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Presidential Documents

Title 3—

The President

Presidential Determination No. 2005–05 of October 20, 2004

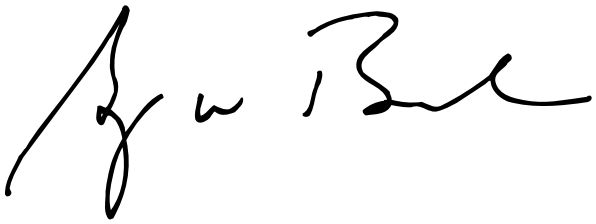
Presidential Determination Relating to Obligation of Cooperative Threat Reduction Funds in Albania under Section 1308 of the National Defense Authorization Act for Fiscal Year 2004

Memorandum for the Secretary of State

Pursuant to section 1308(e) of the National Defense Authorization Act for Fiscal Year 2004 (Title XIII of Public Law 108–136) and the authority vested in me by section 1203(d) of the Cooperative Threat Reduction Act of 1993 (Title XII of Public Law 103–160), as amended (CTR Act), I hereby certify that Albania is committed to the courses of action enumerated in section 1203(d) of the CTR Act.

I have also enclosed the justification for this certification.

You are authorized and directed to transmit this certification and justification to the Congress and to arrange for the publication of this memorandum in the **Federal Register**.



THE WHITE HOUSE,
Washington, October 20, 2004.

[FR Doc. 04–24672
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Rules and Regulations

Federal Register

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Wednesday, November 3, 2004

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

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FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 106, and 109

[Notice 2004–14]

Coordinated and Independent Expenditures by Party Committees

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission is removing its rules restricting the ability of political party committees to make both independent expenditures and coordinated party expenditures with respect to the same candidate's general election campaign for Federal office. The Commission is also repealing its rules prohibiting political party committees that make coordinated party expenditures with respect to a candidate from transferring funds to, or assigning authority to make coordinated party expenditures to, or receiving a transfer of funds from, a political party committee that has made or intends to make an independent expenditure with respect to that candidate. These rules were originally promulgated to implement section 213 of the Bipartisan Campaign Reform Act of 2002. However, in *McConnell* v. *FEC,* the U.S. Supreme Court held that section 213 is unconstitutional. Therefore, the Commission is now removing the rules implementing section 213. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: *Effective Date:* December 3, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Ron B. Katwan, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Notice of Proposed Rulemaking (''NPRM''), on which these final rules are based, was published in the **Federal Register** on June 30, 2004. 69 *FR* 39,373 (June 30, 2004). The comment period closed on July 30, 2004. The Commission received three written comments on the proposed rules. These Final Rules are identical to the rules proposed in the NPRM.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on October 28, 2004.

Explanation and Justification

To conform its regulations to the Supreme Court's invalidation of section 213 of the Bipartisan Campaign Reform Act of 2002 (Pub. L. 107–155 (Mar. 27, 2002)) (''BCRA'') in *McConnell* v. *FEC,* 540 U.S. 93, 199–205 (2003), the Commission is removing its regulations at 11 CFR 109.35 and deleting any cross-references to that section in other regulations.

I. 11 CFR 102.6—Transfer of Funds; Collecting Agents

The Commission is revising section 102.6 by deleting the cross-reference to section 109.35, which is being removed.

II. 11 CFR 106.8—Allocation of Expenses for Political Party Committee Phone Banks That Refer to Clearly Identified Federal Candidate

The Commission is revising section 106.8 by deleting the cross-reference to section 109.35, which is being removed.

III. 11 CFR 109.30—How Are Political Party Committees Treated for Purposes of Coordinated and Independent Expenditures?

The Commission is revising section 109.30 by deleting the cross-references to section 109.35, which is being removed.

IV. 11 CFR 109.33—May a Political Party Committee Assign Its Coordinated Party Expenditure Authority to Another Political Party Committee?

The Commission is revising section 109.33 by deleting the cross-reference to section 109.35, which is being removed.

V. 11 CFR 109.35—What Are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection With the General Election of a Candidate?

Under the Federal Election Campaign Act of 1971 (the ''Act''), as amended, 2 U.S.C. 431 *et seq.*, a national committee, State committee, or a subordinate committee of a State committee of a political party may make expenditures in coordination with a Federal candidate for that candidate's general election campaign [1] up to prescribed limits without these expenditures counting against the party committee's contribution limits. 2 U.S.C. 441a(d)(1)–(3); 11 CFR 109.32. While the Act limits coordinated expenditures, the Supreme Court has determined that political party committees may make unlimited ''independent expenditures,'' [2] which are not coordinated with a candidate or a candidate's authorized committees or agents. *See Colorado Republican Federal Campaign Committee* v. *FEC,* 518 U.S. 604 (1996) (''Colorado I'').[3]

BCRA section 213 amended 2 U.S.C. 441a(d), by prohibiting political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers

[1] *See* 2 U.S.C. 441a(a)(7)(B)(i)–(ii) for a definition of coordinated party expenditures. *See also* 11 CFR 109.20(b).

[2] ''Independent expenditure'' is defined in 2 U.S.C. 431(17) *See also* 11 CFR 100.16.

[3] The holding of Colorado I is limited to independent expenditures in connection with Congressional campaigns. The opinion in Colorado I did not address the issue of whether regulation of independent expenditures is constitutionally permissible in connection with Presidential campaigns. (''Since this case involves only the provision concerning congressional races we do not address issues that might grow out of the public funding of presidential campaigns.'') 518 U.S. at 612. Thus, the opinion in Colorado I did not reach the issue of whether former 11 CFR 110.7(a)(5) which prohibited independent expenditures by the national committee of a political party in connection with a Presidential campaign was constitutional. Subsequently, however, BCRA effectively repealed section 110.7(a)(5) and the Commission replaced the section with 11 CFR 109.36, which prohibits a national committee of a political party from making independent expenditures in connection with a presidential campaign only in certain circumstances in which the national committee of a political party serves as the principal campaign committee or authorized committee of its Presidential candidate. *See* Coordinated and Independent Expenditures; Final Rules, 68 *FR* 421, 447–48 (January 3, 2003).

and assignments to other political party committees. 2 U.S.C. 441a(d)(4).

In 2002, the Commission promulgated rules at 11 CFR 109.35 to implement BCRA section 213. Coordinated and Independent Expenditures, Final Rules, 68 *FR* 421, 422 (January 3, 2003).

Subsequently, in *McConnell* v. *FEC,* the Supreme Court found BCRA section 213 unconstitutional. The Court held that by requiring political parties to choose between coordinated and independent expenditures during the post-nomination, pre-election period, BCRA section 213 placed an unconstitutional burden on the parties' right to make unlimited independent expenditures. 540 U.S. at 199–205. Accordingly, the NPRM proposed removing the regulations at 11 CFR 109.35, which implemented BCRA section 213.

The Commission received three comments on this rulemaking. The Internal Revenue Service submitted a comment informing the Commission that it had no comments. A second comment, while urging the Commission to remove the regulations implementing BCRA section 213 on the grounds that it was unconstitutional, primarily addressed issues beyond the scope of this rulemaking. A third brief comment concerned issues also not within the scope of this rulemaking. The Commission received no comments opposing the removal of its regulations at 11 CFR 109.35 as proposed in the NPRM. Accordingly, the Commission is removing and reserving section 109.35 because the statutory foundation for this section, 2 U.S.C. 441a(d)(4), has been invalidated by the Supreme Court in *McConnell* v. *FEC.*

VI. 11 CFR 109.36—Are There Circumstances Under Which a Political Party Committee Is Prohibited From Making Independent Expenditures?

The Commission is revising section 109.36 by deleting the word ''additional'' in the heading of section 109.36, because, as a result of the removal of section 109.35, the circumstances described in section 109.36 are the only circumstances under which a political party committee is prohibited from making independent expenditures.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

To the extent that political party committees may fall within the definition of ''small entities,'' their number is not substantial. In addition, the rules do not add but remove restrictions applicable to political party committees.

List of Subjects

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 106

Political candidates, campaign funds, political committees and parties.

11 CFR Part 109

Coordinated expenditures, independent expenditures, political committees and parties.

■ For the reasons set out in the preamble, the Federal Election Commission is amending Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

■ 2. Section 102.6 is amended by revising paragraph (a)(1)(ii) to read as follows:

§ 102.6 Transfers of funds; collecting agents.

(a) * * *

(1) * * *

(ii) Subject to the restrictions set forth at 11 CFR 300.10(a), 300.31 and 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 3. The authority citation for part 106 continues to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

■ 4. Section 106.8 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.

* * * * *

(b) * * *

(2) * * *

(ii) A coordinated expenditure or an independent expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.10, 109.32, and 109.33; or

* * * * *

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) AND (d), AND PUB. L. 107–155 SEC. 214(c))

■ 5. The authority citation for Part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107–155, 116 Stat. 81.

■ 6. Section 109.30 is revised to read as follows:

§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

Political party committees may make independent expenditures subject to the provisions in this subpart. *See* 11 CFR 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. *See* 11 CFR 109.32 through 11 CFR 109.34.

■ 7. Section 109.33 is amended by revising paragraph (a) to read as follows:

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

(a) *Assignment.* The national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee. Such an assignment must be made in writing, must state the amount of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.

* * * * *

■ 8. Section 109.35 is removed and reserved.

§ 109.35 [Removed and reserved]

■ 9. Section 109.36 is amended by revising the heading to read as follows:

§ 109.36 Are there circumstances under which a political party committee is prohibited from making independent expenditures?

* * * * *

Dated: October 28, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04–24475 Filed 11–2–04; 8:45 am]

BILLING CODE 6715–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 105

RIN 3245–AF24

Standards of Conduct and Employee Restrictions and Responsibilities

AGENCY: U.S. Small Business Administration.

ACTION: Direct final rule.

SUMMARY: The Small Business Administration (SBA) amends its regulations governing employee standards of conduct by deleting references to Supplemental Standards of Ethical Conduct and revising the descriptions of the headings for Office of the Government Ethics (OGE) regulations. The effect of these amendments is to make SBA's Standards of Conduct and Employee Restrictions and Responsibilities a more precise statement of existing authorities applicable to the ethical conduct of SBA employees.

DATES: This direct final rule is effective January 3, 2005, without further action, unless adverse comment is received by December 3, 2004. If adverse comment is received, SBA will publish a timely withdrawal of the direct final rule in the **Federal Register**.

ADDRESSES: You may submit comments, identified by RIN number, by any of the following methods: (1) Federal eRulemaking Portal: *http://www.regulations.gov;* (2) e-mail: *robert.gangwere@sba.gov.* Include RIN number in the subject line of the message; (3) Fax: (202) 481–5275; (4) mail: Robert L. Gangwere, Deputy General Counsel, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; (5) hand delivery/courier: 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Susan L. Sundberg, Alternate Designated Agency Ethics Official, Office of General Counsel, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416; (202) 619–0585; e-mail: *susan.sundberg@sba.gov.*

SUPPLEMENTARY INFORMATION: SBA issued regulations governing employee standards of conduct on January 26, 1996, at 61 FR 2399 based on its independent authority under the Small Business Act, 15 U.S.C. 631 *et seq.*, and Executive Order 11222, May 8, 1965. According to 5 CFR 2635.105, an agency may also issue regulations that supplement OGE's regulations on standards of conduct for Executive branch employees, which the agency determines are necessary and appropriate in view of its programs and operations. Although SBA's standards of conduct regulations currently make general and specific references to supplemental regulations, SBA has no current plans to issue such supplemental regulations. Therefore, it is necessary to amend the regulations so as not to imply that such supplemental regulations exist. The current regulations also cross-reference two parts of OGE's regulations, 5 CFR part 2634 and 5 CFR part 2635, and describe them as the Uniform Financial Disclosure regulations and the Uniform Standards of Ethical Conduct for Executive Branch employees, respectively. This direct final rule will revise these descriptions to make them consistent with the actual headings used by OGE in its regulations.

SBA is publishing this rule as a direct final rule because the Agency believes that this rule is non-controversial; it merely makes the Agency's regulations consistent with existing authorities. SBA expects no adverse comments on this rule. If, however, adverse comments are received, SBA will publish a timely notice of withdrawal in the **Federal Register**.

Section-by-Section Analysis

Section 105.101 notifies employees that 5 CFR part 2635 codifies the ''Uniform Standards of Ethical Conduct for Executive Branch employees'' and that 5 CFR part 2634 codifies the ''Uniform Financial Disclosure regulation for Executive Branch employees.'' Because these headings do not accurately reflect the headings found at 5 CFR parts 2634 and 2635, this direct final rule amends § 105.101 to indicate the accurate headings for these OGE regulations. Section 105.101 also refers employees to SBA Supplemental Standards of Ethical Conduct at 5 CFR XLIV. This direct final rule deletes that reference because such regulations do not exist.

Section 105.402 identifies the Designated Agency Ethics Official as the official who serves as SBA's Standards of Conduct Counselor, delegates authority to that official to designate Assistant Standards of Conduct Counselors, and describes their responsibilities under OGE and SBA regulations, including SBA's supplemental regulations. Paragraph (b)(4) of this section will be removed in order to delete the provision directing standards of conduct counselors to rely on SBA's Supplemental Standards of Ethical Conduct in making decisions on outside employment. SBA will also make minor grammatical changes to this section to improve clarity.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This direct final rule will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of Government. Therefore, for the purposes of Executive Order 13132, SBA determines that this direct final rule has no federalism implications warranting preparation of a federalism assessment.

This direct final rule meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The direct final rule does not have retroactive or preemptive effect.

The Office of Management and Budget (OMB) has determined that this direct final rule does not constitute a significant regulatory action under Executive Order 12866.

SBA certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612 because the direct final rule applies to SBA employees, not small entities.

SBA has determined that this direct final rule will not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. Ch. 35.

List of Subjects in 13 CFR Part 105

Conflicts of interest, Conduct standards, Ethical conduct, Financial disclosure, Government employees.

■ For the reasons stated in the preamble, SBA amends 13 CFR part 105 as follows:

PART 105—STANDARDS OF CONDUCT AND EMPLOYEE RESTRICTIONS AND RESPONSIBILITIES

■ 1. The authority citation for part 105 continues to read as follows:

Authority: 5 U.S.C. 7301; 15 U.S.C. 634, 637(a)(18) and (a)(19), 642 and 645(a).

■ 2. Revise § 105.101 to read as follows:

§ 105.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

In addition to this part, Small Business Administration (SBA) employees should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the regulations at 5 CFR part 2634 entitled, Executive Branch Financial Disclosure, Qualified Trusts and Certificates of Divestiture.

■ 3. Amend § 105.402 by revising paragraphs (b) (2) and (b) (3) and removing paragraph (b) (4) to read as follows:

§ 105.402 Standards of Conduct Counselors.

* * * * *

(b) * * *

(2) Monitor the Standards of Conduct Program within their assigned areas and provide required reports thereon; and

(3) Review Confidential Financial Disclosure reports as required under 5 CFR part 2634, subpart I, and provide an annual report on compliance with filing requirements to the SBA Standards of Conduct Counselor as of February 1 of each year.

* * * * *

Hector V. Barreto,

Administrator.

[FR Doc. 04–24498 Filed 11–2–04; 8:45 am]

BILLING CODE 8025–01–P

FEDERAL TRADE COMMISSION

16 CFR Parts 603, 613, and 614

RIN 3084–AA94

Related Identity Theft Definitions, Duration of Active Duty Alerts, and Appropriate Proof of Identity Under the Fair Credit Reporting Act

AGENCY: Federal Trade Commission (FTC or the Commission).

ACTION: Final rule.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act), amending the Fair Credit Reporting Act (FCRA), establishes requirements for consumer reporting agencies, creditors, and others to help remedy identity theft. In this document, the Commission issues final rules to establish definitions for the terms ''identity theft'' and ''identity theft report;'' the duration of an ''active duty alert;'' and the ''appropriate proof of identity'' for purposes of sections 605A (fraud alerts and active duty alerts), 605B (consumer report information blocks), and 609(a)(1) (truncation of Social Security numbers) of the FCRA, as amended by the Act.

DATES: *Effective Date:* This rule is effective on December 1, 2004.

ADDRESSES: Requests for copies of the Rule and the Statement of Basis and Purpose should be sent to the Commission's Public Reference Branch, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. The complete record of this proceeding is also available at that address. Relevant portions of the proceeding, including the Rule and Statement of Basis and Purpose, are also available at the Commission's Web site, *www.ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Naomi B. Lefkovitz, Attorney, Division of Planning and Information, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580. (202) 326–3228.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

The FACT Act was signed into law on December 4, 2003. Pub. L. 108–159, 117 Stat. 1952. Portions of the Act amend the FCRA to enhance consumers' ability to resolve problems caused by identity theft. Section 111 of the Act adds several new definitions to the FCRA, including ''identity theft'' and ''identity theft report.'' The Act permits the Commission to further define the term ''identity theft,'' and requires the Commission to determine the meaning of the term ''identity theft report,'' although the Act does provide a minimum definition. Section 112 of the Act requires the Commission to determine the duration of an ''active duty alert,'' which the Act sets at a minimum of 12 months. Section 112 also requires the Commission to determine the ''appropriate proof of identity'' for purposes of sections 605A (fraud alerts and active duty alerts), 605B (consumer report information blocks), and 609(a)(1) (truncation of Social Security numbers) of the FCRA, as amended by the Act.

The Commission published a Notice of Proposed Rulemaking and request for Public Comment (''NPRM'') in the **Federal Register** on April 28, 2004,[1] and the comment period closed on June 15, 2004. The Commission received forty-nine comments.[2] The commenters included the National Association of Attorneys General Executive Committee, consumer advocacy groups,[3] industry trade organizations,[4] three nationwide consumer reporting agencies,[5] financial institutions and other companies,[6] two

[1] Related Identity Theft Definitions, Duration of Active Duty Alerts, and Appropriate Proof of Identity under the Fair Credit Reporting Act, 69 FR 23370 (proposed April 28, 2004) (to be codified at 16 CFR. parts 603, 613, and 614).

[2] The public comments relating to these rulemakings may be viewed at *http://www.ftc.gov/os/comments/factaidt/index.htm.* The Commission considered all comments timely filed, *i.e.*—those received on or before the close of the comment period on June 15, 2004. As a matter of discretion, the Commission also considered comments that were filed after the close of the comment period. Citations to comments filed in this proceeding are made to the name of the organization (if any) or the last name of the commenter, and the comment number of record. Comment number may appear as all numeric characters—*e.g.*, #000031 (indicating a comment received by paper or electronic mail), or as numeric characters preceded by ''EREG''—*e.g.*, ''EREG–000031'' (indicating a comment received through www.regulations.gov).

[3] Consumers Union submitted a comment on behalf of 11 organizations. Consumer advocacy groups commenting included Consumer Action, Consumer Federation of America, Consumers Union, Electronic Privacy Information Center, Identity Theft Resource Center, National Association of Consumer Advocates, National Consumer Law Center, National Council of La Raza, Privacy Rights Clearinghouse, Privacy Times, and U.S. Public Interest Research Group (US–PIRG).

[4] In addition to Consumer Data Industry Association (CDIA)—the trade association that represents the nationwide consumer reporting agencies and a variety of other consumer reporting agencies—the Commission received comment on the proposed rule on behalf of a number of trade organizations representing a variety of industries and concerns. These included ACA International (representing debt collection agencies and other accounts receivable professionals), American Bankers Association, American Financial Services Association (representing companies primarily engaged in the business of providing consumer credit), America's Community Bankers, Credit Union National Association (CUNA), Coalition to Implement the FACT Act (representing trade associations and companies that furnish, use, collect, and disclose consumer information), Consumer Bankers Association, Independent Community Bankers of America, National Automobile Dealers Association, National Business Coalition on Privacy and E-Commerce (representing diverse companies interested in national policy on privacy and electronic commerce issues), Michigan Credit Union League, National Retail Federation, Pennsylvania Credit Union Association, and the Financial Services Roundtable.

[5] Equifax Information Services LLC, Experian Information Solutions, Inc., and Trans Union LLC.

[6] These included Bank of America, Bank One Corporation, BMO Financial Group, Boeing Employees' Credit Union, Capital One Financial Corporation, Countrywide Home Loans, Fifth Third

of the four military service branches,[7] consumers,[8] and the National Notary Association, a professional trade organization. Unless specifically modified in this document, all of the analysis accompanying the proposed rules in the NPRM is adopted and incorporated into this Statement of Basis and Purpose for the final rules.

II. Analysis of the Comments Received

A. Section 603.2: Identity Theft

The definition of ''identity theft'' triggers important duties for businesses and important rights for consumers under the FACT Act and the FCRA. For example, it defines the scope of fraudulent conduct that businesses must take steps to prevent, and it determines who is a victim entitled to take advantage of the rights conferred by the Act. Section 111 of the Act defines the term ''identity theft'' as ''a fraud committed using the identifying information of another person, subject to such further definition as the Commission may prescribe, by regulation.'' In the NPRM, the Commission proposed to further define the term ''identity theft'' [9] so it would be sufficiently broad to cover all bona fide victims and conduct, and also help prevent credit repair fraud.[10]

1. Attempted Fraud

In the NPRM, the Commission proposed adding ''attempt to commit fraud'' to the definition. Although identity thieves do not always succeed in opening new accounts, their attempts to do so may be recorded as inquiries on victims' consumer reports, which may adversely affect the victims' credit scores. Victims who learn of attempts by an identity thief should be entitled to take advantage of the Act to place extended fraud alerts and block fraudulent inquiries. To block these inquiries under section 605B of the FCRA and to obtain an extended fraud alert, victims need to be able to obtain an identity theft report for which they need to be able to allege an identity theft. For these reasons, the Commission proposed adding ''attempt to commit fraud'' to the definition. Although a number of commenters supported this position,[11] a number of commenters also opposed including ''attempt'' in the definition of ''identity theft.'' These commenters made three principal arguments.

First, some commenters argued that it is not necessary for the Commission to include ''attempt'' in the definition of ''identity theft'' to enable consumers to remove fraudulent inquiries from their consumer reports because these victims can dispute inaccurate information in consumer reports with section 611 of the FCRA instead of section 605B.[12] If the Commission were to eliminate ''attempt'' from the definition, it would be creating separate processes for handling fraudulent tradelines and handling fraudulent inquiries under the FCRA. No commenter indicated why fraudulent inquiries should be treated differently from fraudulent tradelines. Further, the section 611 dispute process may not provide an adequate means of removing inquiries. Because section 611 relies on consumers' ability to produce ''relevant documentation,'' [13] it is best suited to addressing inaccurate information that results from errors where consumers can provide records showing that they have, for example, paid their debts. Victims of identity theft, however, have no records showing that they did not open an account and therefore, incurred no debts. Section 605B, however, enables victims to use a law enforcement report as the basis of their proof of the identity theft to block information specifically resulting from identity theft from appearing on their consumer reports. Thus, section 605B is designed specifically to help identity theft victims correct information in their consumer reports that results from fraudulent activity, whereas section 611 is not specifically tailored for identity theft victims. Thus, the Commission sees no reason why consumers with inquiries resulting from attempted fraud should be barred from using this process.

Second, commenters stated that it was not necessary for the Commission to include ''attempt'' to assist in the placement of fraud alerts because consumers do not need to be actual victims of identity theft to place an initial fraud alert.[14] The Commission agrees that consumers will not need to prove identity theft to place an initial fraud alert. The Commission, however, is concerned that in situations where the identity thief continues to attempt to perpetrate frauds, these victims may wish to place an extended fraud alert. Under section 605A of the FCRA, such victims will need an identity theft report alleging an identity theft to obtain the extended fraud alert. An extended fraud alert under these circumstances will alert businesses of the need to take greater precautions and help to prevent losses.

Finally, commenters argued that including ''attempt'' would divert resources that could be better used to assist victims whose information has been actually misused.[15] It is not clear

Bank, Household International, Inc., Juniper Bank, Keycorp, MasterCard International, MBNA America Bank, N.A., Navy Federal Credit Union, Nissan Motor Acceptance Corp., Sprint Corporation, Teachers Federal Credit Union, Visa U.S.A., Inc., Wells Fargo and Company, and Wilshire Credit Corporation.

[7] These were the Office of the Judge Advocate General, Department of the Navy and the United States Marine Corps.

[8] These included Beverly Davis, Mike Heinemann, Robert Pinheiro, Abbi Sexton, and Charles Nichols.

[9] 69 FR 23377. In the NPRM, the Commission defined the term ''identity theft'' to mean a fraud committed or attempted using the identifying information of another person without lawful authority.

(b) The term ''identifying information'' means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any—

(1) Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

[10] *Id.* at 23371.

[11] *See, e.g.*, Keycorp #EREG–000007 (''We support the inclusion of attempted theft in the definition of 'identity theft' under the Act. Allowing a consumer to file an initial identity theft report based on an attempted ID theft affords greater protection for consumers and users of consumer reports.''); Equifax Information Services, LLC #000023 (''Since an initial fraud alert may be placed on a consumer's file by a consumer reporting agency when the consumer has a suspicion that he or she 'is about to become' a victim of fraud, including 'attempt' to commit fraud as part of the definition is a logical and useful extension.''); and Teachers Federal Credit Union #EREG–000009 (''Yes, attempts to commit frauds should be included in the definition, since fraud attempts may have an adverse affect on a victim's credit report/score.'').

[12] *See, e.g.*, MasterCard International #000025 (''We note that consumers who are victims of attempted identity theft have the ability to correct their consumer reports using the dispute process already provided for in the FCRA. Thus, an expanded definition of 'identity theft' is not necessary to provide victims a remedy to correct data on a consumer report.'').

[13] Section 611 of the FCRA, 15 U.S.C. 1681i.

[14] *See, e.g.*, MasterCard International #000025 (''The Commission also suggests that a broad definition is necessary because 'victims who have learned of attempts by an identity thief and want to reduce the likelihood that the identity thief will succeed in opening new accounts may want to place an 'initial fraud alert' on their consumer reports.' We respectfully note that the statute does not require a consumer to be a victim of 'identity theft' in order to place an initial alert in the consumer's file. All that is necessary to place an initial alert in the file is for the consumer to assert 'in good faith a suspicion that the consumer has been or is about to become a victim of fraud or related crime.' We believe that a consumer who has been a victim of attempted identity theft could make such an assertion regardless of whether 'identity theft' were to also mean 'attempted identity theft.' '').

[15] *See, e.g.*, Wells Fargo and Company #000015 (''We are concerned that defining 'identity theft' to

Continued

how the inclusion of ''attempt'' would create such economic hardship as to cause private entities to reallocate resources designated for assisting victims; the provisions of the Act that implicate ''attempt'' either do not affect most private entities or would seem to assist in the prevention of identity theft. For instance, creditors must take certain steps to verify consumers' identities when fraud alerts appear on consumer reports.[16] Such verification would seem worthwhile to prevent identity theft for consumers and financial institutions. Notably, consumer reporting agencies, who will be the only private entities obligated to place fraud alerts and block inquiries, either supported the inclusion of ''attempt'' or did not comment.[17] Similarly, inclusion will not result in increased processing of identity theft reports by information furnishers because no accounts will have been opened.

Accordingly, the Commission retains ''attempt'' in the definition of identity theft.

2. Identifying Information

In the NPRM, the Commission proposed that ''identifying information'' should have the same meaning as ''means of identification'' found in the federal criminal code.[18] This would ensure that the term ''identity theft'' addressed the potential permutations of identity fraud that might occur. It would also provide consistency with the federal criminal law. A number of commenters supported the Commission's proposal.[19] However, because ''means of identification,'' as defined in the criminal statute, includes check routing, credit card, and debit card numbers, a number of commenters were concerned that the proposed rule would cover too broad a range of frauds, in particular, unauthorized use of a consumer's existing accounts.[20]

For example, some commenters argued against including unauthorized use of accounts in the definition of ''identity theft'' because other federal laws provide victims with sufficient protection.[21] While other federal laws may provide victims with the means to redress certain aspects of injuries resulting from the unauthorized use of an account, these other laws do not necessarily address all aspects of their injuries. For example, under the Fair Credit Billing Act,[22] victims can dispute unauthorized credit card transactions on their billing statement, but if the debts resulting from the disputed charges appear on their consumer reports as delinquent,[23] or if the victims need to obtain related transaction records to assist in proving their claim,[24] victims may need to apply the rights provided by the FACT Act. The Commission expects that victims of unauthorized account use will continue to resolve their problems under other federal laws as applicable, but they also may need and are entitled to the protections provided by the Act.

Commenters also were concerned that including unauthorized use of a consumer's existing accounts would encourage abuse of the credit reporting system.[25] The Commission recognizes the concern that the Act, in creating new tools to assist victims in recovering from identity theft (*e.g.*, by enabling them to use the ''identity theft report'' to block the reporting of fraudulent debts in their consumer reports theft report,'' *see infra* II.B.), may give unscrupulous individuals a new, or alternative means to attempt to exploit the credit reporting system. The Commission, however, finds that the definition of ''identity theft report'' (*see infra* II.B.) provides consumer reporting agencies and information furnishers with adequate means to distinguish between bona fide identity theft victims and consumers attempting to defraud the system. The Commission has concluded, therefore, that the possibility of limiting the potential for abuse that might arise from narrowing the definition of identity theft is outweighed by the need to provide bona fide victims of unauthorized account use with the same rights accorded victims of other forms of identity theft under the FCRA.

Accordingly, except for a technical change discussed in paragraph II.A.4, the Commission defines ''identifying information'' to have the same meaning as ''means of identification'' found in 18 U.S.C. 1028(d)(7).

3. Lawful Authority

In the NPRM, the Commission proposed that the definition of identity theft require that a person's identifying information must be used ''without

include ''attempted'' fraud would greatly expand the scope of conduct that entities must take steps to prevent and would significantly increase the number of consumers authorized to take advantage of the rights that the FCRA confers upon identity theft victims. Expanding the definition of identity theft beyond the traditional notion of an individual opening an account or obtaining a loan in another person's name would divert significant resources away from actual identity theft and its victims in order to assist those who have avoided any meaningful harm of identity theft. If a fraud is attempted but not completed, the system will have averted identity theft and the consumer will have suffered little, if any, harm. Any harm that the consumer will have suffered can be, or already will have been, adequately addressed.'').

[16] Section 605A of the FCRA, 15 U.S.C. 1681c–1.

[17] *See, e.g.*, Consumer Data Industry Association #000012 (''CDIA agrees with the Commission that, in order to trigger the important FCRA rights of potential identity theft victims and to enable them to avoid being actual identity theft victims, the definition should cover an attempted fraud, as well as the actual offense.''); Experian Information Solutions #000009 (''The definition captures the appropriate elements; it includes (a) a fraud that is attempted or committed, (b) using 'identifying information' of another, and (c) without lawful authority.''); and Equifax Information Services, LLC #000023 (''Since an initial fraud alert may be placed on a consumer's file by a consumer reporting agency when the consumer has a suspicion that he or she 'is about to become' a victim of fraud, including 'attempt' to commit fraud as part of the definition is a logical and useful extension.'').

[18] ''Identity theft'' is defined in 18 U.S.C. 1028(a)(7) and ''means of identification'' is defined in 18 U.S.C. 1028(d)(7).

[19] *See, e.g.*, Office of the Judge Advocate General, Department of the Navy #000011 (''As the Commission points out, the criminal code's definition of 'means of identification' covers the appropriate range of identifying information and ensures that the term 'identity theft' addresses the relevant permutations of fraud that might occur. Additionally, [sic] the Commission accurately states, it ensures consistency with existing Federal law defining what constitutes identity theft, which promotes clarity and ease of application.'') and Experian Information Solutions #000012 (''Experian supports this definition as well; it encompasses the different kinds of information that could be used to commit an identity theft.'').

[20] *See, e.g.*, National Retail Federation #000005 (''We would strongly urge the Commission to limit its definition of an identity theft to those situations in which the perpetrators have actually assumed someone else's identity, procured a new line of credit and used that credit in the individual's name. We urge this formulation to distinguish true ID Theft from 'attempted' identity theft or from situations involving 'unauthorized use.' '').

Consumers themselves, however, consider that unauthorized use of their accounts is a form of identity theft based on the fact that they file complaints in the Commission's identity theft complaint database about such unauthorized use. *See http://www.consumer.gov/idtheft/charts/CY2002OverallCharts.pdf* for examples of the statistical breakdown of consumer identity theft complaints to the Commission.

[21] *See, e.g.*, Coalition to Implement the FACT Act #000019 (''Not only are there already provisions in existing law, such as under the Truth in Lending Act and the Electronic Fund Transfer Act, to protect consumers who are victims of crimes such as account fraud, but we do not believe it would benefit victims of true identity theft to dilute industry's efforts by giving victims of less debilitating crimes equal priority as identity theft victims.'').

[22] 15 U.S.C. 1666–1666j.

[23] *See* section 605B of the FCRA for the right to block information resulting from identity theft from consumer reports. 15 U.S.C. 1681c–2.

[24] *See* section 609(e) of the FCRA for the right to obtain identity theft related transaction records. 15 U.S.C. 1681g.

[25] *See, e.g.*, Wells Fargo and Company #000015 (''We also believe that inclusion of traditional debit and credit card fraud in the definition of 'identity theft' will significantly increase claims of identity theft, fraud alerts and requests to block information. A significant increase in claims of this type (many of which may be marginal or even untrue) could impact the integrity of the entire information reporting system.'').

lawful authority.'' This definition was designed to prevent individuals from colluding to obtain goods or services without paying for them and then using the rights conferred by the Act to clear their credit records of the negative, but legitimate, information. Most commenters supported the Commission's addition, although some asked for additional clarification.

