follows:

PART 2551—SENIOR COMPANION PROGRAM

■ 1. The authority citation for part 2551 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 2. In § 2551.12, revise paragraphs (r) and (w) to read as follows:

§ 2551.12 Definitions.

* * * * *

(r) Sponsor. A public agency or private non-profit organization, either secular or faith-based, that is responsible for the operation of a Senior Companion project.

* * * * *

(w) Volunteer station. A public agency, secular or faith-based private non-profit organization, or proprietary health care organization that accepts the responsibility for assignment and supervision of Senior Companions in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise

certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 3. Revise § 2551.21 to read as follows:

§ 2551.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, both secular and faith-based, in the United States that have the authority to accept and the capability to administer a Senior Companion project.

■ 4. In § 2551.23, revise paragraph (c)(1) to read as follows:

§ 2551.23 What are a sponsor's program responsibilities?

* * * * *

(c) * * *

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Senior Companions;

* * * * *

■ 5. Amend § 2551.121 by redesignating paragraph (g) as paragraph (g)(1) and adding paragraph (g)(2) to read as follows:

§ 2551.121 What legal limitations apply to the operation of the Senior Companion Program and to the expenditure of grant funds?

* * * * *

(g) * * *

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use Corporation funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

* * * * *

PART 2552—FOSTER GRANDPARENT PROGRAM

■ 6. The authority citation for part 2552 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 7. In § 2552.12, revise paragraphs (u) and (z) to read as follows:

§ 2552.12 Definitions.

* * * * *

(u) *Sponsor.* A public agency or private non-profit organization, either secular or faith-based, that is responsible for the operation of a Foster Grandparent project.

* * * * *

(z) *Volunteer station.* A public agency, secular or faith-based private non-profit organization, or proprietary health care organization that accepts the responsibility for assignment and supervision of Foster Grandparents in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 8. Revise § 2552.21 to read as follows:

§ 2552.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, both secular and faith-based, in the United States that have the authority to accept and the capability to administer a Foster Grandparent project.

■ 9. In § 2552.23, revise paragraph (c)(1) to read as follows:

§ 2552.23 What are a sponsor's program responsibilities?

* * * * *

(c) * *

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of Foster Grandparents;

* * * * *

■ 10. Amend § 2552.121 by redesignating paragraph (g) as paragraph (g)(1) and adding a new paragraph (g)(2) to read as follows:

§ 2552.121 What legal limitations apply to the operation of the Foster Grandparent Program and to the expenditure of grant funds?

* * * * *

(g) * * *

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use Corporation funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

* * * * *

PART 2553—THE RETIRED AND SENIOR VOLUNTEER PROGRAM

■ 11. The authority citation for part 2553 continues to read as follows:

Authority: 42 U.S.C. 4950 *et seq.*

■ 12. In § 2553.12, revise paragraphs (o) and (r) to read as follows:

§ 2553.12 Definitions.

* * * * *

(o) *Sponsor.* A public agency or private non-profit organization, either secular or faith-based, that is responsible for the operation of an RSVP project.

* * * * *

(r) *Volunteer station.* A public agency, secular or faith-based private non-profit organization, or proprietary health care organization that accepts the responsibility for assignment and supervision of RSVP volunteers in health, education, social service or related settings such as multi-purpose centers, home health care agencies, or similar establishments. Each volunteer station must be licensed or otherwise certified, when required, by the appropriate state or local government. Private homes are not volunteer stations.

■ 13. Revise § 2553.21 to read as follows:

§ 2553.21 Who is eligible to serve as a sponsor?

The Corporation awards grants to public agencies, including Indian tribes and non-profit private organizations, both secular and faith-based, in the United Sates that have authority to accept and the capability to administer an RSVP project.

■ 14. In § 2553.23, revise paragraph (c)(1) to read as follows:

§ 2553.23 What are a sponsor's program responsibilities?

* * * * *

(c) * * *

(1) Ensuring that a volunteer station is a public or non-profit private organization, whether secular or faith-based, or an eligible proprietary health care agency, capable of serving as a volunteer station for the placement of RSVP volunteers to meet locally identified needs;

* * * * *

■ 15. Amend § 2553.91 by redesignating paragraph (g) as paragraph (g)(1) and

adding a new paragraph (g)(2) to read as follows:

§ 2553.91 What legal limitations apply to the operation of the RSVP Program and to the expenditure of grant funds?

* * * * *

(g) * * *

(2) A sponsor or volunteer station may retain its independence and may continue to carry out its mission, including the definition, development, practice, and expression of its religious beliefs, provided that it does not use Corporation funds to support any inherently religious activities, such as worship, religious instruction, or proselytization, as part of the programs or services funded. If an organization conducts such activities, the activities must be offered separately, in time or location, from the programs or services funded under this part.

* * * * *

Dated: September 30, 2004.

Tess Scannell,

Director, Senior Corps.

[FR Doc. 04–22534 Filed 10–6–04; 8:45 am]

BILLING CODE 6050–$$–P

Proposed Rules

Federal Register

Vol. 69, No. 194

Thursday, October 7, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

RIN 3206–AK62

Computation of Pay for Biweekly Pay Periods

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to implement a statutory amendment that requires the pay of heads of agencies and other designated employees to be calculated and paid on a biweekly basis instead of on a monthly basis. The proposed regulations also prescribe the circumstances under which an agency may calculate the pay of an employee on a biweekly pay period basis whose pay otherwise would be calculated on a monthly or other basis.

DATES: Comments must be received on or before December 6, 2004.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Deputy Associate Director for Pay and Performance Policy, Office of Personnel Management, Room 7H31, 1900 E Street, NW., Washington, DC 20415, Fax: (202) 606–4264, or e-mail at *pay-perfomance-policy@opm.gov.*

FOR FURTHER INFORMATION CONTACT: Ronald Genua by telephone at (202) 606–2858; by Fax at (202) 606–4264; or by e-mail at *pay-performance-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to calculate pay on a biweekly pay period basis for employees whose pay was formerly calculated on a monthly basis. Section 1124 of Public Law 108–136 (November 24, 2003) amended 5 U.S.C. 5504 to require the pay of heads of agencies (including the heads of military departments) to be calculated and paid on a biweekly basis instead of on a monthly basis. This law also amended 5 U.S.C. 5504 to cover members of the Foreign Service, the Senior Foreign Service, and the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service. In addition, 5 U.S.C. 5504(c)(3), as amended, allows an agency to make exceptions and elect to calculate the pay of employees on a biweekly pay period basis whose pay otherwise would be calculated on a monthly or other basis. The law requires OPM to issue regulations providing guidelines for these exceptions to be made.

Section 1124 became effective on the first day of the first pay period beginning on or after the date of enactment of the Act (November 24, 2003). Since biweekly pay periods for Federal employees begin on a Sunday, this provision became effective on November 30, 2003, for most officials and employees. OPM notified agencies of this legislative change on December 24, 2004, in a memorandum to human resources directors. (*See http://www.opm.gov/oca/compmemo/2003/2003-21.asp.*)

Computation of Pay

The change in the method of computing pay for heads of agencies and other affected employees has no effect on the pay they receive for a given period of work. Prior to the change in 5 U.S.C. 5504, the heads of agencies received a full month's pay for each full month of service (or fraction thereof). For monthly pay computations, an employee's annual salary was divided by 12 to determine the monthly amount. Under the new law, these employees receive a full pay period's worth of pay for each full pay period of service (or fraction thereof). For biweekly pay computations, an employee's annual salary is divided by 2,087 to determine an hourly rate, and the hourly rate is multiplied by 80 to determine the biweekly rate.

Employees Covered

As a result of the amendment to 5 U.S.C. 5504, the pay of most Federal employees in executive branch agencies is calculated on a biweekly pay period basis. However, some categories of employees continue to be excluded because they are excluded from the definition of ''employee'' in 5 U.S.C. 5541(2) (except as provided in 5 U.S.C. 5504(c)(2)(B)). For example, members of the Uniformed Division of the Secret Service and the U.S. Park Police are not covered by 5 U.S.C. 5504 because they are excluded from the definition of ''employee'' by 5 U.S.C. 5541(2)(iv). However, agencies may have established biweekly pay period computations for such employees under separate legal authority.

Exceptions

In § 550.605, OPM proposes to allow an agency under certain circumstances to deem that an otherwise excluded employee meets the definition of a covered employee under § 550.602 for the purpose of computing his or her pay on a biweekly pay period basis. OPM proposes to allow agencies to make exceptions in situations where continuing to calculate an employee's pay on a monthly or other basis would diminish the level of services provided to the public by the agency. In addition, we propose to allow an agency head or designee to make an exception to include otherwise excluded employees when he or she determines that computing the pay of such employees under the rules in 5 U.S.C. 5504 would provide cost savings in agency operations. If an agency chooses to make such an exception, an employee's hourly rate of pay would be calculated by using a divisor of 2,087. Each agency that decides to make an exception under § 550.605 must notify OPM in writing of any exceptions made under that authority.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would affect only Federal agencies and employees.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

Office of Personnel Management.

Kay Coles James,

Director.

Accordingly, OPM is proposing to amend part 550 of title 5 of the Code of Federal Regulations as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

1. A new subpart F is added to part 550 to read as follows:

Subpart F—Computation of Pay for Biweekly Pay Periods

Sec.
550.601 Purpose.
550.602 Coverage.
550.603 Definitions.
550.604 Biweekly pay periods and computation of pay.
550.605 Exceptions.
550.606 Reporting exceptions to OPM.

Authority: 5 U.S.C. 5504; Pub. L. 108–136, 117 Stet. 1637.

Subpart F—Computation of Pay for Biweekly Pay Periods

§ 550.601 Purpose.

This subpart provides regulations to implement 5 U.S.C. 5504 to compute pay on a biweekly pay period basis for employees in an agency, as defined in § 550.603.

§ 550.602 Coverage.

(a) This subpart applies to—

(1) An employee in or under an agency, except an employee excluded by paragraph (b) of this section;

(2) The head of an agency;

(3) The head of a military department, as defined in 5 U.S.C. 102;

(4) A Foreign Service officer;

(5) A member of the Senior Foreign Service;

(6) A member of the Senior Executive Service; or

(7) A member of the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

(b) This subpart does not apply to—

(1) An employee on the Isthmus of Panama in the service of the Panama Canal Commission; or

(2) An employee or individual excluded from the definition of employee in 5 U.S.C. 5541(2), except employees excluded by 5 U.S.C. 5541(2)(ii), (iii), and (xiv) through (xvii) are covered by this subpart.

§ 550.603 Definitions.

In this subpart—

Agency means an executive agency, as defined in 5 U.S.C. 105.

Employee has the meaning given that term in 5 U.S.C. 2105.

§ 550.604 Biweekly pay periods and computation of pay.

Agencies must apply the biweekly pay period and computation of pay provisions of 5 U.S.C. 5504 for employees covered by § 550.602(a).

§ 550.605 Exceptions.

An agency head or designee may deem that an employee excluded from coverage under § 550.602(b)(2) is covered by 5 U.S.C. 5504 in situations where he or she determines that continuing to calculate the pay of such employees on a monthly or other basis would diminish the level of services provided to the public by the agency. An agency head or designee also may deem that otherwise excluded employees are covered by 5 U.S.C. 5504 when he or she determines that computing the pay of such employees under that provision of law would provide cost savings in agency operations.

§ 550.606 Reporting exceptions to OPM.

Each agency must notify OPM in writing of any exceptions made under § 550.605.

[FR Doc. 04–22530 Filed 10–6–04; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19264; Directorate Identifier 2004–NM–90–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This proposed AD would require modification of certain auxiliary power unit (APU) alternating current (AC) generators. This proposed AD is prompted by a report of an explosion in the APU compartment, which blew open the compartment doors. We are proposing this AD to prevent oil vapor leakage from the APU AC generator, which, when combined with an electric arc at the electrical receptacle, could result in a fire or explosion in the APU compartment during flight.

DATES: We must receive comments on this proposed AD by November 22, 2004.

ADDRESSES: Use one of the following addresses to submit comments on this proposed 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.
- *By 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.

For service information identified in this proposed AD, contact Airbus, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France.

You can 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.

FOR FURTHER INFORMATION CONTACT:

Technical information: Tim Dulin, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2141; fax (425) 227–1149.

Plain language information: Marcia Walters, *marcia.walters@faa.gov.*

SUPPLEMENTARY INFORMATION:

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.

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your

comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19264; Directorate Identifier 2004–NM–90–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed 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 proposed AD. Using the search function of that 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 can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can 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 that affect you. You can get more information about plain language at *http://www.faa.gov/language* and *http://www.plainlanguage.gov*.

Examining the Docket

You can 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.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified us that an unsafe condition may exist on certain Airbus Model A319, A320, and A321 series airplanes. The DGAC advises that, one operator reported an explosion in the auxiliary power unit (APU) compartment when passengers were disembarking, which blew open the compartment doors. Analysis revealed that, due to vibrations in the APU alternating current (AC) generators, the retaining bolts of the electrical receptacle had loosened, causing oil vapor leakage. The DGAC also advises that additional reports were received of loose retaining bolts found during maintenance inspections. Oil vapor leakage, combined with an electric arc at the electrical receptacle, could result in a fire or explosion in the APU compartment during flight.

Relevant Service Information

We have reviewed Airbus Service Bulletin A320–24–1106, dated May 26, 2003 (for Model A319, A320, and A321 series airplanes). The service bulletin describes procedures for modification of certain APU AC generators. The modification includes replacing the retaining bolts of the electrical receptacle with new, improved retaining bolts, locking the new bolts with tie wire; installing a new nameplate; and performing an operational test. The service bulletin also specifies modifying the APU AC generator, prior or concurrently with Airbus Service Bulletin A320–24–1082, Revision 01, dated March 15, 1996 (for Model A320 and A321 series airplanes). Accomplishing the actions specified in the Airbus service information is intended to adequately address the unsafe condition.

The DGAC mandated the Airbus service information and issued French airworthiness directive F–2004–019, dated February 4, 2004, to ensure the continued airworthiness of these airplanes in France.

Service Bulletin A320–24–1106 refers to Hamilton Sundstrand Service Bulletin 90EGS01AG–24–18, dated February 13, 2003, as an additional source of service information for accomplishment of the modification.

FAA's Determination and Requirements of the Proposed 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 DGACs findings, evaluated all pertinent information, and determined that we need to issue an AD for products of this type design that are certificated for operation in the United States.

Therefore, we are proposing this AD, which would require modification of certain APU AC generators. The proposed AD would require you to use the Airbus service information described previously to perform these actions.

Costs of Compliance

This proposed AD would affect about 537 airplanes of U.S. registry.

For airplanes listed in Service Bulletin A320–24–1106: The proposed modification would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the estimated cost of the proposed modification for U.S. operators is $174,525, or $325 per airplane.

For airplanes listed in Service Bulletin A320–24–1082: The concurrent modification, if done, would take about 5 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would be free of charge. Based on these figures, the estimated cost of the proposed modification for U.S. operators is $174,525, or $325 per airplane.

Regulatory Findings

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

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

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

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

3. 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 proposed 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, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Airbus: Docket No. FAA–2004–19264; Directorate Identifier 2004–NM–90–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by November 22, 2004.

Affected ADs

(b) None.

Applicability: (c) This AD applies to Airbus Model A319, A320, and A321 series airplanes; certificated in any category; equipped with any Hamilton Sundstrand Auxiliary Power Unit (APU) alternating current (AC) generator having part number 5906732, 5909006, or 5910047; with up to amendment 17 included; on which Airbus Modification 32614 has not been done.

Unsafe Condition

(d) This AD was prompted by a report of an explosion in the APU compartment which blew open the compartment doors. We are issuing this AD to prevent oil vapor leakage from the APU AC generator, which, when combined with an electric arc at the electrical receptacle, could result in a fire or explosion in the APU compartment during flight.

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.

Modification

(f) For all airplanes: Within 20 months after the effective date of this AD, modify the APU AC generator by doing all the actions specified in the Accomplishment Instructions of Airbus Service Bulletin A320–24–1106, dated May 26, 2003. Do the actions in accordance with the service bulletin.

Concurrent Actions

(g) For Model A320 and A321 series airplanes: Prior to or concurrently with accomplishing the modification required by paragraph (f) of this AD, do the modification of the APU AC generator specified in Airbus Service Bulletin A320–24–1082, Revision 01, dated March 15, 1996; by doing all the actions specified in the Accomplishment Instructions in accordance with the service bulletin. Prior accomplishment of the modification in accordance with Airbus Service Bulletin A320–24–1082, dated September 30, 1994, meets the requirements of this paragraph.

Additional Source of Service Information

Note 1: Airbus Service Bulletin A320–24–1106 refers to Hamilton Sundstrand Service Bulletin 90EGS01AG–24–18, dated February 13, 2003, as an additional source of service information for accomplishment of the modification required by paragraph (f) of this AD.

Part Installation

(h) As of the effective date of this AD, no person may install an APU AC generator having a part number listed in the old part number column specified in Paragraph 1.L. of Airbus Service Bulletin A320–24–1106, dated May 26, 2003; on any airplane, unless that generator has been modified in accordance with paragraphs (f) and (g) of this AD, as applicable.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, International Branch, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

Related Information

(j) French airworthiness directive F–2004–019, dated February 4, 2004, also addresses the subject of this AD.

Issued in Renton, Washington, on September 30, 2004.

Kevin M. Mullin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22565 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA 2004–18743; Directorate Identifier 2004–CE–23–AD]

RIN 2120–AA64

Airworthiness Directives; GARMIN International Inc. GTX 33, GTX 33D, GTX 330, and GTX 330D Mode S Transponders

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2004–10–15, which applies to certain GTX 330 and GTX 330D Mode S transponders that are installed on airplanes. AD 2004–10–15 currently requires you to install GTX 330/330D Software Upgrade Version 3.03, 3.04, or 3.05. This proposed AD applies to certain GTX 33, GTX 33D, GTX 330, and GTX 330D Mode S transponders that are installed on airplanes and is the result of observations that the GTX 33/33D/330/330D may detect, from other airplanes, the S1 (suppression) interrogating pulse below the minimum trigger level (MTL) and, in some circumstances, not reply. The GTX 33/33D/330/330D should still reply even if it detects S1 interrogating pulses below the MTL. Consequently, this proposed AD would require you to install GTX 33/33D/330/330D Software Upgrade Version 3.03 or 3.06. Software Upgrade Versions 3.03 and 3.06 correct a TAS, TCAD, and TCAS I system ''whisper-shout'' problem that could potentially lead to the aircraft not being visible at certain ranges. TCAS II systems are not affected. We are issuing this proposed AD to prevent interrogating aircraft from possibly receiving inaccurate replies due to suppression from aircraft equipped with the GTX 33/33D/330/330D Mode S transponders when the pulses are below the MTL. The inaccurate replies could result in reduced vertical separation.

DATES: We must receive any comments on this proposed AD by November 15, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed 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 20590–001.
- *Fax:* 1–202–493–2251.
- *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.

To get the service information identified in this proposed AD, contact GARMIN International Inc. 1200 East 151st Street, Olathe, KS 66062; telephone: 913–397–8200.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* This is docket number FAA 2004–18743.

FOR FURTHER INFORMATION CONTACT: Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; email address: *roger.souter@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any

written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES.** Include the docket number, ''FAA 2004–18743; Directorate Identifier 2004–CE–23–AD'' at the beginning of your 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 proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into 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.). This is docket number FAA 2004–18743. 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.*

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES.** You may also view the AD docket on the Internet at *http://dms.dot.gov.* The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Has FAA taken any action to this point? The GTX 330/GTX 330D may detect from other aircraft the S1 (suppression) interrogating pulse below the MTL and, in some circumstances, does not reply. The GTX 330/330D should still reply even if it detects S1 interrogating pulses below the MTL, and this caused FAA to issue AD 2004–10–15, Amendment 39–13645 (69 FR 29212, dated May 21, 2004). AD 2004–10–15 currently requires the incorporation of GTX 330/330D Software Upgrade to at least Version, 3.03, 3.04, or 3.05 on certain GTX 330 and GTX 330D Mode S transponders that are installed on airplanes.

What has happened since AD 2004–10–15 to initiate this proposed action? After the issuance of AD 2004–10–15, GARMIN International Inc. discovered that minor changes made to GTX 330/330D Software Upgrades 3.04 and 3.05 inadvertently removed the correction to not suppress the S1 pulse below MTL. Garmin also discovered the Software Upgrade must be installed on GTX 33 and GTX 33D Mode S transponders as well as the GTX 330 and GTX 330D Mode S transponders.

What is the potential impact if FAA took no action? We are issuing this proposed AD to incorporate these changes and to prevent interrogating aircraft from possibly receiving inaccurate replies due to suppression from aircraft equipped with the GTX 33/33D/330/330D Mode S transponders when the pulses are below the MTL. Software Upgrade Version 3.03 and 3.06 correct a TAS, TCAD, and TCAS I system ''whisper-shout'' problem that could potentially lead to the aircraft not being visible at certain ranges. TCAS II systems are not affected. The inaccurate replies could result in reduced vertical separation.

Is there service information that applies to this subject? GARMIN International Inc. has issued the Service Bulletin No. 0304, Revision B, dated June 12, 2003 (which incorporates Software Upgrade 3.03), and Service Bulletin No. 0409, dated July 19, 2004 (which incorporates Software Upgrade 3.06).

What are the provisions of this service information? The service bulletins include:

—modification instructions for upgrading to software version 3.03 or 3.06 and

—a listing of parts required to perform the modification.

FAA's Determination and Requirements of This Proposed AD

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

What would this proposed AD require? This proposed AD would supersede AD 2004–10–15 with a new AD that would require you to install Garmin GTX 33/33D/330/330D Software Upgrade Version 3.03 or 3.06.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5400 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? Garmin International Inc. will provide warranty only for Service Bulletin No. 0409, dated July 19, 2004 (which incorporates Software Upgrade 3.06) installation as specified in the service information. Although Software Upgrade 3.03 is still in compliance with this proposed AD, if previously installed, Software Upgrade 3.03 is no longer available through Garmin.

What is the difference between the cost impact of this proposed AD and the cost impact of AD 2004–10–15? Garmin provided warranty credit for AD 2004–10–15 and will provide warranty credit only for installation of Service Bulletin No. 0409, dated July 19, 2004 (which incorporates Software Upgrade 3.06) in the proposed AD.

Regulatory Findings

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

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

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

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

3. Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. FAA 2004–18743; Directorate Identifier 2003-CE–39–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Airworthiness Directive (AD) 2004–10–15, Amendment 39–13645 (69 FR 29212–15, dated May 21, 2004), and by adding a new AD to read as follows:

GARMIN International Inc.: Docket No. FAA 2004–18743; Directorate Identifier 2004–CE–23–AD

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 15, 2004.

What Other ADs Are Affected by This Action?

(b) This AD supersedes AD 2004–10–15, Amendment 39–13645.

What Airplanes Are Affected by This AD?

(c) This AD affects GARMIN International Inc. GTX 33, GTX 33D, GTX 330, and GTX 330D Mode S transponders that are installed on, but not limited to, the following airplanes, certificated in any category:

Manufacturer	Model
(1) Aermacchi S.p.A	S.205–18/F, S.205–18/R, S.205–20/R, S.205–22/R, S208, S.208A, F.260, F.260B, F.260C, F.260D, F.260E, F.260F, S.211A.
(2) Aeronautica Macchi S.p.A	AL 60, AL 60–B, AL 60–F5, AL 60–C5, AM–3.
(3) Aerostar Aircraft Corporation	PA–60–600 (Aerostar 600), PA–60–601 (Aerostar 601), PA–60–601P (Aerostar 601P), PA–60–602P (Aerostar 602P), PA–60–700P (Aerostar 700P), 360, 400.
(4) Alexandria Aircraft, LLC	14–19, 14–19–2, 14–19–3, 14–19–3A, 17–30, 17–31, 17–31TC, 17–30A, 17–31A, 17–31ATC.
(5) Alliance Aircraft Group LLC	15A, 20, H–250, H–295 (USAFU–10D), HT–295, H391 (USAFYL–24), H391B, H–395 (USAFL–28A or U–10B), H–395A, H–700, H–800, HST–550, HST–550A (USAF AU–24A), 500.
(6) American Champion Aircraft Corp	402, 7GCA, 7GCB, 7KC, 7GCBA, 7GCAA, 7GCBC, 7KCAB, 8KCAB, 8GCBC.
(7) Sky International Inc	A–1, A–1A, A–1B, S–1S, S–1T, S–2, S–2A, S–2S, S–2C.
(8) B–N Group Ltd	BN–2, BN–2A, BN–2A–2, BN–2A–3, BN–2A–6, BN–2A–8, BN–2A–8, BN–2A–20, BN–2A–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2A–26, BN–2A–27, BN–2B–20, BN–2B–21, BN–2B–26, BN–2B–27, BN–2T, BN–2T–4R, BN–2A MK.III, BN2A MK. III–2, BN2A MK. 111–3.
(9) Bellanca	14–13, 14–13–2, 14–13–3, 14–13–3W.
(10) Bombardier Inc	(Otter) DHC–3, DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300.
(11) Cessna Aircraft Company	170, 170A, 170B, 172, 172A, 172B, 172C, 172D, 172E, 172F (USAF T–41A), 172G, 172H (USAF T041A), 172I, 172K, 172L, 172M, 172N, 172P, 172Q, 172R, 172S, 172RG, P172D, R172E (USAF T–41 B) (USAF T–41 C AND D), R172F (USAF T–41 D), R175G, R172H (USAF T–41 D), R172J, R172K, 175, 175A, 175B, 175C, 177, 177A, 177B, 177RG, 180, 180A, 180B, 180C, 180D, 180E, 180F, 180G, 180H, 180J, 180K, 182, 182A, 182B, 182C, 182D, 182E, 182F, 182G, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R, 182S, 182T, R182, T182, TR182, T182T, 185, 185A, 185B, 185C, 185D, 185E, A185E, A185F, 190, (LC–126A, B, C) 195, 195A, 195B, 210, 210A, 210B, 210C, 210D, 210E, 210F, T210F, 210G, T210G, 210H, T210H, 210J, T210J, 210K, T210K, 210L, T210L, 210M, T210M, 210N, P210N, T210N, 210R, P210R, T210R, 210–5 (205), 210–5A (205A), 206, P206, P206A, P206B, P206C, P206D, P206E, TP206A, TP206B, TP206C, TU206D, TU206E, TU206F, TU206G, 206H, T206H, 207, 207A, T207, T207A, 208, 208A, 208B, 310, 310A (USAF U–3A), 310B, 310C, 310D, 310E (USAF U–3B), 310F, 310G, 310H, E310H, 310I, 310J, 310J–1, E310J, 310K, 310L, 310N, 310P, T310P, 310Q, T310Q, 310R, T310R, 320, 320A, 320B, 320C, 320D, 320E, 320F, 320–1, 335, 340, 340A, 336, 337, 337A (USAF 02B), 337B, T337B, 337C, 337E, T337E, T337C, 337D, T337D, M337B (USAF 02A), 337F, T337F, T337G, 337G, 337H, P337H, T337H, T337H–SP, 401, 401A, 401B, 402, 402A, 402B, 402C, 411, 411A, 414, 414A, 421, 421A, 421B, 421C, 425, 404, 406, 441.
(12) Cirrus Design Corporation	SR20, SR22.
(13) Commander Aircraft Company	112, 112TC, 112B, 112TCA, 114, 114A, 114B, 114TC.
(14) de Havilland Inc	DHC–2 Mk. I, DHC–2 Mk.II, DHC–2 Mk. III.
(15) Dynac Aerospace Corporation	(Volaire) 10, (Volaire) 10A, (Aero Commander) 100, (Aero Commander) 100A, (Aero Commander) 100–180.
(16) Diamond Aircraft Industries	DA 20–A1, DA20–C1, DA 40.
(17) Empressa Brasileira de Aeronautica S.A. EMBRAER.	EMB–110P1, EMB–110P2.
(18) Extra Flugzeugbau Gmbh	EA300, EA300L, EA300S, EA300/200, EA–400.
(19) Fairchild Aircraft Corporation	SA26–T, SA26–AT, SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT, SA226–TC, SA227–AC (C–26A), SA227–CC, SA227–DC (C–26B).
(20) Global Amphibians, LLC	Colonial C–1, Colonial C–2, Lake LA–4, Lake LA–4A, Lake LA–4P, Lake LA–4–200, Lake Model 250.
(21) Grob-Werke	G115, G115A, G115B, G115C, G115C2, G115D, G115D2, G115EG, G120A.
(22) Lancair Company	LC40–550FG.

Manufacturer	Model
(23) LanShe Aerospace, LLC	MAC–125C, MAC–145, MAC–145A, MAC–145B.
(24) Learjet Inc	23.
(25) Lockheed Aircraft Corporation	18.
(26) Luscombe Aircraft Corporation	11A, 11E.
(27) Maule Aerospace Technology Inc	Bee Dee M–4, M–4, M–4C, M–4S, M–4T, M–4180C, M–4–180S, M–4–180T, M–4–210, M–4–210C, M–4–210S, M–4–210T, M–4–220, M–4–220S, M–4–220T, M–5–180C, M–5–200, M–5–210C, M–5–210TC, M–5–220C, M–5–235C, M–6–180, M–6–235, M–7–235, MX–7–235, MX–7–180, MX–7–420, MXT–7–180, MT–7–235, M–8–235, MX–7–160, MXT–7–160, MX–7–180A, MXT–7–180A, MX–7–180B, M–7–235B, M–7–235A, M–7–235C, MX–7–180C, M–7–260, MT–7–260, M–7–260C, M–7–420AC, MX–7–160C, MX–7–180AC, M–7–420A, MT–7–420.
(28) Mitsubishi Heavy Industries, Ltd	MU–2B–25, MU–2B–35, MU–2B–26, MU–2B–36, MU–2B–26A, MU–2B–36A, MU–2B–40, MU–2B–60, MU–2B, MU–2B–20, MU–2B–20, MU–2B–15.
(29) Mooney Airplane Company, Inc	M20, M20A, M20B, M20C, M20D, M20E, M20F, M20G, M20J, M20K, M20L, M20M, M20R, M20S, M22.
(30) Moravan a.s	Z–242L, Z–143L.
(31) Navion Aircraft Company, Ltd	NAVION, Navion (L–17A), Navion (L17B), Navion (L-17C), Navion B, Navion D, Navion E, Navion F, Navion G, Navion H.
(32) New Piper Aircraft, Inc	PA–12, PA–12S, PA–18, PA–18S, PA–18 "105" (Special), PA–18S "105" (Special), PA–18A, PA–18 "125" (Army L–21A), PA–18S "125," PA–18AS "125," PA–18 "135" (Army L–21B), PA–18A "135," PA–18S "135," PA–18 "150," PA–18A "150," PA–18S "150," PA–18AS "150," PA–19 (Army L–18B), PA–19S, PA–20, PA–20S, PA–20 "115," PA–20S "115," PA–20 "135," PA–20S "135," PA–22, PA–22–108, PA–22–135, PA–22S–135, PA–22–150, PA–22S–150, PA–22–160, PA–22S–160, PA–23, PA–23–160, PA–23–235, PA–23–250, PA–E23–250, PA–24, PA–24–250, PA–24–260, PA–24–400, PA–28–140, PA–28–150, PA–28–151, PA–28–160, PA–28–161, PA–28–180, PA–28–235, PA–28S–160, PA–28R–180, PA–28S–180, PA–28–181, PA–28R–200, PA–28R–201, PA–28R–201T, PA–28RT–201, PA–28RT–201T, PA–28–201T, PA–28–236, PA–30, PA–39, PA–40, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–31P–350, PA–32–260, PA–32–300, PA–32S–300, PA–32R–300, PA–32RT–300, PA–32RT–300T, PA–32R–301 (SP), PA–32R–301 (HP), PA–32R–301T, PA–32–301, PA–32–301T, PA–34–200, PA–34–200T, PA–34–220T, PA–42, PA–42–720, PA–42–1000, PA–42–720R, PA–44–180, PA–44–180T, PA–46–310P, PA–46–350P, PA–46–500TP.
(33) Ostmecklenburgische Flugzeugbau GmgH	OMF–100–160.
(34) Piaggio Aero Industries S.p.A	P–180.
(35) Pilatus Aircraft Ltd	PILATUS PC–12, PILATUS PC–12/45, PC–6, PC–6–H1, PC–6–H2, PC–6/350, PC–6/350–H1, PC–6/350–H2, PC–6/A, PC–6/A–H1, PA–6/A–H2, PC–6/B–H2, PC–6/B1–H2, PC–6/B2–H2, PC–6/B2–H4, PC–6/C–H2, PC–6/C1–H2, PC–7.
(36) Prop-Jets, Inc	200, 200A, 200B, 200C, 200D, 400.
(37) Panstwowe Zakladv Lotnicze (PZL)	PZL–104 WILGA 80, PZL–104M WILGA 2000, PZL-WARSZAWA, PZL-KOLIBER 150A, PZL-KOLIBER 160A.
(38) PZL WSK/Mielec Obrsk	PZL M20 03, PZL M26 01.
(39) Raytheon	35–33, 35–A33, 35–B33, 35–C33, 35–C33A, E33, E33A, E33C, F33, F33A, F33C, G33, H35, J35, K35, M35, N35, P35, S35, V35, V35A, V35B, 36, A36, A36TC, B36TC, 35, A35, B35, C35, D35, E35, F35, G35, 35R, F90, 76, 200, 200C, 200CT, 200T, A200, B200, B200C, B200CT, B200T, 300, 300LW, B300, B300C, 1900, 1900C, 1900D, A100–1 (U–21J), A200 (C–12A), A200 (C–12C), A200C (UC–12B), A200CT (C–12D), A200CT (FWC–12D), A200CT (RC–12D), A200CT (C–12F), A200CT (RC–12G), A200CT (RC–12H), A200CT (RC–12K), A200CT (RC–12P), A200CT (RC–12Q), B200C (C–12F), B200C (UC–12F), B200C (UC–12M), B200C (C–12R), 1900C (C–12J), 65, A65, A65–8200, 65–80, 65–A80, 65–A80–8800, 65–B80, 65–88, 65–A90, 70, B90, C90, C90A, E90, H90, 65–A90–1, 65–A90–2, 65–A90–3, 65–A90–4, 95, B95, B95A, D95A, E95, 95–55, 95–A55, 95–B55, 95–B55A, 95–B55B (T–42A), 95–C55, 95–C55A, D55, D55A, E55, E55A, 56TC, A56TC, 58, 58A, 58P, 58PA, 58TC, 58TCA, 99, 99A, 99A (FACH), A99, A99A, B99, C99, 100, A100 (U–21F), A100A, A100C, B100, 2000, 3000, 390, 19A, B19, M19A, 23, A23, A23A, A23–19, A23–24, B23, C23, A24, A24R, B24R, C24R, 60, A60, B60, 18D, A18A, A18D, S18D, SA18A, SA18D, 3N, 3NM, 3TM, JRB–6, D18C, D18S, E18S, RC–45J (SNB–5P), E18S–9700, G18S, H18, C–45G, TC–45G, C–45H, TC–45H, TC–45J, UC–45J (SNB–5), 50 (L–23A), B50 (L–23B), C50, D50 (L–23E), D50A, D50B, D50C, D50E–5990, E50 (L–23D, RL–23D), F50, G50, H50, J50, 45 (YT–34), A45 (T–34A or B–45), D45 (T–34B).
(40) Rockwell International Corporation	BC–1A, AT–6 (SNJ–2), AT–6A (SNJ–3), AT–6B, AT–6C (SNJ–4), AT–6D (SNJ–5), AT–6F (SNF–6), SNJ–7, T-6G, NOMAD NA–260.
(41) Short Brothers & Harland Ltd	SC–7 Series 2, SC–7 Series 3.
(42) Slingsby Aviation Ltd	T67M260, T67M260–T3A.
(43) SOCATA—Group Aerospatiale	TB9, TB10, TB20, TB21, TB200, TBM 700, M.S. 760, M.S. 760 A, M.S. 760 B, Rallye 100S, Rallye 150ST, Rallye 150T, Rallye 235E, Rallye 235C, MS 880B, MS 885, MS 894A, MS 893A, MS 892A–150, MS 892E–150, MS 893E, MS 894E, GA–7.
(44) Tiger AircraftLLC	AA–1, AA–1A, AA–1B, AA–1C, AA–5, AA–5A, AA–5B, AG–5B.
(45) Twin Commander Aircraft Corporation	500, 500–A, 500–B, 500–U, 500–S, 520, 560, 560–A, 560–E, 560F, 680, 680E, 680F, 680FL, 680FL(P), 680T, 680V, 680W, 681, 685, 690, 690A, 690B, 690C, 690D, 695, 695A, 695B, 720, 700.
(46) Univair Aircraft Corporation	108, 108–1, 108–2, 108–3, 108–5.

Manufacturer	Model
(47) Vulcanair S.p.A	P68, P68B, P68C, P68C–TC, P68 "Observer," P68 "Observer 2," P68TC "Observer," AP68TP300 "Spartacus," AP68TP 600 "Viator".
(48) Zenair Ltd	CH2000.

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of observations that the GTX 33/33D/330/330D may detect, from other airplanes, the S1 (suppression) interrogating pulse below the minimum trigger level (MTL) and, in some circumstances, not reply. The GTX 33/33D/330/330D should still reply even if it detects S1 interrogating pulses below the MTL. The actions specified in this AD are intended to prevent interrogating aircraft from possibly receiving inaccurate replies, due to suppression, from aircraft equipped with the GTX 33/33D/330/330D Mode S transponders when the pulses are below the minimum trigger level (MTL). Software Upgrade Versions 3.03 and 3.06 correct a TAS, TCAD, and TCAS I system ''whisper-shout'' problem that could potentially lead to the aircraft not being visible at certain ranges. TCAS II systems are not affected. The inaccurate replies could result in reduced vertical separation.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
Install GTX 33/33D/330/330D Software Upgrade to at least Version 3.03 or 3.06.	Install the software upgrade within 180 days after the effective date of this AD, unless already accomplished.	Follow GARMIN Mandatory Software Service Bulletin No.: 0304, Rev B, dated June 12, 2003 (Software Upgrade 3.03) or GARMIN Mandatory Software Service Bulletin No.: 0409, July 19, 2004 (Software Upgrade 3.06).

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, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Roger A. Souter, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4134; facsimile: 316–946–4107; e-mail address: *roger.souter@faa.gov.*

May I Get Copies of the Documents Referenced in This AD?

(g) To get copies of the documents referenced in this AD, contact GARMIN International Inc. 1200 East 151st Street, Olathe, KS 66062; telephone: 913–397–8200. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov.* The docket number is FAA 2004–18743.

Issued in Kansas City, Missouri, on September 29, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22586 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA 2004–19119; Directorate Identifier 2004–CE–26–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company, Model 390, Premier 1 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Aircraft Company, Model 390, Premier 1 airplanes. This proposed AD would require you to inspect the routing and security of the left and right main landing gear (MLG) squat switch wire harness installations for damage, repair any damage or replace components, and reinstall the squat switch wire harness. This proposed AD results from reports of damage to the left and/or right MLG wire harness assemblies, which resulted in various system failures/anomalies due to erroneous air/ground status signals. We are issuing this proposed AD to prevent damage to the wire harnesses, which could result in loss of lift dump, loss of pressurization, loss of transponder responses to interrogations, and failure of other systems utilizing air/ground status signals. This failure could lead to loss of control of the airplane.

DATES: We must receive any comments on this proposed AD by November 16, 2004.

ADDRESSES: Use one of the following to submit comments on this proposed 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 20590–001.
- *Fax:* 1–202–493–2251.
- *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.

To get the service information identified in this proposed AD, contact Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043.

To view the comments to this proposed AD, go to *http://dms.dot.gov.* The docket number is FAA 2004–19119.

FOR FURTHER INFORMATION CONTACT: Philip Petty, Aerospace Engineer, ACE–119W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

SUPPLEMENTARY INFORMATION:

Comments Invited

How do I comment on this proposed AD? We invite you to submit any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include the docket number, ''FAA 2004–19119; Directorate Identifier 2004–CE–26–AD'' at the beginning of your 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 proposed rulemaking. Using the search function of our docket Web site, anyone can find and read the comments received into 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.). This is docket number FAA 2004–19119. 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*.

Are there any specific portions of this proposed AD I should pay attention to? We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. If you contact us through a nonwritten communication and that contact relates to a substantive part of this proposed AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend this proposed AD in light of those comments and contacts.

Docket Information

Where can I go to view the docket information? You may view the AD docket that contains the proposal, any comments received, and any final disposition in person at the DMS Docket Offices between 9 a.m. and 5 p.m. (eastern standard time), Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5227) is located on the plaza level of the Department of Transportation NASSIF Building at the street address stated in **ADDRESSES**. You may also view the AD docket on the Internet at *http://dms.dot.gov*. The comments will be available in the AD docket shortly after the DMS receives them.

Discussion

What events have caused this proposed AD? FAA received reports of damage to the left and/or right MLG wire harness assemblies on Raytheon Model 390 airplanes. This resulted in various system failures/anomalies due to erroneous air/ground status signals. Improper installation of Kit 390–8103–0001 may have resulted in the damage to the squat switch wire harness assemblies during normal extension and retraction operations. A damaged wire harness and/or squat switch installation may affect multiple systems on the airplane.

What is the potential impact if FAA took no action? Damage to the wire harnesses could result in loss of lift dump, loss of pressurization, loss of transponder responses to interrogations, and failure of other systems utilizing air/ground status signals. This failure could lead to loss of control of the airplane.

Is there service information that applies to this subject? Raytheon Aircraft Company has issued Service Bulletin SB 32–3678, dated June 2004.

What are the provisions of this service information? The service bulletin includes procedures for:

—Inspecting the squat switch bracket for corrosion or cracking;
—replacing the squat switch bracket, if damaged;
—inspecting the MLG wiring harness; and
—relocating the MLG wire harness tie straps and the M85052/1–8 mounting clamp.

FAA's Determination and Requirements of This Proposed AD

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

What would this proposed AD require? This proposed AD would require you to incorporate the actions in the previously-referenced service bulletin.

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

Costs of Compliance

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 98 airplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected airplanes? Raytheon Aircraft Company will provide warranty credit as specified in the service information.

Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this proposed AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket FAA 2004–19119; Directorate Identifier 2004–CE–26–AD'' in your request.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Raytheon Aircraft Company: Docket No. FAA 2004–19119, Directorate Identifier 2004–CE–26–AD.

When is the Last Date I can Submit Comments on this Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 16, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Airplanes Are Affected by This AD?

(c) This AD affects the following airplane model and serial numbers that are certificated in any category: Model 390 Premier I, Serials RB–1, RB–4 through RB–84, RB–87 through RB–90, RB–92 through RB–96, RB–99 through RB–101, and RB–103 through RB–106.

What is the Unsafe Condition Presented in This AD?

(d) This AD is the result of reports of damage to the left and/or right main landing gear (MLG) wire harness assemblies, which resulted in various system failures/anomalies due to erroneous air/ground status signals. The actions specified in this AD are intended to prevent damage to the wire harnesses, which could result in loss of lift dump, loss of pressurization, loss of transponder responses to interrogations, and failure of other systems utilizing air/ground status signals. This failure could lead to loss of control of the airplane.

What Must I Do To Address This Problem?

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

Actions	Compliance	Procedures
(1) For airplanes prior to serial number RB–100 with Kit 390–8103–0001 installed, and for airplanes with production installation of the plunger-style squat switch, serial numbers RB–100, RB–101, and RB–103 through RB–106, perform the following actions:. (i) Visually inspect the squat switch bracket for corrosion or cracking (damage). (ii) If damage is found, replace the switch bracket with part number 390–810008–0003/–0004.	Inspect within 30 days after the effective date of this AD. If damage is found, replace the switch bracket prior to further flight after the inspection.	Follow Raytheon Aircraft Company Service Bulletin SB 32–3678, dated June 2004.
(2) All airplanes affected by this AD perform the following actions:. (i) Inspect MLG wiring harness service loop for excessive length in air mode (strut extended). The radius of the wire harness service loop should not exceed that of the brake hose service loop. The radius of the brake hose loop should not exceed the radius of the tire. If the length is excessive in air mode, correct in accordance with Raytheon Aircraft Company Service Bulletin SB 32–3678, dated June 2004. (ii) Remove and relocate tie straps and M85052/1–8 mounting clamp. (iii) Perform the landing gear operational test.	Within 30 days after the effective date of this AD.	Follow Raytheon arcart Company Service Bulletin SB 32–3678, dated June 2004.

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, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Philip Petty, Aerospace Engineer, ACE–119W, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4139; facsimile: (316) 946–4107.

May I Get Copies of the Documents Referenced in this AD?

(g) To get copies of the documents referenced in this AD, contact Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043. To view the AD docket, go to the Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC, or on the Internet at *http://dms.dot.gov*. The docket number is FAA 2004–19119.

Issued in Kansas City, Missouri, on September 29, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22585 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–CE–57–AD]

RIN 2120–AA64

Airworthiness Directives; LET a.s. Model Blanik L–13 AC Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would apply to all LET a.s. (formerly LET n.p.) (LET) Model Blanik L–13 AC sailplanes. The earlier NPRM would have required you to repetitively inspect the bedding of the front and rear control levers for cracks, and, if any cracks are found, replace with parts found free of cracks. The earlier NPRM resulted from mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The MCAI is a report of one occurrence of cracks in the attachment of control levers on the control bridge. Since FAA issued the NPRM, FAA has received and evaluated new service information that eliminates the repetitive inspection, requires replacement of parts, and changes the serial number effectivity. Since these actions impose an additional burden over that proposed in the NPRM, we are reopening the comment period to allow the public the chance to comment on these additional actions.

DATES: The Federal Aviation Administration (FAA) must receive any

comments on this proposed rule on or before November 8, 2004.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9–ACE–7–Docket@faa.gov*. Comments sent electronically must contain ''Docket No. 2003–CE–57–AD'' in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from LET a.s., Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 56 41 13. You may also view this information at the Rules Docket at the address above.

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:

Comments Invited

How do I comment on this proposed AD? The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the proposed rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are there any specific portions of this proposed AD I should pay attention to? The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each contact we have with the public that concerns the substantive parts of this proposed AD.

How can I be sure FAA receives my comment? If you want FAA to acknowledge the receipt of your mailed comments, you must include a self-addressed, stamped postcard. On the postcard, write ''Comments to Docket No. 2003–CE–57–AD.'' We will date stamp and mail the postcard back to you.

Discussion

What events have caused this proposed AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified FAA that an unsafe condition may exist on certain LET Model Blanik L–13 AC sailplanes. The CAA reports one occurrence of cracks in the attachment of control levers on the control bridge (Drawing No. A71 210N) on a Model Blanik L–13 AC sailplane after 130 hours time-in-service (TIS) of aerobatics. The cracks are due to material fatigue.

What are the consequences if the condition is not corrected? Failure of the control bridge for the sailplane could lead to 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 LET a.s. (formerly LET n.p.) (LET) Model Blanik L–13 AC sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 9, 2004 (69 FR 10939). The NPRM proposed to require you to repetitively inspect the bedding of the front and rear control levers for cracks, and, if any cracks are found, replace with parts found free of cracks.

You would have to do the proposed actions following Letecke Zavody Mandatory Bulletin No.: L13/095a, dated October 18, 2001.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the NPRM or our estimate of the cost impact upon the public.

Since issuance of the NPRM, LET has issued the new Letecke Zavody Mandatory Bulletin No.: L13AC/014a, dated July 17, 2003. This service bulletin eliminates the repetitive inspection, requires the replacement of parts, and changes the serial number effectivity.

The CAA has not amended the Czech AD to reflect this service information. However, FAA has evaluated the new service information and determined that the NPRM should be changed to reflect the requirements in the new LET service bulletin.

The Supplemental NPRM

How will the changes to the NPRM impact the public? Proposing to eliminate the repetitive inspection, require the replacement of parts, and changing the serial number effectivity goes beyond the scope of what was already proposed and imposes an additional burden on the public. Therefore, we are issuing a supplemental NPRM and reopening the comment period to allow the public additional time to comment.

How does the revision to 14 CFR part 39 affect this proposed AD? On July 10, 2002, FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs FAA's AD system. This regulation now includes material that relate to special flight permits, alternative methods of compliance, and altered products. 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.

Cost Impact

How many airplanes would this proposed AD impact? We estimate that this proposed AD affects 5 sailplanes in the U.S. registry.

What would be the cost impact of this proposed AD on owners/operators of the affected sailplanes? We estimate the following costs to do the proposed replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
7 workhours × $65 per hour = $455	$2,000	$2,455	$12,275

Regulatory Impact

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

Would this proposed AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this proposed 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) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

LET a.s. (Formerly LET n.p.): Docket No. 2003–CE–57–AD.

When Is the Last Date I Can Submit Comments on This Proposed AD?

(a) We must receive comments on this proposed airworthiness directive (AD) by November 8, 2004.

What Other ADs Are Affected by This Action?

(b) None.

What Sailplanes Are Affected by This AD?

(c) This AD affects Model Blanik L–13 AC sailplanes, serial numbers 988601, 988603, 008605, 008606, and 028902, that are certificated in any category:

What Is the Unsafe Condition Presented in This AD?

(d) This AD is the result of a report of one occurrence of cracks in the attachment of control levers on the control bridge. The actions specified in this AD are intended to correct cracks in the bedding of the front and rear control levers, which could result in failure of the control bridge for the sailplane. This failure could lead to 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) Replace the original control bridge (Drawing No. A741 210N) with the new strengthened control column mounting bridge (Drawing No. A740 370N).	Within the next 25 hours time-in-service (TIS) after the effective date of this AD, unless already done.	Follow the WORK PROCEDURE paragraph of LET Letecke Zavody Mandatory Bulletin No.: L13AC/014a, dated July 17, 2003.
(2) Do not install any original control bridge (Drawing No. A741 210N).	As of the effective date of this AD	Not Applicable.

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.

May I Get Copies of the Documents Referenced in This AD?

(g) You may get copies of the documents referenced in this AD from LET a.s., Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 56 41 13. You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Is There Other Information That Relates to This Subject?

(h) Czech Airworthiness Directive CAA–AD–090/2001, dated October 25, 2001, also addresses the subject of this AD.

Issued in Kansas City, Missouri, on October 1, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22581 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 118

[Docket Nos. 1996P–0418, 1997P–0197, 1998P–0203, and 2000N–0504]

RIN 0910–AC14

Egg Safety; Proposed Rule for Prevention of *Salmonella Enteritidis* in Shell Eggs During Production; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public meetings.

SUMMARY: The Food and Drug Administration (FDA) is announcing a series of public meetings to discuss the proposed rule for prevention of *Salmonella* Enteritidis (SE) in shell eggs during production. On September 22, 2004, FDA published in the **Federal Register** a proposed rule for egg safety national standards. The purpose of these meetings is to solicit public comments

on the proposed rule and provide the public an opportunity to ask questions.

DATES: Meetings will be held on October 28, 2004, in College Park, MD; on November 9, 2004, in Chicago, IL and on November 16, 2004, in Los Angeles, CA from 9 a.m. to 1 p.m. and registration will begin at 8 a.m.

FDA provided 90 days for submission of comments on the September 22, 2004 proposal. Written and electronic comments are due by December 21, 2004, and should be submitted in the manner prescribed in the **ADDRESSES** section of this document.

ADDRESSES: The following are a list of the upcoming meeting locations:

1. Thursday, October 28, 2004, Harvey W. Wiley Federal Building, Auditorium, 5100 Paint Branch Pkwy., College Park, MD.
2. Tuesday, November 9, 2004, Chicago Marriott Downtown Magnificent Mile, 540 North Michigan Ave., Chicago, IL.
3. Tuesday, November 16, 2004, Los Angeles Airport Marriott, 5855 West Century Blvd., Los Angeles, CA.

You may submit comments, identified by [Docket Nos. 1996P–0418, 1997P–0197, 1998P–0203, and 2000N–0504], by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web site: *http://www.fda.gov/dockets/ecomments*. Follow the instructions for submitting comments on the agency Web site.
- E-mail: *fdadockets@oc.fda.gov*. Include [Docket Nos. 1996P–0418, 1997P–0197, 1998P–0203, and 2000N–0504 and RIN number 0910–AC14] in the subject line of your e-mail message.
- FAX: 301–827–6870.
- Mail/Hand delivery/Courier [For paper, disk, or CD–ROM submissions]: Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the agency name and Docket Nos. or Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to *http://www.fda.gov/ohrms/dockets/default.htm*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the **ADDRESSES** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.fda.gov/ohrms/dockets/default.htm* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marion V. Allen, Center for Food Safety and Applied Nutrition (HFS–32), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–2428, FAX 301–436–2605, e-mail: *marion.allen@fda.hhs.gov* for general questions only about the meeting.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 22, 2004 (69 FR 56823), FDA proposed to establish measures to prevent SE contamination of shell eggs during egg production. The motivation for this proposal is a farm-to-table risk assessment of SE in eggs which identified implementation of on-farm prevention measures as a very important step that could reduce the occurrence of SE infections from eggs. While voluntary quality assurance (QA) programs for egg production have led to meaningful reductions in SE illnesses, these programs are not always uniformly administered or uniformly comprehensive in their prevention measures.

Moreover, the most recent data from the Centers for Disease Control and Prevention (CDC) show that SE illnesses have essentially remained steady for the past several years. CDC estimated that 118,000 illnesses were caused by consumption of SE-contaminated eggs in 2001. Accordingly, FDA believes that further actions to improve egg safety, building upon the safe consumer handling labeling and egg refrigeration at retail rule of 2000, are the most effective way to achieve our public health goals of a 50 percent reduction in overall salmonellosis and a 50 percent reduction in SE outbreaks by 2010.

The proposed rule for SE prevention measures includes:

Provisions for procurement of chicks and pullets;

- A biosecurity program;
- A pest and rodent control program;
- Cleaning and disinfection of poultry houses that have had an environmental sample or egg test positive for SE before new laying hens are added to the house;
- Refrigerated storage of eggs at the farm;
- Producer testing of the environment for SE in poultry houses, if the environmental test is positive, FDA proposes that egg testing for SE be undertaken, and that, if an egg test is positive, the eggs be diverted from the table egg market;
- Identification of a person responsible for SE prevention at each farm;
- Recordkeeping requirements for environmental and egg sampling and testing and for egg diversion; and
- *Exemptions*: the proposed rule would not apply to producers who sell all of their eggs directly to consumers or producers with fewer than 3,000 laying hens. In addition, if a producer has 3,000 or more laying hens and all eggs at a farm are to be given a treatment that will achieve at least a 5-log destruction of SE or processed into egg products, then only the proposed refrigeration requirements would apply.

The proposed rule and fact sheet are available on FDA's Web site at: *http://www.cfsan.fda.gov/~dms/fs-eggs6.html* and *http://www.fda.gov/OHRMS/DOCKETS/98fr/1996p–0418–npr0002.pdf.*

II. Registration

Please submit your registration information (including name, title, firm name, address, telephone number, e-mail address, and fax number) at least 7 business days before the meeting date. We encourage you to register online at *http://www.cfsan.fda.gov/~dms/egg0904.html,* or by fax at 202–479–6801. We will accept registration on-site. Space is limited, and registration will be closed at each site when maximum seating capacity for that site is reached. If you need special accommodations due to a disability, including a sign language interpreter, please notify the contact person as listed under **FOR FURTHER INFORMATION CONTACT** in this announcement at least 7 business days in advance of the meeting. All participants must present a valid photo ID when entering a federal building and parking facility.

Attendees are encouraged to present their comments, concerns, and recommendations regarding the proposed rule at the public meeting. Attendees wishing to make a presentation will be allowed 5 minutes each. Please indicate when registering if you wish to make a presentation. Individuals and organizations that do not pre-register to make a presentation may have the opportunity to speak if time permits. While oral presentations from specific individuals and organizations will be limited during the public meeting, the written comments submitted as part of the administrative record may contain a discussion of any issues of concern. All relevant data and documentation should be submitted with the written comments.

III. Transcripts

A transcript of the proceedings from these public meetings, as well as all information and data submitted voluntarily to FDA during the public meetings, will become part of the administrative record and will be available to the public under 21 CFR 20.111 from FDA's Division of Dockets Management (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852 at a cost of 10 cents per page. Summaries of the public meetings will also be available for public examination at FDA's Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 29, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22476 Filed 10–4–04; 2:49 pm]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7825–6]

Delaware: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Delaware has applied to EPA for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA proposes to grant final authorization to Delaware. In the ''Rules and Regulations'' section of this **Federal Register**, EPA is authorizing the revisions by an immediate final rule. EPA did not make a proposal prior to the immediate final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the immediate final rule. Unless we receive written comments that oppose this authorization during the comment period, the immediate final rule will become effective on the date it establishes, and we will not take further action on this proposal. However, if we receive comments that oppose this action, or portions thereof, we will withdraw the relevant portions of the immediate final rule, and they will not take effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

DATES: Send your written comments by November 8, 2004.

ADDRESSES: Submit your comments, identified by FRL–7825–5 by one of the following methods:

1. Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
2. E-mail: *ellerbe.lillie@epamail.epa.gov.*
3. Mail: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029.
4. Hand Delivery: At the previously-listed EPA Region III address. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

You may inspect and copy Delaware's application from 8 a.m. to 4:30 p.m., Monday through Friday at the following addresses: Delaware Department of Natural Resources & Environmental Control, Division of Air & Waste Management, Solid and Hazardous Waste Management Branch, 89 Kings Highway, Dover, DE 19901, Phone number (302) 739–3689, attn: Karen J'Anthony, and EPA Region III, Library, 2nd Floor, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone number: (215) 814–5254.

Instructions: Direct your comments to FRL–7825–5. EPA's policy is that all comments received will be included in the public file 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 *http://www.regulations.gov* or e-mail. The federal *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public file and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

FOR FURTHER INFORMATION CONTACT: Lillie Ellerbe, Mailcode 3WC21, RCRA State Programs Branch, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, Phone Number: (215) 814–5454.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

Dated: September 17, 2004.

Thomas Voltaggio,

Acting Regional Administrator, EPA Region III.

[FR Doc. 04–22593 Filed 10–6–04; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AT86

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for *Navarretia fossalis* (spreading navarretia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to designate critical habitat for *Navarretia fossalis* (spreading navarretia) pursuant to the Endangered Species Act of 1973, as amended (Act). We have identified 31,086 acres (ac) (12,580 hectares (ha)) of habitat essential to the conservation of *Navarretia fossalis,* and propose to designate 4,301 ac (1,741 ha) of this essential habitat as critical habitat in San Diego and Los Angeles Counties, California. We have excluded 26,785 ac (10,839 ha) of essential habitat in Riverside and San Diego Counties from this proposed critical habitat designation. The excluded lands are located within approved and pending habitat conservation plans (HCPs), ''mission-critical'' training areas on Department of Defense lands, and areas covered by Integrated Natural Resource Management Plans (INRMPs) on Department of Defense lands. In developing this proposal, we evaluated those lands determined to be essential

to the conservation of *Navarretia fossalis* to ascertain if any specific areas warrant non-inclusion or exclusion from critical habitat pursuant to sections 4(a)(3) and 4(b)(2) of the Act. On the basis of our evaluation, we have determined that the benefits of excluding approved and pending HCPs and ''mission-critical'' training lands owned and managed by the Department of Defense from critical habitat for *Navarretia fossalis* outweighs the benefits of their inclusion, and have subsequently excluded those lands from this proposed designation of critical habitat for this species pursuant to section 4(b)(2) of the Act. We have also evaluated Integrated Natural Resource Management Plans (INRMP) on Department of Defense lands and have not proposed critical habitat where the INRMP provides a benefit to the species pursuant to section 4(a)(3) of the Act. We hereby solicit data and comments from the public on all aspects of this proposal, including data on economic and other impacts of the designation. We may revise this proposal prior to final designation to incorporate or address new information received during public comment periods.

DATES: We will accept comments until December 6, 2004. Public hearing requests must be received by November 22, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, Carlsbad Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6010 Hidden Valley Road, Carlsbad, CA 92009.

2. You may hand-deliver written comments and information to our Carlsbad Fish and Wildlife Office, at the above address, or fax your comments to (760) 731–9618.

3. You may send your comments by electronic mail (e-mail) to *fw1cfwo_nafo@fws.gov.* For directions on how to submit electronic filing of comments, see the ''Public Comments Solicited'' section. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

All comments and materials received, as well as supporting documentation used in preparation of this proposed rule, will be available for public inspection, by appointment, during normal business hours at the above address. Maps of essential habitat not included in the proposed critical habitat are available for viewing by appointment during regular business hours at the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office (telephone (760) 431–9440; facsimile (760) 431–9618).

SUPPLEMENTARY INFORMATION:

Public Comments Solicited

It is our intent that any final action resulting from this proposal will be as accurate as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. In the development of our final designation, we will incorporate or address any new information received during the public comment periods, or from our evaluation of the potential economic impacts of this proposal. As such, we may revise this proposal to address new information and/or to either exclude additional areas that may warrant exclusion pursuant to section 4(b)(2) or we designate additional areas determined to be essential to the species but excluded from this proposal. We particularly seek comments concerning:

(1) The reasons why any areas should or should not be determined to be critical habitat as provided by section 4 of the Act.

(2) Specific information on the amount and distribution of *Navarretia fossalis* and its habitat, and which habitat or habitat components are essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in or adjacent to the areas proposed and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other potential impacts resulting from the proposed designation, in particular, any impacts on small entities and;

(5) Whether our approach to designate critical habitat could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concerns and comments.

Some of the lands we have identified as essential for the conservation of the *Navarretia fossalis* are not being proposed as critical habitat. The following areas essential to the conservation of *N. fossalis* are not being proposed as critical habitat or have been excluded from this proposal: lands on Marine Corps Air Station Miramar (MCAS, Miramar); ''mission-critical'' training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); areas within the San Diego Multiple Species Conservation Program (MSCP), and areas within the Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). These areas have been excluded because they meet the standard for exclusion under section 4(a)(3) of the Act, or because we believe the benefit of excluding these areas from critical habitat outweighs the benefit of including them pursuant to section 4(b)(2). We specifically solicit comment on: (a) Whether these areas are essential; (b) whether these areas warrant exclusion; and (c) the basis for not designating as or excluding these areas from critical habitat pursuant to section 4(a)(3) or section 4(b)(2) of the Act (*see Exclusions Under Section 4(b)(2) of the Act* and *Relationship to Department of Defense Lands* sections for a detailed discussion).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (see **ADDRESSES** section). Please submit Internet comments to *fw1cfwo_nafo@fws.gov* in ASCII file format and avoid the use of special characters or any form of encryption. Please also include ''Attn: RIN 1018–AT86'' in your e-mail subject header and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Carlsbad Fish and Wildlife Office at phone number (760) 431–9440. Please note that the e-mail address *fw1cfwo_nafo@fws.gov* will be closed out at the termination of the public comment period.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. Additionally, we have also found that comparable conservation can be achieved by implementation of laws and regulations obviating the need for critical habitat. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs. The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 36 percent (445 species) of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the section 4 recovery planning process, the section 9 protective prohibitions of unauthorized take, section 6 funding to the States, and the section 10 incidental take permit process. The Service believes it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United State Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been overwhelmed with lawsuits regarding designation of critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA), all are part of the cost of critical habitat designation. None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

It is our intent to discuss only those topics directly relevant to the identification and proposed designation of critical habitat for *Navarretia fossalis* in this rule. For more information on this species, refer to the final listing rule published in the **Federal Register** on October 13, 1998 (63 FR 54975) and the Recovery Plan for the Vernal Pools of Southern California (Recovery Plan) finalized on September 3, 1998 (Service 1998).

Life History

Navarretia fossalis, a member of *Polemoniaceae* (phlox family), is a low, mostly spreading or ascending, annual herb, 10 to 15 centimeters (cm) (4 to 6 inches (in)) tall. This species grows in vernal pools, clay flats, irrigation ditches, alkali grasslands, alkali playas, and alkali sinks (Dudek and Associates, Inc. 2003; Spencer 1997). The lower portions of the stems are mostly glabrous (bare). The leaves are soft and finely divided, 1 to 5 cm (0.4 to 2 in) long, and spine-tipped when dry. The flowers are white to lavender white with linear petals and are arranged in flat-topped, compact, leafy heads. The fruit is an ovoid, 2-chambered capsule (Day 1993; Moran 1977).

There are approximately 30 species in the genus *Navarretia,* several of which occur within the range of *Navarretia fossalis. N. fossalis* can be confused with, and has been misidentified as, *N. prostrata* (Moran 1977). *N. fossalis* is distinguished by its linear or narrowly ovate corolla lobes, erect habit, cymose inflorescences, the size and shape of the calyx, and the position of the corolla relative to the calyx (Day 1993; Service 1998). Two other *Navarretia* taxa are also federally listed as endangered: *N. leucocephala* ssp. *plieantha* (many-flowered navarretia) and *N. leucocephala* ssp. *pauciflora* (few-flowered navarretia) (62 FR 33029). However, these two species are found in vernal pools in northern California.

Distribution and Status

Navarretia fossalis is distributed from northwestern Los Angeles County and western Riverside County, south through coastal San Diego County, California to northwestern Baja California, Mexico (Moran 1977; Oberbauer 1992). It is found at elevations between sea level and 4,250

feet (ft) (1,300 meters (m)) in vernal pools, alkali grassland, alkali playa, and alkali sink habitats (Day 1993; Munz 1974; California Native Plant Society (CNPS) 2001; Reiser 2001; California Natural Diversity Data Base (CNDDB) 2004).

One population has been reported from San Luis Obispo County, however, the identification of this population is thought to be in error (pers. comm. with Spencer 2004). Fewer than 45 populations exist in the United States (CNDDB 2004). Nearly 60 percent of the known populations are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (Service 1998). The two largest populations occur in Riverside County and have been estimated to support 375,000 and 100,000 individuals respectively within 8 ac (3 ha) of habitat. Most other populations contain fewer than 1,000 individuals and occupy less than 1 ac (0.5 ha) of habitat. We estimate that less than 300 ac (120 ha) of habitat in the United States is occupied by this species (63 FR 54975). This estimate only quantifies the areas where the *Navarretia fossalis* is physically found and does not include the areas adjacent to the populations that are necessary to provide the hydrology that this species requires. In Mexico, *N. fossalis* is known from fewer than 10 populations clustered in three areas: along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977).

Threats

It is estimated that greater than 90 percent of the vernal pool habitat in Southern California has been converted as a result of past human activities (Bauder and McMillan 1998; Keeler-Wolf *et al.* 1998). *Navarretia fossalis* is threatened by habitat destruction and fragmentation from urban and agricultural development, pipeline construction, alteration of hydrology and floodplain dynamics, excessive flooding, channelization, off-road vehicle activity, trampling by cattle and sheep, weed abatement, fire suppression practices (including discing and plowing to remove weeds and create fire breaks), and competition from alien plant species (63 FR 54975).

Previous Federal Action

The final listing rule for *Navarretia fossalis* provides a description of previous Federal actions through October 13, 1998 (63 FR 54975). Efforts necessary for the survival and recovery of *N. fossalis* are presented in the Recovery Plan (Service 1998).

At the time of listing, we concluded that designation of critical habitat for *Navarretia fossalis* was not prudent because such designation would not benefit the species. On November 15, 2001, a lawsuit was filed against the Department of the Interior (DOI) and the Service by the Center for Biological Diversity and California Native Plant Society, challenging our ''not prudent'' determinations for eight plants including *Navarretia fossalis (CBD, et al.* v. *Norton,* No. 01–CV–2101 (S.D. Cal.)). A second lawsuit asserting the same claim was filed against the DOI and us by the Building Industry Legal Defense Foundation (BILD) on November 21, 2001 (*BILD* v. *Norton,* No. 01–CV–2145 (S.D. Cal.)). The parties in both cases agreed to a remand of the critical habitat determinations to us for additional consideration. In an order dated July 1, 2002, the U.S. District Court for the Southern District of California directed us to reconsider our not prudent finding and publish a proposed critical habitat rule for *N. fossalis,* if prudent, on or before January 30, 2004. In a motion to modify the July 1, 2002 order, the DOI and we requested that the due date for the proposed rule for *N. fossalis* be extended until October 1, 2004. This motion was granted on September 9, 2003. This proposed rule complies with the court's ruling.

Critical Habitat

Section 3(5)(A) of the Act defines critical habitat as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of [the] Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of [the] Act, upon a determination that such areas are essential for the conservation of the species (Endangered Species Act (Act) 1973 (as amended)). ''Conservation'' means the use of all methods and procedures that are necessary to bring an endangered or a threatened species to the point at which listing under the Act is no longer necessary (Act 1973).

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 requires consultation on Federal actions that are likely to result in the destruction or adverse modification of critical habitat.

To be included in a critical habitat designation, the habitat must first be ''essential to the conservation of the species.'' Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)).

Occupied habitat may be included in critical habitat only if the essential features thereon may require special management or protection. Thus, we do not include areas where existing management is sufficient to conserve the species. (As discussed below, such areas may also be excluded from critical habitat pursuant to section 4(b)(2).)

Our regulations state that, ''The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific and commercial data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Our Policy on Information Standards Under the Endangered Species Act, published in the **Federal Register** on July 1, 1994 (59 FR 34271) and our U.S. Fish and Wildlife Service Information Quality Guidelines (2002) provide criteria, establish procedures, and provide guidance to ensure that our decisions represent the best scientific and commercial data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing package for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Critical habitat designations do not signal that habitat outside the designation is unimportant to

Navarretia fossalis. Areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1), and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available information at the time of the action. We specifically anticipate that federally funded or assisted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning efforts if new information available to these planning efforts calls for a different outcome.

Methods

As required by section 4(b)(2) of the Act, we use the best scientific data available in determining areas that are essential to the conservation of *Navarretia fossalis*. The Recovery Plan for Vernal Pools of Southern California (Recovery Plan) outlines areas essential to the conservation of seven species, including *Navarretia fossalis* (as well as San Diego fairy shrimp (*Branchinecta sandiegonensis*), Riverside fairy shrimp (*Streptocephalus woottoni*), *Eryngium arstulatum* var. *parishii* (San Diego button-celery), *Pogogyne nudiuscula* (Otay mesa mint), *Pogogyne abramsii* (San Diego mesa mint), *Orcuttia californica* (California Orcutt grass)) (Service 1998). The Recovery Plan also outlines steps necessary to stabilize and recover these species to the point where protection under the Act is no longer required. The Recovery Plan uses Management Areas to define regional conservation needs. We have used these Management Areas to aid in identifying habitat essential to the conservation of the species. The areas essential for conservation of this species are detailed in appendices F and G of the Recovery Plan. This and additional information gathered after the completion of the Recovery Plan, are the basis for identifying the essential habitat for *Navarretia fossalis*.

To map and define the areas listed in the Recovery Plan we used research and survey observations published in peer-reviewed articles, regional Geographic Information System (GIS) vegetation, soil, and species coverages, and data compiled in the CNDDB. Information about *Navarretia fossalis* was mapped using GIS and refined indicating the essential habitat associated with each of the occurrences. Areas not containing the primary constituent elements were not included in the boundaries of proposed critical habitat, whenever possible. After creating a GIS coverage of the essential areas, we created legal descriptions of the essential areas. We used a 100-meter grid to establish Universal Transverse Mercator (UTM) North American Datum 27 (NAD 27) coordinates which, when connected, provided the boundaries of the essential areas.

The areas of essential habitat were then analyzed with respect to sections 4(a)(3) and 4(b)(2) of the Act, and any areas that should not be included or excluded from proposed critical habitat were identified.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations or protection. These include, but are not limited to: Space for individual and population growth and for normal behavior; water, air, light, minerals, or other nutritional or physiological requirements; space for growth, development and reproduction, including the space necessary for pollinators to live; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The specific biological and physical features, otherwise referred to as the primary constituent elements, which comprise *Navarretia fossalis* habitat are based on specific components that provide for the essential biological needs of the species as described below.

Individual and Population Growth, Including Sites for Germination, Pollination, Reproduction, Pollen and Seed Dispersal, and Seed Dormancy

Navarretia fossalis is primarily associated with vernal pools (Day 1993; Service 1998) at elevations between sea level and 4,250 ft (1,300 m), and on flat to gently sloping terrain. *N. fossalis* occurs in vernal pools in alkali grassland habitat along the San Jacinto River in Riverside County (Bramlet 1993). The species also occasionally occurs in ditches and other artificial depressions in degraded vernal pool habitat (Moran 1977).

Areas That Provide Basic Requirements for Growth, Such as Water, Light, and Minerals

Navarretia fossalis requires areas that are ephemerally wet in the winter and spring months and dry in the summer and fall months. This type of ephemeral habitat does not allow either upland plants that live in a dry environment year round or wetland plants that require year round moisture to become established (Keeler-Wolf *et al.* 1998). These habitats then allow for specialized plants, such as the *N. fossalis*, to benefit from the exclusion of strictly upland and wetland plants.

Areas That Support Populations of Pollinators and Seed Dispersers

Navarretia fossalis flowers from May through June. This species has evolved mechanisms to self-pollinate (Spencer 1997). The fruit of this species consists of indehiscent (*i.e.*, not opening spontaneously at maturity to release seeds) capsules 2 to 3 millimeters long containing 5 to 25 seeds. The seeds develop a sticky, slimy coating when wet, which may retain moisture and aid in germination (Moran 1977). After fruiting, the species dries out and loses its color rapidly, and can be difficult to detect late in the dry season or in dry years. The number of individuals of *N. fossalis* at a given population site varies annually in response to the timing and amount of rainfall and temperature (Service 1998).

Sufficient studies to reveal possible pollinators of *Navarretia fossalis* have not yet been conducted. Seeds of this plant are likely dispersed locally by the flow of water throughout the vernal pool or alkali wetlands in which this plant occurs. More distant dispersal is most likely accomplished by the spiney flowerheads clinging to the fur of larger mammals or via mud containing seeds stuck to birds that visit these wetlands (pers. comm. with E. Bauder 2004)

Habitats That Are Representative of the Historic Geographical and Ecological Distribution of the Species

The distribution of *Navarretia fossalis* ranges from northwestern Los Angeles County and western Riverside County, south through coastal San Diego County, California to northwestern Baja California, Mexico (Day 1993; Munz 1974; Reiser 2001, CNPS 2001; CNDDB 2003). One population has been reported from San Luis Obispo County, however, the identification of this population is thought to be in error (pers. comm. with Spencer 2004). Fewer

than 45 populations exist in the United States (CNDDB 2004). Nearly 60 percent of the known populations are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (Service 1998). In Mexico, *N. fossalis* is known from fewer than 10 populations clustered in three areas: Along the international border, on the plateaus south of the Rio Guadalupe, and on the San Quintin coastal plain (Moran 1977).

Pursuant to our regulations, we are required to identify the primary constituent elements essential to the conservation of *Navarretia fossalis*, together with a description of proposed critical habitat. In identifying primary constituent elements, we used the best available scientific data. The physical ranges described in the primary constituent elements may not capture all of the variability that is inherent in natural systems that support *N. fossalis*. The primary constituent elements determined essential to the conservation of *N. fossalis* are:

(1) Vernal pool, alkali grassland, alkali playa, or alkali sink habitats, at elevations between sea level and 4,250 ft (1,300 m), and on flat to gently sloping terrain.

(2) Clay soils that retain water for sufficient amounts of time, especially in the winter and spring months, to support vernal pool, alkali grassland, alkali playa, or alkali sink habitats; and

(3) Watershed area immediately surrounding vernal pool, alkali grassland, alkali playa, or alkali sink habitats with hydrology necessary to maintain these specialized habitats.

Description of Essential Habitat

The majority of extant populations of *Navarretia fossalis* exist in the United States (CNDDB 2004), and are concentrated in three locations: Otay Mesa in southern San Diego County, along the San Jacinto River in western Riverside County, and near Hemet in Riverside County (Service 1998). We have determined that 26 areas totaling approximately 31,086 ac (12,580 ha) are essential to the conservation of the species. Seventeen of these areas essential to the conservation of the *N. fossalis*, totaling approximately 26,785 ac (10,839 ha), are not included in (pursuant to section 4(a)(3)) or are excluded from (pursuant to section 4(b)(2)) proposed critical habitat: Lands on Marine Corps Air Station Miramar (MCAS, Miramar); ''mission-critical'' training areas on Marine Corps Base, Camp Pendleton (Camp Pendleton); areas within approved subareas of San Diego Multiple Species Conservation Program (MSCP); and areas within the approved Western Riverside Multiple Species Habitat Conservation Plan (MSHCP). Where appropriate, these areas are described briefly in the unit descriptions in the Proposed Critical Habitat Designation section. They are also shown on the maps in the Proposed Regulation Promulgation section. Military lands not included in the proposal pursuant to section 4(a)(3) are shown on the maps for information purposes only.

All areas of essential habitat for *N. fossalis* in the Western Riverside County Management Area occur within the Western Riverside MSHCP area, and, therefore, have been excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act. These six areas are in the vicinity of Perris, Hemet, Lake Elsinore, and Temecula. The six areas are shown on a map in the Proposed Regulation Promulgation section.

Special Management Considerations or Protection

When designating critical habitat, we assess whether the areas determined to be essential for conservation may require special management considerations or protection. Many of the sites where *Navarretia fossalis* occur require special management and protection. Habitat destruction and loss is the greatest threat to this species (CNDDB 2004), followed by disruption of natural hydrologic regimes that support populations of *N. fossalis*. Projects that occur adjacent to or distant from the location of a population of *N. fossalis* can alter the hydrology and thereby impact the fitness of the population (Service 1998). In some locations encroachment of exotic plants pose a threat to *N. fossalis*; special management is needed to limit this threat (Bramlet 1996; Service 1998).

Proposed Critical Habitat Designation

Proposed critical habitat includes *Navarretia fossalis* essential habitat in Los Angeles and San Diego Counties, California. Areas proposed as critical habitat are under Federal, State, local, and private ownership. The approximate area of proposed critical habitat by county and land ownership is shown in Table 1. Certain lands that are considered essential to *Navarretia fossalis* have not been included or have been excluded from proposed critical habitat based on our 4(a)(3) and 4(b)(2) analyses; these are summarized in Table 2.

TABLE 1.—APPROXIMATE PROPOSED CRITICAL HABITAT AREA (ACRES(ac); HECTARES (ha) FOR *Navarretia fossalis* IN CALIFORNIA BY COUNTY AND LAND OWNERSHIP.

[Estimates reflect the total area within critical habitat unit boundaries.]

County	Federal*	Private	Total
Los Angeles	0 ac (0 ha)	596 ac (241 ha)	596 ac (241 ha)
Riverside	(**)	(**)	(**)
San Diego	178 ac (72 ha)	3,527 ac (1,427 ha)	3,705 ac (1,499 ha)
Total	178 ac (72 ha)	4,123 ac (1,669 ha)	4,301 ac (1,741 ha)

* Federal lands include Department of Defense and other Federal land.

** Not Applicable because all lands in Riverside County that are essential for *Navaretia fossalis* are excluded under 4(b)(2) of the Act.

TABLE 2.—APPROXIMATE ESSENTIAL HABITAT, EXCLUDED ESSENTIAL HABITAT, AND PROPOSED CRITICAL HABITAT (ACRES (ac); HECTARES (ha) FOR *Navarretia fossalis* IN LOS ANGELES, SAN DIEGO, AND RIVERSIDE COUNTIES, CALIFORNIA

Total essential habitat identified for *Navarretia fossalis*	31,086 ac (12,580 ha)
Essential habitat not included in the proposed critical habitat designation pursuant to section 4(a)(3) of the Act due to an INRMP that benefits *Navarretia fossalis* (Marine Corps Air Station (MCAS), Miramar).	774 ac (3,313 ha)
Essential habitat excluded from the proposed critical habitat designation pursuant to section 4(b)(2) of the Act: Completed and pending HCPs (San Diego Multiple Species Conservation Program (MSCP) and Western Riverside County Multiple Species Habitat Conservation Plan (MSHCP)).	25,944 ac (10,499 ha)
Essential habitat excluded from the proposed critical habitat designation pursuant to section 4(b)(2) of the Act: ''Mission-critical'' Department of Defense lands (Marine Corps Base (MCB), Camp Pendleton).	67 ac (27 ha)
Total essential habitat excluded from proposed critical habitat	26,785 ac (10,839 ha)
Total essential habitat proposed as critical habitat	4,301 ac (1,741 ha)

Lands proposed as critical habitat are divided into five units (Units 1 through 5) based on the Management Areas in which the species occurs as identified in the Recovery Plan (Service 1998). Units 1, 4, and 5 were further divided into subunits (1A, 1B, 4A, 4B, 4C, 4D, 4E, 5A, 5B, 5C, 5D) based on their geographical location. Unit boundaries were delineated based on geographical location of vernal pools, soil types, associated watersheds, and local variation of topographic position (*i.e.*, coastal mesas, inland valley). Descriptions of each unit and the reasons for proposing lands within each unit as critical habitat are presented below.

Unit 1 (Subunits 1A, 1B): Transverse Range Critical Habitat Unit, Los Angeles County, California (596 ac (241 ha))

The occurrences of *Navarretia fossalis* in northern Los Angeles County represent isolated occurrences at the northern most extent of the range of the species. Conservation biologists have demonstrated that populations at the edge of a species' distribution can be important sources of genetic variation and represent the best opportunity for colonization or re-colonization (Gilpin and Soulé 1986; Lande 1999). Although the populations of *N. fossalis* in Los Angeles County are far removed from other known locations, these pools are possible sources of unique genetic information that will aid this species in its ability to adapt to future changes in the environment. Such characteristics may not be present in other parts of the species' range (Lesica and Allendorf 1995). For these reasons the unit is essential to the conservation of the species.

The proposed Transverse Range Critical Habitat Unit encompasses 596 ac (241 ha) within the Transverse Management Area as identified in the Recovery Plan, and includes the occupied vernal pools at Cruzan Mesa in Los Angeles County (Service 1998). *Navarretia fossalis* also occurs in a vernal pool in nearby Plum Canyon. Vernal pools at both sites are currently under private ownership. These vernal pools are the last remaining vernal pools in Los Angeles County. The area proposed as critical habitat in Unit 1 contains the primary constituent elements relating to the pooling basins, watersheds, underling soil substrate and topography associated with occupied vernal pools at Cruzan Mesa and Plum Canyon in Los Angeles County.

Unit 2: San Diego North Coastal Mesas Critical Habitat Unit, San Diego County, California (143 ac (64 ha))

The San Diego North Coastal Mesas Critical Habitat Unit encompasses 143 ac (64 ha) within the San Diego North Coastal Mesas Management Area as identified in the Recovery Plan and includes occupied vernal pools on Camp Pendleton and one occupied pool complex in the City of Carlsbad (Service 1998). Essential habitat within training areas defined by the Department of Defense as ''mission critical'' in the Stuart Mesa area of the Oscar One Training Area on Camp Pendleton have been excluded from the proposed critical habitat designation pursuant to section 4(b)(2) of the Act.