Some commenters suggested that ''without lawful authority'' might not fully prevent collusion.[26] These commenters appear to argue that, because no one can ''lawfully'' authorize an illegal act, a person might give another person permission to use his or her identifying information knowing that the recipient would use such information to commit fraud, and then later allege ''identity theft'' because he never gave ''lawful authority'' to use the information to commit fraud.[27] The Commission doubts that the inability to ''lawfully'' authorize a fraudulent act would provide a justification for alleging identity theft in such circumstances. Nevertheless, to avoid any such result, the Commission is deleting the term ''lawful'' from the final Rule. Thus, the final Rule states that ''identity theft'' means ''a fraud committed * * * using the identifying information of another person without authority.'' The Rule is intended to apply to one person's using the identifying information of another person without that person's permission or approval.

In the NPRM, the Commission had asked for comment on whether the definition of ''identity theft'' should include a requirement that a person's identifying information be used without the person's knowledge, to address concerns with collusion. The Commission received few responsive comments, and although such a requirement could address collusion, it would create problems for bona fide victims who may know that their identifying information is in the process of being used, but cannot stop the use. Thus, the Commission has determined not to include ''without knowledge'' in the definition of identity theft.

More broadly, some commenters were concerned that adding ''without lawful authority'' would increase the difficulty of recovery for certain victims such as minors.[28] In the NPRM, the Commission stated that parents who use their minor children's identifying information purporting to be the minors are not exercising lawful authority. Lawful authority, or authority alone, allows parents to use their minor children's identifying information on behalf of the minors, but only when acting in the capacity as the parent. Minors whose parents have misused their identifying information by purporting to be the minors will, therefore, be able to assert that their parents acted without authority and will be entitled to all of the identity theft protections under the FCRA.

Some commenters suggested a clarification that presumed authority if the consumer refused to pursue prosecution.[29] Although refusal to prosecute may be a factor in considering whether an unauthorized use of a person's identifying information has occurred, the Commission does not believe that it constitutes *prima facie* evidence of a grant of authority. Accordingly, the Commission declines to include a person's refusal to prosecute the user of the person's identifying information in the final rule.

4. Additional Changes

One commenter suggested that the Commission amend paragraph (b)(4) (see n. 9) to clarify that identifying information includes credit card and other account identification numbers by incorporating the language referenced in 18 U.S.C. 1029(e) into the final rule.[30] The Commission considers that including the specific language of 18 U.S.C. 1029(e) would add unnecessary verbiage to the rule and that the Commission can use other means to publicize the concept that credit card account numbers are included in the definition. For example, the Commission previously addressed (*see, supra* II.A.2) the fact that unauthorized account use is part of the definition of identity theft, and the Commission will highlight this fact in any educational materials it develops.

Finally, the Commission has corrected a drafting error made in clarifying the term ''identifying information.'' In paragraph (b), the Commission has replaced the clause ''to identify a specific individual'' with ''to identify a specific person'' to conform the elements of ''identifying information'' with the definition of ''identity theft'' in the Act, which uses the term ''person.''

Except for this technical change and the removal of the word ''lawful,'' the Commission adopts the definition of ''identity theft'' without modification.

B. Section 603.3: Identity Theft Report

Under section 111 of the Act, the Commission is required to determine the meaning of the term ''identity theft report,'' using as the foundation a minimum definition set forth in the Act.[31] Consumers can use the identity

[26] *See, e.g.*, Consumer Bankers Association #000007 (''The FTC states that 'adding ''without lawful authority'' [to the definition] prevents individuals from colluding with each other to obtain goods or services without paying for them, and then' attempting to allege that it is the result of identity theft. CBA applauds the FTC for addressing this important issue. We do not believe that consumers who benefit from a transaction should be able to claim that the transaction is the result of identity theft. Therefore, we urge that this concept be retained. However, we also ask the FTC to clarify this issue in the Final Rule. In particular, as the definition is drafted, it is not clear whether the modifier 'without lawful authority' would achieve the FTC's objective because a fraud is already generally an act committed without lawful authority.'').

[27] *Id.*

[28] *See, e.g.*, Consumers Union #EREG–000002 (''The theft of the identities of children by their legal guardians could pose special issues if the definition includes a requirement of lack of legal authority. The explanatory language which suggests that a legal representative never has the power to defraud the other person is helpful, but adding this kind of requirement is likely to make it much harder for a newly adult person to remove from his or her credit record transactions not fairly attributed to that person, when those transactions were initiated by a legal guardian.'').

[29] Consumer Data Industry Association #000009 (''CDIA agrees that an important element of the definition of identity theft is that the person's identifying information is used without lawful authority. As the Commission observes, individuals, such as guardians and attorneys-in-fact, may have lawful authority to use another's identifying information and may misuse that information to commit fraud. CDIA's members have experienced situations where consumers appear to have colluded with family members or friends to perpetrate a fraud or attempted fraud using their own identifying information. In those instances, the consumer refuses to prosecute the perpetrator of the fraud or attempted fraud. For that reason, CDIA believes that the final rule should provide that a consumer's refusal to prosecute the perpetrator of an identity theft is prima facie evidence that the consumer's identifying information was used with the consumer's lawful authority and thus does not involve identity theft.'').

[30] Consumer Data Industry Association #000009 (''As a result of incorporating the U.S. Code definition into the proposed rule, the rule's definition of identity theft could include the authorized [sic] use of a credit card, PIN or similar access device. CDIA understands that the Commission intends this result. However, affected industry members may not associate the crime of identity theft with the fraudulent use of a credit card number without identifying information. For that reason, in order to facilitate compliance, CDIA suggests that the final rule's definition of identifying information incorporate the current U.S. Code definition of 'any telecommunication identifying information or access device.' The final rule could also provide that the definition would include the U.S. Code definition as it may be amended, to reflect changes in technology.'').

[31] Under the Act, an identity theft report is, ''at a minimum, a report—(A) that alleges identity theft; (B) that is a copy of an official, valid report filed by the consumer with an appropriate Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, or such other government agency deemed appropriate by the Commission; and (C) the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information,

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theft report to block information resulting from identity theft from their consumer reports [32] and prevent information furnishers from refurnishing such information,[33] as noted in the NPRM. The Commission is concerned that the identity theft report might be misused by some to attempt to remove accurate, but negative, information from their consumer reports, notwithstanding the Act's requirement that the filing of the report be subject to criminal penalties for the filing of false information.[34] Because certain law enforcement agencies, including most federal agencies, allow consumers to file law enforcement reports through an automated system (*i.e.*, the report can be filed by mail, telephone, or via the Internet, instead of in a face-to-face interview with a law enforcement officer), the Commission is concerned that consumers using an automated means might have less compunction about filing a false report. Moreover, because consumer reporting agencies and information furnishers most likely will receive and be required to act upon the law enforcement report before the identity theft complaint is fully investigated by the law enforcement agency, they will be faced with the initial responsibility for determining the legitimacy of an identity theft claim.[35]

For these reasons, the Commission's proposal allowed consumer reporting agencies and information furnishers to investigate identity theft claims much to the same extent that they could prior to the Act. At the same time, the Commission wanted to ensure that bona fide victims could resolve their identity theft problems without undue delay or burden. The Commission's proposal, with specific limitations, allows consumer reporting agencies and information furnishers to make requests for information and documentation in addition to the law enforcement report to verify the identity theft claim, and to require that consumers allege the identity theft with as much specificity as possible.[36] The Commission also proposed some examples of when it would or would not be reasonable to request additional information or documentation. While a few commenters unreservedly supported the Commission's proposal,[37] as outlined below, most commenters had concerns about some aspect of the Commission's proposal.

Although many commenters were concerned about the possibility of misuse of the identity theft report, they felt that the Commission's proposed remedies were not sufficient to deter this potential problem.[38] Commenters suggested ways in which the rule could better address this concern. For example, some commenters wrote that the Commission should limit the type of law enforcement agency with which a report about identity theft could be filed by further defining what constitutes an ''appropriate'' law enforcement agency. Specifically, some commenters suggested narrowing the term to exclude law enforcement agencies that enforce laws unrelated to identity theft on the grounds that they are unlikely to investigate any reports of identity theft which they receive, thus encouraging the filing of false reports.[39] Other commenters felt that law enforcement agencies with automated systems should not be considered ''appropriate.'' [40] Finally, a number of commenters thought that the Commission should clarify that the Commission itself is not an appropriate law enforcement agency in part because it lacks criminal arrest authority.[41]

After considering these comments, the Commission has determined that it is not necessary to limit further the law enforcement agencies with which identity theft victims can file a report. First, the Commission does not find that restricting law enforcement agencies to those that enforce specific identity theft laws would provide meaningful guidance because identity theft can take many forms and can be prosecuted under many different laws.[42] Rather, the

if, in fact, the information in the report is false.'' 15 U.S.C. 1681a(q)(4).

[32] Section 605B of the FCRA, 15 U.S.C. 1681c–2.

[33] Section 623(a)(6)(B) of the FCRA, 15 U.S.C. 1681s–2(a)(6)(B).

[34] 69 FR 23371.

[35] As further protection against abuse of the credit reporting system, the Act also provides the consumer reporting agencies and information furnishers with some ability to reject or reinstate a block or continue furnishing information (*see* sections 605B(c) and 623(a)(6)(B) of the FCRA, 15 U.S.C. 1681c–2(c) and 15 U.S.C. 1681s–2(a)(6)(B)). In practice, it may be difficult for the consumer reporting agencies or information furnishers to make such determinations without an investigation of the claim of identity theft. This investigation may be difficult to conduct without the cooperation of the consumer making the claim.

[36] 69 FR 23372. The definition proposed in the NPRM:

(a) The term 'identity theft report' means a report—

(1) That alleges identity theft with as much specificity as the consumer can provide;

(2) That is a copy of an official, valid report filed by the consumer with a Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(3) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency makes such request not later than five business days after the date of receipt of the copy of the report form identified in paragraph (2) or the request by the consumer for the particular service, whichever shall be the later.

[37] *See, e.g.*, Independent Community Bankers of America #EREG–000004 (''The ICBA agrees that it is appropriate that credit reporting agencies and information furnishers have the authority to require as much specificity as possible when investigating an allegation of identity theft. To begin with, this will help discourage fraudulent claims of identity theft and abuse of the system, a step that is especially important since, as noted above, Congress created serious remedies for a serious problem. Second, greater specificity will help information furnishers and credit reporting agencies better identify the actual fraud that should be blocked on a credit report.'').

[38] *See, e.g.*, American Financial Services Association #000010 (''AFSA appreciates the Commission's effort to carefully balance the important considerations underlying the FACTA identity theft provisions * * * as the Commission recognizes in its Supplementary Information accompanying the Proposed Rule, identity theft reports 'could provide a powerful tool for misuse, allowing persons to engage in illegal activities in an effort to remove or block accurate, but negative, information from their consumer reports.' [Footnote 2: 69 Fed. Reg. 23,371.] AFSA is concerned that the Proposed Rule has not fully addressed this risk identified by the Commission and that, as written, the Rule may allow the unscrupulous to turn a system intended to protect consumers into a system that could be easily used to deceive and defraud creditors and other users of consumer report information.'').

[39] *See, e.g.*, Consumer Bankers Association #000007 (''For example, the statute would appear to prohibit the filing of an identity theft report with the Federal Communications Commission (''FCC''), because an agency charged with enforcing several different laws unrelated to identity theft would clearly not be an appropriate recipient of a report alleging identity theft. Not only can the FCC do very little about investigating the identity theft, but the FCC is unlikely to spend a lot of resources to determine whether the consumer has lied in the report.'').

[40] *See, e.g.*, Boeing Employees Credit Union #000002 (''We do not agree with the automated method of reporting identity theft. Allowing the reporting to be a faceless transaction with zero law enforcement involvement makes it extremely convenient for someone to falsify a report. In our opinion, to qualify for these protections, the consumers must provide adequate proof of fraud in person.'').

[41] *See, e.g.*, American Bankers Association #EREG–000034 (''Complaints filed with the Commission's Identity Theft Data Clearinghouse should be excluded, unless the Commission has authority to arrest a person filing a false report.'').

By contrast, the National Association of Attorneys General (#000008) suggested that the Commission explicitly include itself as an agency with which victims can file identity theft complaints in the final rule. The Commission considers that the final rule is clear that victims may submit reports to any federal law enforcement agency which accepts identity theft complaints. Therefore, although Congress opted to name the United States Postal Inspection Service in the definition of ''identity theft report,'' it is unnecessary to name the Commission or any other federal agency specifically.

[42] A law enforcement agency may derive its authority to investigate identity theft cases not from a specific law criminalizing identity theft, but from a law criminalizing bank fraud, for example.

Commission notes that consumer reporting agencies and information furnishers may take into account whether the agency with which the law enforcement report was filed appears to have been chosen for the purpose of avoiding inquiry into the identity theft when determining whether to request additional information or documentation to assess the validity of the identity theft claim.

Second, the Commission notes that some victims are faced with police departments that will not take identity theft complaints. This problem, combined with the fact that most federal and some state law enforcement agencies use automated systems to take reports means that excluding law enforcement agencies that take automated reports would unduly burden victims of identity theft. Finally, the Commission is not convinced that excluding the Commission's complaint intake system would diminish the risk of false filings, because the Commission, like any other law enforcement agency, can take steps to pursue any evidence of false filings.[43]

On a different issue, certain commenters raised concerns about the meaning of an ''official, valid report.'' Some requested that the Commission clarify this concept. In order for the report to be considered official and valid, others wanted the report form to state that criminal penalties apply to false statements.[44] The Commission does not find the term ''official, valid report'' to be ambiguous. Further, if the consumer reporting agencies or information furnishers receive copies of law enforcement reports that contain so little information or indications of authenticity as to cause them to be unable to verify that a genuine law enforcement agency issued the report or accepted the filing, or if they determine that the report was fraudulent in any material aspect, they may reject the document as not being a copy of an official, valid law enforcement report.[45] Finally, because not all police report forms contain an express notice regarding criminal penalties for false statements, the Commission considers that excluding a law enforcement report on such a basis would add unnecessary consumer confusion and hardship to the process of obtaining a law enforcement report.

Some commenters were concerned that the Commission's proposal to allow consumer reporting agencies and information furnishers to make reasonable requests for additional information or documentation for an ''identity theft report'' may result in consumer confusion by requiring victims to submit different information or documentation to different companies.[46] Commenters also argued that permitting a reasonable request for additional information or documentation created the potential for abuse,[47] and could make recovery more difficult as well as delay the provision of services.[48] Permitting a reasonable request for additional information or documentation may result in victims having to submit different information or documentation to different companies. However, the requirement that the request must be reasonable should limit requests. On balance, the Commission believes that allowing consumer reporting agencies and information furnishers to make reasonable requests on a case-by-case basis will help prevent abuse of the credit reporting system and maintain the viability of the recovery process for bona fide victims as contemplated by the Act.

Other comments raised the concern that the Commission's five business day time limit on the request for additional information or documentation did not provide a long enough time period to evaluate the need for and to make an initial request.[49] The Commission

[43] *See* 18 U.S.C. 1001. Although the Commission does not have criminal authority to arrest a person or to prosecute identity theft cases directly, based on its Congressional mandate under the 1998 Identity Theft Assumption and Deterrence Act, Pub. L. 105–318, 112 Stat. 3007 (1998) (codified at 18 U.S.C. 1028), it works closely with criminal law enforcement agencies at all governmental levels to analyze the complaints in its database and refer out possible leads for investigation. Thus, complaints made to the Commission may be subject to criminal law enforcement review in much the same way as complaints made directly to federal agencies with criminal authority.

[44] *See, e.g.*, Consumer Data Industry Association #000009 (''* * * the rule should give examples of what constitutes a 'an official, valid report') and Experian Information Solutions #000012 (''An 'official, valid' report is one that on its face demonstrates that the complainant is subject to criminal penalties for any false statements in the report.'').

[45] With respect to reports filed with an automated system, a consumer reporting agency or information furnisher could expect to receive some evidence of a filing confirmation receipt along with the copy of the actual report, thereby allowing it to verify with the agency that a report was filed.

[46] See, *e.g.*, Consumers Union #EREG–000002 (''* * * the proposed definition will create a bewildering situation in which one consumer could be required to augment a single police report in different ways for different CRAs and different furnishers in order to meet the basic definition of an identity theft report. It will be impossible for the Commission, consumer groups, or even CRAs and creditors to tell consumers what to file to constitute an identity theft report.'').

The National Association of Attorneys General (#000008) suggested an alternative to allowing variable requests for additional information or documentation in that, ''* * * the regulations should provide one form containing all information that identity theft victims are expected to provide, such as the FTC affidavit form which is already available on the FTC's website.''

The referenced ID Theft Affidavit was developed by the Commission in coordination with consumer advocate organizations and financial institutions. While it was intended to save time for victims by giving them a uniform means to provide basic information about their identity theft claim, it never purported to cover all necessary information, and companies might ask for additional information. *See* Instructions for Completing the ID Theft Affidavit at *http://www.ftc.gov/bcp/conline/pubs/credit/affidavit.pdf.* Given the variety of forms of identity theft, it is doubtful that a single form could contain all information that all identity theft victims could be expected to provide, yet not be overly burdensome to complete. For example, an information furnisher may need to confirm passwords or other security measures when unauthorized account use has occurred.

[47] Consumers Union (#EREG–000002) also was concerned that requests for additional information or documentation may be abused by consumer reporting agencies and information furnishers. The Commission disagrees that it has opened the door to abusive requests. The Commission carefully crafted the proposed rule to require that requests for additional information or documentation be reasonable.

[48] Finally, Consumers Union (#EREG–000002) argued that allowing requests for additional information would delay the placement of extended fraud alerts. The Commission stated in the examples in the final rule that a law enforcement report submitted for the purpose of obtaining an extended fraud alert, even if filed using an automated system, should not trigger a request for additional information or documentation. In developing this example, it did not appear to the Commission that requests for extended fraud alerts needed to be subject to special scrutiny as there had been no evidence that fraud alerts under the voluntary placement system were requested without cause. No commenters raised any objection to this example. Thus, the Commission anticipates that victims will obtain extended fraud alerts without additional delay in accordance with the placement procedures set forth by the Act.

In any event, consumers who have not already done so may place an initial alert while their request for an extended alert is being processed. Thus, consumers who immediately place an initial fraud alert will receive all of the benefits of this alert.

[49] *See, e.g.*, Michigan Credit Union League #EREG–000024 (''We believe that the five-business day window may be insufficient time to allow credit unions to request the additional information. This might particularly impact credit unions that are very large or very small. Large credit unions could potentially be inundated with identity theft reports and not be able to request that information within the proposed time frame. Small credit unions may not have the staffing or be open more than one to two days per week. This would prevent them from being able to request this information.'') and Keycorp #EREG–000007 (''We believe it is appropriate to include additional documentation requirements in the definition of ''Identity Theft Report.'' However, we are greatly concerned with regard to the timing of the information request by the furnisher or credit reporting agency. Given the complexity of the financial transactions that may be involved in the ID theft claim, coupled with the number of Identity Theft Reports an institution may receive, we do not believe that five business days is sufficient time to receive the Identity Theft Report, evaluate the transaction information contained in the Report, determine what additional information may be required from the consumer to validate the claim, and request the information from

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recognizes that five business days may not be long enough to fairly evaluate the law enforcement report for some consumer reporting agencies or information furnishers. The consequences may be to force them to choose between accepting the law enforcement report as the complete identity theft report regardless of whether the identity theft claim is legitimate, or sending out *pro forma* requests for additional information or documentation, which may or may not be reasonable under the circumstances. The former instance would undermine the Commission's reasons for allowing reasonable requests of information or documentation initially—to minimize abuse of the credit reporting system. The latter instance might result in an increase of consumer complaints and disputes regarding the reasonableness of the information or documentation requests, which would not be a beneficial use of consumers' time and resources. Thus, the Commission considers that allowing consumer reporting agencies and information furnishers to have a longer period of time to evaluate the law enforcement report will better limit fraud and provide a better outcome overall for consumers.

Commenters' suggestions on a longer time period ranged from ten to thirty days (both calendar and business days). The Commission has determined to modify its proposed rule to allow consumer reporting agencies and information furnishers to have fifteen calendar days to make an initial request for additional information or documentation. Fifteen calendar days is approximately five business days more than the Commission had originally proposed, which should allow all consumer reporting agencies and information furnishers sufficient time to determine whether additional information or documentation is needed, but should not cause victims undue delay.

Some commenters also requested an opportunity to make further requests for information or documentation, if necessary.[50] The Commission believes that an exchange of communication between consumer reporting agencies or information furnishers and consumers will allow for a more thorough investigation of the validity of identity theft claims. Furthermore, some consumers may make mistakes in what information or documentation they provide initially and would benefit from further opportunities to furnish the correct information.

Commenters generally suggested one time period to cover both initial and multiple requests or made no specific suggestions. The Commission believes that additional requests should be permitted. However, one time period for both initial and multiple requests could result in the first request of additional information or documentation being made on the last day of the time period, with subsequent requests being made at indefinite times thereafter. The Commission believes that this could unfairly delay the recovery of victims. Therefore, the Commission has determined to retain a limited time period (fifteen calendar days) for an initial request to ensure that an investigation commences promptly, and to set a time limit of fifteen additional days after the initial request for any further requests for information or documentation, as well as a final determination on acceptance or rejection of the ''identity theft report.'' However, in the event that a consumer should submit the additional information or documentation too late in this second fifteen day period for a consumer reporting agency or an information furnisher reasonably to be able to review it, the Commission will allow the consumer reporting agency or information furnisher an additional five days to make a final determination on acceptance or rejection of the ''identity theft report.'' For example, if the additional information or documentation is received on day fourteen of this second fifteen day period, the consumer reporting agency or information furnisher may have five days, if needed, to make a final determination on acceptance or rejection of the ''identity theft report.''

Thus, although in many instances it should take much less time to reach a final determination,[51] under no circumstances will it take longer than thirty-five days.[52] This timing balances the needs of victims to have a finite process for submitting an identity theft report, with the needs of consumer reporting agencies and information furnishers to verify the identity theft. To ensure that victims will understand the operation of this final rule and to facilitate their ability to obtain an identity theft report with minimal delay, the Commission will conduct consumer and business education to advise victims of their rights. The Commission anticipates that should consumer reporting agencies and information furnishers make requests for additional information or documentation, they will inform consumers about the time frame within which information or documentation should be submitted and the outcome if the requested information or documentation is not submitted in a timely manner.

Additionally, a number of commenters requested that the Commission develop a procedure by which consumer reporting agencies or information furnishers could reject identity theft reports. The Commission believes that consumer reporting agencies and information furnishers already have a procedure for rejecting identity theft reports. If the document or documents the consumer presents do not meet the definition set forth in the final rule, the consumer reporting agencies and information furnishers can reject them.

A number of commenters also requested that the Commission clarify the clause ''filed by the consumer'' in paragraph (2) to mean filed directly by the consumer, and not by someone else on behalf of the consumer, as a means of preventing illegal credit repair.[53] The

the consumer. We believe a minimum of fifteen business days is required to properly evaluate and react to an Identity Theft Report responsibly.'').

[50] *See, e.g.*, American Bankers Association #EREG–000034 (''* * * the Commission should permit more than a single request. In many cases, it will be necessary to request additional information in order to properly handle the claim as it progresses.'').

[51] The Commission expects that consumer reporting agencies and information furnishers will make any requests as expeditiously as possible. In particular, it expects that any supplemental requests for information or documentation would be made as soon as practicable to allow consumers sufficient time to respond. It further notes that in practice, many victims may make initial contact with a company by a telephone call as opposed to submission of a law enforcement report. At that time, many consumer reporting agencies or information furnishers likely would discuss with the victim what information or documentation, if any, in addition to the law enforcement report may be needed to validate the identity theft claim so that victims can expedite the process by submitting all necessary documentation together. Thus, the Commission anticipates that a consumer reporting agency or information furnisher may develop an even more efficient and accommodating process for assisting identity theft victims than the minimum standard for timing set forth under this final rule.

[52] While not directly on point, the Commission observes that the section 611 time period for reinvestigation of disputed information can range from thirty to forty-five days depending on whether the consumer provides the consumer reporting agency with additional relevant documentation. 15 U.S.C. 1681i. The maximum thirty-five day period here is adequate because, unlike under section 611, the procedures here explicitly contemplate a dialogue, if needed, within the second fifteen day period, with a possible additional five days for final review.

[53] *See, e.g.*, Consumer Bankers Association #000007 (''We believe an important corollary to the requirement that the identity theft report be filed with an appropriate law enforcement agency is that the report must be filed by the consumer, and not by another entity. CBA is concerned that credit repair clinics and other unscrupulous individuals should not be permitted to file identity theft reports on consumers' behalf.'').

Commission believes that there may be a number of legitimate reasons why a third party (*e.g.*, a guardian or an attorney-in-fact) might file an identity theft report on behalf of a consumer. The Commission believes that to the extent a third party is filing false identity theft reports on behalf of a consumer, the Commission has provided consumer reporting agencies and information furnishers with sufficient flexibility within the definition to determine the validity of the identity theft report just as if the consumers had filed the false identity theft reports themselves. In fact, to the extent a consumer reporting agency or information furnisher recognizes the same filer or a pattern to the filings, it could consider such information as a factor in determining the validity of the identity theft report.

In the NPRM, the Commission provided examples of when it would or would not be reasonable to request additional information or documentation. Commenters asked for clarification on these examples. With respect to the first example,[54] a number of commenters wanted to be able to request additional information or documentation even if the victim provided a suitable police report. Some commenters pointed to section 609(e) of the FCRA, which allows a business to ask for a police report and an affidavit to verify a claim of identity theft before providing copies of the victim's identity theft related transaction records, as an example that Congress intended that they should be able to request additional information or documentation in all cases.[55]

The Commission views the examples as sufficiently clear; they convey that it is reasonable for a consumer reporting agency or information furnisher to request additional information or documentation if the in-person police report is lacking in necessary information or the consumer reporting agency or information furnisher can identify some other reasonable concern underlying the request. Thus, although the examples are intended to demonstrate that victims should not be required to provide redundant information for no discernable reason, they make equally clear that consumer reporting agencies or information furnishers are not prevented from taking reasonable steps to verify the identity theft.

Moreover, Congress did not include the requirements of section 609(e) in the definition of ''identity theft report.'' Instead, it granted the Commission rulemaking authority to determine how the ''identity theft report'' should most appropriately be defined. The Commission believes that it would be overly burdensome to consumers if consumer reporting agencies and information furnishers could request additional information or documentation without an underlying rationale. Further, as discussed above, the Commission believes that it has provided consumer reporting agencies and information furnishers with sufficient flexibility to verify identity theft claims.

Some commenters were concerned that specific language in the first example, that ''the report was fraudulently obtained,'' excluded reports that were counterfeit or otherwise falsified.[56] For the sake of clarity, the Commission has changed this language to ''the report was fraudulent.'' At least one commenter noted that the fifth example seemed unclear.[57] The Commission agrees and considers that the caution against unreasonable redundancy in example 5 is already covered by the other examples. Therefore, it has deleted the fifth example. The remaining examples are unchanged.

C. Section 613.1: Duration of Active Duty Alerts

Under section 112 of the Act, service members who meet the definition of an active duty military consumer[58] are permitted to place an active duty alert in their consumer report maintained by a nationwide consumer reporting agency covered under the definition of section 603(p) of the FCRA. The Act sets a minimum period of 12 months for the duration of the active duty alert, but required the Commission to determine if this period should be longer. In the NPRM, the Commission proposed to maintain the duration of the active duty alert at 12 months because it believed that 12 months would cover adequately the time period for which the majority of service members would be deployed. A number of commenters, including the one service branch commenting directly on the issue, supported the Commission's proposal.[59]

Opposing commenters generally suggested that service members should be able to choose their own duration or select among options of pre-determined lengths.[60] The Commission has

[54] Example 1: A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim's request. In this case, without an identifiable concern, such as an indication that the report was obtained fraudulently, it would not be reasonable for an information furnisher or consumer reporting agency to request additional information or documentation. 69 FR 23378.

[55] *See, e.g.*, Consumer Data Industry Association #000009 (''In addition, the verification element is consistent with the FACT Act provisions, codified in FCRA section 609(e), with respect to the obligations of a business entity to disclose information to an identity theft victim. Those provisions give the entity the discretion always to request the following from the victim, in order to verify the claim of identity theft: (i) A copy of a police report evidencing the claim; and (ii) a properly completed (I) copy of a standardized affidavit of identity theft developed and made available by the Commission; or (II) an affidavit of fact that is acceptable to the business entity for that purpose. [Footnote 12: FCRA 609(e)(2)(B); 15 U.S.C. 1681g(e)(2)(B) (emphasis added).] However, as discussed below, CDIA is concerned that the illustrative examples in the Proposed Rule appear to suggest that in some instances, it would be unreasonable for a consumer reporting agency to request a fraud affidavit or similar information when the consumer provides a police report. Such a suggestion would create unjustified inconsistency, because the FCRA itself permits furnishers to use their discretion to request such information in similar circumstances.'').

[56] *See, e.g.*, Consumer Data Industry Association #000009 (''Although the example would permit requests for additional information if there is some indication that the report was obtained fraudulently, the example should also permit additional information if the report was fraudulently created or altered.'').

[57] *See, e.g.*, Consumer Data Industry Association #000009 (''(5) If the information the information furnishers or the consumer reporting agencies are seeking is already found in the law enforcement report which is otherwise satisfactory, it would not be reasonable to request that the consumer fill out the same information on a different form. The point of this example is unclear.'').

[58] FACT Act sec. 111, *codified at* FCRA sec. 603(q)(1), 15 U.S.C. 1681a(q)(1).

The term ''active duty military consumer'' means a consumer in military service who—

(A) Is on active duty (as defined in section 101(d)(1) of Title 10 U.S.C.) or is a reservist performing duty under a call or order to active duty under a provision of law referred to in section 01(a)(13) of Title 10 U.S.C.; and

(B) Is assigned to service away from the usual duty station of the consumer.

The Commission notes that the United States Marine Corps (#000004) requested clarification of this definition due to concerns that reservists do not have a usual duty station and that some service assignments may only be temporary. However, with respect to active duty alerts, Congress charged the Commission solely with considering whether to lengthen the duration of the active duty alert.

[59] *See, e.g.*, Office of the Judge Advocate General, Department of the Navy #000011 (''The active duty alert should remain at 12 months. * * * The disadvantage of a longer duration for the active duty alert is that service members may need to remove the alert instead of allowing it to expire. For understandable security reasons it will be more difficult to remove an alert than it is to place one. Delays experienced in removing an alert can negatively impact an individual's ability to establish lines of credit or procure loans. Additionally, a 12-month duration for an alert strikes the balance of meeting the active duty military member's needs without being an undue burden on consumers or creditors.'').

[60] *See, e.g.*, Navy Federal Credit Union #000022 (''While many tours of active duty may span 12

Continued

understood that a term of deployment is generally 12 months or less. Deployments may be extended, but service members will not know if their deployments will be extended before they leave on their initial deployment. Thus, it would seem, in the majority of cases, that it would be impossible for service members to accurately select a duration greater than 12 months.

The Commission considers that a better solution would be for service members whose deployments are greater than 12 months to place a subsequent active duty alert.[61] In the NPRM, the Commission asked for comments on the ability of service members to do so, particularly if they already are deployed. The Commission received only a few responsive comments.[62] The one comment on the issue from a military service branch indicated that its personnel likely would have access to email, regular U.S. mail and/or a commercial phone line at least during a portion of the deployment. The Commission expects that the active duty alert may be renewed by using at least some of these communication methods.[63]

Accordingly, the Commission adopts the duration of the active duty alert without modification.

D. Section 614.1: Appropriate Proof of Identity

Subsection 112(b) of the Act requires the Commission to determine what constitutes appropriate proof of identity for purposes of sections 605A (request by a consumer, or an individual acting on behalf of or as a personal representative of a consumer, for placing and removing fraud and active duty alerts), 605B (request by a consumer for blocking fraudulent information on consumer reports), and 609(a)(1) (request by a consumer for Social Security number truncation on file disclosures) of the FCRA, as amended by the Act. The Commission proposed that the rule would require consumer reporting agencies to develop reasonable requirements to identify consumers in accordance with the risk of harm that may arise from a misidentification, but which, at a minimum, should be sufficient to match consumers with their files. The Commission also proposed examples of the kind of information that it might be reasonable to request to match consumers with their files as well as for additional identification. In developing this proposal, the Commission determined that the central consideration was the balance between the harm to the consumer that might arise from inadequate identification with the harm that might arise from delayed or failed fulfillment of requested services due to greater levels of scrutiny. Because the Commission considered that the risk of harm may differ depending on a variety of factors including the service being requested,[64] it sought to develop a standard of proof that had sufficient flexibility to accommodate these differences. Moreover, the Commission viewed the consumer reporting agencies as being in the best position to assess these differences. Commenters were generally supportive of the Commission's approach,[65] but many requested clarifications on various points.

A few commenters requested clarification that the Commission's rule did not require that a consumer reporting agency be able to match consumer-provided information with their file information to a perfect degree.[66] This rule is not intended to reach the question of whether a consumer reporting agency should match information completely, but rather to set forth the type of information that would allow the agency to accurately find the right consumer's file in its database, and as necessary, determine that the requester is in fact the consumer.

Other commenters were concerned that the rule not be used to make it more difficult for consumers to obtain the requested services.[67] Because the rule states that consumer reporting agencies ''shall develop and implement

months, many do not. We believe that the agency should prescribe flexibility for those cases where a servicemember's deployment extends beyond the 12-month duration and broaden the definition of 'active duty alert.' We suggest that the rule be written to allow a servicemember to place an alert from 12 to 24 months or, in the alternative, allow the servicemember to place an alert for the expected term of his or her tour of duty.'').

[61] The Commission notes that although the Act is silent on the placement of subsequent alerts, it would be illogical to read the Act otherwise because service members may go on deployments that meet the elements of the definition of the term ''active duty military consumer'' several times during their service careers.

[62] *See, e.g.*, Office of the Judge Advocate General, Department of the Navy #000011 (''Navy personnel on extended deployments will in most circumstances have access to Email, regular U.S. Mail and/or a commercial phone line at least during a portion of the deployment. Assuming one of these methods of communication will be sufficient to establish or extend an active duty alert then it should not be difficult for a service member to accomplish. Additionally, deploying units frequently hold pre-deployment briefings at which deploying personnel can be briefed on the active duty alert and the option of identifying a personal representative capable of extending the active duty alert if it becomes necessary.''); Michigan Credit Union League #EREG–000024 (''If necessary, we don't believe that it would be difficult to extend an active duty alert, since part of the process of being called to active duty often requires a service person to designate a person as their power of attorney. If the active duty is going to be extended, then the service person or a designated power of attorney could request an extension.''); and Consumers Union #EREG–000002 (''It will be difficult for some. While many service members do have a personal representative, others, particularly those without spouses, may not wish to give another person access to their credit record.'').

[63] Communication also should be made easier for deployed service members because they only need to contact one of the consumer reporting agencies when placing an active duty alert. Under section 605A of the FCRA, the contacted consumer reporting agency must refer the request for placement to the other nationwide consumer reporting agencies. 15 U.S.C. 1681c–1.

[64] For example, given the function of fraud alerts in preventing identity theft, they need to be placed without delay, yet they seem unlikely to be placed by someone other than the consumer or without authorization from the consumer. Thus, unless these circumstances were to change, it would not seem necessary to require more identification than is needed to match the consumer's file. With respect to requests for removal of fraud alerts, however, there would seem to be some incentive for someone other than the consumer, such as an identity thief, to remove them. A delay due to greater scrutiny of the requester would likely cause less harm than an improper removal, and would thus justify greater proof of identity. 69 FR 23374.

[65] *See, e.g.*, Consumer Bankers Association #000007 (''The Proposed Rule requires consumer reporting agencies to 'develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity.' We commend the FTC for determining that the consumer reporting agencies are in the best position to determine what should suffice as 'appropriate proof of identity' in these circumstances. Like the FTC, we believe that the consumer reporting agencies are best equipped to evaluate the risks of misidentifying the consumer as well as the types of information that would be necessary to identify the consumer properly. Therefore, we urge the FTC retain this approach in the Final Rule.'').

[66] *See, e.g.*, Sprint Corporation #EREG–000013 (''The Commission should make clear that when a file match process is used, it is not requiring that there be a 'full match.' For example, a consumer may provide his address as 143rd. yet other records may identify the address as 143rd Street or Terrace. Similar variances or even keystroke errors can occur with street numbers and customer names. If a 100 percent match were required, a high percentage of requests would likely be rejected by automated systems and fall out for manual processing, which would entail length delays and add significant costs. The Commission should make clear that it is not requiring reporting agencies and information furnishers to use, build or modify systems requiring a 100 percent match with no variance allowed, if they use a file match process.'').

[67] *See, e.g.*, Consumers Union #EREG–000002 (''Consumer advocates are concerned that CRAs and, in particular, furnishers may insist on heightened identification requirements in order to make it more difficult to access the rights conferred on identity theft victims by Congress. To prevent this undesirable outcome, while still preserving flexibility, the rule itself should prohibit excessive identification standards. For placing an alert, and for trade line blocking, the rule should prohibit requiring more information than the level of information sufficient to enable the consumer reporting agency to match consumers with their files. The amount of identifying information must not be more than is reasonably necessary in light of the risk to the consumer of a delay in the exercise of an identity theft prevention right.'').

reasonable requirements for what information consumers shall provide,'' the Commission believes that this required element of reasonableness, taken together with the examples of types of reasonable information, will limit the likelihood that a consumer reporting agency would make identification unduly difficult for consumers.

Commenters also were concerned about the reasonableness of allowing consumers to be asked to provide their full Social Security numbers.[68] The Commission believes it is reasonable for consumer reporting agencies to request the full Social Security number if they determine it to be necessary. Consumer reporting agencies already have the full number so the risk that accompanies a new disclosure is minimal. Furthermore, because names, addresses, and birth dates are not always unique to a consumer, full Social Security numbers may be necessary to ensure that consumer reporting agencies match the consumer with the correct file. Moreover, the use of partial Social Security numbers may not provide sufficient accuracy when an agency is working with a large database.

Some commenters were concerned that differing standards of identification would lead to confusion [69] or delays in service.[70] Under the voluntary systems of fraud alert placement and fraudulent information blocking existing prior to the Act, the Commission saw no evidence of consumer confusion in the standards of identification different consumer reporting agencies selected. One standard could also lead to consumers being asked for too much information in order that every consumer reporting agency satisfy the standard of the one consumer reporting agency that needed the most information due to its particular circumstances.

One commenter requested clarification of ''current methods of authentication'' in paragraph (b)(2).[71] The Commission used the term ''current'' to demonstrate that authentication methods may change over time and the examples should be sufficiently flexible to adapt accordingly. However, to avoid confusion, the Commission has deleted the word ''current.''

Some commenters requested that additional types of information be added to the examples.[72] It was not the Commission's intention to specify every form of authentication that a consumer reporting agency could use. Rather, the intent was to distinguish the type of information that might be sufficient for finding consumers' files from the type of information that could prove that the consumers are who they purport to be. Therefore, the Commission does not deem it necessary to include additional authentication methods. However, in paragraph (b)(1), the Commission has added the language ''current and/or recent'' before ''full address'' to make clear that consumer reporting agencies may request additional addresses for consumers who have recently relocated as it may be less apparent that such information may be necessary to find a consumer's file.

Except for the changes to the examples referenced above, the Commission makes no changes to the rule or the examples.

III. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires that the Commission provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA''), if any, with the final rule, unless the Commission certifies that the rule will not have a significant economic impact on a substantial number of small entities (*i.e.*, in general, those with less than $6,000,000 in average annual receipts). 5 U.S.C. 603–605.

The Commission hereby certifies that the final rules will not have a significant economic impact on a substantial number of small entities. The final rules apply to consumer reporting agencies, including agencies that are small entities, if any; persons that furnish information to consumer reporting agencies (''information furnishers''), including persons that are small entities, if any; and to users of consumer reports who are seeking to extend credit to consumers, including users that are small entities, if any. The Commission has concluded that currently there are no nationwide consumer reporting agencies that are small entities (with less than $6 million in average annual receipts). In the NPRM, the Commission stated that a precise estimate of the number of small entities that are other consumer reporting agencies (with less than $6 million in average annual receipts) and users of consumer reports within the meaning of the proposed rules was not currently feasible. In the NPRM, therefore, the Commission asked several questions related to the existence, number and nature of small business entities covered by the proposed rules, as well as the economic impact of the proposed rules on such entities. The Commission received no comments responsive to these questions. Thus, the Commission has been unable to determine precisely how many, if any, consumer reporting agencies, information furnishers, and users of consumer reports are small entities within the meaning of the final rules. Based on its own experience and knowledge of industry practices and members, however, the Commission believes that although there may be a number of small entities among the other consumer reporting agencies,

[68] *See, e.g.*, Consumers Union #EREG–000002 (''We are strongly opposed to the portion of the example which suggests that it is appropriate to require a consumer who has been a victim of identity theft to provide the full nine digits of the Social Security Number. Matching requirements for consumers to exercise their identity theft prevention rights under FACTA should be no more stringent than the level of matching which the CRAs require from users of credit files. Consumers are understandably reluctant to give their Social Security Numbers. Consumers who have been victims or who are concerned about becoming victims of identity theft may be even more concerned about safeguarding this number. If a CRA or furnisher is permitted to request a Social Security Number at all (to place an alert or a block), it should be limited to the last four digits of the Social Security Number, rather than the entire number.'').

[69] *See, e.g.*, Equifax Information Systems #000023 (''Allowing adjustments commensurate with the risk of harm allows too much leeway and could result in different standards and risk evaluations by nationwide consumer reporting agencies and data furnishers. One data furnisher or nationwide consumer reporting agency may accept the proof of identity and the others not, resulting in confusion to consumers and the system.'').

[70] *See, e.g.*, Consumers Union #EREG–000002 (''This approach may defeat the FACTA goal of permitting consumers to request an alert from one of the three major credit reporting agencies, and have that alert forwarded to the additional agencies. If each agency has a different set of identification requirements, how will referral of fraud alert requests work? The statutory goal cannot be served if the request is made, but is not honored, because of differing identification requirements among CRAs. In that situation 'one call' doesn't 'do it all.' '').

The Act requires nationwide consumer reporting agencies to refer fraud alerts to each other for placement in a consumer's report. The Commission does not believe that it is necessary for the final rule to determine how these consumer reporting agencies comply with this requirement of the Act. The Commission considers that the final rule provides these consumer reporting agencies with the necessary flexibility to comply, and expects that they will select the correct standard of identification to ensure their compliance, or modify the standard as necessary should they be found to be out of compliance.

[71] Consumer Data Industry Association #000009 (''It is unclear what is meant by 'current' methods.'').

[72] *See, e.g.*, Consumer Data Industry Association #000009 (''CDIA also suggests that the final rule include as examples of alternative proof of identity copies of pay stubs and W–2 forms.'') and TransUnion LLC #000018 (''* * * we ask that a consumer's previous address (if the consumer has resided at the present address for less than two years) be an example of appropriate information.'').

information furnishers and the users of consumer reports, and the economic impact of the final rules on a particular small entity could be significant, overall the final rules likely will not have a significant economic impact on a substantial number of small entities. The Commission believes further that the regulations will have a minimal impact on small entities because the regulations give these entities flexibility to adapt their existing requirements to ensure that they are providing correctly the services requested by consumers.

Accordingly, this document serves as notice to the Small Business Administration of the agency's certification of no effect. Nonetheless, the Commission has determined to publish a Final Regulatory Flexibility Analysis with the final rules. Therefore, the Commission has prepared the following analysis:

A. Need for and Objectives of the Rule

The Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108–159, 117 Stat. 1952 (FACT Act or the Act), directs the Commission to adopt rules to establish: (1) Definitions for the terms ''identity theft'' and ''identity theft report;'' (2) the duration of an ''active duty alert;'' and (3) the appropriate proof of identity for purposes of sections 605A (fraud alerts and active duty alerts), 605B (consumer report information blocks), and 609(a)(1) (truncation of Social Security numbers) of the FCRA, as amended by the Act. In this action, the Commission promulgates final rules to fulfill the statutory mandate. The rules are authorized by and based upon sections 111 and 112 of the FACT Act.

B. Significant Issues Raised by Public Comment

The Commission received no public comments on the specific impact, if any, of the rules on small entities. As explained above, the Commission has been unable to determine precisely how many, if any, consumer reporting agencies, information users, and users of consumer reports are small entities within the meaning of the final rules. Overall, however, the Commission believes that the final rules likely will not have a significant economic impact on a substantial number of small entities. Furthermore, as discussed below, the Commission has determined that with respect to small entities, if any, the final rules do not include a collection of information requirement subject to the Paperwork Reduction Act of 1995.

The Commission, however, has considered that § 603.3 of the rules, which defines the term ''identity theft report'' and establishes that it may include additional information or documentation to help information furnishers or consumer reporting agencies determine the validity of the alleged identity theft, could apply to small entities, if any. As proposed in the NPRM, the request, if any, for additional information would have to have been made no later than five business days after the date of receipt of the report or the request by the consumer for a particular service, whichever came later. A few commenters questioned certain aspects of the process for requesting additional information set forth in § 603.3, and they directly commented on the potential impact of the process on small entities, if any. For example, the commenters stated that a small business may need more than five business days to request additional information from a consumer, especially in light of the potential increase in the number of identity theft reports that will be received by small businesses, which may have limited staffing and hours of operation. Specifically, the commenters indicated that a small business may need more than five business days to receive an identity theft report, process it, review its contents, and search its files to determine whether it needs additional information from a consumer.[73] In this Statement of Basis and Purpose, the Commission has explained its consideration of and response to those comments. The Commission has made certain changes in § 603.3 of the final rules that should further minimize its impact on all information furnishers and consumer reporting agencies, which would include those, if any, that may be small entities. These changes, which provide information furnishers or consumer reporting agencies with additional opportunities, over a longer period of time than originally proposed (30 days), to request more information from consumers, are explained above in the discussion of the revisions made to § 603.3 of the rules.

C. Small Entities to Which the Rules Will Apply

As described above, the final rules apply to consumer reporting agencies, including agencies that are small entities, if any; information users, including agencies that are small entities, if any; and to users of consumer reports, including users that are small entities, if any. In the NPRM, the Commission stated that a precise estimate of the number of small entities that are consumer reporting agencies (with less than $6 million in average annual receipts) and users of consumer reports within the meaning of the proposed rules was not currently feasible. The Commission, however, invited comment and information on this issue. No comments addressed this issue, and no information with respect to small entities that might be affected by the rules was provided. Thus, based on the lack of response to its request for comments, the Commission has been unable to determine precisely how many, if any, consumer reporting agencies, information furnishers and users of consumer reports are small entities within the meaning of the final rules.[74]

D. Projected Reporting, Recordkeeping and Other Compliance Requirements

In the NPRM, the Commission tentatively determined that with respect to small entities, if any, the proposed rules did not include a collection of information subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501; 5 CFR 1320). The rules do contain collections of information affecting individual consumers and those activities have been separately approved under the Act, as described in section IV, *infra.* The Commission, however, sought comment on any paperwork burden that the proposed rules may impose on small entities to ensure that no burden had been overlooked. No comments addressed this issue. Accordingly, the Commission has determined that with respect to small entities, if any, the final rules do not include a collection of information subject to the Paperwork Reduction Act of 1995.

The Commission recognizes, however, that consumer reporting agencies, information furnishers and users of consumer reports, including those that might be small entities, if any, may incur some indirect, incidental expenses associated with the regulatory scheme established by the rules. Most of these expenses will be in the form of printing,

[73] *See, e.g.*, Coalition to Implement the Fact Act #000019, the Michigan Credit Union League #EREG–000024, America's Community Bankers #000024, and the Juniper Bank #000026.

[74] In addition, to the extent the rules may indirectly affect small governmental jurisdictions (*e.g.*, local police departments that may provide reports about identity theft to consumers), which are defined as small entities pursuant to the RFA (5 U.S.C. 601(5)), the U.S. Census Bureau's *Governments Integrated Directory* as enumerated for the 2002 Census of Governments, suggests there are approximately 85,000 such jurisdictions nationwide. It is not feasible, however, for the Commission to estimate precisely how many, if any, of these jurisdictions may provide reports about identity theft to consumers.

copying, mailing and filing costs associated with processing and reviewing identity theft reports, validating the information received from consumers, and requesting additional information from consumers, if necessary, to determine the validity of the alleged identity theft or the consumer's proof of identity. It is not feasible for the Commission to estimate precisely such expenses without information regarding the volume of the aforementioned activities. It is likely, however, that some of the aforementioned expenses would be incurred anyway in the ordinary course of business.

E. Steps Taken To Minimize Significant Economic Impact of the Rules on Small Entities

The Commission invited comment and information with regard to (1) the existence of small business entities for which the proposed rules would have a significant economic impact; and (2) suggested alternative methods of compliance that, consistent with the statutory requirements, would reduce the economic impact of the rules on such small entities.

The Commission received no information or suggestions in response to these questions. As explained above, however, the Commission has written the final rules, and made certain changes to the final rules, to minimize their impact on all entities that are subject to the rules, including small entities, if any, that may be subject to the rules. For example, the Commission has written the final rules to provide information furnishers or consumer reporting agencies with additional opportunities, over a longer period of time than originally proposed (30 days), to request more information from consumers.

IV. Final Paperwork Reduction Act Analysis

In accordance with the Paperwork Reduction Act, as amended, 44 U.S.C. 3501 *et seq.*, the Commission submitted the proposed rules to the Office of Management and Budget (''OMB'') for review. The OMB has approved the rules' information collection requirements through June 30, 2007, and has assigned OMB control number 3084–0129. The Commission did not receive any comments relating to its original burden estimates for the rules' information collection requirements.

V. Final Rules

List of Subjects in 16 CFR Parts 603, 613, and 614

Fair Credit Reporting Act, Consumer reports, Consumer reporting agencies, Credit, Information furnishers, Identity theft, Trade practices.

■ Accordingly, for the reasons set forth in the preamble, the Commission amends title 16 of the Code of Federal Regulations as follows:

■ 1. Add part 603 to read as follows:

PART 603—DEFINITIONS

Sec.
603.1 [Reserved]
603.2 Identity theft.
603.3 Identity theft report.

Authority: Pub. L. 108–159, sec 111; 15 U.S.C. 1681a.

§ 603.1 [Reserved]

§ 603.2 Identity theft.

(a) The term ''identity theft'' means a fraud committed or attempted using the identifying information of another person without authority.

(b) The term ''identifying information'' means any name or number that may be used, alone or in conjunction with any other information, to identify a specific person, including any—

(1) Name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number;

(2) Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;

(3) Unique electronic identification number, address, or routing code; or

(4) Telecommunication identifying information or access device (as defined in 18 U.S.C. 1029(e)).

§ 603.3 Identity theft report.

(a) The term ''identity theft report'' means a report—

(1) That alleges identity theft with as much specificity as the consumer can provide;

(2) That is a copy of an official, valid report filed by the consumer with a Federal, State, or local law enforcement agency, including the United States Postal Inspection Service, the filing of which subjects the person filing the report to criminal penalties relating to the filing of false information, if, in fact, the information in the report is false; and

(3) That may include additional information or documentation that an information furnisher or consumer reporting agency reasonably requests for the purpose of determining the validity of the alleged identity theft, provided that the information furnisher or consumer reporting agency:

(i) Makes such request not later than fifteen days after the date of receipt of the copy of the report form identified in paragraph (a)(2) of this section or the request by the consumer for the particular service, whichever shall be the later;

(ii) Makes any supplemental requests for information or documentation and final determination on the acceptance of the identity theft report within another fifteen days after its initial request for information or documentation; and

(iii) Shall have five days to make a final determination on the acceptance of the identity theft report, in the event that the consumer reporting agency or information furnisher receives any such additional information or documentation on the eleventh day or later within the fifteen day period set forth in paragraph (a)(3)(ii) of this section.

(b) Examples of the specificity referenced in paragraph (a)(1) of this section are provided for illustrative purposes only, as follows:

(1) Specific dates relating to the identity theft such as when the loss or theft of personal information occurred or when the fraud(s) using the personal information occurred, and how the consumer discovered or otherwise learned of the theft.

(2) Identification information or any other information about the perpetrator, if known.

(3) Name(s) of information furnisher(s), account numbers, or other relevant account information related to the identity theft.

(4) Any other information known to the consumer about the identity theft.

(c) Examples of when it would or would not be reasonable to request additional information or documentation referenced in paragraph (a)(3) of this section are provided for illustrative purposes only, as follows:

(1) A law enforcement report containing detailed information about the identity theft and the signature, badge number or other identification information of the individual law enforcement official taking the report should be sufficient on its face to support a victim's request. In this case, without an identifiable concern, such as an indication that the report was fraudulent, it would not be reasonable for an information furnisher or consumer reporting agency to request

additional information or documentation.

(2) A consumer might provide a law enforcement report similar to the report in paragraph (c)(1) of this section but certain important information such as the consumer's date of birth or Social Security number may be missing because the consumer chose not to provide it. The information furnisher or consumer reporting agency could accept this report, but it would be reasonable to require that the consumer provide the missing information.

(3) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for a tradeline block or cessation of information furnishing. In such a case, it would be reasonable for an information furnisher or consumer reporting agency to ask that the consumer fill out and have notarized the Commission's ID Theft Affidavit or a similar form and provide some form of identification documentation.

(4) A consumer might provide a law enforcement report generated by an automated system with a simple allegation that an identity theft occurred to support a request for an extended fraud alert. In this case, it would not be reasonable for a consumer reporting agency to require additional documentation or information, such as a notarized affidavit.

■ 2. Add Part 613 to read as follows:

PART 613—DURATION OF ACTIVE DUTY ALERTS

Sec.
613.1 Duration of active duty alerts.

Authority: Pub. L. 108–159, sec. 112(a); 15 U.S.C. 1681c–1.

§ 613.1 Duration of active duty alerts.

The duration of an active duty alert shall be twelve months.

■ 3. Add Part 614 to read as follows:

PART 614—APPROPRIATE PROOF OF IDENTITY

Sec.
614.1 Appropriate proof of identity.

Authority: Pub. L. 108–159, sec. 112(b).

§ 614.1 Appropriate proof of identity.

(a) Consumer reporting agencies shall develop and implement reasonable requirements for what information consumers shall provide to constitute proof of identity for purposes of sections 605A, 605B, and 609(a)(1) of the Fair Credit Reporting Act. In developing these requirements, the consumer reporting agencies must:

(1) Ensure that the information is sufficient to enable the consumer reporting agency to match consumers with their files; and

(2) Adjust the information to be commensurate with an identifiable risk of harm arising from misidentifying the consumer.

(b) Examples of information that might constitute reasonable information requirements for proof of identity are provided for illustrative purposes only, as follows:

(1) Consumer file match: The identification information of the consumer including his or her full name (first, middle initial, last, suffix), any other or previously used names, current and/or recent full address (street number and name, apt. no., city, state, and zip code), full 9 digits of Social Security number, and/or date of birth.

(2) Additional proof of identity: copies of government issued identification documents, utility bills, and/or other methods of authentication of a person's identity which may include, but would not be limited to, answering questions to which only the consumer might be expected to know the answer.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–24589 Filed 11–2–04; 8:45 am]

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DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 4841]

RIN 1400–AB85

Availability of Information to the Public

AGENCY: State Department.

ACTION: Final rule.

SUMMARY: This rule makes final the Department's proposed rule published on March 31, 2004. The rule revises the Department's regulations governing access by the public to information that is under the control of the Department in order to reflect changes in the provisions of basic underlying laws and executive orders pertaining to access to information (*i.e.*, the Freedom of Information Act, the Privacy Act, Executive Order 12958 on National Security Information, the Ethics in Government Act) and in the Department's procedures since the last revision of the Department's regulations on this subject. The Department received one non-substantive comment, and proposes no changes to the proposed rule. The proposed rule is therefore issued as final.

EFFECTIVE DATE: This rule is effective on November 3, 2004.

ADDRESSES: Persons wishing to make requests for information under these regulations should address such requests to: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001. Tel: 202–261–8300; FAX: 202–261–8590.

Persons with access to the Internet may also view this notice by going to the regulations.gov Web site at *http://www.regulations.gov/index.cfm.*

FOR FURTHER INFORMATION CONTACT: Margaret P. Grafeld, Director, Office of Information Programs and Services, U.S. Department of State, SA–2, 515 22nd St., NW., Washington, DC 20522–6001. Tel: 202–261–8300; FAX: 202–261–8590.

SUPPLEMENTARY INFORMATION: The Department's proposed rule was published as Public Notice 4653 at 69 FR 16841–16853 on March 31, 2004, with a 90-day public comment period. The Department received one non-substantive comment regarding Reading Room hours of operation, which was satisfied by the availability of the Department's FOIA Web site 24 hours a day. Additionally, while the Department does not accept FOIA requests via e-mail, we are beginning to accept requests via our Web site.

The Freedom of Information Act (FOIA), the Privacy Act (PA), and certain portions of the Ethics in Government Act and Executive Order 12958, as amended, provide for access by the public to records of executive branch agencies, subject to certain restrictions and exemptions. 22 CFR part 171 sets forth the Department's regulations implementing the access provisions of those statutes and the Executive Order. Since the last publication of the regulations in the 1980's, there have been significant changes in the law governing access to government information by the public, particularly with respect to the FOIA and the Executive Order. In addition, certain court decisions have been rendered that affect such access provisions.

A major revision of the Freedom of Information Act was enacted in 1996, the so-called Electronic Freedom of Information Act. The changes effected by the Electronic Freedom of Information Act amendments of 1996 included provisions with respect to the form in which agencies are required to

provide requested information, circumstances that warrant exceptions to time limits on responding to requests, situations in which expedited processing of requests is warranted, and certain reporting requirements. In the case of the requests by the public for declassification of national security information, several executive orders have been promulgated since the Department regulations were last amended. Executive Order 12958, issued in 1995 and most recently and most substantially amended by Executive Order 13292 of March 28, 2003, effected changes in the provisions governing mandatory declassification review as well as access to agency records by historical researchers and certain former government personnel. The final regulations take account of these changes and other changes in the law, principally by way of court decisions, as well as changes in the Department's procedures designed to implement them.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Confidential business information, Freedom of information, Privacy.

■ Chapter 1 of Title 22 of the Code of Federal Regulations is amended by revising part 171 to read as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

Subpart A—General Policy and Procedures

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171.2 Types of records maintained.
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171.20 Definitions.
171.21 Declassification review.
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Subpart F—Appeals Procedures

171.50 Appeals of denials of expedited processing.
171.51 Appeals of denials of fee waivers or reductions.
171.52 Appeals of denials of access to, declassification of, amendment of, or accounting of disclosures of records.

Authority: 22 U.S.C. 552, 552a; Ethics in Government Act of 1978, Pub. L. 95–521, 92 Stat. 1824, as amended; E.O. 12958, as amended, 60 FR 19825, 3 CFR, 1995 Comp., p. 333; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

Subpart A—General Policy and Procedures

§ 171.1 Availability of information.

Records of the Department of State shall be made available to the public upon request made in compliance with the access procedures established in this part, except for any records exempt by law from disclosure. Any request for records must describe the information sought in such a way (*see* § 171.5(c)) that an employee of the Department of State who is familiar with the subject area of the request can locate the records with a reasonable amount of effort. The sections that follow govern the response of the Department to requests for information under the Freedom of Information Act, the Privacy Act, Executive Order 12958, and the Ethics in Government Act. Regulations at 22 CFR 172.1–9 govern the response of the Department to subpoenas, court orders, and certain other requests for testimony of Department officials or disclosure of Department records in litigation to which the Department is not a party.

§ 171.2 Types of records maintained.

Most of the records maintained by the Department pertain to the formulation and execution of U.S. foreign policy. Certain records that pertain to individuals are also maintained such as applications for U.S. passports, applications for visas to enter the U.S., records on consular assistance given abroad by U.S. Foreign Service posts to U.S citizens, and records on Department employees. Further information on the types of records maintained by the Department may be obtained by reviewing the records disposition schedules which are available through the Department's Web site: *http://www.state.gov* or directly at the FOIA home page: *http://foia.state.gov*.

§ 171.3 Public reading room.

A reading room providing public access to certain Department of State material is located in the Department of State, SA–2, 515 22nd Street, NW., Washington, DC. The reading room contains material pertaining to access to information under the Freedom of Information Act, Privacy Act, E.O. 12958 and includes those statutes, regulations, guidelines, and other items required to be made available to the public under 5 U.S.C. 552(a)(2). Also available in the reading room are microfiches of records released by the Department pursuant to requests under the Freedom of Information Act and compilations of documents reviewed and released in certain special projects. The reading room is open during normal Department weekday working hours, 8:15 a.m. to 5 p.m. There are no fees for access by the public to this room or the material contained therein, but fees shall be assessed for the duplication of materials maintained in the reading room at the rate of 15 cents per page and $2.00 per microfiche card. Fees for copies made by other methods of reproduction or duplication, such as tapes, printouts, or CD–ROM, shall be the actual cost of producing the copies, including operator time. Persons wishing to use their own copying equipment must request approval in advance from the Department's Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–6001. The use of such equipment must be consistent with security regulations of the Department and is subject to the availability of personnel to monitor such copying.

§ 171.4 Electronic reading room.

The Department has established a site on the Internet with most of the same records and reference materials that are available in the public reading room. This site also contains information on accessing records under the FOIA and the Privacy Act. The site is a valuable source that is easily accessed by the public by clicking on ''FOIA'' at the Department's Web site at *http://www.state.gov* or directly at the FOIA home page at *http://foia.state.gov*.

Included on the FOIA home page are links to other sites where Department information may be available. The Department's Privacy Act systems of records and the various records disposition schedules may be found on the Department's FOIA home page under ''Reference Materials.''

§ 171.5 Requests for information—types and how made.

(a) Requests for records in accordance with this chapter may be made by mail addressed to the Information and Privacy Coordinator, U.S. Department of State, SA–2, 515 22nd Street, NW., Washington, DC 20522–6001. Facsimile requests under the FOIA only may be sent to: (202) 261–8579. E-mail requests cannot be accepted at this time. Requesters are urged to indicate clearly on their requests the provision of law under which they are requesting information. This will facilitate the processing of the request by the Department. In any case, the Department will process the request under the provision of law that provides the greatest access to the requested records.

(b) Requests may also be made by the public in person from 8:15 a.m. to 5 p.m. at the Department of State, SA–2, 515 22nd Street, NW., Washington, DC.

(c) Although no particular request format is required, it is essential that a request reasonably describe the Department records that are sought. The burden of adequately identifying the record requested lies with the requester. Requests should be specific and include all pertinent details about the request. For FOIA requests, the request should include the subject, timeframe, any individuals involved, and reasons why the Department is believed to have records on the subject of the request. For Privacy Act requests, the request should state the type of records sought, the complete name and date and place of birth of the subject of the request, and the timeframe for the records. An original signature is required. *See* § 171.12(b) for guidance regarding third party requests. Individuals may seek assistance regarding any aspect of their requests from the Chief, Requester Liaison Division, (202) 261–8484.

(d) While every effort is made to guarantee the greatest possible access to all requesters regardless of the specific statute under which the information is requested, the following guidance is provided for individuals in requesting records:

(1) *Freedom of Information Act.* Requests for documents concerning the general activities of government and of the Department of State in particular (*see* subpart B of this part).

(2) *E.O. 12958.* Requests for mandatory review and declassification of specific Department records and requests for access to such records by historical researchers and certain former government officials (*see* subpart C of this part).

(3) *Privacy Act.* Requests from U.S. citizens or legal permanent resident aliens for records that pertain to them and that are maintained by the Department under the individual's name or personal identifier (*see* subpart D of this part).

(4) *Ethics in Government Act.* Requests for the financial Disclosure Statements of Department Employees covered by this Act (*see* subpart E of this part).

(e) *First-in/first-out processing.* As a general matter, information access requests are processed in the order in which they are received. However, if the request is specific and the search can be narrowed, it may be processed more quickly.

(f) *Cut-off date.* In determining which records are responsive to a request, the Department ordinarily will include only records in its possession as of the date the search for responsive documents is initiated, unless the requester has specified an earlier time frame.

(g) *Records previously withheld or in litigation.* Requests shall not be processed for records that have been reviewed and withheld within the past two years or whose withholding is the subject of litigation.

§ 171.6 Archival records.

The Department ordinarily transfers records to the National Archives when they are 25 years old. Accordingly, requests for records 25 years old or older should be addressed to: Archives II, 8601 Adelphi Road, National Archives at College Park, MD 20470–6001.

Subpart B—Freedom of Information Act Provisions

§ 171.10 Purpose and scope.

This subpart contains the rules that the Department follows under the Freedom of Information Act (FOIA), 5 U.S.C. 552. The rules should be read together with the FOIA which provides additional information about access to records and contains the specific exemptions that are applicable to withholding information. Privacy Act records determined to be exempt from disclosure under the Privacy Act are processed as well under the FOIA and are subject to this subpart.

§ 171.11 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Freedom of Information Act* or *FOIA* means the statute codified at 5 U.S.C. 552, as amended.

(b) *Department* means the United States Department of State, including its field offices and Foreign Service posts abroad;

(c) *Agency* means any executive department, military department, Government corporation, Government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency;

(d) *Information and Privacy Coordinator* means the Director of the Department's Office of Information Programs and Services (IPS) who is responsible for processing requests for access to information under the FOIA, the Privacy Act, E.O. 12958, and the Ethics in Government Act;

(e) *Record* means all information under the control of the Department, including information created, stored, and retrievable by electronic means, regardless of physical form or characteristics, made in or received by the Department and preserved as evidence of the organization, functions, policies, decisions, procedures, operations or other activities of the Department or because of the informational value of the data contained therein. It includes records of other Government agencies that have been expressly placed under the control of the Department upon termination of those agencies. It does not include personal records created primarily for the personal convenience of an individual and not used to conduct Department business and not integrated into the Department's record keeping system or files. It does not include records that are not already in existence and that would have to be created specifically to meet a request. However, information available in electronic form shall be searched and compiled in response to a request unless such search and compilation would significantly interfere with the operation of the Department's automated information systems.

(f) *Control* means the Department's legal authority over a record, taking into account the ability of the Department to use and dispose of the record as it sees fit, to legally determine the disposition of a record, the intent of the record's creator to retain or relinquish control over the record, the extent to which Department personnel have read or relied upon the record, and the degree

to which the record has been integrated into the Department's record keeping system or files.

(g) *Direct costs* means those costs the Department incurs in searching for, duplicating, and, in the case of commercial requests, reviewing documents in response to a FOIA request. The term does not include overhead expenses.

(h) *Search costs* means those costs the Department incurs in looking for, identifying, and retrieving material, in paper or electronic form, that is responsive to a request, including page-by-page or line-by-line identification of material within documents. The Department shall attempt to ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the Department and the requester.

(i) *Duplication costs* means those costs the Department incurs in copying a requested record in a form appropriate for release in response to a FOIA request. Such copies may take the form of paper copy, microfiche, audio-visual materials, or machine-readable electronic documentation (*e.g.*, disk or CD-ROM), among others.

(j) *Review costs* means costs the Department incurs in examining a record to determine whether and to what extent the record is responsive to the FOIA request and the extent to which it may be disclosed to the requester. It does not include costs of resolving general legal or policy issues that may be raised by a request.