Within the jurisdiction of the City of Carlsbad, one occupied vernal pool complex is located at the Poinsettia Lane train station. This complex is associated with a remnant of coastal terrace habitat and is considered essential for the conservation of the species in northern San Diego County. This pool is one of the last remaining coastal occurrences of *Navarretia fossalis* outside the boundaries of MCB Camp Pendleton. The City of Carlsbad is developing a subarea plan as part of the Draft Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County. However, the Poinsettia Lane vernal pool complex is not currently covered in the City of Carlsbad's draft subarea plan. The area being proposed as critical habitat in Unit 2 contains the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography associated with the Poinsettia Lane vernal pool complex in the City of Carlsbad.

Unit 3: San Diego Central Coastal Mesas Critical Habitat Unit, San Diego County, California (143 ac (64 ha))

The San Diego Central Coast Mesas Critical Habitat Unit encompasses 143 ac (64 ha) within the San Diego Central Coast Mesas Management Area as identified in the Recovery Plan (Service 1998), and includes occupied vernal pools.

All four areas essential for the conservation of *Navarretia fossalis* in the Central Coast Mesas Management Area are not included in or are excluded from the proposed designation. The majority of pools in this area are on MCAS Miramar and are managed as part of the base's INRMP. Miramar's INRMP places vernal pools and vernal pool habitat in management areas where vernal pool conservation is a high priority. Therefore, areas considered essential for the conservation of *N. fossalis* at Miramar MCAS have not been included in proposed critical habitat pursuant to section 4(a)(3) of the Act.

Other pools in the Central Coast Mesas Management Area are included in the San Diego MSCP. This plan details a policy of ''no-net-loss'' for vernal pools (City of San Diego 1997). There is currently an effort to develop a management plan for vernal pools within the MSCP that provides conservation benefit to *N. fossalis.* Areas considered essential for the conservation of *N. fossalis* within the MSCP are being excluded from

proposed critical habitat pursuant to section 4(b)(2) of the Act. The area being proposed as critical habitat in Unit 3 contains the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography associated with occupied vernal pools.

Unit 4 (Subunits 4A, 4B, 4C, 4D & 4E): San Diego Inland Valleys Critical Habitat Unit, San Diego County, California (3,027 ac (1,225 ha))

The San Diego Inland Valleys Critical Habitat Unit encompasses 3,027 ac (1,225 ha) within the San Diego Inland Valleys Management Area as identified in the Recovery Plan (Service 1998). The five subunits proposed as critical habitat for *Navarretia fossalis* contain one or more occupied vernal pool complexes within the jurisdiction of the City of San Marcos and the community of Ramona.

In the community of Ramona, one of the complexes is within the boundaries of Ramona Airport. These vernal pool complexes are isolated from maritime influence and are representative of vernal pools associated with alluvial or volcanic type soils (Keeler-Wolf *et al.* 1998; Service 1998). The vernal pools in San Marcos are associated with native grassland and a unique association of multiple species of *Brodiaea* (Service 1998). The Recovery Plan specifically identifies these vernal pools as essential for recovery of *N. fossalis* because of their role in stabilizing populations and preventing habitat loss (Service 1998). This unit includes vernal pools within the easternmost edge of the geographical distribution of the species. Conservation of vernal pools in this unit will help maintain the diversity of vernal pool habitats and their unique geological substrates, and will retain the genetic diversity of these geographically distinct populations. The areas being proposed as critical habitat in Unit 4 contain the primary constituent elements described above relating to the pooling basins, watersheds, underling soil substrate and topography associated with occupied vernal pools.

Unit 5 (Subunits 5A, 5B, 5C & 5D): San Diego Southern Coastal Mesas Critical Habitat Unit, San Diego County, California (392 ac (159 ha))

The San Diego Southern Coastal Mesas Critical Habitat Unit encompasses 392 ac (159 ha) within the Southern Coastal Mesas Management Area as identified in the Recovery Plan (Service 1998), and contains several vernal pools and other physiavl features essential to the conservation of *Navarretia fossalis.* Three of the four subunits (5A, 5B, 5C) proposed as critical habitat contain occupied vernal pools. The majority of the land in this unit provides the essential watershed primary constituent element that contributes to the pooling basins that support *N. fossalis.*

The majority of pools in this Unit are part of the San Diego MSCP. There is currently an effort to develop a management plan for vernal pools within the MSCP which will provide further conservation benefit to *N. fossalis.* Areas considered essential for the conservation of *Navarretia fossalis* within the MSCP have been excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act. Of the essential locations, only the vernal pools and their watersheds that occur on lands not protected by the MSCP are proposed as critical habitat. The four subunits for this region include the J15 complex or Arnie's Point and the watershed, vernal pools, and ephemeral ponds that occur on east Otay Mesa that are in the Major and Minor Amendment Areas of the MSCP.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. In our regulations at 50 CFR 402.2, we define destruction or adverse modification as ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to: Alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical.'' We are currently reviewing the regulatory definition of adverse modification in relation to the conservation of the species.

Section 7(a) of the Act requires Federal agencies, including the Service, to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is proposed or designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. If a species is listed or critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. Through this consultation, the action agency ensures that the permitted actions do not jeopardize the continued existence of the species or destroy or adversely modify critical habitat.

When we issue a biological opinion concluding that a project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. ''Reasonable and prudent alternatives'' are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat. Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control over the action or such discretionary involvement or control is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conference with us on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain an opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as the biological opinion when the

critical habitat is designated, if no substantial new information or changes in the action alter the content of the opinion (*see* 50 CFR 402.10(d)).

Activities on Federal lands that may affect *Navarretia fossalis* or its critical habitat will require section 7 consultation. Activities on private or State lands requiring a permit from a Federal agency, such as a permit from the Army Corps under section 404 of the Clean Water Act, a section 10(a)(1)(B) permit from the Service, or some other Federal action, including funding (*e.g.*, Federal Highway Administration or Federal Emergency Management Agency funding), will also continue to be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat and actions on non-Federal and private lands that are not federally funded, authorized, or permitted do not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation. Activities that may destroy or adversely modify critical habitat include those that appreciably reduce the value of critical habitat to *Navarretia fossalis.* We note that such activities may also jeopardize the continued existence of the species.

To properly portray the effects of critical habitat designation, we must first compare the section 7 requirements for actions that may affect critical habitat with the requirements for actions that may affect a listed species. Section 7 prohibits actions funded, authorized, or carried out by Federal agencies from jeopardizing the continued existence of a listed species or destroying or adversely modifying the listed species' critical habitat. Actions likely to ''jeopardize the continued existence'' of a species are those that would appreciably reduce the likelihood of the species' survival and recovery. Actions likely to ''destroy or adversely modify'' critical habitat are those that would appreciably reduce the value of critical habitat to the listed species.

Federal agencies already consult with us on activities in areas currently occupied by the species to ensure that their actions do not jeopardize the continued existence of the species. These actions include, but are not limited to:

(1) Removing, thinning, or destroying *Navarretia fossalis* habitat (as defined in the primary constituent elements discussion), whether by burning, mechanical, chemical, or other means (*e.g.*, plowing, grubbing, grading, grazing, woodcutting, construction, road building, mining, mechanical weed control, herbicide application, etc.);

(2) Activities that appreciably degrade or destroy *Navarretia fossalis* habitat (and its primary constituent elements) include, but are not limited to, livestock grazing, clearing, disking, farming, residential or commercial development, introducing or encouraging the spread of nonnative species, off-road vehicle use, and heavy recreational use;

(3) Activities that appreciably diminish habitat value or quality through indirect effects (*e.g.*, edge effects, invasion of exotic plants or animals, or fragmentation); and

(4) Any activity, including the regulation of activities by the Corps of Engineers under section 404 of the Clean Water Act or activities carried out by or licensed by the Environmental Protection Agency (EPA), that could alter watershed or soil characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain *Navarretia fossalis* habitat. These activities include, but are not limited to, altering the natural fire regime either through fire suppression or by using prescribed fires that are too frequent or poorly-timed; development, including road building and other direct or indirect activities; agricultural activities, livestock grazing, and vegetation manipulation such as clearing or grubbing in the watershed upslope from *Navarretia fossalis*.

(5) Road construction and maintenance, right-of-way designation, and regulation of agricultural activities, or any activity funded or carried out by the Department of Transportation or Department of Agriculture that could result in discharge of dredged or fill material, excavation, or mechanized land clearing of *Navarretia fossalis* habitat;

(6) Licensing of construction of communication sites by the Federal Communications Commission or funding of construction or development activities by the U.S. Department of Housing and Urban Development that could result in discharge of dredged or fill material, excavation, or mechanized land clearing of *Navarretia fossalis* habitat; and

(7) Funding and implementation of disaster relief projects by the FEMA and the Natural Resource Conservation Service's Emergency Watershed Program, including erosion control, flood control, and stream bank repair to reduce the risk of loss of property that could result in discharge of dredged or fill material, excavation, or mechanized land clearing of *Navarretia fossalis* habitat or that could alter watershed or soil characteristics in ways that would appreciably alter or reduce the quality or quantity of surface and subsurface flow of water needed to maintain *Navarretia fossalis* habitat.

All lands proposed as critical habitat are within the geographical area occupied by the species and are essential for the conservation of *Navarretia fossalis.* Federal agencies already consult with us on actions that may affect *N. fossalis* to ensure that their actions do not jeopardize the continued existence of the species. Thus, we do not anticipate substantial additional regulatory protection will result from critical habitat designation.

Exclusions Under Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that critical habitat shall be designated, and revised, on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. An area may be excluded from critical habitat if it is determined that the benefits of exclusion outweigh the benefits of specifying a particular area as critical habitat, unless the failure to designate such area as critical habitat will result in the extinction of the species.

In our critical habitat designations, we have used the provisions outlined in section 4(b)(2) of the Act to evaluate lands essential to the conservation of the subject species for possible exclusion from proposed critical habitat. Lands which we have either excluded from or not included in critical habitat based on those provisions include those covered by: (1) Legally operative HCPs that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (2) draft HCPs that cover the species, have undergone public review and comment, and provide assurances that the conservation measures for the species will be implemented and effective (*i.e.*, pending HCPs); (3) Tribal conservation plans that cover the species and provide assurances that the conservation measures for the species will be implemented and effective; (4) State conservation plans that provide assurances that the conservation measures for the species will be implemented and effective; and (5) Service National Wildlife Refuge System

Comprehensive Conservation Plans that provide assurances that the conservation measures for the species will be implemented and effective.

Relationship of Critical Habitat to Approved Habitat Conservation Plans

Regional HCPs

As described above, section 4(b)(2) of the Act requires us to consider other relevant impacts, in addition to economic and national security impacts, when designating critical habitat. Section 10(a)(1)(B) of the Act authorizes us to issue permits for the take of listed wildlife species incidental to otherwise lawful activities. Development of an HCP is a prerequisite for the issuance of an incidental take permit pursuant to section 10(a)(1)(B) of the Act. An incidental take permit application must be augmented by an HCP that identifies implementable conservation measures to implement for the species to minimize and mitigate the impacts of the permitted incidental take.

Some areas occupied by *Navarretia fossalis* involve complex HCPs that address multiple species, cover large areas, and have many participating permittees. Many of the large regional HCPs in southern California have been, or are being, developed to provide for the voluntary and cooperative conservation of numerous federally listed species and rare species and their habitat. Over time, areas in the planning area are addressed per the HCP, and key areas are acquired, managed, and monitored. These HCPs are designed to implement conservation actions to address future projects that are anticipated to occur within the planning area of the HCP, to reduce delays in the permitting process.

Approved regional HCPs (*e.g.*, those sponsored by cities, counties or other local jurisdictions) where *Navarretia fossalis* is addressed, provide for the protection and management of habitat essential for the conservation of the species while shifting development to non-essential areas. Regional HCP development processes provide an intensive data collection and analysis regarding habitat of *N. fossalis.* The process also enables us to develop a reserve system that provides for the biological needs and long-term conservation of the species (Schwartz 1999).

Completed HCPs and their accompanying Implementing Agreements (IA) contain management measures and protections for identified preserve areas that protect, restore, and enhance the value of these lands as habitat for *Navarretia fossalis.* These measures include explicit standards to minimize impacts to the addressed species and its habitat. In general, HCPs are designed to ensure that the value of the conservation lands are maintained, expanded, and improved for the species that they cover.

In approving these HCPs, we have provided assurances to permit holders that once the protection and management required under the plans are in place and for as long as the permit holders are fulfilling their obligations under the plans, no additional mitigation in the form of land or financial compensation will be required of the permit holders and in some cases, specified third parties.

Navarretia fossalis is covered under the San Diego MSCP and the Western Riverside MSHCP. Portions of the proposed critical habitat units warrant exclusion from the proposed designation of critical habitat under section 4(b)(2) of the Act based on the management and protection afforded under the approved and legally operative San Diego MSCP subarea plans and the Western Riverside MSHCP. We have determined that the benefits of excluding essential habitat areas within these legally operative HCPs from the proposed critical habitat designations will outweigh the benefits of including them.

Western Riverside Multiple Species Habitat Conservation Plan (MSHCP)

Areas of essential habitat for *N. fossalis* in the Western Riverside County Management Area occur within the Western Riverside MSHCP area, and have been excluded from proposed critical habitat pursuant to section 4(b)(2) of the Act. The Western Riverside MSHCP was developed over a period of eight years. Participants in this HCP include 14 cities, the County of Riverside (including the Riverside County Flood Control and Water Conservation Agency, Riverside County Transportation Commission, Riverside County Parks and Open Space District, and Riverside County Waste Department), the California Department of Parks and Recreation, and the California Department of Transportation. The Western Riverside MSHCP is a subregional plan under the State's NCCP and was developed in cooperation with the California Department of Fish and Game. The MSHCP establishes a multi-species conservation program to minimize and mitigate the expected loss of habitat values of ''covered species'' and, with regard to covered animal species, their incidental take. The intent of the MSHCP is to provide avoidance, minimization, and mitigation measures for the impacts of proposed activities on covered species and their habitats. Within the 1,260,000 ac (510,000 ha) Plan Area of the MSHCP, approximately 153,000 ac (62,000 ha) of diverse habitats are to be conserved. The proposed conservation of 153,000 ac (62,000 ha) will complement other existing natural and open space areas (*e.g.*, State Parks, Forest Service, and County Park Lands). *Navarretia fossalis* is a covered species under the MSHCP. The MSHCP has five objectives to conserve and monitor *Navarretia fossalis* populations: (1) To include within the MSHCP conservation area at least 6,900 ac of suitable habitat; (2) include within the MSHCP conservation area at 13 of the known locations of the species at Skunk Hollow, the Santa Rosa Plateau, the San Jacinto Wildlife Area, floodplains of the San Jacinto River from the Ramona Expressway to Railroad Canyon, and upper Salt Creek west of Hemet; (3) to conduct surveys for the species; (4) to include with the MSHCP conservation area the floodplain of the San Jacinto River consistent with Objective 1, and maintain floodplain processes along the river to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change; and (5) to include with the MSHCP conservation area the floodplain along Salt Creek generally in its existing condition from Warren Road to Newport Road and the vernal pools in Upper Salt Creek west of Hemet, and maintain floodplain processes along the river to provide for the distribution of the species to shift over time as hydrologic conditions and seed bank sources change.

San Diego Multiple Species Conservation Program (MSCP)

Portions of Units 3 and 5 are excluded from proposed critical habitat because they are within the San Diego MSCP in southwestern San Diego County. The San Diego MSCP effort encompasses approximately 582,000 ac (236,000 ha) and reflects the cooperative efforts of the local jurisdictions, the State, the building industry, and environmentalists. The San Diego MSCP provides for the establishment over the permit term of approximately 171,000 ac (69,573 ha) of preserve areas to provide conservation benefits for 85 federally listed and sensitive species. The San Diego MSCP and approved subarea plans provide measures to conserve *Navarretia fossalis* populations on Otay Mesa. Surveys for *N. fossalis* are required in suitable habitat (*i.e.*, vernal pools, ephemeral

wetlands, and seasonally ponded areas). These lands are to be permanently maintained and managed for the benefit of *N. fossalis* and other covered species. The eastern portion of Otay Mesa includes Major and Minor Amendment Areas. These areas require a special permitting process; therefore, we included them in this critical habitat proposal.

Other Regional NCCPs and HCPs

There are other regional NCCP/HCP efforts under way in southern California that have not yet been completed but which, upon approval, will provide conservation benefits to *Navarretia fossalis.* Lands within these HCPs are not excluded from consideration for proposed critical habitat. The Draft Multiple Habitat Conservation Program (MHCP) in northwestern San Diego County includes approximately 112,000 ac (45,324 ha) within the study area. Currently, seven cities are participating in the development of the MHCP: Carlsbad, Encinitas, Escondido, San Marcos, Oceanside, Vista, and Solana Beach. Coverage for *N. fossalis* has not yet been determined for this plan and, therefore, we propose critical habitat within the planning area.

(1) Benefits of Inclusion. The principal effect of designated critical habitat is that federally funded or authorized activities within critical habitat may require consultation under section 7 of the Act. Consultation ensures that action entities avoid adverse modification of critical habitat. Currently approved and permitted HCPs and NCCP/HCPs ensure the long-term survival of addressed species. HCPs or NCCP/HCPs and IAs include management measures and protections for conservation lands designed to protect, restore, and enhance their value as habitat for covered species and thus provide benefits to the species well in excess of those that would result from a critical habitat designation.

(2) Benefits of Exclusion. The benefits of excluding lands within HCPs from critical habitat designation include carrying out the assurances provided by the Service to landowners, communities, and counties in return for their voluntary adoption of the HCP, including relieving them of the additional regulatory burden that might be imposed by critical habitat. Many HCPs become the basis for regional conservation plans consistent with the recovery objectives for listed species covered within the plan area. Many of these HCPs provide conservation benefits to unlisted, rare species. Imposing additional regulatory review after an HCP is completed solely as a result of the designation of critical habitat may undermine conservation efforts and partnerships in many areas. In fact, it could result in the loss of species' benefits if participants abandon the voluntary HCP process because it may result in an additional regulatory burden requiring more of them than of other parties who have not voluntarily participated in species conservation. Designation of critical habitat within the boundaries of approved HCPs it is likely to be viewed as a disincentive to those entities currently developing HCPs or contemplating them in the future.

A related benefit of excluding lands within HCPs from critical habitat designation is the continued ability by the Service to seek new partnerships. These may include future HCP participants, such as States, counties, local jurisdictions, conservation organizations, and private landowners. These entities together may implement conservation actions that we would be unable to accomplish otherwise.

An HCP or NCCP/HCP application must undergo section 7 consultation. While this consultation does not address adverse modification to critical habitat, it will determine if the HCP jeopardizes the species in the plan area. Federal actions not covered by the HCP, but in areas occupied by listed species, still require consultation under section 7 of the Act. HCPs and NCCP/HCPs typically provide greater conservation benefits to an addressed listed species than section 7 consultations because HCPs and NCCP/HCPs assure the long-term protection and management of a covered species and its habitat, and funding for such management through the standards found in the 5-Point Policy for HCPs (64 FR 35242). Such assurances are typically not provided by ordinary section 7 consultations which are limited to requiring that the specific action being consulted upon not jeopardize the continued existence of the species.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion. The San Diego MSCP in southwestern San Diego County and the Western Riverside MSHCP both include *Navarretia fossalis* as a covered species. HCPs and NCCP/HCPs provide protection for *N. fossalis* and its associated habitat by securing the land where this plant occurs and developing a management plan for vernal pool ecosystems. The educational benefits of critical habitat, including informing the public of areas that are essential for the long-term survival and conservation of the species, are still accomplished from material provided on our Web site and through public notice and comment procedures required to establish an HCP or NCCP/HCP. We have also received input from the public through the public participation that occurs in the development of many regional HCPs or NCCP/HCPs. For these reasons, we believe proposing critical habitat has little additional benefit in areas covered by HCPs, provided that the HCP or NCCP/HCP specifically and adequately covers the species for which critical habitat is being proposed. We do not believe that this exclusion would result in the extinction of the species because the essential habitat within these HCPs will be conserved, and we have already consulted on these HCPs under section 7 of the Act.

Relationship to Department of Defense Lands

The Sikes Act Improvements Act of 1997 (Sikes Act) requires each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resources Management Plan (INRMP). An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found there. INRMPs include an assessment of the ecological needs on the installation, including needs to provide for the conservation of listed species; a statement of goals and priorities; a description of management actions to be implemented to provide for these ecological needs; a monitoring plan, and an adaptive management plan.

Section 318 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136) amended the Endangered Species Act to address the relationship of INRMPs to critical habitat by adding a new section 4(a)(3)(B). This provision prohibits the Service from designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary of the Interior determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation. MCAS Miramar has an INRMP in place that provides a benefit for *Navarretia fossalis.* Camp Pendleton has an INRMP in place that provides a framework for managing natural resources.

Marine Corps Air Station Miramar

MCAS Miramar completed a final INRMP in May 2000 that provides a benefit to *Navarretia fossalis.* MCAS

Miramar has identified management areas with different resource conservation requirements and management concerns, and identifies them with five separate levels that correspond to their sensitivity. The majority of vernal pools and habitats that support vernal pool species, including the single known occurrence of *N. fossalis,* are located in ''Level I Management Areas (MAs).'' Preventing damage to vernal pool resources is the highest conservation priority in Management Areas with the ''Level I'' designation. The conservation of vernal pools in this MA is achieved through education of base personnel, proactive measures to avoid accidental impacts, and maintenance of an updated inventory of vernal pool basins and the associated vernal pool watersheds.

Since the completion of MCAS Miramar's INRMP, we have received reports on Miramar's vernal pool monitoring and restoration program and correspondence detailing the installation's expenditures on the objectives outlined in its INRMP. MCAS Miramar continues to monitor and manage its vernal pool resources; programs include a study in progress on the effects of fire on vernal pool resources, vernal pool mapping and species surveys, and a study of Pacific bentgrass *(Agrostis avenaceae),* an invasive exotic grass found in some vernal pools on the base. We believe this INRMP benefits this species. The pools on MCAS Miramar which support *Navarretia fossalis* are considered essential for the conservation of this species. In accordance with section 4(a)(3) of the Act, these lands that are essential to the conservation of *N. fossalis* on MCAS Miramar have not been included in the proposed designation of critical habitat because the INRMP provides a benefit to the species.

Marine Corps Base Camp Pendleton

Under 4(b)(2) of the Act, we have considered the effect of a critical habitat designation on national security and have determined that the benefits of exclusion outweigh the benefits of inclusion. We are, therefore, not proposing critical habitat on ''mission-critical'' training areas on Camp Pendleton. In this proposal we refer to areas designated as training areas on maps created by MCB, Camp Pendleton as ''mission-critical'' training areas.

The Marine Corps undertakes section 7 consultation of the Act for activities that may affect federally threatened or endangered species on Camp Pendleton. On March 30, 2000, a formal consultation was initiated between the Marine Corps and the Fish and Wildlife Service regarding their activities on upland areas of Camp Pendleton. The upland consultation that addresses vernal pool habitat, *Navarretia fossalis,* and other species is not yet complete. We are currently working cooperatively with Camp Pendleton to facilitate the completion of this consultation.

To continue its critical training mission pending completion of the consultation, the Marine Corps has implemented measures to avoid jeopardy of *Navarretia fossalis* and other listed species within the uplands area. In particular, the Marine Corps is implementing a set of ''programmatic instructions'' to avoid adverse effects to *N. fossalis.*

(1) Benefits of Inclusion

The primary benefit of proposing critical habitat is to identify lands essential to the conservation of the species which, if critical habitat was designated, would require consultation to ensure activities would not adversely modify critical habitat or jeopardize the continued existence of the species. We are in formal consultation with the Marine Corps on upland activities to ensure current and proposed actions will not jeopardize the species' continued existence. Therefore, we do not believe that designation of ''mission-critical'' training areas on Camp Pendleton as critical habitat will appreciably benefit *Navarretia fossalis* beyond the protection already afforded the species under the Act. Exclusion of these lands will not result in the extinction of the species because the conservation of *N. fossalis* populations will be addressed through our uplands consultation with the Marine Corps. The lands involved in this consultation are ''mission-critical'' training areas, and essential populations of *N. fossalis* occupy them.

(2) Benefits of Exclusion

There are benefits to excluding areas on Camp Pendleton from critical habitat designation. Essential habitat for *Navarretia fossalis* within ''mission-critical'' training areas on Camp Pendleton are occupied by the species, and Section 7 consultations have been completed or are in progress. If essential habitat that occurs within ''mission-critical'' training areas is proposed as critical habitat, the Marine Corps would be required to determine if activities would adversely modify or destroy proposed critical habitat. If such a determination was made, the Marine Corps would be compelled to conference with us pursuant to the requirements of section 7 of the Act.

If proposed critical habitat within training areas is included in a final designation, the Marine Corps would likely be compelled to review completed or in progress consultations to determine if activities may affect designated critical habitat. If 'may affect' determinations were made, the Marine Corps would be further obligated to initiate or reinitiate consultations with us.

(3) Benefits of Exclusion Outweigh the Benefits of Inclusion

We consider specific lands that provide benefits to *Navarretia fossalis* essential for its conservation. For areas proposed as critical habitat not considered ''mission-critical'' training areas or are leased to the State of California, we will complete the balancing analysis under section 4(b)(2) in the final rule. We have considered and excluded lands in ''mission-critical'' training areas on Camp Pendleton from proposed critical habitat. Maps delineating habitat for *N. fossalis,* overlaid with ''mission-critical'' training areas on Camp Pendleton, are available for public review and comment at the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section) or on the Internet at *http://carlsbad.fws.gov.* These maps are provided to allow the public the opportunity to adequately comment on these exclusions. We do not believe that this exclusion would result in the extinction of the species because the Marine Corps undertakes section 7 consultation of the Act for activities that may affect federally threatened or endangered species on Camp Pendleton, and because the Marine Corps has implemented measures to avoid jeopardy of *N. fossalis* and other listed species within the uplands area.

Economic Analysis

An analysis of the economic impacts of proposing critical habitat for *Navarretia fossalis* is being prepared. We will announce the availability of the draft economic analysis as soon as it is completed, at which time we will seek public review and comment for a period not to exceed 30 days. At that time, copies of the draft economic analysis will be available for downloading from the Internet at *http://carlsbad.fws.gov,* or by contacting the Carlsbad Fish and Wildlife Office directly (*see* **ADDRESSES** section).

Peer Review

In accordance with our joint policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three

appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure that our critical habitat designation is based on scientifically sound data, assumptions, and analyses. We will send these peer reviewers copies of this proposed rule immediately following publication in the **Federal Register**. We will invite these peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designation of critical habitat.

We will consider all comments and information received during the comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Public Hearings

The Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. Such requests must be made in writing and be addressed to the Field Supervisor (*see* **ADDRESSES** section). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings in the **Federal Register** and local newspapers at least 15 days prior to the first hearing.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of the sections, use of headings, paragraphing, and so forth) aid or reduce its clarity? (4) Is the description of the notice in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the proposed rule? (5) What else could we do to make this proposed rule easier to understand?

Send a copy of any comments on how we could make this proposed rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240. You may e-mail your comments to this address: *Exsec@ios.doi.gov.*

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is significant in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. The Office of Management and Budget (OMB) has not reviewed this rule. We are preparing a draft economic analysis of this proposed action, and will use the results of this analysis to meet the requirement of section 4(b)(2) of the Act to determine the economic consequences of designating the specific areas as critical habitat and possibly excluding any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such areas as part of the critical habitat, unless failure to designate such area as critical habitat will lead to the extinction of *Navarretia fossalis.* This analysis will also be used to determine compliance with Executive Order 12866, Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 12630.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (*i.e.*, small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities.

At this time, we lack the available economic information necessary to provide an adequate factual basis for the required RFA finding. Therefore, the RFA finding is deferred until completion of the draft economic analysis prepared pursuant to section 4(b)(2) of the Act and Executive Order 12866. This draft economic analysis will provide the required factual basis for the RFA finding. Upon completion of the draft economic analysis, we will publish a notice of availability of the draft economic analysis of the proposed designation and reopen the public comment period for the proposed designation. We will include with the notice of availability, as appropriate, an initial regulatory flexibility analysis or a certification that the rule will not have a significant economic impact on a substantial number of small entities accompanied by the factual basis for that determination. We have concluded that deferring the RFA finding until completion of the draft economic analysis is necessary to meet the purposes and requirements of the RFA. Deferring the RFA finding in this manner will ensure that we make a sufficiently informed determination based on adequate economic information and provides the necessary opportunity for public comment.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule to designate critical habitat for *Navarretia fossalis* is a significant regulatory action under Executive Order 12866 in that it may raise novel legal or policy issues, but it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of federal assistance. ''It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates

to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; AFDC work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because all of the areas designated for critical habitat are occupied by *Navarretia fossalis* and would have required consultation if a Federal nexus was present regardless of this critical habitat designation. As such, Small Government Agency Plan is not required. We will, however, further evaluate this issue as we conduct our economic analysis and revise this assessment if appropriate.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. The rule will not increase or decrease the current restrictions on private property concerning take of *Navarretia fossalis.* Due to current public knowledge of the species' protection, the prohibition against take of the species both within and outside of the designated areas, and the fact that critical habitat provides no incremental restrictions, we do not anticipate that property values will be affected by the proposed critical habitat designation. While real estate market values may temporarily decline following designation, due to the perception that critical habitat designation may impose additional regulatory burdens on land use, we expect any such impacts to be short term. Additionally, critical habitat designation does not preclude development of HCPs and issuance of incidental take permits. Owners of areas that are included in the designated critical habitat will continue to have opportunity to use their property in ways consistent with the survival of the *N. fossalis.*

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with DOI and Department of Commerce policy, we requested information from, and coordinated development of, this proposed critical habitat designation with appropriate State resource agencies in California. The designation of critical habitat in areas currently occupied by *Navarretia fossalis* imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments in that the areas essential to the conservation of the species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While making this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long-range planning (rather than waiting for case-by-case section 7 consultations to occur).

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We have proposed designating critical habitat in accordance with the provisions of the Act. This proposed rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Navarretia fossalis.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Navarretia fossalis.*

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Carlsbad Fish and Wildlife Office (*see* **ADDRESSES** section).

Author

The primary authors of this notice are the staff of the Carlsbad Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

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

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

2. In § 17.12(h) revise the entry for ''*Navarretia fossalis*'' under ''FLOWERING PLANTS'' to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
*	*	*	*	*	*		*
Navarretia fossalis	Spreading navarretia	U.S.A. (CA), Mexico (Baja, California).	Polemoniaceae—Phlox Family.	T	650	17.96(a)	NA
*	*	*	*	*	*		*

3. In § 17.96(a), add critical habitat for *Navarretia fossalis* in alphabetical order under Family Polemoniaceae to read as follows:

§ 17.96 Critical habitat—plants.

(a) Flowering plants.

* * * * *

Family Polemoniaceae: *Navarretia fossalis* (Spreading Navarretia)

(1) Critical habitat units and excluded essential habitat for *Navarretia fossalis* are depicted for San Diego, Riverside and Los Angeles Counties, California, on the maps below.

(2) The primary constituent elements of critical habitat for *Navarretia fossalis* are:

(i) Vernal pool, alkali grassland, alkali playa, or alkali sink habitats, at elevations between sea level and 4,250 ft (1,300 m), and on flat to gently sloping terrain.

(ii) Clay soils that retain water for sufficient amounts of time, especially in the winter and spring months, to support vernal pool, alkali grassland, alkali playa, or alkali sink habitats.

(iii) Watershed area immediately surrounding vernal pool, alkali grassland, alkali playa, or alkali sink habitats with hydrology necessary to maintain these specialized habitats.

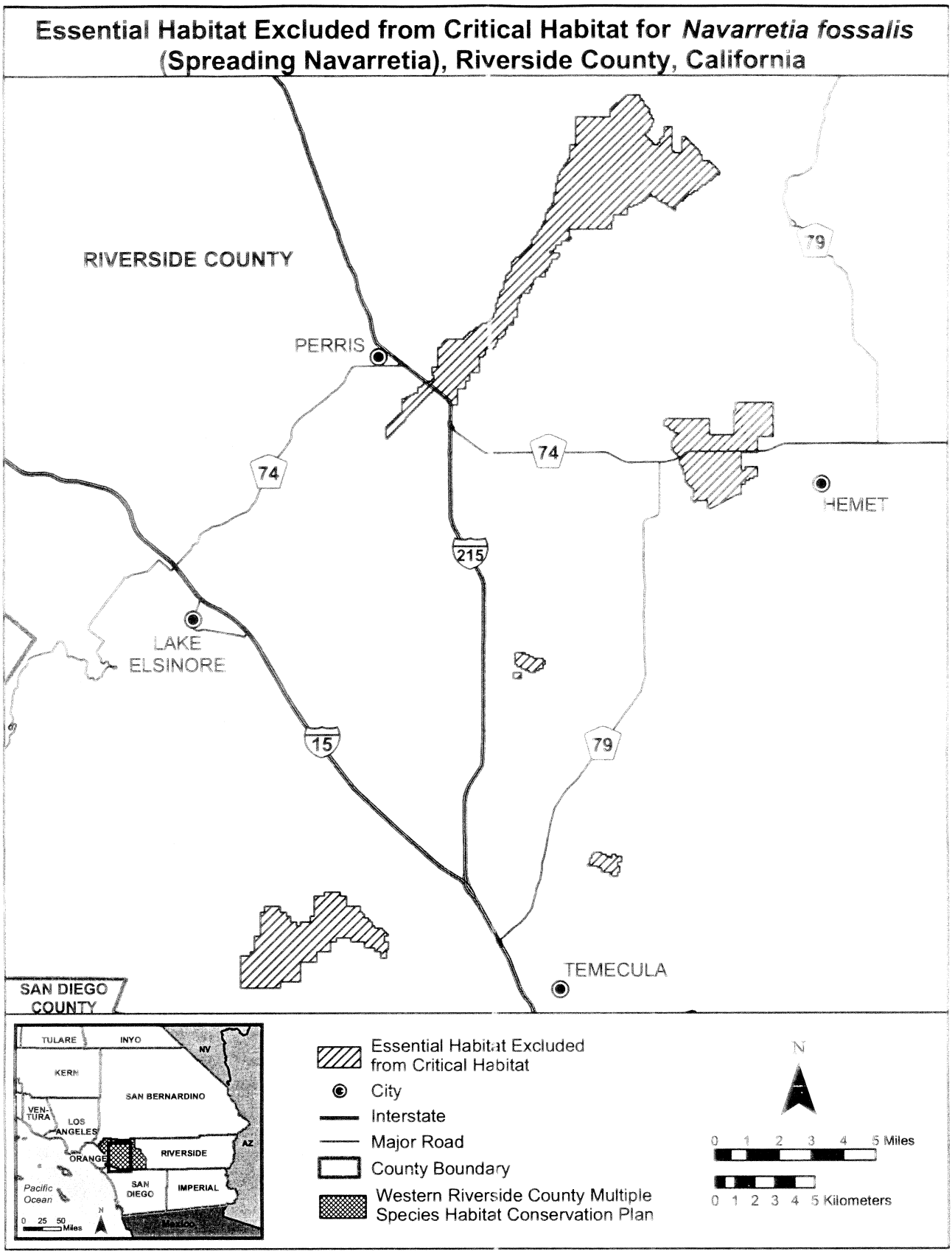
(3) Critical habitat for *Navarretia fossalis* does not include existing features and structures, such as buildings, roads, aqueducts, railroads, airport runways and buildings, other paved areas, lawns, and other urban landscaped areas not containing one or more of the primary constituent elements.

(4) Lands determined to be essential to the conservation of *Navarretia fossalis* and that have been excluded from this proposed designation, are described below:

(i) All essential habitat where an operational Habitat Conservation Plan provides for the conservation of *Navarretia fossalis*. These lands consist of non-federal lands within the Western Riverside Multiple Species Habitat Conservation Plan and preserved lands in the San Diego Multiple Species Conservation Program.

(ii) **Note:** Map of essential habitat for *Navarretia fossalis* that is being excluded from critical habitat designation within the Western Riverside MSHCP conservation area follows:

BILLING CODE 4310–55–P

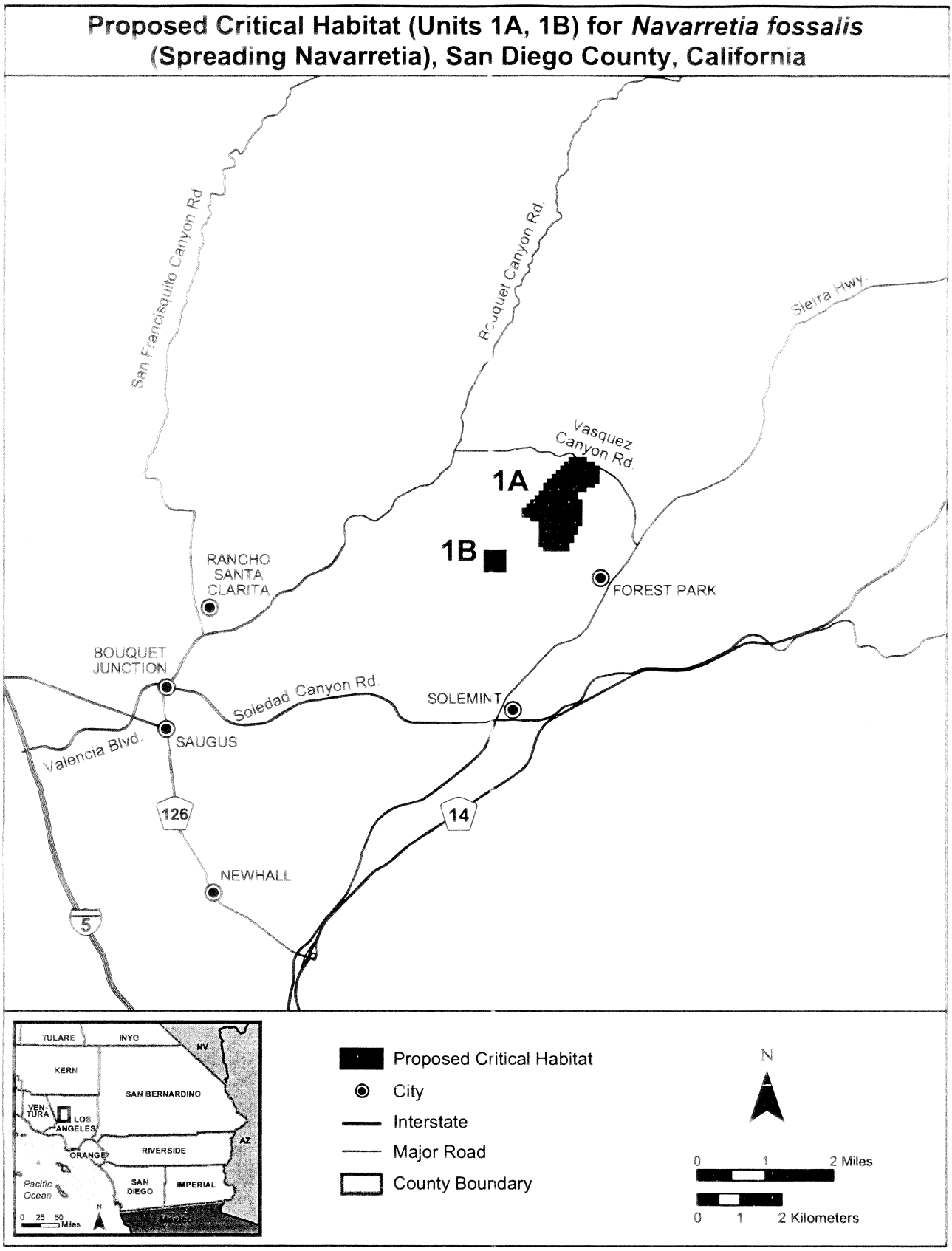

Essential Habitat Excluded from Critical Habitat for *Navarretia fossalis* (Spreading Navarretia), Riverside County, California
RIVERSIDE COUNTY
PERRIS
74
74
79
HEMET
215
LAKE ELSINORE
15
79
TEMECULA
SAN DIEGO COUNTY
TULARE
INYO
NV
KERN
SAN BERNARDINO
VEN-TURA
LOS ANGELES
ORANGE
RIVERSIDE
AZ
Pacific Ocean
SAN DIEGO
IMPERIAL
0 25 50 Miles
Essential Habitat Excluded from Critical Habitat
City
Interstate
Major Road
County Boundary
Western Riverside County Multiple Species Habitat Conservation Plan
N
0 1 2 3 4 5 Miles
0 1 2 3 4 5 Kilometers

(5) Unit 1: Transverse Range Unit. Los Angeles County, California. From USGS 1:24,000 quadrangle map Mint Canyon, California.

(i) Unit 1A: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 368000, 3815300; 368400, 3815300; 368400, 3815200; 368600, 3815200; 368600, 3815100; 368700, 3815100; 368700, 3814700; 368600, 3814700; 368600, 3814600; 368400, 3814600; 368400, 3814500; 368200, 3814500; 368200, 3814300; 368300, 3814300; 368300, 3813700; 368200, 3813700; 368200, 3813500; 368100, 3813500; 368100, 3813300; 368000, 3813300; 368000, 3813100; 367400, 3813100; 367400, 3813200; 367300, 3813200; 367300, 3813800; 367100, 3813800; 367100, 3813900; 366900, 3813900; 366900, 3814100; 367000, 3814100; 367000, 3814200; 367100, 3814200; 367100, 3814300; 367200, 3814300; 367200, 3814400; 367300, 3814400; 367300, 3814500; 367400, 3814500; 367400, 3814700; 367500, 3814700; 367500, 3814800; 367600, 3814800; 367600, 3814900; 367700, 3814900; 367700, 3815000; 367800, 3815000; 367800, 3815100; 367900, 3815100; 367900, 3815200; 368000, 3815200; returning to 368000, 3815300.

(ii) Unit 1B: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 366000, 3813100; 366500, 3813100; 366500, 3812600; 366000, 3812600; returning to 366000, 3813100.

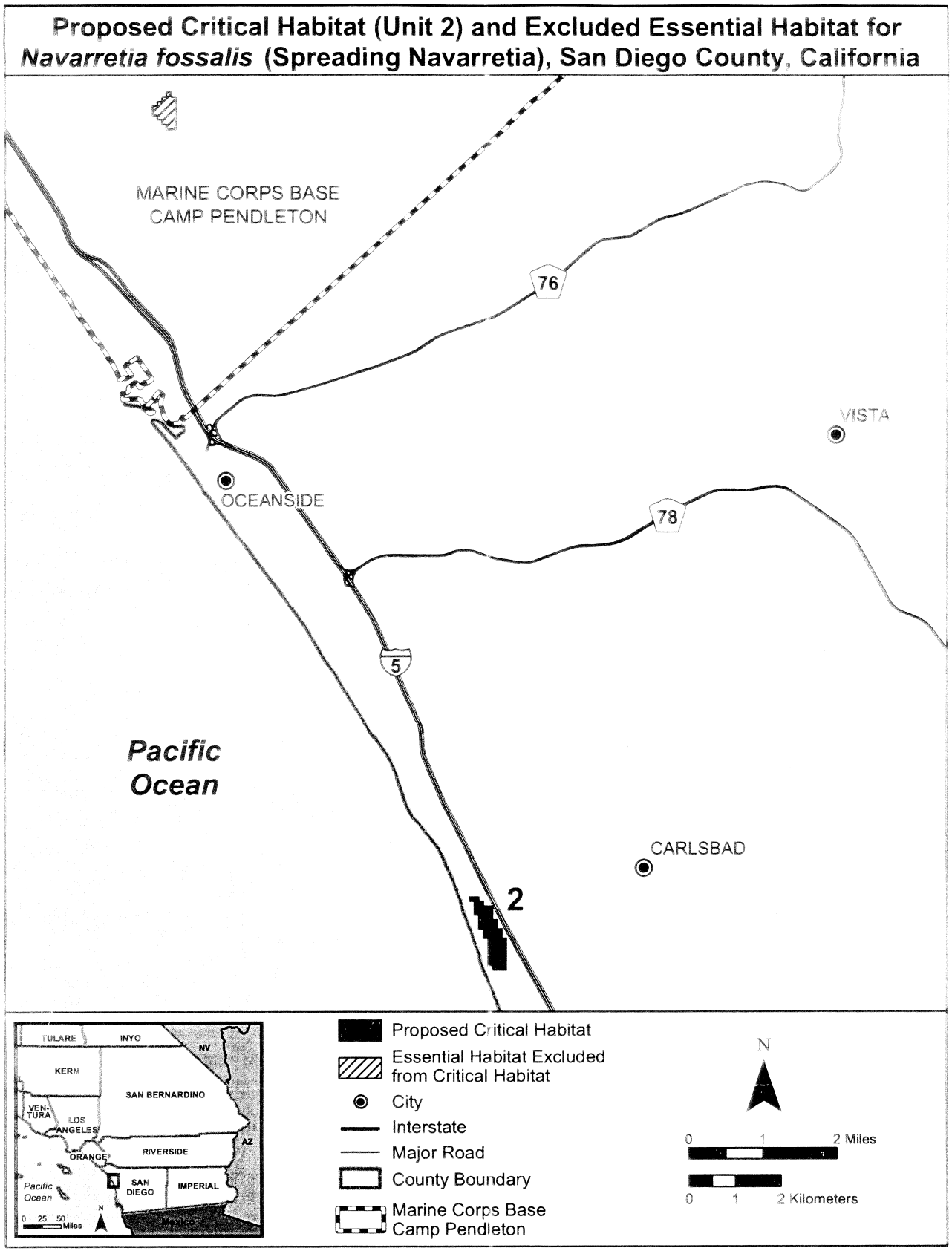
(iii) **Note:** Map of critical habitat unit 1 for *Navarretia fossalis* follows:


Proposed Critical Habitat (Units 1A, 1B) for Navarretia fossalis (Spreading Navarretia), San Diego County, California
San Francisquito Canyon Rd.
Bouquet Canyon Rd.
Sierra Hwy.
Vasquez Canyon Rd.
1A
1B
RANCHO SANTA CLARITA
FOREST PARK
BOUQUET JUNCTION
Soledad Canyon Rd.
SOLEMINT
SAUGUS
Valencia Blvd.
126
14
NEWHALL
5
TULARE
INYO
NV
KERN
SAN BERNARDINO
VEN-TURA
LOS ANGELES
ORANGE
RIVERSIDE
AZ
Pacific Ocean
SAN DIEGO
IMPERIAL
Mexico
0 25 50 Miles
N
Proposed Critical Habitat
City
Interstate
Major Road
County Boundary
N
0 1 2 Miles
0 1 2 Kilometers

(6) Unit 2: San Diego, North Coastal Mesas Unit. San Diego County, California. From USGS 1:24,000 quadrangle map Encinitas, California, land bounded by the following UTM 11 NAD27 coordinates (E, N): 470000, 3663800; 470200, 3663800; 470200, 3663700; 470300, 3663700; 470300, 3663600; 470500, 3663600; 470500, 3663300; 470600, 3663300; 470600, 3663100; 470700, 3663100; 470700, 3662900; 470800, 3662900; 470800, 3662200; 470500, 3662200; 470500, 3662300; 470400, 3662300; 470400, 3662900; 470300, 3662900; 470300, 3663100; 470200, 3663100; 470200, 3663400; 470100, 3663400; 470100, 3663700; 470000, 3663700; returning to 470000, 3663800.

(i) **Note:** Map of critical habitat unit 2 for *Navarretia fossalis* follows:

(ii) (reserved)


Proposed Critical Habitat (Unit 2) and Excluded Essential Habitat for
Navarretia fossalis (Spreading Navarretia), San Diego County, California
MARINE CORPS BASE
CAMP PENDLETON
76
VISTA
OCEANSIDE
78
5
Pacific
Ocean
CARLSBAD
2
TULARE
INYO
NV
KERN
SAN BERNARDINO
VEN-
TURA
LOS
ANGELES
AZ
ORANGE
RIVERSIDE
SAN
DIEGO
IMPERIAL
Pacific
Ocean
0 25 50
Miles
N
Proposed Critical Habitat
Essential Habitat Excluded
from Critical Habitat
City
Interstate
Major Road
County Boundary
Marine Corps Base
Camp Pendleton
N
0 1 2 Miles
0 1 2 Kilometers

(7) Unit 3: San Diego, Central Coastal Mesas Unit. San Diego County, California. From USGS 1:24,000 quadrangle map Rancho Santa Fe, California, land bounded by the following UTM 11 NAD27 coordinates (E, N): 485200, 3653600; 485600, 3653600; 485600, 3653200; 485700, 3653200; 485700, 3652900; 485300, 3652900; 485300, 3653000; 485200, 3653000; 485200, 3652700; 485000, 3652700; 485000, 3652800; 484700, 3652800; 484700, 3653200; 485000, 3653200; 485000, 3653500; 485200, 3653500; returning to 485200, 3653600; excluding lands approved within the San Diego-area Multiple Species Conservation Program, County of San Diego Subarea Plan.

(8) Unit 4: San Diego, Inland Valleys Unit. San Diego County, California. From USGS 1:24,000 quadrangle maps Ramona, San Marcos, and San Pasqual, California.

(i) Unit 4A: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 481800, 3667300; 482000, 3667300; 482000, 3667100; 481800, 3667100; returning to 481800, 3667300.

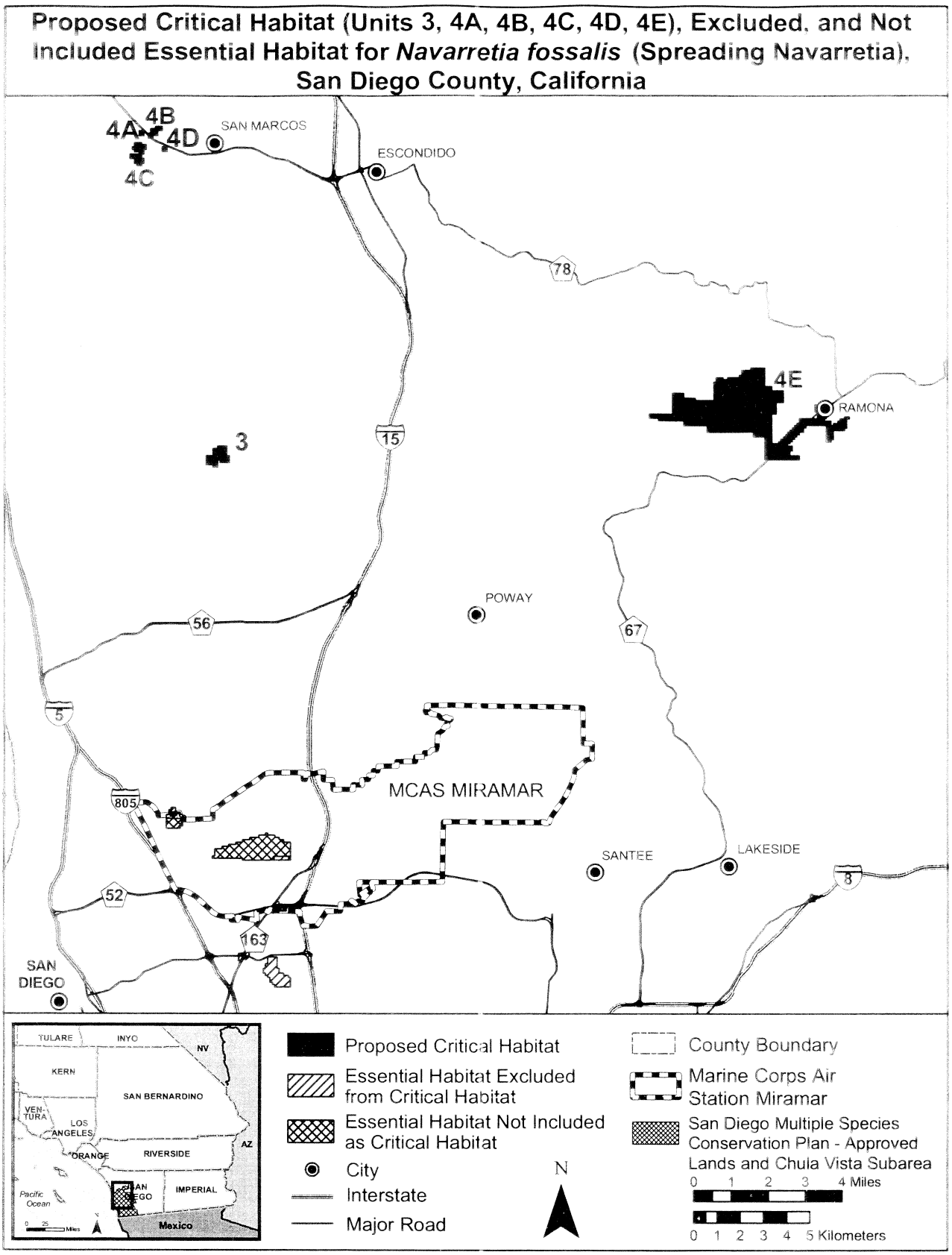
(ii) Unit 4B: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 482500, 3667500; 482800, 3667500; 482800, 3667300; 482600, 3667300; 482600, 3667100; 482400, 3667100; 482400, 3667000; 482200, 3667000; 482200, 3667200; 482300, 3667200; 482300, 3667400; 482500, 3667400; returning to 482500, 3667500.

(iii) Unit 4C: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 481600, 3666800; 481900, 3666800; 481900, 3666700; 482100, 3666700; 482100, 3666500; 482000, 3666500; 482000, 3666300; 481900, 3666300; 481900, 3666100; 482000, 3666100; 482000, 3665900; 481900, 3665900; 481900, 3665800; 481700, 3665800; 481700, 3665900; 481600, 3665900; 481600, 3666100; 481400, 3666100; 481400, 3666300; 481800, 3666300; 481800, 3666400; 481600, 3666400; 481600, 3666500; 481500, 3666500; 481500, 3666600; 481600, 3666600; returning to 481600, 3666800.

(iv) Unit 4D: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 482800, 3666600; 483000, 3666600; 483000, 3666400; 482800, 3666400; returning to 482800, 3666600.

(v) Unit 4E: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 508400, 3657000; 509000, 3657000; 509000, 3656200; 509300, 3656200; 509300, 3656000; 509800, 3656000; 509800, 3655500; 509500, 3655500; 509500, 3655000; 509300, 3655000; 509300, 3653700; 509600, 3653700; 509600, 3653800; 509700, 3653800; 509700, 3653900; 509800, 3653900; 509800, 3654000; 509900, 3654000; 509900, 3654100; 510000, 3654100; 510000, 3654200; 510100, 3654200; 510100, 3654300; 510200, 3654300; 510200, 3654400; 510300, 3654400; 510300, 3654500; 510400, 3654500; 510400, 3654600; 510500, 3654600; 510500, 3654800; 511300, 3654800; 511300, 3655100; 511200, 3655100; 511200, 3655400; 511400, 3655400; 511400, 3655300; 511500, 3655300; 511500, 3655100; 511600, 3655100; 511600, 3655200; 511800, 3655200; 511800, 3655000; 511700, 3655000; 511700, 3654800; 511600, 3654800; 511600, 3654700; 511900, 3654700; 511900, 3654500; 512000, 3654500; 512000, 3654600; 512200, 3654600; 512200, 3654700; 512300, 3654700; 512300, 3654800; 512500, 3654800; 512500, 3654900; 512700, 3654900; 512700, 3654800; 512600, 3654800; 512600, 3654400; 512500, 3654400; 512500, 3654300; 512000, 3654300; 512000, 3653900; 511900, 3653900; 511900, 3653800; 511700, 3653800; 511700, 3654500; 510800, 3654500; 510800, 3654400; 510700, 3654400; 510700, 3654200; 510500, 3654200; 510500, 3654100; 510400, 3654100; 510400, 3654000; 510300, 3654000; 510300, 3653900; 510200, 3653900; 510200, 3653800; 510100, 3653800; 510100, 3653700; 510000, 3653700; 510000, 3653600; 510200, 3653600; 510200, 3653400; 510100, 3653400; 510100, 3653200; 510500, 3653200; 510500, 3653000; 509000, 3653000; 509000, 3654000; 508500, 3654000; 508500, 3654200; 506500, 3654200; 506500, 3654500; 505500, 3654500; 505500, 3654700; 504400, 3654700; 504400, 3654800; 504000, 3654800; 504000, 3655000; 505000, 3655000; 505000, 3655900; 505500, 3655900; 505500, 3655700; 506000, 3655700; 506000, 3655600; 506800, 3655600; 506800, 3656400; 506900, 3656400; 506900, 3656600; 507200, 3656600; 507200, 3656500; 507400, 3656500; 507400, 3656600; 507900, 3656600; 507900, 3656700; 508000, 3656700; 508000, 3656900; 508400, 3656900; returning to 508400, 3657000.

(vi) **Note:** Map of critical habitat units 3–4 for *Navarretia fossalis* follows:


Proposed Critical Habitat (Units 3, 4A, 4B, 4C, 4D, 4E), Excluded, and Not Included Essential Habitat for Navarretia fossalis (Spreading Navarretia), San Diego County, California
4A
4B
4C
4D
4E
3
SAN MARCOS
ESCONDIDO
RAMONA
POWAY
MCAS MIRAMAR
SANTEE
LAKESIDE
SAN DIEGO
78
15
56
67
5
805
52
163
8
TULARE
INYO
NV
KERN
SAN BERNARDINO
VEN-TURA
LOS ANGELES
ORANGE
RIVERSIDE
AZ
IMPERIAL
Pacific Ocean
Mexico
Proposed Critical Habitat
Essential Habitat Excluded from Critical Habitat
Essential Habitat Not Included as Critical Habitat
City
Interstate
Major Road
N
County Boundary
Marine Corps Air Station Miramar
San Diego Multiple Species Conservation Plan - Approved Lands and Chula Vista Subarea
0 1 2 3 4 Miles
0 1 2 3 4 5 Kilometers

(9) Unit 5: San Diego, Southern Coastal Mesas Unit. San Diego County, California. From USGS 1:24,000 quadrangle maps Imperial Beach, Jamul Mountains, and Otay Mesa, California.

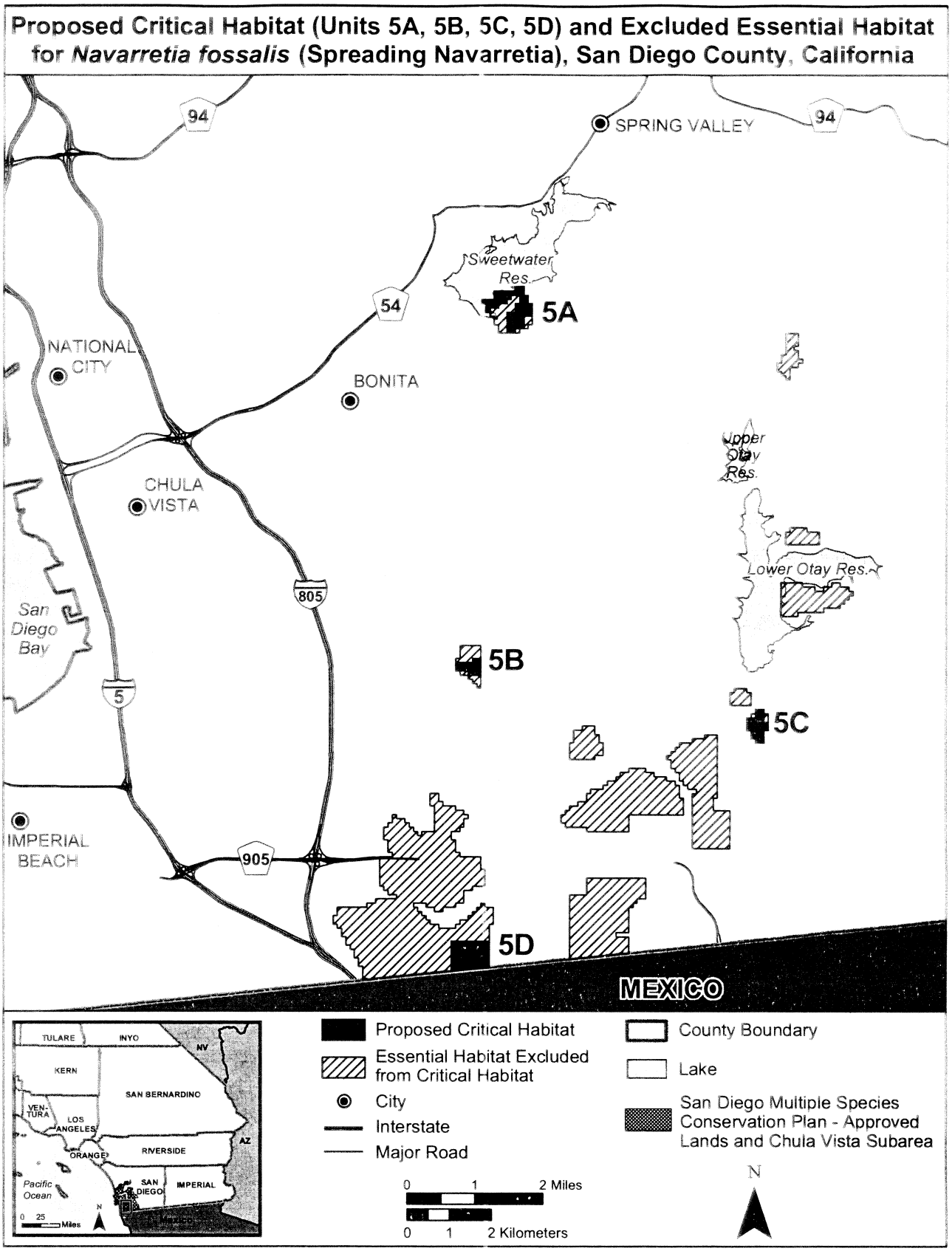
(i) Unit 5A: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 501000, 3616800; 501200, 3616800; 501200, 3616600; 501300, 3616600; 501300, 3616400; 501400, 3616400; 501400, 3616100; 501200, 3616100; 501200, 3615800; 501000, 3615800; 501000, 3615700; 500800, 3615700; 500800, 3616200; 501000, 3616200; 501000, 3616400; 501100, 3616400; 501100, 3616600; 500900, 3616600; 500900, 3616500; 500800, 3616500; 500800, 3616400; 500600, 3616400; 500600, 3616300; 500400, 3616300; 500400, 3616200; 500300, 3616200; 500300, 3616400; 500200, 3616400; 500200, 3616500; 500500, 3616500; 500500, 3616700; 501000, 3616700; returning to 501000, 3616800; excluding lands approved within the San Diego Multiple Species Conservation Program.

(ii) Unit 5B: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 500000, 3608000; 500200, 3608000; 500200, 3607600; 499900, 3607600; 499900, 3607700; 499600, 3607700; 499600, 3607900; 500000, 3607900; returning to 500000, 3608000; excluding lands approved within the San Diego Multiple Species Conservation Program.

(iii) Unit 5C: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 506700, 3606800; 506900, 3606800; 506900, 3606500; 507000, 3606500; 507000, 3606300; 506900, 3606300; 506900, 3606000; 506700, 3606000; 506700, 3606100; 506600, 3606100; 506600, 3606300; 506500, 3606300; 506500, 3606600; 506700, 3606600; returning to 506700, 3606800; excluding lands approved within the San Diego Multiple Species Conservation Program.

(iv) Unit 5D: Land bounded by the following UTM 11 NAD27 coordinates (E, N): 499500, 3601300; 500400, 3601300; 500400, 3600600; 499700, 3600600; 499700, 3600500; 499500, 3600500; returning to 499500, 3601300; excluding lands approved within the San Diego-area Multiple Species Conservation Program, City of San Diego Subarea Plan.

(v) **Note:** Map of critical habitat unit 5 for *Navarretia fossalis* follows:


Proposed Critical Habitat (Units 5A, 5B, 5C, 5D) and Excluded Essential Habitat for Navarretia fossalis (Spreading Navarretia), San Diego County, California
SPRING VALLEY
94
54
Sweetwater Res.
5A
NATIONAL CITY
BONITA
Upper Otay Res.
CHULA VISTA
Lower Otay Res.
805
San Diego Bay
5B
5
5C
IMPERIAL BEACH
905
5D
MEXICO
TULARE
INYO
NV
KERN
SAN BERNARDINO
VEN-TURA
LOS ANGELES
AZ
ORANGE
RIVERSIDE
Pacific Ocean
SAN DIEGO
IMPERIAL
0 25 Miles
Proposed Critical Habitat
Essential Habitat Excluded from Critical Habitat
City
Interstate
Major Road
County Boundary
Lake
San Diego Multiple Species Conservation Plan - Approved Lands and Chula Vista Subarea
0 1 2 Miles
0 1 2 Kilometers
N

Dated: October 1, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22541 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–55–C

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT78

Endangered and Threatened Wildlife and Plants; Proposed Designation of Critical Habitat for the San Miguel Island Fox, Santa Rosa Island Fox, Santa Cruz Island Fox, and Santa Catalina Island Fox

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, and Santa Catalina Island fox were listed as endangered species under the Endangered Species Act of 1973, as amended (Act), on March 5, 2004. We do not find any habitat on the four islands occupied by the foxes that meets the definition of critical habitat under the Act. Because there is no habitat that meets the definition of critical habitat for the island fox subspecies, there is none to propose, and we are proposing that zero critical habitat be designated.

We solicit data and comments from the public on all aspects of this proposed finding. Unless we receive information during the comment period that indicates there is habitat which meets the definition of critical habitat, we will not be preparing an economic analysis.

DATES: We will consider comments received by December 6, 2004.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003.

2. You may hand-deliver written comments to our Ventura Office, at the address given above.

3. You may send comments by electronic mail (e-mail) to: *fw1islandfox@r1.fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit comments by the alternate methods mentioned above.

4. You may fax your comments to 805/644–3958.

The complete file for this finding is available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

FOR FURTHER INFORMATION CONTACT: For the San Miguel Island fox, Santa Rosa Island fox, and Santa Cruz Island fox, contact Diane Noda, Field Supervisor, Ventura Fish and Wildlife Office at the address given above (telephone 805/644–1766; facsimile 805/644–3958). For the Santa Catalina Island fox, contact Jim Bartel, Field Supervisor, Carlsbad Fish and Wildlife Office, 6010 Hidden Valley Road, Carlsbad, CA (telephone 760/431–9440; facsimile 760/431–9624).

SUPPLEMENTARY INFORMATION:

Preamble

Designation of Critical Habitat Provides Little Additional Protection to Species

In 30 years of implementing the Act, the Service has found that the designation of statutory critical habitat provides little additional protection to most listed species, while consuming significant amounts of available conservation resources. The Service's present system for designating critical habitat has evolved since its original statutory prescription into a process that provides little real conservation benefit, is driven by litigation and the courts rather than biology, limits our ability to fully evaluate the science involved, consumes enormous agency resources, and imposes huge social and economic costs). The Service believes that additional agency discretion would allow our focus to return to those actions that provide the greatest benefit to the species most in need of protection.

Role of Critical Habitat in Actual Practice of Administering and Implementing the Act

While attention to and protection of habitat is paramount to successful conservation actions, we have consistently found that, in most circumstances, the designation of critical habitat is of little additional value for most listed species, yet it consumes large amounts of conservation resources. Sidle (1987) stated, ''Because the Act can protect species with and without critical habitat designation, critical habitat designation may be redundant to the other consultation requirements of section 7.'' Currently, only 445 species or 36 percent of the 1,244 listed species in the U.S. under the jurisdiction of the Service have designated critical habitat. We address the habitat needs of all 1,244 listed species through conservation mechanisms such as listing, section 7 consultations, the Section 4 recovery planning process, the Section 9 protective prohibitions of unauthorized take, Section 6 funding to the States, and the Section 10 incidental take permit process. The Service believes that it is these measures that may make the difference between extinction and survival for many species.

We note, however, that a recent 9th Circuit judicial opinion, *Gifford Pinchot Task Force* v. *United States Fish and Wildlife Service,* has invalidated the Service's regulation defining destruction or adverse modification of critical habitat. We are currently reviewing the decision to determine what effect it may have on the outcome of consultations pursuant to Section 7 of the Act.

Procedural and Resource Difficulties in Designating Critical Habitat

We have been inundated with lawsuits for our failure to designate critical habitat, and we face a growing number of lawsuits challenging critical habitat determinations once they are made. These lawsuits have subjected the Service to an ever-increasing series of court orders and court-approved settlement agreements, compliance with which now consumes nearly the entire listing program budget. This leaves the Service with little ability to prioritize its activities to direct scarce listing resources to the listing program actions with the most biologically urgent species conservation needs.

The consequence of the critical habitat litigation activity is that limited listing funds are used to defend active lawsuits, to respond to Notices of Intent (NOIs) to sue relative to critical habitat, and to comply with the growing number of adverse court orders. As a result, listing petition responses, the Service's own proposals to list critically imperiled species, and final listing determinations on existing proposals are all significantly delayed.

The accelerated schedules of court ordered designations have left the Service with almost no ability to provide for adequate public participation or to ensure a defect-free rulemaking process before making decisions on listing and critical habitat proposals due to the risks associated with noncompliance with judicially-imposed deadlines. This in turn fosters a second round of litigation in which

those who fear adverse impacts from critical habitat designations challenge those designations. The cycle of litigation appears endless, is very expensive, and in the final analysis provides relatively little additional protection to listed species.

The costs resulting from the designation include legal costs, the cost of preparation and publication of the designation, the analysis of the economic effects and the cost of requesting and responding to public comment, and in some cases the costs of compliance with the National Environmental Policy Act (NEPA). None of these costs result in any benefit to the species that is not already afforded by the protections of the Act enumerated earlier, and they directly reduce the funds available for direct and tangible conservation actions.

Background

The Island fox is taxonomically divided into six subspecies that are each limited in range to a single island (Gilbert *et al.* 1990; Wayne *et al.* 1991; Collins 1991a, 1993; Goldstein *et al.* 1999). Each subspecies is reproductively isolated from the others by a minimum of 5 kilometers (3 miles) of ocean waters. For further information about the subspecies' taxonomy, description, distribution, habitat, life history, and threats, please refer to the March 5, 2004, final listing rule (69 FR 10335), in which we determined that four of the subspecies were endangered. Regarding the past, present, and future threats faced by these taxa in determining the listing status, the threats are primarily due to predation from golden eagles (on San Miguel, Santa Rosa, and Santa Cruz islands) or canine distemper virus (on Santa Catalina Island). Other threats include disease, natural events, non-native herbivores and on Santa Catalina Island, competition from feral cats, and road mortality, all of which could diminish or destroy the small extant populations. See Tables 1–4, in our final listing rule, for summaries of the status, and major threats, faced by the four subspecies as well as the conservation actions undertaken to protect each of the subspecies, and the effectiveness of such measures (69 FR 10335, March 5, 2004).

Previous Federal Actions

On December 10, 2001, we published a proposal to list four subspecies of island fox as endangered (66 FR 63654). Please refer to this proposed rule for information on Federal actions prior to December 10, 2001. On April 22, 2003, the Center for Biological Diversity filed suit against the Service for failure to finalize the listing and for failure to publish a final determination regarding critical habitat (*Center for Biological Diversity* v. *Williams, et al.* No. CV–03–2729 AHM (C.D. Cal.)). In settlement of that lawsuit, we agreed to submit the final listing determination to the **Federal Register** on or by March 1, 2004, and if prudent, submit a proposed rule to designate critical habitat to the **Federal Register** on or by October 1, 2004, and a final determination regarding critical habitat on or by November 1, 2005. The final rule listing the four subspecies of the island fox as endangered was published on March 5, 2004 (69 FR 10335).

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that we designate critical habitat, to the maximum extent prudent and determinable, at the time a species is listed as endangered or threatened. Designation is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

Critical habitat is defined in section 3(5)(a) of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the March 5, 2004, final listing rule, we determined that designation of critical habitat was prudent for the island foxes. As discussed more fully below, we now find there are no ''specific areas on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection.'' Further, there are no ''specific areas outside the geographical area occupied by [the] species at the time it [was] listed that are essential for the conservation of the species.''

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features (primary constituent elements (PCEs)) that are essential to the conservation of the species, and that may require special management considerations and protection. These include, but are not limited to: space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing (or development) of offspring; and habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

The island fox, however, is a habitat generalist in all aspects of its life history. It does not require particular habitats for food, cover, breeding, and denning sites. The foxes are opportunistic omnivores, and eat a wide variety of plants (*e.g.*, grass, fruits, and berries) and animals (*e.g.*, insects, birds, mice) in whatever habitat they find them (69 FR 10336). As such the foxes use all the habitat available on each of the islands, including riparian, oak woodland, pine woodland, chaparral, coastal sage scrub, maritime scrub, and grasslands. In general, some of these habitats contain cover from aerial predation, and the nature of the cover is not habitat specific. Reproduction in the island foxes is also not limited to a specific habitat; the foxes may locate their simple den sites in any habitat where they find natural shelter (*e.g.*, brush pile, rock crevice, hollow stump, or log) (Laughrin 1977). All habitat available on the islands on which the fox is found can be and is used by the fox. We are not aware of any existing or anticipated threats to the island habitats. Accordingly, there is currently no information to support a conclusion that any specific habitat within these areas are essential. Therefore, we do not believe that there are areas within the subspecies' habitat that contain features that are essential to the conservation of the species.

Adverse effects to the fox that have occurred in these areas have been a result of activities, such as disease (canine distemper) and predation from golden eagles, which threaten individual island foxes rather than island fox habitat. While the habitat of

island foxes on all islands has been subject to substantial human-induced changes over the past 150 years and these changes have resulted in some adverse effects to island foxes, they are unlikely to have directly caused the observed declines. This species' precarious situation derives mostly from predation on the foxes themselves and disease (canine distemper) and not from any particular action that caused habitat degradation. Furthermore, habitat does not appear to be a factor limiting the current population growth rate, nor is it likely to limit future population growth. Because there are no habitat threats to the island foxes, we conclude that no areas require special management considerations or protection. Conservation of the foxes depends on addressing non-habitat related threats.

As discussed, declines have been caused largely by predation and disease, and these effects will be addressed through section 7 consultation with Federal agencies under the jeopardy standard of the Act and through the section 9 prohibitions of the Act to the extent applicable. No benefit would accrue from a critical habitat designation with respect to the effects of predation and disease on individual foxes because the regulatory effects of critical habitat designations apply to adverse modification or destruction of habitat, not to effects that result in mortality of individual foxes. Although not relevant to our determination with regard to critical habitat, we note that the threats that do exist will also be addressed by the conservation actions of the National Park Service (NPS), the Nature Conservancy, and the Catalina Island Conservancy on the islands. Moreover, again because the threats faced by the species are not habitat-based, there would be no informational benefit to the designation.

In accordance with the Act, a critical habitat designation can include areas outside the species' current range if we determine that these areas are essential to the conservation of the species. We have not found any areas outside the current range of the species to be essential for the conservation of the species. Our best data suggests that on all the islands with the exception of San Miguel, the island fox subspecies still occupy all island-based habitat,[1] and thus, there is no area that is located outside the current range of the species on Santa Rosa, Santa Cruz, and Santa Catalina Islands. With respect to San Miguel Island, in 1999, the NPS captured 14 (4 males and 10 females) of the 15 remaining foxes from San Miguel Island to protect the subspecies from further losses from predation by golden eagles and to initiate a captive propagation program. The remaining wild island fox, a lone female, evaded capture efforts until September 2003, when she was captured and brought into captivity. As of 2003, then, there were no island foxes remaining in the wild on San Miguel Island. Four years' captive breeding has increased the captive San Miguel Island fox population to 38 individuals. These individuals are in two captive breeding facilities on San Miguel Island, and the NPS and the recovery team will be releasing some of the foxes back into the wild on San Miguel Island in the next month or two as soon as they are no longer threatened by predation (C. Benz, pers. comm., 2004). Therefore, we are considering all the islands occupied by foxes. If reintroduction does not occur within the next month or two, however, and San Miguel Island is unoccupied for a time longer, we still would find no unoccupied areas essential to the conservation of the fox, as conservation of the foxes is dependent upon removal of predation.

In summary, we do not find any habitat within the islands that meets the definition of critical habitat. Because there is no habitat that meets the definition of critical habitat for the island fox subspecies, there is none to propose, and we are proposing that zero critical habitat be designated.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule in that it may raise novel legal and policy issues, but it is not anticipated to have an annual effect on the economy of $100 million or more or affect the economy in a material way. This rule does not designate critical habitat. Unless we receive information during the comment period that indicates there is habitat which meets the definition of critical habitat, we will not be preparing an economic analysis.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Unless we receive information during the comment period that indicates there is habitat which meets the definition of critical habitat, we will not be preparing an economic analysis. If we prepare an economic analysis, our assessment of economic effect will be completed prior to final rulemaking based upon review of the draft economic analysis prepared pursuant to section 4(b)(2) of the ESA and E.O. 12866.

Executive Order 13211

On May 18, 2001, the President issued an Executive Order (E.O. 13211) on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This proposed rule does not designate critical habitat for the four island fox subspecies. Therefore, no regulatory effects will derive from this action; it is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), the Service makes the following findings: (a) This rule will not produce a Federal mandate, and (b) we do not believe that this rule will significantly or uniquely affect small governments. Because we are not proposing to designate any areas of critical habitat, this rule will result in no regulatory impact on any entities.

Takings

We are not designating critical habitat in this proposed rule, and therefore, this proposed designation of critical habitat for the four island fox subspecies does not pose significant takings implications.

Federalism

We are not designating critical habitat in this proposed rule, and therefore, this proposed designation of critical habitat for the four island fox subspecies does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are not designating critical habitat in accordance with the provisions of the

[1] Since the final listing rule was published, 12 captive foxes were released into the wild on Santa Rosa Island; 4 of the 12 were later returned to captivity, and 1 of the 12 was killed by a golden eagle (NPS 2004). Currently, there are at least 7 adult foxes in the wild on Santa Rosa Island and about 50 in captivity (NPS 2004), and thus we now consider Santa Rosa Island to be occupied habitat. However, as with San Miguel Island, the NPS and the recovery team are considering additional releases of foxes back into the wild on Santa Rosa Island in the next month or two (C. Benz, Service, pers. comm. 2004).

Endangered Species Act so this rule does not burden the judicial system.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. 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.

National Environmental Policy Act

We are not proposing to designate any areas as critical habitat. It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act in connection with designating critical habitat under the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of the Interior's Manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We are not proposing to designate any areas as critical habitat. No tribal lands are essential for the conservation of the San Miguel Island fox, Santa Rosa Island fox, Santa Cruz Island fox, and Santa Catalina Island fox.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Ventura Fish and Wildlife Office (*see* **ADDRESSES** section).

Authors

The primary author of this notice is the staff of the U.S. Fish and Wildlife Service.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h) revising the entries for ''Fox, San Miguel Island, Santa Catalina Island, Santa Cruz Island, Santa Rosa Island'' under ''MAMMALS'' in the list of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
	*	*	*	*	*	*	
MAMMALS							
	*	*	*	*	*	*	
Fox, San Miguel Island.	*Urocyon littoralis litoralis.*	U.S.A. (CA)	Entire	E	742	17.97(a)	NA
Fox, Santa Catalina Island.	*Urocyon littoralis catalinae.*	U.S.A. (CA)	Entire	E	742	17.97(a)	NA
Fox, Santa Cruz Island.	*Urocyon littoralis santacruzae.*	U.S.A. (CA)	Entire	E	742	17.97(a)	NA
Fox, Santa Rosa Island.	*Urocyon littoralis santarosae.*	U.S.A. (CA)	Entire	E	742	17.97(a)	NA
	*	*	*	*	*	*	
	*	*	*	*	*	*	

3. Amend part 17 by adding a new § 17.97 to read as follows:

§ 17.97 Species for which critical habitat is prudent but not designated.

This section includes animal and plant species for which we have determined critical habitat to be prudent, but for which we did not designate critical habitat under the Act for policy and statutory reasons. We identify these species, their primary constituent elements, and the specific habitat areas essential to their conservation to further public awareness and conservation efforts.

(a) *Animals.* This paragraph (a) identifies the primary constituent elements and specific habitat areas essential to the conservation of animal species for which we determined critical habitat to be prudent but did not designate for policy and statutory reasons. We will list these species in the same order as they appear in § 17.11(h).

(1) Fox, San Miguel Island (*Urocyon littoralis litoralis*).

(i) No primary constituent elements have been identified for the San Miguel Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(2) Fox, Santa Catalina Island (*Urocyon littoralis catalinae*).

(i) No primary constituent elements have been identified for the Santa Catalina Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(3) Fox, Santa Cruz Island (*Urocyon littoralis santacruzae*).

(i) No primary constituent elements have been identified for the Santa Cruz Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(4) Fox, Santa Rosa Island (*Urocyon littoralis santarosae*).

(i) No primary constituent elements have been identified for the Santa Rosa Island fox.

(ii) There are no specific habitat areas essential to the conservation of this species.

(b) [Reserved]

Dated: October 1, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22542 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AT44

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the California Tiger Salamander *(Ambystoma californiense)* in Santa Barbara County

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of public comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service) announce the availability of a draft economic analysis for the proposed designation of critical habitat for the California tiger salamander (*Ambystoma californiense*) in Santa Barbara County (here after referred to as ''California tiger salamander'') under the Endangered Species Act of 1973, as amended (Act). We are also reopening the public comment period for the proposal to designate critical habitat for this species to allow all interested parties to comment on the proposed rule and the associated draft economic analysis. Comments previously submitted on the proposed rule need not be resubmitted as they have been incorporated into the public record as a part of this reopening of the comment period, and will be fully considered in preparation of the final rule.

DATES: We will accept all comments received on or before November 8, 2004. Any comments that we receive after the closing date may not be considered in the final decision on this proposal.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposed rule by any one of several methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003, or by facsimile 805/644–3958.

(2) You may hand-deliver written comments to our office, at the address given above.

(3) You may send comments by electronic mail (e-mail) to *fw1ctsch@r1.fws.gov.* Please see the Public Comments Solicited section below for file format and other information about electronic filing. In the event that our Internet connection is not functional, please submit your comments by the alternate methods mentioned above.

Comments and materials received, as well as supporting documentation used in preparation of the proposed critical habitat rule, will be available for public inspection, by appointment, during normal business hours at the above address. You may obtain copies of the draft economic analysis for the California tiger salamander in Santa Barbara County by contacting the Ventura Fish and Wildlife Office at the above address. The draft economic analysis and the proposed rule for critical habitat designation also are available on the Internet at *http://ventura.fws.gov/.* In the event that our Internet connection is not functional, please obtain copies of documents directly from the Ventura Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Katie Drexhage (telephone 805/549–3811; facsimile 805/549–3233 or Michael McCrary (telephone 805/644–1766; facsimile 805/644–3958), Ventura Fish and Wildlife Office, at the address listed above.

SUPPLEMENTARY INFORMATION:

Background

The California tiger salamander is a large and stocky salamander, with a broad, rounded snout. Adult males may reach a total length of 8.2 inches (in) (20.8 centimeters (cm)) while females are slightly smaller, reaching about 6.8 in (17.3 cm) in length. The top of the salamander can have white or pale yellow spots or bars on a black background. The underside varies from almost uniform white or pale yellow to a varying pattern of white or pale yellow and black. This species is restricted to California and does not overlap with any other species of tiger salamander. The Santa Barbara County salamanders are geographically separate from all other California tiger salamanders. Historically, the Santa Barbara County California tiger salamanders inhabited low-elevation (below 1,400 feet (427 meters)) vernal pools and ephemeral ponds, and associated coastal scrub, grassland, and oak savannah plant communities of the Santa Maria, Los Alamos, and Santa Rita valleys.