(k) *Unusual circumstances.* As used herein, but only to the extent reasonably necessary to the proper processing of the particular request, the term ''unusual circumstances'' means:

(1) The need to search for and collect the requested records from Foreign Service posts or other separate and distinct Department offices;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records that are demanded in a single request; or

(3) The need for consultation with another agency having a substantial interest in the determination of the request or among two or more components of the Department that have a substantial subject matter interest therein. Such consultation shall be conducted with all practicable speed.

(l) *Commercial use request* means a request from or on behalf of one who requests information for a use or purpose that furthers the commercial, trade, or profit interest of the requester or the person on whose behalf the request is made. In determining whether a requester belongs within this category, the Department will look at the use to which the requester will put the information requested.

(m) *Educational institution* means a preschool, a public or private elementary or secondary school, an institution of undergraduate or graduate higher education, an institution of professional education, or an institution of vocational education, that operates a program or programs of scholarly research.

(n) *Non-commercial scientific institution* means an institution that is not operated on a ''commercial'' basis, as that term is used in paragraph (l) of this section and that is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(o) *Representative of the news media* means any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term news means information that is about current events or that would be of current interest to the public. News media include television or radio stations broadcasting to the public at large and publishers of periodicals (but only in those instances when they can qualify as disseminators of ''news'') who make their products available for purchase by the general public. Freelance journalists may be regarded as working for a news organization if they can demonstrate, such as by past publication, a likelihood of publication through a representative of the news media, even though not actually employed by it.

(p) *All other* means an individual or organization not covered by a definition in paragraphs (l), (m), (n), or (o) of this section.

§ 171.12 Processing requests.

The Information and Privacy Coordinator is responsible for acting on all initial requests except for requests for records coming under the jurisdiction of the Bureau of Consular Affairs, the Bureau of Diplomatic Security, the Bureau of Human Resources, the Office of Medical Services, and the Office of the Inspector General.

(a) *Third party requests.* Except for requests under the Privacy Act by a parent of a minor or by a legal guardian (§ 171.32(c)), requests for records pertaining to another individual shall be processed under the FOIA and must be accompanied by a written authorization for access by the individual, notarized or made under penalty of perjury, or by proof that the individual is deceased (*e.g.*, death certificate or obituary).

(b) *Expedited processing.* Requests and appeals shall be taken out of order and given expedited treatment whenever a requester has demonstrated that a ''compelling need'' for the information exists. A request for expedited processing may be made at the time of the initial request for records or at any later time. The request for expedited processing shall set forth with specificity the facts on which the request is based. A notice of the determination whether to grant expedited processing shall be provided to the requester within 10 days of the date of the receipt of the request. A ''compelling need'' is deemed to exist where the requester can demonstrate one of the following:

(1) Failure to obtain requested information on an expedited basis could reasonably be expected to: Pose an imminent threat to the life or physical safety of an individual; impair substantial due process rights; or harm substantial humanitarian interests.

(2) The information is urgently needed by an individual primarily engaged in disseminating information in order to inform the public concerning actual or alleged Federal Government activity. News media requesters would normally qualify; however, other persons must demonstrate that their primary activity involves publishing or otherwise disseminating information to the public, not just a particular segment or group.

(i) *Urgently needed.* The information has a particular value that will be lost if not disseminated quickly. Ordinarily this means a breaking news story of general public interest. Information of historical interest only, or information sought for litigation or commercial activities would not qualify, nor would a news media publication or broadcast deadline unrelated to the breaking nature of the story.

(ii) *Actual or alleged Federal Government activity.* The information concerns some actions taken, contemplated, or alleged by or about the government of the United States, or one of its components or agencies, including the Congress.

(c) *Appeal of denial of expedited processing.* Any denial of a request for expedited processing may be appealed in accordance with the appeal procedure set forth in § 171.50.

(d) *Time limits.* The statutory time limit for responding to a FOIA request or to an appeal from a denial of a FOIA request is 20 days. In unusual circumstances, as defined in § 171.11(k), the time limits may be extended by the

Information and Privacy Coordinator for not more than 10 days, excepting Saturdays, Sundays, or legal public holidays.

(e) *Multitrack processing.* The Department may use two or more processing tracks by distinguishing between simple and more complex requests based on the amount of work and/or time needed to process the request. The Department may provide requesters in a slower track an opportunity to limit the scope of their request in order to qualify for faster processing.

(f) *Form or format of response.* The Department shall provide requested records in any form or format sought by the requester if the record is readily reproducible in that form or format through reasonable efforts.

§ 171.13 Business information.

(a) Business information obtained by the Department from a submitter will be disclosed under the FOIA only in compliance with this section.

(b) *Definitions.* For purposes of this section:

(1) *Business information* means information obtained by the Department from a submitter that arguably may be exempt from disclosure as privileged or confidential under Exemption 4 of the FOIA.

(2) *Submitter* means any person or entity from which the Department obtains business information. The term includes corporations, partnerships, sole proprietorships; State, local, and tribal governments; and foreign governments.

(c) *Designation of business information.* A submitter of information will use good-faith efforts to designate, by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of its submission that it considers exempt from disclosure under Exemption 4. These designations will expire ten years after the date of the submission unless the submitter requests, and provides justification for, a longer designation period.

(d) *Notice to submitters.* The Department shall provide a submitter with prompt written notice of a FOIA request or administrative appeal of a denial of such a request that seeks its information whenever required under paragraph (e) of this section, except as provided in paragraph (f) of this section, in order to give the submitter an opportunity to object to disclosure of any specified portion of that information. The notice shall either describe the information requested or include copies of the requested records or record portions containing the information.

(e) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information considered protected from disclosure under Exemption 4; or

(2) The Department has reason to believe that the information may not be protected from disclosure under Exemption 4.

(f) *When notice is not required.* The notice requirements of paragraphs (d) and (e) of this section shall not apply if:

(1) The Department determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, the Department shall, within a reasonable time prior to a specified disclosure date, give the submitter written notice of any final decision to disclose the information.

(g) *Opportunity to object to disclosure.* The Department will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period in the notice. If a submitter has any objection to disclosure, a detailed written statement in support of the objection must be submitted. The statement must specify all grounds for withholding any portion of the information under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information is a trade secret or commercial or financial information that is privileged or confidential. In the event that a submitter fails to respond to the notice within the time specified in it, the submitter will be considered to have no objection to disclosure of the information. Information provided by a submitter under this paragraph may itself be subject to disclosure under the FOIA.

(h) *Notice of intent to disclose.* The Department shall consider a submitter's objections and specific grounds for nondisclosure in deciding whether to disclose business information. Whenever the Department decides to disclose business information over the objection of a submitter, it shall give the submitter written notice, which shall include:

(1) A statement of the reason why each of the submitter's disclosure objections was not sustained;

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

(3) A specified disclosure date, which shall be a reasonable time subsequent to the notice.

(i) *Notice of lawsuit.* Whenever a requester files a lawsuit seeking to compel the disclosure of information, the Department shall promptly notify the submitter.

(j) *Notice to requester.* Whenever the Department provides a submitter with notice and an opportunity to object to disclosure under paragraph (d) of this section, the Department shall also notify the requester. Whenever the Department notifies a submitter of its intent to disclose requested information under paragraph (h) of this section, the Department shall also notify the requester. Whenever a submitter files a lawsuit seeking to prevent the disclosure of business information, the Department shall notify the requester.

§ 171.14 Fees to be charged—general.

The Department shall seek to charge fees that recoup the full allowable direct costs it incurs in processing a FOIA request. It shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA. The Department will not charge fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. With the exception of requesters seeking documents for a commercial use, the Department will provide the first two hours of search time and the first 100 pages of duplication without charge. By making a FOIA request, the requester shall be considered to have agreed to pay all applicable fees up to $25.00 unless a fee waiver has been granted.

(a) *Searches for responsive records.* If the Department estimates that the search costs will exceed $25.00, the requester shall be so notified. Such notice shall offer the requester the opportunity to confer with Department personnel with the object of reformulating the request to meet the requester's needs at a lower cost. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(1) *Manual searches.* The Department will charge at the salary rate (*i.e.*, basic pay plus 16 percent of basic pay) of the employee making the search.

(2) *Computer searches.* The Department will charge at the actual direct cost of providing the service. This

will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary attributable to the search.

(b) *Review of records.* Only requesters who are seeking documents for commercial use may be charged for time spent reviewing records to determine whether they are releasable. Charges may be assessed for the initial review only; *i.e.*, the review undertaken the first time the Department analyzes the applicability of a specific exemption to a particular record or portion of a record.

(c) *Duplication of records.* Records shall be duplicated at a rate of $.15 per page. For copies prepared by computer, such as tapes or printouts, the Department shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Department shall charge the actual direct costs of producing the document. If the Department estimates that the duplication costs will exceed $25.00, the requester shall be so informed. The request shall not be processed further unless the requester agrees to pay the estimated fees.

(d) *Other charges.* The Department shall recover the full costs of providing services such as those enumerated below:

(1) Certifying that records are true copies (*see* part 22 of this chapter);

(2) Sending records by special methods such as express mail, overnight courier, *etc.*

(f) Payment shall be in the form either of a personal check or bank draft drawn on a bank in the United States, or a postal money order. Remittances shall be made payable to the order of the Treasury of the United States and mailed to the Information and Privacy Coordinator.

(g) A receipt for fees paid will be given upon request. Refund of fees paid for services actually rendered will not be made.

§ 171.15 Fees to be charged—categories of requesters.

Under the FOIA, there are four categories of requesters: Commercial use requesters, educational and non-commercial scientific institutions, representatives of the news media, and all other requesters. The fees for each of these categories are:

(a) *Commercial use requesters.* When the Department receives a request for documents for commercial use as defined in § 171.11(l), it will assess charges that recover the full direct costs of searching for, reviewing for release, and duplicating the record sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of reproduction of documents. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (*see* § 171.16(b)).

(b) *Educational and non-commercial scientific institution requesters.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution, as defined in § 171.11(m) and (n), and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(c) *Representatives of the news media.* The Department shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in § 171.11(o), and the request must not be made for a commercial use. A request for records supporting the news dissemination function of the requester shall not be considered to be a commercial use request.

(d) *All other requesters.* The Department shall charge requesters who do not fit into any of the categories above fees that recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge.

§ 171.16 Miscellaneous fee provisions.

(a) *Charging interest.* The Department shall begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent. The fact that the fee has been received by the Department within the thirty-day grace period, even if not processed, shall stay the accrual of interest. Interest will be at the rate prescribed in 31 U.S.C. 3717 and shall accrue from the date of the billing.

(b) *Charges for unsuccessful search or if records are withheld.* The Department may assess charges for time spent searching, even if it fails to locate the records or if the records located are determined to be exempt from disclosure.

(c) *Advance payment.* The Department may not require a requester to make an advance payment, *i.e.*, payment before work is commenced or continued on a request, unless:

(1) It estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. In such a case, the Department shall notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or shall require an advance payment of an amount up to the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay within 30 days of the date of the billing a fee charged. In such a case, the Department shall require the requester to pay the full amount previously owed plus any applicable interest and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new or pending request from that requester. If a requester has failed to pay a fee charged by another U.S. Government agency in an information access case, the Department may require proof that such fee has been paid before processing a new or pending request from that requester.

(3) When the Department acts under paragraph (c)(1) or (2) of this section, the administrative time limits prescribed in the FOIA, 5 U.S.C. 552(a)(6) (*i.e.*, 20 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits), will begin only after the Department has received fee payments described in paragraphs (c)(1) and (2) of this section.

(d) *Aggregating requests.* When the Department reasonably believes that a requester, or a group of requesters acting in concert, has submitted multiple requests involving related matters solely to avoid payment of fees, the Department may aggregate those requests for purposes of assessing processing fees.

(e) *Effect of the Debt Collection Act of 1982 (Pub. L. 97–365).* The Department shall comply with provisions of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to effect repayment.

§ 171.17 Waiver or reduction of fees.

(a) Fees otherwise chargeable in connection with a request for disclosure

of a record shall be waived or reduced where it is determined that disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government and is not primarily in the commercial interest of the requester.

(1) In order to determine whether disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government, the Department will consider the following four factors:

(i) The subject of the request, *i.e.*, whether the subject of the requested records concerns the operations or activities of the government;

(ii) The informative value of the information to be disclosed, *i.e.*, whether the disclosure is likely to contribute to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure, *i.e.*, whether disclosure of the requested information will contribute to public understanding, including whether the requester has expertise in the subject area as well as the intention and ability to disseminate the information to the public; and

(iv) The significance of the contribution to public understanding, *i.e.*, whether the disclosure is likely to contribute significantly to public understanding of government operations or activities.

(2) In order to determine whether disclosure of the information is not primarily in the commercial interest of the requester, the Department will consider the following two factors:

(i) The existence and magnitude of a commercial interest, *i.e.*, whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so,

(ii) The primary interest in disclosure, *i.e.*, whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is primarily in the commercial interest of the requester.

(b) The Department may refuse to consider waiver or reduction of fees for requesters (persons or organizations) from whom unpaid fees remain owed to the Department for another information access request.

(c) Where only some of the records to be released satisfy the requirements for a waiver or reduction of fees, a waiver or reduction shall be granted for only those records.

(d) The Department's decision to refuse to waive or reduce fees may be appealed in accordance with § 171.51.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Agency* means any executive branch agency, as defined in 5 U.S.C. 105, any military department, as defined by 5 U.S.C. 102, and any other entity within the executive branch that comes into possession of classified information.

(b) *Classified information* means information that has been determined pursuant to E.O. 12958 or any predecessor order on national security information to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(c) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(d) *Department* means the U.S. Department of State, including its field offices and Foreign Service posts abroad.

(e) *FOIA* means the Freedom of Information Act, 5 U.S.C. 552.

(f) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as foreign government information under the terms of a predecessor executive order.

(g) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics that is owned by, produced by or for, or is under the control of the United States Government.

(h) *Mandatory declassification review* means the process by which specific classified information is reviewed for declassification pursuant to a request under § 171.21.

(i) *National Security* means the national defense or foreign relations of the United States.

(j) *Certain former government personnel* includes former officials of the Department of State or other U.S. Government agencies who previously have occupied policy-making positions to which they were appointed by the President under 3 U.S.C. 105(a)(2)(A) or by the Vice President under 3 U.S.C. 106(a)(1)(A). It does not include former Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

(k) *Senior Agency Official* means the Under Secretary of State for Management.

§ 171.21 Declassification review.

(a) *Scope.* All information classified under E.O. 12958 or predecessor orders shall be subject to declassification review upon request by a member of the public or a U.S. government employee or agency with the following exceptions:

(1) Information originated by the incumbent President or, in the performance of executive duties, the incumbent Vice President; the incumbent President's White House staff or, in the performance of executive duties, the incumbent Vice President's staff; committees, commissions, or boards appointed by the incumbent President; other entities within the Executive Office of the President that solely advise and assist the incumbent President;

(2) Information that is the subject of litigation;

(3) Information that has been reviewed for declassification within the past two years; and

(4) Information exempted from search and review under the Central Intelligence Agency Information Act.

(b) *Requests.* Requests for mandatory declassification review should be addressed to the Information and Privacy Coordinator at the address given in Sec. 171.5. E-mail requests are not accepted at this time.

(c) *Mandatory declassification review and the FOIA.* A mandatory declassification review request is separate and distinct from a request for records under the FOIA. When a requester submits a request under both mandatory declassification review and the FOIA, the Department shall require the requester to elect review under one process or the other. If the requester

fails to make such election, the request will be under the process that would result in the greatest disclosure unless the information requested is subject to only mandatory declassification review.

(d) *Description of information sought.* In order to be processed, a request for declassification review must describe the document or the material containing the information sought with sufficient specificity to enable the Department to locate the document or material with a reasonable amount of effort. Whenever a request does not sufficiently describe the material, the Department shall notify the requester that no further action will be taken unless additional description of the information sought is provided.

(e) *Refusal to confirm or deny existence of information.* The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of existence or nonexistence is itself classified.

(f) *Processing.* In responding to mandatory declassification review requests, the Department shall make a review determination as promptly as possible and notify the requester accordingly. When the requested information cannot be declassified in its entirety, the Department shall release all meaningful portions that can be declassified and that are not exempt from disclosure on other grounds (see § 171.25).

(g) *Other agency information.* When the Department receives a request for information in its possession that was originally classified by another agency, it shall refer the request and the pertinent information to the other agency for processing unless that agency has agreed that the Department may review such information for declassification on behalf of that agency. The Department may, after consultation with the other agency, inform the requester of the referral unless association of the other agency with the information is itself classified.

(h) *Foreign government information.* In the case of a request for material containing foreign government information, the Department, if it is also the agency that initially received the foreign government information, shall determine whether the information may be declassified and may, if appropriate, consult with the relevant foreign government on that issue. If the Department is not the agency that initially received the foreign government information, it shall refer the request to the original receiving agency for direct response to the requester.

(i) *Cryptologic and intelligence information.* Mandatory declassification review requests for cryptologic information shall be processed in accordance with special procedures established by the Secretary of Defense, and such requests for information concerning intelligence activities or intelligence sources and methods shall be processed in accordance with special procedures established by the Director of Central Intelligence.

§ 171.22 Appeals.

Any denial of a mandatory declassification review request may be appealed to the Department's Appeals Review Panel in accordance with § 171.52. A denial by the Appeals Review Panel of a mandatory declassification review appeal may be further appealed to the Interagency Security Classification Appeals Panel.

§ 171.23 Declassification in the public interest.

It is presumed that information that continues to meet classification requirements requires continued protection. In exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the senior Department official with Top Secret authority having primary jurisdiction over the information in question. That official, after consultation with the Assistant Secretary for Public Affairs, will determine whether the public interest in disclosure outweighs the damage to national security that reasonably could be expected from disclosure. If the determination is made that the information should be declassified and disclosed, that official will make such a recommendation to the Secretary or the senior agency official who shall make the decision on declassification and disclosure. This provision does not amplify or modify the substantive criteria or procedures for classification or create any substantive or procedural right subject to judicial review.

§ 171.24 Access by historical researchers and certain former government personnel.

(a) The restriction in E.O. 12958 and predecessor orders on limiting access to classified information to individuals who have a need-to-know the information may be waived, under the conditions set forth below, for persons who:

(1) Are engaged in historical research projects;

(2) Have served as Presidential or Vice Presidential appointees as defined in § 171.20(j), or

(3) Served as President or Vice President.

(b) Requests by such persons must be submitted in writing to the Information and Privacy Coordinator at the address set forth in § 171.5 and must include a general description of the records sought, the time period covered by the request, and an explanation why access is sought. Requests for access by such requesters may be granted if:

(1) The Secretary or the Senior Agency Official determines in writing that access is consistent with the interests of national security;

(2) The requester agrees in writing to safeguard the information from unauthorized disclosure or compromise;

(3) The requester submits a statement in writing authorizing the Department to review any notes and manuscripts created as a result of access;

(4) The requester submits a statement in writing that any information obtained from review of the records will not be disseminated without the express written permission of the Department;

(c) If a requester uses a research assistant, the requester and the research assistant must both submit a statement in writing acknowledging that the same access conditions set forth in paragraph (b)(4) of this section apply to the research assistant. Such a research assistant must be working for the applicant and not gathering information for publication on his or her own behalf.

(d) Access granted under this section shall be limited to items the appointee originated, reviewed, signed, or received while serving as a Presidential or Vice Presidential appointee or as President or Vice President.

(e) Such requesters may seek declassification and release of material to which they have been granted access under this section through either the FOIA or the mandatory declassification review provisions of E.O. 12958. Such requests shall be processed in the order received, along with other FOIA and mandatory declassification review requests, and shall be subject to the fees applicable to FOIA requests.

§ 171.25 Applicability of other laws.

Exemptions from disclosure set forth in the Freedom of Information Act, the Privacy Act, and other statutes or privileges protecting information from disclosure recognized in discovery or other such litigation-related procedures may be applied to withhold information declassified under the provisions of this subpart.

Subpart D—Privacy Act Provisions

§ 171.30 Purpose and scope.

This subpart contains the rules that the Department follows under the Privacy Act of 1974, 5 U.S.C. 552a. These rules should be read together with the Privacy Act, which provides additional information about records maintained on individuals. The rules in this subpart apply to all records in systems of records maintained by the Department that are retrieved by an individual's name or personal identifier. They describe the procedures by which individuals may request access to records about themselves, request amendment or correction of those records, and request an accounting of disclosures of those records by the Department. If any records retrieved pursuant to an access request under the Privacy Act are found to be exempt from disclosure under that Act, they will be processed for possible disclosure under the Freedom of Information Act (FOIA), 5 U.S.C. 552. No fees shall be charged for access to or amendment of Privacy Act records.

§ 171.31 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *Department* means the United States Department of State, including its field offices and Foreign Service posts abroad.

(b) *Individual* means a citizen of the United States or an alien lawfully admitted for permanent residence.

(c) *Maintain* includes maintain, collect, use, or disseminate.

(d) *Record* means any item, collection, or grouping of information about an individual that is maintained by the Department, including, but not limited to education, financial transactions, medical history, and criminal or employment history, that contains the individual's name or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or photograph.

(e) *System of Records* means a group of any records under the control of the Department from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to an individual.

(f) *Control* has the meaning set forth in § 171.11(f)

(g) *Information and Privacy Coordinator* has the meaning set forth in § 171.11(d).

(h) *DS* is the abbreviation for the Bureau of Diplomatic Security of the U.S. Department of State.

(i) *OIG* is the abbreviation for the Office of the Inspector General of the U.S. Department of State.

§ 171.32 Request for access to records.

(a) *Description of records sought.* All requests for access to a record must reasonably describe the System of Records and the individual's record within the system in sufficient detail to permit identification of the requested record. At a minimum, requests should include the individual's full name (including maiden name, if appropriate) and any other names used, present mailing address and ZIP Code, date and place of birth, and any other information that might help in identifying the record. Helpful data includes the approximate time period of the record and the circumstances that give the individual reason to believe that the Department of State maintains a record under the individual's name or personal identifier. In certain instances, it may be necessary for the Department to request additional information from the requester, either to ensure a full search, or to ensure that a record retrieved does in fact pertain to the individual.

(b) *Verification of personal identity.* The Department will require reasonable identification of individuals requesting records under the Privacy Act to ensure that records are disclosed only to the proper persons. Requesters must state their full name, current address, date and place of birth, and, at the requester's option, social security number. The request must be signed, and the requester's signature must be either notarized or submitted under penalty of perjury (28 U.S.C. 1746) as a substitute for notarization. If the requester seeks records under another name the requester has used, a statement, under penalty of perjury, that the requester has also used the other name must be included.

(c) *Third party access.* The Department shall allow third party access to records under certain conditions:

(1) *Parents.* Upon presentation of documentation of the parental relationship, a parent of a minor (an unmarried person under the age of 18) may, on behalf of the minor, request records pertaining to the minor and the Department may, in its discretion, disclose such records to the parent to the extent determined by the Department to be appropriate in the circumstances of the case. In any case, minors may request such records on their own behalf.

(2) *Guardians.* A guardian of a minor or of an individual who has been declared by a court to be incompetent may act for and on behalf of the minor or the incompetent individual upon presentation of appropriate documentation of the guardian relationship.

(3) *Authorized representatives or designees.* When an individual wishes to authorize another person or persons access to his or her records, the individual shall submit, in addition to the identifying information described in paragraph (b) of this section, a signed statement, either notarized or made under penalty of perjury, authorizing and consenting to access by a designated person or persons. Such requests shall be processed under the FOIA (*see* § 171.12).

(d) *Records relating to civil actions.* Nothing in this subpart entitles an individual to access to any information compiled in reasonable anticipation of a civil action or proceeding.

(e) *Time limits.* The Department will acknowledge the request promptly and furnish the requested information as soon as possible thereafter.

(f) *Information on amending records.* At the time the Department grants access to a record, it will also furnish guidelines for requesting amendment of a record. These guidelines may also be obtained by writing to the Information and Privacy Coordinator at the address given in § 171.5. The guidelines are also available in the reading room described in § 171.3 and in the electronic reading room described in § 171.4.

§ 171.33 Request to amend or correct records.

(a) An individual has the right to request that the Department amend a record pertaining to the individual that the individual believes is not accurate, relevant, timely, or complete.

(b) Requests to amend records must be in writing and mailed or delivered to the Information and Privacy Coordinator, at the address given in § 171.5, who will coordinate the review of the request with the appropriate offices of the Department. The Department will require verification of personal identity as provided in § 171.32(b) before it will initiate action to amend a record. Amendment requests should contain, as a minimum, identifying information needed to locate the record in question, a description of the specific correction requested, and an explanation of why the existing record is not accurate, relevant, timely, or complete. The requester should submit as much pertinent documentation, other information, and explanation as possible to support the request for amendment.

(c) All requests for amendments to records will be acknowledged within 10 days (excluding Saturdays, Sundays, and legal public holidays).

(d) In reviewing a record in response to a request to amend, the Department shall review the record to determine if it is accurate, relevant, timely, and complete.

(e) If the Department agrees with an individual's request to amend a record, it shall:

(1) Advise the individual in writing of its decision;

(2) Amend the record accordingly; and

(3) If an accounting of disclosure has been made, advise all previous recipients of the record of the amendment and its substance.

(f) If the Department denies, in whole or in part, the individual's amendment request, it shall advise the individual in writing of its decision, of the reason therefore, and of the individual's right to appeal the denial in accordance with § 171.52.

§ 171.34 Request for an accounting of record disclosures.

(a) *How made.* Except where accountings of disclosures are not required to be kept, as set forth in paragraph (b) of this section, an individual has a right to request an accounting of any disclosure that the Department has made to another person, organization, or agency of any record about an individual. This accounting shall contain the date, nature, and purpose of each disclosure as well as the name and address of the recipient of the disclosure. Any request for accounting should identify each particular record in question and may be made by writing directly to the Information and Privacy Coordinator at the address given in § 171.5.

(b) *Where accountings not required.* The Department is not required to keep an accounting of disclosures in the case of:

(1) Disclosures made to employees within the Department who have a need for the record in the performance of their duties;

(2) Disclosures required under the FOIA;

(3) Disclosures made to another agency or to an instrumentality of any governmental jurisdiction under the control of or within the United States for authorized civil or criminal law enforcement activities pursuant to a written request from such agency or instrumentality specifying the activities for which the disclosures are sought and the portions of the records sought.

§ 171.35 Denials of requests; appeals.

If the Department denies a request for access to Privacy Act records, for amendment of such records, or for an accounting of disclosure of such records, the requester shall be informed of the reason for the denial and of the right to appeal the denial to the Appeals Review Panel in accordance with § 171.52.

§ 171.36 Exemptions.

Systems of records maintained by the Department are authorized to be exempted from certain provisions of the Privacy Act under both general and specific exemptions set forth in the Act. In utilizing these exemptions, the Department is exempting only those portions of systems that are necessary for the proper functioning of the Department and that are consistent with the Privacy Act. Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, *e.g.*, public source materials, the applicable exemption may be waived, either partially or totally, by the Department or the OIG, in the sole discretion of the Department or the OIG, as appropriate.

(a) *General exemptions.* (1) Individuals may not have access to records maintained by the Department that were provided by another agency that has determined by regulation that such information is subject to general exemption under 5 U.S.C. 552a(j)(1). If such exempt records are the subject of an access request, the Department will advise the requester of their existence and of the name and address of the source agency, unless that information is itself exempt from disclosure.

(2) The systems of records maintained by the Bureau of Diplomatic Security (STATE–36), the Office of the Inspector General (STATE–53), and the Information Access Program Records system (STATE–35) are subject to general exemption under 5 U.S.C. 552a(j)(2). All records contained in record system STATE–36, Security Records, are exempt from all provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the effectiveness of the investigative, judicial, and protective processes. All records contained in STATE–53, records of the Inspector General and Automated Individual Cross-Reference System, are exempt from all of the provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the proper functions of the law enforcement activity, to protect confidential sources of information, to fulfill promises of confidentiality, to prevent interference with the enforcement of criminal laws, to avoid the disclosure of investigative techniques, to avoid the endangering of the life and safety of any individual, to avoid premature disclosure of the knowledge of potential criminal activity and the evidentiary bases of possible enforcement actions, and to maintain the integrity of the law enforcement process. All records contained in the Information Access Program Records system (STATE–35) are exempt from all of the provisions of the Privacy Act except sections (b), (c)(1) and (2), (e)(4)(A) through (F), (e)(6), (7), (9), (10), and (11), and (i) to the extent to which they meet the criteria of section (j)(2). These exemptions are necessary to ensure the protection of law enforcement information retrieved from various sources in response to information access requests.

(b) *Specific exemptions.* Portions of the following systems of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), and (4), (G), (H), and (I), and (f). The names of the systems correspond to those published in the **Federal Register** by the Department.

(1) *Exempt under 5 U.S.C. 552a(k)(1).* The reason for invoking this exemption is to protect material required to be kept secret in the interest of national defense and foreign policy.

Board of Appellate Review Records. STATE–02.

Congressional Correspondence. STATE–43.

Congressional Travel Records. STATE–44.

Coordinator for the Combating of Terrorism Records. STATE–06.

External Research Records. STATE–10.

Extradition Records. STATE–11.

Foreign Assistance Inspection Records. STATE–48.

Human Resources Records. STATE–31.

Information Access Programs Records. STATE–35.

Intelligence and Research Records. STATE–15.

International Organizations Records. STATE–17.

Law of the Sea Records. STATE–19.

Legal Case Management Records. STATE–21.

Munitions Control Records. STATE–42.

Overseas Citizens Services Records. STATE–05.
Overseas Records. STATE–25.
Passport Records. STATE–26.
Personality Cross-Reference Index to the Secretariat Automated Data Index Records. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.
Personnel Payroll Records. STATE–30.
Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53.
Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes. STATE–54.
Rover Records. STATE–41.
Records of Domestic Accounts Receivable. STATE–23.
Records of the Office of White House Liaison. STATE–34.
Board of Appellate Review Records. STATE–02.
Refugee Records. STATE–59.
Refugee Data Center Processing Records. STATE–60.
Security Records. STATE–36.
Visa Records. STATE–39.

(2) *Exempt under 5 U.S.C. 552(a)(k)(2).* The reasons for invoking this exemption are to prevent individuals that are the subject of investigation from frustrating the investigatory process, to ensure the proper functioning and integrity of law enforcement activities, to prevent disclosure of investigative techniques, to maintain the confidence of foreign governments in the integrity of the procedures under which privileged or confidential information may be provided, and to fulfill commitments made to sources to protect their identities and the confidentiality of information and to avoid endangering these sources and law enforcement personnel.

Board of Appellate Review Records. STATE–02.
Coordinator for the Combating of Terrorism Records. STATE–06.
Extradition Records. STATE–11.
Foreign Assistance Inspection Records. STATE–48.
Garnishment of Wages Records. STATE–61.
Information Access Program Records. STATE–35.
Intelligence and Research Records. STATE–15.
Munitions Control Records. STATE–42.
Overseas Citizens Services Records. STATE–05.
Overseas Records. STATE–25.
Passport Records. STATE–26.
Personality Cross Reference Index to the Secretariat Automated Data Index. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE-29.
Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53.
Security Records. STATE–36.
Visa Records. STATE–39.

(3) *Exempt under 5 U.S.C. 552(a)(k)(3).* The reason for invoking this exemption is to preclude impairment of the Department's effective performance in carrying out its lawful protective responsibilities under 18 U.S.C. 3056 and 22 U.S.C. 4802.

Extradition Records. STATE–11.
Information Access Programs Records. STATE–35.
Intelligence and Research Records. STATE–15.
Overseas Citizens Services Records. STATE–05.
Overseas Records. STATE–25.
Passport Records. STATE–26.
Personality Cross-Reference Index to the Secretariat Automated Data Index. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.
Security Records. STATE–36.
Visa Records. STATE–39.

(4) *Exempt under 5 U.S.C. 552a(k)(4).* The reason for invoking this exemption is to avoid needless review of records that are used solely for statistical purposes and from which no individual determinations are made.

Foreign Service Institute Records. STATE–14.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Personnel Payroll Records. STATE–30.
Security Records. STATE–36.

(5) *Exempt under 5 U.S.C. 552a(k)(5).* The reasons for invoking this exemption are to ensure the proper functioning of the investigatory process, to ensure effective determination of suitability, eligibility, and qualification for employment and to protect the confidentiality of sources of information.

Equal Employment Opportunity Records. STATE–09.
Foreign Assistance Inspection Records. STATE–48.
Foreign Service Grievance Board Records. STATE–13.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Legal Adviser Attorney Employment Application Records. STATE–20.
Overseas Records. STATE–25.
Personality Cross-Reference Index to the Secretariat Automated Data Index Records. STATE–28.
Records of the Inspector General and Automated Individual Cross-Reference System. STATE–53.
Records of the Office of White House Liaison. STATE–34.
Rover Records. STATE–41.
Security Records. STATE–36.
Senior Personnel Appointments Records. STATE–47.

(6) *Exempt under 5 U.S.C. 552(k)(6).* The reasons for invoking this exemption are to prevent the compromise of testing or evaluation material used solely to determine individual qualifications for employment or promotion and to avoid giving unfair advantage to individuals by virtue of their having access to such material.

Foreign Service Institute Records. STATE–14.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Security Records. STATE–36.

(7) *Exempt under 5 U.S.C. 552a(k)(7).* The reason for invoking this exemption is to prevent access to material maintained from time to time by the Department in connection with various military personnel exchange programs.

Overseas Records. STATE–25.
Human Resources Records. STATE–31.
Information Access Programs Records. STATE–35.
Personality Cross-Reference Index to the Secretariat Automated Data Index Records. STATE–28.
Personality Index to the Central Foreign Policy Records. STATE–29.

Subpart E—Ethics in Government Act Provisions

§ 171.40 Purpose and scope.

This subpart sets forth the regulations under which persons may request access to the public financial disclosure reports of employees of the Department as well as limits to such requests and use of such information. The Ethics in Government Act 1978, as amended, and the Office of Government Ethics implementing regulations, 5 CFR part 2634, require that high-level Federal officials disclose publicly their personal financial interests.

§ 171.41 Covered employees.

(a) Officers and employees (including special Government employees as defined in 18 U.S.C. 202) whose positions are classified at grades GS–16 and above of the General Schedule, or the rate of basic pay for which is fixed, other than under the General Schedule, at a rate equal to or greater than the 120% of the minimum rate of basic pay for GS–15 of the General Schedule;

(b) Officers or employees in any other positions determined by the Director of the Office of Government Ethics to be of equal classification to GS–16;

(c) Employees in the excepted service in positions that are of a confidential or policy-making character, unless by regulation their positions have been excluded by the Director of the Office of Government Ethics;

(d) The designated agency official who acts as the Department's Ethics Officer;

(e) Incumbent officials holding positions referred to above if they have served 61 days or more in the position during the preceding calendar year.

(f) Officials who have terminated employment from a position referred to above and who have not accepted another such position within 30 days of such termination.

§ 171.42 Requests and identifying information.

Requests for access to public financial disclosure reports of covered employees should be made in writing to the Information and Privacy Coordinator at the address given in § 171.5 setting forth:

(a) The name and/or position title of the Department of State official who is the subject of the request,

(b) The time period covered by the report requested,

(c) A completed Office of Government Ethics request form, OGE Form 201, October, 1999. This form may be obtained by writing to the Information and Privacy Coordinator or by visiting the Public Reading Room described in § 171.3 or *http://www.usoge.gov.*

§ 171.43 Time limits and fees.

(a) Reports shall be made available within thirty (30) days from receipt of a request by the Department. The Department does not charge a fee for a single copy of a public financial report. However, the Department will charge for additional copies of a report at a rate of 15 cents per page plus the actual direct cost of mailing the reports. However, the Department will not charge for individual requests if the total charge would be $10.00 or less.

(b) A report shall be retained by the Department and made available to the public for a period of six (6) years after receipt of such report. After such a six year period, the report shall be destroyed, unless needed in an ongoing investigation, except that those reports filed by individuals who are nominated for office by the President to a position that requires the advice and consent of the Senate, and who subsequently are not confirmed by the Senate, will be retained and made available for a one-year period, and then destroyed, unless needed in an ongoing investigation.

§ 171.44 Improper use of reports.

(a) The Attorney General may bring a civil action against any person who obtains or uses a financial disclosure report:

(1) For any unlawful purpose;

(2) For any commercial purpose, other than for news or community dissemination to the general public;

(3) For determining or establishing the credit rating of any individual;

(4) For use, directly or indirectly, in the solicitation of money for any political, charitable, or other purpose.

(b) The court in which such action is brought may assess a civil penalty not to exceed $10,000 against any person who obtains or uses the reports for these prohibited purposes. Such remedy shall be in addition to any other remedy available under statutory or common law.

Subpart F—Appeal Procedures

§ 171.50 Appeal of denials of expedited processing.

(a) A denial of a request for expedited processing may be appealed to the Chief of the Requester Liaison Division of the office of the Information and Privacy Coordinator at the address given in § 171.5 within 30 days of receipt of the denial. Appeals should contain as much information and documentation as possible to support the request for expedited processing in accordance with the criteria set forth in § 171.12(b)

(b) The Requester Liaison Division Chief will issue a final decision in writing within ten (10) days from the date on which the office of the Information and Privacy Coordinator receives the appeal.

§ 171.51 Appeals of denials of fee waivers or reductions.

(a) A denial of a request for a waiver or reductions of fees may be appealed to the Chief of the Requester of Liaison Division of the Office of the Information and Privacy Coordinator at the address given in § 171.5 within 30 days of receipt of the denial. Appeals should contain as much information and documentation as possible to support the request for fee waiver or reduction in accordance with the criteria set forth in § 171.17.

(b) The Requester Liaison Division Chief will issue a final decision in writing within 30 days from the date on which the office of the Information and Privacy Coordinator receives the appeal.

§ 171.52 Appeal of denial of access to, declassification of, amendment of, accounting of disclosures of, or challenge to classification of records.

(a) *Right of administrative appeal.* Except for records that have been reviewed and withheld within the past two years or are the subject of litigation, any requester whose request for access to records, declassification of records, amendment of records, accounting of disclosures of records, or any authorized holder of classified information whose classification challenge has been denied, has a right to appeal the denial to the Department's Appeals Review Panel. This appeal right includes the right to appeal the determination by the Department that no records responsive to an access request exist in Department files. Privacy Act appeals may be made only by the individual to whom the records pertain.

(b) *Form of appeal.* There is no required form for an appeal. However, it is essential that the appeal contain a clear statement of the decision or determination by the Department being appealed. When possible, the appeal should include argumentation and documentation to support the appeal and to contest the bases for denial cited by the Department. The appeal should be sent to: Chairman, Appeals Review Panel, c/o Information and Privacy Coordinator/Appeals Officer, at the address given in § 171.5.

(c) *Time limits.* The appeal should be received within 60 days of the date of receipt by the requester of the Department's denial. The time limit for response to an appeal begins to run on the day that the appeal is received. The time limit (excluding Saturdays, Sundays, and legal public holidays) for agency decision on an administrative appeal is 20 days under the FOIA (which may be extended for up to an additional 10 days in unusual circumstances) and 30 days under the Privacy Act (which the Panel may extend an additional 30 days for good cause shown). The Panel shall decide mandatory declassification review appeals as promptly as possible.

(d) *Notification to appellant.* The Chairman of the Appeals Review Panel shall notify the appellant in writing of the Panel's decision on the appeal. When the decision is to uphold the denial, the Chairman shall include in his notification the reasons therefore. The appellant shall be advised that the decision of the Panel represents the final decision of the Department and of the right to seek judicial review of the Panel's decision, when applicable. In mandatory declassification review appeals, the Panel shall advise the

requester of the right to appeal the decision to the Interagency Security Classification Appeals Panel under § 3.5(d) of E.O. 12958.

(e) *Procedures in Privacy Act amendment cases.* (1) If the Panel's decision is that a record shall be amended in accordance with the appellant's request, the Chairman shall direct the office responsible for the record to amend the record, advise all previous recipients of the record of the amendment and its substance if an accounting of disclosure has been made, and so advise the individual in writing.

(2) If the Panel's decision is that the request of the appellant to amend the record is denied, in addition to the notification required by paragraph (d) of this section, the Chairman shall advise the appellant:

(i) Of the right to file a concise statement of the reasons for disagreeing with the decision of the Department;

(ii) Of the procedures for filing the statement of disagreement;

(iii) That any statement of disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(3) If the appellant files a statement under paragraph (e)(2) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to the record. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Department will note that the information is disputed and provide a copy of the individual's statement. The Department may also include a brief summary of reasons for not amending the record when disclosing disputed information. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under these regulations.

Dated: October 29, 2004.

Lee R. Lohman,

Deputy Assistant Secretary for Records and Publishing Services, Bureau of Administration, Department of State.

[FR Doc. 04–24581 Filed 11–2–04; 8:45 am]

BILLING CODE 4710–24–P

POSTAL SERVICE

39 CFR Part 20

Discontinuance of Volume Discount Availability for IPA and ISAL Mailers

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule deletes *International Mail Manual* (IMM) 292.212, 292.213, and 293.75, which authorized mailers who spent $2 million or more combined on International Priority Airmail (IPA) and International Surface Air Lift (ISAL) in the preceding Postal Service fiscal year to receive discounted postage rates.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Rick Klutts, 202–268–7268.

SUPPLEMENTARY INFORMATION: On July 28, 2004, the Postal Service published for comment in the **Federal Register** (69 FR 45002–45003) a proposed rule to delete standards that authorize postage discounts for mailers who spend $2 million or more combined on International Priority Airmail (IPA) and International Surface Air Lift (ISAL) in the preceding Postal Service fiscal year. The Postal Service proposed to discontinue these discounts due to recent Postal Service reviews of costs for providing these services. These cost reviews identified increases in transportation, terminal dues, and other costs that have all risen while published rates for IPA and ISAL have remained static since 2001. When costs rise above the rate we are charging, we are obliged to adjust prices and discounts (in this case IPA and ISAL) so they are not subsidized by other domestic or international product offerings. These changes do not affect the standards for existing or prospective customers who use IPA or ISAL mail and participate or would like to participate in the International Customized Mail (ICM) service agreement program as defined in IMM 297.

The Postal Service requested comments on the proposed rule by August 18, 2004. Comments were received from two parties, one who voiced opposition to the proposal, and one whose comment was outside the scope of the proposed rule.

An industry organization respondent questioned the rationale for the proposal and requested a more detailed cost analysis; this commenter also cited a 1998 report to Congress that states there is adequate cost coverage for these products. In addition, the commenter suggested a correlation between the proposed discontinuance of volume discounts and International Customized Mail (ICM) agreements. As pointed out in the supplementary information, the Postal Service is obligated to offer its services at a rate that covers both average attributable cost and institutional cost. When costs rise above the rate we are charging, adjustments to prices and discounts (in this case IPA and ISAL) are required so they are not subsidized by other domestic or international product offerings. Moreover, since 1998, transportation costs, terminal dues costs, and other costs have risen while published rates for IPA and ISAL have remained static since 2001.

The other comment was made by an international mailer who enters mail under an ICM agreement. The mailer stated that IPA was a very good service and they did not want to lose their current discount. Since this proposed rule does not address ICMs, this comment falls outside the scope of this rulemaking and therefore will not be addressed at this time. Additionally, nothing in this change precludes this mailer from entering IPA and ISAL mailings under their existing ICM agreement.

For the reasons discussed above, the Postal Service adopts the following amendments to the *International Mail Manual,* which is incorporated by reference in the *Code of Federal Regulations.* See 39 CFR Part 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

■ 1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407 and 408.

■ 2. Amend the *International Mail Manual* as set forth below:

International Mail Manual (IMM)

* * * * *

2 Conditions for Mailing

* * * * *

290 Commercial Services

* * * * *

292 International Priority Airmail Service

* * * * *

292.2 Postage

292.21 Rates

* * * * *

(Delete 292.212 and 292.213; renumber current 292.214 through 292.217 as new 292.212 through 292.215.)

* * * * *

293 International Surface Air Lift (ISAL) Service

* * * * *

293.7 Postage

* * * * *

(Delete 293.75; renumber current 293.76 as new 293.75.)

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. 04–23997 Filed 11–2–04; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–IA–0004; FRL–7833–7]

Approval and Promulgation of Implementation Plans; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is announcing it is approving a revision to the Iowa State Implementation Plan (SIP) for the purpose of revising open burning rules. This revision includes a provision that allows the Iowa Department of Natural Resources (IDNR) to require the submittal of additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the National Ambient Air Quality Standards (NAAQS) with regard to open burning, clarifies National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidance for disaster rubbish, updates guidance for training fires, and provides clarification to the existing open burning rules covering agricultural structures.

DATES: This direct final rule will be effective January 3, 2005, without further notice, unless EPA receives adverse comment by December 3, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID Number R07–OAR–2004–IA–0004, by one of the following methods:

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

2. *Agency Web site: http://docket.epa.gov/rmepub/.* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search;'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: hamilton.heather@epa.gov.*

4. *Mail:* Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

5. *Hand Delivery or Courier.* Deliver your comments to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

Instructions: Direct your comments to RME ID No. R07–OAR–2004–IA–0004. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/,* 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 RME, regulations.gov, or e-mail. The EPA RME Web site and the Federal regulations.gov Web site are ''anonymous access'' systems, 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 RME or regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the RME index at *http://docket.epa.gov/rmepub/.* Although listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in RME or in hard copy at the Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. The Regional Office's official hours of business are Monday through Friday, 8 to 4:30 excluding Federal holidays. The interested persons wanting to examine these documents should make an appointment with the office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this document?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to us for approval and incorporation into the Federally-enforceable SIP.

Each Federally-approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally-enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to us for inclusion into the SIP. We must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by us.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally-approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at title 40, part 52, entitled ''Approval and Promulgation of Implementation Plans.'' The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are ''incorporated by reference,'' which means that we have approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally-approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, we are authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in section 304 of the CAA.

What Is Being Addressed in This Document?

EPA is approving a revision to the SIP for the State of Iowa for the purpose of revising open burning rules. This revision includes a provision that allows IDNR to require the submittal of additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the NAAQS with regard to open burning, clarifies NESHAP guidance for disaster rubbish, and updates guidance for training fires.

It should be noted that Iowa Administrative Code (IAC) 567–23.2(3), paragraph ''g'' subparagraph (2) was not submitted for approval due to concerns raised by EPA with respect to protection of the NAAQS for particulate matter and carbon monoxide.

Information with regard to variances is identified in the Iowa SIP; however, the state of Iowa found it necessary to add a provision that clarifies that IDNR may require additional information when a variance from the open burning rules is requested. This rulemaking will add the language that states the submittal of adequate documentation to IDNR may be required to allow the director to assess whether granting the variance will hinder attainment, or maintenance of the NAAQS (IAC 567–23.2(2)). EPA notes that this variance provision is not a mechanism to amend the Federally-approved SIP and that any variance must be approved by EPA in order to change the underlying SIP requirement for any source.

IAC 567–23.2(3)a, adds clarification for open burning of disaster rubbish and adds the reference for the standards for demolition and renovation in accordance with the asbestos (NESHAP).

This revision will rescind the paragraph pertaining to training fires and will add a revised paragraph that updates the definition (IAC 567–23.2(3)g(1)). The new definition indicates that a training fire is set for the purpose of conducting bona fide training of public or industrial employees in fire fighting methods. The revision requires that the following conditions be met: The training fire is conducted on a building that is structurally intact; the fire does not include the controlled burning of a demolished building; proper notification must be completed and delivered at least ten working days before action commences; notification must be made in accordance with the asbestos NESHAP; asbestos-containing materials shall be removed prior to the training fire; proper notification and testing of asphalt roofing materials is required, and rubber tires are not to be burned during a training fire.

Finally, this rulemaking will revise the open burning rules pertaining to agricultural structures by adding the condition that burning is to be conducted in accordance with the NESHAP for the standard for demolition and renovation. This revision is found in IAC 23.2(3)i. For the purposes of NESHAP, the definition of agricultural structures excludes a single residential structure on the premises having four or fewer dwelling units, which have been used only for residential purposes.

The revision will make the Iowa SIP consistent with 40 CFR Part 52.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support document which is part of this document, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is revising the SIP for the State of Iowa for the purpose of revising open burning rules. This revision which was adopted November 17, 2003, and became effective January 14, 2004, includes a provision that clarifies that IDNR may require additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the NAAQS with regard to open burning, clarifies NESHAP guidance for disaster rubbish, updates guidance for training fires, and provides clarification to the existing open burning rules covering agricultural structures. We are processing this action as a direct final action because the revisions make routine changes to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment.

Statutory and Executive Order Reviews

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

any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 3, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: October 26, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

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

PART 52—[AMENDED]

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

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

Subpart Q—Iowa

■ 2. In § 52.820 the table in paragraph (c) is amended by revising the entry for 567–23.2 under Chapter 23 to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED IOWA REGULATIONS

Iowa citation date	Title	State effective date	EPA approval	Explanation
Iowa Department of Natural Resources, Environmental Protection Commission (567)				
*	*	*	*	*
Chapter 23—Emission Standards for Contaminants				
*	*	*	*	*
567–23.2	Open Burning	1/14/04	11/03/04 [*insert FR page number where the document begins*].	Subrule 23.2(3)g(2) was not submitted for approval. Variances from open burning rule 23.2(2) are subject to EPA approval.
*	*	*	*	*

* * * * *

[FR Doc. 04–24532 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0215; FRL–7684–4]

Bacillus Pumilus Strain QST 2808; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of the *Bacillus pumilus* strain QST 2808 in or on food commodities when applied/used in accordance with label directions. AgraQuest, Inc submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA), requesting an exemption from the requirement of a tolerance. Notification that EPA had received the petition was published on May 5, 2004 (69 FR 25092) (FRL–7354–4). This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus pumilus* strain QST2808.

DATES: This regulation is effective November 3, 2004. Objections and requests for hearings must be received on or before January 3, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0215. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Barbara Mandula, Biopesticides and Pollution Prevention Division (7511C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–7378; e-mail address: *mandula.barbara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

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

II. Background and Statutory Findings

In the **Federal Register** of May 5, 2004 (69 FR 25092) (FRL–7354–4), EPA issued a notice pursuant to section 408(d)(3) of the FFDCA, 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance petition (PP 4F6926) by AgraQuest, Inc, 1530 Drew Avenue, Davis, CA 95616. This notice included a summary of the petition prepared by the petitioner AgraQuest, Inc. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR part 180 be amended by establishing a permanent exemption from the requirement of a tolerance for residues of *Bacillus pumilus* strain QST 2808. EPA previously had granted the petitioner a temporary exemption from the requirement of a tolerance for residues of *Bacillus pumilus* strain QST 2808, which was published on June 18, 2003 (68 FR 36476)(FRL–7301–1). That temporary exemption is set to expire June 30, 2006.

Section 408(c)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of the FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Pursuant to section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, EPA must take into account the factors set forth in section 408(b)(2)(C), which require EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, section 408(b)(2)(D) of the FFDCA requires that the Agency consider ''available information concerning the cumulative effects of a particular pesticide's residues'' and ''other substances that have a common mechanism of toxicity.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of the FFDCA, EPA has reviewed the available scientific data and other

relevant information in support of this action and considered its validity, completeness, and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Bacillus pumilus strain QST 2808 is a ubiquitous and naturally occurring bacterium commonly found in soil. The results of the acute toxicology and pathogenicity studies previously submitted by the petitioner in support of its petition for a temporary exemption from the requirement of a tolerance for *Bacillus pumilus* strain QST 2808 indicate negligible to no mammalian toxicity. In addition, no pathogenicity was observed in any of the tests conducted with the *Bacillus pumilus* strain QST 2808 Technical product. Accordingly, the toxicology and pathogenicity data generated by AgraQuest, Inc in support of the temporary exemption from the requirement of a tolerance also support a permanent exemption from the requirements of a tolerance. This data is summarized in more detail below.

1. *Acute oral toxicity and pathogenicity (OPPTS 885.3050; MRID 451366–04).* Fifteen male and fifteen female rats each were administered 4.1 x 10^9 colony forming unit (cfu) of *B. pumilus* strain QST 2808 Technical and observed for 14 days. Based on the data, *B. pumilus* strain QST 2808 does not appear to be toxic, infective, and/or pathogenic in rats, when dosed at 4.1 x 10^9 cfu/animal. Classification: Acceptable; Toxicity Category IV.

2. *Acute dermal toxicity (OPPTS 885.3100; MRID 451366–05).* Five male and five female rabbits were dermally treated with 2g/kg body weight *B. pumilus* strain QST 2808 Technical for 24 hours and observed for the following 14 days. The acute lethal dose $(LD)_{50}$ is greater than 2,000 mg/kg. Classification: Acceptable; Toxicity Category III.

3. *Primary eye irritation (OPPTS 870.2400; MRID 452679–01).* Three male rabbits each were administered 0.1 milliliters (mL) of QST 2808 Technical in the everted lower lid of one eye and then observed for 72 hours. Based on the data, QST 2808 Technical showed minimal effects to the eye. Classification: Acceptable; Toxicity Category IV.

4. *Acute injection toxicity/pathogenicity (OPPTS 885.3200; MRID 451366–07).* Eighteen male and eighteen female rats each were dosed at 1.6 x 10^8 cfu *Bacillus pumilus* strain QST 2808 Technical intravenously and monitored over a period of 28 days. A gross necropsy was performed on all rats. Based on the data, the test organism was not toxic, infective, or pathogenic to rats. Classification: Acceptable.

5. *Acute pulmonary toxicity/pathogenicity (OPPTS 885.3150; MRID 451366–06).* Eighteen male and eighteen female rats each were administered 1.6 x 10^8 cfu *Bacillus pumilus* strain QST 2808 Technical in a single intratracheal dose and monitored over a period of 35 days for clinical signs of toxicity. Necropsy studies showed no significant signs of abnormalities due to the test organism. Based on the data, *B. pumilus* strain QST 2808 was not toxic, infective, and/or pathogenic to rats when dosed at 1.6 x 10^8 cfu/animal. Classification: Acceptable.

6. *Acute inhalation toxicity (OPPTS 870.1300).* Results of the acute pulmonary toxicity/pathogenicity (MRID 451366–06) performed with *Bacillus pumilus* strain QST 2808 Technical indicate that it is not toxic, infective, and/or pathogenic to rats when dosed at 1.6 x 10^8 cfu/animal. For the purposes of this specific action, the Agency has determined that the acute pulmonary toxicity/pathogenicity data are adequate to support and/or fulfill this particular data requirement.

7. *Primary dermal irritation (OPPTS 870.2500; MRID 452679–02).* Each of three male adult rabbits were treated dermally with 0.5 mL QST 2808 Technical for 4 hours and observed for the following 72 hours. Based on the data, no abnormal clinical signs were noted. Approximately 60 minutes after patch removal, very slight erythema was noted on one of the three rabbits with resolution by 24 hours. When dosed with QST 2808 Technical at 0.5 mL/animal, QST 2808 Technical was essentially non-irritating. Classification: Acceptable; Toxicity Category IV.

8. *Hypersensitivity incidents (OPPTS 885.3400).* The registrant has reported no incidents to date. Nonetheless, pursuant to FIFRA section 6(a)(2), the registrant is required to report to the Agency any future incidents of hypersensitivity associated with *Bacillus pumilus* strain QST 2808.

9. *Hypersensitivity study (OPPTS 870.2600; MRID 460295–09).* Twenty female guinea pigs were dosed on shaved skin once a week for 3 weeks with 0.4 mL of QST 2808 Technical. When challenged 14 days after the last induction, no signs of sensitization appeared. Acceptable.

10. *Immune response.* There is no information to suggest that *B. pumilus* strain QST 2808 has an effect on the immune system. The submitted toxicity/pathogenicity studies in rodents indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient (MRID 451366–04; 451366–06, 451366–07).

Based on the data generated in accordance with the Tier I data requirements set forth in 40 CFR § 158.740(c), the Tier II and Tier III data requirements were not triggered and, therefore, not required in connection with this action. In addition, because the Tier II and Tier III data requirements were not required, the residue data requirements set forth in 40 CFR § 158.740(b) also were not required.

IV. Aggregate Exposures

In examining aggregate exposure, section 408 of the FFDCA directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Most importantly, there is no evidence of adverse effects from oral, dermal, or inhalation exposure to this microbial agent. (See Unit III. Toxicological Profile.)

A. Dietary Exposure

Humans and animals are commonly exposed to *B. pumilus* strain QST 2808, a ubiquitous microorganism that inhabits soil. No toxicological endpoints were identified for *B. pumilus* strain QST 2808. The low toxicity and non-pathogenicity/infectivity of *B. pumilus strain* QST 2808 is demonstrated by the data summarized in Unit III. of this action.

1. *Food.* While the proposed use pattern may result in dietary exposure with possible residues in or on agricultural commodities, negligible to no risk is expected for the general population, including infants and children, or animals because *B. pumilus* strain QST 2808 technical demonstrated no pathogenicity or oral toxicity at the maximum doses tested, as noted above (Unit III.).

2. *Drinking water exposure.* The potential for transfer of *B. pumilus* strain QST 2808 to surface or ground water during run-off associated with intended use applications is considered minimal to non-existent, due to its percolation through and resulting capture in soil. Accordingly, the use of this microbial pest control agent on terrestrial plants is not anticipated to negatively impact the quality of drinking water.

B. Other Non-Occupational Exposure

Based on the proposed agricultural and horticultural use patterns, the potential for non-dietary exposures to *B. pumilus* strain QST 2808 pesticide residues by the general population, including infants and children, is unlikely. Accordingly, the Agency believes that the potential aggregate non-occupational exposure, derived from dermal and inhalation exposure through the application of *B. pumilus* strain QST 2808 as a pesticide, should fall well below EPA's currently tested microbial safety levels.

1. *Dermal exposure*. The potential for dermal exposure to *B. pumilus* strain QST 2808 pesticide residues for the general population, including infants and children, is unlikely because potential use sites are agricultural and horticultural. However, since *B. pumilus* strain QST 2808 is a naturally occurring bacterium in soil, there is a great likelihood of prior exposure for most, if not all individuals. Accordingly, the increase in dermal exposure due to pesticidal use of *B. pumilus* strain QST 2808 would be negligible. Furthermore, and as demonstrated in Unit III. of this action, the organism is of low dermal toxicity, the acute LD_{50} is greater than 2,000 mg/kg, and the QST 2808 Technical was essentially non-irritating (Toxicity Category IV). Accordingly, the risks anticipated for this route of exposure are considered minimal.

2. *Inhalation exposure*. Inhalation exposure to *B. pumilus* strain QST 2808 pesticide residues for the general population, including infants and children is unlikely because potential use sites are agricultural and horticultural. However, since *B. pumilus* strain QST 2808 is a naturally occurring bacterium in soil, there is a great likelihood of prior exposure for most, if not all individuals. Accordingly, the increase in exposure due to pesticidal use of *B. pumilus* strain QST 2808 would be negligible. Furthermore, and as demonstrated in Unit III. of this action, the acute pulmonary toxicity/pathogenicity testing performed on the technical formulation did not demonstrate pathogenicity or toxicity of *B. pumilus* strain QST 2808. (See Unit III.) Accordingly, the risks anticipated for this route of exposure are considered minimal.

V. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires the Agency, when considering whether to establish, modify, or revoke a tolerance, to consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

These considerations include the possible cumulative effects of such residues on infants and children.

The Agency has considered the potential for cumulative effects of *B. pumilus* strain QST 2808 and other substances in relation to a common mechanism of toxicity. *B. pumilus* strain QST 2808 is practically non-toxic to mammals. Because no mechanism of pathogenicity or toxicity in mammals has been identified for this organism (see Unit III.), no cumulative effects from the interaction of residues of this product with other related microbial pesticides are anticipated when this product is used as directed on the label and in accordance with good agricultural practices.

VI. Determination of Safety for U.S. Population, Infants and Children

There is a reasonable certainty that no harm to the U.S. population, including infants and children, will result from aggregate exposure to residues of *B. pumilus* strain QST 2808 due to its use as a microbial pest control agent. This includes all anticipated dietary exposures and all other exposures for which there is reliable information. As discussed previously, *B. pumilus* strain QST 2808 is not pathogenic or infective and is practically non-toxic to mammals. (See Unit III.) Accordingly, exempting *Bacillus pumilus* strain QST 2808 from the requirement of a tolerance should be considered safe and pose no significant risk.

FFDCA section 408(b)(2)(C) provides that EPA shall apply an additional tenfold margin of exposure (safety) for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base on toxicity and exposure, unless EPA determines that a different margin of exposure (safety) will be safe for infants and children. Margins of exposure (safety) are incorporated into EPA risk assessments either by 1) using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans, or 2) using a margin of exposure analysis. Due to the ubiquitous nature of *B. pumilus* strain QST 2808, residues of this microbial pesticide in or on agricultural commodities are not expected to significantly increase exposure to the U.S. population, including infants and children. Here, EPA concludes that the toxicity and exposure data are sufficiently complete to adequately address the potential for additional sensitivity of infants and children to residues of *B. pumilus* strain QST 2808 and that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to *B. pumilus* strain QST 2808 residues. Thus, the Agency has determined that the additional margin of safety is not necessary to protect infants and children, and that not adding any additional margin of safety will be safe for infants and children.

VII. Other Considerations

A. Endocrine Disruptors

EPA is required under section 408(p) of the FFDCA, as amended by FQPA, to develop a screening program to determine whether certain substances (including all pesticide active and other ingredients) ''may have an effect in humans that is similar to an effect produced by a naturally-occurring estrogen, or other such endocrine effects as the Administrator may designate.'' Following the recommendations of its Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC), EPA determined that there is no scientific basis for including, as part of the screening program, the androgen and thyroid hormone systems in addition to the estrogen hormone system. EPA also adopted EDSTAC's recommendation that the program include evaluations of potential effects in wildlife. For pesticide chemicals, EPA will use FIFRA and, to the extent that effects in wildlife may help determine whether a substance may have an effect in humans, FFDCA authority to require wildlife evaluations. As the science develops and resources allow, screening of additional hormone systems may be added to the Endocrine Disruptor Screening Program (EDSP). When the appropriate screening and/or testing protocols being considered under the Agency's EDSP have been developed, *Bacillus pumilus* strain QST 2808 may be subjected to additional screening and/or testing to better characterize effects related to endocrine disruption.

To date, based on available data, the Agency has no information to suggest that *Bacillus pumilus* strain QST 2808 has an effect on the endocrine systems. Moreover, as is expected from a non-pathogenic microorganism that is practically non-toxic to mammals, the submitted toxicity/pathogenicity studies in rodents indicate that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. (''BPPD Review''- 1/7/02). Thus, there is no

impact via endocrine-related effects on the Agency's safety finding set forth in this final rule for *Bacillus pumilus* strain QST 2808.

B. Analytical Method(s)

The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation for the reasons stated above, including *Bacillus pumilus* strain QST 2808's lack of mammalian toxicity. For the same reasons, the Agency has concluded that an analytical method is not required for enforcement purpose for *Bacillus pumilus* strain QST 2808.

C. Codex Maximum Residue Level

There is no Codex Alimentarius Commission Maximum Residue Level for *Bacillus pumilus* strain QST 2808.

VIII. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0215 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 3, 2005.

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

Mail your written request to: Office of the Hearing Clerk (1900C), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. You may also deliver your request to the Office of the Hearing Clerk in Rm.104, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (703) 603–0061.

2. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0215, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IX. Statutory and Executive Order Reviews

This final rule establishes an exemption from the requirement of a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under section 408(d) of the FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and

responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

X. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 13, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. Section 180.1255 is added to subpart D to read as follows:

§ 180.1255 Bacillus pumilus strain QST 2808; Exemption from the Requirement of a Tolerance..

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide *Bacillus pumilus* strain QST 2808 when used in or on all agricultural commodities when applied/used in accordance with label directions.

[FR Doc. 04–24250 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2004–0206; FRL–7683–2]

Thifensulfuron-methyl; Tolerance Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is reinstating corn tolerances for the herbicide thifensulfuron-methyl. These corn tolerances were previously established but inadvertently removed shortly thereafter. Registrations under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use of thifensulfuron-methyl on corn currently exist and have existed for more than 10 years.

DATES: This regulation is effective November 3, 2004. Objections and requests for hearings must be received on or before January 3, 2005.

ADDRESSES: To submit a written objection or hearing request follow the detailed instructions as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** EPA has established a docket for this action under docket identification (ID) number OPP–2004–0206. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in EDOCKET or in hard copy at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

FOR FURTHER INFORMATION CONTACT: Joseph Nevola, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–8037; e-mail address:*Nevola.joseph@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

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

questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Access Electronic Copies of this Document and Other Related Information?

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

II. Background

A. What Action is the Agency Taking?

In the **Federal Register** of May 12, 2004 (69 FR 26348) (FRL–7358–8), EPA issued a proposal to correct an inadvertent error and reinstate the tolerances in 40 CFR 180.439 for residues of thifensulfuron-methyl in or on corn, field, forage at 0.1 parts per million (ppm); corn, field, stover at 0.1 ppm; and corn, field, grain at 0.05 ppm. Also, the May 12, 2004 proposal provided a 60–day comment period which invited public comment. In response to the proposal published in the **Federal Register** of May 12, 2004 (69 FR 26348), EPA received one comment as follows:

Comment. On May 21, 2004, a private citizen from New Jersey objected to ''any residue allowed or any exemption to produce this product'' and expressed a general concern for chemicals and their toxic effects in humans, air, water, and soil.

Agency response. The comment did not address the inadvertent or improper removal of the established corn tolerances for thifensulfuron-methyl. EPA did not propose the approval of a new chemical but rather proposed the reinstatement of the corn tolerances in 40 CFR 180.439 to correct their inadvertent removal in 1994. For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq*.). Active registrations for use of thifensulfuron-methyl on corn have existed since 1994.

In accordance with current Agency practice, the commodity terminologies for the tolerances should be revised from ''corn forage, field '' to ''corn, field, forage''; ''corn grain, field '' to ''corn, field, grain''; and ''corn fodder, field '' to ''corn, field, stover.'' Therefore, in this final rule, EPA is correcting the inadvertent removal and is reinstating the tolerances in 40 CFR 180.439 for residues of the herbicide thifensulfuron-methyl in or on corn, field, forage at 0.1 ppm; corn, field, stover at 0.1 ppm; and corn, field, grain at 0.05 ppm.

On September 17, 2004 (69 FR 55975) (FRL–7679–4), EPA published a final rule in the **Federal Register** that established tolerances for residues of thifensulfuron-methyl in or on canola, seed; cotton, gin byproducts; cotton, undelinted seed; and flax, seed. Also, EPA determined that 10 tolerances for thifensulfuron-methyl, including the three corn tolerances reinstated herein, are considered reassessed according to FQPA standards.

B. What is the Agency's Authority for Taking this Action?

A tolerance represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq*., as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore adulterated under section 402(a) of the FFDCA. Such food may not be distributed in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances under the FFDCA, but also must be registered under FIFRA (7 U.S.C. *et seq*.). Food-use pesticides not registered in the United States must have tolerances in order for commodities treated with those pesticides to be imported into the United States. EPA will establish and maintain tolerances even when corresponding domestic uses are canceled if the tolerances, which EPA refers to as import tolerances, are necessary to allow importation into the United States of food containing such pesticide residues.

C. When Do These Actions Become Effective?

EPA is reinstating the three corn tolerances for thifensulfuron-methyl effective November 3, 2004.