The loss of the California tiger salamander's upland habitat is the single most important factor contributing to the species' status. Additional threats to this species include threats to the aquatic habitat, predation and competition by introduced or non-native species, habitat fragmentation, contaminants, hybridization with non-native tiger salamanders, disease, and over-grazing.

On January 19, 2000, we published an emergency rule to list the Santa Barbara County DPS of the California tiger salamander as endangered (65 FR 3096), concurrently with a proposed rule (65 FR 3110) to list the species as endangered. We published a final rule listing the Santa Barbara County DPS of the California tiger salamander as endangered on September 21, 2000 (65 FR 57242). On May 23, 2003, we proposed to list the Central California population of California tiger salamander as a threatened DPS. In the same **Federal Register** notice we also proposed to downlist the Sonoma County DPS and Santa Barbara County DPS of California tiger salamander, from endangered to threatened status (68 FR 28648). The **Federal Register** notice also included a proposed special rule that would exempt existing routine ranching activities from the prohibitions of the Act. On August 4, 2004, we determined threatened status for the California tiger salamander rangewide (69 FR 47212). We also finalized the special rule for the species rangewide, which exempts existing routine ranching activities.

On February 25, 2003, the Environmental Defense Center and Center for Biological Diversity filed a complaint challenging our failure to designate critical habitat for the Santa Barbara County DPS of the California tiger salamander (*Environmental Defense Center et al.* v. *U. S. Fish and Wildlife Service et al.,* EVCD 03–00195 (C.D.Cal)). By order dated August 7, 2003, the district court ordered us to publish a proposed rule to designate critical habitat for the California tiger salamander. On January 22, 2004, we proposed to designate critical habitat for the Santa Barbara DPS of California tiger salamander (69 FR 3064). Approximately 13,920 acres (5,633

hectares) fall within the boundaries of the proposed critical habitat designation. Proposed critical habitat is located in Santa Barbara County, California, as described in the proposed rule. The comment period on the proposed rule closed March 22, 2004. However, on April 13, 2004, we reopened the comment period (69 FR 19394) and announced a public hearing that was held on May 11, 2004.

Critical habitat identifies specific areas, both occupied and unoccupied, that are essential to the conservation of a listed species and that may require special management considerations or protection. If the proposed rule is made final, section 7 of the Act will prohibit destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions affecting areas designated as critical habitat must consult with us on the effects of their proposed actions pursuant to section 7(a)(2) of the Act.

Section 4 of the Act requires that we consider economic and other relevant impacts prior to making a final decision on what areas to designate as critical habitat. We have prepared a draft economic analysis for the proposal to designate certain areas as critical habitat for the California tiger salamander. This analysis considers the potential economic effects of our proposed designation. It also considers the economic effects of protective measures taken as a result of listing the species under the Act, and other Federal, State, and local laws that aid habitat conservation in areas proposed for designation.

The majority of these areas occur on privately owned land. We know of no Federal, State, tribal, or military lands within proposed critical habitat. A small portion of land within one unit is owned by local jurisdictions, including the county of Santa Barbara and the Laguna County Sanitation District. The economic analysis addresses the impacts of California tiger salamander conservation efforts on activities occurring on lands proposed for designation. The analysis measures lost economic efficiency associated with real estate development, grazing activities, agriculture, vineyards, road construction projects, utility and other infrastructure projects, as well as the California Environmental Quality Act (CEQA) requirements, uncertainty, and project delay.

There is a great deal of uncertainty in estimating the impact of California tiger salamander-related conservation activities in the future. For example, the economic analysis projects significant future cost to private developers as a result of California tiger salamander conservation activities even though these costs have been relatively minimal in the past. For some activities the analysis estimates an upper-bound cost estimate, for others a conservative approach is taken to reach a best estimate. The implicit lower-bound cost estimate predicts no impact.

Total efficiency costs (*e.g.*, lost economic opportunities associated with restrictions on land use) for the upper bound scenario are estimated to be $411 million between 2005 and 2030. The efficiency costs for the lower bound scenario are estimated to be $105 million between 2005 and 2030. In both cases, the real estate industry, in particular the owners of developable land, is estimated to experience the highest cost overall, followed by agriculture and road construction projects.

Public Comments Solicited

We intend any final action resulting from this proposal to be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the economic analysis or the proposed rule. We particularly seek comments concerning:

(1) The reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act, including whether the benefits of excluding outweigh benefits of including any area as critical habitat;

(2) Specific information on the amount and distribution of California tiger salamander habitat, and what habitat is essential to the conservation of this species and why;

(3) Land use designations and current or planned activities in the subject area and their possible impacts on proposed critical habitat;

(4) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat, in particular, any impacts on small entities;

(5) Whether the economic analysis identifies all State and local costs. If not, what costs are overlooked;

(6) Whether the economic analysis makes appropriate assumptions regarding current practices and likely regulatory changes imposed as a result of the designation of critical habitat;

(7) Whether the economic analysis correctly assesses the effect on regional costs associated with land use controls that derive from the designation;

(8) Whether the designation will result in disproportionate economic impacts to specific areas that should be evaluated for possible exclusion from the final designation;

(9) Whether the economic analysis appropriately identifies all costs that could result from the designation;

(10) Whether our approach to critical habitat designation could be improved or modified in any way to provide for greater public participation and understanding, or to assist us in accommodating public concern and comments;

(11) What the likely benefits of designating critical habitat are and whether the economic analysis appropriately captures those economic benefits that are susceptible to quantification;

(12) Any suggestions to improve our economic analysis particularly with regard to its consideration of the foreseeable economic benefits of critical habitat designation; and

(13) Any suggestions to improve our ability to identify the noneconomic benefits of designating a particular area as critical habitat to enable a more comprehensive and informed analysis of the economic and other relevant impacts of designation.

All comments and information submitted during the previous comment periods on the proposed rule need not be resubmitted. If you wish to comment, you may submit your comments and materials concerning this rule by any one of several methods (*see* **ADDRESSES** section). Please submit Internet comments to *fw1ctsch@r1.fws.gov* and include ''Attn: California Tiger Salamander in SB County Critical Habitat'' in your e-mail subject header, and your name and return address in the body of your message. If you do not receive a confirmation from the system that we have received your Internet message, contact us directly by calling our Ventura Fish and Wildlife Office (*see* **FOR FURTHER INFORMATION CONTACT** section).

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home addresses from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this

prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

Author

The primary author of this notice is the Ventura Fish and Wildlife Office staff (*see* **ADDRESSES** section).

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 29, 2004.

Julie MacDonald,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 04–22540 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 69, No. 194

Thursday, October 7, 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

Forest Service

Lake County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lake County Resource Advisory Committee (RAC) will hold a meeting.

DATES: The meeting will be held on October 14, 2004, from 3:30 p.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at the Lake County Board of Supervisor's Chambers at 255 North Forbes Street, Lakeport.

FOR FURTHER INFORMATION CONTACT: Debbie McIntosh, Committee Coordinator, USDA, Mendocino National Forest, Upper Lake Ranger District, 10025 Elk Mountain Road, Upper Lake, CA 95485. (707) 275–2361; e-mail *dmcintosh@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approval of the minutes of the August 26, 2004 meeting; (2) Discuss other business for 2004; (3) Results from the Lake County Supervisor's Meeting; (4) Letters to Congress on retention of the RACs; (5) Discuss project cost accounting USFS/County of Lake; (6) Set next meeting date and (7) Public Comment period. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: September 30, 2004.

Blaine P. Baker,

Designated Federal Officer.

[FR Doc. 04–22588 Filed 10–6–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Indiana

AGENCY: Natural Resources Conservation Service (NRCS), Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Indiana for review and comment.

SUMMARY: It is the intention of NRCS in Indiana to issue five revised conservation practice standards in Section IV of the FOTG. The revised standards are: Animal Mortality Facility (316); Composting Facility (317); Closure of Waste Impoundment (360); Stripcropping (585) and Underground Outlet (620). These practices may be used in conservation systems that treat highly erodible land and/or wetlands.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

ADDRESSES: Address all requests and comments to Jane E. Hardisty, State Conservationist, Natural Resources Conservation Service (NRCS), 6013 Lakeside Blvd., Indianapolis, Indiana 46278. Copies of this standard will be made available upon written request. You may submit your electronic requests and comments to *darrell.brown@in.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Jane E. Hardisty, 317–290–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that after enactment of the law, revisions made to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Indiana will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Indiana regarding disposition of those comments and a final determination of changes will be made.

Dated: September 22, 2004.

Jane E. Hardisty,

State Conservationist, Indianapolis, Indiana.

[FR Doc. 04–22587 Filed 10–6–04; 8:45 am]

BILLING CODE 3410–16–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Jersey Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights that a conference call of the New Jersey Advisory Committee will convene at 11 a.m. and adjourn at 12 p.m., Wednesday, October 20, 2004. The purpose of the conference call is to conduct project planning.

This conference call is available to the public through the following call-in number: 1–800–473–8693, access code: 26575727. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls not initiated using the supplied call-in number or over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls using the call-in number over land-line connections. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and access code.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Ivy L. Davis of the Eastern Regional Office at 202–376–7533 by 4 p.m. on Tuesday, October 19, 2004.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 1, 2004.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 04–22573 Filed 10–6–04; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Bureau of Economic Analysis Advisory Committee

AGENCY: Bureau of Economic Analysis.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463 as amended by Public Law 94–409, Public Law 96–523, and Public Law 97–375), we are giving notice of a meeting of the Bureau of Economic Analysis Advisory Committee. The meeting's agenda is as follows: 1. Welcome and Update on BEA Activities, 2. Measuring the Real Output of Government: The Case of Education, 3. Profits, Pensions, and Compensation, 4. Researchers and Getting Access to BEA Data, and 5. International Outsourcing and Other Issues.

DATES: Friday, November 5, 2004, the meeting will begin at 9 a.m. and adjourn at approximately 4 p.m.

ADDRESSES: The meeting will take place at the Washington Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: J. Steven Landefeld, Director, Bureau of Economic Analysis, U.S. Department of Commerce, Washington, DC 20230; telephone number: (202) 606–9600.

Public Participation: This meeting is open to the public. Because of security procedures, anyone planning to attend the meeting must contact Nancy Bryan of BEA at (202) 606–9698 in advance. The meeting is physically accessible to people with disabilities. Requests for foreign language interpretation or other auxiliary aids should be directed to Nancy Bryan at (202) 606–9698.

SUPPLEMENTARY INFORMATION: The Committee was established September 2, 1999, to advise the Bureau of Economic Analysis (BEA) on matters related to the development and improvement of BEA's regional economic accounts and proposed revisions to the International System of National Accounts. This will be the Committee's eighth meeting.

Dated: September 30, 2004.

J. Steven Landefeld,

Director, Bureau of Economic Analysis.

[FR Doc. 04–22538 Filed 10–6–04; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828]

Notice of Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review: Certain Hot-Rolled Carbon Steel Flat Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') is conducting an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Brazil in response to a request by respondent Companhia Sidergica Nacional (''CSN''). The review covers shipments to the United States during the period March 1, 2003, to February 29, 2004. For the reasons discussed below, we are fully extending the preliminary results of this administrative review by 120 days, to not later than March 31, 2005. This extension is made pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended.

DATES: October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Helen Kramer or Kristin Najdi at (202) 482–0405 or (202) 482–8221, respectively; Antidumping and Countervailing Duty Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 2004, in response to the Department's notice of opportunity to request a review published in the **Federal Register**, CSN requested that the Department conduct an administrative review of the antidumping duty order on certain hot-rolled carbon steel flat products from Brazil. *See Antidumping Duty Order: Certain Hot-Rolled Flat-Rolled Carbon Quality Steel Products from Brazil,* 67 FR 11093 (March 12, 2002).

On April 28, 2004, the Department published the notice initiating administrative review of CSN. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 69 FR 23170 (April 28, 2004). The preliminary results are currently due not later than December 1, 2004.

Extension of Time Limits for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2), the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within 245 days after the last day of the anniversary month of the date of publication of the order for which the administrative review was requested. The Department has determined it is not practicable to complete this review within the originally anticipated time limit, in accordance with section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), because of complex cost and further manufacturing issues. Therefore, the Department is extending the time limits for the preliminary results by 120 days, to not later than March 31, 2005. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

Dated: October 1, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2532 Filed 10–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–504]

Petroleum Wax Candles From the People's Republic of China: Extension of Time Limit for Final Results of New Shipper Review of Shandong Huihe Trade Co. Inc.

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the new shipper review of the antidumping duty order on petroleum wax candles from the People's Republic of China for Shandong Huihe Trade Co. Inc. (Shandong Huihe) by 139 days until no later than December 20, 2004. The period of review is August 1, 2002 through July 31, 2003. This extension is made pursuant to section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the Act).

DATES: October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay or Dana Mermelstein, Office of AD/CVD Operations VI, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0780 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act requires the Department to issue the final results of a new shipper review within 90 days after the date on which the preliminary results were issued. However, if the Department determines that the issues are extraordinarily complicated, section 751(a)(2)(B)(iv) of the Act allows the Department to extend the deadline for the final results to up to 150 days after the date on which the preliminary results were issued.

Background

On August 12, 2003, the Department received a timely filed request from Shandong Huihe for a new shipper review under the order on petroleum wax candles from the People's Republic of China, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations. In its request, Shandong Huihe certified that it both produced and exported the petroleum wax candles that are subject to review. On September 30, 2003, the Department initiated this new shipper review for the period August 1, 2002 through July 31, 2003. *See Petroleum Wax Candles From the People's Republic of China: Initiation of Antidumping Duty New Shipper Review,* 68 FR 57876 (October 7, 2003).

On March 11, 2004, the Department extended the preliminary results of this new shipper review by 120 days until July 26, 2004. *See Petroleum Wax Candles From the People's Republic of China: Extension of Time Limit of Preliminary Results of New Shipper Review,* 69 FR 12641 (March 17, 2004). On August 3, 2004, the Department issued the preliminary results of this review. *See Petroleum Wax Candles From the People's Republic of China: Notice of Preliminary Results of Antidumping Duty New Shipper Review of Shandong Huihe, Ltd.,* 69 FR 46912.

Extension of Time Limit for Final Results

Pursuant to section 751(a)(2)(B)(iv) of the Act, the Department may extend the deadline for completion of the final results of a new shipper review if it determines that the case is extraordinarily complicated. The Department has determined that this case is extraordinarily complicated because of the issues that must be addressed pertaining to the *bona fides* of Shandong Huihe's U.S. sale and operations and the relationship between Shandong Huihe and its importer. The Department is also planning to conduct a verification of Shandong Huihe. As a result, the final results of this new shipper review cannot be completed within the statutory time limit of 90 days. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and section 351.214(i)(2) of the regulations, the Department is extending the time limit for the completion of final results to 139 days from the date on which the preliminary results were issued. The final results will now be due no later than December 20, 2004.

This notice is published pursuant to sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: October 1, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2531 Filed 10–6–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period April 1 2004, through June 30, 2004. We are publishing the current listing of those subsidies that we have determined exist.

DATES: October 7, 2004.

FOR FURTHER INFORMATION CONTACT: Tipten Troidl, Office of AD/CVD Enforcement III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702 of the Trade Agreements Act of 1979 (as amended) (''the Act'') requires the Department of Commerce (''the Department'') to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(h) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the Department's quarterly update of subsidies on articles of cheese that were imported during the period April 1, 2004, through June 30, 2004.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(h) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available. The Department will incorporate additional programs which are found to constitute subsidies and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: October 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

Appendix

SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross[1] subsidy ($/lb)	Net[2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.02	$0.02
Belgium	EU Restitution Payments	0.02	0.02
Canada	Export Assistance on Certain Types of Cheese	0.47	0.47
Denmark	EU Restitution Payments	0.00	0.00
Finland	EU Restitution Payments	0.05	0.05
France	EU Restitution Payments	0.04	0.04
Germany	EU Restitution Payments	0.02	0.02
Greece	EU Restitution Payments	0.02	0.02
Ireland	EU Restitution Payments	0.02	0.02
Italy	EU Restitution Payments	0.02	0.02
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.02	0.02
Norway	Indirect (Milk) Subsidy	0.36	0.36
	Consumer Subsidy	0.16	0.16
		0.52	0.52
Portugal	EU Restitution Payments	0.02	0.02
Spain	EU Restitution Payments	0.03	0.03
Switzerland	Deficiency Payments	0.04	0.04
U.K.	EU Restitution Payments	0.01	0.01

[1] Definned in 19 U.S.C. 1677(5).
[2] Definned in 19 U.S.C. 1677(6).

[FR Doc. 04–22596 Filed 10–6–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Office of Manufacturing; Roundtable on the 3Rs Initiative (Reduce Waste, Reuse, and Recycle); Notice of Meeting

The U.S. Department of Commerce Office of Manufacturing is hosting an outreach meeting to discuss the 3Rs Initiative (Reduce waste, Reuse and Recycle) that was introduced by the Government of Japan and supported by the U.S. at the 2004 G8 summit in Sea Island, Georgia. The following objectives for the Initiative were established by the G–8 nations.

(1) Reduce waste, reuse and recycle resources and products to the extent feasible

(2) Reduce barriers to the international flow of goods and materials for recycling and remanufacturing, recycled and remanufactured products, and cleaner, more efficient technologies, consistent with existing environmental and trade obligations and frameworks;

(3) Encourage cooperation among various stakeholders (central governments, local governments, the private sector, NGOs and communities), including voluntary and market-based activities;

(4) Promote science and technology suitable for 3Rs; and

(5) Cooperate with developing countries in such areas as capacity building, raising public awareness, human resource development and implementation of recycling projects.

It was further agreed at Sea Island that Japan would host a Ministerial level conference on the Initiative. This has been scheduled by the Government of Japan for April 28–30, 2005 in Tokyo. The White House Council on Environmental Quality (CEQ) is leading an interagency effort to determine what the United States shall attempt to accomplish through the 3Rs Initiative and the policy approaches for the Ministerial Conference. Joseph H. Bogosian, the Deputy Assistant Secretary for Manufacturing at the U.S. Department of Commerce, is hosting this meeting in order to solicit input from all interested stakeholders including representatives of manufacturers, retailers, recyclers, and environmental organizations.

The following points may be useful as an aide for discussion:

1. Definition of ''re-used'' goods. Varying industries define it differently:
(a) Remanufactured;
(b) Refurbished; and
(c) ''Re-used'' as distinguished from ''used'' goods.

2. Trade and Market Access Issues (impacting inbound products and exports).

3. Standards Issues.

4. Recycling Incentives.

5. Possible Models:
(a) Product approach;
(b) Process approach.

6. Best Practices from Earlier Trade Agreements, and Existing Legal and Regulatory Barriers.

7. Benefits to:
(a) The Environment;
(b) The Economy and Jobs.

The event is open to the public and the press. Please RSVP and submit any written comments to *3RsInitiative@mail.doc.gov.* Please include your name, phone number, and organization affiliation.

DATES: Thursday, October 14, 2004.

TIME: 1 p.m.–4 p.m.

ADDRESSES: U.S. Department of Commerce Auditorium, 1401 Constitution Ave, NW., Washington, DC 20230. Enter through the Department of Commerce main entrance on 14th Street between Constitution and Pennsylvania Avenues. Bring a photo ID for security purposes. This meeting is physically accessible to people with disabilities.

FOR FURTHER INFORMATION CONTACT: Sarah E. Aker, Office of the Deputy Assistant Secretary for Manufacturing, Department of Commerce, Room 2132, 1401 Constitution Ave., Washington, DC 20230 (phone: (202) 482–1124).

Dated: October 4, 2004.

Sarah E. Aker,

Special Assistant.

[FR Doc. 04–22702 Filed 10–6–04; 8:45 am]
BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092904B]

Gulf of Mexico Fishery Management Council; Scoping Hearings

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

ACTION: Notice of public hearings; request for comments.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold nine public hearings to inform the public and obtain comments on drafts of Amendment 15 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) and Amendment 24 to the Reef Fish FMP.

DATES: The meetings will be held in October 2004. See **SUPPLEMENTARY INFORMATION** for specific dates, locations, and times. Written public comments must be received by the Council on or before November 5, 2004.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for specific dates, locations, and times.

Written comments should be sent to the Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619. Comments may also be submitted via e-mail to *gulfcouncil@gulfcouncil.org*.

Copies of the draft amendments are available by contacting the Gulf of Mexico Fishery Management Council at the mailing address or e-mail address specified above.

FOR FURTHER INFORMATION CONTACT: Rick Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The Council will hold nine public hearings to solicit public input on drafts of Amendment 15 to the Coastal Migratory Pelagics FMP and Amendment 24 to the Reef Fish FMP (see **ADDRESSES** for information on obtaining these draft amendments). Each of these draft amendments contain alternatives to: (1) allow the existing commercial permit moratoria to expire, (2) extend the moratoria for an additional 5 or 10 years, or (3) replace the moratoria with permanent limited access systems that would, in essence, maintain the cap on the number of permits indefinitely, or until replaced or eliminated by additional actions by the Council. The Council is soliciting public comment on these alternatives and on other alternatives not currently included in the draft amendments. The Council is soliciting public comment on these issues through public hearings, by mail, and by e-mail.

Public hearings will be held at the following dates and locations beginning at 7 p.m. and concluding no later than 10 p.m.:

1. Monday, October 18, 2004, Brownsville Events Center, 1 Events Center Boulevard, Brownsville, TX 78526; telephone: 956–554–0700;

2. Tuesday, October 19, 2004, Port Aransas Community Center, 408 North Allister, Port Aransas, TX 78373; telephone: 361–749–4111;

3. Tuesday, October 19, 2004, DoubleTree Grand Key Resort, 3990 S. Roosevelt Boulevard, Key West, FL 33040; telephone: 888–310–1540 (joint public hearing with the South Atlantic Fishery Management Council);

4. Wednesday, October 20, 2004, San Luis Resort,

5222 Seawall Boulevard, Galveston Island, TX 77651; telephone: 409–744–1500;

5. Thursday, October 21, 2004, Grand Isle Community Center, 3811 Highway 1, Grand Isle, LA 70358; telephone: 985–787–3196;

6. Monday, October 25, 2004, National Marine Fisheries Service, 3500 Delwood Beach Road, Panama City, FL 32408; telephone: 850–234–6541;

7. Tuesday, October 26, 2004, Riverview Plaza Hotel, 64 South Water Street, Mobile, AL 36602; telephone: 251–415–3068;

8. Wednesday, October 27, 2004, Palace Casino Resort, 158 Howard Avenue, Biloxi, MS 39530; telephone: 800–725–2239; and

9. Thursday, October 28, 2004, Madeira Beach City Hall, 300 Municipal Drive, Madeira Beach, FL 33708; telephone: 727–391–9951.

These hearings will be open to the public and physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 12, 2004.

Dated: September 30, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 04–22597 Filed 10–6–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 090904E]

Gulf of Mexico Fishery Management Council; Public Meetings; Correction

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

ACTION: Notice of public meetings.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will separately convene its Mackerel and Reef Fish Advisory Panels (AP). This document replaces the notice published on September 29, 2004, due to rescheduling changes from the hurricane.

DATES: The Mackerel AP meeting will be convened by conference call at 10 a.m. est on Monday, October 25, 2004. The Reef Fish AP meeting will be convened by conference call at 10 a.m. est on Thursday, October 28, 2004.

ADDRESSES:

See **SUPPLEMENTARY INFORMATION** for locations of listening stations.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Richard L. Leard, Deputy Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: This notice originally published at 69 FR 58152 on September 29, 2004, and is republished due to scheduling changes from the hurricane.

Persons wishing to listen to the calls may do so at the following locations:

1. NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, FL, Contact: Gary Fitzhugh at 850–234–6541, extension 214.

2. NMFS Southeast Regional Office, 9721 North Executive Center Drive, St. Petersburg, FL, Contact: Peter Hood at 727–570–5728.

3. NMFS Pascagoula Laboratory, 3209 Frederic Street, Pascagoula, MS, Contact: Cheryl Hinkel 228–762–4591.

4. NMFS Galveston Laboratory (on 28th only), 4700 Avenue U, Galveston, TX, Contact: Rhonda O'Toole at 409–766–3500.

The Gulf of Mexico Fishery Management Council (Council) will separately convene its Mackerel and Reef Fish Advisory Panels (AP) to review public hearing drafts of

Amendment 15 to the Coastal Migratory Pelagics Fishery Management Plan (FMP) and Amendment 24 to the Reef Fish FMP. Each of these amendments contain alternatives to allow the existing commercial permit moratoria to expire, extend the moratoria for 5 or 10 years, or replace the moratoria with permanent limited access systems that would, in essence, maintain the cap on the number of permits indefinitely, or until replaced or eliminated by additional actions by the Council.

Although other non-emergency issues not on the agendas may be discussed by the APs, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the APs will be restricted to those issues specifically identified in the agendas 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 action to address the emergency.

Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council office (see **ADDRESSES**) by October 19, 2004.

Dated: October 4, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2526 Filed 10–6–04; 8:45 am]

BILLING CODE 3510–22–S

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled AmeriCorps*National Civilian Community Corps (NCCC) Team Leader Application to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. John Hourihan at (202) 606–5000, ext. 189. Individuals who use a telecommunications device for the deaf (TTY-TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register:**

(1) By fax to: (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) Electronically by e-mail to: *Katherine_T._Astrich@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on December 8, 2003. This comment period ended February 6, 2004. No comments were received.

Description: The Corporation is seeking to renew with minor revisions its AmeriCorps*NCCC Team Leader Application, OMB Control Number 3045–0005. The Team Leader Application form is completed by applicants who wish to serve as Team Leaders at AmeriCorps*NCCC regional campuses. This form is used to collect information that will be used by AmeriCorps*NCCC staff in the evaluation and selection of Team Leaders.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: AmeriCorps*NCCC Team Leader Application Form.

OMB Number: 3045–0005.

Agency Number: None.

Affected Public: Citizens of diverse ages and backgrounds who are committed to national service.

Total Respondents: 500.

Frequency: Annually.

Average Time Per Response: Two hours.

Estimated Total Burden Hours: 1,000 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: September 30, 2004.

Merlene Mazyck,

*Director, AmeriCorps*National Civilian Community Corps.*

[FR Doc. 04–22535 Filed 10–6–04; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Department of the Army

Performance Review Board Membership

AGENCY: Department of the Army, DoD.

ACTION: Notice.

SUMMARY: Notice is given of the names of members of a Performance Review Board for the Department of the Army.

DATES: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Marilyn Ervin, U.S. Army Senior Executive Service Office, Assistant Secretary of the Army, Manpower & Reserve Affairs, 111 Army, Washington, DC 20310–0111.

SUPPLEMENTARY INFORMATION: Section 4314(c) (1) through (5) of Title 5, U.S.C., requires each agency to establish, in accordance with regulations, one or more Senior Executive Service performance review boards. The boards shall review and evaluate the initial appraisal of senior executives' performance by supervisors and make recommendations to the appointing authority or rating official relative to the performance of these executives.

The members of the Performance Review Board for the Headquarters (HQ), U.S. Army Materiel Command (AMC) are:

1. Mr. Fred Allen, Chief Counsel, U.S. Army Aviation and Missile Command (AMCOM).
2. Dr. Benson Adams, Special Assistant to the Executive Deputy to the Commanding General for AMC Transformation Integration.
3. Ms. Sue Baker, Principal Deputy, G–3, HQ, AMC.

4. Mr. Niels Biamon, Deputy for Operations, G–3, HQ, AMC.
5. Mr. James Buckner, Chief Information Officer, G–6, HQ, AMC.
6. Ms. L. Marlene Cruze, Executive Director, Acquisition Center, AMCOM, AMC.
7. Mr. Ronald J. Davis, Jr., Deputy for Industrial Operations, G–3, HQ, AMC.
8. Mr. Michael P. Devine, Technical Director for Armament, Armament RD&E Center, RDECOM, AMC.
9. MG John C. Doesburg, Commanding General, RDECOM, AMC.
10. Dr. Michael Drillings, Director for Manprint, G–1, HQ, Department of the Army.
11. Mr. Victor Ferlise, Deputy to the Commander, Communications-Electronics Command (CECOM), AMC.
12. Dr. Robert Foster, Director, BioSystems, Office of the Assistant Secretary of Defense (Acquisition, Technology and Logistics).
13. LTG Richard Hack, Deputy Commanding General, AMC.
14. MG Craig D. Hackett, Commanding General, U.S. Army Security Assistance Command, AMC.
15. BG Paul Izzo, Deputy Commanding General, Homeland Operations, RDECOM, AMC.
16. BG Jerome Johnson, Commanding General, Army Field Support Command (AFSC), AMC.
17. Mr. Gregory Kee, Deputy for Future Operations, G–3, HQ, AMC.
18. Dr. Thomas Killion, Deputy Assistant Secretary for Research and Technology/ Chief Scientist, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
19. Mr. Anthony LaPlaca, Director, Logistics and Readiness Center, CECOM, AMC.
20. Mr. John Lawkowski, Assistant Deputy Chief of Staff, G–8, HQ, AMC.
21. Ms. Barbara Leiby, Deputy Chief of Staff, G–8, HQ, AMC.
22. BG William M. Lenaers, Commanding General, U.S. Army Tank-Automotive Command, AMC.
23. Mr. Ronald B. Lewis, Deputy for Enterprise Integration, G–3, HQ, AMC.
24. MG Michael R. Mazzucchi, Commanding General, CECOM, AMC.
25. Dr. Richard McClelland, Director, Tank-Automotive RD&E Center, RDECOM, AMC.
26. Mr. Daniel Mehney, Director, Acquisition Center, U.S. Army Tank-Automotive Command (TACOM), AMC.
27. Mr. A. David Mills, Executive Deputy to the CG, AMC.
28. Dr. A. Fenner Milton, Director, Night Vision and Electronic Sensor, CECOM, AMC.
29. Dr. Walter F. Morrison, Jr., Deputy Director Engineer R&D Center, U.S. Army Corps of Engineers (USACE).
30. Mr. Gary Motsek, Deputy for Support Operations, G–3, HQ, AMC.
31. BG Roger Nadeau, Deputy Commanding General, Systems of Systems Integration (SOSI), RDECOM, AMC.
32. Mr. Michael Parker, Director, U.S. Army Chemical Materials Agency, AMC.
33. Mr. Jeffrey Parsons, Director of Contracting, HQ, AMC.
34. MG James Pillsbury, Commanding General, AMCOM, AMC.
35. BG James W. Rafferty, Commanding General, Joint Munitions Command, AFSC, AMC.
36. Mr. Michael Schexnayder, Associate Director for Systems Missiles, RD&E Center, RDECOM, AMC.
37. Mr. Anthony Sconyers, Chief Counsel, AFSC, AMC.
38. Mr. David Shaffer, Director, U.S. Army Materiel Systems Analysis Activity, AMC.
39. Mr. Brian Simmons, Deputy to the Commander and Technical Director, ATEC.
40. MG Mitchell H. Stevenson, Deputy Chief of Staff, G–3, HQ, AMC.
41. Ms. Kathryn Szymanski, Command Counsel, HQ, AMC.
42. Mr. Edward Thomas, Director, Software Engineering Center, CECOM, AMC.
43. MG N. Ross Thompson III, Commanding General, TACOM, AMC.
44. MG Harry J. Phillips, Jr., Asst. DCG for Reserve Affairs, HQ, AMC.
45. BG Mark Montjar, Assist. DCS, OPNS (Mobilization), G3, HQ, AMC.
46. Dr. Richard W. Amos, Deputy to the Commanding General, AMCOM, AMC.
47. Dr. Robin B. Buckelew, Director, Missile Guidance, AMRDEC, RDECOM, AMC.

The members of the Performance Review Board for the Army Acquisition Executive (AAE) Corps are:

1. Edward Bair, Program Executive Officer, Intelligence, Electronic Warfare, and Sensors, AAE.
2. MG Joseph L. Bergantz, Program Executive Officer, Aviation.
3. Dr. James T. Blake, Deputy to the Commander, PEO STRI.
4. Paul Bogosian, Deputy Program Executive for Aviation, AAE.
5. T. Kevin Carroll, Program Executive Officer, Standard Army Multicommand Management Information System (STAMIS), AAE.
6. Kevin M. Fahey, Deputy PEO, Ground Combat Systems.
7. Kevin J. Flamm, Program Manager for Chemical Demilitarization Operations OASA (Acquisition, Logistics & Technology).
8. Joann H. Langston, Director, Northern Region, U.S. Army Contracting Agency.
9. BG Michael R. Mazzucchi, Program Executive Officer, Command, Control, and Communications (Tactical).
10. Dr. Steven L. Messervy, Program Manager, Joint Simulation Systems, Army Acquisition Executive Support Agency.
11. BG Patrick O'Reilly, Deputy Program Officer.
12. Michael A. Parker, Director, Chemical Materials Agency.
13. Shelba J. Proffitt, Deputy Program Executive Officer, Air and Missile Defense, AAE.
14. Sandra O. Sieber, Director, Army Contracting Agency.
15. BG Jeffrey A. Sorenson, Program Executive Officer, Tactical Missiles.
16. MG John M. Urias, Program Executive Officer.
17. MG Joseph L. Yakovac, Program Executive Officer.

The members of the Performance Review Board for the Consolidated Commands are:

1. Mr. Michael F. Bauman, Director, U.S. Army Training and Doctrine Command Analysis Center.
2. BG Leo A. Brooks, Jr., Vice Director of the Army Staff.
3. Mr. Laurence H. Burger, Director, Space and Missile Defense Battle Laboratory, U.S. Army Space and Missile Defense Command.
4. Mr. William J. Cooper, Special Assistant for Transportation Engineering Agency/ Executive Director TEA.
5. Dr. Charles N. Davidson, Director, U.S. Army Nuclear and Chemical Agency.
6. Ms. Jeannie A. Davis, Assistant Deputy Chief of Staff for Personnel and Installation Management (Civilian Personnel).
7. Dr. Henry C. Dubin, Chief Scientist, U.S. Army Space and Missile Defense Command.
8. MG Ann Dunwoody, Commander, U.S. Army Combined Arms Support Command (CASCOM) and Fort Lee.
9. MG Paul D. Eaton, Deputy Chief of Staff for Operations and Training, U.S. Army Training and Doctrine Command (TRADOC).
10. Mr. Thomas J. Edwards, Deputy to the Commander, CASCOM.
11. BG Charles W. Fletcher, Commander, Military Surface Deployment and Distribution Command (SDDC).
12. Mr. Jess F. Granone, Director, Space and Missile Defense Technical Cente, U.S. Army Space and Missile Defense Command.
13. Ms. Vicky Jefferis, Deputy Chief of Staff for Resource Management, Headquarters, Forces Command.
14. Ms. Jeanne Karstens, Deputy Chief of Staff for Resource Management, Headquarters, U.S. Army, Europe.
15. Mr. J. Stephen Koons, Assistant Deputy Chief of Staff for Logistics, Headquarters, Forces Command.
16. Mr. Darell G. Lance, Chief of Staff, U.S. Intelligence and Security Command.
17. Dr. Michael J. Lavan, Director, Advanced Technology Directorate, U.S. Army Space and Missile Defense Command.
18. Mr. William R. Lucas, Jr., Deputy to the Commander, SDDC.
19. Mr. Ronald G. Magee, Director of Operations, U.S. Army Training and Doctrine Command Analysis Center.
20. Mr. Maxie L. McFarland, Deputy Chief of Staff for Intelligence, U.S. Army Training and Doctrine Command.
21. Mr. Thomas V. Meeks, Technical Advisor-Sustaining Base/Quality of Life Affairs, U.S. Southern Command.
22. Mr. John C. Metzler, Jr., Director of Cemetery Operations, Arlington National Cemetery, Military District of Washington.
23. MG Robert W. Mixon, Jr., Deputy Chief of Staff, Futures Center, U.S. Army Training and Doctrine Command.
24. Mr. Robert L. Moore, Deputy Director, Logistics and Security Assistance, Headquarters, U.S. European Command.
25. Mr. Jerry V. Proctor, Deputy for Futures, U.S. Army Intelligence Center and Fort Huachuca.

26. Mr. William C. Reeves, Jr., Director, Integration/Interoperability for Missile Defense, U.S. Army Space and Missile Defense Command.
27. Mr. Allan M. Resnick, Assistant Deputy Chief of Staff for Combat Development, U.S. Army Training and Doctrine Command.
28. Mr. Rodney Robertson, Director, Sensors Directorate, U.S. Army Space and Missile Defense Command.
29. BG Mark Scheid, Director, G–3.
30. Mr. Robert E. Seger, Assistant Deputy Chief of Staff for Training Policy, Plans and Programs, U.S. Army Training and Doctrine Command.
31. Mr. Mark Allen Smith, Deputy Director of Intelligence, U.S. Southern Command.
32. BG Warner Sumpter, Acting Commander, U.S. Army Intelligence Center and Fort Huachuca/Commandant, U.S. Army Intelligence School.
33. Ms. Donna K. Vargas, Director of Operations, U.S. Army Training and Doctrine Command Analysis Center.

The members of the Performance Review Board for the Office of the Secretary of the Army are:

1. Mr. John J. Argodale, Deputy Assistant Secretary of the Army (Financial Operations), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
2. Mr. William A. Armbruster, Deputy Assistant Secretary of the Army for Privatization and Partnership, Office of the Assistant Secretary of the Army (OASA) (Installations and Environment).
3. Ms. Diane J. Armstrong, Director for C4/IT Investment, Integration and Evaluation, Office of the Chief Information Officer/G–6.
4. Mr. Stephen Bagby, Deputy Assistant Secretary of the Army (Cost and Economics), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
5. Ms. Earnestine Ballard, Deputy Assistant Secretary of the Army for Procurement and Policy, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
6. Mr. Vernon Bettencourt, Jr., Deputy Chief Information Officer, Office of the Chief Information Officer/G–6.
7. Mr. William H. Campbell, Assistant to the Deputy Assistant Secretary of the Army (Budget), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
8. Mr. Joe C. Capps, Director, Enterprise Systems Technology Activity, NETCOM/9th Army Signal Command.
9. Dr. Craig E. College, Deputy Assistant Secretary of the Army (Infrastructure Analysis), Office of the Assistant Secretary of the Army (Installations and Environment).
10. Mr. James C. Cooke, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.
11. Mr. Donald L. Damstetter, Jr., Deputy Assistant Secretary of the Army for Plans, Programs and Resources, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
12. Mr. Daniel B. Denning, Principal Deputy Assistant Secretary of the Army (Manpower and Reserve Affairs)/Deputy Assistant Secretary (Training, Readiness and Mobilization).
13. Mr. Thomas Druzgal, Deputy Auditor General, Acquisition and Logistics Audits, U.S. Army Audit Agency.
14. Mr. George S. Dunlop, Principal Deputy Assistant Secretary of the Army (Civil Works)/Deputy Assistant Secretary of the Army (Legislation).
15. Mr. Raymond J. Fatz, Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, Office of the Assistant Secretary of the Army (Installations and Environment).
16. Mr. Patrick J. Fitzgerald, Principal Deputy Auditor General, U.S. Army Audit Agency.
17. Dr. John B. Foulkes, Director, Test and Evaluation Management Agency, Office of the Chief of Staff.
18. Dr. Michael L. Gentry, Technical Director/Chief Engineer, NETCOM 9th Army Signal Command.
19. Mr. Ernest J. Gregory, Principal Deputy Assistant Secretary of the Army (Financial Management and Comptroller).
20. Ms. Judith A. Guenther, Director of Investments, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
21. MG Lynn Hartsell, Director Army Budget, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
22. Mr. Walter W. Hollis, Deputy Under Secretary of the Army (Operations Research), Office of the Under Secretary of the Army.
23. Mr. Joel B. Hudson, Administrative Assistant to the Secretary of the Army.
24. Mr. Craig D. Hunter, Deputy Assistant Secretary of the Army for Defense Exports and Cooperation, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
25. Dr. Daphne K. Kamely, Special Assistant to the Deputy Assistant Secretary of the Army for Environment, Safety, and Occupational Health, Office of the Assistant Secretary of the Army (Installations and Environment).
26. Mr. Thomas E. Kelly, III, Executive Director, Strategy and Performance Planning, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
27. Dr. Thomas H. Killion, Deputy Assistant Secretary for Research and Technology/Chief Scientist, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
28. Ms. Joann H. Langston, Director, Northern Region, U.S. Army Contracting Agency.
29. Mr. John P. McLaurin, III, Deputy Assistant Secretary of the Army (Human Resources), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
30. Mr. Wesley C. Miller, Director of Management and Control, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
31. Ms. Joyce E. Morrow, The Auditor General, U.S. Army Audit Agency.
32. Mr. Levator Norsworthy, Jr., Deputy General Counsel (Acquisition), Office of the General Counsel.
33. Mr. Dale Ormand, Deputy Assistant Secretary of the Army for Elimination of Chemical Weapons, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
34. Dr. John A. Parmentola, Director, Research and Laboratory Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics & Technology).
35. Ms. Tracey L. Pinson, Director of Small and Disadvantaged Business Utilization, Office of the Secretary.
36. Mr. Dean Popps, Principal Deputy to the Assistant Secretary of the Army (Acquisition, Logistics and Technology)/Director for Iraq Reconstruction and Program Management.
37. Mr. Geoffrey G. Prosch, Principal Deputy Assistant Secretary of the Army (Installations and Environment).
38. Mr. Wimpy D. Pybus, Deputy Assistant Secretary of the Army for Integrated Logistics Support, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
39. Mr. Matt Reres, Deputy General Counsel (Ethics and Fiscal), Office of the General Counsel.
40. Ms. Sandra R. Riley, Deputy Administrative Assistant Secretary of the Army, Office of the Secretary.
41. Mr. Luther L. Santiful, Director for Equal Employment Opportunity/Civil Rights, U.S. Army Civilian Personnel Field Agency.
42. Mr. Richard G. Sayre, Special Assistant for Systems, Office of the Deputy Under Secretary of the Army.
43. Mr. Karl F. Schneider, Deputy Assistant Secretary of the Army (Army Review Boards Agency), Office of the Director.
44. Mr. Matthew L. Scully, Director of Business Resources, Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
45. Mr. C. Russell Shearer, Special Assistant to the Assistant Secretary of the Army (Installations and Environment).
46. Ms. Sandra O. Sieber, Director, Army Contracting Agency.
47. BG Jeffrey Sorenson, Deputy for Acquisition and Systems Management, Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology).
48. Mr. John C. Speedy, III, Deputy Director for Army International Affairs. Office of the Deputy Chief of Staff, G–3.
49. Mr. Donald W. Spigelmyer, Executive Director, Residential Communities Initiatives, Office of the Assistant Secretary of the Army (Installations & Environment).
50. MG Edgar Stanton, Deputy Assistant Secretary of the Army (Budget), Office of the Assistant Secretary of the Army (Financial Management and Comptroller).
51. Mr. Earl H. Stockdale, Jr., Deputy General Counsel (Civil Works and Environment), Office of the General Counsel.
52. Mr. Thomas W. Taylor, Senior Deputy General Counsel, Office of the General Counsel.

53. Ms. Claudia L. Tornblom, Deputy Assistant Secretary of the Army (Management and Budget), Office of the Assistant Secretary of the Army (Civil Works).
54. Ms. Carla A. Von Bernewitz, Director, Business Transformation Task Force, Office of the Under Secretary.
55. MG David F. Wherley, Jr., Director, District of Columbia National Guard, Office of the Secretary.
56. Mr. Joseph W. Whitaker, Jr., Deputy Assistant Secretary of the Army (Installations & Housing), Office of the Assistant Secretary of the Army (Installations & Environment).
57. Miss Sarah F. White, Deputy Assistant Secretary of the Army (Force Management, Manpower and Resources), Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs).
58. Mr. Avon N. Williams, Principal Deputy General Counsel, Office of the General Counsel.
59. Mr. Robert J. Winchester, Assistant for Intelligence Liaison, Office, Chief of Legislative Liaison.
60. Mr. Gary L. Winkler, Director for Enterprise Management, Office of the Chief Information Officer/G–6.

The members of the Performance Review Board for the U.S. Army, Chief of Staff of the Army, are:

1. MG Dorian T. Anderson, Commanding General, United States Army Human Resources Command.
2. Mr. Brian Barr, Technical Director, U.S. Army Test and evaluation Comma.
3. Ms. Jean M. Bennett, Director, Resources and Infrastructure Office of the Deputy Chief of Staff. G–2.
4. Dr. C. David Brown, Director for Test and Technology, U.S. Army Developmental Test Command.
5. BG Sean Byrne, Director of Military of Personnel Policy.
6. Dr. Jeffrey J. Clarke, Chief Historian, U.S. Army Center of Military History.
7. Ms. Kathryn A. Condon, Assistant Deputy Chief of Staff, G–3 Homeland Secretary, Training and Simulation.
8. Mr. William F. Crain, Technical Advisor to the Deputy Chief of Staff, G–3.
9. Ms. Diane M. Devens, Regional Director (Northeast), U.S. Army Installation Management Agency.
10. Dr. Michael Drillings, Director, for Manprint Directorate, Office of the Deputy Chief of Staff, G–1.
11. Mr. Hugh M. Exton, Jr., Regional Director (Southwest), U.S. Army Installation Management Agency.
12. MG George R. Fay, Assistant Deputy Chief of Staff, G–2.
13. Mr. Terrance M. Ford, Assistant Deputy Chief of Staff, G–2.
14. Mr. Thomas A. Gandy, Director, Counterintelligence, Human Intelligence, Security and Disclosure, Office of the Deputy Chief, of staff G–2.
15. Mr. James Gunlicks, Deputy Director, Training, Office of the Deputy Chief of Staff. G–3.
16. Mr. Russell B. Hall, Regional Director (Europe) Installation Management Agency.
17. MG John Hawkins, Assistant G–1 for Reserve and Mobilization.
18. Ms. Lois O. Hickey, Director of Army Personnel Transformation, Office of the Deputy Chief of Staff, G–1.
19. MG Ronald L. Johnson, Director, Installation Management Agency.
20. Mr. Robert N. Kittel, Special Assistant to the Judge advocate General for Regulatory Law and Intellectual Property, U.S. Army Legal Services Agency.
21. Mr. Mark R. Lewis, Assistant Deputy Chief of Staff, G–1.
22. Ms. Maureen T. Lischke, Program Executive Officer for Information Systems and Chief Information Officer, National Guard Bureau.
23. BG John A. Macdonald, Regional Director (Korea), Installation Management Agency.
24. Ms. An M. McFadden, Chief, Policy and Program Development Division, Office of the Deputy Chief of Staff, G–1.
25. GB Keith McNamara Commander, DTC.
26. Ms. Janet C. Menig, deputy Assistant Chief of Staff for Installation Management.
27. Mr. John L. Miller, Financial Manager, Resource Management Office, U.S. Army Installation Management Agency.
28. BG James R. Myles, Commander, Headquarters, Army Test and Evaluation Command.
29. Mr. William P. Neal, Associate Director, Force Projection and Distribution, Office of the Deputy Chief of Staff, G–4.
30. Mr. John B. Nerger, Director, Facilities, Housing and Environment, Office of the Assistant Chief of Staff for Installation Management.
31. Mr. Mark J. O'Konski, Executive Director, U.S. Army Logistics Integration Agency.
32. Mr. Eric A. Orsini, Special assistant to the Deputy chief of Staff, G–4.
33. Mr. Harold C. Pasini, Jr., Technical Director, Test and Experimentation Command.
34. Mr. Dean E. Pfoltzer, Deputy Director, Program, Analysis and Evaluation, Office of the Deputy Chief of Staff, G–8.
35. Ms. Modell Plummer, Associate Director of Sustainment, Office of the Deputy Chief of Staff, G–4.
36. Mr. Joseph H. Plunkett, Regional Director (Southeast), U.S. Army Installation Management Agency.
37. Mr. James R. Robinson, Regional Director (Northwest), Office of the Assistant Chief of Staff for Installation Management.
38. Mr. Philip E. Sakowitz, Deputy, Installation Management Agency.
39. Mr. Brian M. Simmons, Deputy to the Commander and Technical Director, U.S. Army Developmental Test Command.
40. Mr. Zita M. Simutis, Director and Chief Psychologist, Army Research Institute.
41. Mr. Stanely E. Sokolowski, Regional Director (Pacific), Office of the Assistant Chief of Staff for Installation Management.
42. Mr. John C. Speedy, III, Deputy Director for Army International Affairs, Office of the Deputy Chief of Staff, G–3.
43. Mr. Lewis S. Steerod, Director of Modernization, Office of the Deputy Chief of Staff, G–8.
44. Mr. James J. Streilein, Director, Army Evaluation Center, U.S. Army Test and Evaluation Command.
45. Ms. Elizabeth B. Throckmorton, Director, Civilian Personnel Management, Office of the Deputy Chief of Staff, G–1.
46. Mr. Donald C. Tison, Assistant Deputy Chief of Staff for Programs, Office of the Deputy chief of Staff G–8.
47. Mr. Michael L. Vajda, Director, Civilian Human Resources Agency.
48. Mr. Edgar B. Vandiver, III, Director, U.S. Army Center for Army Analysis.
49. MG David P. Wherley, Jr., Commander, DC National Guard.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 04–22572 Filed 10–6–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting, Notice of Vote, Explanation of Action Closing Meeting and List of Persons to Attend

September 30, 2004.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: October 6, 2004. (Within a relatively short time after the Commission's open meeting on October 6.)

PLACE: Room 3M 4A/B, 888 First Street, NE., Washington, DC 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Non-Public Investigations and Inquiries, Enforcement Related Matters, and Security of Regulated Facilities.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary. Telephone (202) 502–8400.

Chairman Wood and Commissioners Brownell, Kelliher, and Kelly voted that agency business requires the holding of a closed meeting on less than the seven days' notice required by the Government in the Sunshine Act. The certification of the General Counsel explaining the action closing the meeting is available for public inspection in the Commission's Public Reference Room at 888 First Street, NE., Washington, DC 20426.

The Chairman and the Commissioners, their assistants, the Commission's Secretary and her assistant, the General Counsel and members of her staff, and a stenographer are expected to attend the meeting. Other staff members from the Commission's program offices who will

advise the Commissioners in the matters discussed will also be present.

Magalie R. Salas,

Secretary.

[FR Doc. 04–22629 Filed 10–4–04; 4:23 pm]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Petition IV–2003–4; FRL–7825–9]

Clean Air Act Operating Permit Program; Petition for Objection To State Operating Permit for Tennessee Valley Authority—Gallatin Power Plant; Gallatin (Sumner County), Tennessee and Johnsonville Power Plant; New Johnsonville (Humphreys County), TN

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to a state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator signed an order, dated July 29, 2004, partially granting and partially denying a petition to object to a state operating permit issued by the Tennessee Department of Environment and Conservation (TDEC) to the Tennessee Valley Authority (TVA), for its Gallatin Power Plant located in Gallatin, Sumner County,Tennessee and its Johnsonville Power Plant located in New Johnsonville, Humphreys County, Tennessee. Pursuant to section 505(b)(2) of the Clean Air Act (CAA or the Act), judicial review of any denial of the petition may be sought in the United States Court of Appeals for the appropriate circuit within 60 days of this notice under section 307 of the Act. No objection shall be subject to judicial review until final action is taken to issue or deny a permit under CAA section 505(c).

ADDRESSES: Copies of the final order, the petition, and all pertinent information relating thereto are on file at the following location: EPA Region 4, Air, Pesticides and Toxics Management Division, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The final order is also available electronically at the following address: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/tva_decision2003.pdf.*

FOR FURTHER INFORMATION CONTACT: Daphne Wilson, Air Permits Section, EPA Region 4, at (404) 562–9098 or *wilson.daphne@epa.gov.*

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review and, as appropriate, to object to operating permits proposed by state permitting authorities under title V of the Act, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the Act and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

Mr. Reed Zars submitted a petition on behalf of the Sierra Club to the Administrator on April 9, 2003, requesting that EPA object to two state title V operating permits issued by TDEC to TVA. The Petitioner maintains that the TVA Gallatin and Johnsonville permits are inconsistent with the Act because:

(1) Certain permit conditions fail to ensure compliance with applicable opacity limits; (2) the permit conditions improperly shield TVA from its requirement to independently certify compliance; (3) the permit conditions allow TDEC to make changes to the Tennessee State Implementation Plan (SIP) without EPA approval; and (4) the Johnsonville permit contains a less stringent opacity limit than is required by the SIP.

On July 29, 2004, the Administrator issued an order partially granting and partially denying this petition. The order explains the detailed reasons behind EPA's conclusion that the Petitioner adequately demonstrated that the TVA Gallatin and Johnsonville permits are not in compliance with the requirements of the Act. EPA agreed that certain permit conditions fail to ensure compliance with the applicable opacity limit and that these conditions improperly shield TVA from its requirement to independently certify compliance. The petitioner's claim that the Johnsonville permit contains a less stringent opacity limit than is required in the SIP was denied because the limit established in the permit is not less stringent than required by the SIP. As a result of the EPA's objections, TDEC is required to reopen the permit in accordance with 40 CFR 70.7(g)(4) or (g)(5)(i) and (ii).

Dated: September 30, 2004.

Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 04–22589 Filed 10–6–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL 7825–4]

Notice of Final NPDES General Permit for New and Existing Sources and New Dischargers in the Offshore Subcategory of the Oil and Gas Extraction Category for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (GMG290000)

SUMMARY: EPA Region 6 today issues a final National Pollutant Discharge Elimination System (NPDES) general permit for the Western Portion of the Outer Continental Shelf of the Gulf of Mexico (No. GMG290000). The general permit authorizes discharges from new sources, existing sources, and new dischargers in the Offshore Subcategory of the Oil and Gas Extraction Point Source Category (40 CFR part 435, subpart A). The reissued permit will become effective November 8, 2004. The existing permit published in the **Federal Register**, at 64 FR 19156 on April 19, 1999 and modified on January 22, 2001 (66 FR 6850), authorizes discharges from exploration, development, and production facilities located in and discharging to Federal waters of the Gulf of Mexico seaward of the outer boundary of the territorial seas offshore of Louisiana and Texas. Today's action reissues the permit which expired on November 3, 2003.

A copy of the Region's responses to comments and the final permit may be obtained from the EPA Region 6 Internet site: *http://www.epa.gov/earth1r6/6wq/6wq.htm.*

A Record of Decision which completes the Environmental Assessment process required by the National Environmental Policy Act is also available at the above Internet address.

FOR FURTHER INFORMATION CONTACT: Ms. Diane Smith, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 665 7191, or via e-mail to the following address: *smith.diane@epa.gov.*

SUPPLEMENTARY INFORMATION:

Regulated Entities. Entities potentially regulated by this action are those which operate offshore oil and gas extraction facilities located in the Outer Continental Shelf Offshore of Louisiana and Texas.

Category	Examples of regulated entities
Industry	Offshore Oil and Gas Extraction Platforms.

This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your (facility, company, business, organization, etc.) is regulated by this action, you should carefully examine the applicability criteria in Part I. Section A.1. of the general permit. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Pursuant to section 402 of the Clean Water Act (CWA), 33 U.S.C. section 1342, EPA proposed and solicited comments on NPDES general permit GMG290000 at 69 FR 39478 (June 30, 2004). Notice of this proposed permit modification was also published in the New Orleans Times Picayune, Lafayette Daily Advertiser, and Houston Chronicle on July 2, 2004. The comment period closed on July 30, 2004.

Region 6 received comments from the Offshore Operators Committee, Petroleum Equipment Suppliers Association, Cognis Oilfield Chemicals, Minerals Management Service, Murphy Exploration and Development Company, and W&T Offshore, Inc.

EPA Region 6 has considered all comments received. In response to those comments the following changes were made to the proposed permit. The effective date was changed to be 30 days after the publication date in the **Federal Register**. Produced water monitoring requirements are included for facilities located in the hypoxic zone. The analytical method for analysis of cadmium in barite is included. A new allowance is included for blending of compliant synthetic base fluids in drilling fluids. The discharge of hydrate control fluids was added to the list of miscellaneous discharges which are authorized. The toxicity limit for sub-sea fluids was decreased from 200 mg/l to 50 mg/l. Non-lethal effects are required to be reported for chronic toxicity testing and the dilution series required for testing was clarified. A number of minor typographical errors and clarifications were also made to the permit's language.

Miguel Flores,

Director, Water Quality Protection Division, EPA Region 6.

[FR Doc. 04–22594 Filed 10–6–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

September 30, 2004.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before November 8, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments regarding this Paperwork Reduction Act submission to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0806.

Title: Universal Service—Schools and Libraries Universal Service Program.

Form Nos: FCC Forms 470 and 471.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, and state, local and tribal government.

Number of Respondents: 60,000.

Estimated Time Per Response: .166–4.5 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement and recordkeeping requirement.

Total Annual Burden: 480,000 hours.

Total Annual Cost: Not applicable.

Privacy Act Impact Assessment: Not applicable.

Needs and Uses: In the Fifth Report and Order in CC Docket No. 02–6, FCC 04–190, adopted on August 4, 2004 and released on August 13, 2004, the Commission is revising this collection pursuant to suggestions from the Department of Justice, in an effort to prevent waste, fraud, and abuse of the schools and libraries program. The changes made to the FCC Forms 470 and 471 will make the E-Rate process more transparent, and will make transgressions of the law easier to detect and prosecute. For example, on the FCC Form 470, applicants must now certify that they have not ''received anything of value or a promise of anything of value, other than services and equipment sought by means of the form, from the service provider * * *'' Similarly, in the FCC Form 471, applicants must now certify that ''no kickbacks were paid to anyone * * *.'' Finally, we are seeking OMB approval for an additional reporting element, *i.e.,* the FCC Registration Number (FRN). As part of the review process of Funding Year 2005, the Administrator will be collecting the FRN from applicants to supplement their application. The Commission will implement a revised FCC Forms 470 and 471 to include collection of the FRN starting with Funding Year 2006.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22595 Filed 10–6–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 04-20802) published on page 55632 of the issue for Wednesday, September 15, 2004.

Under the Federal Reserve Bank of Cleveland heading, the entry for Park National Corporation, Newark, Ohio, is revised to read as follows:

1. Park National Corporation, Newark, Ohio; to acquire First Federal Bancorp, Inc., and thereby indirectly acquire First Federal Savings Bank of Eastern Ohio, both of Zanesville, Ohio, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y. After the acquisition and subsequent bank merger, First Federal Savings Bank will convert to a national bank and Park National Corporation will operate the bank, pursuant to section 3 of the Bank Holding Company Act.

Comments on this application must be received by October 12, 2004.

Board of Governors of the Federal Reserve System, October 1, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22532 Filed 10–6–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Maximum Per Diem Rates for the Continental United States (CONUS)

AGENCY: Office of Governmentwide Policy, General Services Administration (GSA).

ACTION: Correction to Per Diem Bulletin 05–1, Fiscal Year (FY) 2005 continental United States (CONUS) per diem rates.

SUMMARY: An analysis of lodging data reveals that the FY 2005 maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. Per Diem Bulletin 05–1 increases/decreases the maximum lodging amounts in existing per diem localities, increases the standard CONUS lodging amount from $55 to $60 (which results in the deletion of several existing per diem localities), and adds new per diem localities due to requests by Federal agencies. The per diems prescribed in Bulletin 05–1 were posted at *http://www.gsa.gov/perdiem* on August 31, 2004. Several corrections have been made to the per diems as they appeared in that bulletin on that date.

DATES: This notice is effective October 1, 2004, and applies for travel performed on or after October 1, 2004.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Adlore Chaudier, Office of Governmentwide Policy, Travel Management Policy, at (202) 501–3859. Please cite notice of correction to Per Diem Bulletin 05–1.

SUPPLEMENTARY INFORMATION:

A. Background

A notice appeared in the **Federal Register** (69 FR 53071) on August 31, 2004, announcing Per Diem Bulletin 05–1. Several per diem rates and location designations prescribed in that document have been corrected and include these destinations: Atlanta, GA; Boston/Cambridge, MA; Bridgeport/Danbury, CT; Cambridge/St. Michaels, MD; Columbia, MD; Denver and Jefferson County, CO; Fort Worth/Arlington, TX; Frederick County, MD; Grapevine, TX; Gulf Shores, AL; Gwinnett County, GA; Kalamazoo/Battle Creek, MI (Kalamazoo and Calhoun Counties); Key West, FL; Manhattan, Brooklyn, The Bronx, Queens, Staten Island, NY; Middlesex County, MA; Minneapolis/St. Paul, MN; Nashville, TN; Orlando, FL; Philadelphia, PA; Reno/Sparks, NV; St. Louis, MO; Traverse City, MI; Washington, D.C. The corrected rates are posted at *http://www.gsa.gov/perdiem.*

B. Change in standard procedure

GSA issues/publishes the CONUS per diem rates, formerly published in Appendix A to 41 CFR chapter 301, solely on the internet at *http://www.gsa.gov/perdiem.* This process, implemented in 2003, ensures more timely increases or decreases in per diem rates established by GSA for Federal employees on official travel within CONUS. Notices published periodically in the **Federal Register**, such as this one, now constitute the only notification of revisions in CONUS per diem rates to agencies.

Dated: October 1, 2004.

Becky Rhodes,

Deputy Associate Administrator, Office of Transportation and Personal Property.

[FR Doc. 04–22539 Filed 10–6–04; 8:45 am]

BILLING CODE 6820–14–S

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 05–2]

Waivers to Federal Travel Regulation for TDY and PCS in Presidentially Declared Individual Assistance Disaster Areas in Alabama, Florida, Louisiana, and Mississippi

AGENCY: Office of Governmentwide Policy (MTT), GSA.

ACTION: Notice of a bulletin.

SUMMARY: Due to the scope of destruction caused by the recent natural disasters in Alabama, Florida, Louisiana, and Mississippi, agencies should consider delaying all non-essential TDY and PCS to the affected locations for a period of 90 days. This is especially important with PCS travel because the 120–day maximum for TQSE cannot be extended due to statutory restrictions. For travel which cannot be delayed, GSA adjusted several key allowances, as noted in the bulletin following this notice.

EFFECTIVE DATE: This bulletin is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Harte, Office of Governmentwide Policy, Travel Management Policy Division (MTT), General Services Administration, Washington, DC 20405; e-mail, *jim.harte@gsa.gov*, or telephone (202) 501–0483.

Dated: October 1, 2004.

G. MARTIN WAGNER,

Associate Administrator, Office of Governmentwide Policy.

October 1, 2004.

GENERAL SERVICES ADMINISTRATION

[GSA Bulletin FTR 05–2]

TO: Heads of Federal Agencies

SUBJECT: Reimbursement for actual subsistence expenses, and waivers of certain provisions of the Federal Travel Regulation (FTR) (41 CFR 301 and 302) for temporary duty (TDY) or permanent change of station (PCS) travel of employees to Presidentially declared individual assistance disaster areas of Alabama, Florida, Louisiana, and Mississippi

1. *Purpose.* This bulletin informs agencies of the temporarily authorized use of actual subsistence expenses for official travel (both TDY and PCS) to the subject locations as a result of Hurricanes Charley, Frances, Ivan, and Jeanne, as well as Tropical Storm Bonnie, because it is expected that

finding temporary lodging facilities may be difficult, and distances involved may be great.

The provisions in this bulletin are effective from the date of the Presidential declaration of a county as an individual assistance disaster area and apply only upon that designation for the subject states. The provisions of the bulletin expire as stated in paragraph 5.

2. *Background.* Due to the scope of destruction caused by these natural disasters, agencies should consider delaying all non-essential TDY and PCS to the affected locations for a period of 90 days. This is especially important with PCS travel because the 120–day maximum for TQSE cannot be extended due to statutory restrictions. If such TDY and PCS travel cannot be delayed due to mission requirements or personal hardships, then the following applies:

3. *For PCS travel that cannot be delayed due to mission requirements or personal hardships the following applies:* For temporary quarters subsistence expense (TQSE), the FTR provisions requiring that temporary quarters be in reasonable proximity to the new official station are hereby waived for the areas listed in paragraph 4. The maximum limit of 120 days that TQSE may be authorized remains in effect.

Additionally, the provisions of FTR 302–6.102 limiting per diem reimbursement to the standard CONUS rate for TQSE are hereby waived to allow the reimbursement of subsistence expenses at the locality per diem rate under the provisions of FTR 301–11.101 or an actual expense reimbursement allowance under FTR 301–11.300–306, at the discretion of the agency, for the areas specified in paragraph 4. The provisions of FTR 302–6.200–203 providing for fixed amount reimbursement option for TQSE remain in effect. In addition, for house hunting trips (HHT), the provisions of FTR 302–5.13 that restrict reimbursement of subsistence expenses to the lodgings-plus method are hereby waived. Thus, actual expense allowances under FTR 301–11.300–306 may be authorized, at the discretion of the agency, for those areas listed in paragraph 4. The provisions of FTR 302–5.13 providing for fixed amount reimbursement option for HHT remain in effect. In all cases, the provisions of 41 CFR 301–11.303 limiting actual expenses not to exceed 300 percent (rounded to the next higher dollar) of the applicable maximum per diem rate remains in effect.

4. *Maximum rates.* As a result of Hurricanes Charley, Frances, Ivan, and Jeanne, and Tropical Storm Bonnie, the provisions of FTR 301–11.300 and 301–11.70.200(f) requiring an agency determination that reimbursement under the actual expense method is appropriate are hereby waived for the locations specified below. Thus, agencies may approve actual subsistence expense reimbursement, not to exceed 300 percent of the applicable per diem rate, without further justification, for the following affected counties and parishes:

Florida (effective August 11, 2004):

The counties of Brevard, Charlotte, Collier, DeSoto, Dixie, Duval, Flager, Glades, Hardee, Hendry, Highlands, Indian River, Lake, Lee, Levy, Manatee, Monroe, Okeechobee, Orange, Osceola, Pasco, Polk, St. Johns, Sarasota, Seminole, and Volusia.

Florida (effective September 3, 2004):

The counties of Alachua, Baker, Bradford, Brevard, Broward, Charlotte, Citrus, Clay, Columbia, DeSoto, Dixie, Duval, Flagler, Gilchrist, Glades, Hardee, Hendry, Hernando, Highlands, Hillsborough, Indian River, Lake, Lee, Levy, Marion, Martin, Miami-Dade, Nassau, Okeechobee, Orange, Osceola, Palm Beach, Pasco, Pinellas, Polk, Putnam, Seminole, St. Johns, St. Lucie, Sumter, Union and Volusia Counties.

Alabama effective September 13, 2004:

The counties of Baldwin, Butler, Clarke, Coffee, Conecuh, Covington, Crenshaw, Escambia, Geneva, Mobile, Monroe, and Washington.

Florida (effective September 13, 2004):

The counties of Bay, Calhoun, Escambia, Franklin, Gadsden, Gulf, Holmes, Jackson, Leon, Liberty, Okaloosa, Santa Rosa, Taylor, Wakulla, Walton, and Washington.

Louisiana (effective September 13, 2004):

The parishes of Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St, Charles, St. Tammany, and Terrebonne.

Mississippi (effective September 13, 2004):

The counties of George, Hancock, Harrison, Jackson, Perry, Stone, and Wayne.

5. Expiration date. This bulletin expires on December 31, 2004, unless sooner rescinded by this office.

6. *For further information contact.* Ms. Peggy Deprospero, Director, Travel Management Policy, at (202) 501–2826.

By delegation of the Administrator, General Services Administration.

[FR Doc. 04–22528 Filed 10–6–04; 8:45 am]

BILLING CODE 6820–14–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Nursing Home Care Planning Technical Expert Panel Meeting

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ), Center for Quality Improvement and Patient Safety (CQulPS) will convene a technical expert panel (TEP) to discuss nursing home care planning and quality improvement research options for advancing this process in order to maximize quality of nursing home care. The authority for this meeting is derived from 42 U.S.C. 299b–1 and 299 which respectively authorize AHRQ to provide scientific and technical support to improve health care quality and to promote improvements in health system practices by synthesizing and disseminating available scientific information to providers and policymakers and by conducting and supporting research on methods and strategies for improving quality.

DATES: This meeting will take place on October 12, 2004 from 8:45 a.m.–5 p.m. and October 13 from 9 a.m.–3:30 p.m. The meeting is open to the public and a 30 minute public comment period is scheduled starting at 3 p.m. on the first day and 2:30 p.m. on the second day of the meeting.

Due to security measures and space constraints, it will be necessary for you to pre-register to attend the meeting. For pre-registration information please contact the meeting contractor, Karen Sofer at (301) 231–7537, ext. 260, by 11 a.m. on Monday, October 11. You will need to bring a picture ID with you. Please note that persons attempting to attend without prior registration will not be admitted to the meeting.

ADDRESSES: Please note that individuals interested in attending the meeting without prior registration will not be admitted to the meeting. The meeting will be at the AHRQ Conference Center, Watts Branch Conference Room, 540 Gaither Road, Rockville, MD 20850. Please also be advised that seating is very limited and food will be available for panelists and Agency staff. A report of the meeting will be made available to the public after the meeting.

For driving and public transportation directions, please visit *http://www.ahrq.gov/aout/map.htm.* There is a shuttle from the Shady Grove Metro

stop. For those driving, parking is $4.00. You must enter the parking lot at the ''Redland Center'' entrance on Gaither Road, about one-eighth mile from Redland Boulevard.

FOR FURTHER INFORMATION CONTACT: Judith Sangl (301) 427–1308.

SUPPLEMENTARY INFORMATION: The panel will concentrate on improving the overall framework for care planning in nursing homes. They will cover topics of patient-centered care, Resident Assessment Protocols (RAPs) format, clinical utility and ease of use (but not the specific content detail of the RAPs), informatics and decision support for care planning, and interdisciplinary planning.

Dated: October 5, 2004.

Carolyn M. Clancy,

Director.

[FR Doc. 04–22729 Filed 10–6–04; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04KK]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluation of ''Steps to a HealthierUS'' Program—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Description of Proposed Collection

The Steps to a Healthier U.S. (HealthierUS) Program, known as STEPS, is an innovative program that advances the goals of helping Americans live longer, better, and healthier lives by preventing obesity, diabetes, and asthma. Forty communities across the country will or have received funding to develop and implement community action plans. These action plans will include multiple evidence-based public health strategies and interventions to increase healthy behavior change.

The goal of this evaluation is to provide annual data on STEPS program outcomes in the STEPS communities collectively and a matched national sample, using a questionnaire that is tailored to the needs of the STEPS evaluation. The survey will be administered by computer assisted telephone interviews (CATI) annually in the STEPS sites and in a nationally representative (non-STEPS sites) sample of adults 18 years and older that is matched to key characteristics of the STEPS sites collectively (*e.g.*, age, race/ethnicity, income). The proposed survey will enable the CDC to determine if target outcomes are being achieved, and achieved more rapidly in Steps communities compared to the rest of the country.

The survey will help answer key questions that cannot be adequately addressed by existing data infrastructures or by each sites' local evaluation alone. In the absence of a comparison sample, it is not possible to know if progress in STEPS communities is simply a reflection of national secular trends or an impact of the interventions. By implementing a data collection system that is uniform across all STEPS sites and a national comparison sample, directly comparable data to answer specific research questions will be collected. Results from this data collection will help provide data necessary to develop innovative solutions that can be applied by states, communities, and CDC to improve the health behaviors of Americans. There are no costs to respondents except their time to respond.

ANNUALIZED BURDEN TABLE

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Adults at STEPS sites	4000	1	25/60	1667
Adults at Non-STEPS sites	2000	1	25/60	833
Total	6000			2500

Dated: October 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22549 Filed 10–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–0588]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Evaluating the Impact of Lymphedema and a Lymphedema Management Intervention for Women with Lymphatic Filariasis: Understanding Issues Related to Quality of Life (OMB No. 0920–0588)—Extension—National Center for Infectious Diseases (NCID), Centers for Disease Control and Prevention (CDC).

Lymphatic filariasis, a mosquito-transmitted parasitic disease affecting over 120 million people, is the second leading cause of permanent disability worldwide. Globally, lymphatic filariasis causes debilitating genital disease in an estimated 25 million men and lymphedema or elephantiasis of the leg in 15 million people, mostly women in poverty stricken countries. The World Health Organization (WHO) recently identified community management of chronic lymphedema as one of the top twenty lymphatic filariasis research priorities. Recent advances in the management of chronic lymphedema include a prescribed hygiene and wound care intervention. This intervention has shown promising results in: (1) Preventing bacterial infections thus reducing acute attacks; (2) anecdotally improving overall quality of life; (3) alleviating pain; (4) and preventing further suffering.

The data gathered from this study will assist CDC in the development, monitoring and evaluation of morbidity control programs, and the provision of technical assistance to collaborating countries in the *Global Alliance to Eliminate Lymphatic Filariasis.* The data collected by this study will allow CDC to determine directly from affected women such information as knowledge and attitudes related to disease and secondary infections; perceptions of women related to disease transmission; health seeking practices; and current self-care of women who are not under care as well as those who are. This formative data will be used to assist the Ministry of Health in each country to develop new lymphedema management programs and modify current public health educational campaigns to recruit affected populations into treatment. The data will also provide the basis for culturally-tailored public health education strategies that increase the community's as well women's knowledge of lymphatic filariasis, address barriers to health care seeking, debunk myths surrounding disease and morbidity, utilize traditional health care practitioners, train community health care workers in management techniques, inform programs of the psychological, physical, and emotional needs that women have, and other issues identified in research findings.

In addition, the data findings will also be used on a global level (in collaboration with WHO, PAHO, the Liverpool School of Medicine, Emory University, and others) to develop process and outcome indicators for evaluating and monitoring treatment programs at the clinic-level, community-level and home-level. As new programs are initiated, critical evaluation measures are needed to measure the effectiveness of these programs to avoid spending money on ineffective strategies. Operationally this data will allow us to develop a public health strategy for women with disease and their communities that include the regimen of meticulous local hygiene to the affected areas. It will also allow us to develop critical evaluation indicators to ensure appropriate program monitoring so that information will be immediately available for assessment by both the affected countries and the donor agencies supporting program activities. Data will be widely disseminated in reports, presentations, and professional peer-reviewed publications to persons who work in prevention of this disease. There is no cost to respondents.

ANNUALIZED BURDEN TABLE

Questionnaires	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden hours
Qualitative Interviews	50	1	30/60	25
Quantitative Survey	200	1	1	200
Total	250			225

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22550 Filed 10–6–04; 8:45 am]

BILLING CODE 4163–18–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–04KL]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–498–1210 or send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-E11, Atlanta, GA 30333 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Environmental Health Specialists Network (EHS-Net)—New—National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC).

CDC is requesting OMB approval for a data collection system that will assist public health officials to better identify and assess environmental factors contributing to foodborne outbreaks and the prevention efforts needed to reduce or ameliorate these events. The Environmental Health Specialists Network (EHS-Net) Environmental Evaluation System data collection is a standardized survey instrument developed by CDC in collaboration with the U.S. Food and Drug Administration (FDA) and the EHS-Net participating states—California, Colorado, Connecticut, Georgia, Minnesota, New York, Oregon, and Tennessee. The instrument is for use in non-regulatory environmental evaluations. It has been pilot tested in the EHS-Net states.

The eight states in the pilot testing phase used the EHS-Net survey instrument to collect environmental information from two groups of restaurants: those associated with foodborne outbreaks and those that were not. The survey instrument collects information about the restaurant's food safety policies and procedures and also includes direct observations of food preparation and handling practices, and food worker behaviors.

CDC will evaluate the data collected in these eight pilot states to further refine and improve the EHS-Net data collection instrument and methodology. Once this evaluation is completed, the EHS-Net data collection instrument and methodology will be made available to all public health officials in the United States who wish to use the system to identify and assess environmental factors in food establishments that contribute to foodborne illness; and to evaluate the effectiveness of existing prevention measures including food-handling practices, policies, and other control measures. There are no costs to respondents.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden (in hours)
One Public Health Official per State	50	56	6	16,800
Total	50			16,800

Dated: October 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22551 Filed 10–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–04–0624]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210 or send an e-mail to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology. Send comments to Sandi Gambescia, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–E–11, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

An Evaluation Survey on the Use and Effectiveness of Internet SAMMEC, (0920–0624)—Extension—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Since 1987, CDC has used the Smoking-Attributable Mortality, Morbidity, and Economic Costs (SAMMEC) software to estimate the disease impact of smoking for the nation, states, and large populations. The Internet version of the SAMMEC software was released in 2002, and it contains two distinct computational programs, Adult SAMMEC and Maternal and Child Health SAMMEC, which can be used to estimate the adverse health outcomes and disease impact of smoking on adults and infants.

Since the release of Internet SAMMEC, more than 1230 tobacco control professionals in the State health departments and other tobacco control institutions in the country have used SAMMEC to generate the data they need for their projects. Some of them have provided comments and sent requests for assistance. Of those users, 1000 will be recruited to participate in this survey.

The purpose of this survey is to evaluate the use and effectiveness of the SAMMEC software and identify ways to improve the system so that it will better meet the needs of the users in tobacco control and prevention. There are no costs to the respondents except for their time in completing the questionnaire.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)	Total burden (in hrs.)
Tobacco Control Professionals/Internet SAMMEC Users	1000	1	15/60	250
Total				250

Dated: October 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22552 Filed 10–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) and the Health Resources and Services Administration (HRSA) announce the following committee meeting.

Name: CDC/HRSA Advisory Committee on HIV and STD Prevention and Treatment.

Times and Dates: 8 a.m.–5 p.m., November 18, 2004. 8 a.m.–12 p.m., November 19, 2004.

Place: Doubletree Hotel—Rockville, 1740 Rockville Pike, Rockville, Maryland.

Status: Open to the public, limited only by the space available. The meeting room will accommodate approximately 100 people.

Purpose: This Committee is charged with advising the Secretary, the Director, CDC, and the Administrator, HRSA, regarding activities related to prevention and control of HIV/AIDS and other STDs, the support of health care services to persons living with HIV/AIDS, and education of health professionals and the public about HIV/AIDS and other STDs.

Matters To Be Discussed: Agenda items include issues pertaining to (1) AIDS Drug Assistance Program (ADAP); (2) Ryan White Reauthorization; and (3) Impact of Crystal Methamphetamine on STD rates and HIV. Agenda items are subject to change as priorities dictate.

FOR FURTHER INFORMATION CONTACT: Paulette Ford-Knights, Public Health Analyst, National Center for HIV, STD, and TB Prevention, 1600 Clifton Road, NE., Mailstop E-07, Atlanta, Georgia 30333. Telephone 404/639–8008, fax 404/639–3125, e-mail *pbf7@cdc.gov.*

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** Notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: September 30, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–22553 Filed 10–6–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1360–CN]

RIN 0938–AM82

Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Fiscal Year 2005; Correction

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice; correction.

SUMMARY: This document corrects technical errors that appeared in the **Federal Register** notice on July 30, 2004, entitled ''Medicare Program; Inpatient Rehabilitation Facility Prospective Payment System for Fiscal Year 2005.'' That notice updated prospective payment rates for inpatient rehabilitation facilities for Federal fiscal year 2005 as authorized under section 1886(j)(3)(C) of the Social Security Act (the Act). In addition, section 1886(j)(5) of the Act requires the Secretary to publish in the **Federal Register**, on or before August 1 before each fiscal year, the classifications and weighting factors for the inpatient rehabilitation facility case mix groups and a description of the methodology and data used in computing the prospective payment rates for that fiscal year.

DATES: Effective for discharges occurring on or after October 1, 2004, and on or before September 30, 2005.

FOR FURTHER INFORMATION CONTACT: August Nemec, (410) 786–0612; or Jeannette Kranacs, (410) 786–9385.

SUPPLEMENTARY INFORMATION:

I. Background

In CMS–1360–N, FR Doc. 04–17444 of July 30, 2004 (69 FR 45721), there were three technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction notice are effective as if they had been included in the document published July 30, 2004. Accordingly, the corrections are effective for discharges occurring on or after October 1, 2004, and on or before September 30, 2005.

We recently determined that several technical errors occurred in the publication of the wage index values for a number of specific Metropolitan Statistical Areas (MSAs). A description of those technical errors is included in the ''Correction of Errors'' section below. We note that correcting these technical errors is a purely administrative function that does not result in any change of policy or payment methodology.

II. Correction of Errors

In CMS–1360–N, FR Doc. 04–17444 of July 30, 2004 (69 FR 45721), make the following corrections:

A. On page 45734, remove Stanly, NC from Urban Area 1520 Charlotte-Gastonia-Rock Hill, NC-SC, because it has a rural designation instead of an urban designation. We note an error in the labeling of the wage index tables within the Inpatient Rehabilitation Facility Prospective Payment System (IRF PPS). That labeling error is the listing of Stanly County, NC as one of the urban areas under MSA 1520 when, in fact, we consider Stanly County, NC to be a rural area in North Carolina. Stanly County wage data have always been correctly treated as rural in the actual creation of the IRF wage index values, and it has only been the listing of Stanly County under MSA 1520 that was in error. Consequently, we are correcting our labeling error in the IRF PPS notice (CMS–1360–N), and have removed Stanly County from the list of areas that fall under the MSA 1520 wage index. Since this is strictly a labeling correction that does not affect the actual computation of the wage index values, IRFs in Stanly County, NC will continue to fall under, and use, the wage index for rural North Carolina.

B. On page 45746, remove the wage index of 0.0000 for Urban Area 4150 and in its place, add a wage index of 0.8677. This change is made due the inadvertent insertion of 0.0000 for MSA 4150 when it should have been 0.8677.

C. On page 45757, remove the wage index of 0.0000 for Urban Area 7000 and in its place, add a wage index of 0.9757. This change is made due to the inadvertent insertion of 0.0000 for MSA 7000 when it should have been 0.9757.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a regulation take effect. We can waive this procedure, however, if we find good cause that notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued. 5 U.S.C. 553(b)(B). We can also waive the 30-day delayed effective date of the Administrative Procedure Act (5 U.S.C. 553(d)) when there is good cause to do so and we publish in the rule an explanation of our good cause.

We find it unnecessary to undertake notice-and-comment rulemaking because this correction notice merely provides technical corrections to the July 30, 2004 notice. This correction notice corrects inadvertent drafting errors (that is, a labeling error with respect to Stanley County and the insertion of incorrect wage indexes for MSA 4150 and MSA 7000). We are not making substantive changes in policy, but rather, are simply implementing correctly the payment methodology that we long ago proposed, received comment on, and subsequently finalized. Thus, because the public has already had the opportunity to comment on the payment methodology used to calculate the wage indexes, additional comment would be unnecessary.

In addition, publication of a substantive rule shall be made not less than 30 days before its effective date. We can waive this procedure, however, if we find good cause that a delayed effective date is impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(d)(3). We believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical mistakes (that is, a labeling error with respect to Stanley County and the insertion of incorrect numbers in the wage indexes for MSA 4150 and MSA 7000). Further, we believe imposing a 30-day delay in the effective date would be contrary to the public interest with respect to IRF providers in MSA 4150 and MSA 7000. As a matter of good public policy, the rates used in the IRF PPS should not be based on wage indexes that contain inadvertent errors that, if not corrected, would have very real impacts on the payments received by providers in MSA 4150 and MSA 7000. We believe that it is imperative that these providers receive appropriate IRF PPS payments and that failure to do so would be contrary to the public interest. Furthermore, the changes noted above do not make any substantive changes to the IRF PPS payment methodology or underlying payment policies. Therefore, we find good cause to waive the 30-day delayed effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: September 30, 2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–22400 Filed 10–1–04; 11:46 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–1249–CN]

RIN 0938–AM46

Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction notice.