III. Objections and Hearing Requests

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

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

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number OPP–2004–0206 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before January 3, 2005.

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

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

excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 564–6255.

2. *Copies for the Docket*. In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit III.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in **ADDRESSES**. Mail your copies, identified by docket ID number OPP–2004–0206, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. In person or by courier, bring a copy to the location of the PIRIB described in **ADDRESSES**. You may also send an electronic copy of your request via e-mail to: *opp-docket@epa.gov*. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

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

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

IV. Statutory and Executive Order Reviews

This final rule reinstates specific tolerances established under section 408 of FFDCA. The Office of Management and Budget (OMB) has exempted this type of action from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether establishment of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. This analysis was published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the Agency hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities. Furthermore, for the pesticide named in this final rule, the Agency knows of no extraordinary circumstances that exist as to the present reinstatement that would change EPA's previous analysis. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism*(64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers, and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

V. Congressional Review Act

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

List of Subjects in 40 CFR Part 180

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

Dated: October 18, 2004.

James Jones,

Director, Office of Pesticide Programs.

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

PART 180—[AMENDED]

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

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

■ 2. In § 180.439, the table in paragraph (a) is amended by alphabetically adding the following commodities to read as follows:

§ 180.439 Thifensulfuron-methyl; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * *	* *
Corn, field, forage	0.10
Corn, field, grain	0.05
Corn, field, stover	0.10
* * *	* *

* * * * *

[FR Doc. 04–24249 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 501

[Docket No. NHTSA–2004–19521]

Succession to Administrator

AGENCY: National Highway Traffic Safety Administration (NHTSA),Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This document amends NHTSA's regulation specifying the order of succession to Administrator, and also clarifies that officials must be encumbered in their position on a permanent basis to be in the line of succession.

EFFECTIVE DATE: This rule is effective November 3, 2004.

FOR FURTHER INFORMATION CONTACT: You may contact Stanley Feldman at 202–366–9511.

SUPPLEMENTARY INFORMATION: This final rule, which amends NHTSA's regulation specifying the order of succession to the Administrator and clarifies that officials must be encumbered in their position on a permanent basis to be in the line of succession, has no substantive effect. Notice and the opportunity for comment are therefore not required under the Administrative Procedure Act, and the amendment is effective immediately upon publication in the **Federal Register**. In addition, this amendment is not subject to *Executive Order 12866,* the Department of Transportation's regulatory policies and procedures, or the provisions for Congressional review of final rules in Chapter 8 of Title 5, United States Code.

List of Subjects in 49 CFR Part 501

Authority delegations (Government agencies), Organization and functions (Government agencies).

■ In consideration of the foregoing, 49 CFR part 501 is amended as follows:

PART 501—[AMENDED]

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

Authority: 49 U.S.C. 105 and 322; delegation of authority at 49 CFR 1.50.

■ 2. Section 501.4 is revised to read as follows:

§ 501.4 Succession to Administrator.

(a) The following officials, in the order indicated, shall act in accordance with the requirements of 5 U.S.C. 3346–3349 as Administrator of the National Highway Traffic Safety Administration, in the case of the absence or disability or in the case of a vacancy in the office of the Administrator, until a successor is appointed:

(1) Deputy Administrator;

(2) Chief Counsel;

(3) Senior Associate Administrator for Vehicle Safety;

(4) Senior Associate Administrator for Traffic Injury Control; and

(5) Senior Associate Administrator for Policy and Operations.

(b) In order to qualify for the line of succession, officials must be encumbered in their position on a permanent basis.

Issued on October 29, 2004.

Jeffrey W. Runge,

Administrator.

[FR Doc. 04–24525 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. NHTSA–2004–17359]

RIN 2127–AJ27

Final Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final theft data; correction.

SUMMARY: This document corrects typographical errors in the final theft data published on September 1, 2004 (69 FR 53354), for model year (MY) 2002 passenger motor vehicles that were stolen in calendar year (CY) 2002.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, Office of International Policy, Fuel Economy and Consumer Programs, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: NHTSA is correcting errors in the MY 2002 theft data published in the **Federal Register** on September 1, 2004 (69 FR 53354). Specifically, NHTSA is correcting the typographical errors provided for the Saab 9–3 and Saab 9–5 vehicle lines respectively. The following corrections are to be made to page 53358 of the notice document:

1. On line number 157, in the 3rd column under Make/model (line), ''38233'' should read ''9–3''.

2. On line number 198, in the 3rd column under Make/model (line), ''38235'' should read ''9–5''.

Since the corrections made by this document are only to inform the public of previous agency actions, and do not impose any additional obligations on any party, NHTSA finds for good cause that the revisions made by this notice should be effective as soon as this notice is published in the **Federal Register**.

Issued on: October 27, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–24465 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 69, No. 212
Wednesday, November 3, 2004

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Docket No. FV04–923–1 PR]

Sweet Cherries Grown in Designated Counties in Washington; Establishment of Minimum Size and Maturity Requirements for Lightly Colored Sweet Cherry Varieties

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule invites comments on the establishment of a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets under the Washington sweet cherry marketing order. This rule was recommended by the Washington Cherry Marketing Committee (Committee), the agency responsible for local administration of the marketing order. Currently, only the Rainier variety of lightly colored sweet cherries must meet these requirements. This rule is intended to enhance the quality and image of all lightly colored sweet cherry varieties shipped to the fresh market, thereby increasing sales and improving returns to producers.

DATES: Comments must be received by January 3, 2005.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; E-mail: *moab.docketclerk@usda.gov;* or Internet: *http://www.regulations.gov.* Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

FOR FURTHER INFORMATION CONTACT: Teresa L. Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW., Third Avenue, suite 385, Portland, OR 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

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

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 923 (7 CFR part 923) regulating the handling of sweet cherries grown in designated counties in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

This proposal invites comments on the establishment of a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets. Currently, Rainier variety cherries are the only lightly colored sweet cherries under these requirements. This rule would establish the same requirements for all other varieties of lightly colored sweet cherries as are established for Rainier variety cherries.

Section 923.52 of the order authorizes the establishment of grade, size, quality, maturity, pack and container regulations for any variety or varieties of cherries grown in the production area. Section 923.53 further authorizes the modification, suspension, or termination of regulations issued under § 923.52. Section 923.55 provides that whenever cherries are regulated pursuant to § 923.52 or § 923.53, such cherries must be inspected by the Federal-State Inspection Service, and certified as meeting the applicable requirements of such regulations.

On May 18, 2004, the Committee recommended, by a nine to four vote, the establishment of a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties shipped to fresh markets under the order. The Committee recommended the requirement become effective on April 1, 2005, which is the beginning of the 2005–2006 marketing season.

Supporters of the proposal believe that such a regulation would be in the best interests of producers and consumers. Growing lightly colored sweet cherries for the fresh market is more labor intensive and costly than producing dark colored varieties. Trees that produce lightly colored sweet cherries need to be pruned more heavily

than the trees that produce dark colored sweet cherries to ensure acceptable size fruit. The lightly colored sweet varieties are fragile and susceptible to damage during handling with most lightly colored sweet cherries being sorted and packed by hand. Producers need to offer a quality product in order to recoup the higher production costs. The sale of small, immature or poor quality cherries results in buyer dissatisfaction, which reduces repeat purchases and damages the market for all lightly colored sweet cherries.

Supporters of the proposal believe that the requirements currently in place for Rainier variety cherries (59 FR 31917, June 21, 1994) have benefited producers. Concern was also expressed that the non-regulation of new varieties of lightly colored sweet cherries would have an adverse effect in the future on the marketing of Rainier variety cherries if the newer varieties are not regulated in the same manner. It is difficult to distinguish between the different varieties of lightly colored cherries and this can result in confusion in the marketplace.

Those opposed to the recommendation believe that the tonnage of the newer lightly colored sweet cherry varieties is not enough to impact the Rainier market at this time. They believe that the regulation of all lightly colored sweet cherries would reduce the volume of such cherries on the market and reduce overall returns on the crop. Some believe that the additional cost of inspection would increase costs with little added return to the producer.

The Committee estimates that there were less than 500 tons of lightly colored sweet cherry varieties other than the Rainier variety marketed during the 2004 marketing season. By comparison, there were 8,080 tons (Committee records) of Rainier cherries marketed from the production area in 2004.

This rule proposes adding a new provision to § 923.322 to establish a minimum size requirement of 61/64-inch in diameter for all lightly colored sweet cherries which corresponds to the 11-row size. To provide for variances in packing, a tolerance of 10 percent would be provided for undersized lightly colored sweet cherries. Further, the regulation would provide that not more than 5 percent of lightly colored sweet cherries in any lot could be less than 57/64-inch in diameter, which is 11½-row size, one size lower than the 11-row size. These tolerances are identical to those in effect for Rainier cherries and comparable to those in effect for dark colored sweet cherry varieties.

Section 923.322 would also be revised to include that any lot of lightly colored sweet cherries would have to contain a minimum of 17 percent soluble solids. The percentage of soluble solids would be determined by using a refractometer to measure the sugar level in a composite sample of cherries. This maturity test would be taken prior to packing, at the time of packing, or at time of shipment, provided that individual lots shall not be combined with other lots to meet soluble solids requirements. The rule would be effective April 1, 2005, the beginning of the next marketing season.

This rule would also change the section heading of § 923.322 from ''Washington Cherry Regulation 22'' to ''Washington Cherry Handling Regulation'' to more accurately describe the requirements contained therein.

Initial Regulatory Flexibility Analysis

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

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

There are approximately 1,800 producers of sweet cherries grown in designated counties in Washington. In addition, there are approximately 69 handlers subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

Based on a three-year (2001–2003) average fresh cherry production of 79,763 tons (Committee records), a three-year average producer price of $1,390 per ton as reported by the National Agricultural Statistics Service, USDA, and 1,800 Washington cherry producers, the average annual producer revenue is approximately $61,595. In addition, based on Committee records and an average 2003 f.o.b. price of $28.00 per 20-pound container as reported by the AMS Market News, approximately 75 percent of the Washington sweet cherry handlers ship under $5,000,000 worth of cherries. Based on this information, the majority of Washington sweet cherry producers and handlers may be classified as small entities.

This proposal would establish a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for all lightly colored sweet cherry varieties that can be shipped to fresh markets. Currently, Rainier variety cherries are the only lightly colored sweet cherries currently under these requirements.

Rainier and other lightly colored sweet cherry varieties are typically marketed from mid-June through July. AMS Market News data shows that prices are the highest for the earliest offerings of these cherries, and that such prices decline as the season progresses. In 2003, for example, the opening f.o.b. price on June 23 ranged from $45.00 to $45.50 per carton. This declined to $35.00 to $36.50 a week later, and f.o.b. prices were $38.00 to $40.50 per carton at season's end for similar quality and sizes. This price trend serves as an incentive for producers to harvest early, which has resulted in immature and poor quality lightly colored sweet cherries being marketed.

The Committee reports that cherry size and quality are important to buyers. Consistency and dependability are equally important. Shipments of immature, low quality, under-sized lightly colored sweet cherries in recent seasons have disappointed buyers and consumers. This reduces repeat purchases and results in declines in prices and overall sales volumes.

Cherry size is related to maturity and other quality factors. That is, larger sized cherries tend to be sweeter and of higher overall quality. This is supported by prices received for different sizes of Bing (dark colored) cherries. AMS Market News data show that f.o.b. prices for 12 row sized Bing cherries (54/64-inch diameter) averaged about $18.00 per carton in mid-June 2003. At the same time, 10½ row sized (1 inch diameter) Bing cherries were selling for $24.50 to $26.50 per carton. This price relationship held steady throughout the season. Further, the Committee has conducted research showing that larger sizes correlate with higher maturity levels, and that larger sizes are preferred by cherry consumers. While research results and prices by size specifically for Rainier or other lightly colored sweet cherry varieties are currently unavailable, industry consensus is that the same relationships are true for

Rainier and other lightly colored sweet cherries, and Bings.

The Committee discussed alternatives to this rule, including not establishing a minimum size and maturity requirement. The general consensus of the industry is that mandatory size and quality requirements are needed to ensure product quality and to encourage repeat purchases. Previous voluntary standards for lightly colored sweet cherries such as Rainier variety cherries have not been successful.

This proposed rule would establish a minimum size requirement of 11-row size (61/64-inch diameter) and a minimum maturity requirement of 17 percent soluble solids for lightly colored sweet cherry varieties shipped to fresh markets. Accordingly, this proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large sweet cherry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplications by industry and public sector agencies.

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

In addition, the Committee's meeting was widely publicized throughout the Washington sweet cherry industry and all interested persons were invited to attend and participate in the Committee's deliberations on all issues. Like all Committee meetings, the May 18, 2004, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

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

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 923 is proposed to be amended as follows:

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

1. The authority citation for 7 CFR part 923 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 923.322, paragraphs (b) introductory text, (b)(1), and (c) are revised to read as follows:

§ 923.322 Washington Cherry Regulation 22.

* * * * *

(b) *Size.* No handler shall handle, except as otherwise provided in this section, any lot of cherries unless such cherries meet the following minimum size requirements:

(1) For the Rainier variety and similar varieties commonly referred to as ''lightly colored sweet cherries,'' at least 90 percent, by count, of the cherries in any lot shall measure not less than 61/64 inch in diameter and not more than 5 percent, by count, may be less than 57/64 inch in diameter.

* * * * *

(c) *Maturity.* No handler shall handle, except as otherwise provided in this section, any lot of Rainier cherries or other varieties of ''lightly colored sweet cherries'' unless such cherries meet a minimum of 17 percent soluble solids as determined from a composite sample by refractometer prior to packing, at time of packing, or at time of shipment: *Provided,* That individual lots shall not be combined with other lots to meet soluble solids requirements.

* * * * *

Dated: October 27, 2004.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 04–24443 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19494; Directorate Identifier 2004–NM–135–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A318, A319, A320, and A321 Series Airplanes Equipped With Air Cruisers/Aerazur Forward and Aft Passenger Door Emergency Escape Slides

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 A318, A319, A320, and A321 series airplanes equipped with certain forward and aft passenger door emergency escape slides. This proposed AD would require modifying the forward and aft door slides. This proposed AD is prompted by manufacturer testing that has shown contact between the inflation hose and fabric roll, within a short period of time after inflation of the emergency escape slides, can rupture the inflation hose at its end fittings. We are proposing this AD to prevent interference between the inflation hose and slide fabric and rupture of the inflation hose, which could result in incomplete inflation of the emergency escape slides and consequent unavailability of those slides during an emergency evacuation.

DATES: We must receive comments on this proposed AD by December 3, 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: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2125; fax (425) 227–1149.

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–2004–19494; Directorate Identifier 2004–NM–135–AD'' at the beginning 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 our docket website, 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 the 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 9:00 a.m. and 5:00 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 A318, A319, A320, and A321 series airplanes. The DGAC advises that manufacturer testing has shown that contact between the inflation hose and fabric roll, within a short period of time after inflation of the emergency escape slides, can rupture the inflation hose at its end fittings. This condition, if not corrected, could result in incomplete inflation of the emergency escape slides and consequent unavailability of those slides during an emergency evacuation.

Relevant Service Information

Airbus has issued Service Bulletin A320–25–1338, dated February 9, 2004. The service bulletin describes procedures for modifying the forward and aft door slides. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition. The DGAC mandated the service information and issued French airworthiness directive F–2004–072, dated May 26, 2004, to ensure the continued airworthiness of these airplanes in France.

The Airbus service bulletin refers to Air Cruisers/Aerazur Service Bulletin A320 004–25–72, dated October 28, 2003, as an additional source of service information for modifying the forward and aft door slides by bonding a hose retainer to the slide assembly; routing the hose assembly through the hose retainer; and reidentifying the slide assembly and slide system.

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 DGAC's 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 modifying the forward and aft door slides. The proposed AD would require you to use the Airbus service information described previously to perform these actions, except as discussed under ''Difference Between the Proposed AD and French Airworthiness Directive.''

Difference Between the Proposed AD and French Airworthiness Directive

The applicability of French airworthiness directive F–2004–072 excludes airplanes that accomplished Airbus Service Bulletin A320–25–1338 in service. However, we have not excluded those airplanes in the applicability of this proposed AD; rather, this proposed AD includes a requirement to accomplish the actions specified in that service bulletin. Such a requirement would ensure that the actions specified in the service bulletin and required by this proposed AD are accomplished on all affected airplanes. Operators must continue to operate the airplane in the configuration required by this proposed AD unless an alternative method of compliance is approved.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD, at an average labor rate of $65 per work hour.

ESTIMATED COSTS

Action	Work hours per slide	Slides per airplane	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	1	2	Free	$130	648	$84,240

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–2004–19494; Directorate Identifier 2004–NM–135–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 3, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A318–111 and –112 series airplanes; Model A319–111, –112, –113, –114, –115, –131, –132, and –133 series airplanes; Model A320–111, –211, –212, –214, –231, –232, and –233 series airplanes; and Model A321–111, –112, –131, –211, and –231 series airplanes; certificated in any category; equipped with Air Cruisers/Aerazur forward passenger door emergency escape slides, part number (P/N) D31516–111, –113, –115, –117, –311, or –313, and aft passenger door emergency escape slides, part number (P/N) D31517–111, –113, –115, –117, –311, or –313; except those airplanes on which Airbus Modification 33429 has been accomplished in production.

Unsafe Condition

(d) This AD was prompted by manufacturer testing that has shown contact between the inflation hose and fabric roll, within a short period of time after inflation of the emergency escape slides, can rupture the inflation hose at its end fittings. We are issuing this AD to prevent interference between the inflation hose and slide fabric and rupture of the inflation hose, which could result in incomplete inflation of the emergency escape slides and consequent unavailability of those slides during an emergency evacuation.

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) Within 37 months after the effective date of this AD, modify the forward and aft door slides, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–25–1338, dated February 9, 2004.

Note 1: Airbus Service Bulletin A320–25–1338, dated February 9, 2004, refers to Air Cruisers/Aerazur Service Bulletin A320 004–25–72, dated October 28, 2003, as an additional source of service information for modifying the forward and aft door slides.

Alternative Methods of Compliance (AMOCs)

(g) The Manager, International Branch, ANM–116, 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

(h) French airworthiness directive F–2004–072, dated May 26, 2004, also addresses the subject of this AD.

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

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24534 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003–NM–04–AD]

RIN 2120–AA64

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

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes. That action would have required a one-time inspection of the trailing arm cardan of each main landing gear (MLG) to identify a certain part number; a one-time inspection of certain trailing arm cardans to detect cracking, if necessary; and replacement of incorrect trailing arm cardans with cardans having a certain part number. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new substantiating data from the manufacturer that verify that all affected airplanes in the worldwide and domestic fleets are in compliance with the proposed requirements of the NPRM, and all affected spare parts have been returned to the manufacturer and destroyed. Accordingly, the proposed rule is withdrawn.

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

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain EMBRAER Model EMB–135 and –145 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on March 17, 2003 (68 FR 12615). The proposed rule would have required a one-time inspection of the trailing arm cardan of each main landing gear (MLG) to identify a certain part number; a one-time inspection of certain trailing arm cardans to detect cracking, if necessary; and replacement of incorrect trailing arm cardans with cardans having a certain part number. That action was prompted by notification from the

Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, of an unsafe condition. The DAC advised that during a sampling program, fatigue cracks were found on certain trailing arm cardans of the MLGs. The proposed actions were intended to ensure that correct trailing arm cardans of the MLGs were installed.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the manufacturer has requested that the NPRM be withdrawn. The manufacturer has provided data that substantiate that all affected airplanes in the worldwide and domestic fleets are in compliance with the proposed requirements of the NPRM, and that all affected spare parts have been returned to the manufacturer and destroyed.

FAA's Conclusions

Upon further consideration, and based on comments received in response to the proposed AD, we have determined that all affected airplanes in the worldwide and domestic fleets have complied with the requirements of the NPRM, and that all affected spare parts have been returned to the manufacturer and destroyed. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this NPRM constitutes only such action, and does not preclude the agency from issuing another action in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 2003–NM–04–AD, published in the **Federal Register** on March 17, 2003 (68 FR 12615), is withdrawn.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24539 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19493; Directorate Identifier 2004–NM–69–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F 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 Boeing Model 767–200, –300, and –300F series airplanes. This proposed AD would require replacing the inboard fairing seal common to the vapor barrier seal of each strut assembly. This proposed AD is prompted by discovery during production that a section of vapor barrier seal was missing from the spar web cavities of the upper aft struts of both wings. We are proposing this AD to prevent flammable fluids from leaking onto parts of a hot exhaust system of a shut-down engine of an airplane on the ground, which could result in ignition of the flammable fluids and an uncontained fire. This could also lead to an emergency evacuation of the airplane and possible injury to passengers.

DATES: We must receive comments on this proposed AD by December 20, 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person 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. This docket number is FAA–2004–19493; the directorate identifier for this docket is 2004–NM–69–AD.

FOR FURTHER INFORMATION CONTACT:

Technical information: Bernie Gonzalez, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6498; fax (425) 917–6590.

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 written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19493; Directorate Identifier 2004–NM–69–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 may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications 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

We have received a report indicating that, during production, the manufacturer discovered that a section of vapor barrier seal was missing from the spar web cavities of the left and right upper aft struts on certain Boeing Model 767–200, –300, and –300F series airplanes. The vapor barrier is intended to contain a major spray-type fluid leak and direct the fluid through the upper aft spar web environmental control system penetration and the strut drain system. The existing seal lengths do not completely seal the cavity, which results in a gap that could potentially allow vapors and/or fluids to escape. A major fluid leak (*e.g.*, fuel/Skydrol) may overwhelm the drainage provisions for the compartment, filling the compartment and leaking out of the gap. The FAA and Boeing have agreed that, for airplanes in flight and on the ground with the engines running, the fluid can escape safely. However, if an airplane is on the ground with the engines shut down, we are concerned that flammable fluids could leak onto parts of a hot exhaust system of a shut-down engine directly below the missing seal area. This could result in ignition of the flammable fluids and an uncontained fire that could also lead to an emergency evacuation of the airplane and possible injury to passengers.

Relevant Service Information

We have reviewed Boeing Service Bulletin 767–54–0107, Revision 1, dated December 18, 2003. The service bulletin describes procedures for replacing the inboard fairing seal common to the vapor barrier seal of each strut assembly with a new seal. Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other airplanes of this same type design. Therefore, we are proposing this AD, which would require you to replace the inboard fairing seal common to the vapor barrier seal of each strut assembly with a new seal. The proposed AD would require you to use the service information described previously to perform this action.

Costs of Compliance

This proposed AD would affect about 311 airplanes of U.S. registry and 756 airplanes worldwide. The proposed actions would take about 4 work hours per airplane, at an average labor rate of $65 per work hour. Required parts would cost about $185 per airplane. Based on these figures, the estimated cost of the proposed AD for U.S. operators is $138,395, or $445 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):

Boeing: Docket No. FAA–2004–19493; Directorate Identifier 2004–NM–69–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this AD action by December 20, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, equipped with General Electric and Pratt and Whitney engines; as listed in Boeing Service Bulletin 767–54–0107, Revision 1, dated December 18, 2003; certificated in any category.

Unsafe Condition

(d) This AD was prompted by discovery during production that a section of vapor barrier seal was missing from the spar web cavities of the upper aft struts of both wings. We are issuing this AD to prevent flammable fluids from leaking onto parts of a hot exhaust system of a shut-down engine of an airplane on the ground, which could result in ignition of the flammable fluids and an uncontained fire. This could also lead to an emergency evacuation of the airplane and possible injury to passengers.

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.

Installation of Seal

(f) Within 60 months after the effective date of this AD, replace the inboard fairing seal common to the vapor barrier seal of each strut assembly with a new inboard fairing seal in accordance with the Accomplishment Instructions of Boeing Service Bulletin 767–54–0107, Revision 1, dated December 18, 2003.

Seal Installations Accomplished per Previous Issue of Service Bulletin

(g) Seal installations accomplished in accordance with the Accomplishment

Instructions of Boeing Service Bulletin 767–54–0107, dated January 16, 2003, are considered acceptable for compliance with the corresponding action specified in this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, Seattle Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24540 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19495; Directorate Identifier 2003–NM–180–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, –100B, –100B SUD, –200B, and –300 Series Airplanes; and Model 747SR and 747SP Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede an existing airworthiness directive (AD) for certain Boeing Model 747–100, –100B, –100B SUD, –200B, and –300 series airplanes; and Model 747SR and 747SP series airplanes. That AD currently requires repetitive inspections to detect fatigue cracking in the upper deck floor beams located at certain body stations, and repair, if necessary. This proposed AD would lower the threshold for the existing inspections and would require new repetitive inspections of previously repaired areas, and repair if necessary. This proposed AD is prompted by the results of an additional detailed analysis that indicate fatigue cracks can initiate sooner than has previously been observed. We are proposing this AD to prevent failure of the upper deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by December 20, 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.
- 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 Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

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: Ivan Li, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6437; fax (425) 917–6590.

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 written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2004–19495; Directorate Identifier 2003–NM–180–AD'' at the beginning 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 received 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 our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review the 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

On February 22, 2000, we issued AD 2000–04–17, amendment 39–11600 (65 FR 10695, February 29, 2000), for certain Boeing Model 747–100, –200, and –300 series airplanes. That AD requires repetitive inspections to detect fatigue cracking in the upper deck floor beams located at certain body stations, and repair, if necessary. That AD was prompted by a report from the manufacturer that, during a fatigue test at approximately 34,000 total flight cycles, the upper chord and web of the upper deck floor beams located at body

stations (BS) 340 and 360 were found severed. Another report by an operator indicated that, at approximately 33,000 total flight cycles, a severed upper chord and web were found in the upper deck floor beam at BS 380. In addition, cracking was found at multiple fastener hole locations. We issued that AD to prevent failure of the upper deck floor beams at certain body stations due to fatigue cracking, which could result in rapid decompression and reduced controllability of the airplane.

Actions Since Existing AD Was Issued

Since we issued AD 2000–04–17, the results of an additional detailed analysis indicate that fatigue cracks can initiate sooner than has previously been observed. Subsequent to this analysis, the manufacturer issued, and we reviewed Revision 2 of Boeing Alert Service Bulletin 747–53A2431, dated June 13, 2002. (The original issue of the service bulletin was referred to in AD 2000–04–17 as the appropriate source of service information for the required actions). Revision 2 of the service bulletin changes the initial inspection threshold from 28,000 total flight cycles to 22,000 total flight cycles. It also adds new repetitive inspections of areas repaired per earlier issues of the service bulletin, and repair of any crack. Depending on the location of the repair, the inspections include:

- Open-hole HFEC inspections to detect cracks at the fastener holes of the floor panel attachment and the inboard and outboard end fastener locations common to the repair strap; and
- Surface HFEC inspections to detect cracks of the upper chord along the edge of the trimmed surface.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

FAA's Determination and Requirements of the Proposed AD

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. Therefore, we are proposing this AD, which would supersede AD 2000–04–17. This proposed AD would continue to require repetitive inspections to detect fatigue cracking in the upper deck floor beams located at certain body stations, and repair, if necessary. The proposed AD also would require the existing repetitive inspections at a lower threshold. In addition, the proposed AD would require new repetitive inspections of previously repaired areas, and repair of any crack. This proposed AD would require you to use the service information described previously to perform these actions, except as discussed under ''Differences Between the Proposed AD and Service Bulletin.''

Differences Between the Proposed AD and Service Bulletin

Although the service bulletin recommends accomplishing the initial inspection before the accumulation of 22,000 total flight cycles, we have determined that the inspection threshold would not address the identified unsafe condition soon enough to ensure an adequate level of safety for the affected fleet. As described in AD 2004–03–11, amendment 39–13455 (69 FR 5920, February 8, 2004), we have received a report indicating that cracks were found in the upper deck floor at BS 420 on a Boeing Model 747–200F series airplane with 19,598 total flight cycles. The upper chord and web of the floor beam were completely severed. AD 2004–03–11, applicable to certain Boeing Model 747–200C and –200F series airplanes, requires repetitive inspections to find fatigue cracking in the upper chord of the upper deck floor beams, and repair if necessary. For certain airplanes, that AD also provides an optional repair/modification, which extends certain repetitive inspection intervals. That AD is intended to find and fix cracking in certain upper deck floor beams, which extend and sever floor beams at a floor panel attachment hole location and could result in rapid decompression and consequent loss of controllability of the airplane.

Since the issuance of AD 2004–03–11, we have received two reports of multiple-floor beam cracking on two Model 747–200F series airplanes with 19,687 and 23,561 total flight cycles. Numerous cracks up to 0.75 inches long were found at the floor beams. Some of the cracks exceeded the repairable limits specified in Boeing Alert Service Bulletin 747–53A2439, dated July 5, 2001 (cited in AD 2004–03–11 as the appropriate source of service information for the required actions). We are considering further rulemaking action to address these new findings.

The upper deck floor beams at BS 340, 360, and 380 on Model 747–100, –100B, –100B SUD, –200B, and –300 series airplanes, and Model 747SR and 747SP series airplanes are a similar type design to those on Model 747–200C and –200F series airplanes. Therefore, we find that a 18,000 flight-cycle compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

For locations that have been repaired by oversizing the fastener holes only (*i.e.*, repair strap and/or clip not installed) as specified in Table 1 of Part 3 of the Accomplishment Instructions of the service bulletin, Part 4 of the Accomplishment Instructions of the service bulletin does not specify an inspection method or compliance time for that type of repaired location. Therefore, this proposed AD would require an open-hole HFEC inspection to detect cracks of the upper floor beams in accordance with Part 1 of the Accomplishment Instructions of the service bulletin. The compliance time for that inspection is before the accumulation of the applicable threshold specified in the ''New Inspection Threshold'' column in Table 1 of Part 3 of the Accomplishment Instructions of the service bulletin, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

The service bulletin specifies not to count flight cycles with a cabin pressure differential of 2.0 pounds per square inch (psi) or less, and that any flight cycles with momentary spikes in cabin pressure differential above 2.0 psi must be included as a full-pressure flight cycle. We find that insufficient data exist to support this adjustment to flight cycles. In fact, data are available which indicate that the use of a 2.0 adjustment factor provides inaccurate data and unjustified relief for inspection intervals. Consequently, this AD does not allow for this adjustment factor.

The service bulletin specifies that you may contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require you to repair those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the type certification basis of the airplane, and that have been approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make those findings.

Although the service bulletin does not list a grace period in the compliance time for the post-repair inspection, this proposed AD adds a grace period to the compliance times. We find that a grace period will keep airplanes from being grounded unnecessarily.

In addition, the effectivity of service bulletin incorrectly specifies ''747–300B'' as an affected airplane model. The correct model designation is 747–300, as specified in type certificate data sheet, A20WE, May 10, 2004. As explained further below, this AD specifies model designations in the applicability of this proposed AD as

published in the most recent type certificate data sheet.

Certain Changes to Existing AD

We find that certain affected Model 747–100, –100B, –100B SUD, –200B, and –300 series airplanes, and Model 747SR and 747SP series airplanes were not specifically identified by model name in the applicability of AD 2000–04–17. However, all of those airplanes were identified by manufacturer's fuselage numbers in the effectivity listing of Boeing Alert Service Bulletin 747–53A2431, dated February 10, 2000, which was referenced in that AD as the appropriate source of service information for the required actions. Therefore, we have specified model designations in the applicability of this proposed AD as published in the most recent type certificate data sheet and Revision 2 of the referenced service bulletin for the affected models.

This proposed AD would retain all requirements of AD 2000–04–17. Since AD 2000–04–17 was issued, the AD format has been revised, and certain paragraphs have been rearranged. As a result, paragraph (a) of AD 2000–04–17 has been redesignated as paragraph (g) in this proposed AD.

Costs of Compliance

There are about 539 Model 747–100, –100B, –100B SUD, –200B, and –300 series airplanes; and Model 747SR and 747SP series airplanes worldwide of the affected design. This proposed AD would affect about 168 airplanes of U.S. registry.

The actions that are currently required by AD 2000–04–17 and retained in this proposed AD take about 15 work hours per airplane, at an average labor rate of $65 per work hour. Based on these figures, estimated cost of the currently required actions is $163,800, or $975 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 removing amendment 39–11600 (65 FR 10695, February 29, 2000) and adding the following new airworthiness directive (AD):

Boeing: Docket No. FAA–2004–19495; Directorate Identifier 2003–NM–180–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this airworthiness directive (AD) action by December 20, 2004.

Affected ADs

(b) This AD supersedes AD 2000–04–17, amendment 39–11600 (65 FR 10695, February 29, 2000).

Applicability

(c) This AD applies to Boeing Model 747–100, –100B, –100B SUD, –200B, and –300 series airplanes; and Model 747SR and 747SP series airplanes; certificated in any category; as listed in Boeing Alert Service Bulletin 747–53A2431, Revision 2, dated June 13, 2002.

Unsafe Condition

(d) This AD was prompted by the results of an additional detailed analysis that indicate fatigue cracks can initiate sooner than has previously been observed. We are issuing this AD to prevent failure of the upper deck floor beams at certain body stations (BS) due to fatigue cracking, which could result in rapid decompression and reduced controllability of the airplane.

Compliance

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

New Initial Compliance Time

(f) At the earlier of the times specified in paragraphs (f)(1) and (f)(2) of this AD, do the actions specified in paragraph (h) of this AD.

(1) Before the accumulation of 28,000 total flight cycles, or within 60 days after March 15, 2000 (the effective date of AD 2000–04–17, amendment 39–11600), whichever occurs later.

(2) Before the accumulation of 18,000 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

Determining Number of Flight Cycles for Compliance Time

(g) For the purposes of calculating the compliance threshold for the actions required by paragraph (f) of this AD, all pressurized flight cycles, including the number of flight cycles in which cabin differential pressure is at 2.0 pounds per square inch (psi) or less, must be counted when determining the number of flight cycles that have occurred on the airplane. Where the service bulletin and this AD differ, the AD prevails.