SUMMARY: This document corrects technical errors that appeared in the July 30, 2004 **Federal Register**, entitled ''Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update—Notice.''

DATES: This correction is effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Jeanette Kranacs, (410) 786–9385, Bill Ullman, (410) 786–5667, or Sheila Lambowitz, (410) 786–7605.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–17443 of July 30, 2004 (69 FR 45775), there were a number of technical errors that are identified in this notice. It was recently determined that technical errors occurred in the hospital wage index calculation process

for FY 2005, necessitating adjustments to the hospital wage index relating to a number of specific Metropolitan Statistical Areas (MSAs). A description of those technical errors will be included in a **Federal Register** notice specific to the hospital inpatient prospective payment systems (IPPS). As we explained in the July 30, 2004, update notice, the SNF wage index values reflect the pre-floor, pre-reclassification wage data used in the FY 2005 IPPS rates, and therefore, we believe it would be appropriate to incorporate corrections made to the inpatient hospital wage indexes in our SNF PPS wage index tables. Further, we note that correcting these technical errors is a purely administrative function that does not result in any change of policy or payment methodology.

We are correcting Table 10 (which serves to illustrate the payment rate computations for a fictitious ''XYZ'' SNF located in State College, PA), in order to reflect the application of the corrected wage index. In section II of this notice we are correcting the figure for the PPS total payment in the ''XYZ'' example and restoring a footnote that was inadvertently omitted from the published table. This footnote corresponds to the triple asterisk displayed in the table's ''Percent Adjustment'' column for Resource Utilization Group (RUG) SSC, and refers to the application of the 20 percent add-on under section 101(a) of the Medicare, Medicaid and SCHIP Balanced Budget Refinement Act of 1999.

We are also correcting Table 12, which displays the projected impact of the FY 2005 SNF PPS payment update, including the variation in impact by region and by certain other facility characteristics. We note that the effect on the corrected table is solely distributional in nature and, accordingly, there is no change in the estimated aggregate expenditures for FY 2005 as set forth in the July 30, 2004, update notice. A further discussion of the projected impact of the FY 2005 SNF PPS payment update can be found in the July 30, 2004, update notice (69 FR 45820).

In addition, we have identified a labeling error in the wage index tables used in the SNF PPS. That labeling error is the listing of Stanly County, NC as one of the areas under Metropolitan Statistical Area (MSA) 1520 when, in fact, we consider Stanly County, NC to be a rural area in North Carolina. Stanly County wage data have always been correctly treated as rural in the actual creation of the SNF wage index values, and it has only been the listing of Stanly County under MSA 1520 that was in error. Consequently, we have corrected the wage index table in the update notice to remove Stanly County from the list of areas that fall under the MSA 1520 wage index. Since this is strictly a labeling correction that does not affect the actual computation of the wage index values, SNFs in Stanly County, NC will fall under, and use, the wage index for rural North Carolina effective October 1, 2004.

We also wish to clarify that the adjustment amount ($463.96) displayed for RUG CC2 in the ''Percent Adjustment'' column of the corrected Table 10, as indicated by the double asterisk and accompanying footnote, assumes that the days shown in the table for RUG CC2 are for treatment of a patient with acquired immune deficiency syndrome (AIDS). Therefore, this adjustment amount reflected the application of section 511 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA). As explained in the July 30, 2004, update notice (69 FR 45777), section 511 of the MMA provides for a temporary 128 percent increase in payment for any SNF resident with AIDS. We further note that this special 128 percent add-on is applicable regardless of the particular RUG to which an AIDS patient is assigned, and is made in lieu of any other add-on (either 20 percent or 6.7 percent) that might otherwise apply to that RUG.

We have corrected the errors in the wage tables and other tables as noted above. These corrected tables are posted and available on the CMS Web site at: *http://www.cms.hhs.gov/providers/snfpps*. These corrected tables are effective October 1, 2004. We note the corrected tables will be included in a forthcoming **Federal Register** notice.

II. Correction of Errors

In FR Doc. 04–17443 (69 FR 45775), make the following corrections:

1. On page 45817,

a. Third column, line 12, the figure ''$25,161'' is corrected to read ''$25,117''.

b. At the end of the table and after the last sentence, add the following sentence ''*–*–*Reflects a 20 percent adjustment from section 101(a) of the BBRA.''.

III. Waiver of Proposed Rulemaking and Delayed Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

We find it unnecessary to undertake notice-and-comment rulemaking because this notice merely provides technical corrections to the regulations. We are not changing our payment methodology, but rather, are simply implementing correctly the payment methodology that we previously proposed, received comment on, and subsequently finalized. Thus, because the public has already had the opportunity to comment on the payment methodology being used to calculate wage indexes, additional comment would be unnecessary.

Further, we believe a delayed effective date is unnecessary because this correction notice merely corrects inadvertent technical mistakes (that is, a labeling error with respect to Stanley County and the insertion of incorrect numbers in the wage indexes for certain MSAs). Further, we believe imposing a 30-day delay in the effective date would be contrary to the public interest with respect to SNF providers in the affected MSAs. As a matter of good public policy, the rates used in the SNF PPS should not be based on wage indexes that contain inadvertent errors that, if not corrected, would have very real impacts on the payments received by providers in the affected MSAs. We believe that it is imperative that these providers receive appropriate SNF PPS payments and that failure to do so would be contrary to the public interest. Furthermore, the changes noted above do not make any substantive changes to the SNF PPS payment methodology or underlying payment policies. Therefore, we find good cause to waive notice-and-comment procedures, as well as the 30-day delay in effective date.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: September 30, 2004.

Ann Agnew,

Executive Secretary to the Department.

[FR Doc. 04–22399 Filed 10–1–04; 11:46 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[FDA 225–04–4005]

Memorandum of Understanding Between the State of Illinois, Emergency Management Agency, Bureau of Radiation Safety and the Food and Drug Administration, Center for Devices and Radiological Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between the State of Illinois, Emergency Management Agency, Bureau of Radiation Safety and the Food and Drug Administration, Center for Devices and Radiological Health. The purpose of this MOU is to authorize the State of Illinois, through the Illinois Emergency Management Agency, to continue to conduct a State as certifiers program in Illinois under the Mammography Quality Standards Act as amended by the Mammography Quality Standards Reauthorization Act of 1998.

DATES: The agreement became effective August 18, 2004.

FOR FURTHER INFORMATION CONTACT: Joanne Choy, Division of Mammography Quality and Radiation Programs (HFZ–240), 1350 Piccard Dr., Rockville, MD 20850, 301–827–2903, or e-mail: *jkc@cdrh.fda.gov*.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and MOUs between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of the MOU.

Dated: September 30, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

BILLING CODE 4160–01–S

Control No. 225-04-4005

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE STATE OF ILLINOIS

EMERGENCY MANAGEMENT AGENCY
BUREAU OF RADIATION SAFETY

AND

U.S. FOOD AND DRUG ADMINISTRATION
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH
OFFICE OF COMMUNICATION, EDUCATION, AND RADIATION PROGRAMS

I. **PURPOSE**:

The purpose of this Memorandum of Understanding (MOU) is to authorize the State of Illinois, through the Illinois Emergency Management Agency (Agency), to continue to conduct a State as certifiers (SAC) program in Illinois under the Mammography Quality Standards Act (MQSA) (42U.S.C.263b) as amended by the Mammography Quality Standards Reauthorization Act of 1998 (MQSRA). Through this MOU, the United States Food and Drug Administration (FDA) authorizes the Agency to enforce MQSA certification standards as approved by the FDA, to issue certificates to mammography facilities, to perform inspection of mammography facilities, and to take enforcement action against facilities that violate MQSA to ensure safe, reliable, and accurate mammography in Illinois.

II. **BACKGROUND**:

The MQSA (Pub. L. 102-539) was enacted on October 27, 1992, to establish national quality standards for mammography. Subsection 354(q) of the MQSA gives the Secretary of Health and Human Services (Secretary) the power to authorize State programs to carry out certain MQSA certification program requirements. The Secretary has delegated his authority under subsection 354(q) to FDA. FDA developed a States as Certifiers Demonstration Project (Project) to allow a limited trial of State Programs under subsection 354(q) of the MQSA. The State of Illinois applied to participate in the Project and was approved by FDA on August 3, 1998. The State's participation in the Project was subsequently renewed, through an MOU, on November 3, 1999. The State of Illinois requested FDA's approval to continue to serve as a certifying state agency after the completion of the Demonstration Project. FDA has approved the State's request and authorizes, through this MOU, the State of Illinois to continue to serve in its capacity as a certifying State.

III. SUBSTANCE OF AGREEMENT:

1. FDA hereby reauthorizes the State of Illinois, through the Agency, to carry out the certification requirements of subsections 354(b), (c), (d), (g)(1), (h), (i), and (j) of the MQSA (including the requirements under regulations promulgated pursuant to such subsections). This reauthorization applies to facilities within the Agency's jurisdiction.

2. FDA shall continue to carry out subsections 354(e) and (f), may take action under subsections 354(h), (i), and (j) and shall conduct oversight functions under subsections 354(g)(2) and (g)(3) of the MQSA.

3. The State of Illinois shall, in addition, comply with the standards for certification agencies at 21CFR 900.22 and 900.25(b) including but not limited to, the requirements for establishing processes for the following activities:

   - certification and inspection of mammography facilities by MQSA-qualified inspector;
   - appropriate criteria and processes for the suspension and revocation of certificates;
   - prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates, as well as other violations of MQSA;
   - appeals by facilities regarding inspectional findings, enforcement actions, and adverse certification decisions or adverse accreditation decisions after exhausting appeals to their accreditation body;
   - additional mammography review of facilities when the State believes that mammography quality at a facility has been compromised and may present a serious risk to human health;
   - patient and physician notification by the facility when additional mammography review shows that the quality of mammography performed was so inconsistent with established quality standards so as to present a significant risk to human health;
   - timely and accurate electronic transmission of inspection, certification, and compliance data in a format and timeframe determined by FDA;
   - authorization by FDA of changes the State proposes to make to any standard that FDA previously has accepted under 21 CFR 900.21.

4. By October 1st, the beginning of FDA's fiscal year, the State of Illinois shall provide to FDA its plan for inspecting all of the facilities under its jurisdiction during the coming year. At the beginning of each quarter, the State shall provide an update to FDA describing any changes in its annual plan that occurred in the last quarter or are planned for the coming quarter. (Quarters will be calculated on a fiscal rather than calendar year basis, beginning in October and continuing through September of the following year).

5. The State of Illinois will electronically transmit the dates of inspections, and the results of all MQSA facility inspections conducted by the State within 5 business days after conducting the inspection by uploading these data to the MQSA Mammography Program Reporting and Information System (MPRIS) facility inspection data application (FISS).

6. The FDA will bill and charge each inspected mammography facility a fee, in accordance with 42 USC 263b(r)(1), of $509 to cover the FDA's cost for support of the inspections. This fee may be subject to change by FDA. The types of services that will be provided by the FDA are as follows:

   - Training and qualifying inspectors.
   - Billing facilities for the FDA portion of the fees due for annual inspections.
   - Collecting the FDA portion of the facility payments.
   - Developing instrument calibration procedures and calibrating instruments used in the inspections.
   - Supplying, repairing, and replacing inspection equipment.
   - Designing, programming, and maintaining inspection data systems.
   - Administering attributable support to facility inspections.

7. Facilities that qualify as governmental entities (GE) will not be subject to the payment of FDA inspection fees.

8. By the end of each quarter, the State of Illinois shall electronically update and maintain facility noncompliance information via the MPRIS facility compliance tracking data application (FaNTMS) to reflect status and resolution of inspectional findings. Quarters will begin in October and continue through September of the following year

9. The State of Illinois will, in accordance with 21 CFR 900.23, provide all information as specified by FDA as part of FDA's responsibilities, including keeping FDA's SAC liaison informed of compliance actions as they occur and through resolution (e.g., AMR, PPN, Injunctions, Cease and Desist Order, Suspension, or Revocation).

10. The State of Illinois will provide FDA with updates and revisions to its policies and procedures previously approved by FDA, as appropriate.

11. In the event FDA determines, through its oversight activities under 21 CFR 900.23, or through other means, that the State of Illinois is no longer in substantial compliance with its certification program responsibilities, FDA may take action in accordance with 21 CFR 900.24.

12. FDA will provide to the State of Illinois, under 21 CFR 900.25(a), the opportunity to appeal final actions taken by FDA regarding its approval or withdrawal of approval of the certification body.

13. FDA will provide the State of Illinois with access to the FDA MQSA database (MPRIS).

IV. NAMES AND ADDRESSES OF PARTICIPATING AGENCIES:

State of Illinois:
Illinois Emergency Management Agency
110 East Adams Street
Springfield, IL 62701

FDA:
Office of Communication, Education, and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850

V. LIAISON OFFICERS:

For matters and notices related to this MOU:

A. The contact person for the Agency is:

Marilyn Haycraft
Mammography Certification Program
Division of Nuclear Safety
Illinois Emergency Management Agency
1035 Outer Park Drive
Springfield, Illinois 62704
Phone: (217) 785-9923
FAX: (217) 785-9946
E-mail address: Haycraft@iema.state.il.us

B. The contact person for FDA is:

Joanne Choy
Food and Drug Administration, HFZ-240
Division of Mammography Quality and Radiation Programs
1350 Piccard Drive
Rockville, MD 20850
Phone: (301) 827-2963
FAX: (301) 594-3306
E-mail address: jkc@cdrh.fda.gov

Either party may designate in writing different contact persons or addresses.

VI. **PERIOD OF AGREEMENT**:

This MOU will become effective on the date or as of the acceptance by both parties and will continue until termination in writing by either party with a 30-day prior notice (such notice shall be sent to the addresses listed in Section V.) This MOU may be modified by mutual written consent at any time. The MOU will be formally reviewed by the FDA every seven years, and updated or modified as appropriate.

APPROVED AND ACCEPTED FOR THE STATE OF ILLINOIS

(Signature and date) 8/3/04

William C. Burke
Director
Illinois Emergency Management Agency
State of Illinois

APPROVED AND ACCEPTED FOR THE FOOD AND DRUG ADMINISTRATION

(Signature and date) 8/18/04

Lynne L. Rice
Director
Office of Communication, Education, and Radiation Programs
Center for Devices and Radiological Health
Food and Drug Administration

[FR Doc. 04–22577 Filed 10–6–04; 8:45 am]
BILLING CODE 4160–01–C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Notice of Listing of Members of the Food and Drug Administration's Senior Executive Service Performance Review Board

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the members of the FDA Performance Review Board (PRB). This action is intended to ensure that members of the PRBs are appointed in a manner that provides consistency, stability, and objectivity in performance appraisals, and that notice of the appointment of members of the board be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Arlene S. Karr, Rockville Human Resources Center, Department of Health and Human Services (DHHS), 5600 Fishers Lane, Rockville, MD 20857, 301–827–4183.

The following persons will serve on FDA's PRB, which oversees the evaluation of performance appraisals of FDA's Senior Executive Service members in accordance with 5 U.S.C. 4314(c)(4): Jeffrey M. Weber, Chairperson, Richard Diamond, Margaret O'K Glavin,William K. Hubbard, Linda Kahan, Michael Landa, John Marzilli, Melinda K. Plaisier, Linda Tollefson, and Helen Winkle.

Dated: September 30, 2004.

Lester M. Crawford,

Acting Commissioner of Food and Drugs.

[FR Doc. 04–22578 Filed 10–6–04; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2325–04]

Extension of the Designation of Temporary Protected Status for Burundi

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The Temporary Protected Status (TPS) designation for Burundi will expire on November 2, 2004. This notice extends the Secretary of Homeland Security's designation of Burundi for 12 months, until November 2, 2005, and sets forth procedures necessary for nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation

(which was announced on November 4, 1997) and also timely re-registered under each subsequent extension of the designation; or who registered under the re-designation (which was announced on November 9, 1999) and also timely re-registered under each extension of the re-designation. Certain nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who previously have not applied for TPS may be eligible to apply under the late initial registration provisions.

EFFECTIVE DATES: The extension of Burundi's TPS designation is effective November 2, 2004, and will remain in effect until November 2, 2005. The 60-day re-registration period begins October 7, 2004 and will remain in effect until December 6, 2004.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Ullico Building, 3rd Floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend the Designation of TPS for Burundi?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering TPS held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. 8 U.S.C. 1254a(b)(1). The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). 8 U.S.C. 1254a(a)(1).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). Finally, if the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation or extension is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend the TPS Designation for Burundi?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** at 62 FR 59735 designating TPS for Burundi finding that an ongoing armed conflict, and temporary and extraordinary conditions resulting from such conflict, warranted TPS for Burundi. The Attorney General extended the initial designation of TPS for Burundi by notice published in the **Federal Register** on November 3, 1998 at 63 FR 59334. The Attorney General extended and re-designated TPS for Burundi by notice published in the **Federal Register** on November 9, 1999 at 64 FR 61123, finding that the ongoing armed conflict, and temporary and extraordinary conditions resulting from such conflict, continued to warrant TPS for Burundi. The re-designation of TPS for Burundi subsequently was extended by the Attorney General three times by **Federal Register** notice (65 FR 67404; 66 FR 46027; 67 FR 55875).

The Secretary of DHS published a 12-month extension of TPS for Burundi in the **Federal Register** on September 3, 2003 at 68 FR 52405. This extension expires on November 2, 2004.

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Burundi. Although some progress has been made in the peace process, the Secretary of DHS has determined that a 12-month extension of TPS is warranted because both the armed conflict and extraordinary and temporary conditions that prompted designation persist. Further, the Secretary finds that it is not contrary to the national interest of the United States to permit nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who otherwise qualify for TPS to remain temporarily in the United States. 8 U.S.C. 1254a(b)(1)(C).

DOS observes that progress in building a long-term peace has been slower than expected. (DOS Recommendation (June 30, 2004)). One rebel group, the Party for the Liberation of the Hutu People-Forces for National Liberation (PALIPEHUTU–FNL), remains outside of the peace process. (BCIS Resource Information Center Report (June 29, 2004) (hereinafter RIC Report (June 29, 2004)). Fighting between the armed forces of Burundi and the PALIPEHUTU–FNL, as well as between the PALIPEHUTU–FNL and the largest former rebel group, the National Council for the Defense of Democracy-Forces for the Defense of Democracy (CNDD–FDD), continues in Bujumbura Rural, the region surrounding the capital. *Id.*

The transitional period set forth under the Arusha Peace and Reconciliation Agreement signed August 28, 2000, is coming to an end in late 2004. The demobilization of armed groups, not including the 3,000-strong PALIPEHUTU–FNL, is in its early stages at 11 cantonment sites throughout the country. *Id.* The World Bank estimates that there are some 55,000 combatants to be demobilized. (DOS Recommendation (June 30, 2004)). In May 2004, the United Nations Security Council authorized the United Nations Operation in Burundi (ONUB). ONUB was deployed in June 2004 and is tasked, in part, with helping create the security conditions for the provision of humanitarian assistance, and to carry out the disarmament and demobilization portions of the national Disarmament, Demobilization and Reintegration Programs. *Id.*

The armed conflict has displaced 140,000–280,000 persons within Burundi and an estimated 800,000 outside Burundi. (DOS Recommendation (June 30,2004); RIC Report (June 29, 2004)). Another 100,000 Burundians are temporarily displaced each month. (RIC Report (June 29, 2004)).

In spite of the reduction of armed conflict, there continue to be reports of human rights violations by all parties to the conflict. *Id.* An estimated 250,000–300,000 people have been killed in the conflict in Burundi since 1993. *Id.* Nearly 14 percent of the population (965,000 people) is in need of emergency food and agricultural assistance. *Id.* The number of people living below the poverty line doubled from 33 percent in 1990 to 67 percent in 2003. *Id.*

Based upon this review, the Secretary of DHS, after consultation with

appropriate government agencies, finds that the conditions that prompted TPS designation for Burundi continue to be met. 8 U.S.C. 1254a(b)(3)(A). The armed conflict is ongoing and there are extraordinary and temporary conditions in Burundi such that it is not safe to return nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) if these aliens meet the statutory and regulatory requirements for TPS. 8 U.S.C. 1254a(b)(1)(A), (C). The Secretary of DHS also finds that permitting nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who are eligible for TPS to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Burundi should be extended for an additional 12-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Burundi TPS Designation, Do I Still Re-register for TPS?

Yes. If you already have received TPS benefits through the Burundi TPS designation, your benefits will expire on November 2, 2004. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain TPS benefits through November 2, 2005. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-register for an Extension?

All persons previously granted TPS under the Burundi designation who wish to maintain such status must apply for an extension by filing the following: (1) Form I–821, Application for Temporary Protected Status, without the filing fee; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (full face frontal 2 inches x 2 inches); and (4) a biometrics fee of seventy dollars ($70) for each applicant age 14 and older. (See the chart below to determine whether you must submit the one hundred and seventy-five dollar ($175) filing fee with Form I–765.) All applicants for TPS benefits, including those applying for re-registration need to be re-fingerprinted and thus need to pay the seventy dollar ($70) biometric services fee.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins October 7, 2004 and ends December 6, 2004. An interim employment authorization document will not be issued unless the Form I–765, as part of the TPS registration package, has been pending with BCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an Application Support Center (ASC). *See* 8 CFR 103.2(b)(10)(ii) and 8 CFR 274a.13(d).

If:	Then:
You are applying for employment authorization until November 2, 2005	You must complete and file the Form I–765, Application for Employment Authorization, with the $175.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $175 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii); 8 U.S.C. 1254a(c)(2)(B)(ii).

Are Certain Aliens Ineligible for TPS?

Yes. Individuals who do not meet the physical presence and continuous residence requirements as explained earlier in this notice are ineligible for TPS. In addition, there are certain criminal and terrorism related inadmissibility grounds that apply to TPS applicants and would render an alien ineligible for TPS. 8 U.S.C. 1254a (c)(2)(iii). Further, aliens who have been convicted of a felony, or two or more misdemeanors, committed in the United States and aliens who are described in the bars to asylum in Section 208 (b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A), are ineligible for TPS. 8 U.S.C. 1254a (c)(2)(B).

Can I Apply for Another Immigration Benefit While Registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status or from filing for adjustment of status based on an immigrant petition. 8 U.S.C. 1254a(a)(5). TPS alone, however, does not lead to adjustment of status. *See 8* U.S.C. 1254a(e), (f)(1), (h). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4).

Does This Extension Allow Nationals of Burundi (or Aliens Having No Nationality Who Last Habitually Resided in Burundi) Who Entered the United States after November 9, 1999, to File for TPS?

No. This is a notice of an extension of TPS, not a notice of re-designation of TPS for Burundi. An extension of TPS does not change the required dates of continuous residence and continuous physical presence in the United States. This extension does not expand TPS availability to those beyond the current TPS eligibility requirements of Burundi. To be eligible for benefits under this extension, nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) must have been continuously physically present and continuously resided in the United States since November 9, 1999,

the date of the most recent re-designation of TPS for Burundi.

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A), 8 U.S.C. 1254a(c)(2), and 8 CFR 244.2. To apply for late initial registration an applicant must:

(1) Be a national of Burundi (or alien who has no nationality and who last habitually resided in Burundi);

(2) Have been continuously physically present in the United States since November 9, 1999;

(3) Have continuously resided in the United States since November 9, 1999; and

(4) Be both admissible as an immigrant, except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that during the registration period for the initial designation (from November 4, 1997 to November 3, 1998), or during the registration period for the re-designation (from November 9, 1999 to November 2, 2000), he or she:

(1) Was a nonimmigrant or had been granted voluntary departure status or any relief from removal;

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal or change of status pending or subject to further review or appeal;

(3) Was a parolee or had a pending request for reparole; or

(4) Was the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must file an application for late registration no later than 60 days after the expiration or termination of the conditions described above. 8 CFR 244.2(g).

What Happens When This Extension of TPS Expires on November 2, 2005?

At least 60 days before this extension of TPS expires on November 2, 2005, the Secretary of DHS will review conditions in Burundi and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register.**

Notice of Extension of Designation of TPS for Burundi

By the authority vested in DHS under sections 244(b)(1)(A), (b)(1)(C), (b)(3)(A), and (b)(3)(C) of the Act, DHS has determined, after consultation with the appropriate government agencies, that the conditions that prompted designation of Burundi for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Burundi under sections 244(b)(1)(A) and (b)(1)(C) of the Act is extended for an additional 12-month period from November 2, 2004, to November 2, 2005. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 19 nationals of Burundi (or aliens having no nationality who last habitually resided in Burundi) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Burundi (or an alien having no nationality who last habitually resided in Burundi) who was granted TPS during the initial designation period or re-designation period must re-register for TPS during the 60-day re-registration period from October 7, 2004 until December 6, 2004.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status without fee; (2) Form I–765, Application for Employment Authorization with fee if work authorization is requested; (3) two identification photographs (full face frontal 2 inches by 2 inches); and (4) a biometrics fee of seventy dollars ($70) for each applicant age 14 and older. Applications submitted without the required fee and/or photos will be returned to the applicant. If the applicant requests employment authorization, he or she must submit one hundred and seventy-five dollars ($175) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee for filing Form I–765. Failure to re-register without good cause will result in the withdrawal of TPS. 8 U.S.C. 1254a(c)(3)(C). Some persons who had not previously applied for TPS may be eligible for late initial registration under 8 CFR 244.2.

(5) At least 60 days before this extension terminates on November 2, 2005, the Secretary will review the designation of TPS for Burundi and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register.** *Id.*

(6) Information concerning the extension of designation of Burundi for TPS will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://uscis.gov.*

Dated: September 2, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–22706 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–10–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

[CIS No. 2322–04]

Extension and Re-designation of Temporary Protected Status for Sudan

AGENCY: Bureau of Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The Temporary Protected Status (TPS) designation for Sudan will expire on November 2, 2004. This notice extends the Secretary of Homeland Security's designation of Sudan for 12 months until November 2, 2005, and sets forth procedures necessary for nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) with TPS to re-register and to apply for an extension of their employment authorization documentation for the additional 12-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on November 4, 1997) and also timely re-registered under each subsequent extension of the designation; or who registered under the re-designation (which was announced on November 9, 1999) and also timely re-registered under each extension of the re-designation. This notice also re-designates Sudan for TPS. To register for the first time under the re-designation, eligible nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) must have been continuously physically present and continuously resided in the United States since October 7, 2004.

EFFECTIVE DATES: The extension of Sudan's TPS designation is effective November 2, 2004, and will remain in effect until November 2, 2005. The 60-day re-registration period begins October 7, 2004 and will remain in effect until December 6, 2004. The re-designation of Sudan for TPS also is effective November 2, 2004, and will

remain in effect until November 2, 2005. The 180-day registration period begins October 7, 2004 and will remain in effect until April 5, 2005.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, Bureau of Citizenship and Immigration Services, Department of Homeland Security, 425 I Street, NW., Ullico Building, 3rd Floor, Washington, DC 20529, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Authority Does the Secretary of the Department of Homeland Security Have To Extend and Re-designate TPS for Sudan?

On March 1, 2003, the functions of the Immigration and Naturalization Service (Service) transferred from the Department of Justice (DOJ) to the Department of Homeland Security (DHS) pursuant to the Homeland Security Act of 2002, Pub. L. 107–296. The responsibilities for administering TPS held by the Service were transferred to the Bureau of Citizenship and Immigration Services (BCIS).

Under section 244 of the Immigration and Nationality Act (Act), 8 U.S.C. 1254a, the Secretary of DHS, after consultation with appropriate agencies of the Government, is authorized to designate a foreign state or (part thereof) for TPS. 8 U.S.C. 1254a(b)(1). The Secretary of DHS may then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state).

Section 244(b)(3)(A) of the Act requires the Secretary of DHS to review, at least 60 days before the end of the TPS designation or any extension thereof, the conditions in a foreign state designated for TPS to determine whether the conditions for a TPS designation continue to be met and, if so, the length of an extension of TPS. 8 U.S.C. 1254a(b)(3)(A). If the Secretary of DHS determines that the foreign state no longer meets the conditions for TPS designation, he shall terminate the designation, as provided in section 244(b)(3)(B) of the Act. 8 U.S.C. 1254a(b)(3)(B). If the Secretary of DHS does not determine that a foreign state (or part thereof) no longer meets the conditions for designation at least 60 days before the designation, or extension of such designation, is due to expire, section 244(b)(3)(C) of the Act provides for an automatic extension of TPS for an additional period of 6 months (or, in the discretion of the Secretary of DHS, a period of 12 or 18 months). 8 U.S.C. 1254a(b)(3)(C).

Why Did the Secretary of DHS Decide To Extend and Re-designate TPS for Sudan?

On November 4, 1997, the Attorney General published a notice in the **Federal Register** at 62 FR 59737 designating Sudan for TPS. The initial designation was extended for twelve months by notice published in the **Federal Register** on November 3, 1998 at 63 FR 59337. The Attorney General re-designated Sudan for TPS by a notice published in the **Federal Register** on November 9, 1999 at 64 FR 61128. The re-designation of TPS for Sudan subsequently was extended by the Attorney General three times by **Federal Register** notice (65 FR 67407, 66 FR 46031 and 67 FR 55877). The last extension of TPS for Sudan by the Attorney General was published in the **Federal Register** on August 30, 2002 at 67 FR 55877.

The Secretary of Homeland Security published a 12-month extension of TPS for Sudan by publishing a notice in the **Federal Register** on September 3, 2003 at 68 FR 52410. This extension expires on November 2, 2004.

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Sudan. Although some progress has been made in the peace negotiations for the North-South conflict, the Secretary of DHS has determined that a 12-month extension is warranted because the armed conflict in Sudan continues. Likewise, the extraordinary and temporary conditions resulting from Sudan's North-South civil war persist. 8 U.S.C. 1254a(b)(1)(A), (C). Further, the Secretary finds that it is not contrary to the national interest of the United States to permit nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who otherwise qualify for TPS to remain temporarily in the United States. 8 U.S.C. 1254a(b)(1)(C). The Secretary of DHS has also determined that Sudan be re-designated for TPS based on the intensification of the armed conflict in the Darfur region of Sudan.

Both DOS and the BCIS Resource Information Center note that a framework peace agreement between the Government of Sudan and the Sudan People's Liberation Army (SPLA) was signed in June 2004. (DOS Recommendation (June 24, 2004) and BCIS Resource Information Center Report (June 30, 2004), (hereinafter RIC Report (June 30, 2004)). In spite of that progress, the North-South civil war continues without a comprehensive peace agreement to end the civil war. (DOS Recommendation (June 24, 2004)). Fighting continues between the SPLA and southern militias. (RIC Report (June 30, 2004). Renewed fighting caused the displacement of 70,000 people in south Sudan's Shilluk Kingdom. *Id.* The 20-year old conflict is estimated to have killed 2 million people, internally displaced 4.5 million people, and sent over 600,000 refugees into neighboring countries. (DOS Recommendation (June 24, 2004)).

In addition to the North-South conflict, the conflict in the western region of Darfur has intensified. Up to 30,000 civilians have been killed. (RIC Report (June 30, 2004)). Up to one million people have been displaced from their homes in Darfur and over 100,000 have fled to neighboring Chad. *Id.* One million civilians in Darfur remain beyond the reach of aid workers due to the ongoing conflict. *Id.* Reports of killings, rapes, beatings, looting and burning of property throughout the Darfur region continue. (DOS Recommendation (June 24, 2004)).

Based upon this review, the Secretary of DHS, after consultation with appropriate government agencies, finds that the conditions that prompted designation of Sudan for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). The armed conflict is ongoing and there are extraordinary and temporary conditions in Sudan such that it is not safe to return nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) if these aliens meet the statutory and regulatory requirements for TPS. 8 U.S.C. 1254a(b)(1)(A), (C). The Secretary of DHS also finds that permitting nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who are eligible for TPS to remain temporarily in the United States is not contrary to the national interest of the United States. 8 U.S.C. 1254a(b)(1)(C). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Sudan should be extended for an additional 12-month period and that Sudan should be re-designated for TPS. 8 U.S.C. 1254a(b)(3)(C), 1254a(b)(1)(A).

If I Currently Have TPS Through the Sudan TPS Designation, Do I Still Re-register for TPS?

Yes. If you already have received TPS benefits through the Sudan TPS designation, your benefits will expire on November 2, 2004. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain their TPS benefits through November 2, 2005. TPS benefits include

temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period and any extension thereof. 8 U.S.C. 1254a(a)(1).

If I Am Currently Registered for TPS, How Do I Re-register for an Extension?

All persons previously granted TPS under the Sudan designation who wish to maintain such status must apply for an extension by filing the following: (1) Form I–821, Application for Temporary Protected Status, without the filing fee; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (full face frontal 2 inches x 2 inches); and (4) a biometrics fee of seventy dollars ($70) for each applicant age 14 or older. (See the chart below to determine whether you must submit the one hundred and seventy-five dollar ($175) filing fee with Form I–765.) All applicants for TPS benefits, including those applying for re-registration need to be re-fingerprinted and thus need to pay the seventy dollar ($70) biometric services fee.

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 60-day re-registration period that begins October 7, 2004 and ends December 6, 2004. An interim employment authorization document will not be issued to an applicant unless the Form I–765, as part of the TPS registration package, has been pending with BCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an Application Support Center (ASC). *See* 8 CFR 103.2(b)(10)(ii), 274a.13(d).

If:	Then:
You are applying for employment authorization until November 2, 2005	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee.[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $175 fee, but must still complete and submit Form I–765 for data gathering purposes.

Does this extension allow nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who entered the United States after November 9, 1999, to file for TPS?

Yes. This notice re-designates Sudan for TPS based on the ongoing armed conflict in the Darfur region. To register for TPS under this re-designation nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) must have been continuously physically present and continuously resided in the United States since October 7, 2004.

If I Am Not Currently Registered for TPS, How Do I Register Under the Re-designation?

First-time applicants for TPS may register under the re-designation by filing the following: (1) Form I–821, Application for Temporary Protected Status, with the fifty dollar ($50) filing fee; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (full face frontal 2 inches × 2 inches); (4) supporting evidence as required to establish eligibility for TPS benefits as provided in 8 CFR 244.9; and (5) a biometrics fee of seventy dollars ($70) for each applicant over the age of 14. (See the chart below to determine whether you must submit the one hundred and seventy five dollar ($175) filing fee with Form I–765).

An application submitted without the required fee and/or photos will be returned to the applicant. Submit the completed forms and applicable fee, if any, to the BCIS District Office having jurisdiction over your place of residence during the 180-day registration period that begins October 7, 2004 and ends April 5, 2005. An interim employment authorization document will not be issued to an applicant unless the Form I–765, as part of the TPS registration package, has been pending with BCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an Application Support Center (ASC). *See* 8 CFR 103.2(b)(10)(ii), 274a.13(d).

If:	Then:
You are applying for employment authorization until November 2, 2005	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee if you are between the ages 14 and 65 (inclusive)
You already have employment authorization or do not require employment authorization.	You must complete and file Form I–765 with no fee[1]
You are applying for employment authorization and are requesting a fee waiver.	You must complete and file: (1) Form I–765 and (2) a fee waiver request and affidavit (and any other information) in accordance with 8 CFR 244.20.

[1] An applicant who does not seek employment authorization documentation does not need to submit the $175 fee, but must still complete and submit Form I–765 for data gathering purposes.

How Does an Application for TPS Affect My Application for Asylum or Other Immigration Benefits?

An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an applicant's TPS eligibility, although the grounds for denying one form of relief may also be grounds for denying TPS. For example, a person who has been convicted of a particularly serious crime is not eligible for asylum or TPS. 8 U.S.C. 1158(b)(2)(A)(ii), 1254a(c)(2)(B)(ii).

Are Certain Aliens Ineligible for TPS?

Yes. Individuals who do not meet the physical presence and continuous residence requirements as explained earlier in this notice are ineligible for TPS. In addition, there are certain criminal and terrorism related inadmissibility grounds that apply to TPS applicants and would render an alien ineligible for TPS. 8 U.S.C. 1254a (c)(2)(iii). Further, aliens who have been convicted of a felony, or two or more misdemeanors, committed in the United States, and aliens who are described in the bars to asylum under Section 208(b)(2)(A) of the Act (8 U.S.C. 1158(b)(2)(A)), are ineligible for TPS. 8 U.S.C. 1254a(c)(2)(B).

Can I Apply for Another Immigration Benefit While Registered for TPS?

Yes. Registration for TPS does not prevent you from applying for another non-immigrant status or from filing for adjustment of status based on an immigrant petition. 8 U.S.C. 1254a(a)(5). TPS alone, however, does not lead to adjustment of status. 8 U.S.C. 1254a(e), (f)(1), (h). For the purposes of change of status and adjustment of status, an alien is considered as being in, and maintaining, lawful status as a nonimmigrant during the period in which the alien is granted TPS. 8 U.S.C. 1254a(f)(4).

What Happens When this Extension and Re-designation of TPS Expire on November 2, 2005?

At least 60 days before the extension and re-designation of TPS expire on November 2, 2005, the Secretary of DHS will review conditions in Sudan and determine whether the conditions for TPS designation continue to be met at that time, or whether the TPS designation should be terminated. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

Notice of Extension and Re-designation of TPS for Sudan

By the authority vested in DHS under sections 244(b)(1)(A), (b)(1)(C), (b)(3)(A), and (b)(3)(C) of the Act, DHS has determined, after consultation with the appropriate government agencies, that the conditions that prompted designation of Sudan for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Sudan under sections 244(b)(1)(A) and (b)(1)(C) of the Act is extended for an additional 12-month period from November 2, 2004, to November 2, 2005. 8 U.S.C. 1254a(b)(3)(C).

(2) Sudan is re-designated for TPS under section 244(b)(1)(A) of the Act. 8 U.S.C. 1254a(b)(1)(A).

(3) There are approximately 449 nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who have been granted TPS and who are eligible for re-registration.

(4) It is estimated that there are fewer than 1,500 nationals of Sudan (or aliens having no nationality who last habitually resided in Sudan) who are not currently registered for TPS, but who may be eligible for TPS under this re-designation.

(5) To maintain TPS, a national of Sudan (or an alien having no nationality who last habitually resided in Sudan) who was granted TPS during the initial designation period or re-designation period must re-register for TPS under the extension during the 60-day re-registration period from October 7, 2004 until December 6, 2004.

(6) To re-register under the extension, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (full face frontal 2 inches by 2 inches); and (4) a biometrics fee of seventy dollars ($70) for each applicant age 14 and older. Applications submitted without the required fee and/or photos will be returned to the applicant. There is no fee for filing a Form I–821 for re-registration. If the applicant requests employment authorization, he or she must submit one hundred and seventy-five dollars ($175) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee. Failure to re-register without good cause will result in the withdrawal of TPS. 8 U.S.C. 1254a(c)(3)(C).

(7) To register for TPS under the re-designation, a national of Sudan (or alien having no nationality who last habitually resided in Sudan) who has been continuously physically present and continuously resided in the United States since October 7, 2004 must register for TPS during the 180-day registration period from October 7, 2004 until April 5, 2005. Only aliens who have not already been granted TPS pursuant to the TPS designation for Sudan, and whose status has not been withdrawn, may apply for TPS under the re-designation.

(8) To register under the re-designation, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status, with fee; (2) Form I–765, Application for Employment Authorization; (3) two identification photographs (full face frontal 2 inches by 2 inches); (4) supporting evidence as required to establish eligibility for TPS benefits as provided in 8 CFR 244.9; and (5) a biometrics fee of seventy dollars ($70) for each applicant over age 14. Applications submitted without the required fee and/or photos will be returned to the applicant. If the applicant is between the ages of 14 and 65 (inclusive) and requests employment authorization, he or she must submit one hundred and seventy-five dollars ($175) or a properly documented fee waiver request, pursuant to 8 CFR 244.20, with the Form I–765. An applicant who does not request employment authorization must nonetheless file Form I–765 along with Form I–821, but is not required to submit the fee for filing the Form I–765. Failure to re-register without good cause will result in the withdrawal of TPS. 8 U.S.C. 1254a(c)(3)(C).

(9) At least 60 days before this extension and re-designation terminates on November 2, 2005, the Secretary will review the designation of Sudan for TPS and determine whether the conditions for designation continue to be met. 8 U.S.C. 1254a(b)(3)(A). Notice of that determination, including the basis for the determination, will be published in the **Federal Register**. 8 U.S.C. 1254a(b)(3)(A).

(10) Information concerning the extension of designation of Sudan for TPS will be available at local BCIS offices upon publication of this notice and on the BCIS Web site at *http://uscis.gov.*

Dated: September 2, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–22707 Filed 10–6–04; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4914-N–04]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with section 202(c) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: David E. Hintz, Acting Secretary to the Mortgagee Review Board, 451 Seventh Street, SW., Washington, DC 20410–8000, telephone: (202) 708–3856, extension 3594. A Telecommunications Device for Hearing- and Speech-Impaired Individuals (TTY) is available at (800) 877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235, approved December 15, 1989), requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board (Board). In compliance with the requirements of section 202(c)(5), this notice advises of administrative actions that have been taken by the Board from February 1, 2003 to July 31, 2004.

1. Accent Mortgage Services, Inc., Alpharetta, GA [Docket No. 03–3219–MR]

Action: Settlement Agreement signed March 26, 2004. Without admitting fault or liability, Accent Mortgage Services, Inc. (AMS) agreed to pay a civil money penalty in the amount of $75,000.

Cause: The Board took this action based on the following violations of HUD and Federal Housing Administration (HUD/FHA) requirements in origination of HUD/FHA-insured loans where AMS: allowed non-HUD/FHA approved entities to originate and process HUD/FHA-insured loans that were registered with HUD, as loans originated and processed by AMS; and entered into prohibited branch agreements with its branch managers.

2. Advantage Investors Mortgage Corporation, Dallas, TX [Docket No. 01–1447–MR]

Action: Settlement Agreement signed September 15, 2003. Without admitting fault or liability, Advantage Investors Mortgage Corporation (AIM) agreed to pay a civil money penalty in the amount of $247,500. AIM also agreed to indemnify HUD for any losses incurred on 29 loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where AIM: Failed to verify the source and adequacy of funds required for closing and/or to pay off debts; failed to adequately verify employment and/or used false and/or inaccurate income to qualify mortgagors; failed to include or determine all of the mortgagor's liabilities and/or the liabilities of the non-purchasing spouse in mortgage qualification; failed to resolve outstanding delinquent federal debt; failed to obtain required inspections and/or certifications relating to property eligibility; failed to recalculate the maximum mortgage amount at closing resulting in an over-insured mortgage; failed to resolve or clarify important file discrepancies; charged mortgagors excessive or unallowable fees; failed to retain the entire case file for a minimum period of two years from the date of insurance endorsement; and failed to report fraud to HUD.

3. Alliance Mortgage Banking Corporation, Levittown, NY [Docket No. 01–1571–MR]

Action: Settlement Agreement signed September 17, 2003. Without admitting fault or liability, Alliance Mortgage Banking Corporation (AMB) agreed to pay an administrative payment in the amount of $500,000. AMB also agreed to indemnify HUD for any losses incurred on three loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where AMB: Failed to identify and/or resolve false or conflicting documentation prior to approving HUD/FHA mortgagors; failed to obtain sufficient documentation to verify the source and adequacy of funds for the downpayment and/or closing costs; approved a loan where the appraiser's estimate of the market value of the property was significantly inflated; and failed to establish a quality control plan that conforms with HUD/FHA requirements.

4. Amera Mortgage Corporation, Farmington Hills, MI [Docket No. 03–3442–MR]

Action: Settlement Agreement signed July 20, 2004. Without admitting fault or liability, Amera Mortgage Corporation (AMC) agreed to pay an administrative payment in the amount of $43,000. AMC also agreed to indemnify HUD for any losses incurred on two loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where AMC: Failed to ensure that their employees worked exclusively for AMC; failed to pay all operating expenses for branch and satellite offices; failed to ensure their branch managers only managed one branch; shared branch office space with another entity; failed to properly notify HUD of its corporate changes; failed to properly verify the source and adequacy of funds used for downpayment and closing costs; charged borrowers fees which are not in compliance with HUD/FHA requirements; and failed to guarantee an interest rate and/or discount points at least 15 days prior to the date the loan closed.

5. American Union Mortgage, Inc., Sandy, UT [Docket No. 02–1873–MR]

Action: Settlement Agreement signed May 14, 2004. Without admitting fault or liability, American Union Mortgage, Inc. (AUM) agreed to a pay civil money penalty in the amount of $150,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where AUM: Accepted loans originated by personnel not employed by or not exclusively employed by AUM; signed false lender certifications contained in the Addendum to Uniform Residential Loan Applications; and failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements.

6. ARC Mortgage, Inc., Saddlebrook, NJ [Docket No. 03–3124–MR]

Action: Settlement Agreement signed April 14, 2004. Without admitting fault or liability, ARC Mortgage, Inc. (ARC) agreed to pay an administrative payment in the amount of $40,500. ARC also agreed to indemnify HUD for any losses incurred on six loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination

of HUD/FHA-insured loans where ARC: Failed to ensure the borrower met the three percent statutorily required minimum cash investment; used falsified documentation and/or conflicting information to originate the loans and obtain HUD/FHA mortgage insurance; failed to properly document the borrower's income and/or employment; failed to establish the source and/or adequacy of funds for the downpayment and/or the costs due at closing; and charged borrowers a $395 commitment fee without appropriate documentation of an interest rate and/or discount points lock-in 15 days prior to closing.

7. Bartlett Mortgage, Inc., Bartlett, TN [Docket No. 04–4169–MR]

Action: In a letter dated December 23, 2003, the Board accepted an offer from Bartlett Mortgage, Inc. (Bartlett) to pay $223,405.78 as full payment for indemnifications due HUD.

Cause: The Board took this action because Bartlett failed to comply with the terms of a previously executed indemnification agreement with the Department.

8. Best Mortgage Inc., Gladstone, MO [Docket No. 04–4271–MR]

Action: Settlement Agreement signed August 3, 2004. Without admitting fault or liability, Best Mortgage Inc. (Best) agreed to pay HUD $402,650.43, the full amount due the Department under three previously executed indemnification agreements.

Cause: The Board took this action because Best failed to comply with the terms of three Indemnification Agreements executed with the Department on July 26, 2001.

9. California Housing Finance Agency, Sacramento, CA [Docket No. 02–2155–MR]

Action: Settlement Agreement signed September 29, 2003. Without admitting fault or liability, the California Housing Finance Agency (CHFA) agreed to pay an administrative payment in the amount of $322,500.

Cause: The Board took this action as a result of CHFA's failure to perform property inspections on HUD/FHA-insured multifamily projects.

10. Capitol State Mortgage Corporation, Houston, TX [Docket No. 03–3216–MR]

Action: On November 10, 2003, the Board issued a letter to Capitol State Mortgage Corporation (CSM) permanently withdrawing its HUD/FHA approval. The Board also voted to impose a civil money penalty in the amount of $5,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where CSM: Submitted financial statements to HUD that were falsified and were not audited by a licensed certified public accountant for fiscal years ending June 30, 1995–1999; and employed and retained an officer, partner, director or principal at such time when such person was suspended or debarred.

11. Carlton Mortgage Services, Inc., Palatine, IL [Docket No. 03–3217–MR]

Action: On April 22, 2004, the Board issued a letter to Carlton Mortgage Services Inc. (CMS) withdrawing its HUD/FHA approval for three years. The Board also voted to impose a civil money penalty in the amount of $126,162.50.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where CMS: Failed to provide evidence that its quality control plan was implemented and maintained in compliance with HUD/FHA requirements; failed to timely remit up-front mortgage insurance premiums; failed to submit loans for endorsement in a timely manner; submitted delinquent loans for endorsement; and charged commitment fees that were not in compliance with HUD/FHA requirements.

12. Chapel Mortgage Corporation, Rancocas, NJ [Docket No. 04–4281–MR]

Action: Settlement Agreement signed August 12, 2004. Without admitting fault or liability, Chapel Mortgage Corporation (CMC) agreed to pay an administrative payment in the amount of $100,000. CMC also agreed to indemnify HUD for any losses incurred on 19 loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where CMC: failed to identify and/or provide an analysis of prior sales that occurred within one year of the appraisal report; falsely certified that the loans were eligible for FHA mortgage insurance; failed to include/evaluate borrower debt and/or document satisfactory explanations of the derogatory credit; approved loans with ratios that exceeds HUD/FHA's established standards without significant compensating factors; failed to adequately document the source of funds used for the downpayment and/or closing costs; failed to provide HUD with the requested quality control reviews; and failed to ensure that borrowers who had been charged a commitment fee executed a commitment agreement guaranteeing discount points at least 15 days prior to the date the loan closed.

13. Charter One Bank NA, Troy, MI [Docket No. 03–3112–MR]

Action: Settlement Agreement signed March 10, 2004. Without admitting fault or liability, Charter One Bank (COB) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of COB's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

14. Colorado Housing Finance Authority, Denver, CO [Docket No. 03–3107–MR]

Action: Settlement Agreement signed November 13, 2003. Without admitting fault or liability, Colorado Housing Finance Authority (CHFA) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of CHFA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

15. Connecticut Housing Finance Authority, Rocky Hill, CT [Docket No. 03–3231–MR]

Action: Settlement Agreement signed July 7, 2004. Without admitting fault or liability, Connecticut Housing Finance Authority (CHFA) agreed to pay an administrative payment in the amount of $15,000.

Cause: The Board took this action as a result of CHFA's failure to perform property inspections on HUD/FHA-insured multifamily projects.

16. Credit Services Investment Mortgage Corporation, Waco, TX [Docket No. 02–1791–MR]

Action: Settlement Agreement signed September 17, 2003. Without admitting fault or liability, Credit Services Investment Mortgage Corporation (CSI) agreed to pay HUD an administrative payment in the amount of $16,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where CSI: allowed non-HUD approved entities and non-CSI employees to originate HUD/FHA-insured loans in violation of the HUD/FHA requirements.

17. Crest Mortgage Company, Dallas, TX [Docket No. 02–1839–MR]

Action: On April 21, 2004, the Board issued a letter to Crest Mortgage Company (CMC) withdrawing its HUD/FHA approval for five years. The Board

also voted to impose a civil money penalty in the amount of $206,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where CMC: falsely certified to HUD that the information contained in the Uniform Residential Loan Application was obtained directly from the mortgagor by a full time employee of the mortgagee; failed to verify the transfer of gift funds; failed to verify the source of funds needed to close loans and/or satisfy delinquent obligations; failed to ensure that mortgagors met their minimum capital investment requirements; failed to adequately verify income; failed to resolve discrepancies in loan documents; failed to implement a quality control plan in compliance with HUD/FHA requirements; permitted loan documents to be hand-carried by an interested third party; and permitted an employee involved in the loan to process the application.

18. CW Capital, LLC, Needham, MA [Docket No. 04–4232–MR]

Action: Settlement Agreement signed July 27, 2004. Without admitting fault or liability CW Capital, LLC (CWC) agreed to pay HUD an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of CWC's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

19. De Oro, Inc., Ontario, CA [Docket No. 03–3127–MR]

Action: Settlement Agreement signed January 13, 2004. Without admitting fault or liability, De Oro, Inc. (DOI) agreed to pay HUD an administrative payment in the amount of $175,000. DOI also agreed to indemnify HUD for any losses incurred on 13 loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where DOI: failed to segregate the collection of up-front mortgage insurance premiums (UFMIP) of HUD-insured mortgages from its general operating accounts for the years 2001 and 2002; failed to remit timely UFMIP for the years 2001 and 2002; failed to implement and maintain a quality control plan in compliance with HUD/FHA guidelines; failed to submit loans for endorsement in a timely manner; failed to properly evaluate credit risk; failed to properly verify the source and adequacy of funds for the downpayment and/or closing costs; failed to properly verify income; failed to adequately monitor the section 203(k) repair process; and failed to adequately address conflict of interest situations.

20. Fifth Third Bank, Cincinnati, OH [Docket No. 03–3113–MR]

Action: Settlement Agreement signed September 3, 2003. Without admitting fault or liability, Fifth Third Bank (FTB) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of FTB's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

21. First American Home Loan & Mortgage Company, Merrillville, IN [Docket No. 03–3221–MR]

Action: The Board voted to accept First American Home Loan & Mortgage Company's (FAHL) offer to pay an administrative payment of $24,500 and repayment of fees improperly charged borrowers.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where FAHL: failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements for two and a half years; charged commitment fees that were not in compliance with HUD/FHA requirements; and charged borrowers unallowable fees.

22. First Banc Mortgage, Inc., Clayton, MO [Docket No. 02–1909–MR]

Action: Settlement Agreement signed September 17, 2003. Without admitting fault or liability, First Banc Mortgage, Inc. (FBM) agreed to pay a civil money penalty in the amount of $64,000. FBM also agreed to indemnify HUD for any losses incurred on four loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where FBM: failed to implement and maintain an adequate quality control plan; failed to report fraud or program abuses to HUD; failed to expand its quality control reviews after fraud was identified; failed to properly disclose premium pricing (*i.e.*, when a borrower agrees to a higher mortgage interest rate in exchange for the mortgagee paying closing and settlement costs); failed to adequately monitor its pricing policies and that of its loan correspondents; failed to properly verify the source and/or adequacy of funds for the downpayment and/or closing costs; approved loans using false and/or conflicting information; failed to properly evaluate employment and/or income; failed to include a liability in the underwriting analysis; and closed a loan the was not in compliance with the Loan Prospector, an automated underwriting system.

23. First Community Bank, Kansas City, KS [Docket No. 02–1936–MR]

Action: Settlement Agreement signed March 1, 2004. Without admitting fault or liability, First Community Bank (FCB) agreed to pay HUD an administrative payment in the amount of $119,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where FCB: Falsely certified to HUD that the information contained in the Uniform Residential Loan Application was obtained directly from the mortgagor by a full time employee of the mortgagee; failed to verify the transfer of gift funds; failed to verify the source of funds needed to close loans and/or satisfy delinquent obligations; failed to ensure that mortgagors met their minimum capital investment requirements; failed to adequately verify income; failed to resolve discrepancies in loan documents; failed to implement a quality control plan in compliance with HUD/FHA requirements; and permitted an employee involved with the loan to process the application.

24. First Community Resources, Inc., St. Louis, MO [Docket No. 04–4382–MR]

Action: Settlement Agreement signed August 13, 2004. Without admitting fault or liability, First Community Resources, Inc. (FCR) agreed to pay civil money penalty in the amount of $16,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where FCR: Failed to maintain a quality control plan and conduct quality control reviews in compliance with HUD/FHA requirements for the years 2001, 2002 and 2003.

25. First Hawaiian Bank, Honolulu, HI [Docket No. 03–3115–MR]

Action: Settlement Agreement signed September 2, 2003. Without admitting fault or liability, First Hawaiian Bank (FHB) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of FHB's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

26. First Realty Funding, Inc., La Puente, CA [Docket No. 03–3019–MR]

Action: On August 2, 2004, First Realty Funding, Inc. (FRF) was served

with the Government's Complaint for Civil Money Penalty in the amount of $18,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where FRF: Failed to implement and maintain a quality control plan; used independent contractors to originate HUD/FHA-insured mortgages; failed to file annual reports regarding loan application activities; and breached an indemnification agreement signed with the Department.

27. Flagstar Bank, Troy, MI [Docket No. 03–3226–MR]

Action: Settlement Agreement signed March 26, 2004. Without admitting fault or liability, Flagstar Bank (Flagstar) agreed to pay an administrative payment in the amount of $197,775. Flagstar also agreed to indemnify HUD for any losses incurred 13 loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where Flagstar: Failed to remit timely payment of up-front mortgage insurance premiums on 1,310 loans; failed to submit 1,035 loans for insurance endorsement within 60 days from the date of loan closing; failed to ensure that borrowers on one HUD/FHA-insured loan met their statutorily required minimum cash investment; failed to properly verify the source and adequacy of funds used for the downpayment and closing costs; failed to adequately document income and/or employment used to qualify the borrower; failed to consider all debts in the calculation of debt to income ratios; charged the borrowers for unallowable fees; and failed to ensure that borrowers who had been charged a commitment fee had executed commitment agreements.

28. Fleet National Bank, Providence, RI [Docket No. 04–4231–MR]

Action: Settlement Agreement signed August 16, 2004. Without admitting fault or liability, Fleet National Bank (Fleet) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of Fleet's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

29. Group One Mortgage, Inc., Kent, WA [Docket No. 03–3125–MR]

Action: On November 12, 2003, the Board issued a letter to Group One Mortgage, Inc. (GOM) withdrawing its HUD/FHA approval for three years. The Board also voted to impose a civil money penalty in the amount of $148,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where GOM: Failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements; failed to check all parties to the transaction against the limited denial of participation (LDP) and General Services Administration (GSA) lists in accordance with HUD/FHA requirements; failed to comply with HUD/FHA requirements for an underwriter's compensation; failed to ensure that loan documentation was not handled by an interested third party; failed to verify the source and adequacy of funds for the downpayment and/or closing costs; failed to properly verify and evaluate employment and/or income; and failed to underwrite loans in accordance with HUD/FHA requirements.

30. GTL Investments, d/b/a John Adams Mortgage Company, Southfield, MI [Docket No. 04–4138–MR]

Action: Settlement Agreement signed July 16, 2004. Without admitting fault or liability, John Adams Mortgage Company (JAMC) agreed to pay an administrative payment in the amount of $20,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where JAMC: Failed to ensure that all officers, branch managers and other employees were exclusive JAMC employees; failed to register a ''Doing Business As'' name with HUD; charged borrowers fees not permitted by HUD/FHA; failed to ensure that borrowers who had been charged a commitment fee executed a commitment agreement guaranteeing interest rate and/or discount points at least 15 days prior to the date the loan closed; and failed to provide complete loan origination files for review.

31. Homestead Financial Services, Inc., Syracuse, NY [Docket No. 01–1587–MR]

Action: Settlement Agreement signed October 30, 2003. Without admitting fault or liability, Homestead Financial Services, Inc. (HFS) agreed to pay a civil money penalty in the amount of $50,000. HFS also agreed to indemnify HUD for any losses incurred on two loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where HFS: Submitted loans for endorsement that were originated by non-HUD/FHA-approved mortgage brokers; used unsupported/conflicting income information in the loan approval process; failed to ensure mortgagors met the statutory minimum required cash investment; and failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements.

32. Illinois Housing Development Authority, Chicago, IL [Docket No. 03–3104–MR]

Action: Settlement Agreement signed September 2, 2003. Without admitting fault or liability, Illinois Housing Development Authority (IHDA) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of IHDA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

33. Imperial Financial Lending, Inc., City of Industry, CA [Docket No. 03–3161–MR]

Action: Settlement Agreement signed November 20, 2003. Without admitting fault or liability, Imperial Financial Lending, Inc. (IFL) agreed to pay a civil money penalty in the amount of $33,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where IFL: failed to maintain a quality control plan in compliance with HUD/FHA requirements; failed to implement a quality control plan in compliance with HUD/FHA requirements; permitted a corporate officer to be affiliated with other lending institutions and/or real estate entities; failed to file annual reports for Fiscal Years 2000, 2001, and 2002, regarding loan application activity; and used an independent contractor agreement with its loan officers that was not in compliance with HUD/FHA requirements.

34. Kentucky Housing Corporation, Frankfort, KY [Docket No. 03–3027–MR]

Action: Settlement Agreement signed October 31, 2003. Without admitting fault or liability, Kentucky Housing Corporation (KHC) agreed to pay an administrative payment in the amount of $5,000.

Cause: The Board took this action as a result of KHC's failure to perform property inspection on one HUD/FHA-insured multifamily project.

35. Legacy Mortgage Financial Services, LLC, Orem, UT [Docket No. 03–3241–MR]

Action: On February 27, 2004, the Board issued a letter to Legacy Mortgage Financial Services, LLC (LMF) withdrawing its HUD/FHA approval for three years. The Board also voted to impose a civil money penalty in the amount of $6,500.

Cause: The Board took this action against LMF because an individual debarred by HUD for his actions as a principal of a formerly approved mortgagee, was owner and principal of LMF, in violation of HUD/FHA requirements.

36. Massachusetts Housing Finance Agency, Boston, MA [Docket No. 03–3029–MR]

Action: Settlement Agreement signed March 20, 2003. Without admitting fault or liability, Massachusetts Housing Finance Agency (MHFA) agreed to pay an administrative payment in the amount of $6,000.

Cause: The Board took this action as a result of MHFA's failure to perform property inspections on HUD/FHA-insured multifamily projects.

37. MISRA Group, Inc., d/b/a Raintree Mortgage Services, Inc., Kennesaw, GA [Docket No. 02–1941–MR]

Action: On May 19, 2003, the Board issued a letter to MISRA Group, Inc. (MGI) withdrawing its HUD/FHA approval for three years. The Board also voted to impose a civil money penalty in the amount of $69,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where MGI: Failed to ensure that employees worked exclusively for RMS; submitted falsified documentation to obtain HUD/FHA mortgage insurance; failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements; and failed to file the annual report for the year 2000 regarding loan application activity as required by HUD/FHA requirements.

38. Montana Board of Housing, Helena, MT [Docket No. 03–3036–MR]

Action: On March 6, 2003, Montana Board of Housing (MBH) was served with the Government's Complaint for Civil Money Penalty in the amount of $5,000.

Cause: The Board took this action as a result of MBH's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

39. Mortgage Network, Inc., Cincinnati, OH [Docket No. 03–3158–MR]

Action: Settlement Agreement signed December 29, 2003. Without admitting fault or liability, Mortgage Network, Inc. (MNI) agreed to pay a civil money penalty in the amount of $20,000. Additionally, on February 12, 2004, the Board issued a Letter of Reprimand to MNI.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where MNI: Allowed a non-HUD/FHA-approved mortgage broker to originate HUD/FHA-insured mortgages; and failed to maintain a quality control plan in compliance with HUD/FHA requirements.

40. Mount Vernon Mortgage Company, Indianapolis, IN [Docket No. 03–3094–MR]

Action: Settlement Agreement signed October 13, 2003. Without admitting fault or liability, Mount Vernon Mortgage Company (MVM) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of MVM's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

41. New Centennial, Inc., Santa Clarita, CA [Docket No. 03–3060–MR]

Action: Settlement Agreement signed November 13, 2003. Without admitting fault or liability, New Centennial, Inc. (NCI) agreed to pay a civil money penalty in the amount of $100,000. NCI also agreed to indemnify HUD for any losses incurred on six loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where NCI: Employed a debarred loan officer/branch manager/corporate officer in violation of HUD/FHA approval standards; violated HUD/FHA third party origination restrictions by making improper payments to a mortgage corporation owned by a debarred person or by permitting employees of other mortgage companies to improperly participate in the origination of HUD/FHA-insured mortgages; failed to implement and/or maintain its quality control plan; originated HUD/FHA-insured loans at branch offices before those branches were approved by HUD; used false and/or conflicting information to obtain HUD/FHA mortgage insurance; failed to notify HUD of corporate changes related to address changes, branch closures and removal of a corporate officer; failed to ensure that its branch offices had signs that the mortgagee was conducting business at two locations; permitted its loan officer to work for another mortgagee while employed by NCI; and charged branches a fee for performing quality control reviews.

42. New Hampshire Housing Finance Authority, Bedford, NH [Docket No. 03–3239–MR]

Action: Settlement Agreement signed March 10, 2004. Without admitting fault or liability, New Hampshire Housing Finance Authority (NHHFA) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of NHHFA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

43. New Jersey Health Care Facility Financing Authority, Trenton, NJ [Docket No. 03–3030–MR]

Action: Settlement Agreement signed April 1, 2003. Without admitting fault or liability, New Jersey Health Care Facility Financing Authority (NJHC) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of NJHC's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

44. North Star Mortgage Corporation, Dallas, TX [Docket No. 04–4247–MR]

Action: Settlement Agreement signed July 16, 2004. Without admitting fault or liability, North Star Mortgage Corporation (NSM) and its president agreed: To an immediate five year withdrawal of its HUD/FHA approval; to close all loans identified in Attachment A to the Settlement Agreement within 90 days of the effective date of the Settlement Agreement; and to pay an administrative payment in the amount of $175,000. NSM's president, individually, agreed that if there is a failure by NSM to make the payments due under the Settlement Agreement that he will personally consent to an immediate three-year debarment without benefit of any further proceedings by the Department. NSM's president further agreed not to be an owner or officer of another HUD/FHA-approved mortgage company for a period of three years from the effective date of the Settlement Agreement.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where NSM: Failed to ensure that employees worked

exclusively for NSMC; allowed non-approved, independent mortgage brokers to process applications and originate HUD/FHA-insured loans; falsely certified that the information in the Uniform Residential Loan Application was obtained directly from the borrowers by a full-time employee or its authorized agents; submitted falsified and/or conflicting documentation to obtain HUD/FHA mortgage insurance; allowed payments to individuals who received payments for services related to the transaction; failed to document the borrowers source of funds used for downpayment or closing costs; failed to properly document the borrower's source of income; failed to properly calculate the maximum mortgage amount; failed to ensure that the borrowers met the 3% minimum required investment; failed to properly verify the borrower's previous rental history; failed to provide borrowers with a Good Faith Estimate within three business days of application; and approved mortgage loans where borrowers were charged a fee not permitted by HUD/FHA.

45. PFC Corporation, Newport Beach, CA [Docket Nos. 03–3098–MR]

Action: Settlement Agreement signed October 2, 2003. Without admitting fault or liability, PFC Corporation (PFC) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of PFC's failure to perform property inspections on HUD/FHA-insured multifamily projects.

46. Prem Mortgage, Inc., d/b/a/First United Mortgage, Las Vegas, NV [Docket No. 04–4269–MR]

Action: In its July 1, 2004 meeting, the Board voted to impose a civil money penalty on Prem Mortgage, Inc. (Prem) in the amount of $128,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where Prem: Failed to implement and maintain a quality control plan in accordance with HUD/FHA requirements; originated HUD/FHA-insured loans from non-HUD/FHA-approved branches; and failed to assure that verifications and credit documentation did not pass through the hands of a third party.

47. Prudential Insurance Company of America, Newark, NJ [Docket No. 03–3031–MR]

Action: Settlement Agreement signed October 7, 2003. Without admitting fault or liability, Prudential Insurance Company of America (PICA) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of PICA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

48. Real Estate Plus Mortgage, Redondo Beach, CA [Docket No. 04–4275MR]

Action: On March 11, 2004, the Board issued a letter to Real Estate Plus Mortgage (REPM) withdrawing its HUD/FHA approval for three years. The Board also voted to impose a civil money penalty in the amount of $6,500.

Cause: The Board took this action because REPM failed to comply with the terms of a previously executed Indemnification Agreement with the Department.

49. Reilly Mortgage, McLean, VA [Docket No. 03–3034–MR]

Action: Settlement Agreement signed March 24, 2003. Without admitting fault or liability, Reilly Mortgage (Reilly) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of Reilly's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

50. Ridgewood Savings Bank, Ridgewood, NY [Docket No. 03–3114–MR]

Action: Settlement Agreement signed September 2, 2003. Without admitting fault or liability, Ridgewood Savings Bank (RSB) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of RSB's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

51. Rocky Mountain Mortgage Specialists, Englewood, CO [Docket No. 03–3225–MR]

Accent: Settlement Agreement signed June 28, 2004. Without admitting fault or liability, Rocky Mountain Specialists (RMS) agreed to pay a civil money penalty in the amount of $92,000, plus an administrative payment of $25,000. RMS also agreed to indemnify HUD for any losses incurred on 11 loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where RMS: Underwrote and closed HUD/FHA loans for a non-HUD/FHA approved lender; falsely certified that the information contained in loan applications was obtained directly from the borrower by a fulltime employee or its authorized agent; did not notify HUD/FHA when they became aware that certain HUD/FHA insured loans contained fraudulent documentation; failed to ensure that loans were properly underwritten; and failed to document and verify the source of funds used for the downpayment and closing costs on HUD/FHA-insured loans.

52. Sea Breeze Mortgage Services, Inc., Anaheim, CA [Docket No. 03–3162–MR]

Action: Settlement Agreement signed November 20, 2003. Without admitting fault or liability, Sea Breeze Mortgage Services, Inc. (SBM) agreed to pay an administrative payment of $6,000. SBM also agreed to pay $77,204.84 as indemnification for HUD losses on two loans.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where SBM: Used falsified documentation to obtain HUD/FHA mortgage insurance; and failed to analyze the borrower's credit history in accordance with HUD/FHA requirements.

53. Secure Financial Services, Houston, TX [Docket No. 02–1970–MR]

Action: Settlement Agreement signed November 7, 2003. Without admitting fault or liability, Secure Financial Services (SFS) agreed to pay HUD an administrative payment of $150,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where SFS: Used prohibited third parties to originate loans; provided falsified documentation in the origination of one loan; failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements; and failed to file annual reports regarding loan activity.

54. South Texas Mortgage Corporation, Corpus Christi, TX [Docket No. 02–1945–MR]

Action: On August 26, 2003, South Texas Mortgage Corporation (STM) was served with the Government's Complaint for Civil Money Penalty in the amount of $109,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where STM: Accepted loans originated by personnel not employed by STM; and failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements.

55. Sovereign Bank, FSB, Wyomissing, PA [Docket No. 03–3035–MR]

Action: Settlement Agreement signed May 12, 2003. Without admitting fault or liability, Sovereign Bank, FSB (Sovereign) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of Sovereign's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

56. Stellar Mortgage Company, Houston, TX [Docket No. 01–1577–MR]

Action: On March 25, 2004, Stellar Mortgage Company (SMC) was served with the Government's Complaint for Civil Money Penalty in the amount of $173,500.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where SMC: Engaged in a scheme to circumvent HUD/FHA requirements and submitted false HUD–1 Settlement Statements to HUD; submitted loan applications containing false information to HUD; failed to implement and maintain a quality control plan in compliance with HUD/FHA requirements; and shared office space with employees (other than receptionists) of another entity.

57. Suburban Mortgage Association, Inc., (SMA), Bethesda, MD [Docket No. 03–3095–MR]

Action: Settlement Agreement signed September 22, 2003. Without admitting fault or liability, Suburban Mortgage Association (SMA) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of SMA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

58. Sunset Mortgage, LP, Franklin Center, PA [Docket No. 03–3171–MR]

Action: Settlement Agreement signed March 26, 2004. Without admitting fault or liability, Sunset Mortgage, LP (SM) agreed to pay HUD a civil money penalty in the amount of $76,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where SM: Failed to ensure that its registered branches met HUD/FHA requirements regarding office space and facilities; failed to include a sign clearly identifying the branch to the public; failed to ensure that loan applications were taken by authorized employees of SM; and failed to ensure that its employees worked exclusively for SM.

59. SunTrust Bank, Atlanta, GA [Docket No. 03–3233–MR]

Action: Settlement Agreement signed March 16, 2004. Without admitting fault or liability, SunTrust Bank (STB) agreed to pay an administrative payment in the amount of $6,000.

Cause: The Board took this action as a result of STB's failure to perform property inspections on HUD/FHA-insured multifamily projects.

60. Tennessee Housing Development Agency, Nashville, TN [Docket No. 03–3242–MR]

Action: Settlement Agreement signed July 22, 2004. Without admitting fault or liability, Tennessee Housing Development Agency (THDA) agreed to pay an administrative payment of $3,000.

Cause: The Board took this action as a result of THDA's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

61. Trustmark National Bank (TNB), Jackson, MS [Docket No. 03–3236–MR]

Action: Settlement Agreement signed January 15, 2004. Without admitting fault or liability, Trustmark National Bank (TNB) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of TNB's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

62. Two Thousand Two New World Mortgage Services, Inc., d/b/a New World Mortgage, Inc., [Docket No. 03–3157–MR]

Action: On November 12, 2003, the Board issued a letter to New World Mortgage (NWM) withdrawing its HUD/FHA approval for five years. The Board also voted to impose a civil money penalty in the amount of $113,000.

Cause: The Board took this action based on the following violations of HUD/FHA requirements in origination of HUD/FHA-insured loans where NWM: Failed to adopt and maintain a quality control plan in accordance with HUD requirements; failed to implement a quality control plan in accordance with HUD requirements; allowed an employee who is suspended under the Department's regulations to participate in the origination of HUD/FHA-insured loans; and failed to timely notify HUD of a change in NWM's name.

63. U.S. Bank, NA, Minneapolis, MN [Docket Nos. 03–3049–MR, 03–3072–MR, 03–3235–MR]

Action: Settlement Agreement signed May 12, 2004. Without admitting fault or liability, U.S. Bank, NA (USB) agreed to pay an administrative payment of $54,000.

Cause: The Board took this action as a result of USB's failure to perform property inspections on HUD/FHA-insured multifamily projects.

64. USGI, Inc., La Plata, MD [Docket No. 03–3116–MR]

Action: Settlement Agreement signed October 31, 2003. Without admitting fault or liability, USGI, Inc. (USGI) agreed to pay an administrative payment in the amount of $3,000.

Cause: The Board took this action as a result of USGI's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

65. Westminster Mortgage Company, Beverly Hills, CA, [Docket No. 03–3023–MR]

Action: On May 20, 2003, Westminster Mortgage Company (WMC) was served with the Government's Complaint for Civil Money Penalty in the amount of $5,000.

Cause: The Board took this action as a result of WMC's failure to perform a property inspection on one HUD/FHA-insured multifamily project.

66. Wisconsin Housing and Economic Development Authority, Madison, WI [Docket No. 02–2153–MR]

Action: Settlement Agreement signed March 14, 2003. Without admitting fault or liability, Wisconsin Housing and Economic Development Authority (WHEDA) agreed to pay an administrative payment in the amount of $12,000.

Cause: The Board took this action as a result of WHEDA's failure to perform property inspections on HUD/FHA-insured multifamily projects.

Dated: September 30, 2004.

John C. Weicher,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. E4–2530 Filed 10–6–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Notice of Availability of Draft Conservation Plan for the Sacramento Mountains Checkerspot Butterfly (Euphydryas anicia cloudcrofti)

AGENCY: Fish and Wildlife, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) provides notice that a draft Conservation Plan for the Sacramento Mountains checkerspot butterfly (*Euphydryas anicia cloudcrofti*) (butterfly) is available for review and comment. This Conservation Plan will provide guidance for the conservation and management of the species and its habitat.

DATES: Comments on the draft Conservation Plan must be submitted directly to the Service (*see* **ADDRESSES** section) on or before November 8, 2004 or at the public meeting to be held in October of 2004.

ADDRESSES: The Service will host a public informational session in the Village Council Chambers Room at 201 Burro Street Cloudcroft, New Mexico, on October 13, 2004, from 5 p.m. to 7 p.m.

If you wish to comment via mail, comments and materials should be addressed to the Threatened and Endangered Species Division, Fish and Wildlife Service Southwest Regional Office, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico, 87103–1306. Comments and materials received will be made available for public inspection during normal business hours, by appointment, at the above address. A copy of this document has been posted on the Fish and Wildlife Service Web site at *http://www.fws.gov.*

FOR FURTHER INFORMATION CONTACT: Sarah E. Rinkevich, Fish and Wildlife Biologist, or Tracy Scheffler, Fish and Wildlife Biologist, Fish and Wildlife Service, Southwest Regional Office, at the above address (505) 248–6920.

SUPPLEMENTARY INFORMATION:

Background

The Sacramento Mountains checkerspot butterfly is found only in high elevation mountain-meadows within the Sacramento Mountains of central New Mexico. In January 1999, the Southwest Center for Biological Diversity petitioned the Service to emergency list the Sacramento Mountains checkerspot butterfly as endangered. The Service published a notice on December 27, 1999, finding that the petition presented substantial information to indicate that listing may be warranted, but that emergency listing was not warranted. The Service then commenced a status review of the species. On September 6, 2001, the Fish and Wildlife Service published a 12-month finding and proposed rule to list the Sacramento Mountains checkerspot butterfly as endangered with critical habitat (66 FR 46575). Habitat loss from proposed development, drought and wildfire, and threats from collection were stated as the reasons for the proposed listing.

In response to growing interest by the local community to conserve the butterfly, the Service began coordination in 2004 with local and Federal partners to assess current threats to the species and develop a draft Conservation Plan. The goal of the draft Conservation Plan is to provide conservation and management recommendations for public and private lands within the range of the butterfly as necessary to alleviate threats to the species and its habitat. Specific conservations actions in the draft Conservation Plan include time and cost estimates and responsible partners.

The Village of Cloudcroft, Otero County, Forest Service, and the Service have signed a Memorandum of Understanding to demonstrate the commitments of the parties to the implementation of the Conservation Plan.

Public Comments Solicited

The Service solicits written comments on the draft Conservation Plan. All comments received by the date specified above will be considered prior to approval of the Conservation Plan. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: September 3, 2004.

Esther M. Pringle,

Acting Regional Director, Region 2, Fish and Wildlife Service.

[FR Doc. 04–22554 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Meeting of the California Desert District Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given, in accordance with Public Laws 92–463 and 94–579, that the California Desert District Advisory Council to the Bureau of Land Management (BLM), U.S. Department of the Interior, will participate in a field tour of the BLM-administered public lands.

DATES: Friday, October 22, 2004, from 8 a.m. to 5 p.m., and meet in formal session on Saturday, October 23, from 8 a.m. to 4 p.m. The Saturday meeting will be held at the Needles City Council Chambers, located at 1111 Bailey, Needles, California.

ADDRESSES: The field office is located at 101 West Spikes Road in Needles, California.

SUPPLEMENTARY INFORMATION: The Council and interested members of the public will depart for a field tour from the parking lot of the BLM's field office in Needles at 8 a.m. Tour stops will include the Route 66 interpretive display and a BLM grazing allotment. Presentations and discussions will focus on current grazing management and proposed revisions to the grazing regulations. The public is welcome to participate in the tour, but should plan on providing their own transportation, drinks, and lunch.

Agenda items tentatively scheduled for the Saturday Council meeting will include the election of officers, reports by Advisory Council members, the District Manager and the five District field office managers, a briefing on the U.S. Fish and Wildlife Service's raven management initiative, and an update on the Desert Managers Group's Desert Tortoise Education and Outreach Plan. BLM will also brief the Council on the status of the Eastern San Diego County Resource Management Plan, and review the 10-year anniversary of the passage of the California Desert Protection Act.

All Desert District Advisory Council meetings are open to the public. Time for public comment may be made available by the Council Chairman during the presentation of various agenda items, and is scheduled at the end of the meeting for topics not on the agenda.

Written comments may be filed in advance of the meeting for the California Desert District Advisory Council, c/o Bureau of Land

Management, Public Affairs Office, 22835 Calle San Juan De Los Lagos, Moreno Valley, California 92553. Written comments also are accepted at the time of the meeting and, if copies are provided to the recorder, will be incorporated into the minutes.

Dated: September 27, 2004.

Alan Stein,

Assistant District Manager.

[FR Doc. 04–22536 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–05–1020–PH]

Notice of Public Meeting, New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management, New Mexico Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meeting dates are November 9–10, 2004, at the Drury Inn, 4310 The 25 Way Northeast, Albuquerque, NM. An optional field trip is planned for Monday, November 8, 2004. The public comment period is scheduled for November 8, 2004, from 6–7 p.m. at the Drury Inn. The public may present written comments to the RAC. Depending on the number of individuals wishing to comment and time available, oral comments may be limited. The three established RAC working groups may have a late afternoon or an evening meeting on Tuesday, November 9, 2004.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in New Mexico. All meetings are open to the public. At this meeting, topics include issues on renewable and nonrenewable resources.

FOR FURTHER INFORMATION CONTACT: Theresa Herrera, New Mexico State Office, Office of External Affairs, Bureau of Land Management, PO Box 27115, Santa Fe, New Mexico 87502–0115, (505) 438–7517.

Dated: October 1, 2004.

Linda S.C. Rundell,

State Director.

[FR Doc. 04–22555 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–092–04–5870–EU; GP4–0168]

Direct Sale of Public Lands, OR 55502

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of realty action.

SUMMARY: A 0.45 acre parcel of public land in Lane County, Oregon, is being considered for direct sale to James L. Bean to resolve an inadvertent occupancy trespass. The parcel is the minimum size possible to resolve the encroachment.

DATES: Submit comments on or before November 22, 2004.

ADDRESSES: Address all written comments concerning this notice to Emily Rice, Field Manager, Upper Willamette Field Office, PO Box 10226, Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Cheryl Adcock, Realty Specialist at (541) 683–6145.

SUPPLEMENTARY INFORMATION: The following described public land has been examined and found suitable for sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 1719). The parcel proposed for sale is identified as follows:

Willamette Meridian, Oregon,

T. 21 S., R. 2 W.,
Sec. 1, lot 9.

The area described contains 0.45 acre, more or less, in Lane County, Oregon. This parcel will be sold at no less than the appraised market value which has been determined to be $10,000.00. In accordance with 43 CFR 2711.3–3(a) (5) direct sale procedures are appropriate since the land has been inadvertently occupied and utilized for many years as a portion of a residential yard. The Eugene District Resource Management Plan as amended, August 6, 1998, identifies ''unintentional occupancy trespass sites discovered in the future * * *'' as suitable for disposal.

James L. Bean will be allowed 30 days from receipt of a written offer to submit a deposit of at least 10 percent of the appraised market value of the parcel and within 180 days thereafter to submit the balance.

The following rights, reservations, and conditions will be included in the Deed conveying the land:

A reservation to the United States for a right-of-way for ditches and canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945).

The mineral interests being offered for conveyance have no known mineral value. Acceptance of the direct sale offer constitutes an application for conveyance of the mineral interests also being offered under the authority of Section 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719). In addition to the full purchase price, a nonrefundable fee of $50 will be required for purchase of the mineral interests to be conveyed simultaneously with the sale of the land.

The land described is segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

Detailed information concerning this land sale, including the reservations, sale procedures and conditions, planning and environmental documents, appraisal report, and mineral report is available for review at the Eugene District Office, Bureau of Land Management, 2890 Chad Drive, Eugene, Oregon 97470.

In the absence of any objections, this proposal will become the final determination of the Department of the Interior.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to request that the BLM consider withholding your name, street address and other contact information, *e.g.*, Internet address, FAX or phone number, from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. The BLM will honor requests for confidentiality on a case-by-case basis to the extent allowed by law. The BLM will make available for public inspection in their entirety all submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

(Authority: 43 CFR 2711.1–2 (a)).

Dated: April 21, 2004.

Emily Rice,

Field Manager, Upper Willamette Field Office.

[FR Doc. 04–22557 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–33–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 two sheets, constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines and a portion of the subdivision of section 16, and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 15, 16, 21, and 22, in T. 2 N., R. 24 E., Boise Meridian, Idaho, was accepted July 19, 2004. The plat constituting the entire survey record of the dependent resurvey of a portion of the subdivisional lines and a metes-and-bounds survey of a portion of the Craters of the Moon National Monument in sections 2, 3, and 11, in T. 6 S., R. 28 E., Boise Meridian, Idaho, was accepted August 25, 2004.

The plat representing the dependent resurvey of a portion of the east boundary, a portion of the subdivisional lines, and the subdivision of sections 13 and 24, in T. 1 S., R. 3 W., Boise Meridian, Idaho, was accepted August 26, 2004.

These surveys were executed at the request of the Bureau of Land Management to meet certain administrative needs of the Bureau of Indian Affairs. The lands surveyed are: The plat representing the dependent resurvey of a portion of the 1892 south boundary, the 1892 east boundary, and a portion of the subdivisional lines, the subdivision of section 13, and the survey of the 1999–2003 meanders of the Blackfoot River, the North Boundary of the Fort Hall Indian Reservation, of lot 10, and a portion of the 1999–2003 median line of the Blackfoot River, all in section 13, in T. 3 S., R. 35 E., Boise Meridian, Idaho, was accepted September 30, 2004. The plat representing the dependent resurvey of a portion of the south boundary, an informative traverse of the 1875 west boundary, a portion of the subdivisional lines and 1907 meanders of the left bank of the Blackfoot River in section 7, the subdivision of sections 7, 18, 19, and 31, and the survey of the 2002–2004 meanders of the Blackfoot River and North Boundary of the Fort Hall Indian Reservation in sections 7 and 18, in T. 3 S., R. 36 E., Boise Meridian, Idaho, was accepted September 30, 2004.

Dated: October 1, 2004.

Stanley G. French,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 04–22558 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

National Park Service

Thirty-day Notice of Submission of Study Package to Office of Management and Budget—Opportunity for Public Comment

AGENCY: Department of the Interior, National Park Service.

ACTION: Notice and request for comments.

SUMMARY: The National Park Service (NPS) Social Science Program has submitted to the Office of Management and Budget (OMB) a request for clearance of a renewed program of social science surveys of the public related to the mission of the NPS. The NPS is publishing this notice to inform the public of this program and to request comments on the program.

Since many of the NPS surveys are similar in terms of the populations being surveyed, the types of questions being asked, and research methodologies, the NPS proposed to OMB and received clearance for a program of approval for NPS-sponsored public surveys (OMB# 1024–0224 exp. 8/31/2001; three-year extension granted in September 2001, exp. 9/30/2004). The program presented an alternative approach to complying with the Paperwork Reduction Act (PRA). In the five years since the NPS received clearance for the program of expedited approval, 193 public surveys have been conducted in units of the National Park System. The benefits of this program have been significant to the NPS, Department of the Interior (DOI), OMB, NPS cooperators, and the public. Significant time and cost savings have been incurred. Expedited approval was typically granted in 45 days or less from the date the Principal Investigator first submitted a survey package for review. This is a significant reduction over the approximate 6 months involved in the standard OMB approval process. It is estimated that the expedited approval process saved a total of 870 months in Fiscal Years 1999–2003. In five years, the expedited approval process has accounted for a cost savings to the federal government and PIs estimated at $348,001. The initial program included surveys of park visitors. The program renewed in September 2001 included surveys of park visitors, potential park visitors, and residents of communities near parks. The current extension request proposes to continue with a program of social science surveys of park visitors, potential park visitors, and residents of communities near parks.

Under provisions of the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service is soliciting comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the NPS, including whether the information will have practical utility; (b) the accuracy of the NPS estimate of the burden of the collection of information, including the validity of the methodology and assumptions used; (c) the quality, utility, and clarity of the information to be collected; and (d) how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

DATES: Public comments will be accepted on or before 30 days from the date of publication in the **Federal Register**.

ADDRESSES: You may submit comments directly to the Desk Officer for the Department of the Interior (OMB #1024–0224), Office of Management and Budget Office of Information and Regulatory Affairs (OMB-OIRA) by fax at 202–395–5806 or e-mail at *oira_docket@omb.eop.gov.*

FOR FURTHER INFORMATION OR A COPY OF THE STUDY PACKAGE, CONTACT: Dr. James H. Gramann. Voice: 202–513–7189, Fax: 202–371–2131, E-mail: *james_gramann@partner.nps.gov* or Brian E. Forist. Voice: 202–513–7190,

Fax: 202–371–2131, E-mail: *brian_forist@partner.nps.gov.*

Request for Clearance of a Three Year Program of Collections of Information: Programmatic Approval of NPS-Sponsored Public Surveys.

SUPPLEMENTARY INFORMATION:

Title: Programmatic Approval of NPS-Sponsored Public Surveys.

Bureau Form Number: None.

OMB Number: 1024–0224.

Expiration date: 9/30/2004.

Type of request: Extension of a currently approved collection.

Description of need: The National Park Service needs information concerning park visitors and visitor services, potential park visitors, and residents of communities near parks to provide park and NPS managers with usable knowledge for improving the quality and utility of agency programs, services, and planning efforts.

Automated data collection: At the present time, there is no automated way to gather this information, since the information gathering process involves asking the public to evaluate services and facilities that they used during their park visits, services and facilities they are likely to use on future park visits, perceptions of park services and facilities, opinions regarding park management, and technical assistance provided by the agency. The burden on individuals is minimized by rigorously designing public surveys to maximize the ability of the surveys to use small samples of individuals to represent large populations of the public, and by coordinating the program of surveys to maximize the ability of new surveys to build on the findings of prior surveys.

Description of Respondents: A sample of visitors to parks, potential visitors to parks, and residents of communities near parks.

Estimated average number of respondents: The program does not identify the number of respondents because that number will differ in each individual survey, depending on the purpose and design of each information collection.

Estimated average number of responses: The program does not identify the average number of responses because that number will differ in each individual survey, depending on the purpose and design of each individual survey. For most surveys, each respondent will be asked to respond only one time, so in those cases the number of responses will be the same as the number of respondents.

Estimated average burden hours per response: The program does not identify the average burden hours per response because that number will differ from individual survey to individual survey, depending on the purpose and design of each individual survey.

Frequency of response: Most individual surveys will request only 1 response per respondent.

Estimated annual reporting burden: The program identifies the requested total number of burden hours annually for all of the surveys to be conducted under its auspices to be 15,000 burden hours per year. The total annual burden per survey for most surveys conducted under the auspices of this program would be within the range of 100 to 300 hours.

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

Dated: September 17, 2004.

Doris Lowery,

Acting, Information Collection Officer.

[FR Doc. 04–22570 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official insignia for the Volunteers-in-Parks program

AGENCY: National Park Service, Interior.

ACTION: Official insignia designation.

SUMMARY: This notice serves as official designation of the insignia (shown below) for the National Park Service Volunteers-in-Parks (VIP) program. It replaces an earlier insignia in use since 1970.

DATES: Action described will be effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Joy Pietschmann, Service-wide VIP Program Coordinator, National Park Service, 1849 C Street, NW., Mailstop 2450, Washington, DC 20240. Telephone: (202) 513–7141. E-mail: *Joy_Pietschmann@nps.gov.*

SUPPLEMENTARY INFORMATION: Authority for the National Park Service VIP program is found in the Volunteers in the Parks Act of 1969, 16 U.S.C. 18g–18j.

The insignia depicted replaces an earlier symbol developed in 1970. It will serve as the official uniform patch and logo for the VIP program. The National Park Service began using the new insignia in January 2004. Use of the insignia is controlled by the Director of the National Park Service.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of 18 U.S.C. 701.

Dated: August 18, 2004.

Christopher Jarvi,

Associate Director for Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation.

[FR Doc. 04–22568 Filed 10–6–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Insignia for the Volunteers-in-Parks Master Ranger Corps Program

AGENCY: National Park Service, Interior.

ACTION: Official insignia designation.

SUMMARY: This notice serves as official designation of the insignia (shown below) for the National Park Service Volunteers-in-Parks (VIP) Master Ranger Corps program.

DATES: Action described will be effective upon publication of this notice.

FOR FURTHER INFORMATION CONTACT: Joy Pietschmann, Service-wide VIP Program Coordinator, National Park Service, 1849 C Street, NW., Mailstop 2450, Washington, DC 20240. Telephone: (202) 513–7141. E-mail: *Joy_Pietschmann@nps.gov.*

SUPPLEMENTARY INFORMATION: Authority for the National Park Service VIP program is found in the Volunteers in the Parks Act of 1969, 16 U.S.C. 18g–18j. The Master Ranger Corps is a new part of the VIP program.

The insignia depicted will serve as the official uniform patch and logo for the Master Ranger Corps. The National Park Service began using the insignia in January 2004. Use of this insignia is controlled by the Director of the National Park Service.

In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of 18 U.S.C. 701.

Dated: August 18, 2004.

Christopher Jarvi,

Associate Director for Partnerships, Interpretation and Education, Volunteers, and Outdoor Recreation.

[FR Doc. 04–22569 Filed 10–6–04; 8:45 am]

BILLING CODE 4312–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

Chesapeake and Ohio Canal National Historical Park Advisory Commission; Notice of Public Meeting

AGENCY: Department of the Interior, National Park Service, Chesapeake and Ohio Canal National Historical Park Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Chesapeake and Ohio Canal National Historical Park Advisory Commission (the Commission) will be held on Friday, October 15, 2004, at Rockwood Manor, 11001 MacArthur Blvd., Potomac, Maryland. The meeting will begin at 9 a.m.

Items on the agenda include the Georgetown University boathouse, planning initiatives, construction and development projects and park operational issues.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact Superintendent Kevin Brandt at (301) 714–2201.

DATES: October 15, 2004, at 9 a.m.

ADDRESSES: 11001 MacArthur Blvd., Potomac, Maryland 20854.

FOR FURTHER INFORMATION CONTACT: Superintendent Kevin Brandt, (301) 714–2201.

SUPPLEMENTARY INFORMATION: The Commission was established by *Public Law 91–664* to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

Members of the Commission are: Mrs. Sheila Rabb Weidenfeld, Chairman, Mr. Charles J. Weir, Mr. Barry A. Passett, Mr. Terry W. Hepburn, Ms. Elise B. Heinz, Ms. JoAnn M. Spevacek, Mrs. Mary E. Woodward, Mrs. Donna Printz, Mrs. Ferial S. Bishop, Ms. Nancy C. Long, Mrs. Jo Reynolds, Dr. James H. Gilford, Brother James Kirkpatrick.

Dated: September 14, 2004.

Kevin Brandt,

Superintendent, Chesapeake and Ohio Canal National Historical Park.

[FR Doc. 04–22567 Filed 10–6–04; 8:45 am]

BILLING CODE 4312–JK–M

DEPARTMENT OF THE INTERIOR

National Park Service

Flight 93 National Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of October 22, 2004 Meeting.

SUMMARY: This notice sets forth the date of the October 22, 2004 meeting of the Flight 93 Advisory Commission.

DATES: The public meeting will be held on October 22, 2004 from 10 a.m. to 4 p.m.

LOCATION: The meeting will be held at the Flight 93 National Memorial Office, 109 West Main Street, Newberry Building, Somerset, Pennsylvania, 15501.

Agenda

The October 22, 2004 meeting will consist of:

(1) Opening of Meeting and Pledge of Allegiance

(2) Review and Approval of Minutes from July 30, 2004

(3) Reports from the Flight 93 Memorial Task Force Committees and the National Park Service

Administration Committee

Lands/Resource Assessment Committee

Memorial Ideas Planning Committee
Design Solicitation Committee
Fundraising Committee
Government Relations Committee
Public Relations Committee
Archives Committee
Temporary Memorial Management Committee
Family Memorial Committee
Families of Flight 93, Inc.
National Park Service

Comments from the public will be received after each committee briefing.

(4) Old Business
(5) New Business
(6) Closing Remarks

FOR FURTHER INFORMATION CONTACT: Joanne M. Hanley, Superintendent, Flight 93 National Memorial, 109 West Main Street, Somerset, PA 15501.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning agenda items. The statement should be addressed to the Flight 93 Advisory Commission, 109 West Main Street, Somerset, PA 15501.

Joanne M. Hanley,

Superintendent, Flight 93 National Memorial.

[FR Doc. 04–22566 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–52–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Preservation Technology and Training Board: Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470) and the Federal Advisory Committee Act (FACA), 5 U.S.C. Appendix (1988), the Preservation Technology and Training Board will meet October 18, 2004, in the 3rd floor Conference Room of the Main Building at Ellis Island National Monument, New York, NY. The public can access the Island via the Circle Line Ferry, departing from Battery Park in Manhattan, NY, or Liberty State Park, NJ. Those wishing to be present for the beginning of the meeting should plan to take the 8:30 a.m. ferry from either location. Ferry schedules can be confirmed online prior to the meeting at www.circleline.com. Notification of this meeting may appear in the **Federal Register** less than 15 calendar days prior to the meeting date due to difficulties in arranging the meeting venue.

DATES: The meeting at Ellis Island National Monument, New York, NY, is scheduled for October 18, 2004. The meeting will begin at 9:15 a.m. and end no later than 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: Persons wishing more information concerning the meeting, or who wish to submit written statements, may contact Mr. de Teel Patterson Tiller, Deputy Associate Director, Cultural Resources, National Park Service, 1849 C Street NW–3128 MIB, Washington, DC 20240, telephone (202) 208–7625. Increased security in the Washington, DC, area may cause delays in the delivery of U.S. Mail to government offices. In addition to mail or commercial delivery, please fax a copy of the written submission to Mr. Tiller at (202) 273–3237.

SUPPLEMENTARY INFORMATION: The Board was established by Congress to provide leadership, policy advice, and professional oversight to the National Center for Preservation Technology and Training (NCPTT), as required under the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470).

The Board meeting's agenda will include NCPTT operations, budget, and program development; NCPTT business and strategic plans; Preservation Technology and Training grants; the Heritage Education program; and PTT Board workgroup reports.

The Board meeting is open to the public. Facilities and space for accommodating members of the public are limited, however, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed.

Minutes of the meeting will be available for public inspection no later than 90 days after the meeting at the office of the Deputy Associate Director, Cultural Resources, National Park Service, 1849 C Street NW–3128 MIB, Washington, DC 20240, telephone (202) 208–7625.

Dated: September 16, 2004

de Teel Patterson Tiller,

Deputy Associate Director, Cultural Resources.

[FR Doc. 04–22571 Filed 10–6–04; 8:45 am]

BILLING CODE 4312–50–S

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels for Such Devices; Notice of Commission Decision Not to Review an Initial Determination Terminating the Investigation as to Respondent Longacre Industries, Inc. on the Basis of a Settlement Agreement and Consent Order; Issuance of the Consent Order

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to respondent Longacre Industries, Inc. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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: The Commission instituted this investigation on June 20, 2003, based on a complaint filed by Auto Meter Products, Inc. (''Auto Meter'') of Sycamore, Illinois. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and

1,497,472, and U.S. Supplemental Register No. 1,903908, and infringement of the complainant's trade dress. Subsequently, seven more firms were added as respondents based on two separate motions filed by complainant Auto Meter. The investigation was terminated as to nine respondents on the basis of consent orders. Six respondents were found to be in default.

On July 2, 2004, Auto Meter and respondent Longacre Industries, Inc. (''Longacre '') filed a joint motion to terminate based on a settlement agreement between Auto Meter and Longacre and a consent order stipulation with a proposed consent order.

On September 1, 2004, the ALJ issued an ID (Order No. 37) terminating the investigation as to respondent Longacre on the basis of a settlement agreement and consent order. The Commission investigative attorneys filed a response in support of the joint motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

By order of the Commission.

Issued: September 27, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22602 Filed 10–6–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–494]

In the Matter of Certain Automotive Measuring Devices, Products Containing Same, and Bezels For Such Devices; Notice of Commission Decision Not To Review An Initial Determination Terminating The Investigation As To Respondent Longacre Industries, Inc. On The Basis of A Settlement Agreement And Consent Order; Issuance Of The Consent Order; Republication

Editorial Note: FR Doc. 04–22033 did not publish in the issue of Friday, October 1, 2004. It is being published in its entirety in the issue of October 7, 2004.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') issued by the presiding administrative law judge (''ALJ'') terminating the above-captioned investigation as to respondent Longacre Industries, Inc. on the basis of a consent order.

FOR FURTHER INFORMATION CONTACT: Timothy P. Monaghan, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3152. Copies of the public version of the ID and all nonconfidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. 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: The Commission instituted this investigation on June 20, 2003, based on a complaint filed by Auto Meter Products, Inc. (''Auto Meter'') of Sycamore, Illinois. 68 FR 37023. The complaint alleged violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain automotive measuring devices, products containing same, and bezels for such devices, by reason of infringement of U.S. Registered Trademark Nos. 1,732,643 and 1,497,472, and U.S. Supplemental Register No. 1,903,908, and infringement of the complainant's trade dress. Subsequently, seven more firms were added as respondents based on two separate motions filed by complainant Auto Meter. The investigation was terminated as to nine respondents on the basis of consent orders. Six respondents were found to be in default.

On July 2, 2004, Auto Meter and respondent Longacre Industries, Inc. (''Longacre'') filed a joint motion to terminate based on a settlement agreement between Auto Meter and Longacre and a consent order stipulation with a proposed consent order.

On September 1, 2004, the ALJ issued an ID (Order No. 37) terminating the investigation as to respondent Longacre on the basis of a settlement agreement and consent order. The Commission investigative attorneys filed a response in support of the joint motion. No petitions for review of the ID were filed.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42 of the Commission's Rules of Practice and Procedure (19 CFR 210.42).

Issued: September 27, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22033 Filed 9–30–04; 8:45 am]

Editorial Note: FR Doc. 04–22033 did not publish in the issue of Friday, October 1, 2004. It is being published in its entirety in the issue of October 7, 2004.

[FR Doc. R4–22033 Filed 10–6–04; 8:45 am]

BILLING CODE 1505–01–D

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–493]

In the Matter of Certain Zero-Mercury-Added Alkaline Batteries, Parts Thereof, and Products Containing Same; Notice of Commission Decision to Terminate Investigation with a Finding of No Violation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of no violation of section 337.

FOR FURTHER INFORMATION CONTACT: Wayne Herrington, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–3090. Copies of the ALJ's ID and all other nonconfidential documents filed in connection with this investigation are or will be 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., Washington, DC 20436, telephone 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–ON–LINE) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on

this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on June 2, 2003, based on a complaint filed by Energizer Holdings, Inc. and Eveready Battery Company, Inc., both of St. Louis, Missouri. 68 FR 32771 (June 2, 2003). The complaint, as supplemented, alleged violations of section 337 of the Tariff Act of 1930 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain zero-mercury-added alkaline batteries, parts thereof, and products containing same by reason of infringement of claims 1–12 of U.S. Patent No. 5,464,709 (''the '709 patent''). The complaint and notice of investigation named 26 respondents and were later amended to include an additional firm as a respondent. The investigation has been terminated as to claims 8–12 of the '709 patent. Several respondents have been terminated from the investigation for various reasons.

On June 2, 2004, the ALJ issued his final ID finding a violation of section 337. He also recommended the issuance of remedial orders. A number of the remaining respondents petitioned for review of the ID. Complainants and the Commission investigative attorney filed oppositions to those petitions. On July 9, 2004, the Commission issued a notice that it had determined to review the ALJ's final ID in its entirety. In that notice, the Commission requested written submissions on the issues on review (noting issues and questions it particularly sought briefing on), as well as on remedy, the public interest, and bonding. Complainants, respondents, and the Commission investigative attorney filed written submissions.

Having considered the record in this investigation, including the written submissions on the issues on review and on remedy, the public interest, and bonding, the Commission has determined to terminate this investigation with a finding of no violation of section 337. Specifically, the Commission has determined that the asserted claims are invalid for indefiniteness. The Commission has determined to take no position on the other issues raised in this investigation. Finally, the Commission has determined to deny as moot the May 21, 2004, motion of respondent Ningbo Baowang Battery Co. Ltd. to terminate the investigation as to it, as well as its motion to reopen the evidentiary record.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and sections 210.41–.51 of the Commission's Rules of Practice and Procedure (19 CFR 210.41–.51).

By order of the Commission.

Issued: October 1, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22601 Filed 10–6–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Settlement Agreement Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on September 23, 2004, a proposed Settlement Agreement (the ''Agreement'') in In re: Farmland Industries, Inc., *et al.*, Case No. 02–50557, was lodged with the United States Bankruptcy Court for the Western District of Missouri.

In this settlement the United States resolves the Environmental Protection Agency's claim for cost recovery for costs to be incurred remediating environmental contamination at the Obee Road Superfund Site in Hutchinson, Kansas. Farmland Industries, Inc. has been identified as a responsible party under the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA'') in connection with this Site. and civil penalties under CERCLA, the Clean Water Act, and the Clean Air Act against Farmland Industries, Inc. The Settlement Agreement provides that the United States will have an allowed general unsecured claim of $940,000, in settlement of the above-described claim. The United States previously has recovered from Farmland its past costs incurred at the Obee Road Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Settlement Agreement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to In re: Farmland Industries, Inc., *et al.,* Case No. 02–50557, Bankruptcy Court for Western District of Missouri, D.J. Ref. #90–5–1–1–06976/3.

The Settlement Agreement may be examined at the Office of the United States Attorney, 400 E. 9th Street, Kansas City, MO 64106, and at U.S. EPA Region 7, 901 N. 5th Street, Kansas City, Kansas 66101. During the public comment period, the Settlement Agreement may also be examined on the following Justice Department Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the Settlement Agreement may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $1.00 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine R. McCabe,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–22525 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of the Proposed Consent Decree Between the United States, The State of Maryland, The Commonwealth of Virginia, Mirant Mid-Atlantic, LLC and Mirant Potomac River, LLC

Notice is hereby given that on Monday, September 27, 2004, a proposed Consent decree (''proposed Decree'') in *United States and State of Maryland* v. *Mirant Mid-Atlantic, LLC and Mirant Potomac River, LLC* (''Mirant''), Civil Action No. 1:04CV1136, was lodged with the United States District Court for the Eastern District of Virginia.

In this civil enforcement action under the federal Clean Air Act (''Act''), the United States alleges that in 2003, Mirant, an electric utility, failed to comply with a provision in the Operating Permit for the Potomac River Generating Station that limited that plant's NO_X emissions to 1,019 tons of NO_X during the ozone season. The complaint seeks both injunctive relief and a civil penalty.

The proposed Decree lodged with the Court addresses this violation at the Potomac river Generating Station (located in Alexandria, Virginia) by requiring relief at that plant, as well as at three other Mirant coal-fired electric generating facilities: the Chalk Point Generating Plant (in Prince George's County, Maryland); the Morgantown Generating Plant (in Charles County, Maryland); and the Dickerson Generating Plant (in Montgomery County, Maryland).

The proposed Decree requires the installation of NO_X pollution control equipment at the Potomac River Generating Station and the Morgantown Generating Plant, over a period of several years. In addition, the proposed Decree imposes limitations on the NO_X emissions from all four plants that apply both annually and during the ozone season.

The proposed Decree also requires Mirant to implement a series of environmental projects designed to reduce particulate matter emissions from the Potomac River Plant. They are described in the proposed Decree and are valued at about $1 million. In addition, Mirant also will pay a civil penalty of $250,000 to the United States, and a civil penalty of $250,000 to the Commonwealth of Virginia.

Joining in the proposed Decree as co-plaintiffs are the State of Maryland and the Commonwealth of Virginia.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, PO Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Mirant Potomac River LLC, Mirant Mid-Atlantic LLC,* D.J. Ref. 90–5–2–1–07829.

The proposed Decree may be examined at the offices of the United States Attorney, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia, and at the offices of U.S. EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029.

During the public comment period, the proposed Decree may also be examined on the following Department of Justice Web site, *http://www.usdoj.gov/enrd/open.html.* A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $14.50 (25 cents per page reproduction cost) payable to the U.S. Treasury.

Catherine R. McCabe,

Deputy Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–22524 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Second Supplement to the Consent Decree Pursuant to the Safe Drinking Water Act

In accordance with 28 CFR 50.7, notice is hereby given that a proposed Second Supplement to the Consent Decree in *United States and State of New York, et al.* v. *City of New York, et al.,* Civil Action No. CV 97–2154 (Gershon J.) (Gold, M.J.), was lodged with the United States District Court for the Eastern District of New York on September 23, 2004. In this action, the United States and the State of New York sought a court order requiring the City of New York to come into compliance with the Safe Drinking Water Act, 42 U.S.C. 300f, *et seq.,* and the Surface Water Treatment Rule, a National Primary Drinking Water Regulation, by installing filtration treatment for its Croton water supply system.

On November 24, 1998, the Court entered a Consent Decree in this action which required the City, among other obligations, to select a site for, design, and construct the Croton filtration plant. The City selected a site for the plant at the Mosholu Golf Course in Van Cortlandt Park in the Bronx. However, on February 8, 2001, the New York State Court of Appeals held that the City could not construct the plant at the Mosholu Golf Course Site without first obtaining approval from the New York State Legislature. The City sought, but did not promptly obtain legislative approval to construct the plant at the Mosholu Golf Course Site.

In view of the lack of legislative approval for the Mosholu Golf Course Site in 2001–2002, the parties to the Consent Decree negotiated in 2001 and the Court entered in 2002 a first Supplement to the Consent Decree (''first Supplement''), which required the City to select a new site and modified the deadlines for construction of the filtration plant. The City identified two alternative sites for construction of the filtration plant, a site in the Town of Mount Pleasant in Westchester County, denominated the Eastview Site, and a site adjacent to the Harlem River in Bronx County, denominated the Harlem River Site. The first Supplement to the Consent Decree required the City to conduct some initial study and design work relating to the Eastview Site and the Harlem River Site and to identify its preferred site in a draft environmental impact statement to be submitted on April 30, 2003. The City was to select one of these two sites or, if legislative approval for the Mosholu Golf Course Site was obtained by April 15, 2003 and other requirements were met, the City could instead select the Mosholu Golf Course Site.

Legislative approval for the Mosholu Golf Course Site was not obtained by April 15, 2003. The City failed to select a preferred site under the requirements of the first Supplement by April 30, 2003. However, on June 20, 2003, the State legislature passed a bill allowing use of the Mosholu Golf Course Site for the Croton filtration plant, which was signed into law on July 22, 2003. The State legislation also required that the City conduct a supplemental environmental impact statement prior to selecting the preferred filtration plant site.

On June 30, 2004, the City completed a final supplemental environmental impact statement and selected the Mosholu Golf Course Site as its preferred site for the Croton filtration plant. The City also selected the Eastview Site as its backup site for the Croton filtration plant.

As a result of the City's failure to comply with the April 30, 2003 deadline for selecting its preferred site and the later enactment of the State legislation, the Parties have negotiated a further modification of the Consent Decree, which is set forth in the Second Supplement to the Consent Decree (''Second Supplement''). The Second Supplement supercedes the first Supplement.

The Second Supplement sets forth a modified schedule for the City to construct filtration facilities. Consistent with the terms of the Second Supplement, the City selected its preferred and backup sites. The Second Supplement requires the City to complete construction of the Croton filtration plant at is preferred site, the Mosholu Golf Course Site, by May 1, 2011, and commence full operation of the Croton filtration plant by October 31, 2011. The Second Supplement also provides that, if the United States, State, or the City determines during the course of implementation of the Second Supplement that the City cannot complete the plant at the preferred site within the schedule set forth in the Second Supplement or within a reasonable time period agreed to by the parties, the City shall construct the plant at its backup site, the Eastview Site. In addition, the Second Supplement provides for continued implementation of interim measures and for payment by the City of stipulated penalties in the amount of $180,000 for its failure to select a preferred site timely in accordance with

the first Supplement. The City will also spend up to $225,000 for an expert consultant to be retained by the United States and State to assess the feasibility of expediting the City's construction schedule.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Second Supplement. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, c/o Deborah B. Zwany, Assistant U.S. Attorney, Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201, and should refer to *United States and State of New York* v. *City of New York*, D.J. Ref. 90–5–1–1–4429. A copy of the comments should also be sent to Chief, Environmental Enforcement Section, U.S. Department of Justice, PO Box 7611, Washington, DC 20044.

The proposed Second Supplement may be examined at the office of the United States Attorney for the Eastern District of New York, One Pierrepont Plaza, 14th Floor, Brooklyn, New York 11201, and at the U.S. Environmental Protection Agency, Region II office, 290 Broadway, New York, New York 10007. During the public comment period, the Second Supplement may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/open.html.* A copy of the Second Supplement may also be obtained by mail from the Consent Decree Library, PO Box 7611, Washington, DC 20044–7611, or by faxing or emailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $18.00 (25 cent per page reproduction costs) for the Second Supplement, payable to the U.S. Treasury.

Karen S. Dworkin,

Assistant Chief Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 04–22526 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with 28 CFR 50.7 and section 122 of the Comprehensive Environmental Response, Compensation and Liability Act (''CERCLA''), 42 U.S.C. 9622, the Department of Justice gives notice that a proposed First Amendment to the Consent Decree, in *United States* v. *The Upjohn Co. et al.* v. *ABF Freight System, Inc., et al.* Civil No. 1:92–CV–659 (W.D. Mich.), was lodged with the United States District Court for the Western District of Michigan on September 10, 2004, pertaining to the West KL Avenue Landfill Superfund Site (the ''Site''), located on West KL Avenue, Oshtemo Township, Kalamazoo County, Michigan. The proposed First Amendment to the Consent Decree amends a Consent Decree entered by the Court in 1992 that resolved the United States' civil claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Pharmacia Corp., successor to The Upjohn Company; Kalamazoo County; Charter Township of Oshtemo; the City of Kalmazoo (collectively, the ''Performing Settling Defendants''); and 219 additional Third-Party Defendant generators at the Site (all defendants, collectively, the ''Settling Defendants'').

Under the proposed First Amendment to the Consent Decree, the Performing Settling Defendants are obligated to implement a Record of Decision (''ROD'') Amendment, issued by the U.S. Environmental Protection Agency (''EPA'') on February 27, 2003, of a 1990 ROD for the Site. The ROD Amendment requires the establishment of a new municipal water service zone or alternative institutional controls around a newly discovered area of groundwater contamination and a buffer zone within a determined area extending beyond the contamination, in which every property in the zone will be hooked up to the City of Kalmazoo's municipal water system, and in which groundwater use will be restricted. The ROD Amendment revises the groundwater cleanup standards established in the original 1990 ROD, replacing the Michigan Act 307 type B standards with the current residential standards established under Part 201 of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (formerly known as Michigan Act 307). The ROD Amendment also provides for the continuation of natural attenuation studies and calls for the preparation of the landfill cap design to continue while those studies are underway.

Under the proposed First Amendment to Consent Decree, Plaintiff and the Performing Settling Defendants agree to modify the terms of the Consent Decree, as provided by Paragraph 85 of the Consent Decree, to require the Performing Settling Defendants to implement the provisions of the February 27, 2003 ROD Amendment. The Settling Defendants other than the Performing Settling Defendants are not signatories to the proposed First Amendment to the Consent Decree. However, the First Amendment to the Consent Decree does not add to or change any of the settlement obligations of the Settling Defendants other than the Performing Settling Defendants, and none of the settling Third-Party Defendants will have any obligations to implement the provisions of the February 27, 2003 ROD Amendment.

To facilitate future modifications to the Consent Decree regarding implementation of the Work, if any, the First Amendment to the Consent Decree also effectively modifies the provisions of Paragraph 85 in the Consent Decree so that notification to the Settling Defendants other than the Performing Settling Defendants for any future material modifications to the Work under the Consent Decree will not be required.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed First Amendment to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, PO Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *The Upjohn Co. et. a.,* v. *ABF Freight System, Inc., et al.,* Civil No. 1:92–CV–659 (W.D. Mich.), and DOJ Reference No. 90–11–2–561.

The proposed First Amendment to the Consent Decree may be examined at: (1) the Office of the United States Attorney for the Western District of Michigan, 330 Ionia Ave. NW., Suite 501, Grand Rapids, MI 49503, (616–456–2404); and (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Blvd., Chicago, IL 60604–3507 (contact: Stuart Hersh (312–886–6235)).

During the public comment period, the proposed First Amendment to the Consent Decree may also be examined on the following U.S. Department of Justice Web site, *http://usdoj.gov/enrd/open.html.* A copy of the proposed First Amendment to the Consent Decree may also be obtained by mail from the

Consent Decree Library, U.S. Department of Justice, PO Box 7611, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no (202) 514–0097, phone confirmation no. (202) 514–1547. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check in the amount of $2.50 for the First Amendment to the Consent Decree only (10 pages, at 25 cents per page reproduction costs), or $13.25 for the First Amendment to the Consent Decree and all appendices (53 pages), made payable to the Consent Decree Library.

William D. Brighton,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 04–22527 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: National Firearms Act (NFA)—Special Occupational Taxes (SOT).

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 56, page 13586 on March 23, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* National Firearms Act (NFA)—Special Occupational Taxes (SOT).

(3) *The agency form number, if any, and the applicable component of the department sponsoring the collection:* Form Number: ATF F 5630.5R, ATF 5630.5RC, ATF F 5630.7. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. ATF F 5630.7, Special Tax Registration and Return National Firearms Act (NFA) is completed and returned by businesses that are subject to Special Occupational Taxes under the National Firearms Act for either initial tax payment or business information changes. This form serves as both a return and a business registration. ATF F 5630.5R, 2005 NFA Special Tax Renewal Registration and Return and ATF F 5630.5RC, 2005 NFA Special Tax Location Registration Listing are preprinted forms sent to taxpayers who owe Special Occupational Taxes under the National Firearms Act. Taxpayers validate and correct the information and send the forms back with payment for the applicable tax year.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that 2,800 taxpayers will complete forms ATF F 5630.5R and ATF F 5630.5RC in approximately 20 minutes (10 minutes for each form). It is also estimated that 200 new taxpayers will complete ATF F 5630.7 in its entirety in approximately 15 minutes. The total number of respondents for this information collection is 3,000.

(6) An estimate of the total public burden (in hours) associated with the collection: The total burden for ATF F 5630.5R and ATF F 5630.5RC is 933 hours. The total burden for ATF F 5630.7 is 50 hours. The estimated total public burden associated with this information collection is 983 hours.

If additional information is required contact: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: September 29, 2004.

Brenda E. Dyer,

Clearance Officer, Department of Justice.

[FR Doc. 04–22548 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Survey on Sexual Violence.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 69, Number 137, page 43015 on July 19, 2004, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until November 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
—Enhance the quality, utility, and clarity of the information to be collected; and
—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Survey on Sexual Violence.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Numbers: SSV1, SSV2, SSV3, SSV4, SSV5, SSV6. U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State, local, or tribal government. Other: Federal government, business or other for-profit, not-for-profit institutions. The data will be used to develop estimates for the incidence and prevalence of sexual assault within correctional facilities as required under the Prison Rape Elimination Act of 2003 (Pub. L. 108–79).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 761 respondents will complete each form within 90 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 1,522 total annual burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW, Washington, DC 20530.

Dated: October 1, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–22547 Filed 10–6–04; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 1218–0151 (2005)

Cranes and Derricks Standard for Construction; Posting Weight and Load Capacity of Personnel Platforms; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comment.

SUMMARY: OSHA solicits comments concerning its request for an extension of the information collection requirement specified by paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (29 CFR 1926.550). This paragraph requires employers to post a plate or other permanent marking that indicates the weight of a personnel-hoisting platform and its rated-load capacity or maximum intended load.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be submitted (postmarked or received) by December 6, 2004.

Facsimile and Electronic Transmission: Your comments must be received by December 6, 2004.

ADDRESSES: You may submit comments, identified by OSHA Docket No. ICR–1218–0151 (2004), by any of the following methods:

Regular Mail, Express Delivery, Hand Delivery, and Messenger Service: Submit your comments and attachments to the ISHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). OSHA Docket Office and Department of Labor hours are 8:15 .m. to 4:45 p.m., ET.

Facsimile: If your comments are 10 pages or fewer in length, including attachments, you may fax them to the OSHA Docket Office at (202) 693–1648.

Electronic: You may submit comments through the Internet at *http://ecomments.osha.gov.* Follow instructions on the OSHA Web page for submitting comments.

Docket: For access to the docket to read or download comments or background materials, such as the complete Information Collection Request (ICR) (containing the Supporting Statement, OMB–83–I Form, and attachments), go to OSHA's Web page at *http://www.OSHA.gov.* Comments, submissions, and the ICR are available for inspection and copying at the OSHA Docket Office at the address above. You may also contact Todd Owen at the address below to obtain a copy of the ICR.

(For additional information on submitting comments, please see the ''Public Participation'' heading in the **SUPPLEMENTARY INFORMATION** section of this document.)

FOR FURTHER INFORMATION CONTACT: Todd Owen, Directorate of Standards and Guidance, OSHA, Room N–3609, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments and supporting materials in response to this notice by (1) hard copy, (2) fax transmission (facsimile), or (3) electronically through the OSHA Web page. Because of security related problems, there may be a significant delay in the receipt of comments by regular mail. Please contact the OSHA Docket Office at (202) 2693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery and messenger service.

All comments, submissions and background documents are available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions posted on OSHA's Web page are available at *http://www.OSHA.gov.* Contact the OSHA

Docket Office for information about materials not available through the OSHA Web page and for assistance using the Web page to locate docket submissions.

Electronic copies of this **Federal Register** notice as well as other relevant documents are available on OSHA's Web page.

II. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)).

This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

Paragraph (g)(4)(ii)(I) of the Cranes and Derricks Standard for Construction (Sec. 1926.550) requires employers to post conspicuously with a plate or other permanent marking the weight and rated load capacity or maximum intended loads of each platform used to raise and lower employees to a worksite using a crane or derrick. This requirement helps employers to avoid exceeding the lifting capacity of such platforms and the cranes or derrick being used to lift the platforms. Therefore, this requirement can prevent the platform, crane, or derrick from collapsing and causing serious injury to death to employees on or below the platform.

III. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

IV. Proposed Actions

OSHA is proposing to extend the information collection requirement specified by paragraph (g)(4)(ii)(I) of Sec. 1926.550. The Agency will summarize the comments submitted in response to this notice and will include this summary in its request to OMB to extend the approval of this information collection requirements contained in the Standard.

Type of Review: Extension of currently approved information collection requirements.

Title: Cranes and Derricks Standard for Construction; Posting Weight and Load Capacity of Personnel Platforms (29 CFR 1926.550).

OMB Number: 1218–0151.

Affected Public: Business or other for-profit; not-for-profit institutions; Federal government; State, local, or Tribal governments.

Number of Respondents: 2,750 (platforms).

Frequency of Response: On occasion.

Total Responses: 2,750.

Average Time per Response: Five minutes to post or mark a platform.

Estimated Total Burden Hours: 229.

Estimated Cost. (Operation and Maintenance): $0.

V. Authority and Signature

John L. Henshaw, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*), and Secretary of Labor's Order No. 5–2002 (67 FR 65008).

Signed at Washington, DC, on October 4, 2004.

John L. Henshaw,

Assistant Secretary of Labor.

[FR Doc. 04–22600 Filed 10–6–04; 8:45 am]

BILLING CODE 4510–26–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The U.S. Nuclear Regulatory Commission (NRC) has issued for public comment a draft of a new guide in the agency's Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The new draft regulatory guide, entitled ''Risk-Informed, Performance-Based Fire Protection for Existing Light-Water Nuclear Power Plants,'' is temporarily identified by its task number, DG–1139, which should be mentioned in all related correspondence. The draft regulatory guide contains the staff's regulatory position on ''Guidance for Implementing a Risk-Informed, Performance-Based Fire Protection Program Under 10 CFR 50.48(c),'' which the Nuclear Energy Institute (NEI) has promulgated as document #NEI 04–02.

It is the staff's intent to endorse a version of NEI 04–02, as appropriate, in the final regulatory guide, consistent with the new risk-informed, performance-based fire protection rule, specified in Title 10, Section 50.48(c), of the *Code of Federal Regulations* [10 CFR 50.48(c)], which the NRC has issued for existing light-water nuclear power plants. This new regulation provides a voluntary alternative to the requirements of Appendix R to 10 CFR part 50, ''Fire Protection Program for Nuclear Power Facilities Operating Prior to January 1, 1979.'' As such, the new rule endorses a national consensus standard (NEI 04–02), sets performance goals and criteria, and takes advantage of experience and enhanced methodologies.

The NRC staff is soliciting comments on draft regulatory guide DG–1139, and comments may be accompanied by relevant information or supporting data. Please mention DG–1139 [50.48(c) RG] in the subject line of your comments. Comments on this draft regulatory guide submitted in writing or in electronic form will be made available to the public in their entirety on the NRC's rulemaking Web site. Personal information will not be removed from your comments. You may submit comments by any of the following methods.

Mail comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Email comments to: NRCREP@nrc.gov. You may also submit comments via the NRC's rulemaking Web site at *http://ruleforum.llnl.gov.* Address questions about our rulemaking

Web site to Carol A. Gallagher (301) 415–5905; email *CAG@nrc.gov*.

Hand-deliver comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

Fax comments to: Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission at (301) 415–5144.

Request for information about draft regulatory guide DG–1139 may be directed to Paul W. Lain at (301) 415–2346 or via email to *PWL@nrc.gov*.

Comments would be most helpful if received by December 15, 2004. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Electronic copies of the draft regulatory guide are available through the NRC's public Web site under Draft Regulatory Guides in the Regulatory Guides document collection of the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/doc-collections/*. Electronic copies are also available in the NRC's Agencywide Documents Access and Management System (ADAMS) at *http://www.nrc.gov/reading-rm/adams.html*, under Accession No. ML042740308. In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR), which is located at 11555 Rockville Pike, Rockville, Maryland; the PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548; and by email to *PDR@nrc.gov*. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Reproduction and Distribution Services Section; by email to *DISTRIBUTION@nrc.gov*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (U.S.C. 552(a))

Dated at Rockville, Maryland, this 30th day of September , 2004.

For the U.S. Nuclear Regulatory Commission.

Sharon D. Stewart,

Acting Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 04–22545 Filed 10–6–04; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication; Steam Generator Tube Integrity and Associated Technical Specifications

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter (GL) to request that addressees submit a description of their program for ensuring steam generator (SG) tube integrity for the interval between inspections and description of the methodology used to assess the effects of non-pressure-related loads such as bending on SG tube integrity. Addressees should also provide a safety assessment demonstrating that the SG tubes will have adequate structural and leakage integrity (with appropriate regulatory margins) at the time of their next SG tube inspection, taking into account the effects of non-pressure-related loads.

This **Federal Register** notice is available through the NRC's Agencywide Documents Access and Management System (ADAMS) under accession number ML042710075.

DATES: Comment period expires December 6, 2004. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

ADDRESSEES: Submit written comments to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Mail Stop T6-D59, Washington, DC 20555–0001, and cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to NRC Headquarters, 11545 Rockville Pike (Room T–6D59), Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

FOR FURTHER INFORMATION CONTACT: Kenneth Karwoski, NRR at 301–415–2752 or by e-mail at *kjk1@nrc.gov* or Maitri Banerjee, NRR at 301–415–2277 or by e-mail at *mxb@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Draft NRC Generic Letter 2004–XX: Steam Generator Tube Integrity and Associated Technical Specifications

Addressees

All holders of operating licenses for pressurized-water reactors (PWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel and {the following plants that have already modified their technical specifications to be consistent with those in the Attachment}.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter (GL) to:

(1) Request that addressees submit a description of their program for ensuring steam generator (SG) tube integrity for the interval between inspections; and

(2) Request that addressees submit a description of the methodology used to assess the effects of non-pressure-related loads such as bending on SG tube integrity. Addressees should also provide a safety assessment demonstrating that the SG tubes will have adequate structural and leakage integrity (with appropriate regulatory margins) at the time of their next SG tube inspection, taking into account the effects of non-pressure-related loads.

Discussion

Steam generator tubes function as an integral part of the reactor coolant pressure boundary (RCPB) and also serve to isolate radiological fission products in the primary coolant from the secondary coolant and the environment. For the purposes of this generic letter, tube integrity means that the tubes are capable of performing these functions in accordance with the plant design and licensing basis, including applicable regulatory requirements.

During operation, licensees are required to monitor and maintain the condition of the SG tubing with the objective of ensuring its continued integrity. Specifically, licensees are required by 10 CFR 50.55a(b)(2)(iii), 10 CFR 50.55a(g), or by the plant technical specifications to perform periodic inservice inspections and to repair (*e.g.*, sleeve) or remove from service (by installing plugs in the tube ends) all tubes found to contain flaws exceeding

the plugging limit (*i.e.*, tube repair criteria).

The current technical specification requirements for inspection and repair of SG tubing were developed in the 1970s and define a prescriptive approach for ensuring tube integrity. This prescriptive approach involves inspecting the tubing at specified intervals, implementing specified tube inspection sampling plans, and repairing or removing from service by plugging all tubes found by inspection to contain flaws in excess of specified flaw repair criteria. However, as evidenced by operating experience, the prescriptive approach defined in the technical specifications may not be sufficient to ensure that tube integrity is maintained. For example, in cases of low to moderate levels of degradation, the technical specifications only require that 3-to 21-percent of the tubes be inspected, irrespective of whether the inspection results indicate that additional tubes need to be inspected to reasonably ensure that tubes with flaws that may exceed the tube repair criteria or which may impair tube integrity are detected. In addition, the technical specifications (and Section XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code) do not explicitly address the inspection methods to be employed for different tube degradation mechanisms at specific tube locations, nor are the specific objectives to be fulfilled by the selected methods explicitly defined. Also, incremental flaw growth between inspections can in many instances exceed what is allowed for in the specified tube repair criteria. In such cases, the specified inspection frequencies may not ensure reinspection of a tube before its integrity is impaired. In short, current technical specification surveillance requirements may not require licensees to actively manage their SG programs so as to provide reasonable assurance that tube integrity is maintained. As a result of the above, licensees have frequently found it necessary to implement measures beyond the technical specification requirements to ensure adequate tube integrity. These measures are frequently accompanied by interaction with the NRC staff in an oversight or review capacity to ensure that adequate tube integrity is being maintained.

The NRC staff, with external stakeholder involvement, embarked on efforts to improve the SG tube integrity regulatory framework as discussed in SECY–03–0800, ''Steam Generator Tube Integrity (SGTI)—Plans for Revising the Associated Regulatory Framework.'' As a result of these efforts, the NRC and industry generically developed modified technical specifications for addressing steam generator tube integrity. These generically developed technical specifications were recently incorporated into one facility's technical specifications. (Proposals to change the plant-specific technical specifications are reviewed in accordance with the license amendment review process to confirm their acceptability). These modified technical specifications are attached to this generic letter for your information. The approach taken in the modified technical specifications in the Attachment is conceptually similar to the approach outlined in the industry initiative referred to as NEI 97–06, ''Steam Generator Program Guidelines.'' The modified technical specifications in the Attachment are performance-based in that they are focused on ensuring that the tubing satisfies performance criteria that are commensurate with tube integrity. This approach can be readily adapted to new or unexpected degradation mechanisms and advances in nondestructive examination technology. This approach also includes programmatic elements to ensure that tubes are being adequately monitored and maintained relative to the performance criteria.

The requirements pertaining to the integrity of the SG tubes are contained within Title 10 of the Code of Federal Regulations (10 CFR). Specifically, the general design criteria (GDC) [1] described in Appendix A to 10 CFR part 50 contain, in part, requirements related to the RCPB (*e.g.*, GDC 14, GDC 30, GDC 32). In addition to the GDC, 10 CFR 50.55a specifies that components that are part of the RCPB must meet the requirements for Class 1 components in Section III and XI of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code unless the plant technical specifications for surveillance differ from those specified in the ASME Code, in which case the technical specifications govern.

The requirements pertaining to the content of a plant's technical specifications are given in 10 CFR 50.36, ''Technical Specifications.'' All currently operating PWR licensees have technical specifications governing the surveillance of the SG tubes. These technical specifications also include operational leakage limits so that if significant leakage develops, the plant is shut down. The plugging limits in the technical specifications were developed to ensure that degraded tubes: (1) Maintain factors of safety against gross rupture consistent with the plant design basis (*i.e.*, consistent with the stress limits of the ASME Code, Section III); and (2) maintain leakage integrity consistent with the plant licensing basis while, at the same time, allowing for potential flaw size measurement error and flaw growth between inservice inspections.

As part of the plant licensing basis, applicants for PWR licenses are also required to analyze the consequences of postulated design-basis accidents. Typical accidents analyzed are the SG tube rupture, the locked-rotor, control rod ejection, and a main steamline break. These analyses consider the potential primary-to-secondary leakage through the tubes during these events and must show that the offsite radiological doses do not exceed 10 CFR part 100 limits (or some fraction thereof) and GDC 19 of Appendix A to 10 CFR part 50.

Irrespective of technical specification requirements for SG tube inspection and repair, licensees are also required by 10 CFR part 50, Appendix B Criterion XVI, ''Corrective Action,'' to ensure that conditions adverse to quality are promptly identified and corrected. In the case of significant conditions adverse to quality, the measures shall assure that the cause of the condition is determined and corrective action taken to preclude repetition.

The staff is requesting information as to: (1) Actions licensees are taking or will take to ensure tube integrity is being maintained, and (2) contemplated changes to the technical specifications to reflect these actions.

As discussed above, the approach in the attached technical specifications is performance-based. There are three performance criteria for the SG tubes: (1) A structural integrity performance criterion, (2) a primary-to-secondary leakage performance criterion for normal operation, and (3) a primary-to-secondary leakage performance criterion for postulated accident conditions.

During public interactions with stakeholders on the structural integrity performance criterion, the staff became aware that the effects of various non-pressure-related loads such as bending loads may not be fully addressed in industry guidance documents for assessing the integrity of degraded SG tubes. Non-pressure-related loads were assessed in the original design of the SG tubes so as to ensure that nondegraded tubes would have adequate integrity for the full range of operating conditions. As a result, this generic letter requests addressees to discuss how they have

[1] Or, for PWR facilities licensed before the issuance of 10 CFR part 50, Appendix A, similar requirements in the plant-specific principal design criteria.

assessed the effects of non-pressure-related loads in their assessments of tube integrity and to discuss whether all tubes will have adequate structural integrity at the time of their next SG tube inspection, taking all loading conditions on the tube into account.

Requested Information

Addressees are requested to provide the following information to the NRC within 60 days of the date of this generic letter:

1. A description of the actions they are taking or will take to ensure tube integrity is being maintained and contemplated changes to the technical specifications to reflect these actions.

2. A description of the methodology used to assess the effects of non-pressure-related loads such as bending on SG tube integrity. In addition, addressees should provide a safety assessment demonstrating that the SG tubes will have adequate structural and leakage integrity at the time of their next SG tube inspection, taking into account the effects of non-pressure-related loads.

Required Response

In accordance with 10 CFR 50.54(f), addressees are required to submit written responses to this generic letter. Two options are available:

(a) Addressees may choose to submit written responses providing the information requested above within the requested time period.

(b) Addressees who cannot meet the requested completion date or who choose an alternate course of action are required to so notify the NRC in writing as soon as possible but no later than 30 days from the date of this generic letter. The response must address any alternative course of action proposed, including the basis for the acceptability of the proposed alternative course of action, and the basis for finding that the SGs remain operable. If the information requested in the previous section of this GL will be subsequently provided, the response must set forth the schedule for submitting the information.

The required written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, 11555 Rockville Pike, Rockville, Maryland 20852, under oath or affirmation under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f). In addition, a copy of the response should be sent to the appropriate regional administrator.

Reasons for Requested Information

This GL requests addressees to submit information. The requested information will enable the NRC staff to determine whether addressees' SG tube integrity programs provide reasonable assurance of tube integrity consistent with their design and licensing basis and applicable regulatory requirements (10 CFR part 50, Appendix A[1]; 10 CFR part 50, Appendix B). In addition, the requested information will enable the NRC staff to determine whether SG tube integrity is being maintained under all loading conditions consistent with the design and licensing basis and applicable regulatory requirements (10 CFR part 50, Appendix A[1]).

The NRC staff will review the responses to this GL in order to determine whether additional actions are necessary.

Backfit Discussion

Under the provisions of section 182a of the Atomic Energy Act of 1954, as amended, and 10 CFR 50.54(f), this GL transmits an information request for the purpose of verifying compliance with applicable existing requirements. Specifically, the requested information will enable the NRC staff to determine whether the applicable requirements discussed above are being met. No backfit is either intended or approved in the context of issuance of this GL. Therefore, the staff has not performed a backfit analysis.

Federal Register Notification

To be done after the public comment period.

Small Business Regulatory Enforcement Fairness Act

The NRC has determined that this action is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

Paperwork Reduction Act Statement

This GL contains information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget, approval no. 3150–0011, which expires on February 28, 2007.

The burden of these mandatory information collections on the public is estimated to average 200 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments regarding this burden estimate or any other aspect of these information collections, including suggestions for reducing the burden, to the Records and FOIA/Privacy Services Branch (T–5 F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

Sample Technical Specifications

Steam Generator (SG) Program

A SG Program shall be established and implemented to ensure that SG tube integrity is maintained. The SG Program shall include the following provisions:

a. Provisions for condition-monitoring assessments. A condition-monitoring assessment is an evaluation of the ''as-found'' condition of the tubing with respect to the performance criteria for structural integrity and accident-induced leakage. The ''as-found'' condition refers to the condition of the tubing during a SG inspection outage, as determined from the inservice inspection results or by other means, prior to the plugging of tubes. Condition-monitoring assessments shall be conducted during each outage during which the SG tubes are inspected or plugged to confirm that the performance criteria are being met.

b. Performance criteria for SG tube integrity. SG tube integrity shall be maintained by meeting the performance criteria for tube structural integrity, accident-induced leakage, and operational LEAKAGE.

1. Structural integrity performance criterion: All inservice SG tubes shall retain structural integrity over the full range of normal operating conditions (including startup, operation in the power range, hot standby, and cooldown and all anticipated transients included in the design specifications) and design-basis accidents. This includes retaining a safety factor of 3.0 against burst under the normal steady state full-power operation primary-to-secondary pressure differential and a safety factor of 1.4 against burst applied to the design-basis accident primary-to-secondary pressure differentials. Apart from the above requirements, additional loading conditions associated with the design-basis accidents, or combination of accidents in accordance with the

design and licensing basis, shall also be evaluated to determine if the associated loads contribute significantly to burst or collapse. In the assessment of tube integrity, those loads that do significantly affect burst or collapse shall be determined and assessed in combination with the loads due to pressure with a safety factor of 1.2 on the combined primary loads and 1.0 on axial secondary loads.

2. Accident-induced leakage performance criterion: The primary-to-secondary accident-induced leakage rate for any design-basis accident, other than a SG tube rupture, shall not exceed the rates assumed in the accident analysis for total leakage rate from all SGs and leakage rate from an individual SG. Accident-induced leakage is not to exceed [licensee to insert value] gallons per day through each SG and [licensee to insert value] gallons per day through all SGs.

3. The operational LEAKAGE performance criterion is specified in limiting condition for operation (LCO) [licensee to insert reference to appropriate LCO. For limits currently greater than 150 gallons per day, the LCO limit should be lowered to a value less than or equal to 150 gallons per day.]

c. SG tube repair criteria. Tubes found by inservice inspection to contain flaws with a depth equal to or exceeding 40 percent of the nominal tube wall thickness shall be plugged.

d. Provisions for SG tube inspections. Periodic SG tube inspections shall be performed. The number and portions of the tubes inspected and the method of inspection shall be performed with the objective of detecting flaws of any type (for example, volumetric flaws, axial and circumferential cracks) that may be present along the length of the tube, from the tube-to-tubesheet weld at the tube inlet to the tube-to-tubesheet weld at the tube outlet, and that may satisfy the applicable tube repair criteria. The tube-to-tubesheet weld is not part of the tube. In addition to meeting requirements d.1, d.2, and d.3 below, the inspection scope, inspection methods, and inspection intervals shall be such as to ensure that SG tube integrity is maintained until the next SG inspection. An assessment of degradation shall be performed to determine the type and location of flaws to which the tubes may be susceptible and, based on this assessment, to determine which inspection methods need to be employed and at what locations.

1. Inspect 100 percent of the tubes in each SG during the first refueling outage following SG replacement.

2. Inspect 100 percent of the tubes at sequential periods of [for licensees with thermally treated Alloy 690 tubes, insert ''144, 108, 72, and thereafter 60 effective full-power months;'' for licensees with thermally treated Alloy 600 tubes, insert ''120, 90, and thereafter 60 effective full-power months;'' for licensees with mill-annealed Alloy 600 tubes, insert ''60 effective full-power months;'']. The first sequential period shall be considered to begin after the first inservice inspection of the SGs. In addition, inspect 50 percent of the tubes by the refueling outage nearest the midpoint of the period and the remaining 50 percent by the refueling outage nearest the end of the period. No SG shall operate for more than [for licensees with thermally treated Alloy 690 tubes, insert ''72 effective full-power months or three refueling outages;'' for licensees with thermally treated Alloy 600 tubes, insert ''48 effective full-power months or two refueling outages;'' for licensees with mill-annealed Alloy 600 tubes, insert ''24 effective full-power months or each refueling outage'' (whichever is less)] without being inspected.

3. If crack indications are found in any SG tube, then the next inspection for each SG for the degradation mechanism that caused the crack indication shall not exceed 24 effective full-power months or one refueling outage (whichever is less). If definitive information, such as from examination of a pulled tube, diagnostic nondestructive testing, or an engineering evaluation indicates that a cracklike indication is not associated with a crack or cracks, then the indication need not be treated as a crack.

e. Provisions for monitoring operational primary-to-secondary leakage.

Steam Generator (SG) Tube Inspection Report

A report shall be submitted within 180 days of the initial entry into MODE 4 following completion of the inspection. The report shall include:

a. The scope of inspection performed on each SG.

b. Active degradation mechanisms found.

c. Nondestructive examination techniques utilized for each degradation mechanism.

d. Location, orientation (if linear), and measured sizes (if available) of service-induced indications.

e. Number of tubes plugged during the inspection outage for each active degradation mechanism.

f. Total number and percentage of tubes plugged to date.

g. The results of condition monitoring, including the results of tube pulls and in-situ testing.

End

Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/NRC/ADAMS/index.html.* If you do not have access to ADAMS or if you have problems in accessing the documents in ADAMS, contact the NRC Public Document Room (PDR) reference staff at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated in Rockville, Maryland, this 30 day of September, 2004.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Acting Branch Chief, Reactor Operations Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–22546 Filed 10–6–04; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

November 4, 2004, Public Hearing; Sunshine Act

TIME AND DATE: 2 p.m., Thursday, November 4, 2004.

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Hearing open to the public at 2 p.m.

PURPOSE: Public Hearing in conjunction with each meeting of OPIC's Board of Directors, to afford an opportunity for any person to present views regarding the activities of the Corporation.

PROCEDURES: Individuals wishing to address the hearing orally must provide advance notice to OPIC's Corporate Secretary no later than 5 p.m., Monday, October 25, 2004. The notice must include the individual's name, title, organization, address, and telephone number, and a concise summary of the subject matter to be presented.

Oral presentations may not exceed ten (10) minutes. The time for individual presentations may be reduced proportionately, if necessary, to afford all participants who have submitted a

timely request to participate an opportunity to be heard.

Participants wishing to submit a written statement for the record must submit a copy of such statement to OPIC's Corporate Secretary no later than 5 p.m., Monday, October 25, 2004. Such statements must be typewritten, double-spaced, and may not exceed twenty-five (25) pages.

Upon receipts of the required notice, OPIC will prepare an agenda for the hearing identifying speakers, setting forth the subject on which each participant will speak, and the time allotted for each presentation. The agenda will be available at the hearing.

A written summary of the hearing will be compiled, and such summary will be made available, upon written request to OPIC's Corporate Secretary, at the cost of reproduction.

CONTACT PERSON FOR INFORMATION: Information on the hearing may be obtained from Connie M. Downs at (202) 336–8438, via facsimile at (202) 218–0136, or via e-mail at *cdown@opic.gov.*

Dated: October 4, 2004.

Connie M. Downs,

OPIC Corporate Secretary.

[FR Doc. 04–22648 Filed 10–4–04; 4:49 pm]

BILLING CODE 3210–01–M

PRESIDIO TRUST

Notice of Extension of Public Comment Period for the Public Health Service Hospital Draft Supplemental Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: Extension of comment period.

SUMMARY: The Presidio Trust is extending the comment period from October 12, 2004 to November 12, 2004 to enhance opportunities for public and agency participation in the National Environmental Policy Act process for the Public Health Service Hospital (PHSH) Draft Supplemental Environmental Impact Statement (Draft SEIS).

Oral comments may be made at the public meeting of the Presidio Trust Board of Directors commencing 6:30 p.m. on November 4, 2004, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. Written comments may be sent to the Presidio Trust via fax ((415) 561–2790), e-mail (*phsh@presidiotrust.gov*), or U.S Mail (NEPA Compliance Coordinator, The Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, CA 94129–0052). All comments must be postmarked by November 12, 2004. Please be aware that all written comments and information submitted to the Presidio Trust will be made available to the public, including, without limitation, any postal address, e-mail address, phone number or other information contained in each submission. The Draft SEIS may be viewed or downloaded from the Trust's Web site at *http://www.presidio.gov,* following the link from the Home page. A printed copy may be requested at no charge at (415) 561–5414 or *phsh@presidiotrust.gov.*

FOR FURTHER INFORMATION CONTACT: For more information regarding this and other planning efforts in the Presidio, visit *http://www.presidio.gov.* Specific questions about this notice may be directed to John Pelka, NEPA Compliance Coordinator for the Presidio Trust, at (415) 561–5365.

Dated: October 1, 2004.

Karen A. Cook,

General Counsel.

[FR Doc. 04–22559 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–4R–P

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § (c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, as amended, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held commencing 6:30 p.m. on Thursday, November 4, 2004, at the Officers' Club, 50 Moraga Avenue, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purposes of this meeting are to provide the Executive Director's report and to receive public comment regarding the Draft Supplemental Environmental Impact Statement for the Public Health Service Hospital project.

Accommodation: Individuals requiring special accommodation at this meeting, such as needing a sign language interpreter, should contact Mollie Matull at (415) 561–5300 prior to October 25, 2004.

FOR FURTHER INFORMATION CONTACT: Karen Cook, General Counsel, the Presidio Trust, 34 Graham Street, PO Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: October 1, 2004.

Karen A. Cook,

General Counsel.

[FR Doc. 04–22560 Filed 10–6–04; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50481; File No. SR–CHX–2004–12]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto and Notice of Filing and Order Granting Accelerated Approval of Amendments No. 2 and 3 to the Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Implementation of a Fully-Automated Functionality for the Handling of Particular Orders Called CHXpress

September 30, 2004.

I. Introduction

On February 20, 2004, the Chicago Stock Exchange, Inc. (''CHX'' 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 amend CHX Article XX, Rule 37 to implement a new automated functionality for handling particular orders called CHXpress. On April 8, 2004, the Exchange amended the proposed rule change.[3] The proposed rule change, as amended by Amendment No. 1, was published for comment in the **Federal Register** on April 21, 2004.[4] The Commission received no comments on the proposed rule change, as amended. On May 11, 2004 and August 23, 2004, the Exchange filed Amendments No. 2 and 3 to the proposed rule change, respectively.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated April 7, 2004, and the attached Form 19b–4, which replaced the original filing in its entirety (''Amendment No. 1'').

[4] *See* Securities Exchange Act Release No. 49567 (April 15, 2004), 69 FR 21591.

[5] *See* letters from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated May 10, 2004 (''Amendment No. 2'') and August 20, 2004 (''Amendment No. 3''). In Amendment No. 2, the Exchange made technical

Continued

This order approves the proposed rule change, as amended, grants accelerated approval to Amendments No. 2 and 3, and solicits comments from interested persons on Amendments No. 2 and 3.

II. Description of the Proposed Rule Change

The Exchange proposes to implement a new automated functionality built into the Exchange's MAX® system called CHXpress for certain orders.[6] Under the proposal, only unconditional, round-lot limit orders could be designated as CHXpress orders.[7] CHXpress orders could be submitted in an issue only after an order has been executed on the primary market in that issue and would be automatically cancelled at the end of each trading day, if they remain unexecuted.[8]

CHXpress orders could be routed into the MAX system by the Exchange's order-sending firms or by CHX floor brokers. All orders would be required to be specifically designated as CHXpress orders to ensure appropriate handling in the Exchange's automated systems.[9] Under the proposal, CHXpress orders would be executed immediately and automatically against same or better-priced orders in the specialist's book, or against the specialist, unless those executions would trade through another ITS market or unless trading in the issue has been halted.[10]

If a CHXpress order could not be immediately executed, it would be placed in the specialist's book for instantaneous display or later execution.[11] However, CHXpress orders, like all other orders at the Exchange, would not be eligible for automated display if that display would improperly lock or cross another ITS market.[12] In such instances, the CHXpress order would be automatically cancelled.

Finally, under the proposed rules, CHXpress orders would be primarily designed to match against orders in the specialist's book.[13] As a result, CHX specialists would not provide CHXpress orders with the execution guarantees that might otherwise be available to agency limit orders.[14] Specifically, these orders would not be eligible for automated price improvement, or execution based on quotes in the national market system or prints in the primary market for a security.[15] CHX specialists also would not act as agent for the orders in other markets. CHX specialists, however, would be required to integrate their handling of CHXpress orders with any executions that occur at the post with floor brokers or market makers.[16]

III. Discussion

After careful review, 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.[17] In particular, the Commission finds that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[18] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As noted by the Exchange, CHXpress orders will automatically and immediately execute against orders in the specialist's book or against the specialist unless the execution would cause a trade through of another ITS market or trading has been halted in the particular security. The Commission believes that this new automatic execution system should provide investors with an efficient mechanism by which to immediately interact with the Exchange's quote and allow investors to immediately access liquidity on the Exchange.

Moreover, the Commission believes that the proposal, as amended, will provide investors with additional order routing capabilities that may enhance the execution of their orders. The proposal provides a new execution facility in addition to the current execution facilities on the CHX. Investors will be able to choose a more immediate execution that will not provide them with price improvement opportunities on CHXpress or choose to direct their order to the current CHX BEST or MAX system for price improvement opportunities. The Commission finds that allowing the automatic execution of CHXpress orders against orders in the specialist's book will help to perfect the mechanism of a free and open market by providing an execution vehicle for investors who value immediate and automatic access to available liquidity at the Exchange more than the opportunity for price improvement.[19]

Furthermore, the Commission believes that the Exchange's proposal to automatically cancel and not accept any CHXpress orders in an issue during a trading halt, and cancel both inbound

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corrections to the text of the proposed rule change. In Amendment No. 3, the Exchange changed the designator that would identify CHXpress orders in the Exchange's MAX system from ''E'' to ''XPR,'' provided additional detail regarding the handling of CHXpress orders during a trading halt, and confirmed that the Exchange would automatically cancel both inbound orders and orders already in the book, if the execution of the order would improperly trade through another Intermarket Trading System (''ITS'') market or if the display of the order would improperly lock or cross another ITS market.

[6] The MAX system provides automated display and execution for orders sent to the Exchange's specialists for execution.

[7] *See* CHX Article XX, Rule 37(b), proposed section 11(A).

[8] *Id.*

[9] *See* CHX Article XX, Rule 37(b), proposed section 11(A), and Amendment No. 3, *supra* note 5.

[10] If the execution of a CHXpress order would cause an improper trade-through of another ITS market, the CHXpress order would be automatically cancelled. *See* CHX Article XX, Rule 37(b), proposed section (11)(C), and Amendment No. 3, *supra* note 5. If trading in an issue has been halted, all CHXpress orders in that issue would be automatically cancelled. The Exchange would not accept any CHXpress orders in an issue during a trading halt and would not resume accepting such orders until an execution has occurred in the primary market. Id.

[11] A CHXpress order would be instantaneously and automatically displayed when it constitutes the best bid or offer in the CHX book. *See* CHX Article XX, Rule 37(b), proposed section 11(D).

[12] The Exchange's MAX system does not permit the automatic display of any order greater than 100 shares where that order would lock or cross another ITS market.

[13] A specialist could participate in filling a CHXpress order, but could not do so if that execution would cause the specialist to trade ahead of any other order in the book.

[14] *See* CHX Article XX, Rule 37(b), proposed sections 11(E) and (F).

[15] Under the Exchange's existing rules, a specialist can engage an automated functionality in the MAX system to provide price improvement to eligible agency orders and can use automated functionalities to provide agency orders with protection against trades in the primary market for both listed and Nasdaq/NM securities. *See* CHX Article XX, Rule 37(d) (describing the SuperMAX price improvement functionality) and Rule 37(a)(3) (setting out the limit order protections otherwise guaranteed to limit orders, such as protections against primary market trades at or through a limit order's price).

[16] For example, if the specialist is in the process of manually executing an order on the floor at the displayed bid, and a CHXpress order automatically executes against that bid before the specialist is able to complete the transaction on the floor, the specialist would still be required to honor the trade on the floor at the displayed bid price, even if that displayed interest is no longer available. *See* CHX Article XX, Rule 37(b), proposed section 11(G).

[17] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] The Commission notes, however, that while it believes that the proposed rule change, as amended, is consistent with the requirements of the Act, the Commission is not making a determination that the CHX's automatic execution capabilities would satisfy the ''automated order execution facility'' definition in Rule 600(b)(3) of proposed Regulation NMS. *See* Securities Exchange Act Release No. 49325 (February 26, 2004), 69 FR 11126 at 11203 (March 9, 2004). *See also* Securities Exchange Act Release No. 49749 (May 20, 2004), 69 FR 30142 (May 26, 2004).

orders and orders already in the book if the execution of the order would improperly trade through another ITS market will protect investors and promote the fair and orderly operation of the markets. Specifically, the Commission believes these proposed rules will increase the efficiency of the Exchange's order routing and execution system and enable market participants to make informed order entry decisions based on current, disseminated information regarding the issue.

Application of ''Effect v. *Execute'' Exemption From Section 11(a) of the Act*

Section 11(a) of the Act [20] prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion (collectively, ''covered accounts'') unless an exception applies. In addition to the exceptions set forth in the statute, Rule 11a2–2(T) [21] provides exchange members with an exemption from this prohibition. Known as the ''effect versus execute'' rule, Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions on the exchange. To comply with the rule's conditions, a member: (i) Must transmit the order from off the exchange floor; (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution; [22] (iii) may not be affiliated with the executing member; and (iv) with respect to an account over which the member has investment discretion, neither the member nor its associated person may retain any compensation in the connection with effecting the transaction except as provided in the Rule.

In a letter dated July 6, 2004,[23] the CHX represents that transactions effected using the CHXpress functionality satisfy the conditions of Rule 11a2–2(T). Based on these representations, the Commission finds that the CHXpress functionality complies with the requirements of Section 11(a) of the Exchange Act and Rule 11a2–2(T) thereunder.[24]

First, according to the CHX, all CHXpress orders would be electronically submitted either by members from locations off the exchange floor or by floor brokers located on the Exchange floor for the accounts of off-floor members. Specifically, floor brokers may receive an order, by telephone, from an off-floor member not affiliated with the floor broker. Thereafter, the floor broker may decide that it would be best to execute all or a portion of the off-floor member's order in CHXpress. Accordingly, because the off-floor member submitted its order to an unaffiliated floor broker on the floor from off the Exchange floor, the Commission believes that it has satisfied the off-floor transmission requirement. Second, because a member would relinquish control of its order after it is submitted to CHXpress and would not be able to influence or guide the execution of its order, the member would not be participating in the execution of its order. Third, although the rule contemplates having an order executed by an exchange member who is not affiliated with the member initiating the order, the Commission recognizes that this requirement is satisfied when automated exchange facilities are used.[25] Fourth, the CHX states that members that rely on Rule 11a2–2(T) for a managed account transaction would be required to comply with the limitations on compensation set forth in the rule.

Accelerated Approval of Amendments No. 2 and 3

The Commission finds good cause to approve Amendments No. 2 and 3 to the proposed rule change prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.[26] Amendment No. 2 made technical corrections to the proposed rule text. Amendment No. 3 also made technical corrections to the proposed rule text and addressed concerns raised by the Commission staff by clarifying in the proposed rule text how CHXpress orders would be handled during a trading halt, and confirming that, if an execution of a CHXpress order in the book would cause an improper trade-through of another ITS market or if the display of the order would improperly lock or cross another market, the Exchange would automatically cancel both inbound orders and orders already in the book. The Commission believes that the proposed changes in Amendments No. 2 and 3 provide a clearer understanding of the operation of the CHXpress functionality and raise no new issues of regulatory concern and, therefore, believes good cause exists to accelerate approval of Amendments No. 2 and 3.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 2 and 3, including whether Amendments No. 2 and 3 are consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CHX–2004–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission,

[20] 15 U.S.C. 78k(a).

[21] 17 CFR 240.11a2–2(T).

[22] The member, however, may participate in clearing and settling the transaction.

[23] *See* letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine England, Assistant Director, Division, Commission, dated July 6, 2004.

[24] The Commission and its staff, on numerous occasions, have considered the application of Rule 11a2–2(T) to electronic trading and order routing systems. *See, e.g.,* Securities Exchange Act Release Nos. 49068 (January 13, 2004) (Order approving the Boston Options Exchange as an options trading facility of the Boston Stock Exchange); 44983 (October 25, 2001) (Order approving the Archipelago Exchange as the equities trading facility of PCX Equities Inc.); 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System); and 14563 (March 14, 1978) (regarding the NYSE's Designated Order Turnaround System). *See also* letter from Larry E. Bergmann, Senior Associate Director, Division, Commission, to Edith Hallahan, Associate General Counsel, Phlx (March 24, 1999) (regarding Phlx's VWAP Trading System); letter from Catherine McGuire, Chief Counsel, Division, Commission, to David E. Rosedahl, PCX (November 30, 1998) (regarding Optimark); and letter from Brandon Becker, Director, Division, Commission, to George T. Simon, Foley & Lardner (November 30, 1994) (regarding Chicago Match).

[25] In considering the operation of automated execution systems operated by an exchange, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T). *See* Securities Exchange Act Release No. 15533 (January 29, 1979).

[26] 15 U.S.C. 78s(b)(2).

450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CHX–2004–12. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CHX. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2004–12 and should be submitted on or before October 28, 2004.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with Section 6(b)(5) of the Act.[27]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–CHX–2004–12) and Amendment No. 1 thereto are approved, and that Amendments No. 2 and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2527 Filed 10–6–04; 8:45 am]

BILLING CODE 8010–01–P

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50463; File No. SR–NASD–2003–13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto, and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to Adopt New Interpretive Material to NASD Rule 2210(d)(2)(N) to Allow NASD Member Firms to Use Certain Investment Analysis Tools

September 28, 2004.

I. Introduction

On February 3, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC''), 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 a new Interpretive Material (''IM'') to NASD Rule 2210(d)(2)(N) that would allow NASD member firms to use investment analysis tools that show the probability that investing in specific securities or mutual funds may produce a desired result. On February 27, 2003, the NASD amended the proposed rule change.[3] The proposed rule change, as amended, was published for notice and comment in the **Federal Register** on April 3, 2003.[4] The Commission received seven comment letters on the proposal.[5] On December 2, 2003, the NASD responded to the comment letters and amended the proposed rule change.[6] The NASD filed another amendment to make minor changes to the proposed rule change on February 27, 2004.[7] This order approves the proposed rule change as modified by Amendment No. 1. Simultaneously, the Commission provides notice of filing of Amendment Nos. 2 and 3 and grants accelerated approval of Amendment Nos. 2 and 3. The complete text of the proposed rule change, as approved, is attached as Exhibit A.

II. Summary of Comments

The Commission received seven comment letters on the NASD's proposed rule change as modified by Amendment No. 1.[8] One comment letter supported the NASD's rule change as originally proposed, five supported the proposed rule change but suggested certain modifications, and one opposed the proposed rule change.[9] The following summary of comments provides an overview of the commenters' concerns:

• *NASD Should Revise the Definition of Investment Analysis Tools*

Several commenters suggested that the NASD revise its definition of investment analysis tools.[10] One commenter expressed concern that the proposed definition of investment analysis tools does not clearly reflect the ''distinction between tools that show a probability that investing in *specific* securities or mutual funds will produce

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* February 27, 2003, letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments (''Amendment No. 1''). The original proposed rule change was inadvertently filed without page 5. In Amendment No. 1, NASD removed pages 1–25 of the original filing and replaced them with new pages 1–25. The Commission did not require the NASD to re-file pages 26–230.

[4] *See* Securities Exchange Act Release No. 47590 (March 28, 2003), 68 FR 16325.

[5] *See infra* note 8 (citing comment letters).

[6] *See* December 2, 2003, letter from James S. Wrona, Associate General Counsel, NASD, to Katherine A. England, and attachments (''NASD Response Letter'' or ''Amendment No. 2''). *See also infra* Section III (discussing the NASD's response to comments and amendments to the proposed IM).

[7] *See* February 26, 2004, letter from James S. Wrona to Katherine A. England, and attachments (''Amendment No. 3''). In Amendment No. 3, the NASD made changes to the format of the proposed rule language, and added specific references to NASD and Commission rules and requirements.

[8] *See* the following letters to Jonathan G. Katz, Secretary, SEC: April 24, 2003, letter from Alexander C. Gavis, Associate General Counsel, Fidelity Investments (''Fidelity Letter''); April 24, 2003, letter from Tamara K. Salmon, Senior Associate Counsel, Investment Company Institute (''ICI Letter''); April 24, 2003, letter from Michael J. Hogan, Harris Investor Services LLC (''Harris Letter''); April 29, 2003, letter from Christopher P. Gilkerson, Vice President and Associate General Counsel, Office of Corporate Counsel, Charles Schwab & Co. (''Schwab Letter''); May 1, 2003, letter from Scott W. Campbell, Executive Vice President and General Counsel, Financial Engines, Inc. (''FE Letter''); May 7, 2003, letter from Eliot Wagner, Chair, Technology & Regulation Committee, and Hardy Callcott, Chair, Online Brokerage Legal Committee, Securities Industry Association (''SIA Letter''); and May 9, 2003, letter from John M. Ramsay, Senior Vice President and Regulatory Counsel, The Bond Market Association (''BMA Letter'').

[9] The FE Letter expressed approval of the proposed rule change (asserting the proposed rule change ''will benefit investors and enhance competition in the securities industry''). FE Letter at 1. The Fidelity, ICI, Schwab, SIA, and BMA Letters expressed approval of the proposed rule change with modifications. The Harris Letter opposed the proposed rule change.

[10] Fidelity Letter at 3; Schwab Letter at 2–4; SIA Letter at 4; BMA Letter at 2–4, 6; Harris Letter at 13. Amendment No. 1 defined an investment analysis tool as ''an interactive technological tool that produces simulations and statistical analyses that present a range of probabilities that various investment outcomes might occur, thereby serving as an additional resource to investors in the evaluation of the potential risks of and returns on particular investments.'' Amendment No. 1 at 3.

a desired result and tools that show probabilities as to how classes of financial assets or style of investing might perform'' (emphasis in original).[11] Other commenters suggested that the NASD revise the definition to allow for tools that present a single probability of achieving a desired result, rather than limiting the definition to tools that provide a range of probabilities.[12] These commenters believed that the presentation of a single probability of achieving a desired result can be achieved in a fair and balanced manner through the use of disclosure and/or tool functionality.[13]

One commenter further suggested that the NASD's proposed definition of investment analysis tools should be revised so that it fully reflects the purpose of the IM and explains ''which tools are not covered by the IM's prescriptive text and therefore are already permissible under existing [NASD] Rule 2210(d). * * *''[14] The commenter argued that, since several of the proposed investment analysis tool disclosure requirements ''only make sense if the tool results in or analyzes investment recommendations,'' investment analysis tools that analyze a self-directed client's portfolio in light of a goal provided by the client, such as retirement, and do not make any investment recommendations should be excluded from the proposed definition of investment analysis tools.[15] Additionally, the commenter recommended that investment analysis tools that registered representatives currently use internally to make recommendations to clients (where the tool is not client-facing) also should be excluded from the NASD's proposed definition of investment analysis tools.[16] The commenter offered a revised definition of investment analysis tools, stating that the failure to amend the NASD's proposed definition ''will lead to confusion and inconsistency between past and current interpretations and practices under different parts of [NASD] Rule 2210(d).''[17]

One commenter suggested that investment analysis tools provided exclusively to institutional investors should be excluded from the scope of the proposed IM's prohibition,[18] while another commenter encouraged the NASD to revise the definition of investment analysis tools to clarify that the IM does not apply to bond calculators or risk management tools used by money managers and institutional investors to help manage portfolios.[19] One commenter opined that the definition is ''unnecessarily broad and confusing'' and argued that the NASD tried to clarify that ''certain 'automated educational' [t]ools that present certain 'portfolio analysis' financial planning may not be subject to the rule, but it appears that portfolio-based planning [t]ools that are more than 'educational' would be subject to the rule.''[20]

• *NASD Should Clarify the Requirement That Investment Analysis Tools Use a Mathematical Process That Can Be Audited and Reviewed*

Several commenters suggested that the NASD further explain its intent with regard to the requirement that investment analysis tools use a mathematical process that can be audited and reviewed.[21] The commenters expressed concern that this requirement could be interpreted to require member firms to obtain third-party audits of investment analysis tools.[22] Two commenters urged the NASD to clarify that it does not intend for members to collect and maintain an archive of calculations of each session during which an investment analysis tool is used.[23] One commenter noted that some broker-dealers may purchase their investment analysis tools from third party vendors who may not be willing to waive confidentiality provisions in licensing agreements with respect to granting the broker-dealer access to the mathematical processes of the investment analysis tools.[24]

• *NASD Should Modify the Requirement to Disclose the Universe of Investments Considered*

Some commenters suggested that the NASD modify its disclosure requirements to eliminate unnecessary and duplicative disclosure. For example, several commenters opposed the requirement of a disclosure statement explaining that there are other investments that were not considered by the investment analysis tool that may have characteristics similar or superior to those analyzed by the tool.[25] One of those commenters suggested that the requirement be revised to require disclosure only of a description of the universe of investments considered in the analysis, reasoning that investors ''would likely be confused by boilerplate disclosure stating that other similar investments were not considered.''[26] One commenter argued that by requiring disclosure of the universe of investments considered in the analysis, investors would know that not all investments offered anywhere were considered.[27]

• *NASD Should Modify the Proposed Disclosure Requirements*

The NASD's proposed disclosure requirements apply not only to investment analysis tools, but also to written reports indicating the results generated by the use of investment analysis tools, and any related sales material. Commenters had varying concerns about this aspect of the proposal. For example, one commenter advocated an alternative approach in which the NASD would grant member firms the discretion to determine the best approach regarding disclosure between investment analysis tools and the reports generated by use of the tools, rather than requiring that all written reports contain the same disclosure, which would be redundant and unhelpful.[28] The commenter also suggested that the disclosure requirements not be applied broadly to all tool-related sales material, but rather be limited to sales material containing a

[11] Fidelity Letter at 3. Though the commenter noted that the distinction is indicated in the IM's first footnote, the commenter recommended that the distinction be recognized in the text of the definition. *Id.*

[12] *Id.* at 4; Schwab Letter at 4 (''* * * there are tools whose purpose and use do not include presenting a range of probabilities.''); SIA Letter at 3.