Requirements of AD 2000–04–17 and New Repair Method

(h) At the time specified in paragraph (f) of this AD, perform the actions required by either paragraph (h)(1) or (h)(2) of this AD.

(1) Gain access to the upper deck floor beams from above the upper deck floor, and perform an open-hole high frequency eddy current (HFEC) inspection to detect cracking of the upper deck floor beams at BS 340 and 360, and on both the left and right sides of the floor beam at BS 380 between buttock lines (BL) 40 and 76; in accordance with Part 1 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2431, Revision 2, dated June 13, 2002.

(i) If no cracking is found, perform the actions required by paragraph (h)(1)(i)(A), (h)(1)(i)(B), or (h)(1)(i)(C) of this AD, in accordance with the alert service bulletin.

(A) Repeat the inspection required by paragraph (h)(1) of this AD thereafter at intervals not to exceed 3,000 flight cycles.

(B) Modify (oversize) the floor panel attachment fastener holes as specified in Figure 5 of the alert service bulletin, and repeat the inspection required by paragraph (h)(1) of this AD within 10,000 flight cycles. Thereafter, repeat the inspection at intervals not to exceed 3,000 flight cycles.

(C) Do the applicable repair procedures shown in Part 3 of the Accomplishment Instructions of the alert service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair in accordance with paragraph (h)(1)(ii)(A) of this AD.

(ii) If any cracking is found, before further flight, do the action specified in either paragraph (h)(1)(ii)(A) or (h)(1)(ii)(B) of this AD.

(A) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the FAA to make

such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

(B) Repair in accordance with Part 3 of the Accomplishment Instructions of the alert service bulletin; except where the service bulletin specifies to contact Boeing for appropriate action, before further flight, repair in accordance with paragraph (h)(1)(ii)(A) of this AD.

(2) Gain access to the upper deck floor beams from below the upper deck floor; and perform a surface HFEC inspection to detect cracking of the floor beams at BS 340 and 360, and on both the left and right sides of the floor beam at BS 380 between BL 40 and 76; in accordance with Part 2 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2431, Revision 2, dated June 13, 2002.

(i) If no cracking is found, repeat the inspection required by paragraph (h)(2) of this AD thereafter at intervals not to exceed 750 flight cycles.

(ii) If any cracking is found, before further flight, do the action specified in paragraph (h)(1)(ii) of this AD.

New Post-Repair Inspection

(i) For areas repaired in accordance with paragraph (h)(1)(i)(C) or (h)(1)(ii)(B) of this AD: Before the accumulation of the applicable threshold specified in the ''New Inspection Threshold'' column in Table 1 of Part 3 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2431, Revision 2, dated June 13, 2002, after accomplishing the repair; or within 1,000 flight cycles after the effective date of this AD; whichever occurs later: Do the actions specified in paragraphs (i)(1) through (i)(3) of this AD, as applicable.

(1) For locations that have been repaired by oversizing the fastener holes only (*i.e.*, repair strap and/or clip not installed) as shown in Part 3 of the Accomplishment Instructions of Revision 1 or 2 of the alert service bulletin: Perform an open-hole HFEC inspection to detect cracking of the upper deck floor beams, in accordance with Part 1 of the Accomplishment Instructions of the alert service bulletin.

(2) For locations previously repaired as shown in Figure 8 of Revision 1 or 2 of the alert service bulletin: Do an open-hole HFEC inspection to detect cracks at the fastener holes of the floor panel attachment and the inboard and outboard end fastener locations common to the repair strap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2431, Revision 2, dated June 13, 2002.

(3) For locations previously repaired as shown in Figure 9 or Figure 10 of Revision 1 or 2 of the alert service bulletin: Do a surface HFEC inspection to detect cracks at the upper chord along the edge of the trimmed surface; and perform an open-hole HFEC inspection to detect cracks at the fastener holes of the floor panel attachment and the inboard and outboard end fastener locations common to the repair strap, in accordance with Part 4 of the Accomplishment Instructions of Boeing Alert Service Bulletin 747–53A2431, Revision 2, dated June 13, 2002.

(j) If no crack is detected during any inspection required by paragraphs (i)(1) through (i)(3) of this AD, repeat the applicable inspection thereafter at intervals not to exceed 3,000 flight cycles.

(k) If any crack is detected during any inspection required by paragraph (i)(1) through (i)(3) of this AD, before further flight, do the action specified in paragraph (h)(1)(ii)(A) of this AD.

(l) For areas repaired in accordance with paragraph (h)(1)(ii)(A) of this AD that do not have a post-repair inspection program approved by the Manager, Seattle ACO or by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make those findings: Do the actions specified in paragraph (h) of this AD at the time specified in that paragraph.

Credit for Previous Released Alert Service Bulletin

(m) Actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–53A2431, dated February 10, 2000; or Revision 1, dated March 8, 2001; are acceptable for compliance with the applicable requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(n)(1) The Manager, Seattle ACO, FAA, has the authority to approve AMOCs for this AD, if requested in accordance with the procedures found in 14 CFR 39.19.

(2) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the approval must specifically refer to this AD.

(3) AMOCs, approved previously per AD 2000–14–17, amendment 39–11600, are approved as AMOCs with paragraph (h)(1)(ii)(A) of this AD, provided that a post-repair inspection program has been approved by the Manager, Seattle ACO, or by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make those findings.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24544 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2004–19496; Directorate Identifier 2003–NM–181–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–215–6B11 (CL215T Variant) and CL–215–6B11 (CL415 Variant) 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 Bombardier Model CL–215–6B11 (CL215T variant) and CL–215–6B11 (CL415 variant) series airplanes. This proposed AD would require replacing the mounting pad studs of the auxiliary feather pump with new, longer studs, and installing a pressure relief valve. This proposed AD is prompted by a few incidents of external oil leaks from the oil pump of the power control unit due to a malfunction of the pressure regulating valve. We are proposing this AD to prevent fracturing of the pump body, which could result in loss of engine oil, and consequent inability to maintain engine oil pressure and to feather the propeller.

DATES: We must receive comments on this proposed AD by December 3, 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.

You can get the service information identified in this proposed AD from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada.

You may examine the contents of this AD docket on the Internet at *http://*

dms.dot.gov, or at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Richard Fiesel, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Westbury, suite 410, New York 11590; telephone (516) 228–7304; fax (516) 794–5531.

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 written relevant data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES.** Include ''Docket No. FAA–2004–19496; Directorate Identifier 2003–NM–181–AD ''at the beginning 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 our docket Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*

We are reviewing the writing style we currently use in regulatory documents. We are interested in your comments on whether the style of this document is clear, and your suggestions to improve the clarity of our communications 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 may examine the AD docket 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

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified us that an unsafe condition may exist on certain Bombardier Model CL–215–6B11 (CL215T variant) and CL–215–6B11 (CL415 variant) series airplanes. The TCCA advises that there have been a few incidents of external oil leaks from the oil pump of the propeller control unit due to a malfunction of the pressure regulating valve, on Pratt & Whitney Model PW120 series engines. The resulting high internal oil pressure may cause a fracture of the pump body. This condition, if not corrected, could result in loss of engine oil, and consequent inability to maintain engine oil pressure and to feather the propeller.

Relevant Service Information

Bombardier has issued Service Bulletin 215–3108, dated March 28, 2001 (for Model CL–215–6B11 (CL215T variant) series airplanes); and Bombardier Service Bulletin 215–4234, dated March 28, 2001 (for Model CL–215–6B11 (CL415 variant) series airplanes). The service bulletins describe procedures for replacing the mounting pad studs of the auxiliary feather pump with new, longer studs, and installing a pressure relief valve. Accomplishing the actions specified in the service information will adequately address the unsafe condition. TCCA mandated the service information and issued Canadian airworthiness directive CF–2002–14, dated February 13, 2002, to ensure the continued airworthiness of these airplanes in Canada.

The service bulletins refer to Pratt & Whitney Canada Service Bulletin PW100–72–21636, Revision 2, dated June 26, 2002, as an additional source of service information for doing the replacement of the mounting pad studs.

FAA's Determination and Requirements of the Proposed AD

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

Therefore, we are proposing this AD, which would require replacing the mounting pad studs of the auxiliary feather pump with new, longer studs, and installing a pressure relief valve. The proposed AD would require you to use the Bombardier service information described previously to perform these actions, except as discussed under ''Difference Between Proposed Rule and Referenced Service Bulletins.''

Difference Between Proposed Rule and Referenced Service Bulletins

Operators should note that, although the Accomplishment Instructions of the referenced Bombardier service bulletins describe procedures for submitting a sheet recording compliance with the service bulletin, this proposed AD would not require that action. We do not need this information from operators.

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement	2	$65	Free	$130	3	$390
Installation	4	65	Free	260	3	780

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):

Bombardier, Inc. (Formerly Canadair): Docket No. FAA–2004–19496; Directorate Identifier 2003–NM–181–AD.

Comments Due Date

(a) The Federal Aviation Administration must receive comments on this AD action by December 3, 2004.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier Model CL–215–6B11 (CL215T variant) having serial numbers (S/N) 1056 through 1125 inclusive, and Model CL–215–6B11 (CL415 variant) series airplanes, having S/Ns 2001 through 2053 inclusive; certificated in any category.

Unsafe Condition

(d) This AD was prompted by a few incidents of external oil leaks from the oil pump of the power control unit due to a malfunction of the pressure regulating valve. We are issuing this AD to prevent fracturing of the pump body, which could result in loss of engine oil, and consequent inability to maintain engine oil pressure and to feather the propeller.

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.

Replacement

(f) Within 12 months after the effective date of this AD, replace the mounting pad studs of the auxiliary feather pump with new, longer studs, and install a pressure relief valve; in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 215–3108, dated March 28, 2001 (for Model CL–215–6B11 (CL215T variant) series airplanes); or Bombardier Service Bulletin 215–4234, dated March 28, 2001 (for Model CL–215–6B11 (CL415 variant) series airplanes); as applicable.

Note 1: Bombardier Service Bulletin 215–3108 and Bombardier Service Bulletin 215–4234 refer to Pratt & Whitney Canada Service Bulletin PW100–72–21636, Revision 2, dated June 26, 2002, as an additional source of service information for accomplishing the replacement of the mounting pad studs.

No Reporting

(g) Although the service bulletin refers to a reporting requirement in paragraph 2.B, that reporting is not required by this AD.

Alternative Methods of Compliance (AMOCs)

(h) The Manager, New York Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

Related Information

(i) Canadian airworthiness directive CF–2002–14, dated February 13, 2002, also addresses the subject of this AD.

Issued in Renton, Washington, on October 21, 2004.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–24543 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19362; Airspace Docket No. 04–AAL–22]

Proposed Establishment of Class E Airspace; Red Dog, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Red Dog, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Red Dog Airport. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) and 1,200 ft. above the surface at Red Dog, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19362/ Airspace Docket No. 04–AAL–22, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety,

Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19362/Airspace Docket No. 04–AAL–22.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Red Dog, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. and 1,200 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Red Dog, AK.

The Special Instrument Flight Procedures developed for the Red Dog Airport currently are not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Red Dog, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. and 1,200 ft. above the surface within the Red Dog Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, datedAugust 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Red Dog, AK [New]

Red Dog Airport, AK

(Lat. 68°01′53″ N., long. 162°′54′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Red Dog Airport and that airspace extending upward from 1,200 feet above the surface within a 14-mile radius of the Red Dog airport.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24461 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19363; Airspace Docket No. 04–AAL–23]

Proposed Establishment of Class E Airspace; Seward, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Seward, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Seward Airport. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Seward, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19363/ Airspace Docket No. 04–AAL–23, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19363/Airspace Docket No. 04–AAL–23.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish new Class E airspace at Seward, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Seward, AK.

The Special Instrument Flight Procedure developed for the Seward Airport currently is not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Seward, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Seward Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, Airspace Designations and Reporting Points, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Seward, AK [New]

Seward Airport, AK
(Lat. 60°07′37″ N., long. 149°25′08″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Seward Airport.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24460 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19357; Airspace Docket No. 04–AAL–17]

Proposed Establishment of Class E Airspace; Annette Island, Metlakatla, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Annette Island Airport, Metlakatla, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Annette Island Airport, AK. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Annette Island Airport, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19357/Airspace Docket No. 04–AAL–17, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19357/Airspace Docket No. 04–AAL–17.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71) which would establish new Class E airspace at Annette Island Airport, Metlakatla, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Annette Island Airport.

The Special Instrument Flight Procedures developed for the Annette Island Airport currently are not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Annette Island Airport, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Annette Island Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83.

The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Metlakatla, AK [New]

Annette Island Airport, AK

(Lat. 55°02′33″ N., long. 131°34′20″ W.)

That airspace extending upward from 700 feet above the surface within a 4.5-mile radius of the Annette Island Airport.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24459 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19358; Airspace Docket No. 04–AAL–18]

Proposed Establishment of Class E Airspace; Badami, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Badami, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Badami Airport. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Badami, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19358/ Airspace Docket No. 04–AAL–18, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19358/Airspace Docket No. 04–AAL–18.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling

(202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR Part 71), which would establish new Class E airspace at Badami, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Badami, AK.

The Special Instrument Flight Procedures developed for the Badami Airport currently are not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Badami, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Badami Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Badami, AK [New]

Badami Airport, AK

(Lat. 70°08′15″ N., long. 147°01′49″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Badami Airport.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24458 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19359; Airspace Docket No. 04–AAL–19]

Proposed Establishment of Class E Airspace; Haines, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Haines, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Haines Airport. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Haines, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19359/ Airspace Docket No. 04–AAL–19, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; email: *Jesse.CTR.Patterson@faa.gov.* Internet address: *http://www.alaska.faa.gov/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those

comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19359/Airspace Docket No. 04–AAL–19.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemakings (NPRMs)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Haines, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Haines, AK.

The Special Instrument Flight Procedures developed for the Haines Airport currently are not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Haines, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Haines Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore —(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points,* dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Haines, AK [New]

Haines Airport, AK
(Lat. 59°14′38″ N., long. 135°31′25″ W.)

That airspace extending upward from 700 feet above the surface within a 4-mile radius of the Haines Airport.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24457 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19360; Airspace Docket No. 04–AAL–20]

Proposed Establishment of Class E Airspace; Kulik Lake, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Kulik Lake, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Kulik Lake Airport. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Kulik Lake, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19360/ Airspace Docket No. 04–AAL–20, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level

of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19360/Airspace Docket No. 04–AAL–20.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRMs)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRM's should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Kulik Lake, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Kulik Lake, AK.

The Special Instrument Flight Procedure developed for the Kulik Lake Airport currently is not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Kulik Lake, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Kulik Lake Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Kulik Lake, AK [New]

Kulik Lake Airport, AK

(Lat. 58°58′55″ N., long. 155°07′17″ W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Kulik Lake Airport and that airspace 4 miles either side of the 098° bearing to the Kulik Lake Airport from the 4.3 mile radius out to the 7.5 miles.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24456 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–19361; Airspace Docket No. 04–AAL–21]

Proposed Establishment of Class E Airspace; Prospect Creek, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to establish new Class E airspace at Prospect Creek, AK. There is no existing Class E airspace to contain aircraft executing instrument approaches at Prospect Creek Airport. Adoption of this proposal would result in the establishment of Class E airspace upward from 700 feet (ft.) above the surface at Prospect Creek, AK.

DATES: Comments must be received on or before December 20, 2004.

ADDRESSES: Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–19361/ Airspace Docket No. 04–AAL–21, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Manager, Safety, Alaska Flight Services Operations, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

FOR FURTHER INFORMATION CONTACT: Jesse Patterson, AAL–538G, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–5898; fax: (907) 271–2850; e-mail: *Jesse.CTR.Patterson@faa.gov*. Internet address: *http://www.alaska.faa.gov/at*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–19361/Airspace Docket No. 04–AAL–21.'' The postcard will be date/time stamped and returned to the commenter.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the public docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRMs)

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

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the Code of Federal Regulations (14 CFR part 71), which would establish new Class E airspace at Prospect Creek, AK. The intended effect of this proposal is to establish Class E airspace upward from 700 ft. above the surface, to contain Instrument Flight Rules (IFR) operations at Prospect Creek, AK.

The Special Instrument Flight Procedures developed for the Prospect Creek Airport currently are not contained in Class E airspace. To improve safety, the FAA is proposing to establish Class E airspace at Prospect Creek, AK, which would be sufficient to contain aircraft executing instrument procedures. New Class E controlled airspace extending upward from 700 ft. above the surface within the Prospect Creek Airport area would be created by this action.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas designated as 700/1200 foot transition areas are published in paragraph 6005 in FAA Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9M, *Airspace Designations and Reporting Points*, dated August 30, 2004, and effective September 16, 2004, is to be amended as follows:

* * * * *

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

* * * * *

AAL AK E5 Prospect Creek, AK [New]

Prospect Creek Airport, AK
(Lat. 66°48′46″ N., long. 150°38′38″ W.)
Prospect Creek NDB
(Lat. 66°49′04″ N., long. 150°38′03″ W.)

That airspace extending upward from 700 feet above the surface within a 4.2-mile radius of the Prospect Creek NDB and that airspace 4 miles either side of the 096° bearing to the Prospect Creek NDB from the 4.2 mile radius out to 8 miles.

* * * * *

Issued in Anchorage, AK, on October 25, 2004.

Anthony M. Wylie,

Acting Area Director, Alaska Flight Services Operations.

[FR Doc. 04–24455 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Chapter I

[USCG–2003–15771]

Exclusion Zones for Marine LNG Spills

AGENCY: Coast Guard, DHS.

ACTION: Request for public comments.

SUMMARY: The Coast Guard seeks public comments on a petition for rulemaking from the City of Fall River, Massachusetts. The petition requests regulations be promulgated that would establish thermal and vapor dispersion exclusion zones for marine spills of liquefied natural gas similar to those established by the Secretary of Transportation for spills of LNG on land.

DATES: Comments and related material must reach the docket management facility on or before February 1, 2005.

ADDRESSES: You may submit comments identified by Coast Guard docket number (USCG–2003–15771) to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

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

(2) Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001.

(3) Fax: 202–493–2251.

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

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, please call Commander John Cushing at 202–267–1043, or e-mail *JCushing@comdt.uscg.mil.* If you have questions on viewing or submitting material to the docket, please call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this notice by submitting comments and related materials. All comments received will be posted, without change, to *http://dms.dot.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use their Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting comments: If you submit a comment, please include your name and address, identify the docket number for this notice (USCG–2003–15771), and give the reason for each comment. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

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

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

Background and purpose. The City of Fall River, Massachusetts is petitioning the Coast Guard to develop regulations relating to marine transportation of liquid natural gas (LNG). Specifically, the City requests promulgation of regulations to apply the same thermal and vapor dispersion exclusion zone requirements established by the Department of Transportation for LNG spills on land (49 CFR Parts 193.2057 and 193.2059), to LNG spills on water. The City's petition included expanded discussion on this issue and may be read in its entirety in the docket. The public is invited to review the material contained in the docket and submit relevant comments. The Coast Guard will consider the City's petition, any comments received from the public, and other information to determine whether or not to initiate the requested rulemaking.

Dated: October 22, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security, and Environmental Protection, U.S. Coast Guard.

[FR Doc. 04–24454 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1234

RIN 3095–AB39

Records Management; Electronic Mail; Electronic Records; Disposition of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Proposed rule.

SUMMARY: NARA is seeking comments from Federal agencies and the public on a proposed revision to our regulations to provide for the appropriate management and disposition of very short-term temporary e-mail, by allowing agencies to manage these records within the e-mail system.

DATES: Submit comments on or before January 3, 2005.

ADDRESSES: NARA invites interested persons to submit comments on this proposed rule. Please include ''Attn: RIN 3095–AB39'' and your name and mailing address in your comments. Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *E-mail:* Send comments to *comments@nara.gov.* If you do not receive a confirmation that we have received your e-mail message, contact Cheryl Stadel-Bevans at 301–837–3021.
- *Fax:* Submit comments by facsimile transmission to (301) 837–0319.
- *Mail:* Send comments to Regulations Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001.
- *Hand Delivery or Courier:* Deliver comments to 8601 Adelphi Road, College Park, MD.

FOR FURTHER INFORMATION CONTACT: Cheryl Stadel-Bevans at telephone number (301) 837–3021 or fax number (301) 837–0319.

SUPPLEMENTARY INFORMATION:

Background on Proposed Regulation Changes

As part of NARA's Records Management Initiatives to redesign Federal records management, NARA has determined that Federal agencies should be allowed to dispose of short-term temporary electronic mail (e-mail) records (*e.g.*, those with a retention period of 90, 120, or 180 days), without requiring the creation of a separate paper or electronic recordkeeping copy. Rather, such short-term e-mail records could reside on a live e-mail system, provided that (1) users do not delete the messages before the expiration of the NARA-approved retention period, and (2) the system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period. Agencies are reminded that disposition authorities for records, including e-mail records, that have been requested under FOIA or that are the subject of current or imminent audit, investigation, or litigation may need to be placed in suspense or ''frozen'' until the matter is resolved. In such cases, an agency always should obtain appropriate legal advice tailored to the circumstances before proceeding with disposition.

Allowing agencies to dispense with creating separate recordkeeping copies of such documents will reduce the records management burden on agencies and will serve to encourage agency staff to create recordkeeping copies of the relatively small proportion of e-mail records that warrant longer-term or permanent retention. The records covered by this change are limited to transitory Federal records covered by GRS 23, Item 7, or Federal records scheduled on a NARA-approved agency records schedule with a very short-term retention (*e.g.*, 90, 120, or 180 days).

Minor changes to General Record Schedule (GRS) 23, Records Common to Most Offices within Agencies, will be necessary. GRS 23, Item 7 will be changed to read:

Transitory Records

Records of short-term interest, including those in electronic form (*e.g.*, e-mail messages), which have minimal or no documentary or evidential value. Included are such records as:

- Routine requests for information or publications and copies of replies which require no administrative action, no policy decision, and no special compilation or research for reply;
- Originating office copies of letters of transmittal that do not add any information to that contained in the transmitted material, and receiving office copy if filed separately from transmitted material;
- Quasi-official notices including memoranda and other records that do not serve as the basis of official actions, such as notices of holidays or charity and welfare fund appeals, bond campaigns, and similar records;
- Records documenting routine activities containing no substantive information, such as routine notifications of meetings, scheduling of work-related trips and visits, and other scheduling related activities;
- Suspense and tickler files or ''to-do'' and task lists that serve as a reminder that an action is required on a given date or that a reply to action is expected, and if not received, should be traced on a given date.

Destroy immediately, or when no longer needed for reference, or according to a predetermined time period or business rule (*e.g.*, implementing the auto-delete feature of electronic mail systems).

In a **Federal Register** notice appearing elsewhere in this edition, we invite comment on the proposed GRS 23 change.

NARA proposes to implement this change in advance of developing the final revised regulatory framework that was proposed in 60 FR 12100 (March 15, 2004). We have determined that this approach to managing transitory e-mail will greatly assist agencies and should not wait for development of the regulations implementing the revised framework.

This proposed rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this rule applies to Federal agencies. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1234

Archives and records, Computer technology.

For the reasons set forth in the preamble, NARA proposes to amend chapter XII of title 36 of the Code of Federal Regulations as follows:

PART 1234—ELECTRONIC RECORDS MANAGEMENT

1. The authority citation for Part 1234 is revised to read as follows:

Authority: 44 U.S.C. 2904, 3101, 3102, 3105, and 3303.

2. Amend § 1234.24 by revising paragraph (b)(2) and adding paragraph (b)(3) to read as follows:

§ 1234.24 Standards for managing electronic mail records.

* * * * *

(b) * * *

(2) Agencies may elect to manage electronic mail records with very short-term NARA-approved retention periods (transitory records covered by GRS 23, Item 7, or records scheduled on a

NARA-approved agency records schedule with a very short-term retention) on the electronic mail system itself, without the need to copy the record to a paper or electronic recordkeeping system, provided that:

(i) Users do not delete the messages before the expiration of the NARA-approved retention period, and

(ii) The system's automatic deletion rules ensure preservation of the records until the expiration of the NARA-approved retention period.

(3) Except for those electronic mail records within the scope of paragraph (b)(2) of this section,

(i) Agencies must not store the recordkeeping copy of electronic mail messages that are Federal records only on the electronic mail system, unless the system has all of the features specified in paragraph (b)(1) of this section.

(ii) If the electronic mail system is not designed to be a recordkeeping system, agencies must instruct staff on how to copy Federal records from the electronic mail system to a recordkeeping system.

* * * * *

3. Amend § 1234.32 by revising paragraph (d) to read as follows:

§ 1234.32 Retention and disposition of electronic records.

* * * * *

(d) Electronic mail records may not be deleted or otherwise disposed of without prior disposition authority from NARA (44 U.S.C. 3303a).

(1) *Electronic mail records with very short-term (transitory) value.* Agencies may use the disposition authority in General Records Schedule 23, Item 7 for electronic mail records that have very short-term retention periods (*e.g.*, 90, 120, or 180 days). (*see* 36 CFR 1234.24(b)(2)).

(2) *Other records on the electronic mail system.* When an agency has taken the necessary steps to retain the record in a scheduled recordkeeping system, the identical version that remains on the user's screen or in the user's mailbox has no continuing value. Therefore, NARA has authorized deletion of the version of the record on the electronic mail system under General Records Schedule 20, Item 14, after the record has been preserved in a recordkeeping system along with all appropriate transmission data. If the records in the recordkeeping system are not scheduled, the agency must follow the procedures at 36 CFR part 1228.

(3) *Records in recordkeeping systems.* The disposition of electronic mail records that have been transferred to an appropriate recordkeeping system is governed by the records schedule or schedules that control the records in that system. If the records in the recordkeeping system are not scheduled, the agency must follow the procedures at 36 CFR part 1228.

Dated: July 29, 2004.

John W. Carlin,

Archivist of the United States.

[FR Doc. 04–24403 Filed 11–2–04; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R07–OAR–2004–IA–0004; FRL–7833–8]

Approval and Promulgation of State Implementation Plan; State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Iowa state implementation plan (SIP) for the purpose of revising open burning rules. This revision includes a provision that allows the Iowa Department of Natural Resources to require the submittal of additional information when a variance from open burning rules is requested, reemphasizes the state's obligation to protect the National Ambient Air Quality Standards (NAAQS) with regard to open burning, clarifies National Emissions Standards for Hazardous Air Pollutants (NESHAP) guidance for disaster rubbish, updates guidance for training fires, and provides clarification to the existing open burning rules covering agricultural structures.

DATES: Comments on this proposed action must be received in writing by December 3, 2004.

ADDRESSES: Comments may be mailed to Heather Hamilton, Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101. Comments may also be submitted electronically or through hand delivery/courier; please follow the detailed instructions in the Addresses section of the direct final rule which is located in the rules section of this **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton at (913) 551–7039, or by e-mail at *hamilton.heather@epa.gov.*

SUPPLEMENTARY INFORMATION: In the final rules section of the **Federal Register**, EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments to this action. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, no further activity is contemplated in relation to this action. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed action. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on part of this rule and if that part can be severed from the remainder of the rule, EPA may adopt as final those parts of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the rules section of this **Federal Register**.

Dated: October 26, 2004.

James B. Gulliford,

Regional Administrator, Region 7.

[FR Doc. 04–24531 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 531

[Docket No. 04–12]

RIN 3072–AC30

Non-Vessel-Operating Common Carrier Service Arrangements

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission proposes an exemption from the tariff publication requirements of the Shipping Act of 1984 for service arrangements made by non-vessel-operating common carriers, subject to the conditional filing requirements set forth in this new Part.

DATES: Submit an original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than November 19, 2004.

ADDRESSES: Address all comments concerning this proposed rule to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001, *Secretary@fmc.gov.*

FOR FURTHER INFORMATION CONTACT:
Amy W. Larson, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001, (202) 523–5740, *generalcounsel@fmc.gov.*
Austin L. Schmitt, Director of Operations, Federal Maritime Commission,800 N. Capitol Street, NW., Washington, DC 20573–0001, (202) 523–0988.

SUPPLEMENTARY INFORMATION:

I. Background

Between July 25, 2003 and March 12, 2004, the Federal Maritime Commission (''FMC'' or ''Commission'') received eight petitions from seven individual non-vessel-operating common carriers (''NVOCCs'') and one trade association of NVOCCs (collectively ''Petitioners''), seeking various exemptions from the tariff publication and adherence requirements of the Shipping Act of 1984, 46 U.S.C. app. §§ 1701–1719 (''Shipping Act'').[1] United Parcel Service, Inc. (''UPS''), C.H. Robinson Worldwide, Inc. (''CHRW''), Danzas Corporation d/b/a Danmar Lines Ltd., Danzas Ocean Services and DHL Danzas Air and Ocean (''Danmar''), BDP International, Inc. (''BDP''), and FEDEX Trade Networks Transport & Brokerage, Inc. (''FEDEX'') each requested individual exemptions from the tariff publication and adherence requirements of the Shipping Act. They argued that changes in the ocean freight industry since the passage of the Ocean Shipping Reform Act (''OSRA'') in 1998 warrant the Commission granting to NVOCCs the authority to contract confidentially with their shipper customers in the same manner as vessel-operating common carriers (''VOCCs'').

The National Customs Brokers and Forwarders Association of America, Inc. (''NCBFAA''), a national trade association representing the interests of freight forwarders, NVOCCs and customs brokers, sought an exemption from the tariff publication requirements for all NVOCCs. NCBFAA presented arguments similar to UPS and CHRW, but also asserted that the Shipping Act's tariff publication requirements are outdated and impractical, and requested unconditional exemption for all NVOCCs from the provisions of the Shipping Act that require NVOCCs to establish, publish, maintain and enforce tariffs setting forth ocean freight rates, thereby allowing NVOCCs to offer confidential service contracts as carriers with their shipper customers. Ocean World Lines, Inc. (''OWL'') requested a rulemaking to expand the definition and scope of the term ''special contracts'' in the Commission's regulations to include NVOCCs if UPS' and/or NCBFAA's petitions are not granted. Finally, BAX Global, Inc. (''BAX'') sought a rulemaking to permit it and similar ''qualified'' NVOCCs to enter into confidential service contracts as ''ocean common carriers'' with their shipper customers. By the close of the comment period to the last of the petitions on April 2, 2004, the Commission had received over 1,400 pages of filed comments from more than 80 commenters and 208 Members of Congress.

On August 2, 2004, the National Industrial Transportation League (''NITL''), UPS, BAX, FEDEX, Transportation Intermediaries Association (''TIA''), CHRW, and BDP (collectively, ''Joint Commenters'') filed a Motion for Leave pursuant to Rule 73 of the Commission's Rules of Practice and Procedure, 46 CFR 502.73, in the proceedings referenced above to file Joint Supplemental Comments Requesting Expedited Adoption of a Conditional Exemption from Tariff Publication (''Joint Proposal''). Joint Commenters sought acceptance of the Joint Proposal into the record, arguing that the proposal reflects an updated, common approach to the various forms of relief requested in the original individual petitions. They urged the Commission to use its authority under section 16 of the Shipping Act to expeditiously grant NVOCCs a conditional exemption from the tariff publication and enforcement provisions in the Shipping Act and Commission regulations at 46 CFR part 520. Joint Commenters did not withdraw the existing petitions, and submitted that any Commission action on the proposed conditional tariff exemption should not supercede consideration of petitioners' individual requested relief from the tariff publication requirements. Joint Proposal at 2 n.2.

The Commission granted the motion and reopened the comment period until September 30, 2004. 69 FR 54788 (September 10, 2004). Thirty-four comments were received from: NCBFAA; Danmar; ATEC Systems, Ltd. (''ATEC''); John S. Connor, Inc. (''Connor''); Phoenix International Freight Services, Ltd. (''Phoenix''); Airport Brokers Corporation (''ABC''); Fashion Accessories Shippers Association, Inc. (''FASA''); World Shipping Council (''WSC''); Yellow Roadway Corporation (''Yellow''); Exel Transportation Services Inc. (''Exel''); Landstar System, Inc. (''Landstar''); Worldlink Logistics, Inc. (''Worldlink''); SIRVA Corporation (''SIRVA''); C.H. Powell Company (''Powell''); Interlog USA, Inc. (''Interlog''); Latin American Forwarding Company (''LAFCO''); U.S. Department of Transportation (''DOT''); Alliance Shippers, Inc. d/b/a Alliance International (''Alliance''); Cargo Brokers International, Inc. (''CBI''); A.N. Deringer, Inc. (''Deringer''); Barthco International, Inc. (''Barthco''); USA Shipping, LLC (''USA''); Camelot Company (''Camelot''); All Freight International, Inc. (''All Freight''); ABS Consulting (''ABS''); Topocean Consolidation Service (''Topocean''); Antilles Freight Corp. (''Antilles''); Geologistics Corporation (''Geologistics''); Reilly Transportation Services, Inc. (''Reilly''); Navetrans Corp d/b/a Costa Rica Carriers (''Navetrans''); Thiel Logistics USA, Inc. (''Thiel''); Interport Services Corp. (''Interport''); Express Freight International, Inc. (''Express''); and the Honorable Robert E. Andrews of the U.S. House of Representatives.