[13] *See e.g.*, Fidelity Letter at 4.

[14] Schwab Letter at 2.

[15] *Id.* at 2–3. *See also* SIA Letter at 4 (investment analysis tools that include yield or performance information as part of an analysis of a client's portfolio in light of client-supplied goals should be excluded).

[16] Schwab Letter at 3. *See also* SIA Letter at 4 (arguing that investment analysis tools used internally by registered representatives or investment advisers in the course of preparing advice for clients should be excluded from the scope of the IM's prohibition).

[17] Schwab Letter at 3.

[18] SIA Letter at 4.

[19] BMA Letter at 6.

[20] Harris Letter at 13.

[21] ICI Letter at 3; Fidelity Letter at 5; Harris Letter at 14.

[22] Fidelity Letter at 5; ICI Letter at 3.

[23] Schwab Letter at 4 (''The final IM should make clear that it is only the general mathematical process itself that must be documented and not the specific calculations generated for any specific application of the tool.''); Harris Letter at 14 (''No guidance is provided as to how a member firm must audit the [t]ool, what features are subject to an audit requirement or whether it applies on a per client basis.'')

[24] Harris Letter at 14.

[25] ICI Letter at 3; Harris Letter at 15; Fidelity Letter at 5–6.

[26] Fidelity Letter at 6 (''. . .[t]his would give [investors] the impression that the 'grass may be greener' with other investments, but would fail to provide the investor with any meaningful analysis.'').

[27] ICI Letter at 3.

[28] Fidelity Letter at 6. Rather, the commenter recommended that firms be required to rationalize disclosure between the tool and the reports, and opined of a greater likelihood that investors would read the disclosure information if firms are given discretion in this area. *Id.*

detailed description of the tools as well as investor-specific probability presentations.[29] Similarly, another commenter suggested that, rather than requiring the member firm to make the same disclosure in all reports and sales material, ''the member could determine where disclosure of this information would be most appropriate, so long as the totality of the disclosure provided to the investor includes all elements of disclosure required by the IM.'' [30]

One commenter argued against the NASD's proposal to apply the disclosure requirements broadly to all investment analysis tool-related sales material, and recommended that the disclosure requirements apply only to ''sales material that contains either a detailed description of the tool or investor-specific probability presentations.'' [31] Without this constraint on the scope of the disclosure requirement, the commenter believed that all pieces of sales material might fall within the scope of the proposed rule, and therefore be required to comply with the substantive and disclosure requirements outlined in IM–2210–(c) and (d). For both written reports and sales material, the commenter recommended that the NASD allow member firms the flexibility to self-determine the appropriate disclosure for reports and sales material.[32]

One commenter suggested that the NASD allow members to have discretion over where to place the required clear and prominent disclosures ''as part of the tool's interactive process and/or on any report that provides the tool's result.'' [33] The commenter encouraged the NASD to modify the proposed rule to expressly permit both written and electronic disclosures, ''given that this is a rule about electronic investment analysis tools.'' [34] In a general criticism of the disclosure provision, one commenter suggested that, for most investment analysis tools, the NASD's mandated conditions and disclosures ''are unnecessary either because the presentation, purpose or level of detail of the [t]ool is self evident, or the [t]ool itself contains sufficient context and disclosure without the additional NASD requirements.'' [35]

• *NASD Should Modify or Eliminate the 30-Day Pre-Filing and Approval Requirement*

Most of the commenters opposed the NASD's proposed requirement that member firms provide the NASD with access to a proposed investment analysis tool at least 30 days prior to its first use, and the required filing of any templates for written reports produced by, or sales material concerning, the tool.[36] One commenter believed that the pre-use access and filing requirement ''places broker-dealers at a competitive disadvantage given that investment advisers, mutual funds, and unregulated financial portals on the Web have no such pre-use approval process for their investment analysis tools.''[37] Another commenter opposed the pre-filing requirement by arguing that it ''would result in significant delays in the launch of investment tools to investors.'' [38] Noting that investment analysis tools can take from as little as a few months to over a year or more to develop, the commenter remarked that the pre-use access and filing requirement would essentially insert the NASD into the development cycle of investment analysis tools, likely at the final stages of the process. The commenter argued that this ''will result in member firms devoting a significant amount of time to negotiating comments with the NASD at the last stages of development, detracting from focus on launching the tool with the public.'' [39] Noting that the NASD does not consider the approval requirement to be a merit based review, and will instead only review an investment analysis tool to confirm that the requisite disclosures have been made, the commenter argued against the need for a 30-day pre-filing and approval requirement.[40] The commenter suggested that the NASD conduct its review either ''in due course or after a member has first used the tool,'' reasoning that ''the proposed review would be an inefficient extension of the NASD staff's responsibilities, particularly when the staff is not charged with responsibility of pre-screening other types of investment tools.'' [41] Another commenter remarked that ''the disclosure requirements, as modified, would be clear enough on their face for members to implement, rendering any prior review unnecessary.'' [42]

One commenter recommended reducing the 30-day period to a 10-day period.[43] Noting that no other provisions of NASD Rule 2210, nor any other interpretive material issued under the rule, require the filing of information with the NASD more than 10 days before use, the commenter remarked that a 10-day pre-filing and approval requirement ''will facilitate the ability of members to utilize their current internal procedures relating to the review and filing of advertising and sales literature in connection with the use of these tools.'' [44]

• *NASD Should Clarify Which Regulatory Regime Applies to the Use of Investment Analysis Tools*

A few commenters expressed concern that the NASD's proposed IM does not resolve ambiguity regarding which regulatory scheme applies to the use of investment analysis tools.[45] Specifically, one commenter questioned the uncertainty of whether ''the rule prohibiting predictions and projections, the existing exception to this rule for hypothetical illustrations of mathematical principles, the exception to this rule for tools as proposed in the IM, or the rule permitting forecasts that are not unwarranted and have a reasonable basis'' applies to the use of investment analysis tools.[46] The same commenter alleged that the proposed IM took a ''broader historical interpretation'' of the scope of the NASD Rule 2210(d)(2)(N) prohibition as applied to investment analysis tools, and suggested that the language ''be revised to avoid upsetting settled expectations.'' [47] The commenter noted that many broker-dealers consider their investment analysis tools to fall under the exception to the general prohibition of Rule 2110(d)(2)(N) that permits hypothetical illustrations of mathematical principles.[48]

Similarly, one commenter recommended that the NASD explain in more detail the difference between a permissible ''forecast'' and a prohibited ''projection or prediction'' and suggested that the IM is inconsistent

[29] *Id.* at 7–8.

[30] ICI Letter at 4. *See also* SIA Letter at 4 (recommending flexibility in provisions for disclosure and presentation of information).

[31] Fidelity Letter at 6–7.

[32] *Id.*

[33] Schwab Letter at 4.

[34] *Id.*

[35] Harris Letter at 14.

[36] Schwab Letter at 5; Fidelity Letter at 7; Harris Letter at 16–18; ICI Letter at 4; SIA Letter at 4.

[37] Schwab Letter at 5.

[38] Fidelity Letter at 7.

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] Schwab Letter at 6.

[43] ICI Letter at 4.

[44] *Id.* Additionally, the commenter recommended that the filing, approval, and recordkeeping requirements under NASD Rule 2210 not apply to amendments to a tool, related sales material, or written reports indicating the tool's results that are either non-substantive or merely updates to preexisting templates that the NASD previously approved. *Id.* at 4–5.

[45] SIA Letter at 2; Harris Letter at 4–19.

[46] SIA Letter at 2.

[47] *Id.* at 4. The SIA Letter recommended that the IM should be revised to describe the NASD's prior application of the prohibition as applying to ''communications (generated by a tool or otherwise) that unfairly implied a specific result, included exaggerated or unwarranted claims or contained misrepresentations.'' *Id.* at 5.

[48] *Id.* at 3.

with prior NASD staff interpretations, which the commenter interpreted as having previously authorized the use of investment analysis tools, and takes an unprecedented and overly expansive interpretation of Rule 2110(d)(2)(N).[49] The same commenter recommended that the NASD withdraw the proposed IM and instead work to harmonize what the commenter characterized as inconsistencies within NASD rules and between NASD and NYSE rules with respect to the terms ''forecast,'' ''projection'' and ''prediction,'' where all three terms are, in the commenter's opinion, sometimes used interchangeably.[50] The commenter opined that investment analysis tools should be treated as ''permissible forecasts'' under existing interpretations of Rule 2110(d)(2)(N) and suggested that current NASD rules against exaggerated or unwarranted claims or misrepresentations already provide adequate safeguards for the public.[51]

• *NASD Should Clarify the Applicability of the IM to Entities Dually Registered as Investment Advisers*

Two commenters requested the NASD to clarify whether a broker-dealer that also is registered as an investment adviser would be subject to the provisions of the IM when offering public customers an investment analysis tool in its capacity as an investment adviser.[52] One commenter suggested that since investment analysis tools offered by registered investment advisers are already subject to regulation and oversight under the regulatory regime applicable to registered investment advisers, such tools should not be subject to an additional layer of regulation under the NASD IM when offered through a broker-dealer to its customers or through a united Web site of a broker-dealer dually-registered as an adviser.[53] Similarly, the same commenter requested the NASD to clarify the applicability of the IM to investment analysis tools offered by affiliates of a broker-dealer, as well as non-affiliates and other third parties, including instances where a broker-dealer's Web site links to such other party's investment analysis tool.[54]

• *Undue Burden on Competition*

Some commenters objected to what they believe is a potential burden on competition that could result from the proposed IM, in particular the pre-filing and approval process.[55] The commenters were concerned that the IM could affect the ability of NASD-member firms to compete with investment advisers, banks, financial planners, financial Web sites, non-NASD broker-dealers and other non-regulated entities that would not be subject to the pre-use filing and approval process with respect to investment analysis tools.

One commenter stated that member firms linking customers to an investment adviser, bank, or other affiliated or non-affiliated third party offering an investment analysis tool may or may not be subject to the rule, the uncertainty of which the commenter believes creates competitive disadvantages for certain classes of member firms depending on their organizational structure and relationships with third parties.[56] Another commenter suggested that the pre-review process could inhibit the incentive of NASD-member firms to develop proprietary products tailored to the needs of their customers and favor third-party vendors who would not be subject to the rule.[57]

III. The NASD's Response to Comments

The NASD filed Amendment No. 2 on December 3, 2003, which responded to the comments and elaborated on the NASD's rationale for the proposed IM. Amendment No. 2 modified the NASD's proposal to accommodate many of the commenters' concerns.[58] The NASD's responses to several of the more significant issues are addressed below.

One of the NASD's modifications to the proposed rule was a further delineation of the types of communications generally prohibited by the proposed IM. In Amendment No. 2, the NASD modified the proposed IM to make it consistent with the recently amended language of NASD Rule 2210(d)(1)(D), formerly NASD Rule 2210(d)(2)(N), by clarifying that the proposed rule change ''prohibits predictions and projections involving the likely performance of both specific securities *and investment strategies and styles*'' (emphasis in original).[59] Noting that the dividing line between predictions of specific investments and investment strategies ''is problematic and no meaningful distinction can be made from the perspective of investor protection,'' the NASD broadened the scope of the proposed IM by expanding the definition of investment analysis tools to allow members to use or offer tools that present ''the likelihood of various investment outcomes if certain investments are made *or certain investment strategies or styles are undertaken,*'' as long as the member complies with the proposed IM's requirements.[60]

In response to commenters' concerns with the pre-filing requirement, the NASD modified the proposed IM to eliminate the 30-day pre-filing requirement and instead require members to file their investment analysis tools with the NASD Advertising Regulation Department within 10 days after first use. The NASD recognized commenters' concerns with respect to the NASD interfering in the development of investment analysis tools and acknowledged that the pre-filing requirement is unnecessary in light of the fact that the NASD staff will not be conducting a merit review of the tools.[61] Further, the NASD modified the proposed IM to exempt from the 10-day post-use access and filing requirement members that provide investment analysis tools exclusively to institutional customers. Such members would, however, remain subject to the disclosure requirements and would retain their suitability obligations.[62] The NASD further modified the proposed IM to require members to provide the NASD with access to investment analysis tools or re-file with the NASD the written-report templates or sales materials only if firms make a material change to the investment analysis tools,

[49] Harris Letter at 7–8.

[50] *Id.* at 6.

[51] *Id.* at 5.

[52] FE Letter at 4 (n. 14); Harris Letter at 11–12).

[53] Harris Letter at 11–12.

[54] *Id.* at 3, 12.

[55] *See, e.g.,* Schwab Letter at 5; Harris Letter at 4. *But see* FE Letter at 3–5 (asserting that the proposed IM will level the playing field among investment advisers, broker-dealers and other financial institutions, increase competition, foster innovation, and benefit investors).

[56] Harris Letter at 4–5.

[57] BMA Letter at 5.

[58] *See* NASD Response Letter, *supra* note 6.

[59] *Id.* at 2. The initial version of the proposed IM ''focused on projections of specific securities and did not indicate that [NASD] Rule 2210(d)(1)(D) also applied to predictions and projections involving investment strategies and styles.'' *Id.* An exception to NASD Rule 2210(d)(1)(D) permits a hypothetical illustration of mathematical principals, provided that it does not predict or project the performance of an investment or investment strategy. *See* Securities Exchange Act Release No. 47820 (May 9, 2003) (SR–NASD–2000–12), 68 FR 27116, 27123 (May 19, 2003) (adopting amended NASD Rule 2210).

[60] NASD Resposne Letter, *supra* note 6, at 2–3 (emphasis in original). The revised definition states that an investment analysis tool is ''an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.'' Amendment No. 3, *supra* note 7, at 2–3.

[61] NASD Response Letter, *supra* note 6, at 3.

[62] *Id.*

written-report templates, or sales materials.[63]

The NASD also responded to commenters' concerns regarding the permissibility of calculating a single probability score by amending the proposed IM to eliminate the requirement that investment analysis tools present a range of probabilities, including upside, downside, and median projections.[64] The NASD recognized that the removal of this requirement would simplify the proposed IM by eliminating a provision that did not particularly contribute to the goals of investor protection.[65]

Similarly, the NASD eliminated the requirement that investment analysis tools use a mathematical process that can be audited and reviewed. The NASD recognized the difficulty inherent in requiring NASD examiners to review the mathematical processes of investment analysis tools for compliance with the proposed IM. Further, the NASD eliminated the requirement in order to avoid any perception that may have led the investing public to believe that the NASD would be performing a merit-based review of these investment analysis tools.[66]

The NASD also responded to a suggestion that the NASD standard be harmonized with New York Stock Exchange Rule 472 that permits forecasts that are clearly labeled as such and are not exaggerated or unwarranted.[67] The NASD explained that ''forecasts'' relate to estimates of economic performance and results, which is different from predicting or projecting how a particular investment or investing style might perform.[68] Accordingly, the NASD affirmed its belief in requiring member firms to provide the information specified in the streamlined disclosure requirements of the amended IM when offering investment analysis tools, in addition to requiring that the tools not produce misleading, exaggerated, or unwarranted claims.[69]

With regard to commenters who stated their belief that investment analysis tools are already permitted by the exception to NASD Rule 2210(d)(2)(N) permitting hypothetical illustrations of mathematical principles, the NASD explained that amended NASD Rule 2210(d)(1)(D), formerly NASD Rule 2210(d)(2)(N), operates generally to prohibit investment analysis tools, as they make predictions and projections which are prohibited by the rule.[70] Rather, the hypothetical illustration exception applies to ''tools that serve the functions of a calculator that computes the mathematical outcome of certain assumed variables without predicting the likelihood of either the assumed variables or the outcome.'' [71]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD's response to the comments, and 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 association [72] and, in particular, the requirements of section 15A(b)(6) of the Act,[73] which requires, among other things, that the NASD's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

In particular, the Commission notes that, in response to commenters' concerns, the NASD modified the proposed IM to eliminate the 30-day pre-filing requirement in favor of a 10-day post-use access and filing requirement. Additionally, the filing requirement is waived for investment analysis tools provided exclusively to institutional investors, though the Commission notes that such tools would still be subject to the disclosure requirements of the proposed IM. The Commission believes this modification of the proposed IM addresses the commenters' concerns and that the amended provision is reasonable. Since the NASD will not be performing substantive merit reviews of these tools, however, the Commission reminds NASD member firms of the need to take great care in providing complete and understandable disclosure to minimize the potential for any investment analysis tool literature or output to be presented in a misleading manner.[74]

With respect to the disclosure regarding the universe of investments considered by investment analysis tools, the Commission agrees that the NASD's approach is reasonably tailored to provide meaningful disclosure regarding the securities considered by the tools and the limitations inherent in the scope of any analysis provided. Regarding commenters' concerns about the requirement that investment analysis tools use a mathematical process that can be audited, the Commission notes that the NASD has dropped this provision from the proposed IM. The Commission believes that this modification to the proposed IM is reasonable. While the Commission acknowledges that the NASD's modification was intended, in part, to alleviate the commenters' concerns that the NASD intended for members to collect and maintain an archive of calculations performed by the tools, or to perhaps require third-party audits of the tools, the Commission reminds NASD members that any investment analysis tools purporting to employ mathematical principles while accounting for certain variables and assumptions should, by their nature, be capable of being audited with respect to the processes employed and functions performed by the tools.

Similarly, the Commission notes that the NASD has amended the proposed IM to remove the requirement that investment analysis tools present a range of probabilities, thereby allowing tools to present a single probability of achieving a desired result. While the Commission believes this modification is reasonable, the Commission reminds broker-dealers of the importance of meaningful and readily-understandable disclosure for any investment analysis tools that present the likelihood of achieving a single result in such a way that guards against the potential for misleading the investing public.

[63] *Id.* at 4.

[64] *Id.*

[65] *Id.*

[66] *Id.*

[67] *Id.* at 5.

[68] *Id.*

[69] *Id.*

[70] *See* Securities Exchange Act Release No. 47820 (May 9, 2003) (SR–NASD–2000–12), 68 FR 27116, 27125 (May 19, 2003) (noting that the rule permits a member to present a hypothetical illustration of mathematical principles (*e.g.,* a mutual fund cost calculator), but would not permit the illustration to predict or project the performance of an investment or investment strategy, since making a prediction based on those calculations could be misleading to investors).

[71] NASD Response Letter at 5.

[72] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[73] 15 U.S.C. 78o–3(b)(6).

[74] The Commission notes that NASD member firms should be particularly mindful when an investment analysis tool or any report or sales material derived from such a tool is used in any way that could be construed as promoting the future performance of one or more specific investment companies. Tools, reports, or sales materials that are used in this manner may raise issues under the antifraud provisions of the federal securities laws and implicate the investment company advertising rules. *See, e.g.,* 17 CFR 230.156(b)(2) (Rule 156(b)(2) under the Securities Act of 1933 provides that representations about future investment performance could be misleading under certain circumstances including situations where representations are made as to possible future gains or income.).

In response to one commenter's concerns regarding broker-dealers dually registered as investment advisers, the Commission notes that the proposed IM applies only to NASD members. Further, with respect to the obligations of a broker-dealer for hyperlinked information, the Commission reminds NASD members of the Commission's guidance regarding the applicable theories of liability for hyperlinked information.[75]

The Commission does not believe that the proposed IM will place any undue burden on competition. The Commission notes the elimination of the pre-use filing requirement from the proposed IM and, though financial advisers and other entities may not be subject to the IM since the NASD's jurisdiction only extends to its member broker-dealers, the Commission feels that the amended IM is narrowly tailored to prevent fraudulent practices and protect the investing public without unduly restricting or burdening the competitive market for these types of products with respect to NASD members.

With regard to all other issues raised by the commenters, the Commission is satisfied that the NASD has adequately addressed the commenters' concerns.

The Commission expects that the NASD will carefully monitor compliance with the provisions of the IM among its member broker-dealers offering investment analysis tools and, in particular, will review the required disclosures, including the nature of the tools' output, with an eye towards preventing misleading and fraudulent statements and protecting the investing public.

The Commission finds good cause for approving Amendment Nos. 2 and 3 before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The NASD filed Amendment No. 2 in response to comments it received after the publication of the notice of filing of the proposed rule change, to address certain commenters' concerns and to amend the proposed IM. In addition, the NASD filed Amendment No. 3 to make minor modifications to the proposed rule change, including formatting changes and adding references to NASD and Commission rules and requirements. Because Amendment No. 2 is responsive to the commenters' concerns and Amendment No. 3 is responsive to the Commission's suggested modifications, and because neither Amendment presents any novel issues, the Commission finds good cause for accelerating approval of Amendment Nos. 2 and 3.

[75] *See* Securities Exchange Act Release No. 42728 (April 28, 2000), 65 FR 25843 (May 4, 2000) (regarding the entanglement and adopting theories of liability for hyperlinked information).

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment Nos. 2 and 3 are 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–2003–13 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 No. SR–NASD–2003–13. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR-NASD–2003–13 and should be submitted on or before October 28, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[76] that the proposed rule change (SR–NASD–2003–13), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendment Nos. 2 and 3 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[77]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

* * * * *

Proposed IM–2210–6—Investment Analysis Tools

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IM–2210–6. Requirements for the Use of Investment Analysis Tools

(a) General Considerations

This Interpretive Material provides a limited exception to NASD Rule 2210(d)(1)(D).[1] No member may imply that NASD endorses or approves the use of any investment analysis tool or any recommendation based on such a tool. A member that offers or intends to offer an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) must, within 10 days of first use, (1) provide NASD's Advertising Regulation Department (Department) access to the investment analysis tool and (2) file with the Department any template for written reports produced by, or sales material concerning, the tool.[2] The member also must provide any supplemental information requested by the Department. The Department may require that the member modify the investment analysis tool, written-report template or sales material. The Department also may require that the

[76] 15 U.S.C. 78s(b)(2).

[77] 17 CFR 200.30–3(a)(12).

[1] NASD Rule 2210(d)(1)(D) states that ''[c]ommunications with the public may not predict or project performance, imply that past performance will recur or make any exaggerated or unwarranted claim, opinion or forecast.'' This Interpretive Material allows member firms to offer investment analysis tools (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tools and related sales material in certain circumstances.

Rule 2210(d)(1)(D) does not prohibit, and this Interpretive Material does not apply to, hypothetical illustrations of mathematical principles that do not predict or project the performance of an investment or investment strategy.

[2] After the Department has reviewed the investment analysis tool, written-report template or sales material, a member must notify the Department and provide additional access to the tool and re-file any template or sales material if it makes a material change to the presentation of information or disclosures as required by paragraphs (c) and (d).

member not offer or continue to offer or use the tool, written-report template or sales material until all changes specified by the Department have been made by the member.

A member that offers an investment analysis tool exclusively to ''institutional investors,'' as defined in Rule 2211(a)(3), is not subject to the post-use access and filing requirement in this paragraph if the communications relating to or produced by the tool meet the criteria for ''institutional sales material,'' as defined in Rule 2211(a)(2). A member that intends to make the tool available to, or that intends to use the tool with, any person other than an institutional investor (such as an employee benefit plan participant or a retail broker-dealer customer) will be subject to the filing and access requirements, however.

As in all cases, a member's compliance with this Interpretive Material does not mean that the member is acting in conformity with other applicable laws and rules. A member that offers an investment analysis tool under this Interpretive Material (whether customers use the member's tool independently or with assistance from the member) is responsible for ensuring that use of the investment analysis tool and all recommendations based on the investment analysis tool (whether made via the automated tool or a written report) comply, as applicable, with NASD's suitability rule (Rule 2310), the other provisions of Rule 2210 (including, but not limited to, the principles of fair dealing and good faith, the prohibition on exaggerated, unwarranted or misleading statements or claims, and any other applicable filing requirements for advertisements and sales literature), the federal securities laws (including, but not limited to, the antifraud provisions), the Securities and Exchange Commission rules (including, but not limited to, SEC Rule 156 under the Securities Act of 1933) and other NASD rules.

(b) Definition

For purposes of this Interpretive Material and any interpretation thereof, an ''investment analysis tool'' is an interactive technological tool that produces simulations and statistical analyses that present the likelihood of various investment outcomes if certain investments are made or certain investment strategies or styles are undertaken, thereby serving as an additional resource to investors in the evaluation of the potential risks and returns of investment choices.

(c) Use of Investment Analysis Tools and Related Written Reports and Sales Material

A member may provide an investment analysis tool (whether customers use the member's tool independently or with assistance from the member), written reports indicating the results generated by such tool and related sales material[3] only if:

(1) The member describes the criteria and methodology used, including the investment analysis tool's limitations and key assumptions;

(2) the member explains that results may vary with each use and over time;

(3) if applicable, the member describes the universe of investments considered in the analysis, explains how the tool determines which securities to select, discloses if the tool favors certain securities and, if so, explains the reason for the selectivity,[4] and states that other investments not considered may have characteristics similar or superior to those being analyzed; and

(4) the member displays the following additional disclosure: ''IMPORTANT: The projections or other information generated by [name of investment analysis tool] regarding the likelihood of various investment outcomes are hypothetical in nature, do not reflect actual investment results and are not guarantees of future results.''

(d) Disclosures

The disclosures and other required information discussed in paragraph (c) must be clear and prominent and must be in written or electronic narrative form.

* * * * *

[FR Doc. E4–2529 Filed 10–6–04; 8:45 am]

BILLING CODE 8010–01–P

[3] Sales material that contains an incidental reference to an investment analysis tool (*e.g.*, a brochure that merely mentions a member's tool as one of the services offered by the member) need not include the disclosures required by this Interpretive Material and would not need to be filed with the Department, unless otherwise required by the other provisions of Rule 2210.

[4] This disclosure must indicate, among other things, whether the investment analysis tool searches, analyzes or in any way favors certain securities within the universe of securities considered based on revenue received by the member in connection with the sale of those securities or based on relationships or understandings between the member and the entity that created the investment analysis tool. The disclosure also must indicate whether the investment analysis tool is limited to searching, analyzing or in any way favoring securities in which the member makes a market or has any other direct or indirect interest. Members are not required to provide a ''negative'' disclosure (i.e., a disclosure indicating that the tool does *not* favor certain securities).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50473; File No. SR–PCX–2003–64]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval of Proposed Rule Change and Amendments No. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 3, 4, and 5 Thereto Regarding Facilitation Crossing Procedures

September 29, 2004.

I. Introduction

On November 20, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the Exchange's facilitation crossing procedures in several respects. On July 7, 2004, and July 15, 2004, respectively, the Exchange filed Amendments No. 1 and 2 to the proposed rule change.[3] The proposed rule change as amended by Amendments No. 1 and 2 was published for comment in the **Federal Register** on July 29, 2004.[4] The Commission received no comments on the proposal, as amended. On September 24, 2004, the Exchange submitted Amendment No. 3 to the proposal.[5] On September 29, 2004, the Exchange submitted Amendment No. 4 and Amendment No. 5 to the proposed rule change.[6] This order approves the proposed rule change and Amendments No. 1 and 2, grants accelerated approval of Amendments No. 3, 4, and 5, and solicits comments on Amendments No. 3 and 5.

II. Discussion of the Proposed Rule Change

Current PCX Rule 6.47(b), concerning the crossing of facilitation orders, permits a Floor Broker who holds an order for a customer and an order for the proprietary account of an OTP (Options Trading Permit) Holder or OTP Firm

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letters from Mai S. Shiver, Acting Director/Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated July 6, 2004, and July 14, 2004.

[4] *See* Securities Exchange Act Release No. 50064 (July 22, 2004), 69 FR 45360 (''Notice'').

[5] *See* letter from Mai S. Shiver, Director/Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 23, 2004 (''Amendment No. 3''). In Amendment No. 3, the Exchange expanded the types of orders eligible for crossing with a Customer Order to include orders for the proprietary account of an organization under common control with a Market Maker that is representing the customer. The version of this provision published in the Notice applied only to orders for the proprietary account of an organization under common control with a Lead Market Maker (''LMM'') that is representing the customer. Amendment No. 3 also clarified the rule with respect to allocation of the portion of the Customer Order remaining after the Floor Broker executes its guarantee in certain situations, and made technical and stylistic changes to the rule text.

[6] *See* letters from Mai S. Shiver, Director/Senior Counsel, PCX, to Nancy J. Sanow, Assistant Director, Division, Commission, dated September 28, 2004 (''Amendment No. 4'') and September 29, 2004 (''Amendment No. 5''). Amendment No. 4 was a technical amendment correcting typographical errors in the proposed rule text, and is not required to be noticed for comment. In Amendment No. 5, the Exchange proposed to make the effective date of the proposal October 29, 2004 in order to allow the Exchange to provide proper notice and education to the Exchange OTP Holders and OTP Firms that are affected by the rule change.

that is representing that customer (''Facilitation Order'') to cross those orders, provided that specified procedures and requirements are met. Among other things, before executing the cross, the Floor Broker must request from the trading crowd bids and offers for all components of the customer order and clearly disclose his or her intention to execute a facilitation cross transaction. With respect to customer orders of 50 contracts or more, the current rule further provides that once a market has been established and all public customer orders represented in the trading crowd have been satisfied, the Floor Broker may cross either (i) 40% of any remaining contracts at a price between the trading crowd's quoted market, or (ii) 25% of the contracts at the trading crowd's best bid or offer.

The proposed rule change would amend Rule 6.47(b), to be newly entitled ''Facilitation Procedure,'' in several ways. Whereas the current rule defines a ''customer order'' subject to facilitation to include orders of broker-dealers, under the proposal, the facilitation procedure would apply only to orders of public customers.[7] The proposed rule change would add a requirement that in calling for the crowd's market, the Floor Broker must include the size of the order, but would eliminate the requirement that the Floor Broker disclose his intention to execute a facilitation cross. The proposal would also permit the Floor Broker to immediately consummate the facilitation cross in response to the trading crowd's quoted market if he or she immediately bids or offers a price on the customer order that is on or inside the quoted market (''Facilitation Price'') provided by the trading crowd. As revised by Amendment No. 3, the proposal would also expand the rule to allow a Floor Broker to cross a Customer Order with an order for the proprietary account of an organization under common control with a Market Maker that is representing that customer.[8]

Further, the proposal would (a) increase to 40% the guaranteed percentage of a Customer Order that a Floor Broker is entitled to cross at the quoted market, and (b) obligate the Floor Broker to fill any portion of the customer order that remains unexecuted after the Floor Broker has provided the trading crowd an opportunity to execute the remainder of the order. Specifically, after first satisfying any orders for the account of persons who are not OTP Holders or OTP Firms pending at the Facilitation Price, the Floor Broker would be permitted to facilitate up to 40% of the remaining contracts in the Customer Order against the Facilitation Order at the Facilitation Price. The Floor Broker would be required to allow any other member of the trading crowd interested in trading at the Facilitation Price to execute the remaining 60% or more of the Customer Order.

The remaining 60% would be allocated among the members interested in trading at the Facilitation Price on a size pro-rata basis or, in the case of identical offers or bids (where the Floor Broker's offer or bid improved the crowd's price in response to the request for a market), on an equal basis. If any portion of the Customer Order remains after providing the crowd reasonable time to execute the remaining 60%, the Floor Broker would be required to fill the remainder of the Customer Order by executing it against the Facilitation Order at the Facilitation Price.

The Exchange also proposes to add new PCX Rule 6.47(b)(5), which states that if the trading crowd does not provide a bid and offer for all components of the Customer Order in response to the Floor Broker's request within a reasonable period of time, the ''market quote'' for the purpose of this rule will be either (i) the quoted market disseminated by the Exchange prior to the commencement of the Facilitation Procedure, or (ii) for orders for which there is no disseminated market, a quote that is determined by the disseminated quote for each leg of the transaction prior to the commencement of the Facilitation Procedure. As clarified in Amendment No. 3, the 60% of the Customer Order remaining after the Floor Broker executes the 40% guarantee in such a situation would be allocated on an equal basis among any members of the crowd interested in trading at the Facilitation Price.

The proposal would renumber former PCX Rule 6.47(b)(5) as PCX Rule 6.47(b)(6) and amend it to provide that if the facilitation trade occurs at the LMM's quoted bid or offer in its allocated issue and the Floor Broker takes less than 40% of the trade, then the LMM may elect either (i) to accept a guaranteed participation level of 40% minus the Floor Broker's allocation percentage, or (ii) to participate in the pro-rata allocation without a guaranteed participation level. If the trade occurs at a price other than the LMM's quoted bid or offer, the LMM would not be entitled to a guaranteed participation. A Floor Broker or LMM would not be prohibited from trading more than their guaranteed participation levels if the members of the trading crowd do not choose to trade the remaining portion of the order.

The proposed rule change would revise Commentary .06 to PCX Rule 6.47 to provide that it will be a violation of a Floor Broker's duty to use due diligence in representing its Customer Order if the Floor Broker does not employ the Facilitation Procedure on the PCX immediately upon receipt on the PCX of the order that the OTP Holder or OTP Firm wishes to have executed as a facilitation cross. The Exchange also proposes to add Commentary .07, which provides that it will be a violation of an OTP Holder's or OTP Firm's duty of best execution to its customer if it cancels a facilitation order for the purpose of avoiding execution of the order at a better price.

Finally, the proposed rule change would clarify facilitation crossing procedures for orders of less than 50 contracts, which are not subject to the guarantees set forth in the rule. The proposal would establish that, when facilitating such orders, the Floor Broker must satisfy all orders in the book and all orders represented in the trading crowd (affording the trading crowd a reasonable period of time to respond to the Customer Order) before the Floor Broker may cross the Customer Order.

III. Commission Findings and Order Granting Approval

After careful consideration, the Commission has determined to approve the proposed rule change, as amended.[9] For the reasons discussed below, 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. Specifically, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of Section 6(b)(5) of the Act,[10] which requires, among other things, that an exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposed rule change sets forth a number of amendments to the procedures for the execution of facilitation crossing transactions on the Exchange, and would also increase the

[7] *See* Notice at note 5 and accompanying text. Such orders would be defined in the rule as ''Customer Orders.''

[8] *See supra* note 5.

[9] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78f(b)(5).

guaranteed percentage to which a Floor Broker is entitled when facilitating a Customer Order at the quoted market. The Commission believes that these changes are generally consistent with rules in place variously at other exchanges or otherwise constitute reasonable modifications to the Exchange's procedures. In particular, the Commission notes that the increase in the percentage that the Floor Broker is entitled to facilitate at the quoted market would not exceed 40% of an order. The Commission has previously found that participation guarantees of as much as 40% of an order in options trading are not inconsistent with statutory standards of competition and free and open markets.[11]

The Commission further notes that the proposed rule change also would require a Floor Broker to fill the remainder of the Customer Order that is not filled by the trading crowd by executing it against the Facilitation Order, thus ensuring that the Customer Order will be executed at or between quoted markets.[12] The proposed rule change also clarifies the Exchange's facilitation procedures by setting forth explicit provisions regarding the method for allocating the contracts remaining after the Floor Broker executes his or her guaranteed percentage. Finally, the new commentaries regarding Floor Brokers' duties of best execution and due diligence contribute to the clarity of the facilitation rules by expressly defining violative conduct.

The Commission finds good cause for approving Amendments No. 3 and 5 to the proposed rule change prior to the thirtieth day after the amendment is published in the **Federal Register**, pursuant to Section 19(b)(2) of the Act.[13] With respect to the types of orders that may be Facilitation Orders, Amendment No. 3 eliminated a distinction between orders for the proprietary accounts of organizations under common control with LMMs and orders for the proprietary accounts of organizations under common control with Market Makers, and thus enhanced the proposed rule change. Amendment No. 3 also strengthened the proposal by clarifying the method of allocation of the remaining 60% of a Customer Order in a situation where the crowd had not provided a response to Floor Broker's request for a market. Finally, Amendment No. 3 made a few minor technical and stylistic changes to the proposed rule text. In Amendment No. 5, the Exchange proposed to make the effective date of the proposal October 29, 2004 in order to allow the Exchange to provide proper notice and education to the Exchange OTP Holders and OTP Firms that are affected by the rule change. Acceleration of Amendments No. 3 and 5 will permit the Exchange to implement the proposal in an expeditious manner. The Commission, therefore, believes that good cause exists, consistent with Section 6(b)(5)[14] and Section 19(b)[15] of the Act, to accelerate approval of Amendment No 3.

IV. Solicitation of Comments Concerning Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *http://www.sec.gov/rules/sro.shtml*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–PCX–2003–64 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–2003–64. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2003–64 and should be submitted on or before October 28, 2004.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (File No. SR–PCX–2003–64) and Amendments No. 1 and 2 thereto are approved, and that Amendments No. 3, 4 and 5 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2528 Filed 10–6–04; 8:45 am]

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[11] *See, e.g.*, Securities Exchange Act Releases No. 42455 (February 24, 2000), 65 FR 11388 (March 2, 2000) at 11398; and No. 43100 (July 31, 2000), 65 FR 48778 (August 9, 2000) at notes 96–99 and accompanying text.

[12] The Exchange represents that any portion of a Customer Order executed pursuant to this rule would not be executed at a price inferior to the national best bid or offer. Telephone conversation between Mai S. Shiver, Director/Senior Counsel, PCX, and Ira L. Brandriss, Assistant Director, Division, Commission, September 29, 2004.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b)(5).

[15] 15 U.S.C. 78s(b).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of termination of waiver of the Nonmanufacturer Rule for Paint and Paint Manufacturing.

SUMMARY: The U. S. Small Business Administration (SBA) is terminating the waiver of the Nonmanufacturer Rule for Paint and Paint Manufacturing based on our recent discovery of a small business manufacturer for this class of products. Terminating this waiver will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or process on such contracts.

DATES: This termination of waiver is effective on October 22, 2004.

FOR FURTHER INFORMATI0N 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, (Act)15 U.S.C. 637(a)(17), requires that recipients of Federal contracts set aside for small businesses or SBA's 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 of the product. 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 available to participate 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 for a class 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 June 29, 2004 to waive the Nonmanufacturer Rule for Paint and Paint Manufacturing. In response, on July 28, 2004, SBA published in the **Federal Register**, and FedBizOpps notices of intent to the waiver of the Nonmanufacturer Rule for Paint and Paint Manufacturing. In responses to these notices, SBA discovered the existence of a small business manufacturer of that class of products. Accordingly, based on the available information, SBA has determined that there is a small business manufacturer of this class of products, and is therefore terminating the class waiver of the Nonmanufacturer Rule for Paint and Paint Manufacturing, NAICS 325510.

Authority: 15 U.S.C. 637(a)(17).

Dated: October 4, 2004.

Emily Murphy,

Acting Associate Administrator for Government Contracting.

[FR Doc. 04–22580 Filed 10–6–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4854]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Educational Adviser Training and Support Services

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/A–05–05.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: January 1, 2005 to December 31, 2005.

Application Deadline: Friday, November 22, 2004.

Executive Summary: The Educational Information and Resources Branch of the Office of Global Educational Programs in the Bureau of Educational and Cultural Affairs announces an open competition for Educational Adviser Training and Support Services. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code Section 26 U.S.C. 501(c)(3) may submit proposals to develop training programs and provide support services for the following:

1. Department of State-Affiliated Overseas Educational Advisers

Overseas educational advisers provide accurate and objective information to foreign audiences on U.S. study opportunities at accredited academic institutions and guide students and professionals in selecting a program appropriate to their needs.

2. Regional Educational Advising Coordinators

Regional Educational Advising Coordinators (REAC) provide training and needs assessment and serve as the chief resource to centers in their regions on advising and other educational issues.

Project proposals should be structured to focus on the following:

1. Short-term training for mid- and senior-level advisers.

2. Logistical support services for Regional Educational Advising Coordinators and educational advisers attending the national NAFSA: Association of International Educators conference in Seattle in May 2005.

The Department anticipates awarding one grant to administer this program.

The training component of the proposal should include a U.S.-Based Training program (USBT) for mid-level advisers and Professional Advising Leadership (PAL) fellowships for senior-level advisers.

The USBT for mid-level educational advisers should be approximately three weeks in duration in Fall 2005 and must include workshops on advising issues of concern, visits to a variety of U.S. academic institutions outside of the Washington, DC metropolitan area and attendance at a regional NAFSA: Association of International Educators conference or similar professional development opportunity.

Professional Advising Leadership (PAL) projects for senior-level advisers may take place three times throughout 2005 and include four advisers in each group. Advisers applying for a PAL fellowship will have at least four years of advising experience. Applicants will formulate a proposal outlining a project that will be of benefit to the adviser's center, region and the profession as a whole.

The Support Services portion of the program will include providing logistical support for the following activities in May/June 2005:

1. Regional Educational Advising Coordinators (REAC) Meeting

Support will include making arrangements for lodging and other activities for up to eight REACs and Educational Information and Resources Branch (ECA/A/S/A) program staff for five days of consultations in Washington, DC before the 2005 NAFSA Conference to be held May 29–June 3, 2005 in Seattle, Washington,

2. PAL Meeting

Support will include making arrangements for meetings with REACs, PAL Fellows and Branch program officers after the NAFSA conference in Seattle.

3. Educational Adviser Pre-NAFSA Conference Campus Visits/Conference Attendance

Support will include (a) making hotel reservations for advisers not participating in the USBT and PAL programs and (b) providing grants to advisers for conference attendance and to the ECA/A/S/A-designated campus liaison coordinator for administration of pre-conference campus visits.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States

and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The program's objectives are twofold: to strengthen and develop the skills of overseas educational advisers; and to build a corps of knowledgeable advisers who are skilled trainers and can advance the field of educational advising in their home countries with new and current expertise, techniques and knowledge of applicable technology.

Guidelines

1. Participants

For the purposes of this RFGP, eligible advisers are defined as those who are currently working at a State Department-affiliated advising center and who have demonstrated the skills associated with the four major components of overseas educational advising: (1) Knowledge of the U.S. and home country educational systems; (2) knowledge of the application process for individuals to enroll in U.S. higher educational institutions; (3) demonstrated educational advising and cross-cultural communication skills; and (4) demonstrated office management skills as they relate to an overseas advising center. In addition, each participant must demonstrate leadership and a commitment to the profession.

Approximately twenty participants are expected for one USBT program and twelve (three groups of four) for the PAL program. Participants will be selected by ECA/A/S/A based on nominations from overseas posts.

2. Program Design

The Bureau invites organizations to submit creative and flexible program plans which can be tailored, in close consultation with ECA/A/S/A, to the selected advisers' individual needs. The proposal should include an overall project framework which identifies objectives, an implementation plan and measurable, expected outcomes.

Possible topics to incorporate for the USBT portion of the program include: Degree equivalency and accreditation; international student admissions; financial aid; standardized testing; ESL programs; immigration and visa issues; fields of study; cultural adjustment; U.S. societal diversity; specialized Internet usage; distance learning; proposal writing; fundraising; public relations and marketing; determining appropriate fees for advising services for students and others, given each host country's environment; trends in advising center cost-sharing and training and management of volunteer staff.

For the PAL component, advisers, in consultation with ECA/A/S/A and the grantee organization, will develop a research or training project to be carried out in the United States that will have a formative impact on advising in their countries and regions. For 2005, PAL projects may include the following topics: Admission with financial aid; business planning and income-generating activities; outreach programming; marketing and publicity for advising centers.

3. Timing/Program Phases

The USBT and PAL components should provide for the possibility of attendance at, and active participation in, an appropriate NAFSA or other conference where workshops and seminars address issues of current interest to international educators and overseas advisers and where the opportunity to brainstorm and to share information plays an important part. Advisers should have opportunities to present and/or participate in panels and pre-conference/conference workshops. In addition, the USBT portion of the program should include internship experiences and visits to a four-year public university, a private college or university, a community college, an Historically Black College or University (HBCU) or other minority-serving institution, and a graduate or research institution. Ideally, USBT participants should visit campuses while classes are in session to optimize their experience through interaction with students.

4. Logistics

The grantee organization will be responsible for all arrangements associated with this program. For the USBT and PAL components, these include organizing a coherent progression of activities, providing international and domestic travel arrangements for all advisers, making lodging and local transportation arrangements, orienting and debriefing advisers, preparing support material, and recruiting host campuses. The organization should work with host campuses and experts in the field of higher education and overseas advising to achieve maximum program effectiveness, by providing participants with hands-on training and direct involvement in the administration of practices and policies of higher education institutions.

5. Evaluation/Follow-Up

The proposal must include a detailed evaluation and follow-up plan. Special emphasis should be given to designing a program which incorporates outcome measurement strategies that assess ultimate effectiveness. Refer to Section IV.3d of this document for additional information on evaluation.

6. Visa/Insurance/Tax Requirements

The program must comply with applicable visa regulations. Participants should come on B1/B2 tourist visas. Participant health and accident insurance will be provided to the overseas advisers by the Bureau; the recipient organization will be responsible for enrolling participants in the Bureau's insurance program and providing any necessary assistance should medical care be needed. Administration of the program must be in compliance with reporting and withholding regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

7. Printed Materials

Drafts of all printed materials developed for this program should be submitted to ECA/A/S/A for review and approval. All official documents should highlight the U.S. government's role as program sponsor and funding source. The Bureau requires that it receive the copyright use and be allowed to distribute this material as it sees fit.

Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

8. ECA's Role in the Cooperative Agreement Includes

- Selection of program participants in coordination with Public Affairs Sections at U.S. embassies and consulates overseas, with input from the ECA Grants Office
- Participation and speaking at program sessions to include opening and closing activities
- Organizing meetings with Department of State offices
- Review and approval of program plans and agendas

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY2005.

Approximate Total Funding: $475,000–$575,000.

Approximate Number of Awards: 1.

Approximate Average Award: Not to exceed $575,000.

Anticipated Award Date: Pending availability of funds, January 1, 2005.

Anticipated Project Completion Date: December 31, 2005.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

a. Bureau grant guidelines require that organizations with less than four years' experience in conducting international exchanges be limited to $60,000 in Bureau funding. ECA anticipates awarding one grant, in an amount not to exceed $575,000 to support program and administrative costs required to implement this exchange program. Therefore, organizations with less than four years' experience in conducting international exchanges are ineligible to apply under this competition.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the ECA/A/S/A, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–260–6936, fax: 202–401–1433, e-mail: *MoraDD@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number ECA/A/S/A–05–05 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document which consists of required application forms and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3e., ''Submission Dates and Times'' section below.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF–424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative:

IV.3d.1 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the ''Support for Diversity'' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.2 Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to

link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable timeframe), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes*, in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning*, such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior*, concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between participants, community members, and others.

4. *Institutional changes*, such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it (1) specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

IV.3.e. Please take the following information into consideration when preparing your budget:

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification. Applicants must submit two budgets: One for not more than $475,000 to support initial program and administrative costs required to implement this program, and a second for not more than $575,000, for additional adviser training and support activities, should additional funding become available.

IV.3e.2. Allowable costs for the program include the following:

(1) Salaries and fringe benefits; travel and per diem;

(2) Other direct costs, inclusive of rent, utilities, etc.;

(3) Indirect expenses (except against participant program expenses), auditing costs;

(4) Participant program costs; *i.e.*, international/domestic travel, visas, per diem, conference attendance.

(5) Alumni Web site and alumni support activities

(6) Advising coordinator expenses for pre-conference campus visits

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: Friday, November 22, 2004.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission, please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A/–05–05, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Diplomacy section overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the Program Idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program Planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability To Achieve Program Objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier Effect/Impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-On Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-Effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-Sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information:

http://www.whitehouse.gov/omb/grants.

http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus one copy of the following reports:

1. A final program and financial report no more than 90 days after the expiration of the award;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all

persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: Dorothy Mora, Educational Information and Resources Branch, ECA/A/S/A, Room 349, Reference number ECA/A/S/A–05–05, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547, telephone: 202–260–6936 and fax number: 202–401–1433, Internet address: *MoraDD@state.gov.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–05–05 Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 27, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, , Department of State.

[FR Doc. 04–22583 Filed 10–6–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4855]

Bureau of Educational and Cultural Affairs (ECA) Request for Grant Proposals: Educational Advising and Regional Educational Advising Coordinator Services in Eurasia

Announcement Type: New Cooperative Agreement.

Funding Opportunity Number: ECA/A/S/A–05–07.

Catalog of Federal Domestic Assistance Number: 00.000.

Key Dates: January 1, 2005 to December 31, 2005.

Application Deadline: Friday, November 12, 2004.

Executive Summary: The Office of Global Educational Programs, Educational Information and Resources Branch of the Bureau of Educational and Cultural Affairs announces an open competition for Educational Advising and Regional Educational Advising Coordinator (REAC) Services in Eurasia (Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan). Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3) may submit proposals to operate centers in Bureau-specified locations in Eurasia and provide REAC services for the region out of Moscow, Russia. The educational advising centers would be a part of the network of approximately 450 Department of State-affiliated centers worldwide. These centers provide comprehensive and unbiased information to interested students, scholars, and other individuals about study opportunities in the U.S.

The REAC provides training and information to new and experienced advisers, conducts needs assessments, site visits, manages the regional advising listserv, and oversees production of the regional newsletter.

I. Funding Opportunity Description

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Purpose: The educational advising centers in Eurasia must provide access to comprehensive and unbiased information about study opportunities in the U.S. Services provided by the centers must include group informational sessions as well as individual advising. The centers should provide accurate, impartial information and advising on the following topics: all accredited U.S. colleges, universities, and other higher education institutions; accreditation issues; the application process to a U.S. university; majors and fields of study; testing requirements; life in the U.S.; scholarship programs and financial aid; visa requirements, and pre-departure orientation. Centers should also provide information on grant opportunities sponsored by the USG and other institutions and organizations. The Bureau will provide a selection of reference books and materials to each center. Educational advisers at the centers will be eligible to apply for Bureau-sponsored professional development opportunities and training events.

The REAC coordinates a network of educational advising centers throughout the region. Advising centers first opened in Eurasia in 1992, and the network has expanded each year. These centers provide accurate and unbiased information and advising about higher education in the U.S. and U.S. Government-sponsored exchange programs to all interested students and scholars. The REAC's mission is to continue to develop and strengthen this network of educational information and advising centers and to provide leadership and expertise on educational advising issues to centers and Public Affairs Sections. The REAC is responsible for providing onsite technical assistance and training to all centers in the U.S. Department of State-affiliated network. The REAC lends support to any affiliated center in the twelve countries comprising the Eurasia region and works impartially with all organizations involved in educational advising to help enable centers to provide accurate and timely information on U.S. higher educational opportunities. The REAC also works closely with the Bureau and Public Affairs Sections to help establish

priorities for educational advising in the region. The REAC must be a U.S. citizen located in Moscow.

In a cooperative agreement, ECA/A/S/A is substantially involved in program activities above and beyond routine grant monitoring. ECA/A/S/A activities and responsibilities for this program are as follows: all Eurasia centers must facilitate international exchange through overseas educational advising, orientation, and information services for foreign students and scholars seeking information on opportunities in U.S. higher education. ECA/A/S/A will provide reference materials, training opportunities, and occasional equipment (on a priority needs basis) to all educational advising centers in the State Department-affiliated EducationUSA advising network. All centers in the network, including those centers receiving grants from ECA/A/S/A, must operate according to the following basic principles:

(a) Advising centers should provide impartial information about all accredited institutions of higher learning in the United States;

(b) Services provided at no charge should include, at minimum, access to educational reference materials as appropriate and to an introductory group advising session;

(c) Advising centers must be open to the public and must serve the diversity of the population without bias against age, gender, socio-economic level, race, religion, physical disabilities, or any other factor.

In addition, ECA/A/S/A support is contingent upon the following standards of operation:

Outreach: Proposals should include any proposed outreach programs from each center and a detailed description of activities, along with a proposed schedule of visits. Examples of outreach may include collaboration with American Corners and the Internet Access Training Program (IATP), organization of education fairs, presentations at local high schools, and cooperation with Peace Corps volunteers. The Bureau's priority of diversity should be considered when making plans for outreach activities to ensure that less represented non-elite populations, including the physically challenged, have access to the centers' services.

Statistics: Centers should submit monthly usage statistics to the Eurasia REAC and be responsive to special requests for information from the Eurasia REAC and ECA/A/S/A. The proposal should also explain how the centers are working with public affairs and consular sections of the U.S. Embassies in the region to assist the Embassies and students in the visa application process.

Fund-Raising/Cost Defrayment: The proposal should explain any measures the advising centers are taking to generate income or defray operating costs and include projected savings/income from activities during 2005.

Coordination and Communication: ECA/A/S/A requests that Eurasia educational advising centers continue to coordinate major events such as workshops, advising fairs, etc. with the REAC and other centers in the region or in Europe to prevent similar events from occurring at the same time. In accordance with the principles of better customer service, such coordination will provide visiting representatives of U.S. institutions the opportunity to participate in multiple advising fairs on the same trip.

Advisers at the centers should participate in the Eurasia advising listserv and maintain contact with other educational advisers in Eurasia and other regions. This listserv is administered by the Educational Information and Resources Branch and is open to educational advisers working at Department of State-affiliated advising centers.

Professional Standards, Guidelines and Development: Educational advisers should adhere to the OSEAS Standards of Ethical Conduct adopted by NAFSA: Association of International Educators.

ECA/A/S/A requests that your organization consider providing cost sharing for educational advisers to attend/participate in professional development conferences.

Unless an educational advising center is removed from the list of State Department-approved EducationUSA advising centers, each center should prominently display in the center and on its website, if one exists, the EducationUSA name and logo, as part of the State Department's effort to build recognition of the EducationUSA brand.

II. Award Information

Type of Award: Cooperative Agreement. ECA's level of involvement in this program is listed under number I above.

Fiscal Year Funds: FY2005.

Approximate Total Funding: $435,000.

Approximate Number of Awards: One—Three.

Anticipated Award Date: Pending availability of funds, January 1, 2005.

Anticipated Project Completion Date: December 31, 2005.

Additional Information: Pending successful implementation of this program and the availability of funds in subsequent fiscal years, it is ECA's intent to renew this grant for two additional fiscal years, before openly competing it again.

III. Eligibility Information

III.1. Eligible applicants

Applications may be submitted by public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 U.S.C. 501(c)(3).

III.2. Cost Sharing or Matching Funds

There is no minimum or maximum percentage required for this competition. However, the Bureau encourages applicants to provide maximum levels of cost sharing and funding in support of its programs.

When cost sharing is offered, it is understood and agreed that the applicant must provide the amount of cost sharing as stipulated in its proposal and later included in an approved grant agreement. Cost sharing may be in the form of allowable direct or indirect costs. For accountability, you must maintain written records to support all costs which are claimed as your contribution, as well as costs to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A–110, (Revised), Subpart C.23—Cost Sharing and Matching. In the event you do not provide the minimum amount of cost sharing as stipulated in the approved budget, ECA's contribution will be reduced in like proportion.

III.3 Other Eligibility Requirements

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

IV. Application and Submission Information

Note: Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

IV.1 Contact Information To Request an Application Package

Please contact the Educational Information and Resources Branch, ECA/A/S/A, Room 349, U.S. Department of State, SA–44, 301 4th Street, SW., Washington, DC 20547,

telephone: 202–260–6936, fax: 202–401–1433, e-mail: *MoraDD@state.gov* to request a Solicitation Package. Please refer to the Funding Opportunity Number: ECA/A/S/A–05–07 located at the top of this announcement when making your request.

The Solicitation Package contains the Proposal Submission Instruction (PSI) document that consists of required application forms, and standard guidelines for proposal preparation.

It also contains the Project Objectives, Goals and Implementation (POGI) document, which provides specific information, award criteria and budget instructions tailored to this competition.

Please specify Bureau Program Officer Dorothy Mora and refer to the Funding Opportunity Number ECA/A/S/A–05–07 located at the top of this announcement on all other inquiries and correspondence.

IV.2. To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from the Bureau's Web site at *http://exchanges.state.gov/education/rfgps/menu.htm.* Please read all information before downloading.

IV.3. Content and Form of Submission

Applicants must follow all instructions in the Solicitation Package. The original and eight copies of the application should be sent per the instructions under IV.3e. ''Submission Dates and Times section'' below. Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the Public Affairs Section at the U.S. embassies and consulates in Eurasia for review.

IV.3a. You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the U.S. Government. This number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711. Please ensure that your DUNS number is included in the appropriate box of the SF—424 which is part of the formal application package.

IV.3b. All proposals must contain an executive summary, proposal narrative and budget.

Please Refer to the Solicitation Package. It contains the mandatory Proposal Submission Instructions (PSI) document and the Project Objectives, Goals and Implementation (POGI) document for additional formatting and technical requirements.

IV.3c. You must have nonprofit status with the IRS at the time of application. If your organization is a private nonprofit which has not received a grant or cooperative agreement from ECA in the past three years, or if your organization received nonprofit status from the IRS within the past four years, you must submit the necessary documentation to verify nonprofit status as directed in the PSI document. Failure to do so will cause your proposal to be declared technically ineligible.

IV.3d. Please take into consideration the following information when preparing your proposal narrative: Proposals should include a plan to work with the American Corner network in Eurasia. Proposals should also address cooperation with the IATP network and alumni groups where practical.

IV.3d.2 Diversity, Freedom and Democracy Guidelines. Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and disabilities. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into your proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' the Bureau ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Public Law 106—113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

IV.3d.3. Program Monitoring and Evaluation. Proposals must include a plan to monitor and evaluate the project's success, both as the activities unfold and at the end of the program. The Bureau recommends that your proposal include a draft survey questionnaire or other technique plus a description of a methodology to use to link outcomes to original project objectives. The Bureau expects that the grantee will track participants or partners and be able to respond to key evaluation questions, including satisfaction with the program, learning as a result of the program, changes in behavior as a result of the program, and effects of the program on institutions (institutions in which participants work or partner institutions). The evaluation plan should include indicators that measure gains in mutual understanding as well as substantive knowledge.

Successful monitoring and evaluation depend heavily on setting clear goals and outcomes at the outset of a program. Your evaluation plan should include a description of your project's objectives, your anticipated project outcomes, and how and when you intend to measure these outcomes (performance indicators). The more that outcomes are ''smart'' (specific, measurable, attainable, results-oriented, and placed in a reasonable time frame), the easier it will be to conduct the evaluation. You should also show how your project objectives link to the goals of the program described in this RFGP.

Your monitoring and evaluation plan should clearly distinguish between program *outputs* and *outcomes. Outputs* are products and services delivered, often stated as an amount. Output information is important to show the scope or size of project activities, but it cannot substitute for information about progress towards outcomes or the results achieved. Examples of outputs include the number of people trained or the number of seminars conducted. *Outcomes,* in contrast, represent specific results a project is intended to achieve and is usually measured as an extent of change. Findings on outputs and outcomes should both be reported, but the focus should be on outcomes.

We encourage you to assess the following four levels of outcomes, as they relate to the program goals set out in the RFGP (listed here in increasing order of importance):

1. *Participant satisfaction* with the program and exchange experience.

2. *Participant learning,* such as increased knowledge, aptitude, skills, and changed understanding and attitude. Learning includes both substantive (subject-specific) learning and mutual understanding.

3. *Participant behavior,* concrete actions to apply knowledge in work or community; greater participation and responsibility in civic organizations; interpretation and explanation of experiences and new knowledge gained; continued contacts between

participants, community members, and others.

4. *Institutional changes,* such as increased collaboration and partnerships, policy reforms, new programming, and organizational improvements.

Please note: Consideration should be given to the appropriate timing of data collection for each level of outcome. For example, satisfaction is usually captured as a short-term outcome, whereas behavior and institutional changes are normally considered longer-term outcomes.

Overall, the quality of your monitoring and evaluation plan will be judged on how well it: (1) Specifies intended outcomes; (2) gives clear descriptions of how each outcome will be measured; (3) identifies when particular outcomes will be measured; and (4) provides a clear description of the data collection strategies for each outcome (*i.e.*, surveys, interviews, or focus groups). (Please note that evaluation plans that deal only with the first level of outcomes [satisfaction] will be deemed less competitive under the present evaluation criteria.)

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

Describe your plans for: sustainability, overall program management, staffing, coordination with ECA and PAS.

IV.3e.1. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

IV.3.e.2. Allowable costs for the educational advising program include the following:

(1) Educational advising staff salaries and benefits;

(2) Office supplies and expenses, including rent, communications, postage and shipping;

(3) Outreach and publicity costs;

(4) Indirect costs; Allowable costs for the REAC include the following:

(1) REAC salary and benefits;

(2) Travel and per diem costs for site visits and training within the Eurasia region;

(3) Travel for REAC to attend NAFSA National Conference in Seattle, Washington for one week, and an additional week of REAC meetings in Washington, DC in May/June 2005;

(4) Program costs for internship training programs and other training workshops. This may include participant travel and per diem, supplies, venue costs, and honoraria for speakers;

(5) Office and administrative costs, including communication and equipment.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

IV.3f. Submission Dates and Times:

Application Deadline Date: Friday, November 12, 2004.

Explanation of Deadlines: In light of recent events and heightened security measures, proposal submissions must be sent via a nationally recognized overnight delivery service (*i.e.*, DHL, Federal Express, UPS, Airborne Express, or U.S. Postal Service Express Overnight Mail, etc.) and be shipped no later than the above deadline. The delivery services used by applicants must have in-place, centralized shipping identification and tracking systems that may be accessed via the Internet and delivery people who are identifiable by commonly recognized uniforms and delivery vehicles. Proposals shipped on or before the above deadline but received at ECA more than seven days after the deadline will be ineligible for further consideration under this competition. Proposals shipped after the established deadlines are ineligible for consideration under this competition. It is each applicant's responsibility to ensure that each package is marked with a legible tracking number and to monitor/confirm delivery to ECA via the Internet. ECA will *not* notify you upon receipt of application. Delivery of proposal packages *may not* be made via local courier service or in person for this competition. Faxed documents will not be accepted at any time. Only proposals submitted as stated above will be considered. Applications may not be submitted electronically at this time.

Applicants must follow all instructions in the Solicitation Package.

Important note: When preparing your submission please make sure to include one extra copy of the completed SF–424 form and place it in an envelope addressed to ''ECA/EX/PM''.

The original and eight copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/A/S/A–05–07, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Along with the Project Title, all applicants must enter the above Reference Number in Box 11 on the SF–424 contained in the mandatory Proposal Submission Instructions (PSI) of the solicitation document.

IV.3g. Intergovernmental Review of Applications: Executive Order 12372 does not apply to this program.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal in text (.txt) format on a PC-formatted disk. The Bureau will provide these files electronically to the appropriate Public Affairs Section(s) at the U.S. embassy(ies) for its(their) review.

V. Application Review Information

V.1. Review Process

The Bureau will review all proposals for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the Public Affairs Sections overseas, where appropriate. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for assistance awards and cooperative agreements resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grants Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

12. *Value to U.S.-Partner Country Relations:* Proposed projects should receive positive assessments by the U.S. Department of State's geographic area desk and overseas officers of program need, potential impact, and significance in the partner country(ies).

VI. Award Administration Information

VI.1a. Award Notices

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures. Successful applicants will receive an Assistance Award Document (AAD) from the Bureau's Grants Office. The AAD and the original grant proposal with subsequent modifications (if applicable) shall be the only binding authorizing document between the recipient and the U.S. Government. The AAD will be signed by an authorized Grants Officer, and mailed to the recipient's responsible officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review from the ECA program office coordinating this competition.

VI.2 Administrative and National Policy Requirements

Terms and Conditions for the Administration of ECA agreements include the following:

Office of Management and Budget Circular A–122, ''Cost Principles for Nonprofit Organizations.''

Office of Management and Budget Circular A–21, ''Cost Principles for Educational Institutions.''

OMB Circular A–87, ''Cost Principles for State, Local and Indian Governments''.

OMB Circular No. A–110 (Revised), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations.

OMB Circular No. A–102, Uniform Administrative Requirements for Grants-in-Aid to State and Local Governments.

OMB Circular No. A–133, Audits of States, Local Government, and Non-profit Organizations

Please reference the following websites for additional information:
http://www.whitehouse.gov/omb/grants.
http://exchanges.state.gov/education/grantsdiv/terms.htm#articleI.

VI.3. Reporting Requirements

You must provide ECA with a hard copy original plus two copies of the following reports:

A final program and financial report no more than 90 days after the expiration of the award;

Grantees will be required to provide reports analyzing their evaluation findings to the Bureau in their regular program reports. (Please refer to IV. Application and Submission Instructions (IV.3.d.3) above for Program Monitoring and Evaluation information.

All data collected, including survey responses and contact information, must be maintained for a minimum of three years and provided to the Bureau upon request.

All reports must be sent to the ECA Grants Officer and ECA Program Officer listed in the final assistance award document.

Program Data Requirements: Organizations awarded grants will be required to maintain specific data on program participants and activities in an electronically accessible database format that can be shared with the Bureau as required. As a minimum, the data must include the following:

(1) Name, address, contact information and biographic sketch of all persons who travel internationally on funds provided by the grant or who benefit from the grant funding but do not travel.

(2) Itineraries of international and domestic travel, providing dates of travel and cities in which any exchange experiences take place. Final schedules for in-country and U.S. activities must be received by the ECA Program Officer at least three work days prior to the official opening of the activity.

VII. Agency Contacts

For questions about this announcement, contact: The Educational Information and Resources Branch, ECA/A/S/A, room 349, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone: 202–260–6936, fax: 202–401–1433, *http://exchanges.state.gov/education/educationusa.*

All correspondence with the Bureau concerning this RFGP should reference the above title and number ECA/A/S/A–05–07.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFGP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

VIII. Other Information

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements per section VI.3 above.

Dated: September 30, 2004.

C. Miller Crouch,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–22582 Filed 10–6–04; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments for Market Access Negotiations Under the WTO Agreement on Government Procurement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Committee (TPSC) is requesting written public comments with respect to the expansion of market access opportunities in government procurement under the World Trade Organization Agreement on Government Procurement. The specific information being sought is described in the background section below.

DATES: Public Comments are due by noon, November 1, 2004.

ADDRESSES: Offices of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20508. Submissions by electronic mail: *FR0446@ustr.gov*. Submissions by facsimile: Gloria Blue, Executive Secretary, Trade Policy Staff Committee, at (202) 395–6143.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1725 F. Street, NW, Washington, DC 20508, telephone (202) 395–3475. Questions concerning the expansion of market access opportunities in government procurement should be addressed to Jean Heilman Grier, Senior Procurement Negotiator, Office of the USTR, (202) 395–5097, or Scott Pietan, Department of Commerce, (202) 482–4337.

SUPPLEMENTARY INFORMATION: The Chairman of the TPSC invites written comments from the public on the expansion of market access opportunities in government procurement under the World Trade Organization (WTO) Agreement on Government Procurement (GPA). Comments should identify specific improvements that are needed in the current coverage of the Parties to the GPA. Such requests could include the addition of specific government entities, state-owned enterprises or other government-related entities, the addition of services covered by the Agreement, and the removal of existing discriminatory measures or exclusions.

The Appendices with the current market access commitments or coverage of each Party can be found on the WTO Web site at *http://www.wto.org* under the trade topic ''government procurement,'' with the details of Parties' market access obligations at *http://www.wto.org/english/tratop_e/gproc_e/loose_e.htm*.

1. Background Information

The GPA is a plurilateral agreement that currently applies to 38 Members of the WTO. In addition to the United States, they are: Canada, European Communities (including its 25 member States: Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxemburg, Malta, Netherlands, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom), Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Netherlands with respect to Aruba, Norway, Singapore, and Switzerland. The GPA includes both procedures that all the Parties are required to follow when they undertake procurements covered by the GPA and market access obligations in the Appendices to the Agreement.

The Appendices include for each Party a positive list of the government entities that are required to comply with the Agreement when they undertake procurement above specified thresholds, subject to exclusions of certain goods. The government entities covered by the GPA include central government entities and government-related enterprises (such as state-owned enterprises), as well as, for most Parties, sub-central government entities. The Appendices also include a list of the services covered by the Party. In addition, the Parties set out exclusions and discriminatory measures in the Appendices.

The GPA calls for negotiations aimed at increasing market access opportunities under the Agreement through the greatest possible extension of coverage of government procurement by the Parties, on the basis of reciprocity, and the elimination of discriminatory measures and practices that distort open procurement. The GPA Parties have agreed to commence bilateral negotiations with the submission of initial requests to the other Parties for improvements in their coverage under the GPA by the end of November 2004. Based on the requests, the Parties will exchange offers in the spring of 2005.

The comments will be considered in developing U.S. positions in the negotiations, including requests for improvements in the market access provided by other Parties under the GPA.

2. Requirements for Submissions

In order to facilitate prompt processing of submissions, USTR strongly urges and prefers electronic (e-mail) submissions in response to this notice.

Persons making submissions by e-mail should use the following subject line: ''Expansion of Market Access under the WTO/GPA'' followed by ''Written Comments.'' Documents should be submitted as WordPerfect, MSWord, or text (.txt) files. Supporting documentation submitted as spreadsheets are acceptable in Quattro Pro or Excel.

For any document containing business confidential information submitted electronically, the file name of the business confidential version should begin with the characters ''BC-'', and the file name of the public version should begin with the characters ''P-''. The ''P-'' or ''BC-'' should be followed by the name of the submitter. Persons who make submissions by e-mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. To the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Written comments submitted in response to this request will be placed in a file open to public inspection pursuant to 15 CFR 2003.5, except business confidential information exempt from public inspection in accordance with 15 CFR 2003.6. Business confidential information submitted in accordance with 15 CFR 2003.6 must be clearly market ''Business Confidential'' at the top of each page, including any cover letter or cover page, and must be accompanied by a nonconfidential summary of the confidential information. All public documents and nonconfidential summaries shall be available for public inspection in the USTR Reading Room. The USTR Reading Room is open to the public, by appointment only, from 10 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday. An appointment to review the file must be scheduled at least 48 hours in advance

and may be made by calling (202) 395–6186.

General information concerning the Office of the United States Trade Representative may be obtained by accessing its Internet Web site (*http://www.ustr.gov*).

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 04–22574 Filed 10–6–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Municipality of Anchorage, Alaska

AGENCY: Federal Highway Administration (FHWA) and Alaska Department of Transportation and Public Facilities (ADOT&PF).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for the West Dowling Road Connection Project located in the Municipality of Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Edrie Vinson, Environmental Project Manager, Federal Highway Administration, P O Box 21648, Juneau, AK 99802, (907) 586–7464 or Miriam Tanaka, P.E. Project Manager, ADOT&PF, Box 196900, Anchorage, AK 99519, (907) 269–0546.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the ADOT&PF, will prepare an EIS for the West Dowling Road Connection Project. The ADOT&PF has identified the need to enhance roadway connectivity and construct accessibility improvements in the West Dowling Road Connection Project area. The arterial network in the project area is poorly connected. Of the roads that are classified as arterials, none connect east-west across the project area. The road network that does exist (minor arterials and collectors that feed traffic to the arterials) is discontinuous, which limits accessibility and mobility within and through the project area. East-west barriers to through traffic in the project area are Campbell Creek, the Alaska Railroad tracks, and the controlled-access freeways (New Seward Highway and Minnesota Drive). Because of the limited roadway connections, accessibility is a concern of emergency service providers. For the land uses within the project area, the incomplete road network often results in long and circuitous trip patterns. The lack of connectivity also hampers neighborhood access to residential areas and truck access to industrial areas. These problems add to traffic congestion on the adjacent street network. The project is identified in Anchorage's long-range transportation plan. As such, the improvement is an important component of maintaining compliance with federal carbon monoxide (CO) standards (Anchorage was recently reclassified from nonattainment to maintenance for CO).

A number of alternatives have been identified through a planning and scoping process. The EIS will examine the No-Build alternative and three build alternatives.

Project planning for the West Dowling Road Connection Project has been underway since 2002 with preliminary engineering and a public and agency scoping process. Stakeholder interviews held in August of 2002 provided an early, informal opportunity to meet with agency representatives to assess their expectations for involvement and to begin identifying agency-specific issues/concerns regarding the project. An initial round of public and agency scoping meetings was held on October 30, 2002. The second set of public and agency scoping meetings was held on May 14, 2003. A scoping summary report summarizing the public and agency scoping was published in November of 2003 and is available at the following Web site: *http://www.dowlingroad.com.*

Based on project issues and on public and agency involvement to date, the FHWA has determined an EIS is required. Official notice of agency and public scoping for the EIS will be issued in the near future. A public hearing will be held following the publication of the Draft EIS. Notice of the availability of the Draft EIS and date and location of the hearing will be published in the **Federal Register** and in the Anchorage Daily News. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA address 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.)

Issued on: September 28, 2004.

David C. Miller,

Division Administrator, Juneau, Alaska.

[FR Doc. 04–22533 Filed 10–6–04; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34545]

Genesee & Wyoming, Inc.—Continuance in Control Exemption–Tazewell & Peoria Railroad, Inc.

AGENCY: Surface Transportation Board.

ACTION: Notice of Exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323–25 for Genesee & Wyoming, Inc. (GWI), a noncarrier, to continue in control of Tazewell & Peoria Railroad, Inc. (TPR), upon TPR's becoming a rail carrier pursuant to a related transaction involving the lease and operation of a line of the Peoria and Pekin Union Railway Company.[1] GWI is a holding company that directly or indirectly controls 1 Class II rail carrier, 21 operating Class III rail carriers, and 4 non-operating Class III rail carriers. A line of one of GWI's subsidiaries, Illinois & Midland Railroad, Inc., connects at Pekin, IL, with the line to be leased by TPR in the related transaction.

DATES: This exemption will be effective on October 28, 2004. Petitions to stay must be filed by October 15, 2004. Petitions to reopen must be filed by October 22, 2004.

ADDRESSES: Send an original and 10 copies of all pleadings, referring to STB Finance Docket No. 34545, to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of pleadings to Jo A. DeRoche, Weiner Brodsky Sidman Kider PC, 1300 19th Street, NW., Fifth Floor, Washington, DC 20036–1609.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1600 [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339].

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail *asapdc@verizon.net*; telephone (301) 577–2600. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

[1] *See Tazewell & Peoria Railroad, Inc.—Lease and Operation Exemption—Peoria and Pekin Union Railway Company,* STB Finance Docket No. 34544 (STB served Sept. 28, 2004).

Decided: September 30, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. 04–22434 Filed 10–6–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34554]

Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

The Burlington Northern and Santa Fe Railway Company (BNSF), pursuant to a written trackage rights agreement entered into between BNSF and Union Pacific Railroad Company (UP), has agreed to grant local trackage rights to UP [1] over a BNSF line of railroad extending from BNSF milepost 579.3 near Mill Creek, OK, to BNSF milepost 631.1 near Joe Junction, TX, a distance of approximately 51 miles.[2]

The transaction was scheduled to be consummated on September 24, 2004.

The purpose of the trackage rights is to permit UP to move loaded and empty ballast trains for use in its maintenance-of-way projects.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34554 must be filed with the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Robert T. Opal, 1400 Douglas Street, STOP 1580, Omaha, NE 68179.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 29, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–22451 Filed 10–6–04; 8:45 am]

BILLING CODE 4915–01–P

[1] The trackage rights are only temporary rights, but, because they are ''local'' rather than ''overhead'' rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 CFR 1180.2(d)(8). *See Railroad Consolidation Procedures—Exemption for Temporary Trackage Rights,* STB Ex Parte No. 282 (Sub-No. 20) (STB served May 23, 2003). Therefore, UP has concurrently filed a petition for partial revocation of this exemption in STB Finance Docket No. 34554 (Sub-No. 1), *Union Pacific Railroad Company—Temporary Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* wherein UP requests that the Board permit the proposed local trackage rights arrangement described in this notice to expire on or about December 31, 2004. That petition will be addressed by the Board in a separate decision.

[2] The trackage rights involve BNSF subdivisions with non-contiguous mileposts. Therefore, total mileage does not correspond to the milepost designations of the endpoints.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Submission for OMB Review; Comment Request—Operating Subsidiary

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

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 of 1995. OTS is soliciting public comments on the proposal.

DATES: Submit written comments on or before November 8, 2004.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to OMB and OTS at these addresses: Mark D. Menchik, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503, or e-mail to *mmenchik@omb.eop.gov;* and Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, by fax to (202) 906–6518, or by e-mail to *infocollection.comments@ots.treas.gov.* OTS will post comments and the related index on the OTS Internet Site at *www.ots.treas.gov.* In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *publicinfo@ots.treas.gov,* or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the submission to OMB, contact Marilyn K. Burton at *marilyn.burton@ots.treas.gov,* (202) 906–6467, or facsimile number (202) 906–6518, Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Title of Proposal: Operating Subsidiary.

OMB Number: 1550–0077.

Form Number: OTS Forms 1579.

Regulation requirement: 12 CFR Part 559.

Description: 12 CFR Part 559 requires a savings association proposing to establish or acquire an operating subsidiary or conduct new activities in an existing operating subsidiary to either notify OTS or obtain the prior approval of OTS. The regulation also requires a savings association to create and maintain certain documents.

Type of Review: Renewal.

Affected Public: Savings Associations.

Estimated Number of Respondents: 68.

Estimated Frequency of Response: Event-generated.

Estimated Burden Hours per Response: 14 hours.

Estimated Total Burden: 952 hours.

Clearance Officer: Marilyn K. Burton, (202) 906–6467, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

OMB Reviewer: Mark D. Menchik, (202) 395–3176, Office of Management and Budget, Room 10236, New Executive Office Building, Washington, DC 20503.

Dated: September 30, 2004.

By the Office of Thrift Supervision.

Richard M. Riccobono,

Deputy Director.

[FR Doc. 04–22529 Filed 10–6–04; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register

Vol. 69, No. 194

Thursday, October 7, 2004

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9156]

RIN 1545-BB00

Place for Filing

Correction

In rule document 04–19478 beginning on page 55743 in the issue of Thursday, September 16, 2004, make the following corrections:

1. On page 55743, in the second column, in the first full paragraph, in the tenth line, ''sect;1.6091–1(b)'' should read ''§ 1.6091–1(b).''

§1.6091–2 [Corrected]

2. On page 55744, in the second column, in 1.6091–2(a), in the second line, ''paragraph (c) § f'' should read ''paragraph (c) of.''

§1.6091–3 [Corrected]

3. On the same page, in the third column, § 1.6091–3, after amendatory instruction 12., in the next line, the phrase, ''*The revision reads as follows:*'' should read, ''The revision reads as follows:''.

[FR Doc. C4–19478 Filed 10–6–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Thursday,
October 7, 2004

Part II

Social Security Administration

20 CFR Parts 404, 408 and 416

Representative Payment Under Titles II, VIII and XVI of the Social Security Act; Final Rule

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 404, 408 and 416

[Regulation Nos. 4, 8, and 16]

RIN 0960–AF83

Representative Payment Under Titles II, VIII and XVI of the Social Security Act

AGENCY: Social Security Administration (SSA).

ACTION: Final rules.

SUMMARY: We are revising our regulations that explain the procedures we follow in determining the need for a representative payee, the procedures we follow in selecting a representative payee, the responsibilities of a representative payee, and restitution of misused benefits under titles II, VIII and XVI of the Social Security Act (the Act). This regulation codifies SSA's representative payee policy based on statutory changes made during 1990–1999 and includes one provision enacted in 2004. Part 408 sets forth our rules applicable to claims for special veteran's benefits (SVB) under title VIII of the Act. We began making payments under the SVB program in May 2000. We are adding a new subpart F (Representative Payment) to part 408.

The changes to the representative payee provisions of the regulations reflect several statutory changes that provide protection for beneficiaries who need representative payees. These changes include representative payment procedures for investigating payee applicants, identifying unsuitable applicants, making direct payment in some circumstances, providing advance notice of our determination to make representative payment, and providing affected beneficiaries with the opportunity to appeal our determinations. Also included are procedures for making restitution of benefits where a payee has misused a beneficiary's payments and representative payee policies and procedures for the title VIII program.

DATES: These rules are effective November 8, 2004.

FOR FURTHER INFORMATION CONTACT: Regarding this **Federal Register** document—Robert Augustine, Social Insurance Specialist, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401, (410) 965–0020 or TTY (410) 966–5609; regarding eligibility or filing for benefits—our national toll-free number, 1–800–772–1213 or TTY 1–800–325–0778 or visit our Internet Web site, Social Security Online at *http://www.socialsecurity.gov*.

Electronic Version

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SUPPLEMENTARY INFORMATION:

Background

Subpart U of part 404 and subpart F of part 416 of our regulations explain the principles and procedures that we follow in determining whether to make representative payment and in selecting a representative payee under the title II and title XVI programs. These subparts also describe the responsibilities of a representative payee regarding the use of benefits the payee receives on behalf of the beneficiary. Under the authority provided in sections 205(j) and 1631(a)(2) of the Act and these regulations, we select a representative payee for a person receiving Social Security benefits under title II or supplemental security income (SSI) benefits under title XVI of the Act if we believe that representative payment rather than direct payment of benefits is in the best interest of that person.

In selecting a representative payee, we choose the person, agency, or organization that we believe will best serve the interest of a beneficiary. Any person or organization chosen as a representative payee must use benefits and accept all payee responsibilities as required under the Act and our regulations.

A. Changes Required by Public Law 101–508

Sections 5105(a)(1) and (2), and (c) of Public Law 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) enacted November 5, 1990, amended sections 205(j) and 1631(a)(2) of the Act. These sections of OBRA 90 made numerous modifications and additions to the representative payee provisions of the Act and were intended to provide additional safeguards and protection for beneficiaries who need representative payees. These modifications and additions include:

- Investigating representative payee applicants;
- Identifying unsuitable representative payee applicants;
- Making direct payment to some beneficiaries while we try to find a representative payee;
- Allowing a delay or suspension of direct payment for one month (or longer under certain exceptions) when searching for a representative payee where direct payment would cause substantial harm to the beneficiary;
- Providing advance notice to the beneficiary of determinations to make representative payment and selections of representative payees;
- Providing beneficiaries with the opportunity to appeal our determination to make representative payment or to select a particular representative payee;
- Making restitution (in some instances) to beneficiaries of benefits misused by representative payees; and
- Making a good faith effort in those instances to obtain restitution from terminated representative payees who have misused benefits.

The restitution provision of section 5105(c) of OBRA 90, amending sections 205(j) and 1631(a)(2) of the Act, was effective November 5, 1990—the date OBRA 90 was enacted. These restitution provisions were later amended by Public Law 108–203, which was enacted March 2, 2004. That amendment is effective for determinations of misuse made on or after January 1, 1995. The provision in Public Law 108–203 regarding misuse is discussed below. The other OBRA 90 representative payee provisions addressed by these rules were effective with respect to determinations regarding payment of benefits to representative payees made on or after July 1, 1991.

As noted above, Public Law 108–203 was enacted March 2, 2004, several months after we published the proposed rules for representative payment under title II, VIII, and XVI of the Act. The misuse provision in Public Law 108–203 is effective immediately and requires SSA to provide restitution of misused benefits when the representative payee is an organization or an individual payee serving 15 or more beneficiaries. Prior to the enactment of Public Law 108–203, SSA would repay benefits only when we determined SSA was negligent in investigating or monitoring the payee and that negligence contributed to or failed to prevent the misuse. SSA does not have discretion in implementing the new restitution requirement, as the statutory obligation is very specific. Accordingly, we are including this restitution provision in these final rules, rather than including it in a NPRM with other Pub. L. 108–203 provisions that are subject to comment and a delayed effective date.

B. Changes Required by Public Law 103–296

Section 201 of Public Law 103–296, the Social Security Independence and Program Improvements Act of 1994 (SSIPIA 94), enacted August 15, 1994:

- Extends the authority for qualified organizations to collect fees for representative payee services beyond the July 1, 1994, sunset date;
- Included State or local government agencies as qualified organizations for purposes of collecting fees; and
- Required an annual adjustment (beginning with December 1996) to the limit on the fee collected by qualified organizations for providing payee services.

C. Changes Required by Public Law 104–121

Section 105 of Public Law 104–121, the Contract With America Advancement Act of 1996, enacted March 29, 1996, eliminated disability benefits based on drug addiction and/or alcoholism (DAA). However, individuals are considered to have a DAA condition when there is medical evidence of DAA, but the DAA is not material to the disability determination. Under Public Law 104–121, individuals with a DAA condition (as determined by the Commissioner), who are eligible for Social Security or SSI benefits based on a disability other than DAA and who are also found to be incapable of managing their own benefits, must have a representative payee if the Commissioner determines that representative payment would serve the interests of the individual. The statute also provided an exception to the one-month limit on suspension of benefit payment while we are looking for a representative payee for an individual with a DAA condition. Appointment of organizational representative payees for incapable individuals with a DAA condition is preferred; however, in certain cases we may select a family member.

D. Changes Required by Public Law 105–33 and Public Law 106–170

Section 5525(b) of Public Law 105–33, the Balanced Budget Act of 1997, enacted August 5, 1997, provided technical amendments to the title XVI portions of Public Law 104–121 relating to the effective date of provisions concerning representative payees. Effective July 1, 1996, or later, certain individuals with a DAA condition who were found to be incapable of managing their benefits would be paid through a representative payee. In addition, section 401 of Public Law 106–170, the Ticket to Work and Work Incentives Improvement Act of 1999, provided technical amendments to Public Law 104–121 to change the effective date of the title II representative payee and referral provisions applicable to individuals with a DAA condition.

E. Changes Required by Public Law 106–169

Section 251 of Public Law 106–169, the Foster Care Independence Act of 1999, enacted on December 14, 1999, added a new title VIII program to the Act—Special Benefits for Certain World War II Veterans. Title VIII requires SSA to pay SVB to certain World War II Veterans. Section 807 of the Act authorizes SSA to pay SVB to a representative payee when we determine that would be in the beneficiary's interest. We are adding a new subpart F—Representative Payment to part 408 of our regulations to set forth the representative payment rules applicable to the SVB program.

F. Changes Required by Section 101 of Public Law 108–203

Section 101 of Public Law 108–203, the Social Security Protection Act of 2004, enacted March 2, 2004, eliminated the requirement in cases of certain representative payees that SSA must be negligent in fully following agency procedures before it is required to repay the amount of misused benefits to beneficiaries. Effective for determinations of misuse made on or after January 1, 1995, SSA must re-issue benefits under Titles II, VIII, or XVI whenever an individual representative payee serving 15 or more beneficiaries or an organizational representative payee is found to have misused a beneficiary's benefits. If an individual payee serving fewer than 15 beneficiaries misuses a beneficiary's benefits, we will be liable for repayment of the misused benefits only when our negligent failure to investigate or monitor the representative payee results in misuse by the payee.

As discussed above, we are including the restitution provision of Public Law 108–203 in these final rules because it is effective immediately, and the requirement is very specific and does not allow SSA discretion in how to implement it.

Public Law 108–203 makes a number of additional changes to provisions related to representative payees under Titles II, VIII, XI, and XVI of the Act. We will promulgate regulations to implement these changes at a later date.

Explanation of Regulatory Changes

We are making the following changes in our regulations to reflect the amendments to the Act made by sections 5105(a)(1) and (2), and (c) of Public Law 101–508; section 201 of Public Law 103–296; section 105 of Public Law 104–121; section 5525(b) of Public Law 105–33; section 251 of Public 106–169; section 401 of Public Law 106–170 and section 101 of Public Law 108–203.

A. Restitution

We are amending existing §§ 404.902 and 416.1402 to include a determination on restitution as an initial determination subject to the administrative review process. This change reflects our view that our determination regarding a person's right to restitution is a decision covered by sections 205(b)(1) and 1631(c)(1) of the Act and is an initial determination subject to the administrative review process.

B. Substantial Harm

We are adding new §§ 404.2011 and 416.611 to explain that when we have determined a beneficiary needs to be paid through a representative payee and a representative payee is not immediately available:

1. We will pay monthly benefits directly to a beneficiary who we determine should have a representative payee until a suitable representative payee is selected, unless we determine that direct payment of these benefits will result in substantial harm to the beneficiary.

2. Findings of substantial harm will be made on a case-by-case basis. We will find substantial harm in cases where direct payment of benefits is expected to result in serious physical or mental injury to the beneficiary. We also will find substantial harm to exist when the beneficiary is legally incompetent, under age 15, or is receiving disability payments and we have determined that he or she has a DAA condition. However, we will allow these individuals to provide evidence that direct payment would not cause substantial harm. If we find upon review of this evidence that direct payment will not result in substantial harm, then we will make direct payment to the individual.

3. Findings of substantial harm are not considered initial determinations subject to appeal rights. A finding of substantial harm will not materially affect the beneficiary because delay or suspension of direct payment is temporary. Beneficiaries who have their benefits temporarily suspended can

appeal the determination to make representative payment (§§ 404.902(o) and 416.1402(d)).

4. If we find that direct payment to an individual would cause substantial harm, we may delay or suspend benefits up to 1 month. If the beneficiary who needs a representative payee is legally incompetent, under age 15, or receiving disability payments and determined by us to have a DAA condition and is incapable, we may delay payments for more than 1 month.

5. Payment of any benefits that were deferred or suspended pending selection of a representative payee will be made to the beneficiary or the representative payee as a single sum, or in installments when we determine that installments are in the best interest of the beneficiary.

C. Unsuitable Representative Payees

We are adding new §§ 404.2022 and 416.622 to explain that:

1. A representative payee applicant convicted of a violation under section 208, 811 or 1632 of the Act may never serve as a representative payee. This prohibition was in sections 208 and 1632 of the Act prior to enactment of section 5105(a)(2) of OBRA 90 but was never included in our regulations. We added section 811 violations because of the enactment of the new SVB program (section 807 of the Act).

2. A representative payee applicant receiving Social Security, SVB or SSI benefits through a representative payee may not serve as a representative payee. These individuals have already been determined to be incapable of managing their own benefits.

3. A representative payee applicant whose prior certification or appointment as representative payee was revoked or terminated for misusing title II, VIII or XVI benefits generally may not be appointed as a representative payee. We may make an exception to this prohibition on a case-by-case basis if:

- Direct payment is not possible,
- No suitable alternative payee is available,
- Payment to the payee applicant would serve the best interest of the beneficiary,
- The information we have indicates the applicant is now suitable to serve as payee, and
- The applicant has repaid the misused benefits or has a plan to repay them.

If such an applicant is appointed, evaluation(s) of the applicant's performance as representative payee will be conducted periodically at intervals not to exceed 3 months until we are satisfied that the payee poses no risk to the beneficiary and is likely to perform in the beneficiary's best interest.

4. Payment will not be certified to a representative payee applicant who is a creditor of the beneficiary (*i.e.*, provides goods or services for consideration), unless the creditor is:

- A relative of the beneficiary living in the same household as the beneficiary;
- A legal guardian or legal representative of the beneficiary;
- A facility that is licensed or certified as a care facility under State or local law, or an administrator, owner, or employee of such a facility and the selection of the facility or such person is made only after we have attempted to locate an alternative representative payee who would better serve the interests of the beneficiary;
- An individual we determine to be acceptable to serve as a representative payee because we have determined that the individual poses no risk to the beneficiary, the financial relationship of the applicant to the beneficiary poses no substantial conflict of interest, and a more suitable representative payee cannot be found; or
- A qualified organization authorized to collect a monthly fee from the beneficiary for expenses incurred by the organization in providing services performed as the individual's representative payee.

D. Investigation of Representative Payee Applicants

We are adding new §§ 404.2024 and 416.624 to explain that before certifying payment to a representative payee applicant, we will conduct an investigation of the payee applicant to determine the applicant's suitability. A face-to-face interview will be included as part of the investigation unless it is impracticable to do so. A face-to-face interview may be considered impracticable if it would cause the representative payee applicant undue hardship. Undue hardship exists when the applicant cannot reasonably make arrangements to visit the Social Security field office. During the investigation, we will:

- Require the payee applicant to submit documented proof of identity, unless such information has been submitted with an application for titles II, VIII or XVI benefits;
- Verify the payee applicant's Social Security account number or employer identification number;
- Determine whether the payee applicant has been convicted of a violation under section 208, 811, or 1632 of the Act;
- Determine whether the payee applicant previously served as a representative payee and had his or her certification revoked or terminated because of misuse of title II, VIII or XVI benefits.

E. Notice of Appointment of Representative Payee

We are amending existing §§ 404.2030 and 416.630 to explain that whenever we intend to make representative payment or to appoint a particular representative payee, we will provide written notice to the beneficiary (or the legal guardian or the legal representative of the beneficiary) in advance of actually appointing the payee and certifying payment. This will allow the beneficiary the opportunity to appeal the proposed representative payee appointment. The advance notice will:

- Be clearly written in language that is easily understandable to the reader;
- Identify the person to be designated as representative payee;
- Explain the right of the beneficiary (or the legal guardian or legal representative of the beneficiary) to appeal our determination that a representative payee is necessary;
- Explain the right to appeal the designation of a particular person to serve as the representative payee of the beneficiary; and
- Explain the right to review the evidence upon which the payee designation is based, and to submit additional evidence.

If the beneficiary, or his or her legal guardian or legal representative, appeals and the appeal is received before the appointment of the representative payee is effective, the appointment will not be processed until the appeal has been resolved in accordance with subpart J of part 404 or subpart N of part 416. We will pay current monthly benefits directly to the beneficiary, where appropriate, in accordance with §§ 404.2011 and 416.611, until we select a payee.

F. Organizational Representative Payees

We are amending existing §§ 404.2040a and 416.640a to remove the requirement that the organization must have been in existence prior to October 1, 1988. We are including State or local government agencies as qualified organizations for purposes of collecting fees. We are also revising paragraph (g), Limitation on fees, to reflect that the limit on fees collected by such organizations increases annually by the same percentage as the cost of living adjustment. Our NPRM

inadvertently omitted the phrase ''which is tax exempt under section 501(c) of the Internal Revenue Code'' from §§ 404.2040a and 416.640a(a)(2); we have included it in this final rule. We also deleted the language at the end of proposed § 404.2040a(b)(1) because it was redundant.

G. Liability for Misused Benefits

We are amending existing §§ 404.2041 and 416.641 to explain that:

- The representative payee is liable for misuse of the beneficiary's benefits and is responsible for paying back misused benefits to us. We will always make every reasonable effort to obtain restitution of misused benefits and repay them to the beneficiary;
- In addition, we will be liable for repayment of misused benefits whenever an individual representative payee serving 15 or more beneficiaries or an organizational representative payee is found to have misused a beneficiary's benefits.
- In all other cases of misuse, we will be liable for repayment of the misused benefits when our negligent failure to investigate or monitor the representative payee results in misuse by the payee. The term ''negligent failure'' as used in the regulation means that we failed to investigate or monitor a representative payee or that we did investigate or monitor the payee but were negligent in that effort;
- For title XVI purposes, our repayment of misused funds will include any portion of misused SSI benefits which are State supplementary payments.
- If we determine that repayment of misused benefits is appropriate, we will certify for payment to the beneficiary or the beneficiary's new representative payee an amount equal to such misused benefits.

H. When a New Representative Payee Will Be Selected

We are amending existing §§ 404.2050 and 416.650 to reflect changes made by section 5105(a)(1) of OBRA 90 requiring that we will promptly stop payment to a representative payee and make payment directly to the beneficiary or to a new payee if we, or a court of competent jurisdiction, determine that the representative payee has misused the beneficiary's benefits. We may make exceptions to this rule on a case-by-case basis if the requirements discussed in C.3. above are met.

I. Annual Accounting of Benefits

We are amending existing §§ 404.2065 and 416.665 to show that an annual accounting of benefits is required from all representative payees except for certain State institutions, and to clarify the types of questions included in the accounting report. We also clarify that payees must keep records and make them available to us upon request.

J. Other Changes

We are amending existing §§ 404.2025 and 416.625 to change the title of the sections to ''What information must a representative payee report to us?'', move existing paragraph (a) of these sections with minor revisions to new §§ 404.2024 and 416.624 as new paragraph (a)(8) and keep existing paragraph (b) as an undesignated paragraph under §§ 404.2025 and 416.625.

We are also amending existing §§ 404.902(o) and 416.1402(d) to give any individual who is dissatisfied with the determination that he or she needs a payee the right to a hearing on the matter.

We added a new paragraph §§ 404.902(x) and 416.1402(o) to include the determination whether SSA was negligent in investigating or monitoring or failing to investigate or monitor the representative payee which resulted in misuse of benefits by a representative payee as an initial determination subject to judicial review.

K. Representative Payment of SVB

Section 807 of the Act authorizes SSA to pay SVB benefits to a representative payee when we determine that would be in the best interest of the beneficiary. The title VIII provisions on representative payment closely parallel the representative payment provisions in titles II and XVI of the Act (although not all title II/XVI provisions apply to the title VIII program). We are therefore adding a new subpart F to part 408 which includes an introductory section on representative payment in the title VIII program followed by sections (with the exception of § 408.630) that refer users to the sections in part 404 that deal with the appropriate topics. Subpart F consists of the following sections:

- Section 408.601 introduces subpart F.
- Section 408.610 provides a cross-reference to § 404.2010(a), which explains the circumstances under which we will make representative payment.
- Section 408.611 provides a cross-reference to § 404.2011, which explains what happens to your monthly benefits while we are finding a suitable representative payee.
- Section 408.615 provides a cross-reference to § 404.2015, which explains the kinds of information we consider in determining whether to make representative payment.
- Section 408.620 provides a cross-reference to § 404.2020, which explains the information we consider in determining an appropriate representative payee for you.
- Section 408.621 provides a cross-reference to § 404.2021(a), which provides a list of the payees that we prefer to serve your interests.
- Section 408.622 provides a cross-reference to § 404.2022, which contains a list of individuals whom we generally will not select as your representative payee.
- Section 408.624 provides a cross-reference to § 404.2024, which explains how we investigate whether an individual is suitable to serve as a representative payee, including the requirement that we conduct a face-to-face interview with the payee applicant unless it is impracticable to do so.
- Section 408.625 provides a cross-reference to § 404.2025, which explains the information a representative payee or payee applicant must give us.
- Section 408.630 explains how we will notify you when we decide you need a representative payee.
- Section 408.635 provides a cross-reference to § 404.2035, which explains the responsibilities of a representative payee.
- Section 408.640 provides a cross-reference to § 404.2040, which explains how a representative payee must use the SVB payments he or she receives on your behalf.
- Section 408.641 provides a cross-reference to § 404.2041, which explains who is liable when a representative payee misuses the benefits he or she receives on your behalf.
- Section 408.645 provides a cross-reference to § 404.2045, which explains the rules your representative payee must follow to conserve or invest excess benefits, contains a list of preferred investments, and explains that any interest and dividends that result from an investment is your property, not the property of your payee.
- Section 408.650 provides a cross-reference to § 404.2050, which explains when we will select a new representative payee for you.
- Section 408.655 provides a cross-reference to § 404.2055, which explains when we will stop representative payment and begin making payment directly to you.
- Section 408.660 provides a cross-reference to § 404.2060, which explains what happens to accumulated funds when your representative payee changes.

• Section 408.665 provides a cross-reference to § 404.2065, which explains how we require your representative payee to verify that he or she used your benefits on your behalf.

• Section 408.655 provides a cross-reference to § 404.2055, which explains when we will stop representative payment and begin making payment directly to you.

Public Comments

On September 25, 2003, we published proposed rules in the **Federal Register** at 68 FR 55323 and provided a 60-day period for interested parties to comment. We received comments from 6 organizations and 20 individuals. Because some of the comments received were quite detailed, we have condensed, summarized or paraphrased them in the discussion below. We address all of the issues raised by the commenters that are within the scope of the proposed rules.

Comment: Three commenters felt that the explanation we provided in the NPRM on ''substantial harm'' was inconsistent with the proposed regulations language, which specified that substantial harm will be found where direct payment is expected to result in *serious* physical or mental injury. The commenters also felt the example in the preamble was vague and overly broad.

Response: We agree with the commenters and have revised the explanation accordingly.

Comment: One commenter suggests the regulations do not sufficiently explain what would constitute ''substantial harm'' which would justify an interruption in direct payment of benefits. The commenter noted for example, the ''stress associated with handling his * * * own affairs'' may arise even for many non-disabled individuals and certainly should not result in a capable beneficiary requiring a representative payee, unless of course they freely request such an arrangement. The commenter recognizes that there are certain categories of beneficiaries where a payee would be expected, but recommends that we always favor direct payment.

Response: The parenthetical language objected to by the commenter in the ''Explanation of Regulatory Changes'' section has been removed as stated in the response shown above. Our policy is that every beneficiary has the right to manage his or her own benefits unless he or she is unable to do so due to a mental or physical condition or due to youth. When we determine a payee is necessary, we will generally pay the beneficiary directly, while finding a suitable representative payee. Substantial harm must be determined before we may delay a payment. Sections 404.2011 and 416.611 clearly describe how we determine substantial harm. We will not appoint a representative payee for a ''capable'' beneficiary. SSA selects a representative payee only when someone is not able to manage or direct the management of their finances because of their age, or a mental or physical impairment. SSA does not appoint a representative payee solely for a beneficiary's convenience or personal preference.

Comment: Eighteen commenters suggested that SSA ensure that substantial harm in fact exists and that benefits are not routinely withheld for one month pending appointment of an appropriate payee.

Response: We believe that under the proposed regulations, benefits will not routinely be held for a month pending appointment of an appropriate payee. Direct payment will be made pending appointment of a payee unless substantial harm is found. Sections 404.2011 and 416.611 clearly specify that withholding payment for one month pending appointment of an appropriate payee is appropriate only in cases when we find that direct payment will cause substantial harm to the beneficiary. Those sections also clearly explain how we determine whether substantial harm exists.

Comment: One commenter suggested that individuals whose benefits are deferred or suspended for more than one month based on a finding of substantial harm should have the ability to appeal the substantial harm finding. The commenter stated that SSA can make a mistake in its finding that ''substantial harm'' would result from direct payment to the individual and that the ability to appeal would ensure that cases do not get lost in the SSA workload and unnecessarily delayed for months.

Response: Benefits should not be suspended for more than 1 month. Benefits can only be suspended for a maximum of 1 month while a payee is being developed if direct payment to the incapable beneficiary would cause the beneficiary ''substantial harm''. Beneficiaries who have their benefits temporarily suspended can appeal the determination to make representative payment (§§ 404.902(o) and 416.1402(d)). Further, sections 404.2011 and 416.611 clearly specify that, in cases when we withhold payment for one month, we will allow a beneficiary to rebut the substantial harm decision and present evidence that direct payment will not cause him or her substantial harm. Therefore, we believe the proposed rules already provide sufficient safeguards.

Comment: A commenter said we did not explain in the NPRM that paragraph (b) in §§ 404.2021 and 416.621 is redesignated as paragraph (c).

Response: The redesignation of subsection (b) to subsection (c) in §§ 404.2021 and 416.621 was noted in number 5 of the proposed amendments to Part 404 and number 17 of the proposed amendments to Part 416.

Comment: Two commenters expressed concern that the investigation procedures for representative payee applicants set forth in proposed §§ 404.2024 and 416.624 were not stringent enough to protect the recipients who will lose all rights to control their benefits. Specifically, they expressed the view that difficulty finding child care is simply not severe enough to warrant exempting a prospective payee from a personal interview.

Response: We agree and have revised §§ 404.2024(b) and 416.624(b) by deleting the examples of not being able to find child care and not being able to arrange for time off from work.

Comment: Twenty-two commenters recommended that SSA make home visits to payee applicants unable to visit an SSA office for a face-to-face interview. They also suggested that this procedure could be included in a Program Operating Manual System (POMS) provision on payee applicant interviewing procedures.

Response: This is an operational issue and not appropriate to include in regulations. However, we will review current operating instructions and determine whether guidance on when to conduct home visits to payee applicants should be considered. We have made no changes to the regulations based on this comment.

Comment: A commenter suggested that SSA should be required to keep records that it has properly investigated payee applicants before their appointment.

Response: Representative payee applications are taken and stored in the Representative Payee System (RPS) which is a database that houses information about representative payees and beneficiaries who have payees. The RPS was designed to keep an electronic record of our appointment process and the information it contains documents that the payee applicant was properly investigated before being appointed.

Comment: Three commenters stated that the statute requires that prior to appointment of a ''high risk'' payee, the Commissioner establish that ''such individual poses no risk to the

beneficiary.'' The commenters recommended that statutory language be included at the outset of these regulations to clarify that the Commissioner's duty to make this finding applies to all ''high risk'' payee applicants.

Response: The requirement that the Commissioner must establish that an individual poses no risk to the beneficiary applies only to the appointment of creditor payees and not to the other categories of payees in §§ 404.2022 and 416.622. The statute imposes different standards and restrictions for different situations. These rules set out steps that are required to ensure the payee is acting in the beneficiary's best interest depending upon the specific situation. Therefore, we have made no changes based on this comment.

Comment: A commenter was concerned that direct providers of services have potential conflict of interest as payees. The commenter listed as an example residential boarding homes, which the commenter felt had a high potential for fraud or abuse. The commenter recommended that SSA develop some new classes of non-profit payees and ban payees where there is an inherent conflict of interest and a potential for abuse exists.

Response: Banning certain classes of potential payees would be inconsistent with sections 205(j)(2)(c)(iii) and 1631(a)(2)(B)(v) of the Act. We use guidelines setting out categories of potential representative payees for selecting the best payee for a beneficiary. These guidelines suggest a preferred order for considering those potential representative payees but they are flexible. Our regulations do generally prohibit the appointment of creditors as payees, and they are only appointed when specific conditions exist, including a determination that there is no substantial conflict of interest (§§ 404.2022(d), 416.622(d)). We do currently appoint non-profit payees, and we are always seeking to develop new or additional sources of representative payees. Our primary concern is to select a representative payee who will best serve the interest of the beneficiary. Banning a specific class of payee based on ''potential abuse'' would not take individual circumstances into account. We do not believe such an approach would be in the best interest of the beneficiary and therefore, have made no changes based on this comment.

Comment: Twenty-one commenters stated that §§ 404.2022(d)(3) and 416.622(d)(3) would permit an institution to act as payee with virtually no safeguards. The commenters believe there is a strong need for closer oversight of governmental agencies and institutions that serve as payees and recommend that SSA take the following steps to ensure that a creditor institution, acting as payee, fulfills its fiduciary duties on the beneficiary's behalf: (1) Notify the beneficiary in writing before the institution is appointed as payee that the institution will be appointed and make clear that the person's benefits will be available to the person upon release from the institution; (2) include in the regulations a requirement that institutional payees develop procedures for conducting annual individualized assessments of the current and foreseeable needs of the beneficiary, considering more than just the financial needs of the institution as a creditor; and (3) ensure that, where there is a family member or friend available to be the payee, they be given preference over the institution as payee.

Response: We have made no changes based on this comment for the following reasons:

(1) The advance notice, sent before effectuation of any payee appointment, contains language regarding the identity of the proposed representative payee. However, we do not require institutions to set aside funds for the beneficiary's use after release from the institution. As explained in §§ 404.2040(b) and 416.640(b), we consider funds to have been used for the use and benefit of the beneficiary if they are used for the beneficiary's current care and maintenance. Any remaining funds should be conserved or invested for the beneficiary pursuant to § 404.2045.

(2) SSA requires that all representative payees remain informed of beneficiaries' needs (*i.e.*, make ongoing assessments of beneficiaries' current and reasonably foreseeable needs) so they can decide how best to use benefits for beneficiaries' personal care and well being. Institutional payees, as care facilities, generally assess current and future needs for the purpose of providing care as well as deciding how best to use benefits received on behalf of a beneficiary. We believe that ongoing assessments better serve the beneficiaries than would annual assessments.

(3) If we are aware of family interest in being a representative payee, we will solicit an application from family members. However, SSA's responsibility is to appoint the person, agency, organization or institution who can best serve the interest of the beneficiary. Thus family members will be evaluated under this standard along with any other applicants.

Comment: Twenty-two commenters suggested strengthening the language in §§ 404.2022(c)(5) and 416.622(c)(5) regarding when a misuser can be appointed. They note, for example, it is difficult to imagine any circumstances where SSA would approve a payee who not only has misused others' benefits in the past but also has failed to repay completely those misused benefits. The commenters said that SSA needed to set a very high standard for re-appointing a person who has previously misused benefits.

Response: Representative payees with a history of misuse are generally banned from serving as representative payees. As noted in the proposed rules at §§ 404.2022 and 416.622, we will only consider appointing a person who has misused funds in the past when five specific requirements are met, including the requirement that no suitable alternative payee is available. We believe the standard for appointing a payee who has previously misused funds is sufficiently strong to protect the beneficiaries, while at the same time is flexible enough to address situations where no other payee is available.

Comment: A commenter suggested that §§ 404.902(x) and 416.1402(o) be revised to clarify that both the determination of negligence and the determination regarding restitution are initial determinations subject to appeal.

Response: In all cases where SSA determines that it was negligent in investigating or monitoring a representative payee and misuse of benefits resulted, SSA is liable for restitution of the misused funds. Where the Agency finds itself negligent, restitution is due and there is no need to appeal the restitution decision separately.

Comment: Twenty-two commenters suggested that the regulations should be amended to indicate that SSA's determinations of misuse (or no misuse) are initial determinations subject to the appeals process.

Response: Findings of misuse or no misuse are administrative decisions, and are not initial determinations subject to the appeals process. Nothing actionable results from a misuse determination. However, in every case where SSA makes a finding of misuse, it also makes a decision on restitution. SSA's findings of whether or not we will make restitution are initial determinations, and thus subject to appeal. Effectively, a beneficiary may appeal the misuse finding in these circumstances as part of any appeal on the decision to make restitution. Finally,

recently enacted statutory guidelines now require SSA to make restitution without a finding of negligence in misuse cases where the payee is an organization or an individual payee serving 15 or more beneficiaries. For these reasons, we have made no changes based on this comment.

Comment: One commenter suggested that we revise proposed §§ 404.2022(c) and 416.622(c) to provide that we will evaluate a payee's performance at least once every three months for at least the first two years when that payee has previously been found to have misused benefits.

Response: We believe the language in the proposed rules is preferable because it provides more flexibility to take into account the different facts of each case while still safeguarding the beneficiary's interest. It says we must evaluate the payee's performance *at least* every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest. This period could be less than or greater than two years depending on the specific circumstances.

Comment: One commenter stated that misuse of funds by a representative payee should not negatively impact the payment of benefits to child beneficiaries, who should be presumed to be without fault under §§ 404.2041 and 416.641. The commenter stated that holding the child beneficiary liable for misuse of dedicated funds is unfair to the child and clearly violates the spirit and purpose of the Act. This should be made explicit in the regulations.

Response: Sections 404.2041 and 416.641 explain that the representative payee is liable for repaying misused funds. We do not hold the beneficiary liable, and these rules do not suggest otherwise. Therefore, we do not find it necessary to change the proposed regulations.

Comment: A commenter said § 404.2030(a) does not clearly indicate that *both* the decision as to the need for a payee *and* the decision as to whom to appoint are appealable issues.

Response: The proposed regulations at §§ 404.2030(a)(3) and 416.630(a)(3) indicate that the determination that you need a representative payee may be appealed, and §§ 404.2030(a)(4) and 416.630(a)(4) indicate that the designation of a particular person or organization as your representative payee may be appealed. We made no changes to the regulation based on this comment.

Comment: Twenty-one commenters suggested that we allow 15 days from time of receipt of our notice to protest our decision as to the need for a payee and the decision as to who we appoint as payee instead of 10 days as provided in §§ 404.2030(a) and 416.630(a).

Response: We feel the protest and appeal time we allow adequately protects the beneficiary's rights. We have revised the language in the regulation to clarify that there are two ways to give advance notice—by mail or in the field office. Appropriate language is included in each notice outlining how claimants must proceed if they disagree with our decision and the timeframes they must meet.

Comment: One commenter recommended that we revise §§ 404.2065 and 416.665 to include an exception to the annual accounting requirements for parents of child beneficiaries. The commenter stated there should be a presumption that parents are allocating the benefits in a responsible manner.

Response: The statute requires that all representative payees report not less often than annually. The only exception granted by Congress in the statute is for certain State institutions which participate in a separate onsite review program. We cannot change a statutory requirement by regulation.

Comment: One commenter suggested that we periodically send a questionnaire to recipients (except minor children and some others who may have difficulty replying) to help identify situations where payees need further education about their responsibilities or need to be replaced. The commenter stated that SSA should have in place a mechanism for regular contact with the recipients as well as the payees.

Response: We do not think mailing a questionnaire to beneficiaries would help identify situations where payees need further education about their responsibilities or need to be replaced. As part of the representative payee annual report process, SSA includes as a reminder a section on representative payee responsibilities. Questions on the accounting form are designed to solicit meaningful information about how payees use the benefits sent to them. We also have operating procedures in place to evaluate responses as indicators of how well the payee manages benefits. Our new publication no. 05–10097, ''What you should know when a representative payee manages your money * * *'' was designed to help explain representative payment to adult beneficiaries and is sent to the beneficiary with the advance notice that a representative payee has been appointed. Beneficiaries may contact SSA at any time to discuss their payee or payee situations. In addition, our new monitoring program (described in our response to the following comment) provides for beneficiary interviews when feasible.

Comment: Twenty-one commenters suggested SSA should increase oversight of governmental agencies and institutions and include all payees in the annual reporting requirement and not exempt certain State institutions.

Response: Four years ago, we strengthened our oversight process by establishing a new expanded monitoring program. Recently enacted new statutory guidelines expand that program even further. The new program now requires site visits for fee-for-service payees, volume payees (those organizational payees serving 50 or more beneficiaries) and individual payees serving 15 or more beneficiaries. These site reviews monitor payee compliance through a face-to-face meeting and an examination of a sample of beneficiary records. All representative payees must account for use of benefits by completing a written report, but Congress specifically exempted certain State institutions. These State institutions participate in an alternate periodic monitoring program as allowed by statute. See section 205(j)(3)(B) of the Act. We have made no changes to the regulatory language based on this comment.

Comment: Four commenters suggested that in their experiences dealing with SSA on claims of misuse, there are often no records showing what SSA did to determine whether the payee was properly investigated, or whether SSA monitored the payee's performance, or responded to the beneficiaries' complaints of misuse. The commenters feel there is a need for explicit standards, procedures, and a paper trail on these issues.

Response: We do maintain records to document our efforts in these areas. Procedures require that all payees are monitored and that we retain the annual representative payee reports for two years. The RPS contains information regarding beneficiaries' complaints and the actual findings of misuse. Current procedures require all allegations of misuse to be investigated and documented in the RPS.

Comment: Three commenters made suggestions regarding fee-for-service payees. They suggested that charges for such services should be limited to $25 a month. In addition, the commenters suggested that the current proposal to allow certain State agencies to charge a fee and that the fee be ''indexed'' should not be finalized without extensive study into the workings of these agencies and their current histories as representative

payees. The commenters stated if ''indexing'' of fees is allowed, it should not occur automatically. Any increase in fees for organizational representative payees should be the result of a request for an increase by the payee and a complete investigation of that payee's activities and performance as payee before any increased fee is allowed.

Response: Fee-for-service organizations may collect from the individual a monthly fee for providing payee services. The fee amount and the yearly adjustments are set by statute. See section 205(j)(4)(A)(i) of the Act.

Comment: Five commenters recommended that SSA incorporate a requirement in the regulations that beneficiary complaints are treated seriously and investigated promptly by the local District Office staff. The commenters recommended SSA offer a specific procedure for filing complaints about payees and to tell beneficiaries how they can file a complaint if needed.

Response: We take all beneficiary complaints seriously, regardless of how the complaint is reported. It is unnecessary to establish a formal process to receive such complaints. Sections 404.2050 and 416.650 explain when we will make a representative payee change and provide the criteria for looking into such complaints. We have made no changes based on this comment.

Comment: One commenter suggests SSA should be required to review a significant sampling of individual and institutional payees each year. Such reviews should include a requirement for the payee to visit the local SSA office for an interview and a close inspection of accounts and bookkeeping methods used by the payee.

Response: Our current procedures require an annual accounting from all payees and we also have a monitoring program that requires site visits for all fee-for-service payees, volume payees (organizations serving 50 or more beneficiaries) and individual payees serving 15 or more beneficiaries. These site reviews ensure payee compliance through a face-to-face meeting and an examination of a sample of beneficiary records. The reviews include an assessment of the payee's record keeping and a certification that institutional payees continue to meet requirements for a fee-for-service payee. Whenever feasible, we include beneficiary interviews.

Regulatory Procedures

Executive Order 12866

We have consulted with the Office of Management and Budget (OMB) and determined that these final rules meet the criteria for a significant regulatory action under Executive Order 12866, as amended by Executive Order 13258. Thus, they were reviewed by OMB. However, the estimated amounts of the savings or costs involved do not cross the threshold for an economically significant regulation as defined in Executive Order 12866, as amended by Executive Order 13258.

We have also determined that these final rules meet the plain language requirement of Executive Order 12866, as amended by Executive Order 13258.

Administrative Procedure Act

Pursuant to section 702(a)(5) of the Social Security Act, 42 U.S.C. 902(a)(5), the Social Security Administration follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its Notice of Proposed Rulemaking (NPRM) procedures when an agency finds that there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. As indicated above, we are including in these final rules a provision on restitution of misused benefits that was enacted March 2, 2004, as part of Public Law 108–203 and, therefore, was not included in the NPRM we published on September 25, 2003. Since this provision was effective on enactment and the statutory requirement is very specific and does not allow SSA discretion in how to implement, we have determined that under 5 U.S.C. 553(b)(B), good cause exists for waiving the NPRM procedures for the restitution provision of Public Law 108–203 included in these rules.

Executive Order 13132 (Federalism) and the Unfunded Mandates Reform Act of 1995

We have reviewed these final rules for compliance with Executive Order 13132 and the Unfunded Mandates Reform Act of 1995 (UMRA of 1995). We have determined that the final rules are not significant within the meaning of the UMRA of 1995 nor will they have any 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 within the meaning of Executive Order 13132.

The provision regarding restitution of misused benefit payments will not significantly impact the States. Even though the States will be responsible for the supplementary payments portion of the restitution, there should only be a small number of cases involved. There are a very small number of representative payees who are found to misuse benefit payments and of that number, misuse involving SSI payments is even smaller. In addition, SSA will seek restitution of misused funds from the terminated representative payee and, if the restitution is obtained, the State will be reimbursed for any State supplementary payment involved.

Regulatory Flexibility Act

We certify that these final regulations will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

The Paperwork Reduction Act (PRA) of 1995 says that no persons are required to respond to a collection of information unless it displays a valid OMB control number. In accordance with the PRA, SSA is providing notice that OMB has approved the information collection requirements contained in part 404—subpart U, part 408—subpart F, and part 416—subpart F. The OMB Control Number for these collections is 0960–0679, expiring November 30, 2006.

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security-Disability Insurance; 96.002, Social Security-Retirement Insurance; 96.004, Social-Security Survivors Insurance; 96.006, Supplemental Security Income; 96–020, Special Benefits for Certain World War II Veterans.)

List of Subjects

20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 408

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social Security, Special Veterans benefits, Veterans.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, supplemental security income (SSI).

Dated: July 12, 2004.

Jo Anne B. Barnhart,

Commissioner of Social Security.

■ For the reasons set out in the preamble, we are amending subparts J and U of part 404, adding subpart F to part 408, and amending subparts F and N of part 416 of Title 20 of the Code of Federal Regulations as follows:

PART 404—FEDERAL OLD–AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart J—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

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

Authority: Secs. 201(j), 204(f), 205(a)–(b), (d)–(h), and (j), 221, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 401(j), 404(f), 405(a)–(b), (d)–(h), and (j), 421, 425, and 902(a)(5)); 31 U.S.C. 3720A; sec. 5, Pub. L. 97–455, 96 Stat. 2500 (42 U.S.C. 405 note); secs. 5, 6(c)–(e), and 15, Pub. L. 98–460, 98 Stat. 1802 (42 U.S.C. 421 note).

■ 2. Amend § 404.902 by revising paragraph (o), removing the word ''and'' at the end of paragraph (v), removing the period at the end of paragraph (w) and adding ''; and'' in its place, and adding paragraph (x) to read as follows:

§ 404.902 Administrative actions that are initial determinations.

* * * * *

(o) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(x) Whether we were negligent in investigating or monitoring or failing to investigate or monitor your representative payee, which resulted in the misuse of benefits by your representative payee.

Subpart U—Representative Payment

■ 3. The authority citation for subpart U of part 404 continues to read as follows:

Authority: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

■ 4. Add § 404.2011 to read as follows:

§ 404.2011 What happens to your monthly benefits while we are finding a suitable representative payee for you?

(a) *We may pay you directly.* We will pay current monthly benefits directly to you while finding a suitable representative payee unless we determine that paying you directly would cause substantial harm to you. We determine substantial harm as follows:

(1) If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will presume that substantial harm exists. However, we will allow you to rebut this presumption by presenting evidence that direct payment would not cause you substantial harm.

(2) If you do not fit any of these categories, we make findings of substantial harm on a case-by-case basis. We consider all matters that may affect your ability to manage your benefits in your own best interest. We decide that substantial harm exists if both of the following conditions exist:

(i) Directly receiving benefits can be expected to cause you serious physical or mental injury.

(ii) The possible effect of the injury would outweigh the effect of having no income to meet your basic needs.

(b) *We may delay or suspend your payments.* If we find that direct payment will cause substantial harm to you, we may delay (in the case of initial entitlement to benefits) or suspend (in the case of existing entitlement to benefits) payments for as long as one month while we try to find a suitable representative payee for you. If we do not find a payee within one month, we will pay you directly. If you are receiving disability payments and we have determined that you have a drug addiction and alcoholism condition, or you are legally incompetent, or you are under age 15, we will withhold payment until a representative payee is appointed even if it takes longer than one month. We will, however, as noted in paragraph (a)(1) of this section, allow you to present evidence to rebut the presumption that direct payment would cause you substantial harm. See § 404.2001(b)(3) for our policy on suspending benefits if you are currently receiving benefits directly.

Example 1: Substantial Harm Exists. We are unable to find a representative payee for Mr. X, a 67 year old retirement beneficiary who is an alcoholic. Based on contacts with the doctor and beneficiary, we determine that Mr. X was hospitalized recently for his drinking. Paying him directly will cause serious injury, so we may delay payment for as long as one month based on substantial harm while we locate a suitable representative payee.

Example 2: Substantial Harm Does Not Exist. We approve a claim for Mr. Y, a title II claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing his benefits, but we have not found a representative payee. Although we believe that Mr. Y may not use the money wisely, there is no indication that receiving funds directly would cause him substantial harm (*i.e.*, serious physical or mental injury). We must pay current benefits directly to Mr. Y while we locate a suitable representative payee.

(c) *How we pay delayed or suspended benefits.* Payment of benefits, which were delayed or suspended pending appointment of a representative payee, can be made to you or your representative payee as a single sum or in installments when we determine that installments are in your best interest.

■ 5. Amend § 404.2021 by revising the section heading and paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

§ 404.2021 What is our order of preference in selecting a representative payee for you?

* * * * *

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

* * * * *

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency which is licensed by the State, or bonded;

(2) A Federal, State, or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

* * * * *

■ 6. Add § 404.2022 to read as follows:

§ 404.2022 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.

(b) Receives title II, VIII, or XVI benefits through a representative payee.

(c) Previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II, VIII or XVI benefits. However, if we decide to make an exception to this prohibition, we must evaluate the payee's performance

at least every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest. Exceptions are made on a case-by-case basis if all of the following are true:

(1) Direct payment of benefits to the beneficiary is not in the beneficiary's best interest.

(2) No suitable alternative payee is available.

(3) Selecting the payee applicant as representative payee would be in the best interest of the beneficiary.

(4) The information we have indicates the applicant is now suitable to serve as a representative payee.

(5) The payee applicant has repaid the misused benefits or has a plan to repay them.

(d) Is a creditor. A creditor is someone who provides you with goods or services for consideration. This restriction does not apply to the creditor who poses no risk to you and whose financial relationship with you presents no substantial conflict of interest, and who is any of the following:

(1) A relative living in the same household as you do.

(2) Your legal guardian or legal representative.

(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State.

(4) A qualified organization authorized to collect a monthly fee from you for expenses incurred in providing representative payee services for you, under § 404.2040a.

(5) An administrator, owner, or employee of the facility in which you live, and we are unable to locate an alternative representative payee.

(6) Any other individual we deem appropriate based on a written determination.

Example 1: Sharon applies to be representative payee for Ron who we have determined cannot manage his benefits. Sharon has been renting a room to Ron for several years and assists Ron in handling his other financial obligations, as needed. She charges Ron a reasonable amount of rent. Ron has no other family or friends willing to help manage his benefits or to act as representative payee. Sharon has demonstrated that her interest in and concern for Ron goes beyond her desire to collect the rent each month. In this instance, we may select Sharon as Ron's representative payee because a more suitable payee is not available, she appears to pose no risk to Ron and there is minimal conflict of interest. We will document this decision.

Example 2: In a situation similar to the one above, Ron's landlord indicates that she is applying to be payee only to ensure receipt of her rent. If there is money left after payment of the rent, she will give it directly to Ron to manage on his own. In this situation, we would not select the landlord as Ron's representative payee because of the substantial conflict of interest and lack of interest in his well being.

■ 7. Add § 404.2024 to read as follows:

§ 404.2024 How do we investigate a representative payee applicant?

Before selecting an individual or organization to act as your representative payee, we will perform an investigation.

(a) *Nature of the investigation.* As part of the investigation, we do the following:

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (b) of this section.

(2) Require the payee applicant to submit documented proof of identity, unless information establishing identity has recently been submitted with an application for title II, VIII or XVI benefits.

(3) Verify the payee applicant's Social Security account number or employer identification number.

(4) Determine whether the payee applicant has been convicted of a violation of section 208, 811 or 1632 of the Social Security Act.

(5) Determine whether the payee applicant has previously served as a representative payee and if any previous appointment as payee was revoked or terminated for misusing title II, VIII or XVI benefits.

(6) Use our records to verify the payee applicant's employment and/or direct receipt of title II, VIII, or XVI benefits.

(7) Verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person.

(8) Require the payee applicant to provide adequate information showing his or her relationship to the beneficiary and to describe his or her responsibility for the care of the beneficiary.

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 404.2022(d)).

(b) *A face-to-face interview.* We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview. We may decide subsequent face-to-face interviews are impracticable for an organizational representative payee applicant when the organization is known by the field office as a suitable payee. We base this decision on the organization's past performance, recent contacts, and its knowledge of and compliance with reporting requirements.

■ 8. Revise § 404.2025 to read as follows:

§ 404.2025 What information must a representative payee report to us?

Anytime after we select a representative payee for you, we may ask your payee to give us information showing a continuing relationship with you, a continuing responsibility for your care, and how he/she used the payments on your behalf. If your representative payee does not give us the requested information within a reasonable period of time, we may stop sending your benefit payment to him/her—unless we determine that he/she had a satisfactory reason for not meeting our request and we subsequently receive the requested information. If we decide to stop sending your payment to your representative payee, we will consider paying you directly (in accordance with § 404.2011) while we look for a new payee.

■ 9. Revise § 404.2030 to read as follows:

§ 404.2030 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. This advance notice explains that we have determined that representative payment is in your interest, and it provides the name of the representative payee we have selected. We provide this notice before we actually appoint the payee. If you are under age 15, an unemancipated minor under the age of 18, or legally incompetent, our written notice goes to your legal guardian or legal representative. The advance notice:

(1) Contains language that is easily understandable to the reader.

(2) Identifies the person designated as your representative payee.

(3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person or organization to serve as your representative payee.

(5) Explains that you, your legal guardian, or your legal representative can review the evidence upon which our designation of a particular

representative payee is based and submit additional evidence.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, we will handle the objection as follows:

(1) If you disagree with the decision and wish to file an appeal, we will process it under subpart J of this part.

(2) If you received your advance notice by mail and you protest or file your appeal within 10 days after you receive this notice, we will delay the action until we make a decision on your protest or appeal. (If you received and signed your notice while you were in the local field office, our decision will be effective immediately.)

■ 10. Revise § 404.2040a to read as follows:

§ 404.2040a Compensation for qualified organizations serving as representative payees.

(a) *Organizations that can request compensation.* A qualified organization can request us to authorize it to collect a monthly fee from your benefit payment. A qualified organization is:

(1) Any State or local government agency with fiduciary responsibilities or whose mission is to carry out income maintenance, social service, or health care-related activities; or

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, that is tax exempt under section 501(c) of the Internal Revenue Code and that is licensed in the State in which it serves as representative payee or bonded.

(b) *Requirements qualified organizations must meet.* Organizations that are qualified under paragraphs (a)(1) or (a)(2) of this section must also meet the following requirements before we can authorize them to collect a monthly fee.

(1) A qualified organization must regularly provide representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily (not more than 6 months) not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(2) A qualified organization must demonstrate that it is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to the requirement regarding creditors.

(c) *Creditor relationship.* On a case-by-case basis, we may authorize an organization to collect a fee for payee services despite the creditor relationship. (For example, the creditor is the beneficiary's landlord.) To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The creditor services (*e.g.*, providing housing) provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) *Authorization process.* (1) An organization must request in writing and receive an authorization from us *before* it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (a), (b), and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that it meets the requirements of this section, and additional investigation by us proves it suitable to serve, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) *Revocation and cancellation of the authorization.* (1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written notice to us.

(f) *Notices.* The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (a), (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) *Limitation on fees.* (1) An organization authorized to collect a fee under this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary. The limit on the fee a qualified organization may collect for providing payee services increases by the same percentage as the annual cost of living adjustment (COLA). The increased fee amount (rounded to the nearest dollar) is taken beginning with the benefit for December (received in January).

(2) Any agreement providing for a fee in excess of the amount permitted shall be void and treated as misuse of your benefits by the organization under § 404.2041.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with § 404.2045.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payment for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization can collect a fee for providing representative payee services from another source if the total amount of the fee collected from both the beneficiary and the other source does not exceed the amount authorized by us.

■ 11. Revise § 404.2041 to read as follows:

§ 404.2041 Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your

alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term ''negligent failure'' used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not timely investigate a reported allegation of misuse; or

(3) We did not take the necessary steps to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility as described in paragraph (a) of this section.

■ 12. Revise § 404.2050 to read as follows:

§ 404.2050 When will we select a new representative payee for you?

When we learn that your interest is not served by sending your benefit payment to your present representative payee or that your present payee is no longer able or willing to carry out payee responsibilities, we will promptly stop sending your payment to the payee. We will then send your benefit payment to an alternative payee or directly to you, until we find a suitable payee. We may suspend payment as explained in § 404.2011(c) if we find that paying you directly would cause substantial harm and we cannot find a suitable alternative representative payee before your next payment is due. We will terminate payment of benefits to your representative payee and find a new payee or pay you directly if the present payee:

(a) Has been found by us or a court of competent jurisdiction to have misused your benefits;

(b) Has not used the benefit payments on your behalf in accordance with the guidelines in this subpart;

(c) Has not carried out the other responsibilities described in this subpart;

(d) Dies;

(e) No longer wishes to be your payee;

(f) Is unable to manage your benefit payments; or

(g) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information we request.

■ 13. Revise § 404.2065 to read as follows:

§ 404.2065 How does your representative payee account for the use of benefits?

A representative payee must account for the use of benefits. We require written reports from your representative payee no less than annually (except for certain State institutions which participate in a separate onsite review program). We may verify how your representative payee used the funds. Your representative payee should keep records of how benefits were used in order to make accounting reports and make those records available upon our request. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;

(b) Who made the decisions on how your benefits were spent or saved;

(c) How your benefit payments were used; and

(d) How much of your benefit payments were saved and how the savings were invested.

PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (SVB)

■ 14. Add new Subpart F to Part 408 to read as follows:

Subpart F—Representative Payment

Sec.

408.601 What is this subpart about?
408.610 When will we send your SVB payments to a representative payee?
408.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?
408.615 What information do we consider in determining whether we will pay your benefits to a representative payee?
408.620 What information do we consider in selecting the proper representative payee for you?
408.621 What is our order of preference in selecting a representative payee for you?
408.622 Who may not serve as a representative payee?
408.624 How do we investigate a representative payee applicant?
408.625 What information must a representative payee report to us?
408.630 How will we notify you when we decide you need a representative payee?
408.635 What are the responsibilities of your representative payee?
408.640 How must your representative payee use your benefits?
408.641 Who is liable if your representative payee misuses your benefits?
408.645 What must your representative payee do with unused benefits?
408.650 When will we select a new representative payee for you?
408.655 When will we stop making your payments to a representative payee?
408.660 What happens to your accumulated funds when your representative payee changes?
408.665 How does your representative payee account for the use of your SVB payments?

Subpart F—Representative Payment

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

§ 408.601 What is this subpart about?

(a) *Explanation of representative payment.* This subpart explains the policies and procedures we follow to determine whether to pay your benefits to a representative payee and to select a representative payee for you. It also explains the responsibilities your representative payee has for using the funds he or she receives on your behalf. A representative payee may be either an individual or an organization. We will select a representative payee to receive your benefits if we believe your interests will be better served by paying a representative payee than by paying you directly. Generally, we appoint a representative payee if we determine you are unable to manage or direct the management of your own benefit payments. Because the representative payment policies and procedures we use for the title VIII program closely parallel our title II policies and procedures, we provide cross-references to the appropriate material in our title II representative payment rules in subpart U of part 404 of this chapter.

(b) *Policy we use to determine whether to make representative payment.* For an explanation of the policy we use to determine whether to pay your SVB to a representative payee, see § 404.2001(b) of this chapter.

§ 408.610 When will we send your SVB payments to a representative payee?

In determining when we will pay your benefits to a representative payee, we follow the rules in § 404.2010(a) of this chapter.

§ 408.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?

For an explanation of the policy we use to determine what happens to your monthly benefits while we are finding a suitable representative payee for you, see § 404.2011 of this chapter.

§ 408.615 What information do we consider in determining whether we will pay your benefits to a representative payee?

We determine whether to pay your benefits to a representative payee after considering the information listed in § 404.2015 of this chapter.

§ 408.620 What information do we consider in selecting the proper representative payee for you?

To select a proper representative payee for you, we consider the information listed in § 404.2020 of this chapter.

§ 408.621 What is our order of preference in selecting a representative payee for you?

We use the preference list in § 404.2021(a) of this chapter as a guide in selecting the proper representative payee for you.

§ 408.622 Who may not serve as a representative payee?

For a list of individuals who may not serve as a representative payee, *see* § 404.2022 of this chapter.

§ 408.624 How do we investigate a representative payee applicant?

Before selecting an individual or organization as your representative payee, we investigate him or her following the rules in § 404.2024 of this chapter.

§ 408.625 What information must a representative payee report to us?

Your representative payee must report to us information as described in § 404.2025 of this chapter.

§ 408.630 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. If you are legally incompetent, our written notice is sent to your legal guardian or legal representative. The notice explains that we have determined that representative payment is in your interest, and it provides the name of the representative payee we have selected. The notice:

(1) Contains language that is easily understandable to the reader.

(2) Identifies the person designated as your representative payee.

(3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person to serve as representative payee.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, you can file a formal appeal.

§ 408.635 What are the responsibilities of your representative payee?

For a list of your representative payee's responsibilities, see § 404.2035 of this chapter.

§ 408.640 How must your representative payee use your benefits?

Your representative payee must use your benefits in accordance with the rules in § 404.2040 of this chapter.

§ 408.641 Who is liable if your representative payee misuses your benefits?

For the rules we follow to determine who is liable for repayment of misused benefits, see § 404.2041 of this chapter.

§ 408.645 What must your representative payee do with unused benefits?

If your representative payee has accumulated benefits for you, he or she must conserve or invest them as provided in § 404.2045 of this chapter.

§ 408.650 When will we select a new representative payee for you?

We follow the rules in § 404.2050 of this chapter to determine when we will select a new representative payee for you.

§ 408.655 When will we stop making your payments to a representative payee?

To determine when we will stop representative payment for you, we follow the rules in § 404.2055 of this chapter.

§ 408.660 What happens to your accumulated funds when your representative payee changes?

For a description of what happens to your accumulated funds (including the interest earned on the funds) when we change your representative payee or when you begin receiving benefits directly, see § 404.2060 of this chapter.

§ 408.665 How does your representative payee account for the use of your SVB payments?

Your representative payee must account for the use of your benefits as specified in § 404.2065 of this chapter.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED

Subpart F—Representative Payment

■ 15. The authority citation for subpart F continues to read as follows:

Authority: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

■ 16. Add § 416.611 to read as follows:

§ 416.611 What happens to your monthly benefits while we are finding a suitable representative payee for you?

(a) *We may pay you directly.* We will pay current monthly benefits directly to you while finding a suitable representative payee unless we determine that paying you directly would cause substantial harm to you. We determine substantial harm as follows:

(1) If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will presume that substantial harm exists. However, we will allow you to rebut this presumption by presenting evidence that direct payment would not cause you substantial harm.

(2) If you do not fit any of these categories, we make findings of substantial harm on a case-by-case basis. We consider all matters that may affect your ability to manage your benefits in your own best interest. We decide that substantial harm exists if both of the following conditions exist:

(i) Directly receiving benefits can be expected to cause you serious physical or mental injury.

(ii) The possible effect of the injury would outweigh the effect of having no income to meet your basic needs.

(b) *We may delay or suspend your payments.* If we find that direct payment will cause substantial harm to you, we may delay (in the case of initial eligibility for benefits) or suspend (in the case of existing eligibility for benefits) payments for as long as one month while we try to find a suitable representative payee. If we do not find a payee within one month, we will pay you directly. If you are receiving disability payments and we have determined that you have a drug addiction or alcoholism condition, or you are legally incompetent, or you are under age 15, we will withhold payment until a representative payee is appointed even if it takes longer than one month. We will, however, as noted in paragraph (a)(1) of this section, allow you to present evidence to rebut the

presumption that direct payment would cause you substantial harm. See § 416.601(b)(3) for our policy on suspending the benefits if you are currently receiving benefits directly.

Example 1: Substantial Harm Exists. We are unable to find a representative payee for Mr. X, a 67 year old claimant receiving title XVI benefits based on age who is an alcoholic. Based on contacts with the doctor and beneficiary, we determine that Mr. X was hospitalized recently for his drinking. Paying him directly will cause serious injury, so we may delay payment for as long as one month based on substantial harm while we locate a suitable representative payee.

Example 2: Substantial Harm Does Not Exist. We approve a claim for Mr. Y, a title XVI claimant who suffers from a combination of mental impairments but who is not legally incompetent. We determine that Mr. Y needs assistance in managing benefits, but we have not found a representative payee. Although we believe that Mr. Y may not use the money wisely, there is no indication that receiving funds directly would cause him substantial harm (*i.e.*, serious physical or mental injury). We must pay current benefits directly to Mr. Y while we locate a suitable representative payee.

(c) *How we pay delayed or suspended benefits.* Payment of benefits, which were delayed or suspended pending appointment of a representative payee, can be made to you or your representative payee as a single sum or in installments when we determine that installments are in your best interest.

■ 17. Amend § 416.621 by revising the section heading and paragraph (a) introductory text, redesignating paragraph (b) as paragraph (c) and adding new paragraph (b) to read as follows:

§ 416.621 What is our order of preference in selecting a representative payee for you?

* * * * *

(a) For beneficiaries 18 years old or older (except those described in paragraph (b) of this section), our preference is—

* * * * *

(b) For individuals who are disabled and who have a drug addiction or alcoholism condition our preference is—

(1) A community-based nonprofit social service agency licensed by the State, or bonded;

(2) A Federal, State or local government agency whose mission is to carry out income maintenance, social service, or health care-related activities;

(3) A State or local government agency with fiduciary responsibilities;

(4) A designee of an agency (other than a Federal agency) referred to in paragraphs (b)(1), (2), and (3) of this section, if appropriate; or

(5) A family member.

* * * * *

■ 18. Add § 416.622 to read as follows:

§ 416.622 Who may not serve as a representative payee?

A representative payee applicant may not serve if he/she:

(a) Has been convicted of a violation under section 208, 811 or 1632 of the Social Security Act.

(b) Receives title II, VIII, or XVI benefits through a representative payee.

(c) Previously served as a representative payee and was found by us, or a court of competent jurisdiction, to have misused title II, VIII or XVI benefits. However, if we decide to make an exception to the prohibition, we must evaluate the payee's performance at least every 3 months until we are satisfied that the payee poses no risk to the beneficiary's best interest. Exceptions are made on a case-by-case basis if all of the following are true:

(1) Direct payment of benefits to the beneficiary is not in the beneficiary's best interest.

(2) No suitable alternative payee is available.

(3) Selecting the payee applicant as representative payee would be in the best interest of the beneficiary.

(4) The information we have indicates the applicant is now suitable to serve as a representative payee.

(5) The payee applicant has repaid the misused benefits or has a plan to repay them.

(d) Is a creditor. A creditor is someone who provides you with goods or services for consideration. This restriction does not apply to the creditor who poses no risk to you and whose financial relationship with you presents no substantial conflict of interest, and is any of the following:

(1) A relative living in the same household as you do.

(2) Your legal guardian or legal representative.

(3) A facility that is licensed or certified as a care facility under the law of a State or a political subdivision of a State.

(4) A qualified organization authorized to collect a monthly fee from you for expenses incurred in providing representative payee services for you, under § 416.640a.

(5) An administrator, owner, or employee of the facility in which you live and we are unable to locate an alternative representative payee.

(6) Any other individual we deem appropriate based on a written determination.

Example 1: Sharon applies to be representative payee for Ron who we have determined needs assistance in managing his benefits. Sharon has been renting a room to Ron for several years and assists Ron in handling his other financial obligations, as needed. She charges Ron a reasonable amount of rent. Ron has no other family or friends willing to help manage his benefits or to act as representative payee. Sharon has demonstrated that her interest in and concern for Ron goes beyond her desire to collect the rent each month. In this instance, we may select Sharon as Ron's representative payee because a more suitable payee is not available, she appears to pose no risk to Ron and there is minimal conflict of interest. We will document this decision.

Example 2: In a situation similar to the one above, Ron's landlord indicates that she is applying to be payee only to ensure receipt of her rent. If there is money left after payment of the rent, she will give it directly to Ron to manage on his own. In this situation, we would not select the landlord as Ron's representative payee because of the substantial conflict of interest and lack of interest in his well being.

■ 19. Add § 416.624 to read as follows:

§ 416.624 How do we investigate a representative payee applicant?

Before selecting an individual or organization to act as your representative payee, we will perform an investigation.

(a) *Nature of the investigation.* As part of the investigation, we do the following:

(1) Conduct a face-to-face interview with the payee applicant unless it is impracticable as explained in paragraph (b) of this section.

(2) Require the payee applicant to submit documented proof of identity, unless information establishing identity has recently been submitted with an application for title II, VIII or XVI benefits.

(3) Verify the payee applicant's Social Security account number or employer identification number.

(4) Determine whether the payee applicant has been convicted of a violation of section 208, 811 or 1632 of the Social Security Act.

(5) Determine whether the payee applicant has previously served as a representative payee and if any previous appointment as payee was revoked or terminated for misusing title II, VIII or XVI benefits.

(6) Use our records to verify the payee applicant's employment and/or direct receipt of title II, VIII, or XVI benefits.

(7) Verify the payee applicant's concern for the beneficiary with the beneficiary's custodian or other interested person.

(8) Require the payee applicant to provide adequate information showing his or her relationship to the beneficiary and to describe his or her responsibility for the care of the beneficiary.

(9) Determine whether the payee applicant is a creditor of the beneficiary (see § 416.622(d)).

(b) *A face-to-face interview.* We may consider a face-to-face interview impracticable if it would cause the payee applicant undue hardship. For example, the payee applicant would have to travel a great distance to the field office. In this situation, we may conduct the investigation to determine the payee applicant's suitability to serve as a representative payee without a face-to-face interview. We may decide subsequent face-to-face interviews are impracticable for an organizational representative payee applicant when the organization is known by the field office as a suitable payee. We base this decision on the organization's past performance, recent contacts, and its knowledge of and compliance with reporting requirements.

■ 20. Revise § 416.625 to read as follows:

§ 416.625 What information must a representative payee report to us?

Anytime after we select a representative payee for you, we may ask your payee to give us information showing a continuing relationship with you, a continuing responsibility for your care, and how he/she used the payments on your behalf. If your representative payee does not give us the requested information within a reasonable period of time, we may stop sending your benefit payment to him/her—unless we determine that he/she had a satisfactory reason for not meeting our request and we subsequently receive the requested information. If we decide to stop sending your benefit payment to your representative payee, we will consider paying you directly (in accordance with § 416.611) while we look for a new payee.

■ 21. Revise § 416.630 to read as follows:

§ 416.630 How will we notify you when we decide you need a representative payee?

(a) We notify you in writing of our determination to make representative payment. This advance notice explains that we have determined that representative payment is in your interest, and it provides the name of the representative payee we have selected. We provide this notice before we actually appoint the payee. If you are under age 15, an unemancipated minor under the age of 18, or legally incompetent, our written notice goes to your legal guardian or legal representative. The advance notice:

(1) Contains language that is easily understandable to the reader.

(2) Identifies the person designated as your representative payee.

(3) Explains that you, your legal guardian, or your legal representative can appeal our determination that you need a representative payee.

(4) Explains that you, your legal guardian, or your legal representative can appeal our designation of a particular person to serve as your representative payee.

(5) Explains that you, your legal guardian, or your legal representative can review the evidence upon which our designation of a particular representative payee is based and submit additional evidence.

(b) If you, your legal guardian, or your legal representative objects to representative payment or to the designated payee, we will handle the objection as follows:

(1) If you disagree with the decision and wish to file an appeal, we will process it under subpart N of this part.

(2) If you received your advance notice by mail and you protest or file your appeal within 10 days after you receive the notice, we will delay the action until we make a decision on your protest or appeal. (If you received and signed your notice while you were in the local field office, our decision will be effective immediately.)

■ 22. Revise § 416.640a to read as follows:

§ 416.640a Compensation for qualified organizations serving as representative payees.

(a) *Organizations that can request compensation.* A qualified organization can request us to authorize it to collect a monthly fee from your benefit payment. A qualified organization is:

(1) Any State or local government agency with fiduciary responsibilities or whose mission is to carry out income maintenance, social service, or health care-related activities; or

(2) Any community-based nonprofit social service organization founded for religious, charitable or social welfare purposes, that is tax exempt under section 501(c) of the Internal Revenue Code and that is licensed in the State in which it serves as representative payee or bonded.

(b) *Requirements qualified organizations must meet.* Organizations that are qualified under paragraphs (a)(1) or (a)(2) of this section must also meet the following requirements before we can authorize them to collect a monthly fee.

(1) A qualified organization must regularly provide representative payee services concurrently to at least five beneficiaries. An organization which has received our authorization to collect a fee for representative payee services, but is temporarily (not more than 6 months) not a payee for at least five beneficiaries, may request our approval to continue to collect fees.

(2) A qualified organization must demonstrate that it is not a creditor of the beneficiary. See paragraph (c) of this section for exceptions to the requirement regarding creditors.

(c) *Creditor relationship.* On a case-by-case basis, we may authorize an organization to collect a fee for payee services despite the creditor relationship. (For example, the creditor is the beneficiary's landlord.) To provide this authorization, we will review all of the evidence submitted by the organization and authorize collection of a fee when:

(1) The creditor services (*e.g.*, providing housing) provided by the organization help to meet the current needs of the beneficiary; and

(2) The amount the organization charges the beneficiary for these services is commensurate with the beneficiary's ability to pay.

(d) *Authorization process.* (1) An organization must request in writing and receive an authorization from us *before* it may collect a fee.

(2) An organization seeking authorization to collect a fee must also give us evidence to show that it is qualified, pursuant to paragraphs (a), (b), and (c) of this section, to collect a fee.

(3) If the evidence provided to us by the organization shows that it meets the requirements of this section, and additional investigation by us proves it suitable to serve, we will notify the organization in writing that it is authorized to collect a fee. If we need more evidence, or if we are not able to authorize the collection of a fee, we will also notify the organization in writing that we have not authorized the collection of a fee.

(e) *Revocation and cancellation of the authorization.* (1) We will revoke an authorization to collect a fee if we have evidence which establishes that an organization no longer meets the requirements of this section. We will issue a written notice to the organization explaining the reason(s) for the revocation.

(2) An organization may cancel its authorization at any time upon written notice to us.

(f) *Notices.* The written notice we will send to an organization authorizing the collection of a fee will contain an effective date for the collection of a fee pursuant to paragraphs (a), (b) and (c) of this section. The effective date will be no earlier than the month in which the organization asked for authorization to collect a fee. The notice will be applicable to all beneficiaries for whom the organization was payee at the time of our authorization and all beneficiaries for whom the organization becomes payee while the authorization is in effect.

(g) *Limitation on fees.* (1) An organization authorized to collect a fee under this section may collect from a beneficiary a monthly fee for expenses (including overhead) it has incurred in providing payee services to a beneficiary. The limit on the fee a qualified organization may collect for providing payee services increases by the same percentage as the annual cost of living adjustment (COLA). The increased fee amount (rounded to the nearest dollar) is taken beginning with the payment for January.

(2) Any agreement providing for a fee in excess of the amount permitted shall be void and treated as misuse of your benefits by the organization under § 416.641.

(3) A fee may be collected for any month during which the organization—

(i) Provides representative payee services;

(ii) Receives a benefit payment for the beneficiary; and

(iii) Is authorized to receive a fee for representative payee services.

(4) Fees for services may not be taken from any funds conserved for the beneficiary by a payee in accordance with § 416.645.

(5) Generally, an organization may not collect a fee for months in which it does not receive a benefit payment. However, an organization will be allowed to collect a fee for months in which it did not receive a payment if we later issue payment for these months and the organization:

(i) Received our approval to collect a fee for the months for which payment is made;

(ii) Provided payee services in the months for which payment is made; and

(iii) Was the payee when the retroactive payment was paid by us.

(6) An authorized organization can collect a fee for providing representative payee services from another source if the total amount of the fee collected from both the beneficiary and the other source does not exceed the amount authorized by us.

■ 23. Revise § 416.641 to read as follows:

§ 416.641 Who is liable if your representative payee misuses your benefits?

(a) A representative payee who misuses your benefits is responsible for paying back misused benefits. We will make every reasonable effort to obtain restitution of misused benefits so that we can repay these benefits to you.

(b) Whether or not we have obtained restitution from the misuser, we will repay benefits in cases when we determine that a representative payee misused benefits and the representative payee is an organization or an individual payee serving 15 or more beneficiaries. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(c) Whether or not we have obtained restitution form the misuser, we will repay benefits in cases when we determine that an individual representative payee serving 14 or fewer beneficiaries misused benefits and our negligent failure in the investigation or monitoring of that representative payee results in the misuse. When we make restitution, we will pay you or your alternative representative payee an amount equal to the misused benefits less any amount we collected from the misuser and repaid to you.

(d) The term ''negligent failure'' used in this subpart means that we failed to investigate or monitor a representative payee or that we did investigate or monitor a representative payee but did not follow established procedures in our investigation or monitoring. Examples of our negligent failure include, but are not limited to, the following:

(1) We did not follow our established procedures in this subpart when investigating, appointing, or monitoring a representative payee;

(2) We did not investigate timely a reported allegation of misuse; or

(3) We did not take the steps necessary to prevent the issuance of payments to the representative payee after it was determined that the payee misused benefits.

(e) Our repayment of misused benefits under these provisions does not alter the representative payee's liability and responsibility as described in paragraph (a) of this section.

■ 24. Revise § 416.650 to read as follows:

§ 416.650 When will we select a new representative payee for you?

When we learn that your interest is not served by sending your benefit payment to your present representative payee or that your present payee is no longer able or willing to carry out payee responsibilities, we will promptly stop sending your payment to the payee. We will then send your benefit payment to an alternative payee or directly to you, until we find a suitable payee. We may suspend payment as explained in § 416.611(c) if we find that paying you directly would cause substantial harm and we cannot find a suitable alternative representative payee before your next payment is due. We will terminate payment of benefits to your representative payee and find a new payee or pay you directly if the present payee:

(a) Has been found by us or a court of competent jurisdiction to have misused your benefits;

(b) Has not used the benefit payments on your behalf in accordance with the guidelines in this subpart;

(c) Has not carried out the other responsibilities described in this subpart;

(d) Dies;

(e) No longer wishes to be your payee;

(f) Is unable to manage your benefit payments; or

(g) Fails to cooperate, within a reasonable time, in providing evidence, accounting, or other information we request.

■ 25. Revise § 416.665 to read as follows:

§ 416.665 How does your representative payee account for the use of benefits?

A representative payee must account for the use of benefits. We require written reports from your representative payee no less than annually (except for certain State institutions which participate in a separate onsite review program). We may verify how your representative payee used the funds. Your representative payee should keep records of how benefits were used in order to make accounting reports and make those records available upon our request. We may ask your representative payee to give us the following information:

(a) Where you lived during the accounting period;

(b) Who made the decisions on how your benefits were spent or saved;

(c) How your benefit payments were used; and

(d) How much of your benefit payments were saved and how the savings were invested.

Subpart N—Determinations, Administrative Review Process, and Reopening of Determinations and Decisions

■ 26. The authority citation for subpart N continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383(b)); 31 U.S.C. 3720A.

■ 27. Amend § 416.1402 by revising paragraph (d), removing the word ''and'' at the end of paragraph (m), removing the period at the end of paragraph (n) and adding ''; and,'' in its place, and adding paragraph (o) to read as follows:

§ 416.1402 Administrative actions that are initial determinations.

* * * * *

(d) Whether the payment of your benefits will be made, on your behalf, to a representative payee;

* * * * *

(o) Whether we were negligent in investigating or monitoring or failing to investigate or monitor your representative payee, which resulted in the misuse of benefits by your representative payee.

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Federal Register

Thursday,
October 7, 2004

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 403, et al.

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Correction of Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 403, 412, 413, 418, 460, 480, 482, 483, 485, and 489

[CMS–1428–CN2]

RIN 0938–AM80

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule.

SUMMARY: This document corrects technical errors in the final rule that appeared in the August 11, 2004 **Federal Register** entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates.''

DATES: Effective October 1, 2004.

FOR FURTHER INFORMATION CONTACT: James Hart, (410) 786–4548.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 04–17943 (69 FR 48916, August 11, 2004), the final rule entitled "Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2005 Rates'' (hereinafter referred to as the FY 2005 final rule) there were a number of technical errors that are identified and corrected in section III of this correction notice. The provisions in this correction notice are effective as if they had been included in the FY 2005 final rule. Accordingly, the corrections are effective on October 1, 2004.

II. Summary of the Corrections to the FY 2005 Final Rule

A. Corrections to the FY 2005 Rule Contained in This Notice

This correction notice makes a number of changes to the FY 2005 final rule. Because of the number of corrections and the length of some of these corrections, we are providing a summary of the major corrections contained within this notice.

On page 49022, in the summary of a public comment concerning the application for new technology add-on payments for the Intramedullary Skeletal Kinetic Distractor (ISKD), we did not accurately describe the issues raised by the applicant. Accordingly, in this correction notice, we are revising the summary of this comment to reflect more accurately the comment submitted. (See section III, item 11 of this notice.)

On page 49061, we inadvertently omitted a comment and response with respect to geographic reclassifications under section 508 of Public Law 108–173. However, we note that the comment was considered before finalization of our policy. (*See* item 13 in section III of this notice.)

On pages 49070 through 49075, we discuss our postacute care transfer payment policy. In this discussion, we inadvertently omitted several comments and responses from this section. However, we note that we did consider these comments before we finalized our policy. Several comments were related to the proposal to include DRG 430 in the policy under the proposed alternate criteria (which we did not adopt in the final rule). Many others raised arguments that CMS has responded to in the past, but which these commenters raised again in response to the FY 2005 proposed rule (69 FR 28196). In addition, we inadvertently omitted from the final rule a summation of and our response to a comment relating to the postacute care transfer policy that was outside the scope of the proposed rule.

In the interests of clarity and convenience, we are reprinting the discussion of comments on this section in its entirety, including all comments that were inadvertently omitted from the final rule, as well as appropriate responses to those comments. (See items 14 and 15 in section III of this notice.)

On page 49105, we inadvertently omitted portions of our policy discussion with respect to our decision to make an exception for hospitals that failed to reclassify as an urban group under 42 CFR 412.234. On page 49107, we also inadvertently omitted part of our policy discussion with respect to the special circumstances of sole community hospitals in low population density States. In addition, on page 49249, there were technical and typographical errors in two sections (§ 412.230 and § 412.232) of the regulations text regarding criteria for hospitals seeking redesignation. We note that one of the errors was a result of not revising the timeframe in § 412.230(d)(3)(iii)(B) in conjunction with adding a new provision in § 412.230(d)(3)(iii)(C). (See items 18, 19, 21, and 43 in section III of this notice.)

On page 49090, we inadvertently duplicated a comment and response that were appropriately included on page 49155 of the FY 2005 final rule. Also on pages 49130 through 49132, we inadvertently omitted clarifications to the preamble discussion of our policy regarding the treatment of hospitals that are members of the same affiliated group as of July 1, 2003, under section 1886(h)(7)(A)(iii) of the Act for the purposes of payment adjustments for indirect medical education (IME) and graduate medical education (GME) costs. In addition, on page 49132, we inadvertently omitted clarifications to the preamble discussion of our policies regarding the criteria for determining hospitals that will receive increases to their FTE resident caps under section 1886(h)(7)(B) of the Act. In section III of this notice we correct these errors (see section III items 16, 25, and 26 of this notice).

On pages 49221, 49224, and 49271, we made technical errors in our preamble discussion and regulatory text regarding the grandfathering of certain critical access hospitals (CAHs) due to the new metropolitan statistical areas (MSA) definitions for the geographic classification of hospitals. As a result, we are making corrections to two dates and removing an erroneous paragraph of regulations text. (*See* items 39, 42, and 47 of section III of this notice.)

On page 49240, we made a technical error in the regulations text of § 412.22(e)(1) regarding hospitals-within-hospitals. In this paragraph, we erroneously stated the timeframe for which the provision is applicable. (*See* item 41 section III of this notice.)

On page 49250, in the regulatory text changes for § 412.312(e)(3), we incorrectly cited the cross-reference to the offsetting amounts established for extraordinary circumstances exception payments under the capital-related costs under IPPS. As we had indicated in the preamble to the final rule (69 FR 49185 and 49186), the correct cross-reference in both cases in the regulatory text should have been § 412.348(e). (See section III. item 44 of this notice.)

On page 49290, we incorrectly stated the FY 2005 special capital rate for Puerto Rico as $199.02. Consistent with the capital rate for Puerto Rico that was stated in Table 1D in the Addendum of the final rule (69 FR 49294), the rate in the narrative of the Addendum should have been $199.01. (See section III. item 50 of this notice.)

On pages 49738 through 49754, in Table 11–FY 2005 LTC–DRGs, Relative Weights, Geometric Average Length of Stay, and 5/6 of the Geometric Average Length of Stay, there were inadvertent typographical in the published table with respect to the geometric average length of stay and the 5/6 geometric average length of stay (columns 4 and 5 of the table) for a number of the long-term care diagnostic-related groups

(LTC–DRGs). There were no errors in the other columns of the published table. However, for clarity and ease of reference, we are reprinting the table in its entirety. (See item 56 in section III of this notice.)

We are also correcting typographic, formatting, or other errors that appear on other pages of the FY 2005 final rule, as cited in section III. of this notice.

B. Additional Corrections to the FY 2005 Final Rule

We made technical errors in the tables related to the wage indexes, geographic reclassifications, and IPPS payment rates. In section IV. of this notice, we discuss these errors in detail. However, we are posting the corrected tables on the CMS Web site and will issue a separate **Federal Register** document that contains corrected tables and addendum language and a revised impact analysis.

III. Correction of Errors

In FR Doc. 04–17943 (69 FR 48916), make the following corrections:

A. Corrections to Errors in the Preamble

1. On page 48928, second column, lines 39 through 43, the sentence ''The proposed restructured DRG 103 included any principal diagnosis in MDC 5, plus one of the following surgical procedure codes:'' is corrected to read ''The proposed restructured DRG 103 is procedure-driven and not based on any specific principal diagnosis. Assignment to DRG 103 will be based on one of the following surgical procedure codes:''

2. On page 48938, second column, at the end of line 42 and before line 43, add the following sentence: ''We are also assigning code 84.59 and codes 84.60 through 84.69 to the following DRGs as discussed above and shown in Table 6B: MDC 1, DRGs 531–532; MDC 21, DRGs 442–443; MDC 24, DRG 486.''

3. On page 48952, first column, lines 10 through 26, these lines are deleted and the following new text in their place:

''The logic for DRG 315 is modified as follows:

O.R. Procedures

This list remains the same as V21.0 of the GROUPER

OR

Principal diagnosis of renal failure from DRG 315

AND

Non-Operating Room Procedure

86.07, Insertion of totally implantable vascular access device [VAD]

OR

Principal Diagnosis

250.41, Diabetes with renal manifestations, type 1, [insulin dependent type] [IDDM] [juvenile type], not stated as uncontrolled

250.43, Diabetes with renal manifestations, type 1, [insulin dependent type] [IDDM] [juvenile type], uncontrolled

AND

Non-Operating Room Procedures

52.84, Autotransplantation of cells of islets of Langerhans

52.85, Allotransplantation of cells of islets of Langerhans''.

4. On page 48975, second column, line 56, the term ''diotrecogin'' is corrected to read ''drotrecogin''.

5. On page 48976, first column, line 3, the term ''diotrecogin'' is corrected to read ''drotrecogin''.

6. On page 49002, second column,

a. Lines 2 through 5, the sentence ''The comment regarding the DRG assignment of the treatment for AIP is addressed in section II.B.16.i. of this final rule.'' is deleted.

b. Line 45, the cross-reference ''section II.B.16.c.'' is corrected to read ''section II.B.16.d.''; and

c. Line 48, the cross-reference ''section II.B.16.i.'' is corrected to read ''section II.B.16.j.''.

7. On page 49003, second column, lines 42, the term ''begins'' is corrected to read ''begin''.

8. On page 49008,

a. First column,

(1) Line 6, the date ''July 2, 2003'' is corrected to read ''July 2, 2002''.

(2) After line 63 insert the following paragraph ''We are finalizing that proposal in this final rule.''

b. Second column, lines 5 and 6, the paragraph ''We are finalizing that proposal in this final rule'' is deleted.

9. On page 49009, third column, lines 61 through 64, the phrase ''(Craniotomy with implantation of chemotherapeutic agent or acute complex central nervous system principle diagnosis) to which Gliadel cases will be assigned.'' is corrected to read ''(Craniotomy with Implantation of Chemotherapeutic Agent or Acute Complex Central Nervous System Principal Diagnosis) to which cases involving GLIADEL® will be assigned.''

10. On page 49018, second column, line 63, the phrase ''stated that that based'' is corrected to read ''stated that based''.

11. On page 49022, first column, lines 22 through 55, the paragraph beginning with the phrase ''Comment: The applicant noted that it'' is corrected to read:

''*Comment:* The applicant stated that it was inappropriate to use the date of FDA approval (May 2, 2001) as the date the device was commercially available, which the applicant believes should be February 2002. The commenter stated that the 'delay between FDA approval and commercial availability was due to a halt in the production while certain changes on the ISKD were validated.' It also noted that the company 'conducted a comprehensive review of its sales database' and has determined that the first commercial sales of the device were made in February 2002, and as such, the costs of the device were not included in the FY 2001 MedPAR. The applicant reiterated the reasons the device met the cost and substantial clinical improvement criteria. The applicant also stated that if CMS had asked for market data in the application, it would have provided that information to us sooner, and would have had the opportunity to present its argument that the device did, in fact, have a delay between FDA approval and coming to the market and respectfully requested that we reconsider the application, taking these points into consideration.''

12. On page 49028, second column, line 35, the term ''OMB'' is corrected to read ''Census''.

13. On page 49061, second column, after line 25 and before line 26 insert the following 2 paragraphs:

''*Comment:* One commenter requested that we clarify whether hospitals that were approved for reclassification under the section 508 of Public Law 108–173 provision for urban groups could also reclassify under the policy, which we proposed in our discussion of the standardized amount reclassification provisions, under which certain hospitals that previously were part of failed urban group reclassification applications for FYs 2004 and 2005 would be assigned to the MSAs to which they had applied in their applications for FYs 2004 and 2005. The commenter stated that the proposal should be construed to provide all section 508 hospitals with such an assignment and that to do so would allow theses hospitals to extend their section 508 reclassifications for a 6-month period, from April 1, 2007 through September 1, 2007. Finally, the commenter recommended that, in effecting the extension, 'the section 508 reclassifications should be deemed to take precedence over the assignment of the wage index by CMS so any dilution of the target wage index would not occur until the 6-month extension begins'.

''*Response:* In the proposed rule, we proposed to exercise the Secretary's authority to provide for 'exceptions and adjustments' to payments under the

IPPS. Specifically, we proposed to assign a different wage index to a group of hospitals that were unable to reclassify because of a reclassification criterion that is no longer appropriate due to a statutory change. Several hospitals, including those described above, notified us that they have met the requirements that we announced in the proposed rule. We acknowledge that we had not contemplated a situation such as the one described by the commenter. Even in light of this circumstance, we do not intend to modify our proposal because the intent of the proposal was to assign a different wage index to a group of hospitals that 'were *unable* to reclassify' (69 FR 28288) (emphasis added). The hospitals described by the commenter were approved for reclassification under section 508 of Public Law 108–173. Finally, section 508(a)(3) of Public Law 108–173 provides: 'Such reclassification shall apply with respect to discharges occurring during the 3-year period beginning with April 1, 2004.' Because the section 508 reclassifications have been implemented in accordance with Congressional intent, we are clarifying in this final rule that the assignment of a different wage index, as proposed, is applicable only to those applicants that were unable to reclassify because of a reclassification criterion that is no longer appropriate.''.

14. On page 49072, third column, line 33, the phrase ''postacute transfer policy'' is corrected to read ''postacute care transfer policy''.

15. On pages 49073 through 49075 the text beginning on page 49073, first column, first full paragraph and ending on page 49075, first column, fourth full paragraph, is revised to read as follows:

''*Comment:* Several commenters objected to the proposed alternate criteria for DRGs to be included in the postacute care transfer policy. Some commenters believed that the proposed criteria were inappropriate because they appeared contrived to ensure that cases in the former DRG 483, which had a very high DRG weight and resulted in significant Medicare payments, would not be paid at the higher rate associated with those cases. One commenter stated that if CMS' creation of the two new DRGs for tracheostomies with and without surgical procedures does not create less variation in length of stay and cost per case, there is no need to split DRG 483 and no need to expand the transfer policy criteria. The commenters argued that if the split of DRG 483 into more specific DRGs will better account for variations in the original DRG, then the historical logic behind the transfer policy in these cases is no longer valid. Some commenters also believed that the alternate criteria did not meet the objective of the provision, which is to ensure that the postacute care transfer policy only subjects high-volume DRGs to this payment method.

''Some commenters objected to the method by which we proposed the change in the criteria for DRGs to qualify to be included in the postacute transfer policy. They argued that CMS should have proposed the criteria and accepted comment on the alternate criteria and made appropriate changes based on those comments before applying them to any additional DRGs. The commenters were concerned that CMS had seemingly arbitrarily created the alternate set of criteria and applied them to new DRGs in the same rule. Many commenters also noted that CMS did not provide enough evidence or substantial analysis to warrant such a change in policy prior to proposing the alternate criteria and proposing to apply them. Commenters argued that no analysis has been done to determine the impacts of last year's changes to the criteria for the postacute care transfer policy and that to alter the criteria again the following year, without any analysis of last year's changes, would be premature.

''Several commenters took issue with changes to the DRG system having impacts on the postacute care transfer policy. One commenter stated that, from a clinical perspective, many of the tracheostomy patients can be 'weaned' from the ventilator, and the highest success rate occurs when the patients are moved 'in an expedient fashion' to postacute care settings where 'weaning protocols can be applied.' Other commenters asked CMS to recognize that 'there is no other institute to transfer these [tracheostomy] patients to' and that 'acute hospitals are the only settings in which they can be cared for.' One commenter stated that the different case weights of the new DRGs may have significant financial impacts on providers and that we should reconsider the assignment of these new DRGs in the policy until sufficient data are available to determine if they would meet the existing criteria for inclusion in the policy.

''Some commenters recognized the need to develop an 'alternative method for historic, qualifying transfer DRGs that are eliminated and remapped into another existing DRG and/or split into two new DRGs due to annual coding changes or DRG service refinements' to be included in the postacute care transfer policy. However, they still objected to the use of the proposed alternate criteria when the first set of criteria are not met and recommended, as a compromise, that CMS adopt the use of the alternate criteria only when: (1) Cases in an existing DRG are remapped or split into two new DRGs, as is the situation with DRG 483; (2) these cases would remain subject to the postacute care transfer policy during a 'transitional year'; (3) the existing criteria would apply at the end of this 'transitional year'; and (4) the individual codes or sets of ICD–9–CM diagnosis or procedure codes that are remapped would not automatically qualify the new DRGs for inclusion in the postacute care transfer policy unless such mapping would result in all cases within the new DRG(s) qualifying under the existing criteria. This approach would exclude the criterion that the DRG(s) meet these criteria for both of the two most recent fiscal years, as the new DRG(s) would not have been in existence, and could not have met the criteria in those years.

''*Response:* We disagree with some of the points raised by these commenters. In the proposed rule (69 FR 28273), we clearly indicated that the alternate criteria to be included in the postacute care transfer policy still required relatively high volumes of postacute care transfer cases, as well as very high proportions of short-stay transfer cases. We specifically chose a very high threshold for the percent of these postacute care transfer cases that are short-stay cases in order to avoid including inappropriate DRGs within the postacute care transfer policy. In many areas of Medicare program policy, we employ a threshold of one standard deviation or less in order to qualify for inclusion to or exclusion from certain provisions. In this instance, we deliberately chose a much higher threshold in order to ensure that only those DRGs with the highest rate of short-stay postacute care transfers would be included in the policy.

''However, in light of these and other comments, we are not adopting the proposed alternate criteria in this final rule. We note that the postacute care transfer policy was not considered at the time the decision was made to split DRG 483. We do not intend to change our rationale for reorganizing DRGs into more coherent groups or to compromise the clinical cohesiveness of the DRG system in order to ensure cases are included in or excluded from the postacute care transfer policy or other CMS policies. We have discussed the reasons for splitting DRG 483 in section II.B.9. of the proposed rule and in this final rule. However, we do note that, while these cases will continue to be

included in the postacute care transfer policy and subject to per diem payments, we anticipate that fewer cases will actually receive these reduced payments as the new DRGs better reflect the resources required to treat these patients. As a result, hospitals will have less incentive to discharge these patients to postacute care.

''We also note that, if acute care settings are the only appropriate place that tracheostomy patients can receive proper care, as reported by one commenter, then DRG 483 into which these claims fall would not have a high percentage of short-stay transfers (they currently account for 42 percent of all transfer cases in this DRG), and it would not have been included in the postacute care transfer policy. This commenter's statement is also contrary to another commenter's statement that we summarized, which stated that the appropriate place for these patients to be weaned from ventilators is at postacute care facilities. Lastly, since the postacute care transfer policy was implemented in FY 1999, we have accumulated 5 years' worth of data containing these cases. These data show that these cases are appropriate candidates for the postacute care transfer policy.

''*Comment:* Other commenters continued to argue that the postacute care transfer policy goes against the premise of the DRG system that is intended to pay the average of the costs of all cases in a DRG, short lengths of stay and longer lengths of stay. The commenters asserted that to reduce the payment for the shorter stay cases without providing a mechanism to recover the costs associated with the longer stay cases (other than outlier payments) is unfair to hospitals. One commenter quoted the Medicare Guide, which has acknowledged 'division of a prospective payment amount, on a per diem or other basis, undercuts the principles and objectives of the prospective payment system.' Commenters also continued to argue that the premise behind the transfer policy is biased, based on an assumption of gaming by providers, and that it punishes providers for providing the appropriate level of care at the right time and place. Commenters argued that the policy creates an administrative burden on claims processing that has caused payment delays and 'inappropriate denials of hospital bills.' They also noted a geographic bias against regions that have access to greater capital, resources, and postacute care facilities, and that traditionally have had shorter lengths of stay for their patients than other regions of the country.

''Commenters also argued that the policy should be repealed in its entirety, rather than expanded, because it creates a perverse incentive for hospitals to keep patients longer and to deny them appropriate care in postacute care facilities when it is needed. Many commenters also argued that CMS has failed to provide analysis showing the continued need for the postacute care transfer policy, much less the need to expand it, especially considering that the majority of postacute care facilities are now paid for in their own prospective payment systems. Commenters continued to argue that 'CMS has presented no evidence that hospitals are discharging patients before they are ready.'

''*Response:* We have addressed many of these concerns in previous rules and continue to find them unconvincing. We again note that the requirement to treat certain qualified discharges to postacute care as transfers was added by section 4407 of the Balanced Budget Act of 1997. That law initially required CMS to identify DRGs with high volumes of transfer cases to postacute care settings. Since then, we have found that the policy is quite appropriate and analysis of the use of postacute care has consistently demonstrated that the frequency of use of postacute care facilities continues to rise. Although many of the postacute care facilities are now paid under their own prospective payment systems, we continue to find that is inappropriate for Medicare to make two full payments for the treatment of these patients. Furthermore, we do not believe it is appropriate to reimburse acute care hospitals at the full DRG amount when many patients who are transferred to postacute care early do not receive the full care and build up the same costs at the acute care facility. Therefore, because the majority of patients comprising short-stay transfers receive the majority of their care at postacute care facilities, we continue to believe that full payment to those postacute care facilities and reduced payment to acute facilities for these cases are merited.

''*Comment:* Commenters argued that because no analysis had been done to see if the postacute care transfer policy led to unnecessarily extended hospital stays in order to avoid the adjustment, no further expansion of the policy should occur until a full impact analysis is performed. Commenters asked specifically that the analysis include a focus on payments, quality of service, and behavioral changes.

''*Response:* Many studies have been done to analyze the postacute care transfer policy by MedPAC, the Office of Inspector General, and others. These studies all support the need for the policy and generally support expansion of the policy to additional DRGs where appropriate. The OIG reports specifically address hospital compliance with the original 10 DRG policy. These reports frequently cite examples of hospitals that try to avoid the policy requirements by miscoding transfers as regular discharges. Because medical review is not frequently done in these audits, the reports do not usually examine whether hospitals are keeping patients too long to avoid the reduced payments. We have strongly warned hospitals that keeping patients in acute care merely to avoid application of the postacute care transfer policy is inappropriate. Further, we note that the reference to hospitals gaming the system is the opposite of the gaming that we normally reference with the policy, but leads to the same result: inappropriate payments. The commenters' reference to such practices further demonstrates that we have grounds to believe gaming still occurs and, therefore the postacute care transfer policy should be continued and further expansions as indicated by our analysis, should be considered.

''*Comment:* Some commenters suggested that in place of the proposed alternate criteria, we should adopt a policy of keeping cases within the scope of the postacute care transfer policy permanently once they initially qualify for inclusion in the policy. These commenters noted that removing DRGs from the postacute care transfer policy makes the payment system less stable and results in inconsistent incentives over time. They also argued that ''a drop in the number of transfers to postacute settings is to be expected after the transfer policy is applied to a DRG, but the frequency of transfers may well rise again if the DRG is removed from the policy.'' Other commenters expressed concern about our changing of the policy criteria in 2 consecutive years. These commenters argued that such frequent changes in policy give the appearance that the policy has been contrived to achieve certain desired results and make the regulatory process unpredictable and unfair. They further imply that these ''band-aid fixes'' to the 20-year old Medicare system do not bode well for the confidence of outside organizations in regards to the program.

''*Response:* We did consider grandfathering cases already included in the policy because this approach is, on the surface, the simplest method of ensuring these cases continue to be paid

appropriately. However, we determined that in order to adopt this approach, we would also need to determine an appropriate timeframe for the grandfathering period. We did not believe that we could adequately predict or project what timeframe would be appropriate, not only in the case of the splitting of DRG 483 into DRGs 541 and 542, but also for future situations where this kind of split may occur. Therefore, we tried to develop appropriate, alternative criteria based on actual case data that could be monitored and applied from year to year.

''However, due to the large number of comments received and the strong arguments they have raised in favor of a more straightforward approach, we have decided not to adopt the alternate criteria proposed in the May 18, 2004 proposed rule. Instead, in this final rule, we are adopting the policy of simply grandfathering, for a period of 2 years, any cases that were previously included within a DRG that has split, when the split DRG qualified for inclusion in the postacute care transfer policy for both of the previous 2 years. Under this policy, the cases that were previously assigned to DRG 483, and that will now fall into DRGs 541 and 542, will continue to be subject to the postacute care transfer policy for the next 2 years. We will monitor the frequency with which these cases are transferred to postacute care settings and the percentage of these cases that are short-stay transfer cases. Because we are not adopting the proposed alternate criteria for DRG inclusion in the postacute care transfer policy at this time, DRG 430 (Psychoses) does not meet the criteria for inclusion and will not be subject to the postacute care transfer policy for FY 2005.

''We appreciate the recommendation to address situations such as the splitting of DRGs by simply including all cases within the postacute care transfer policy permanently once they have initially qualified. While we are not adopting this policy at this time, we will actively consider it for adoption at a later date. Meanwhile, we believe that grandfathering the cases formerly included in DRG 483 for 2 years is an appropriate interim measure that ensures a consistent payment approach to these cases while affording us sufficient time to undertake a thorough review of this issue. In the meantime, we welcome comments on how to treat the cases formerly included in a split DRG after the grandfathering period. We note that, if we were to adopt the policy recommended by the commenter, cases in DRGs 263 and 264 would again become subject to the policy. As noted above, these DRGs are already very close to meeting the criteria required to be re-included in the policy. However, we will monitor cases until next year or until such time that another change to this policy is warranted.

''*Comment:* Several commenters disagreed with our proposal to add DRG 430 to the list of DRGs subject to the postacute care transfer policy. They argued that DRG 430 has been in existence since the start of the postacute care transfer policy and CMS has never previously considered it appropriate to include this DRG in the policy. Only now that CMS has proposed to add alternative criteria does it qualify for inclusion in the policy. Furthermore, they argued that it is unfair for CMS to remove the potential for $25 million in payments at a time when hospitals are already having staff shortages and difficulty keeping nurses and accessing capital to treat patients.

''*Response:* We note that the number of transfer cases in this DRG was already near the 14,000 threshold (12,202 transfer cases in our analysis in the proposed rule using the FY 2003 MedPAR) necessary to meet the existing criteria. The percentage of short-stay transfer cases in DRG 430 easily meets the criteria for both the existing criterion (10 percent) and the proposed alternative criterion (2 standard deviations above the mean across all DRGs, or 37 percent in FY 2005). Therefore, we do not believe the addition of this DRG under the proposed alternative criteria was unjustified. However, as we discuss in this final rule, we are modifying our proposal in a way that this DRG will not be added to the postacute care transfer policy.

''The table below displays the 30 DRGs that we are including in the postacute care transfer policy, effective for discharges occurring on or after October 1, 2004. This table includes the effects of dropping DRG 483, which we are deleting from the DRG list, and adding the two new DRGs 541 and 542 that will now incorporate the cases formerly assigned to DRG 483. As discussed above, these cases are being grandfathered into the policy for 2 years. The other DRGs meet the criteria specified above during both of the 2 most recent years for which data were available prior to the publication of this final rule (FYs 2002 and 2003), as well as their paired-DRG if one of the DRGs meeting the criteria includes a CC/no-CC split.

DRG	DRG title
12	Degenerative Nervous System Disorders.
14	Intracranial Hemorrhage and Stroke with Infarction.
24	Seizure and Headache Age > 17 With CC.
25	Seizure and Headache Age > 17 Without CC.
88	Chronic Obstructive Pulmonary Disease.
89	Simple Pneumonia and Pleurisy Age > 17 With CC.
90	Simple Pneumonia and Pleurisy Age > 17 Without CC.
113	Amputation for Circulatory System Disorders Except Upper Limb and Toe.
121	Circulatory Disorders With AMI and Major Complication, Discharged Alive.
122	Circulatory Disorders With AMI Without Major Complications Discharged Alive.
127	Heart Failure & Shock.
130	Peripheral Vascular Disorders With CC.
131	Peripheral Vascular Disorders Without CC.
209	Major Joint and Limb Reattachment Procedures of Lower Extremity.
210	Hip and Femur Procedures Except Major Joint Age > 17 With CC.
211	Hip and Femur Procedures Except Major Joint Age > 17 Without CC.
236	Fractures of Hip and Pelvis.
239	Pathological Fractures and Musculoskeletal and Connective Tissue Malignancy.
277	Cellulitis Age > 17 With CC.
278	Cellulitis Age > 17 Without CC.
294	Diabetes Age > 35.
296	Nutritional and Miscellaneous Metabolic Disorders Age > 17 With CC.
297	Nutritional and Miscellaneous Metabolic Disorders Age > 17 Without CC.

DRG	DRG title
320	Kidney and Urinary Tract Infections Age > 17 With CC.
321	Kidney and Urinary Tract Infections Age > 17 Without CC.
395	Red Blood Cell Disorders Age > 17.
429	Organic Disturbances and Mental Retardation.
468	Extensive O.R. Procedure Unrelated to Principal Diagnosis.
541 (formerly 483)	Tracheostomy with Mechanical Ventilation 96+ Hours or Principal Diagnosis Except Face, Mouth and Neck Diagnoses With Major O.R. Procedure.
542 (formerly 483)	Tracheostomy with Mechanical Ventilation 96+ Hours or Principal Diagnosis Except Face, Mouth and Neck Diagnoses Without Major O.R. Procedure.

''Section 1886(d)(5)(J)(i) of the Act recognizes that, in some cases, a substantial portion of the costs of care is incurred in the early days of the inpatient stay. Similar to the policy for transfers between two acute care hospitals, the transferring hospital in a postacute care transfer receives twice the per diem rate for the first day of treatment and the per diem rate for each following day of the stay before the transfer, up to the full DRG payment. However, three of the DRGs subject to the postacute care transfer policy exhibit a disproportionate share of costs very early in the hospital stay in postacute care transfer situations. For these DRGs, hospitals receive 50 percent of the full DRG payment plus the single per diem (rather than double the per diem) for the first day of the stay and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment.

''In previous years, we determined that DRGs 209 and 211 met this cost threshold and qualified to receive this special payment methodology. Because DRG 210 is paired with DRG 211, we include payment for cases in that DRG for the same reason we include paired DRGs in the postacute care transfer policy (to eliminate any incentive to code incorrectly in order to receive higher payment for those cases). The FY 2003 MedPAR data show that DRGs 209 and 211 continue to have charges on the first day of the stay that are higher than 50 percent of the average charges in the DRGs. Therefore, we proposed to continue the special payment methodology for DRGs 209, 210, and 211 for FY 2005 (69 FR 28274).

''We received no comments on this proposal. Therefore, we will continue the special payment methodology for these DRGs in FY 2005.

Out-of-Scope Comments

''*Comment:* One commenter requested that we require physicians and postacute care facilities to notify the original treating hospital that a patient has been treated within 3 days at another facility. The commenter indicated that this step would reduce the burden on hospitals in relation to the postacute transfer policy.

''*Response:* While we appreciate the commenter's concern to reduce the burdens on hospitals, we are reluctant to impose this burden on other entities, especially since these other entities are not affected by the payment decisions that are involved.

''*Comment:* One commenter asked that CMS clarify if the services included within the scope of the postacute care transfer policy include activities of daily living, or if the intent of the regulation is only for skilled services as provided by a SNF (such as physical therapy and wound care).

''*Response:* This comment was outside the scope of the proposed rule. Nevertheless, as stated above, the regulation defines a qualified discharge for purposes of the postacute care transfer policy as including a discharge to '[h]ome health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).' We have specified the appropriate time period during which we will consider a discharge to home health services to constitute a transfer as within 3 days of the date of discharge from the hospital. We also believe that, because the service is required to be related to the condition or diagnosis for which the individual received inpatient hospital services, the treatment received from a home health agency that would fall within the purview of the postacute care transfer policy would be specialized, skilled services (for example, physical therapy is a standard of care following hip replacement surgery). However, because some patients are discharged to home after receiving inpatient care, and because some patients live in nursing homes that provide assisted living services, these claims would still be considered transfers if the nursing facility's provider number indicates that the services provided are skilled in nature (that is, an SNF rather than a nursing home).''

16. On page 49090, first column, lines 4 through 45, the lines are deleted.

17. On page 49103, third column, lines 46 through 58, the two sentences ''In light of its concerns, the commenter recommends that CMS establish a separate exception for major rural teaching hospitals by revising § 412.230 to add two provisions. The commenter believes that adoption of the suggested rules would allow a major teaching hospital to reclassify to an MSA where a substantial number of its competing hospitals are located within the same census region, thus affording them the flexibility to reclassify to an appropriate MSA.'' are corrected to read ''In light of its concerns, the commenter recommends that CMS establish a separate exception for major rural teaching hospitals by revising § 412.230 to eliminate the proximity requirement for rural, major teaching hospitals who seek reclassification to a large urban area within their census region that includes 5 or more major teaching hospitals. The commenter also recommended elimination of the wage comparability test of § 412.230(e)(1)(iii) for rural hospitals that were major teaching hospitals as of September 30, 2004.''.

18. On page 49104,

a. First column,

(1) Line 48, the phrase ''proximity criteria because'' is corrected to read ''proximity criteria in § 412.230(b) because'';

(2) Line 55, after the parenthetical phrase ''(§ 412.230(a)(3))'', insert the following phrase ''and will generally be reclassified to the urban area closest to the hospital''; and

(3) Lines 55 through 58, the sentence ''In addition, rural referral centers (and SCHs) may also reclassify to any MSA to which they qualify under § 412.230(b).'' is corrected to read ''In the alternative, RRCs (and SCHs) also have the opportunity to meet the proximity criteria of § 412.230(b) and seek reclassification to an area for which they met the proximity rules.''.

b. Second column,

(1) Line 4, preceding the sentence that begins ''Therefore we are not'' insert the following sentence:

''We note that under § 412.230(e)(3), RRCs are already exempt from the criterion in § 412.230(e)(1)(iii) regarding the average hourly wage.''.

(2) Lines 27 through 33, the sentence ''In keeping with the proposal to define labor market areas as MSAs, including those in New England, the criteria and conditions for redesignation set forth in § 412.230 will be applicable to New England hospitals seeking to reclassify.'' is corrected to read ''In keeping with our policy of defining labor market areas as MSAs, including those in New England, the criteria and conditions for redesignation set forth in § 412.230 will be applicable to individual New England hospitals seeking to reclassify and the conditions for reclassification as a group set forth in § 412.234 will be applicable to New England hospitals seeking to reclassify as a group.''.

(3) Lines 56 through 58, the phrase ''we believe it would be appropriate to make an adjustment to the hospital's wage index by assigning,'' is corrected to read ''we proposed to make an adjustment to certain hospitals' wage indexes by assigning,''.

c. Third column,

(1) Line 10, the phrase ''failed to reclassify'' is corrected to read ''applied but failed to reclassify'';

(2) Line 15, the phrase ''any hospital whose'' is corrected to read ''we proposed that any hospital whose'';

(3) Line 27, the phrase ''wish to'' is corrected to read ''wished to''; and

(4) Lines 35 through 48, the text beginning with the phrase ''We further stated that the notification should only contain:'' and ending with the phrase ''and FY 2005.'' is corrected by deleting that text; and

(5) Lines 60 through 68, the two sentences ''We proposed to exercise the Secretary's authority to provide for 'exceptions and adjustments' to payments under the IPPS. To assign a different wage index to a group of hospitals that were unable to reclassify because of a reclassification criterion that is no longer appropriate due to a statutory change.'' is corrected to read ''We proposed to exercise the Secretary's authority to provide for 'exceptions and adjustments' to payments under the IPPS to assign a different wage index to a group of hospitals that applied but were unable to reclassify solely because of a reclassification criterion that is no longer appropriate due to a statutory change.''

19. On page 49105,

a. First column,

(1) After line 12 and before line 13, insert the following paragraph:

''By providing relief only to hospitals that applied but failed to reclassify as a group under § 412.234 for FYs 2004 and 2005, we are applying meaningful limits to the scope of the exception. We are limiting our relief only to hospitals who previously demonstrated the intent to reclassify and met all of the criteria for group reclassification but not for the standardized amount reclassification criterion under § 412.234(c). Moreover, hospitals that submitted a group application specified their preferences regarding the MSA or MSAs to which they sought to be reclassified and in this final rule we are allowing hospitals that qualify under this exception to reclassify only to the MSA or MSAs specified in the previously submitted group application. By limiting the exception in this way, hospitals that had no intent to reclassify in the past will be prevented from submitting an application for reclassification now based on the reconfiguration of the MSAs. We note that we did not receive any comments regarding our decision to limit the scope of the exception to hospitals that had previously submitted a group application for reclassification.''; and

(2) Lines 15 through 18, the phrase ''hospitals that were unable to reclassify as a group solely because they failed to meet the standardized amount criterion in either FY 2004 or FY 2005.'' is corrected to read ''hospitals with failed applications for either FY 2004 or FY 2005.'';

(3) After line 68, add the following three sentences: ''We believe these criteria are reasonable because the hospitals that failed to reclassify are required to compete in their counties with a high number of hospitals that were successful in reclassifying and who may be able to pay significantly higher wages because of their higher indexes. In addition, these hospitals applied for reclassification for FY 2004 or FY 2005 but failed to receive it solely on the basis of a criterion that no longer exists due to changes in the statute. (Since reclassification lasts for a 3-year period, we have allowed hospitals that sought group reclassification for either FY 2004 or FY 2005, and who also meet all of the other criteria above, to receive this special exception.)''.

b. Third column, lines 1 through 8, the phrase ''that are, under the new MSA designations and the same CMSA under the former MSA designations qualify as meeting the proximity requirement for reclassification to the urban area to which they seek redesignation.'' ' is corrected to read ''that are in the same Combined Statistical Area (CSA) (under the MSA definitions announced by the OMB on June 6, 2003); or in the same Consolidated Metropolitan Statistical Area (CMSA) under the standards published by the OMB on March 30, 1990) as the urban area to which they seek redesignation qualify as meeting the proximity requirement for reclassification to the urban area to which they seek redesignation.'' '.

20. On page 49106, second column,

(a) Line 57, the phrase ''adjacency and'' is deleted;

(b) Lines 58 and 59, the phrase ''§ 412.230(a)(2) therefore, ''is corrected to read ''§ 412.230(a)(2). Therefore, ''; and

(c) Line 62, after the phrase ''to reclassify.'' insert the following sentence: ''However, RRCs and SCHs, if they wish to, can —in the alternative— seek reclassification to an area for which they can demonstrate close proximity under § 412.230(b).''.

21. On page 49107, third column, line 66, after the phrase ''is warranted.'' insert the following 2 sentences: ''In addition, given that many of the hospitals in the low population density States were already reclassified in accordance with section 508 of Pub. L. 108–173, we believe it is reasonable to ensure that the SCHs that were not reclassified are not put at a significant disadvantage. Hospitals that were not in the low-population density States identified in the section 508 notice will not suffer the same competitive disadvantage vis-à-vis other hospitals in their State.''

22. On page 49108, first column,

a. Line 30, the phrase ''hospitals in the area.'' is corrected to read ''hospitals in the area (not including the hospital itself).''; and

b. Line 37, the phrase ''hospitals in the area.'' is corrected to read ''hospitals in the area (not including the hospital itself).''.

23. On page 49115, first column, line 4, the phrase ''with less than 250 beds'' is corrected to read ''has less than 250 beds''.

24. On page 49116, third column,

a. Line 2, the phrase ''that lent financial support to the subject'' is corrected to read ''to lend financial support to the distressed''.

b. Lines 3 through 20, the four sentences ''A formal merger between the two hospitals has been opposed by the state's Attorney General. The subject hospital's residency programs have not grown to the level maintained prior to the petition for closure and the hospital was training residents well below its FTE resident cap during the reference

cost reporting period. As such, the hospital believes that its FTE resident caps will be reduced pursuant to section 422. The commenter requests that the hospital be exempt from FTE resident cap reductions and that this exemption extend to the Medicare GME affiliated group of which the hospital is a part of to preserve the group's future ability to build their teaching programs.'' are corrected to read ''A formal merger between the two hospitals was desired by the hospitals, but has been opposed by the State's Attorney General. The distressed hospital's residency programs have not grown to the level that was maintained prior to the petition for closure and, thus, the number of FTE residents the hospital was training is well below its FTE resident cap during the reference cost reporting period. As such, the hospital believes that its FTE resident caps will be reduced in accordance with section 1886(h)(7)(A) of the Act. The commenter requested that the hospital be exempt from the FTE resident cap reductions and that this exemption extend to the Medicare GME affiliated group of which the hospital is a part in order to preserve the group's future ability to build its teaching programs.''.

25. On page 49130,

a. First column, entire columns (lines 1 through 64) the text beginning with the phrase ''regarding affiliated groups (63 FR 26338)'' and ending with the phrase ''basis, a hospital had trained fewer'' is corrected to read ''regarding affiliated groups at §§ 413.86(b) and (g)(4)(iv), (also described at 63 FR 26338, May 12, 1998), we note that a single hospital could have several Medicare GME affiliation agreements with several different 'affiliated groups.' However, for purposes of applying the provision at section 1886(h)(7)(A)(iii) of Act, we will use a broader definition of the affiliated group. Specifically, for purposes of comparing aggregate FTE resident caps to aggregate FTE counts, we will include every hospital that has an affiliation agreement (as of July 1, 2003) in common with any other hospital (the commonly affiliated group). Then, for direct GME and IME respectively, the fiscal intermediaries will identify the '1996' FTE resident caps (subject to permanent adjustments for new programs, if applicable), and the unweighted allopathic and osteopathic FTE resident counts for each hospital that is part of that commonly affiliated group for each affiliated hospital's cost report that includes July 1, 2003. (Note that since the 1996 cap and FTE count information from the cost report that includes July 1, 2003 is being used for purposes of section 1886(h)(7)(iii) of the Act, the caps as amended in accordance with the July 1, 2003 affiliation agreement are irrelevant for this portion of the analysis). In many cases, the hospitals in the commonly affiliated group will not all have the same fiscal year end (FYE). Therefore, for example, for a hospital with a FYE of June 30, the fiscal intermediary will identify the FTE resident cap (that is, the '1996' cap, subject to permanent adjustments for new programs, if applicable) and the unweighted allopathic and osteopathic FTE resident count from the hospital's FYE June 30, 2004 cost report. For a hospital with a FYE of December 31, the fiscal intermediary will identify, for IME and direct GME, respectively, the FTE resident cap (that is, the '1996' cap, subject to permanent adjustments for new programs, if applicable) and the unweighted allopathic and osteopathic FTE resident count from the hospital's FYE December 31, 2003 cost report. Next, the fiscal intermediary will add the FTE resident caps for all the hospitals in the commonly affiliated group to determine the aggregate FTE resident cap, and will add the FTE resident counts from all those hospitals' cost reports that include July 1, 2003, to determine the aggregate FTE resident count for the commonly affiliated group. If the aggregate FTE resident count for the commonly affiliated group is equal to or exceeds the aggregate FTE resident cap, then no reductions would be made under section 1886(h)(7)(A)(i) of the Act to the FTE resident caps of any of the hospitals in the commonly affiliated group. Each hospital's FTE resident cap would not be reduced effective July 1, 2005, even if, on a hospital-specific basis, a hospital trained fewer'';

b. Second column, the entire column (lines 1 through 63), the text beginning with the phrase ''residents in its cost report that includes'' and ending with the figure ''3.04.'' is corrected to read ''residents in its cost reporting period that includes July 1, 2003, than its adjusted 'affiliated' cap. However, if the aggregate FTE resident count for the commonly affiliated group is below its aggregate FTE resident cap, there would be a reduction in FTE resident cap(s) that is equal to 75 percent of the difference between the aggregate FTE resident cap and the aggregate FTE resident count for the commonly affiliated group. In these cases, for each hospital in the commonly affiliated group, the fiscal intermediary will determine the following information for the cost report that includes July 1, 2003:

(1) The individual hospital's '1996' FTE resident cap (subject to permanent adjustments for new programs, if applicable)—for IME from worksheet E, Part A of the Medicare cost report, the sum of lines 3.04 and 3.05; for direct GME from worksheet E–3, Part IV of the Medicare cost report, the sum of lines 3.01 and 3.02.

(2) The individual hospital's 'affiliated' FTE resident cap—for IME, line 3.07 of worksheet E, Part A; for direct GME, line 3.04 of worksheet E–3 Part IV.

(3) The individual hospital's total number of allopathic and osteopathic FTE residents—for IME, line 3.08; for direct GME, line 3.05.

(4) For IME and GME, respectively, the difference between the aggregate 1996 FTE resident cap and the aggregate FTE resident count for all of the commonly affiliated hospitals—for IME, Σ line 3.08 minus Σ (lines 3.04 + 3.05); for direct GME, Σ line 3.05 minus Σ (lines 3.01 + 3.02). Note, if the aggregate FTE resident count is greater than or equal to the aggregate 1996 FTE resident cap, stop here; there will be no reduction under section 1886(h)(7)(A)(i) of the Act to the FTE resident cap of any individual hospital within the commonly affiliated group. Alternatively, if the aggregate FTE resident count is less than the aggregate 1996 FTE resident cap, the aggregate reduction under section 1886(h)(7)(A)(i) of the Act to the FTE resident caps for hospitals in the commonly affiliated group will be based on this calculation; reductions to individual hospitals are calculated as indicated below.

(5) For IME, for those hospitals whose FTE resident count from line 3.08 is greater than or equal to the 'affiliated' FTE resident cap on line 3.07, indicate 'zero.' For direct GME, for those hospitals whose FTE resident count from line 3.05 is greater than or equal to the ''affiliated'' FTE resident cap on line 3.04, indicate 'zero.' For IME, for those hospitals whose FTE resident count from line 3.08 is less than the 'affiliated' FTE resident cap on line 3.07, calculate the difference between the hospital's 'affiliated' FTE resident cap and the hospital's FTE resident count—line 3.08 minus line 3.07. For direct GME, for those hospitals whose FTE resident count from line 3.05 is less than the 'affiliated' FTE resident cap on line 3.04, calculate the difference between the hospital's 'affiliated' FTE resident cap and the hospital's FTE resident count—line 3.05 minus line 3.04.

c. Third column, the entire column (lines 1 through 63), the text beginning with the phrase ''(6) For IME and direct GME'' and ending with the phrase ''table below.'' is corrected to read as follows:

''(6) For IME and direct GME, respectively, determine the total amount by which the aggregate 'affiliated' FTE resident count for the commonly affiliated group is below the aggregate FTE resident cap for the group by adding together the amounts determined for each hospital under step 5.

''(7) For IME and direct GME, respectively, calculate a pro rata cap reduction for each hospital by dividing the hospital-specific amount calculated in step 5 by the total for all of the commonly affiliated hospitals calculated in step 6, and multiply by the total amount calculated in step 4 (that is, (step 5/step 6) × step 4)).

''(8) For IME and direct GME, respectively, determine the reduction to the FTE resident cap for each hospital under section 1886(h)(7)(A)(i) of the Act by multiplying the pro rata cap reduction from step 7 by 0.75.

''(9) For IME and direct GME, respectively, determine the FTE resident cap for each hospital by subtracting the reduction to the FTE resident cap calculated in step 8 from the '1996' FTE resident cap in step 1. This is the hospital's FTE resident cap effective July 1, 2005.

''The following is an example of how the reductions to the FTE resident caps will be determined where the aggregate FTE resident counts for hospitals in a commonly affiliated group as of July 1, 2003 are below the hospitals' aggregate FTE resident caps for the hospitals' cost reporting periods that include July 1, 2003. (This example illustrates reductions to the IME caps only, but the methodology is the same for reductions to the direct GME caps):

''Hospitals A, B, and C are affiliated for the academic year beginning July 1, 2003. Hospital C is also affiliated with Hospitals D and E for the academic year beginning July 1, 2003. Thus, the commonly affiliated group for purposes of determining possible FTE cap reductions under section 1886(h)(7)(A)(iii) of the Act consists of Hospitals A, B, C, D, and E. Hospital A's and B's cost report that includes July 1, 2003 is their FYE June 30, 2004. Hospital C's and D's cost report that includes July 1, 2003 is their FYE December 31, 2003, and Hospital E's cost report that includes July 1, 2003 is its FYE September 30, 2003. Using steps 1 through 9 above, the reductions to the FTE resident caps of those hospitals in the affiliated group that trained a number of FTE residents in their cost reporting period that includes July 1, 2003, that is below their 'affiliated' FTE resident caps are determined in the table below.''

26. On page 49131,

a. First column,

(1) Lines 1 and 2, the phrase ''trained residents'' is corrected to read ''trained a number of residents'';

(2) Lines 16 through 18, the phrase ''minimizes the reductions to Hospital D's and E's '1996' FTE resident caps through the calculation of a pro rata'' is corrected to read ''partially offsets the reduction to Hospital D's and E's FTE resident caps through the application of a pro rata'';

(3) Line 22, the phrase ''the actual cap reduction'' is corrected to read ''the cap reduction'';

(4) Lines 33 through 44, the sentence ''We note that the total final FTE resident cap effective July 1, 2005 is 410 FTEs (the total under step 9), which, mathematically, is the same as subtracting 400 (the total FTEs trained in the group) from 440 (the aggregate ''1996'' FTE residents caps) multiplying by 75 percent, and subtracting the result from the original aggregate cap of 440 (that is, [440 − (0.75 (440 − 400))] = 410).'' is corrected to read ''We note that the aggregate total final FTE resident cap for the hospitals in the commonly affiliated group, effective July 1, 2005, is 410 (the total under step 9), which, mathematically, is the same as subtracting 400 (the aggregate total FTE residents trained in the group) from 440 (the aggregate ''1996'' FTE resident caps), multiplying by 75 percent, and subtracting the result from the original aggregate FTE resident cap of 440 (440 − (0.75(440 − 400))] = 410).''; and

(5) Lines 44 through 49 and second column, lines 1 through 11, delete the paragraph that begins ''We also note that the reductions to''.

b. Second column, lines 12 through 49 and third column lines 1 through 12, the paragraph that begins with the phrase ''We believe'' and ends with the phrase ''of the Act.'' is corrected to read ''We believe this final policy concerning the application of sections 1886(h)(7)(A)(i) and (iii) of the Act to hospitals that are affiliated 'as of July 1, 2003' addresses the commenters' concerns in that it protects hospitals from any reduction in their FTE resident caps if the aggregate FTE resident counts for the commonly affiliated group equal or exceed the aggregate FTE resident caps, and, in some cases, can limit the reductions in FTE resident caps. We believe this final policy also addresses the commenters' concerns that hospitals in an affiliated group as of July 1, 2003, should be allowed to modify their affiliation agreements as late as June 30, 2004, in order to reflect the resident rotations that actually occurred among the affiliated hospitals, and that the policy should be applied using a contemporaneous comparison of FTE resident counts and affiliated caps. Under our final policy, we will use the hospitals' affiliated FTE resident caps as reported on the cost report, which allows for modifications to the July 1, 2003, affiliation agreement by June 30, 2004, and a comparison of contemporaneous FTE resident caps and counts. The commenters also requested that we provide an extra opportunity for hospitals that were affiliated ''as of July 1, 2003'' to modify their affiliation agreements after publication of the final rule, if the final policy is significantly different from the proposed policy. We do not believe it is appropriate to allow hospitals to modify their affiliation agreements after publication of the final rule. The only reason we allow hospitals to modify their agreements by June 30 of an academic year is to allow adjustment to the FTE counts of each hospital in the affiliation to reflect the realities of the cross-training that occurred within that academic year. Thus, the decision as to whether or not an affiliation agreement should be modified should be based solely on whether the FTE counts first reflected in the affiliation agreement on July 1 of a year differ from the actual FTEs that trained at each hospital during the year. We expect that if affiliated hospitals experienced changes in resident rotations during the academic year that were not reflected in their affiliation agreement, they would have modified their affiliation agreement by the conclusion of the academic year as is permitted under our current policy. We do not believe it is appropriate to allow an additional opportunity for hospitals to modify their affiliation agreements for other purposes.''.

c. Third column,

(1) Lines 15 through 17, the phrase ''located in an other than large urban area is part of an affiliated group as of July 1, 2003 with a rural hospital that has'' is corrected to read ''located in an 'other than large' urban area is part of an affiliated group as of July 1, 2003, that includes a rural hospital that has'';

(2) Lines 18 through 26, the sentence ''The commenter stated that while the rural hospital is exempt from reductions to its FTE resident caps, the urban hospital could be 'penalized' because of the slots acquired under the affiliation agreement with the rural hospital, if the urban hospital did not fill all of those slots in its reference cost reporting period.'' is corrected to read ''The commenter stated that, while the rural hospital is exempt from reductions to its FTE resident caps, the urban hospital could be 'penalized' if, in its reference cost reporting period, the urban hospital

did not fill all of the slots it acquired under the affiliation agreement with the rural hospital.'';

(3) Line 18, the phrase ''that CMS carve out'' is corrected to read ''that CMS 'carve out.''';

(4) Line 34, the phrase ''of unused residency slots'' is corrected to read ''of ''unused'' residency slots''.

(5) Lines 39 through 41, the phrase ''we cannot exempt other hospitals outright from possible reductions to their FTE resident caps.'' is corrected to read ''section 1886(h)(7)(A) of the Act does not provide for exemptions from possible reductions to FTE resident caps.'';

(6) Line 44, the phrase ''part of an affiliated group'' is corrected to read ''part of a commonly affiliated group''; and

(7) Line 50, the phrase '''1996''' FTE resident caps'' is corrected to read ''FTE resident caps''.

27. On page 49132,

a. First column

(1) Lines 3 through 11, the sentence ''But if the aggregate FTE resident counts are below the aggregate ''affiliated'' FTE resident caps, then (except for rural hospitals with less than 250 beds), a hospital in the affiliated group that trained less FTE residents than its individual ''affiliated'' FTE resident cap would have its ''1996'' FTE resident cap reduced'' is corrected to read ''However, if the group's aggregate FTE resident count is below its aggregate FTE resident cap, then (except for rural hospitals with less than 250 beds), a hospital in the affiliated group that trained fewer FTE residents than its individual ''affiliated'' FTE resident cap would have its FTE resident cap reduced under section 1886(h)(7)(A)(i) of the Act.'';

(2) Lines 15 through 21, the phrase ''the hospital(s) with which it was affiliated as of July 1, 2003, the aggregate FTE resident counts were below the aggregate 'affiliated' FTE resident caps and the urban hospital was also training fewer residents than its 'affiliated' cap.'' is corrected to read ''the hospital(s) that are part of its commonly affiliated group as of July 1, 2003, the aggregate FTE resident counts were below the aggregate FTE resident caps and the urban hospital was also training fewer residents than its 'affiliated' cap.''; and

(3) Lines 21 through 38, the two sentences ''However, since the rural hospital's FTE resident caps are protected from reductions under section 1886(h)(7)(A)(i)(II) of the Act, the urban hospital could continue to affiliate with the rural hospital on and after July 1, 2005, and, to the extent that the rural hospital has FTE slots available to ''lend'' to the urban hospital, the urban hospital could receive a temporary increase to its FTE resident caps via the affiliation agreement with the rural hospital. Therefore, although this urban hospital may lose slots under section 1886(h)(7)(A)(i) of the Act, it may be able to receive additional slots temporarily by affiliating with the rural hospital.'' are corrected to read ''Since the rural hospital's FTE resident caps are protected from reductions under section 1886(h)(7)(A)(i)(II) of the Act, its FTE resident cap would not be reduced regardless of the comparison between its FTE resident counts and caps. Thus, the urban hospital could continue to affiliate with the rural hospital on and after July 1, 2005, and, to the extent that the rural hospital has FTE slots available within its FTE resident cap to ''lend'' to the urban hospital, the urban hospital could receive a temporary increase to its FTE resident caps via an affiliation agreement with the rural hospital. Therefore, although this urban hospital's FTE resident cap may be subject to reduction under section 1886(h)(7)(A)(i) of the Act, the hospital may be able to receive a temporary adjustment to its FTE resident cap by affiliating with the rural hospital in subsequent academic years.''

(4) Lines 43 through 69 and the second column lines 1 through 30, the text beginning with the phrase ''*Comment:* One commenter noted that'' and ending with the phrase ''the reference affiliated resident FTE cap.'' is corrected to read:

''*Comment:* One commenter noted that in the May 18, 2004 proposed rule (69 FR 28297), a hospital's reference resident level would be compared to the hospital's reference FTE resident cap as adjusted by applicable Medicare GME affiliation agreements. The commenter asked for clarification regarding the treatment of a hospital that, absent an affiliation agreement, has an FTE resident cap of zero, but the hospital received a temporary increase to its FTE resident cap by participating in a Medicare GME affiliated group. The commenter stated that in its reference period, the hospital's resident level was below its FTE cap as adjusted by the affiliation agreement and asked if, as a result, CMS would reduce its FTE resident cap below zero.''

''*Response:* An FTE resident cap would not be reduced below zero. That is, if the hospital's cap without any adjustment under an affiliation agreement is zero, the hospital's FTE resident cap would not be reduced to a negative number if its reference resident level is below the affiliated resident FTE cap for the reference period.''.

28. On page 49139, first column, lines 15 and 16, the phrase ''As we have stated in this final rule, each application by a hospital'' is corrected to read ''Each application by a hospital''.

29. On page 49148, first column, lines 36 and 37, the phrase ''score of 4 (expanding geriatrics program, Medicare physician scarcity area, residents'' is corrected to read ''score of 5 (expanding geriatrics program, which is also a primary care program, Medicare physician scarcity area, residents''.

30. On page 49149, first column, line 12, the citation ''§ 413.75(b)'' is corrected to read ''existing § 413.86(b)''.

31. On page 49158, second column,

a. Line 47, the phrase ''a criterion'' is corrected to read ''a 'bright line ' criterion''.

b. Line 56, at the end of the sentence add the following sentence ''The commenter stated that contrary to the authority provided to CMS in section 422 of Pub. L. 108–173, the agency's proposal would result in the redistribution of these resident positions in 'some wholesale manner'.''

32. On page 49159, second column, lines 55 through 61, the sentence ''The Congress did, however, recognize the unique status of reductions in FTE resident counts attributable to a hospital's participation in a demonstration project or the VRRP in the statute at section 1886(h)(7)(B)(vi) of the Act.'' is deleted.

33. On page 49165, last bulleted item, last line, the phrase ''in its existing programs.'' is corrected to read ''in its existing programs or the 2004 fill rate information of all of the programs at the hospital.''

34. On page 49168, fourth boxed paragraph C11, last line, the phrase ''defined under 413.75(b)'' is corrected to read ''defined under existing § 413.86(b).''

35. On page 49172,

a. Second column, lines 26 through 38, the phrase ''effective October 1, 2004, if a hospital can document that a particular resident matches simultaneously for a first year of training in a clinical base year, and for a second year of training in the specialty program in which the resident intends to seek board certification, the resident's initial residency period would be based on the specific specialty program for the subsequent year(s) of training in which the resident matches and not on the clinical base year program.'' is corrected to read ''effective for portions of cost reporting periods beginning on or after October 1, 2004, if a hospital can document that a particular resident

matches simultaneously for a first year of training in a clinical base year, and for a second year of training in a different specialty program, the resident's initial residency period would be based on the specific specialty program for the subsequent year(s) of training in which the resident matches and not on the clinical base year program.''

b. Third column, line 44, the phrase ''we are able to'' is corrected to read ''under current policy, we have been able to''.

c. Third column, line 65, ''effective October 1, 2004'' is corrected to read, ''effective for portions of cost reporting periods beginning on or after October 1, 2004.''

36. On page 49178, third column, lines 48 and 49, the phrase ''to financial intermediaries'' is corrected to read ''to fiscal intermediaries''.

37. On page 49180,

a. First column, line 3, the phrase ''we are also proposing'' is corrected to read ''we also proposed''.

b. Third column, lines 18 and 19, the phrase ''because we are proposing to'' is corrected to read ''because we proposed to''.

38. On page 49219,

a. Second column, line 62, the citation ''§ 485.649'' is corrected to read ''§ 485.647'';

b. Third column, line 1, the phrase ''to clarify that. Payment to the CAH for'' is corrected to read ''to clarify that payment to the CAH for''.

39. On page 49221, third column, line 53, the date ''December 31, 2005'' is corrected to read ''September 30, 2006''.

40. On page 49222, first column, line 22, the phrase ''§ 489.24(d) to § 489.24(d)'' is corrected to read ''§ 489.24(d) to § 489.24(e)''.

Corrections to the Regulations Text

§ 412.22 [Corrected]

■ 41. On page 49240, third column, in § 412.22 paragraph (e)(1) introductory text is corrected to read:

* * * * *

(1) Except as specified in paragraph (f) of this section, for cost reporting periods beginning on or after October 1, 1997—

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§ 412.103 [Corrected]

■ 42. On page 49244, third column, line 2, in § 412.103(a)(4), the date ''January 1, 2004'' is corrected to read ''October 1, 2006''.

§ 412.230 [Corrected]

■ 43. On page 49249,

■ a. First column, 1. In the amendatory instruction 21 for § 412.230, the instruction, ''I. Revising redesignated paragraphs (d)(3)(i), (d)(3)(ii), and adding (d)(3)(iii(C).'' is corrected to read ''I. Revising redesignated paragraphs (d)(3)(i), (d)(3)(ii), revising paragraph (d)(3)(iii) (B) and adding paragraph (d)(3)(iii)(C).''; and

■ 2. In § 412.230(a)(1)(ii), lines 3 and 4, the phrase ''from a rural area to another urban area'' is corrected to read ''from an urban area to another urban area''.

■ b. Second column,

1. Section 412.230(d)(3)(ii) is corrected by adding the following paragraph (d)(3)(ii)(B):

* * * * *

(B) With respect to redesignations for Federal fiscal years 2002 through 2005, the hospitals average hourly wage is, in the case of a hospital located in a rural area, at least 106 percent and in the case of a hospital located in an urban area, at least 108 percent of the average hourly wage of hospitals in the area in which the hospital is located.

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■ 2. In § 412.230(d)(3)(iii) (C), the phrase ''108 percent'' is corrected to read ''at least 108 percent''.

§ 412.232 [Corrected]

■ 3. In § 412.232(a)(1)(i), the year ''2005'' is corrected to read ''2006'';

■ 4. In § 412.232(a)(1)(ii), the phrase ''fiscal years 2005'' is corrected to read ''fiscal year 2006''; and

■ 5. In § 412.232(a)(4)(ii), the year ''2005'' is corrected to read ''2006''.

§ 412.312 [Corrected]

■ 44. On page 49250, second column, in § 412.312(e)(3), the cross-reference ''§ 412.348(c)'' is corrected to read ''§ 412.348(e)'' in two places.

§ 413.77 [Corrected]

■ 45. On page 49258, first column, § 413.77(f) is corrected to read as follows:

* * * * *

(f) *Residency match.* Effective for portions of cost reporting periods beginning on or after October 1, 2004, with respect to a resident who matches simultaneously for a first year of training in a primary care specialty, and for an additional year(s) of training in a nonprimary care specialty, the per resident amount that is used to determine direct GME payment with respect to that resident is the nonprimary care per resident amount for the first year of training in the primary care specialty and for the duration of the resident's training in the nonprimary care specialty.

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§ 413.79 [Corrected]

■ 46. On page 49259, second column, § 413.79(a)(10) is corrected to read as follows:

* * * * *

(a) * * *

(10) Effective for cost reporting periods beginning on or after October 1, 2004, if a hospital can document that a resident simultaneously matched for one year of training in a particular specialty program, and for a subsequent year(s) of training in a different specialty program, the resident's initial residency period will be determined based on the period of board eligibility associated with the program for which the resident matched for the subsequent year(s) of training.

* * * * *

§ 485.610 [Corrected]

■ 47. On page 49271,

■ a. Second column, § 485.610 is corrected by deleting paragraph (b)(3).

■ b. Third column,

■ 1. In § 485.610(c), in the last line, the phrase ''after October 1, 2006'' is corrected to read ''after January 1, 2006''; and

§ 485.620 [Corrected]

■ 2. In § 485.620(a), the cross-reference ''§ 485.646'' is corrected to read ''§ 485.647''.

Corrections to the Addendum

48. On page 49277,

a. First column,

(1) Lines 17 and 18, the phrase ''hearings and investigations, significant charge increases by hospitals, charges'' is corrected to read ''hearings and investigations concerning significant charge increases by hospitals, charges''; and

(2) Second full paragraph, lines 61 through 65, the sentence, ''This problem has now been resolved and along with the reasons stated above recommended that revert to a methodology using costs when calculating the annual outlier threshold.'' is corrected to read ''Because this problem has now been resolved, and for the reasons stated above, the commenter recommended that we revert to a methodology using costs when calculating the annual outlier threshold.''

b. Third column, line 69, the phrase ''data in updating charges, themselves.'' is corrected by removing the comma to read ''data in updating charges themselves.''

49. On page 49278, third column,

a. Line 35 the figure ''3.5'' is corrected to read ''3.6''; and

b. Line 36, the figure ''1.6'' is corrected to read ''1.5''.

50. On page 49290, second column, line 22 the figure "$199.02" is corrected to read "$199.01".

51. On pages 49612 through 49622, in Table 6A—New Diagnosis Codes the table is corrected by revising column 4 for listed entries to read as follows:

BILLING CODE 4120–01–P

Diagnosis Code	Description	CC	MDC	DRG
521.06	Dental caries pit and fissure	N	PRE 3	482 185, 186, 187
521.07	Dental caries of smooth surface	N	PRE 3	482 185, 186, 187
521.08	Dental caries of root surface	N	PRE 3	482 185, 186, 187
521.10	Excessive attrition, unspecified	N	PRE 3	482 185, 186, 187
521.11	Excessive attrition, limited to enamel	N	PRE 3	482 185, 186, 187
521.12	Excessive attrition, extending into dentine	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
521.13	Excessive attrition, extending into pulp	N	PRE 3	482 185, 186, 187
521.14	Excessive attrition, localized	N	PRE 3	482 185, 186, 187
521.15	Excessive attrition, generalized	N	PRE 3	482 185, 186, 187
521.20	Abrasion, unspecified	N	PRE 3	482 185, 186, 187
521.21	Abrasion, limited to enamel	N	PRE 3	482 185, 186, 187
521.22	Abrasion, extending into dentine	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
521.23	Abrasion, extending into pulp	N	PRE 3	482 185, 186, 187
521.24	Abrasion, localized	N	PRE 3	482 185, 186, 187
521.25	Abrasion, generalized	N	PRE 3	482 185, 186, 187
521.30	Erosion, unspecified	N	PRE 3	482 185, 186, 187
521.31	Erosion, limited to enamel	N	PRE 3	482 185, 186, 187
521.32	Erosion, extending into dentine	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
521.33	Erosion, extending into pulp	N	PRE 3	482 185, 186, 187
521.34	Erosion, localized	N	PRE 3	482 185, 186, 187
521.35	Erosion, generalized	N	PRE 3	482 185, 186, 187
521.40	Pathological resorption, unspecified	N	PRE 3	482 185, 186, 187
521.41	Pathological resorption, internal	N	PRE 3	482 185, 186, 187
521.42	Pathological resorption, external	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
521.49	Other pathological resorption	N	PRE 3	482 185, 186, 187
523.20	Gingival recession, unspecified	N	PRE 3	482 185, 186, 187
523.21	Gingival recession, minimal	N	PRE 3	482 185, 186, 187
523.22	Gingival recession, moderate	N	PRE 3	482 185, 186, 187
523.23	Gingival recession, severe	N	PRE 3	482 185, 186, 187
523.24	Gingival recession, localized	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
523.25	Gingival recession, generalized	N	PRE 3	482 185, 186, 187
524.07	Excessive tuberosity of jaw	N	PRE 3	482 185, 186, 187
524.20	Unspecified anomaly of dental arch relationship	N	PRE 3	482 185, 186, 187
524.21	Angle's class I	N	PRE 3	482 185, 186, 187
524.22	Angle's class II	N	PRE 3	482 185, 186, 187
524.23	Angle's class III	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
524.24	Open anterior occlusal relationship	N	PRE 3	482 185, 186, 187
524.25	Open posterior occlusal relationship	N	PRE 3	482 185, 186, 187
524.26	Excessive horizontal overlap	N	PRE 3	482 185, 186, 187
524.27	Reverse articulation	N	PRE 3	482 185, 186, 187
524.28	Anomalies of interarch distance	N	PRE 3	482 185, 186, 187
524.29	Other anomalies of dental arch relationship	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
524.30	Unspecified anomaly of tooth position	N	PRE 3	482 185, 186, 187
524.31	Crowding of teeth	N	PRE 3	482 185, 186, 187
524.32	Excessive spacing of teeth	N	PRE 3	482 185, 186, 187
524.33	Horizontal displacement of teeth	N	PRE 3	482 185, 186, 187
524.34	Vertical displacement of teeth	N	PRE 3	482 185, 186, 187
524.35	Rotation of teeth	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
524.36	Insufficient interocclusal distance of teeth (ridge)	N	PRE 3	482 185, 186, 187
524.37	Excessive interocclusal distance of teeth	N	PRE 3	482 185, 186, 187
524.39	Other anomalies of tooth position	N	PRE 3	482 185, 186, 187
524.50	Dentofacial functional abnormality, unspecified	N	PRE 3	482 185, 186, 187
524.51	Abnormal jaw closure	N	PRE 3	482 185, 186, 187
524.52	Limited mandibular range of motion	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
524.53	Deviation in opening and closing of the mandible	N	PRE 3	482 185, 186, 187
524.54	Insufficient anterior guidance	N	PRE 3	482 185, 186, 187
524.55	Centric occlusion maximum intercuspation discrepancy	N	PRE 3	482 185, 186, 187
524.56	Non-working side interference	N	PRE3	482 185, 186, 187
524.57	Lack of posterior occlusal support	N	PRE 3	482 185, 186, 187
524.59	Other dentofacial functional abnormalities	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
524.64	Temporomandibular joint sounds on opening and/or closing the jaw	N	PRE 3	482 185, 186, 187
524.75	Vertical displacement of alveolus and teeth	N	PRE 3	482 185, 186, 187
524.76	Occlusal plane deviation	N	PRE 3	482 185, 186, 187
524.81	Anterior soft tissue impingement	N	PRE 3	482 185, 186, 187
524.82	Posterior soft tissue impingement	N	PRE 3	482 185, 186, 187
524.89	Other specified dentofacial anomalies	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
525.20	Unspecified atrophy of edentulous alveolar ridge	N	PRE 3	482 185, 186, 187
525.21	Minimal atrophy of the mandible	N	PRE 3	482 185, 186, 187
525.22	Moderate atrophy of the mandible	N	PRE 3	482 185, 186, 187
525.23	Severe atrophy of the mandible	N	PRE 3	482 185, 186, 187
525.24	Minimal atrophy of the maxilla	N	PRE 3	482 185, 186, 187
525.25	Moderate atrophy of the maxilla	N	PRE 3	482 185, 186, 187

Diagnosis Code	Description	CC	MDC	DRG
525.26	Severe atrophy of the maxilla	N	PRE 3	482 185, 186, 187
528.71	Minimal keratinized residual ridge mucosa	N	PRE 3	482 185, 186, 187
528.72	Excessive keratinized residual ridge mucosa	N	PRE 3	482 185, 186, 187
528.79	Other disturbances of oral epithelium, including tongue	N	PRE 3	482 185, 186, 187

52. On page 49628, in Table 6C.—Invalid Diagnosis Codes, the table is corrected by adding the following footnote at the end of the table:

[109] Assigned to the Secondary Diagnosis list that defines a Major Complication.

53. On page 49631, in Table 6E.—Revised Diagnosis Code Titles, fourth entry, the MDC (column 4) is revised to read as follows:

Diagnosis code	Description	CC	MDC	DRG
250.63	Diabetes with neurological manifestations, type I [juvenile type], uncontrolled	Y	PRE 1	512,513 18,19.

54. On page 49640, in Table 6E.—Revised Diagnosis Code Titles, the table is corrected by adding the two footnotes at the end of the table to read as follows:

[1] Classified as a Major Problem.
[2] Classified as a Major Related Condition.

55. On page 49641, in Table 6F.—Revised Procedure Code Titles, second and third entry, the MDC (column 4) is revised to read as follows:

Procedure code	Description	OR	MDC	DRG
01.22	Removal of intracranial neurostimulator lead(s)	Y	1 17	1, 2, 3. 406, 407, 539, 540.
02.93	Implantation or replacement of intracranial neurostimulator lead(s)	Y	1 17 21 24	1, 2, 3. 406, 407, 539, 540. 442, 443. 486.

56. On pages 49738 through 49754, Table 11.—FY 2005 LTC–DRGs, Relative Weights, Geometric Average Length Of Stay, and 5/6ths of the Geometric Average Length of Stay, the table is corrected to read as follows:

TABLE 11.-- FY 2005 LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY, AND 5/6THS OF THE GEOMETRIC AVERAGE LENGTH OF STAY

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
2	[8] CRANIOTOMY AGE >17 W/O CC	1.1899	28.5	23.8
3	[8] CRANIOTOMY AGE 0-17	1.1899	28.5	23.8
6	[8] CARPAL TUNNEL RELEASE	0.6064	21.1	17.6
26	[8] SEIZURE & HEADACHE AGE 0-17	0.6064	21.1	17.6
30	[8] TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	0.8508	24.3	20.3
32	[8] CONCUSSION AGE >17 W/O CC	0.6064	21.1	17.6
33	[8] CONCUSSION AGE 0-17	0.6064	21.1	17.6
36	[8] RETINAL PROCEDURES	0.4586	16.9	14.1
37	[8] ORBITAL PROCEDURES	0.4586	16.9	14.1
38	[8] PRIMARY IRIS PROCEDURES	0.4586	16.9	14.1
39	[8] LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	0.4586	16.9	14.1
40	[8] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	0.4586	16.9	14.1
41	[8] EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	0.4586	16.9	14.1
42	[8] INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	0.4586	16.9	14.1
48	[8] OTHER DISORDERS OF THE EYE AGE 0-17	0.4586	16.9	14.1
49	[8] MAJOR HEAD & NECK PROCEDURES	1.1899	28.5	23.8
50	[8] SIALOADENECTOMY	1.1899	28.5	23.8
51	[8] SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	1.1899	28.5	23.8
52	[8] CLEFT LIP & PALATE REPAIR	1.1899	28.5	23.8
53	[8] SINUS & MASTOID PROCEDURES AGE >17	1.1899	28.5	23.8
54	[8] SINUS & MASTOID PROCEDURES AGE 0-17	1.1899	28.5	23.8
56	[8] RHINOPLASTY	1.1899	28.5	23.8
57	[8] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6064	21.1	17.6
58	[8] T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.6064	21.1	17.6
59	[8] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	0.6064	21.1	17.6
60	[8] TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	0.6064	21.1	17.6
61	[8] MYRINGOTOMY W TUBE INSERTION AGE >17	0.6064	21.1	17.6
62	[8] MYRINGOTOMY W TUBE INSERTION AGE 0-17	0.6064	21.1	17.6
66	[8] EPISTAXIS	0.6064	21.1	17.6
67	[8] EPIGLOTTITIS	1.1899	28.5	23.8
70	[8] OTITIS MEDIA & URI AGE 0-17	0.6064	21.1	17.6
71	[8] LARYNGOTRACHEITIS	0.4586	16.9	14.1
72	[8] NASAL TRAUMA & DEFORMITY	0.8508	24.3	20.3
74	[8] OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	0.6064	21.1	17.6
81	[8] RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	0.6064	21.1	17.6
91	[8] SIMPLE PNEUMONIA & PLEURISY AGE 0-17	0.8508	24.3	20.3
98	[8] BRONCHITIS & ASTHMA AGE 0-17	0.4586	16.9	14.1
104	[8] CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH	0.4586	16.9	14.1

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
105	[8] CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH	0.4586	16.9	14.1
106	[8] CORONARY BYPASS W PTCA	0.4586	16.9	14.1
107	[8] CORONARY BYPASS W CARDIAC CATH	0.4586	16.9	14.1
111	[8] MAJOR CARDIOVASCULAR PROCEDURES W/O CC	0.4586	16.9	14.1
137	[8] CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	0.8508	24.3	20.3
146	[8] RECTAL RESECTION W CC	1.8658	38.6	32.2
147	[8] RECTAL RESECTION W/O CC	1.8658	38.6	32.2
151	[8] PERITONEAL ADHESIOLYSIS W/O CC	1.8658	38.6	32.2
153	[8] MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.8658	38.6	32.2
155	[8] STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC	1.8658	38.6	32.2
156	[8] STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	1.8658	38.6	32.2
158	[8] ANAL & STOMAL PROCEDURES W/O CC	1.1899	28.5	23.8
160	[8] HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC	0.8508	24.3	20.3
162	[8] INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	0.4586	16.9	14.1
163	[8] HERNIA PROCEDURES AGE 0-17	0.4586	16.9	14.1
164	[8] APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	1.8658	38.6	32.2
165	[8] APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.8658	38.6	32.2
166	[8] APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.8658	38.6	32.2
167	[8] APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	1.8658	38.6	32.2
169	[8] MOUTH PROCEDURES W/O CC	0.8508	24.3	20.3
184	[8] ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	0.6064	21.1	17.6
186	[8] DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17	0.8508	24.3	20.3
187	[8] DENTAL EXTRACTIONS & RESTORATIONS	0.8508	24.3	20.3
190	[8] OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	0.8508	24.3	20.3
192	[8] PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8658	38.6	32.2
194	[8] BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC	0.4586	16.9	14.1
195	[8] CHOLECYSTECTOMY W C.D.E. W CC	1.8658	38.6	32.2
196	[8] CHOLECYSTECTOMY W C.D.E. W/O CC	1.8658	38.6	32.2
198	[8] CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC	1.8658	38.6	32.2
199	[8] HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	0.8508	24.3	20.3
211	[8] HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC	1.8658	38.6	32.2
212	[8] HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	1.8658	38.6	32.2
219	[8] LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC	1.1899	28.5	23.8
220	[8] LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0-17	1.1899	28.5	23.8
223	[8] MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC	1.1899	28.5	23.8

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
224	[8] SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC	0.6064	21.1	17.6
232	[8] ARTHROSCOPY	0.8508	24.3	20.3
252	[8] FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	0.8508	24.3	20.3
255	[8] FX, SPRN, STRN & DISL OF UPARM, LOW LEG EX FOOT AGE 0-17	0.8508	24.3	20.3
257	[8] TOTAL MASTECTOMY FOR MALIGNANCY W CC	0.4586	16.9	14.1
258	[8] TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	0.4586	16.9	14.1
259	[8] SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	0.4586	16.9	14.1
279	[8] CELLULITIS AGE 0-17	0.4586	16.9	14.1
282	[8] TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	0.8508	24.3	20.3
286	[8] ADRENAL & PITUITARY PROCEDURES	1.1899	28.5	23.8
289	[8] PARATHYROID PROCEDURES	1.1899	28.5	23.8
290	[8] THYROID PROCEDURES	1.1899	28.5	23.8
291	[8] THYROGLOSSAL PROCEDURES	1.1899	28.5	23.8
293	[8] OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1899	28.5	23.8
298	[8] NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	0.6064	21.1	17.6
309	[8] MINOR BLADDER PROCEDURES W/O CC	1.1899	28.5	23.8
311	[8] TRANSURETHRAL PROCEDURES W/O CC	0.8508	24.3	20.3
313	[8] URETHRAL PROCEDURES, AGE >17 W/O CC	1.1899	28.5	23.8
314	[8] URETHRAL PROCEDURES, AGE 0-17	0.6064	21.1	17.6
322	[8] KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	0.4586	16.9	14.1
327	[8] KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	0.4586	16.9	14.1
329	[8] URETHRAL STRICTURE AGE >17 W/O CC	0.6064	21.1	17.6
330	[8] URETHRAL STRICTURE AGE 0-17	0.6064	21.1	17.6
333	[8] OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	0.6064	21.1	17.6
334	[8] MAJOR MALE PELVIC PROCEDURES W CC	1.8658	38.6	32.2
335	[8] MAJOR MALE PELVIC PROCEDURES W/O CC	1.8658	38.6	32.2
337	[8] TRANSURETHRAL PROSTATECTOMY W/O CC	1.1899	28.5	23.8
340	[8] TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	0.4586	16.9	14.1
342	[8] CIRCUMCISION AGE >17	0.4586	16.9	14.1
343	[8] CIRCUMCISION AGE 0-17	0.4586	16.9	14.1
351	[8] STERILIZATION, MALE	0.4586	16.9	14.1
353	[8] PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY	1.8658	38.6	32.2
354	[8] UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC	1.8658	38.6	32.2
355	[8] UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC	1.8658	38.6	32.2
356	[8] FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES	1.1899	28.5	23.8
357	[8] UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY	1.1899	28.5	23.8
358	[8] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.1899	28.5	23.8
359	[8] UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	1.1899	28.5	23.8
360	[8] VAGINA, CERVIX & VULVA PROCEDURES	1.1899	28.5	23.8
361	[8] LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	0.4586	16.9	14.1

LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
362	[8] ENDOSCOPIC TUBAL INTERRUPTION	0.4586	16.9	14.1
363	[8] D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	0.4586	16.9	14.1
364	[8] D&C, CONIZATION EXCEPT FOR MALIGNANCY	0.4586	16.9	14.1
370	[8] CESAREAN SECTION W CC	0.8508	24.3	20.3
371	[8] CESAREAN SECTION W/O CC	0.4586	16.9	14.1
372	[8] VAGINAL DELIVERY W COMPLICATING DIAGNOSES	0.4586	16.9	14.1
373	[8] VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	0.4586	16.9	14.1
374	[8] VAGINAL DELIVERY W STERILIZATION &/OR D&C	0.4586	16.9	14.1
375	[8] VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	0.4586	16.9	14.1
376	[8] POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE	0.4586	16.9	14.1
377	[8] POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE	0.4586	16.9	14.1
378	[8] ECTOPIC PREGNANCY	0.8508	24.3	20.3
379	[8] THREATENED ABORTION	0.4586	16.9	14.1
380	[8] ABORTION W/O D&C	0.4586	16.9	14.1
381	[8] ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	0.4586	16.9	14.1
382	[8] FALSE LABOR	0.4586	16.9	14.1
383	[8] OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	0.4586	16.9	14.1
384	[8] OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS	0.4586	16.9	14.1
385	[8] NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY	0.4586	16.9	14.1
386	[8] EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE	0.4586	16.9	14.1
387	[8] PREMATURITY W MAJOR PROBLEMS	0.4586	16.9	14.1
388	[8] PREMATURITY W/O MAJOR PROBLEMS	0.4586	16.9	14.1
389	[8] FULL TERM NEONATE W MAJOR PROBLEMS	0.4586	16.9	14.1
390	[8] NEONATE W OTHER SIGNIFICANT PROBLEMS	0.4586	16.9	14.1
391	[8] NORMAL NEWBORN	0.4586	16.9	14.1
392	[8] SPLENECTOMY AGE >17	1.8658	38.6	32.2
393	[8] SPLENECTOMY AGE 0-17	1.8658	38.6	32.2
396	[8] RED BLOOD CELL DISORDERS AGE 0-17	0.6064	21.1	17.6
402	[8] LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC	0.8508	24.3	20.3
405	[8] ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	0.4586	16.9	14.1
407	[8] MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC	1.1899	28.5	23.8
411	[8] HISTORY OF MALIGNANCY W/O ENDOSCOPY	0.4586	16.9	14.1
412	[8] HISTORY OF MALIGNANCY W ENDOSCOPY	0.4586	16.9	14.1
417	[8] SEPTICEMIA AGE 0-17	0.8508	24.3	20.3
422	[8] VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	0.6064	21.1	17.6
432	[8] OTHER MENTAL DISORDER DIAGNOSES	0.4586	16.9	14.1
446	[8] TRAUMATIC INJURY AGE 0-17	0.8508	24.3	20.3
448	[8] ALLERGIC REACTIONS AGE 0-17	0.8508	24.3	20.3

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LTC-DRG	Description	Relative Weight	Geometric Average Length of Stay	5/6ths of the Geometric Average Length of Stay
451	[8] POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	0.6064	21.1	17.6
471	[8] BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY	0.8508	24.3	20.3
481	[8] BONE MARROW TRANSPLANT	1.1899	28.5	23.8
482	[8] TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	1.1899	28.5	23.8
484	[8] CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	1.1899	28.5	23.8
491	[8] MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY	1.8658	38.6	32.2
492	[8] CHEMOTHERAPY W ACUTE LEUKEMIA OR W USE OF HI DOSE CHEMOAGENT	1.1899	28.5	23.8
494	[8] LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.1899	28.5	23.8
498	[8] SPINAL FUSION EXCEPT CERVICAL W/O CC	0.8508	24.3	20.3
504	[8] EXTENSIVE BURNS OF FULL THICKNESS BURNS WITH MECH VENT 96+HRS WITH SKIN GRAFT	1.8658	38.6	32.2
507	[8] FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA	0.8508	24.3	20.3
516	[8] PERCUTANEOUS CARDIOVASC PROC W AMI	0.6064	21.1	17.6
520	[8] CERVICAL SPINAL FUSION W/O CC	0.8508	24.3	20.3
525	[8] OTHER HEART ASSIST SYSTEM IMPLANT	1.8658	38.6	32.2
526	[8] PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W AMI	0.8508	24.3	20.3
527	[8] PERCUTNEOUS CARDIOVASULAR PROC W DRUG ELUTING STENT W/O AMI	0.8508	24.3	20.3
528	[8] INTRACRANIAL VASCULAR PROC W PDX HEMORRHAGE	1.1899	28.5	23.8
530	[8] VENTRICULAR SHUNT PROCEDURES W/O CC	1.1899	28.5	23.8
534	[8] EXTRACRANIAL PROCEDURES W/O CC	0.4586	16.9	14.1
540	[8] LYMPHOMA & LEUKEMIA W MAJOR OR PROCEDURE W/O CC	0.6064	21.1	17.6

[8] Relative weights for these LTC-DRGs were determined by assigning these cases to the appropriate low volume quintile because they had no LTCH cases in the FY 2003 MedPAR file.

BILLING CODE 4120–01–C

IV. Correction of Errors in Wage Index, Geographic Reclassification, and IPPS Payment Rate Tables and Related Addendum Language

We are correcting technical errors in the tables and addendum language of the FY 2005 final rule relating to the wage indexes, geographic reclassifications, IPPS payment rates. CMS and the fiscal intermediaries made errors in handling the data used to calculate certain average hourly wages, wage indexes, and capital geographic adjustment factors published in Tables 2, $3A_1$, $3A_2$, $3B_1$, $3B_2$, $4A_1$, $4A_2$, $4B_1$, $4B_2$, $4C_1$, $4C_2$, 4G, 4H. This mishandling of data also caused technical errors in the average hourly wage data comparison used to formulate the list of counties qualifying for the out-migration adjustment published in Table 4J.

In addition, there were technical errors in hospital geographic reclassification data displayed in Tables $9A_1$ and $9A_2$. We also inadvertently omitted information and made typographical errors in several of the entries published in Table 9B.

We have corrected the errors in the wage tables and geographic reclassification tables. These corrected tables are posted and available on the CMS Web site at: *http://www.cms.hhs.gov/providers/hipps/ippswage.asp*. These corrected tables are effective for discharges occurring on or after October 1, 2004. We note that the corrected tables, addendum language and revised impact analysis, will be included in a forthcoming correction notice to be published in the **Federal Register**.

As a result of the revisions to the wage index tables, the FY 2005 hospital inpatient PPS operating and capital payment rates, published in Table 1A, 1B, 1C, and 1D also have been revised. The revised rates are posted and available on the CMS Web site at: *http://www.cms.hhs.gov/providers/hipps/*. The corrections to the hospital inpatient PPS operating and capital payment rates are effective for discharges occurring on or after October 1, 2004. We note that the corrected payment rate tables will also be published in the **Federal Register**.

V. Waiver of Proposed Rulemaking and Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a

notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that a notice and comment process is impracticable, unnecessary or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

The policies and payment methodology expressed in the FY 2005 final rule have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the FY 2005 final rule that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodology that were expressed in the final rule. For example, this notice corrects typographical errors, inserts comments and responses that were inadvertently omitted from the final rule, makes clarifications to the preamble and regulations text, and revises inaccurate tabular data. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. We also believe it is in the public interest to waive notice and comment procedures and the 30-day delay in effective date for this notice. This correction notice is intended to ensure that the FY 2005 final rule accurately reflects the policies expressed in the final rule, and that the corrected information is made available to the public prior to October 1, 2004, the date on which the final rule becomes effective.

For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary and impracticable, and that it is in the public interest to make this notice effective in conjunction with the final rule to which the corrections apply (and would be contrary to the public interest to do otherwise). Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 30, 2004.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. 04–22389 Filed 9–30–04; 4:44 pm]

BILLING CODE 4120–01–P

Federal Register

Thursday,
October 7, 2004

Part IV

The President

Proclamation 7824—Fire Prevention Week, 2004

Proclamation 7825—Child Health Day, 2004

Proclamation 7826—To Implement the 2004 United States-Israel Agreement on Trade in Agricultural Products

Federal Register
Vol. 69, No. 194
Thursday, October 7, 2004

Presidential Documents

Title 3—

The President

Proclamation 7824 of October 4, 2004

Fire Prevention Week, 2004

By the President of the United States of America

A Proclamation

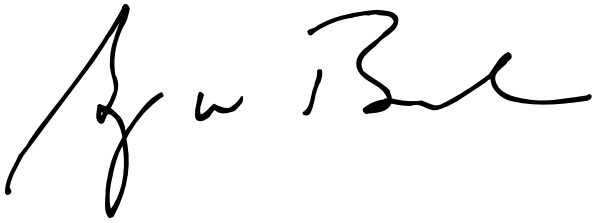
Fire Prevention Week is an opportunity for all Americans to learn more about how to avoid fires, as well as how to best respond in case of such an emergency. By making fire safety a priority, we can help limit the devastating effects of fires and enhance the safety of our citizens.

A large majority of fire deaths in the United States occur in the home. This year's theme, ''It's Fire Prevention Week: Test Your Smoke Alarms,'' reflects the importance of installing and maintaining working smoke alarms on every floor of the home. As vital early warning systems, smoke alarms reduce the chances of a fire becoming fatal by approximately 50 percent. Americans can also take steps to reduce the chance of a fire ever starting. These include using electrical devices safely, avoiding overloading circuits, and carefully operating stoves, fireplaces, and space heaters. We should also supervise our children and educate them about the dangers of lighters and matches, exercise care in the storing of firewood and other flammable materials, and obey local burning laws. More information about these and other measures is available from the National Fire Protection Association and the Department of Homeland Security's United States Fire Administration.

Firefighters are among our greatest heroes, and they risk their lives each day to protect our citizens and our homeland. All Americans owe them a debt of gratitude for their courage and dedication. By working to prevent disasters and by being prepared, we support firefighters as they serve communities across 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 October 3 through October 9, 2004, as Fire Prevention Week. I call upon the people of the United States to observe this week with appropriate activities and to undertake efforts to prevent fires and their tragic consequences.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–22757
Filed 10–6–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7825 of October 4, 2004

Child Health Day, 2004

By the President of the United States of America

A Proclamation

Parents play a vital role in keeping their children healthy, and when it comes to helping children make right choices, there is work for all Americans to do. Parents, teachers, faith-based and community groups, and government leaders are working together to counter the negative influences in today's culture, highlight the benefits of healthy lifestyles, and educate children about the consequences of their actions.

By promoting good nutrition and regular physical activity, parents help their children perform better in the classroom and live healthy lives. To encourage healthy families, my Administration is helping young people learn the simple steps to live better through the HealthierUS Initiative and the President's Challenge awards program. These programs encourage young people to eat a nutritious diet rich in fruits and vegetables and to set aside time every day for physical activity, such as playing sports, biking, or even helping with yard work at home. Encouraging healthy habits early in life helps give children a head start and gives them the best chance of reaching their potential.

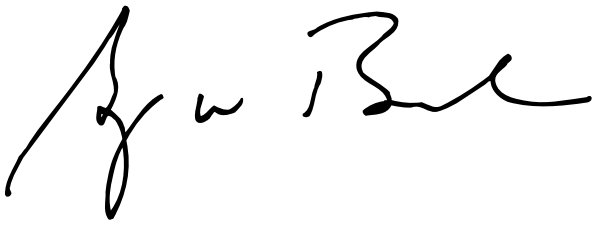
Our youth are challenged with tough choices. We must continue to promote responsibility among our Nation's young people by providing them with the knowledge they need to make the right decisions concerning drug and alcohol use. My Administration supports education programs that address these issues. Through the National Youth Anti-Drug Media Campaign and Drug-Free Communities Program, we are working to ensure that young people understand the serious risks and consequences of substance abuse. And in order to help kids who need help, my Administration supports random drug testing as a prevention tool. We have also increased support for abstinence-only education programs, including grants for community and faith-based organizations, because abstinence is the only sure way to prevent teenage pregnancy and sexually transmitted diseases.

We all have an important role in giving America's children a healthy start in life by teaching them that the decisions they make today will affect them for the rest of their lives. By helping them make the right choices, we better prepare them for a hopeful future.

The Congress, by a joint resolution approved May 18, 1928, as amended (36 U.S.C. 105), has called for the designation of the first Monday in October as ''Child Health Day'' and has requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Monday, October 4, 2004, as Child Health Day. I call upon families, schools, child health professionals, faith-based and community organizations, and governments to help all our children discover the rewards of good health and wellness.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



[FR Doc. 04–22758
Filed 10–6–04; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7826 of October 4, 2004

To Implement the 2004 United States-Israel Agreement on Trade in Agricultural Products

By the President of the United States of America

A Proclamation

1. On April 22, 1985, the United States entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the ''FTA''), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''FTA Act'') (19 U.S.C. 2112 Note).

2. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the Government of the United States entered into an agreement with the Government of Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement''). The 2004 Agreement reflects an effort by the United States and Israel to address, through 2008, their continuing differences over the meaning of certain provisions in the FTA governing access for United States agricultural products to Israel's market.

3. Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the FTA.

4. Pursuant to section 4(b) of the FTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel, to provide through the close of December 31, 2008, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges.

5. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (the ''Trade Act'') authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

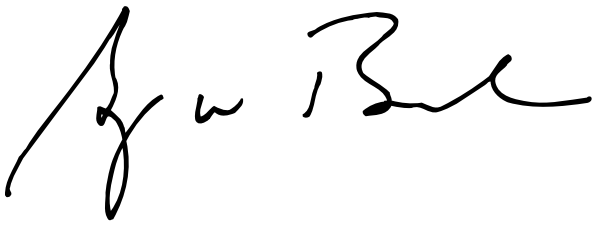
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 4 of the FTA Act and section 604 of the Trade Act, do hereby proclaim:

(1) In order to implement aspects of the 2004 Agreement with the Government of Israel, concerning certain aspects of trade in agricultural products, the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3) The modifications to the HTS made by the Annex to this proclamation shall be effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, and the tariff treatment set forth therein shall be effective as provided in such Annex through December 31, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand this fourth day of October, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-ninth.



Billing code 3195–01–P

ANNEX

MODIFICATIONS TO SUBCHAPTER VIII OF CHAPTER 99
OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2004, and through the close of December 31, 2008, subchapter VIII of chapter 99 of the HTS is modified as provided herein:

1. U.S. note 1 to such subchapter is modified by striking "December 31, 2003," and by inserting in lieu thereof "December 31, 2008,".

2. U.S. note 3 is modified by inserting at the end of the table therein the following additional applicable time periods and quantities:

[Applicable time period]	[Quantity (kg)]
"Calendar year 2004	383,000
Calendar year 2005	402,150
Calendar year 2006	422,258
Calendar year 2007	443,370
Calendar year 2008	465,539"

3. U.S. note 4 is modified by inserting at the end of the table therein the following additional applicable time periods and quantities:

[Applicable time period]	[Quantity (kg)]
"Calendar year 2004	1,160,000
Calendar year 2005	1,194,800
Calendar year 2006	1,230,644
Calendar year 2007	1,267,563
Calendar year 2008	1,305,590"

4. U.S. note 5 is modified by inserting at the end of the table therein the following additional applicable time periods and quantities:

[Applicable time period]	[Quantity (kg)]
"Calendar year 2004	1,279,000
Calendar year 2005	1,317,370
Calendar year 2006	1,356,891
Calendar year 2007	1,397,598
Calendar year 2008	1,439,526"

5. U.S. note 6 is modified by inserting at the end of the table therein the following additional applicable time period and quantity:

[Applicable time period]	[Quantity (kg)]
"Calendar year 2004	116,000
Calendar year 2005	119,480
Calendar year 2006	123,064
Calendar year 2007	126,756
Calendar year 2008	130,559"

6. U.S. note 7 is modified by inserting at the end of the table therein the following additional applicable time periods and quantities:

[Applicable time period]	[Quantity (kg)]
"Calendar year 2004	405,317
Calendar year 2005	417,477
Calendar year 2006	430,001
Calendar year 2007	442,901
Calendar year 2008	456,188"

[FR Doc. 04–22759
Filed 10–6–04; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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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*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

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