II. Joint Proposal

Joint Commenters assert that they now present a unified approach to the pending NVOCC tariff publication exemption proceedings that is intended to give ''clear direction'' to the Commission in its deliberations. Joint Proposal at 2–3. Reiterating their concerns submitted in the pending petitions and comments that the current regulatory scheme undermines competitiveness in the shipping industry, the Joint Commenters request that the Commission use its authority under section 16 of the Shipping Act to exempt certain NVOCC arrangements (hereinafter NVOCC Service

[1] They were: Petition No. P3–03—*Petition of United Parcel Service, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Service Contracts;* Petition No. P5–03—*Petition of the National Customs Brokers and Forwarders Association of America, Inc. for Limited Exemption from Certain Tariff Requirements of the Shipping Act of 1984;* Petition No. P7–03—*Petition of Ocean World Lines, Inc., for a Rulemaking to Amend and Expand the Definition and Scope of ''Special Contracts'' to Include All Ocean Transportation Intermediaries;* Petition No. P8–03—*Petition of BAX Global, Inc. for Rulemaking;* Petition No. P9–03—*Petition of C.H. Robinson Worldwide, Inc. for Exemption Pursuant to Section 16 of the Shipping Act of 1984 to Permit Negotiation, Entry and Performance of Confidential Service Contracts;* Petition No. P1–04—*Petition of Danzas Corporation d/b/a Danmar Lines Ltd.; Danzas AEI Ocean Services and DHL Danzas Air and Ocean for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as Amended;* Petition No. P2–04—*Petition of BDP International, Inc. for Exemption from the Tariff Publishing Requirements of Section 8 of the Shipping Act of 1984, as amended;* Petition No. P4–04—*Petition of FEDEX Trade Networks Transport & Brokerage, Inc. for Exemption from the Tariff Publishing Requirements of Sections 8 and 10 of the Shipping Act of 1984, as Amended.*

Arrangements, or ''NSAs'') [2] with shippers from the tariff publication requirements in sections 8(a), (b), (d) and (e) of the Shipping Act and 46 CFR part 520 of the Commission's rules, as well as the tariff-related prohibited acts found in sections 10(b)(1), (2), (4) and (8) of the Shipping Act. Joint Proposal at 3, Appendix 1. The proposed exemption would apply to any written arrangements between an NVOCC and a shipper (excluding bills of lading, receipts or other transport documents), where the shipper pledges to provide a specific volume/portion of cargo over a fixed time period and the NVOCC commits to a defined rate and service level. *Id.*

According to the Joint Commenters, the proposed exemption would be subject to the following conditions: (1) The arrangements and their essential terms must be filed confidentially with the Commission; [3] (2) the NVOCC must publish a tariff that includes the origin and destination port ranges, commodity involved, minimum volume/portion, and duration of the agreement; and (3) the Commission would retain jurisdiction over NSAs to the same extent as it does over service contracts under the Shipping Act. *Id.*

III. Replies to the Joint Proposal

A. Comments in Support of the Joint Proposal

The World Shipping Council submits its support for the Joint Proposal with the understanding that the Commission will monitor the effects of the exemption and that a condition of the exemption will subject the new NSAs to the same regulatory requirements as VOCC service contracts. WSC at 1, 4. Danmar, All Freight and Topocean support the Joint Proposal because it would promote competition and benefit commerce by enabling NVOCCs to give shippers what they require: individually-tailored transportation packages. Danmar at 3; All Freight at 1; Topocean at 1, 5. These supporters urge the Commission to implement this regulatory reform as expeditiously as possible, as no new or additional issues are proposed and the Commission now has before it a fully developed record that more than adequately justifies the exemption. Danmar at 3; All Freight at 1; Topocean at 7.

B. Comments in Support of the NCBFAA Approach

NCBFAA and the remaining commenters believe that while adoption of the Joint Proposal will provide some short-term relief, it fails to address the significant costs and burdens that currently fall upon NVOCCs. As such, these commenters prefer the exemption from the tariff publication requirements of the Shipping Act and the Commission regulations as proposed by the original NCBFAA petition. NCBFAA at 2–3; LAFCO at 1; ATEC at 1; Connor at 1.

Commenters contend that NVOCCs or shippers will not benefit by transforming the burdens associated with tariff publication into the burdens of filing service contracts. Furthermore, commenters express concerns regarding the Commission's ability to oversee large volume of NSAs that will be generated by the Joint Proposal. NCBFAA at 3; Yellow at 3; Powell at 1–2; CBI at 1; Deringer at 1; Camelot at 2; Geologistics at 2; Andrews at 18, ABS at 1; ABC at 4. NCBFAA specifically re-states its belief that filing service contracts was primarily designed as part of the Commission's oversight of VOCCs with antitrust immunity. NCBFAA at 3. NCBFAA and Yellow discount any ''level playing field argument'' for requiring NVOCCs to file service contracts because they believe that NVOCCs have no such immunity, and therefore, there is no basis to support a requirement that NVOCCs file service contracts with the Commission. *Id.* at 3–4, Yellow at 5. As Phoenix explains, the ''free market will ensure that these prices are competitive.'' Phoenix at 1.

NCBFAA, Connor and CBI specifically suggest that the Commission could condition the grant of the NCBFAA exemption from tariff publication by requiring an NVOCC to maintain in its own files the essential terms of those arrangements. NCBFAA at 5; Connor at 2; CBI at 1. NCBFAA asserts that in the event of a dispute or alleged malpractice, the Commission would continue to have the ability to bring enforcement matters arising under the Shipping Act. NCBFAA at 5.

Commenters assert that while they welcome the opportunity to engage in service contracting, it will be difficult for NVOCCs to structure NSAs with shippers to reflect the fluctuation in pricing schemes and schedules of the multiple VOCCs with whom NVOCCs contract. Phoenix at 1; Powell at 2; CBI at 1. They explain that memorializing such transactions in NSAs to be filed with the Commission before the cargo moves is impractical, especially in light of the fact that NVOCCs must often re-adjust their rates in reaction to the ''spot market'' for VOCC rates. Powell at 2; Camelot at 2; CBI at 1; Antilles at 1.

Moreover, Phoenix and Camelot aver that the majority of their customers have no interest in signing such arrangements because they must be able to select from a variety of service providers and such service arrangements would make it more cumbersome to shop for service in such a way. Phoenix at 1, Camelot at 2. Camelot contends that small- to mid-sized shippers ''will not only balk, but will run from any attempt to make them contractually accountable to an NVOCC, especially where the matter of dead freight penalties for unmoved cargo present themselves.'' Camelot at 2.

The U.S. Department of Transportation reiterates the position it expressed in response to the original petitions: the Commission should grant NVOCCs an exemption from Shipping Act requirements to allow them the ability to contract confidentially with their shipping customers. DOT at 2–3, 6. DOT contends that the Commission should ''at the very least'' adopt the Joint Proposal, but urges the Commission also to consider points raised by the NCBFAA comments, namely whether a legitimate regulatory purpose would be served by requiring confidential filing of individual NSAs and the publication of their relevant essential terms. *Id.* at 3. DOT argues that conference oversight was Congress's rationale for enacting the VOCC service contract filing requirements, but is inapplicable to NSAs, as NVOCCs could not concertedly enter into pricing agreements under the Shipping Act even with the exemption at issue. *Id.* at 4. As such, DOT claims that the Commission should not impose any requirements on NVOCCs that serve no regulatory function. *Id.* at 5.

FASA urges the Commission to either initiate a new proceeding and reopen the record for a public examination of the proposal, or reject the Joint Proposal and proceed to consideration of the pending petitions. FASA at 1. FASA asserts that the petitions raise important issues for the small and medium-sized shippers that it represents, as well as fundamental issues relating to the Commission's statutory authority to grant exemptions from core features of the Shipping Act. *Id.* Thus, FASA believes whether the Joint Proposal represents a common approach is irrelevant; further deliberation is not only necessary, but critical as the Shipping Act does not contemplate

[2] Although referred to by the Joint Proposal as ''NVOCC Service Agreements'' we use the term ''arrangements'' in order that they not be confused with ''agreements'' as set forth in section 4 of the Shipping Act, 46 U.S.C. app. § 1703.

[3] The essential terms would include: (1) Origin and destination port ranges; (2) origin and destination geographic areas in the case of through intermodal movements; (3) list of commodities; (4) minimum volume/portion; (5) line-haul rate; (6) arrangement duration; (7) service commitments; (8) liquidated damages or indemnity provision for non-performance. *Id.*

''rulemaking by coalition action'' and the brushing aside of the ''rights of numerous smaller, less vociferous, members of the shipping community whose interests deserve the agency's protection.'' *Id.* at 2. FASA avers that the Joint Proposal adds a new procedural dimension to the proceedings. *Id.* at 3. Further, FASA insists, the temporary exemption sought by the Joint Proposal would essentially confer all the relief requested in the underlying petitions already under consideration and could make any contrary, final determination by the Commission appear inconsistent with its prior action. *Id.* FASA worries that the Commission's deliberative process may be compromised by the premature adoption of such an exemption. *Id.*

IV. Discussion

Section 8(a)(1) of the Shipping Act requires ''each common carrier * * * [to] keep open to public inspection in an automated tariff system, tariffs showing all its rates.'' 46 U.S.C. app. 1707(a)(1). Section 10(b)(2)(A) prohibits common carriers from ''provid[ing] service in the liner trade that is not in accordance with the rates * * * contained in a tariff * * * or a service contract.'' 46 U.S.C. app. 1709(b)(2)(A). Section 3(19) of the Shipping Act defines a service contract as ''a written contract, other than a bill of lading or receipt, between one or more shippers and an individual *ocean common carrier* or an agreement between or among *ocean common carriers.*'' 46 U.S.C. app. 1702(19) (emphasis added). The Shipping Act defines an ocean common carrier as ''a vessel-operating common carrier.'' 46 U.S.C. app. 1702(16).

The cumulative effect of these provisions is that, although both VOCCs and NVOCCs are common carriers under the Shipping Act, all NVOCC services must be provided according to the provisions of a published tariff, while VOCCs may provide service either under a published tariff or under a filed service contract. The eight petitions and the Joint Proposal seek an exemption, pursuant to section 16 of the Shipping Act, enabling NVOCCs to choose whether to offer their services under a published tariff or under an instrument akin to a service contract. To accomplish this, the Joint Proposal suggests the Commission adopt an exemption with conditions which would result in equivalent treatment for service contract-like arrangements offered by NVOCCs. NCBFAA and similar commenters, on the other hand, propose the Commission adopt an exemption from the Shipping Act's tariff publication requirements without the service contract-mirroring conditions.

As explained in further detail below, the Commission has determined to issue a notice of proposed rulemaking (''NPR'') providing NVOCCs with the ability to enter into NSAs in lieu of moving all cargo under tariff rates. This determination, based on the Joint Proposal, would grant NVOCCs parity with VOCCs by permitting NVOCCs, in their capacity as carriers, to provide transportation to their shipper customers on a confidential basis.

The proposed regulation defines an NSA as:

> A written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.

The proposed rule is modeled after the current service contract rules at 46 CFR part 530, and the definition of ''NSA'' is based on the definition of ''service contract'' in the Shipping Act. 46 U.S.C. app. 1702(9). *See also* 46 CFR 530.3(q). The Commission proposes that, as VOCCs currently do for service contract filing, NVOCCs wishing to avail themselves of the opportunity to offer NSAs request a log-on identification number and password from the Commission using proposed Form FMC–78. The Commission would then issue the registering NVOCC (''Registrant'') a log-on I.D. and password, and the Registrant would be able to file NSAs electronically via the internet. The proposed rule would also require NVOCCs, as VOCCs are required for service contracts, to publish an NSA's essential terms in an automated system and file the text of the NSA confidentially with the Commission.

The general approach set forth in the Joint Proposal does not address a myriad of details which would arise from its implementation. We have determined that the exemption must be subject to the conditions set forth below to ensure the exemption will not have any of the negative effects proscribed by section 16.[4] This includes a condition that the NVOCC execute an NSA with the NSA shipper and file it with the Commission. Without these conditions, detriment to commerce may arise from the Commission's inability to fulfill its statutory mandate to ensure NVOCCs are carrying out their common carrier duties. Furthermore, we believe that the proposed conditional exemption will promote ''competitive and efficient ocean transportation'' and will lead to ''a greater reliance on the marketplace.'' 46 U.S.C. app. 1701(4).

A. Changes in the Industry Since 1998

The Joint Commenters, the original eight Petitioners and many commenters assert that since the passage of OSRA in 1998, a new commercial climate has developed in which shippers expect and demand the ability to negotiate individualized rates and services fitting their commercial needs. The original Petitioners contend that changes in economic, competitive and technology factors, as well as the improvement of supply chain management and services offered by VOCCs, have led to the emergence of sophisticated NVOCCs that are highly competitive, multinational companies with integrated logistics services. They also contend that many of these are asset-based companies that are generally more financially stable than NVOCCs typically were in 1998.

The original Petitioners also maintain that the competitive landscape for VOCCs has changed significantly since 1998. They believe that there has been significant consolidation in the VOCC industry and that most VOCCs have established or allied themselves with ocean transportation intermediaries (''OTIs'') to provide the full range of integrated logistics services. The original Petitioners aver that they now face substantial competition from the VOCCs which provide logistics services and whose ability to offer confidential service contracts places them at a significant advantage over NVOCCs.

The original Petitioners contend that NSAs would make the entire intermodal system more efficient by allowing NVOCCs to transport consistent volumes of cargo to VOCCs, which in turn will benefit all participants by enabling more uniform contract terms over the entire route of the shipment in a single NVOCC bill of lading. Finally, several of the original Petitioners and commenters on those original petitions believe that because of the delays they experience as a result of security regulations, such arrangements are also necessary to allow them to maintain the pace and volumes their shippers now expect.

[4] Section 16 reads, in pertinent part, ''The Commission * * * may * * * exempt for the future any class of agreements between persons subject to this Act or any specified activity of those persons from any requirement of this Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce. The Commission may attach conditions to any exemption and may, by order, revoke any exemption.'' 46 U.S.C. app. 1715.

B. Exemption Authority of the Commission

In order for the Commission to grant an exemption under section 16 of the Shipping Act, it must find such an exemption will meet two criteria: the exemption must not result in substantial reduction to competition, and must not be detrimental to commerce. 46 U.S.C. app. 1715. Contrary to the assertions of some commenters and proponents, the statutory criteria for exemption do not include whether the requirements from which relief is sought are ''infrequently used by shippers'' or that the requirements ''serve no valid public policy.'' Even if the Commission believes an exemption from a requirement of the Shipping Act or its regulations might relieve burdens on the industry or be a good ''public policy'' choice, it cannot grant an exemption without a finding that the criteria of section 16 have been met.

In proposing this new exemption, the Commission has concluded that it will not result in a substantial reduction in competition or be detrimental to commerce, as discussed in detail below. In addition, the Commission has determined that the carriage of cargo by NVOCCs under individualized arrangements concerns ''specified activity'' as that term is used in section 16, and that the tariff-publication requirement from which the Joint Proposal seeks exemption is a ''requirement'' of the Shipping Act under that section.

1. Judicial Interpretation

The Commission has considered how courts have interpreted other agencies' exemption authority. The Supreme Court struck down an Interstate Commerce Commission (''ICC'') policy in *Maislin Industries, U.S. Inc.* v. *Primary Steel, Inc.*, 497 U.S. 116, 126 (1990) (''*Maislin*''). In *Maislin*, the Court held that the ICC's policy of creating an exemption to relieve shippers' obligations to pay the filed rate when a shipper and carrier have privately negotiated a lower rate (known as the ''Negotiated Rates Policy'') was inconsistent with the Interstate Commerce Act (''ICA''), and that the ICC did not have the authority to release a shipper from liability for undercharges. The Court found that compliance with the filed rate, known as the ''filed rate doctrine,'' was ''utterly central'' to the administration of the ICA. *Id.* at 132 (citing *Regular Common Carrier Conference* v. *United States*, 793 F.2d 376, 379 (1986)). The Court found that ''the policy, by sanctioning adherence to unfiled rates, undermines the basic structure of the [ICA]'' and that, although it had the authority and expertise generally to adopt new policies when faced with new developments in the industry it regulates, ''it [did] not have the power to adopt a policy that directly conflicts with its governing statute.'' *Id.* at 132, 134. If strict adherence to the filed rate doctrine ''has become an anachronism * * * it is the responsibility of Congress to modify or eliminate these sections.'' *Id.* at 136. *See also MCI Telecommunications Corp.* v. *American Tel. & Tel. Co.*, 512 U.S. 218 (1994) (''*MCI*'') (striking down Federal Communications Commission's deregulation of tariff filing).

The Commission has determined that it can distinguish its statutory authority to exempt NVOCCs from the provisions of the Shipping Act—subject to certain conditions—from both *Maislin* and *MCI*. First, *Maislin* and *MCI* apply to other statutes and their regulatory regimes. *See* P6–89, *Motor Vehicle Manufacturers Association of the United States—Application for Exemption of Vehicle Shipments from Portions of the Shipping Act of 1984*, 25 S.R.R. 849, 855 (1989) (''*MVMA I*'') (policies underlying other transportation statutes do not ''establish that the exemption is consistent with the regulatory scheme established by the [Shipping] Act''). Second, OSRA's elimination of the absolutist ''filed rate doctrine'' for more ''market based principles'' appears to define the Commission's new role as more market-based than the statutes at issue in *Maislin* and *MCI*. *See* section 13(f)(1), 46 U.S.C. app. 1712(f)(1) (''Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.'') Third, the Commission's determination to impose conditions on the requested exemption is consistent with the recent decision of the U.S. Court of Appeals for the Ninth Circuit in *California* v. *Federal Energy Regulatory Comm'n*, 383 F.3d 1006 (9th Cir. 2004). In that case, the court upheld a decision of FERC to deregulate filed tariff requirements. *Id.* at 1013 (citing 16 U.S.C. 824d(c)). Even though the Ninth Circuit described the filed rate doctrine as ''central to FERC's operations,'' it distinguished the case before it from *MCI* and *Maislin* because FERC had combined the provision with two requirements: first, an *ex ante* finding of the absence of market power; and second, sufficient post-approval reporting requirements. *Id.* The court of appeals found that the structure of market-based tariffs complied with the Federal Power Act only so long as it was coupled with enforceable post-approval reporting that would enable FERC to determine whether the rates were ''just and reasonable'' and whether market forces were truly determining the price. *Id.* at 1014. The Commission's proposed conditional exemption is analogous to the program found by the court of appeals to be within FERC's authority to deregulate.

2. Substantial Reduction in Competition

Section 16 requires the Commission to find that a proposed exemption will not result in substantial reduction in competition before it may be granted. 46 U.S.C. app. 1715. The Commission's interpretation of this provision has been sparse, but the agency has not limited itself to consideration of the effects that the exemption may have on competition between VOCCs. The Commission, for example, analyzed competition between FMC-regulated carriers and non-regulated carriers in Docket No. 92–36, *Reduction of Notice for Tariff Increases in the Domestic Offshore Trades,* 26 S.R.R. 526, 528 (1992). It has also considered competition between large and small automobile shippers, first in *MVMA I,* 25 S.R.R. at 854, and again in P7–92, *Motor Vehicle Manufacturers Association of the United States and Wallenius Lines, N.A.—Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles,* 26 S.R.R. 1002 (FMC 1993) (order referring petition for further proceedings). In the present case, the Commission has determined that it may grant the requested relief only if it imposes conditions to ensure no substantial reduction in competition occurs.

a. Competition Among NVOCCs

In order to ensure there is no substantial reduction in competition among NVOCCs, the exemption must be available to all NVOCCs compliant with section 19 of the Shipping Act and with the conditions of the exemption. ABC and FASA contend that the conditional exemption may cause some reduction in competition between large NVOCCs that can afford the administrative and legal costs of drafting, negotiating, filing and enforcing NSAs, and small NVOCCs that cannot. Because the approach we propose is optional, and it is consistent with the statutory scheme of the Shipping Act, we believe that it should

be available to compliant NVOCCs without regard to size or capitalization.

The proposed regulation specifically does not permit two or more NVOCCs to offer NSAs in concert, as there is reason for concern that doing so may cause substantial reduction in competition due to the inability of either the Department of Justice under the antitrust laws or the Commission under the Shipping Act to oversee such concerted behavior. Section 7(a)(2)(B) of the Shipping Act provides that the antitrust laws do not apply to ''any activity or agreement within the scope of this Act, whether permitted under or prohibited by this Act, undertaken or entered into with a reasonable basis to conclude that * * * it is exempt under section 16 of this Act from any filing or publication requirement of this Act.'' 46 U.S.C. app. 1706(a)(2)(B). It could be argued that operating under an NSA would constitute activity that has been exempted under section 16 from the tariff publication requirement, and that such activity should therefore be exempt from the antitrust laws. This would mean that NSAs offered by two or more NVOCCs acting in concert would enjoy immunity from antitrust enforcement, even though their collusive activity is not monitored by the Commission. See, *e.g. United States* v. *Tucor,* 189 F.3d 834 (9th Cir. 1999) (section 7(a)(4) of the Shipping Act immunizes NVOCCs from antitrust prosecution for the foreign inland segment of through transportation to the United States involving military household goods). In addition, we believe that the prohibitions of section 10(c) were intended to apply only to coordination between ocean common carriers as defined in section 4 of the Shipping Act, 46 U.S.C. app. 1703. Therefore, allowing two or more unrelated NVOCCs to offer NSAs in concert could present significant impediments to competition, as NVOCCs would be permitted to collude without the oversight of the Commission or the Department of Justice.

In order to avoid this potential effect, the Commission proposes to define NSAs specifically as arrangements between NVOCCs and non-NVOCC shippers in which the NVOCC acts as a carrier offering a service and the non-NVOCC shipper receives the service as a customer of the NVOCC. We expect that this will ensure that NVOCCs are not granted antitrust immunity that was not intended by Congress.

Further, the proposed rule would not permit an NVOCC to enter into an NSA in its capacity as a shipper; it would limit the definition of ''NSA shipper'' to beneficial cargo owners and shippers' associations with no NVOCC members. Section 7(a)(2) provides antitrust immunity to ''any activity'' under the Shipping Act that has been ''exempt[ed] under section 16 * * * from any filing or publication requirement.'' Section 7(a) does not on its face limit the scope of antitrust immunity to VOCCs, and does not limit the scope of that immunity to transactions between carriers and other carriers. In other words, section 7(a)'s grant of immunity to ''any activity'' that has been exempted from the Shipping Act's filing or publication requirements could be read to include transactions between carriers and shippers. Under *Tucor,* the immunity would likely be interpreted to include an NSA entered into between an NVOCC acting as a carrier and an NVOCC acting as a shipper.

Because of the dual role (as carriers and shippers) occupied by NVOCCs, allowing them to enter into NSAs as shippers could result in such arrangements being immune from antitrust prosecution. The particular difficulty about this is that NVOCCs—in their capacity as carriers—are engaged in competition with one another. It is possible that NVOCCs could affect shipping rates through collusive arrangements in which one NVOCC is characterized as a carrier and the other is characterized as a shipper. Authorizing a mechanism by which they could collude on price, free from antitrust enforcement, could ''result in a substantial reduction in competition.'' 46 U.S.C. app. 1715.

We would emphasize that the proposed limitation on the definition of ''shipper'' would not undermine parity between NVOCCs and VOCCs, because their situations are not analogous: VOCCs do not occupy a dual role in the transportation chain, and do not compete against most of their shippers. Although VOCCs could be said to be engaged in competition against NVOCCs and are nonetheless permitted to offer service contracts to NVOCCs acting as shippers, the same concerns do not arise from such arrangements as would arise if NVOCCs were permitted to enter into NSAs as shippers. This is, again, because section 7(a)(2) would appear to confer antitrust immunity on any activity that has been exempted from filing or publishing requirements. A service contract between a VOCC and an NVOCC acting as a shipper would not fall under such an exemption, as it is already authorized by the Shipping Act. *See* 46 U.S.C. app. 1703(19) and 1703(17)(B). An NSA between two NVOCCs, however, would fall under the exemption, and would arguably be immune from antitrust prosecution.

We request comment on issues surrounding the potential activities of NVOCC affiliates under NSAs. In light of the potentially broad applicability of antitrust immunity under the Shipping Act found in *Tucor,* we believe it is prudent to permit only one NVOCC to offer an NSA in its capacity as a carrier. However, it may be possible for the Commission to permit wholly-owned subsidiaries of the NVOCC to participate as carrier parties to an NSA. Thus, we seek input on the viability and likelihood of such arrangements.

b. Competition Between NVOCCs and VOCCs

In order to ensure there is no substantial reduction in competition between NVOCCs and VOCCs, the Commission proposes that the exemption be conditioned on the same statutory and regulatory requirements and protections applicable to VOCCs' service contracts: namely, filing of executed agreements; publication of essential terms of those agreements; and confidential treatment, similar to that set forth in 46 CFR part 530.

Section 8(a)(1) requires that, except with regard to certain commodities, ''each common carrier * * * keep open to public inspection in an automated tariff system, tariffs showing all its rates, charges, classifications, rules, and practices.'' 46 U.S.C. app. 1707(a)(1). This requirement does not differentiate between VOCCs and NVOCCs, and it is clear that VOCCs generally must comply with this requirement. However, implicitly, VOCCs do enjoy an alternative to the requirement that they show ''all'' rates, etc. in a tariff, because they may include such matters in their filed service contracts. It appears necessary, therefore, to explicitly exempt NVOCCs from the requirement of section 8(a)(1) that they publish all rates, etc. in a tariff on the condition that those rates, etc. are contained in a filed NSA. Under the proposed rule, NVOCCs would remain subject, as VOCCs are, to the general requirement of section 8(a)(1) that they maintain a tariff. With the exemption we propose, NVOCC licensure will continue to require publication of a tariff, although every rate an NVOCC charges will not be required to be published therein, if the rate is filed in an NSA. This approach also preserves the Commission's remedial authorities for tariff prohibition, cancellation and suspension pursuant to sections 11(b)(2) and 11(b)(3) for NVOCCs. 46 U.S.C. app. 1710(b)(2), (b)(3).

The Shipping Act excepts certain commodities from the requirement that conditions for their carriage be reflected in a published tariff or a filed service contract, and the Commission has likewise exempted the provision of certain services from the tariff publication requirements of sections 8(a)(1) and section 8(c)(2). Sections 8(a)(1) and 8(c)(2) excepts the following commodities: bulk cargo, forest products, recycled metal scrap, new assembled motor vehicles, waste paper and paper waste; the Commission has exempted the Department of Defense cargo and U.S. mail from the service contract filing requirements of section 8(c)(2) in its rules at 46 CFR 530.13. The proposed rule mirrors the provisions of the Commission's rules on service contracts for excepted and exempted commodities and services.

The prohibited acts contained in sections 10(b)(1), (2), (5) and (9), 46 U.S.C. app. 1709(b)(1), (2), (5), (9), apply to cargo moved under service contract. To ensure consistency with VOCC treatment, the Commission proposes identical administrative prohibitions applicable to NSAs. The prohibited actions applicable only to tariffs would not apply to cargo moved under an NSA, but would still remain in effect, as they do for VOCCs, for cargo handled under a tariff.[5]

Section 10(b)(1) reads, in pertinent part, ''No common carrier * * * may * * * allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its tariff or service contract by means of false billing, false classification, false weighing, false measurement, or by any other unjust or unfair device or means.'' 46 U.S.C. app. 1709(b)(1). A rate established in an NSA becomes the legal rate for the subject shipment. To ensure the Commission has the same oversight over cargo carried under an NSA with respect to the prohibitions contained in section 10(b)(1), the Commission proposes that this provision be made applicable by regulation.

The Shipping Act prohibits VOCCs from discriminating against ports though service contracts. 46 U.S.C. app. 1709(b)(5), 1709(b)(9). The NPR includes provisions prohibiting this to mirror the requirements the Shipping Act places on VOCC service contracting.

c. Competition Among Shippers

To ensure competition among shippers is not substantially harmed, the Commission proposes to require the publication of the essential terms of all NSAs in automated systems and the filing of the full text of those arrangements with the Commission. Publication of NSA essential terms will enable shippers to determine, as they currently are able for VOCC-offered service contracts, general information on the services NVOCCs are offering their competitors. This will enable shippers to gather information on general market conditions as they evaluate their own transportation needs, and potentially identify any prohibited conduct.

3. Detriment to Commerce

The ''detrimental to commerce'' criterion was carried over to the present statute from 1966 amendments to section 35 of the Shipping Act, 1916, although the use of the phrase since has been removed from other provisions of the Shipping Act. In P7–92, *Motor Vehicle Manufacturers Association of the United States, Inc. and Wallenius Lines, N.A.—Joint Application for Exemption from Certain Requirements of the Shipping Act of 1984 for Certain Limited Shipments of Passenger Vehicles,* 26 S.R.R. 1269 (ALJ recommended decision) (administratively final, April 29, 1994) (''*MVMA ALJ*''), drawing on the Commission's reasoning in Docket No. 65–45, *Investigation of Ocean Rate Structures in the Trade between United States North Atlantic Ports and Ports in the United Kingdom and Eire—North Atlantic United Kingdom Freight Conference, Agreement 7100, and North Atlantic Westbound Freight Association, Agreement 5850,* 12 F.M.C. 34, 35 (1968), the ALJ found ''detriment to commerce'' must mean ''something harmful'' other than one of the other criteria of the exemption provision. *MVMA ALJ* at 1300. Interpreting the two criteria of section 16 identically would be contrary to the well-accepted canon of construction which requires that meaning be given to every provision of a statute; if ''detriment to commerce'' had the same meaning as ''no substantial reduction in competition,'' it would be mere surplusage. See, *e.g., Babbitt* v. *Sweet Home Chapter of Communities for a Great Oregon,* 515 U.S. 687, 697–698 (1995).

Although the conditions placed on the proposed exemption to ensure that it is not detrimental to commerce may overlap to a certain extent with the conditions ensuring against reduction in competition, the analysis is distinct. Many important shipper protections provided for in the Shipping Act relating to service contracts offered by VOCCs ensure against detriment to commerce. Thus, the Commission proposes making applicable to carriage under an NSA, those provisions of the Shipping Act that would be applicable to service contracts.

Section 10(a)(1) reads, ''No person may knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means obtain or attempt to obtain ocean transportation for less than the rates or charges that would otherwise be applicable.'' 46 U.S.C. app. 1709(a)(1). This provision is at the heart of the ''filed rate doctrine''—that there must always be an ''applicable'' or ''legal'' rate. Just as rates provided under service contracts are ''applicable rates,'' so compliant NSA rates would be applicable rates. Doing away with the requirements that common carriers publish tariffs and adhere to rates that are either published in those public tariffs available to all-comers, or adhere to rates filed in their service contracts or NSAs, would likely undercut those principles and thereby cause detriment to commerce.[6]

Section 10(b)(12) of the Shipping Act prohibits VOCCs from knowingly and willfully entering into service contracts with an NVOCC that does not have a license and bond, insurance, or other surety as required by sections 8 and 19 of the Shipping Act, or with an affiliate of such an NVOCC. 46 U.S.C. app. 1709(b)(12). Because the NPR permits NVOCCs to participate in NSAs only in their capacity as carriers, it is not necessary to adopt section 10(b)(12) as a parallel administrative violation. However, the NPR does contain a requirement that only those NVOCCs who are in compliance with the licensing, bonding and tariff publishing requirements of the Shipping Act be

[5] The following prohibitions, which are now applicable to all common carriers, including NVOCCs, would remain applicable to cargo movements regardless of whether they are accomplished under an NSA, under a published tariff, or under a filed service contract: section 10(b)(3) (retaliation); section 10(b)(7) (deferred rebates); section 10(b)(10) (unreasonable refusal to deal or negotiate); section 10(b)(11) (moving cargo for unlicensed OTIs); section 10(b)(13) (disclosure of shipper information); and section 10(d)(1) (unreasonable practices).

[6] Section 8(d) reads, in pertinent part, ''No new or initial rate or change in an existing rate that results in an increased cost to the shipper may become effective earlier than 30 calendar days after publication.'' 46 U.S.C. app. 1707(d). As an NSA rate under the proposed exemption would not be considered a tariff rate, it would not be held to this requirement. Furthermore, this protection does not appear necessary for shippers who negotiate service contracts as the shipper is a party to the negotiation. The same is not true for shippers who move cargo under tariffs, which are ''take it or leave it'' terms.

permitted to offer NSAs in their capacity as carriers.[7]

Section 10(b)(11), 46 U.S.C. app. 1709(b)(11), contains a slightly different prohibition (it forbids acceptance of cargo from a non-compliant NVOCC for movements rated under tariffs and service contracts). As the Commission proposes that NVOCCs may only offer NSAs as carriers, and may not act as shippers, and that only compliant NVOCCs may offer NSAs, we believe it is not necessary to provide equivalent shipper protections to movements under an NSA.

Therefore, to ensure the exemption does not result in any detriment to commerce, the proposed rule requires NVOCCs to file their NSAs electronically with the Commission, to retain the original (in the same manner that service contracts offered by VOCCs are now filed) and prohibits noncompliant NVOCCs from offering NSAs. These conditions will enable the Commission to perform audits of these arrangements to ensure against malpractices by which shippers may be harmed.

V. Proposed Regulation—Section-by-Section Analysis

Section 531.1 Purpose

The NPR proposes an exemption from certain provisions of the Shipping Act. Section 531.1 sets for the purpose for the exemption and its conditions.

Section 531.2 Scope and Applicability

This provision indicates that only individual NVOCCs compliant with the requirements of section 19 of the Shipping Act, 46 U.S.C. app. 1718, and the Commission's regulations at 46 CFR part 515, may enter into an NSA with one or more NSA shippers subject to the requirements of these rules. Further, it states that any NVOCC who fails to maintain its bond or license or has had its tariff suspended or cancelled by the Commission is ineligible to offer and file NSAs.

Section 531.3 Definitions

This section sets forth the definitions of terms to be used in this part. This section defines an NVOCC service arrangement (''NSA'') as ''a written contract, other than a bill of lading or receipt, between one or more NSA shippers as defined in this regulation and an individual NVOCC in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in the event of nonperformance on the part of any party.'' This definition largely tracks the definition of ''service contract'' as set forth in the Commission's current rules at 46 CFR part 530.3(q), except that the phrase ''such as, assured space, transit time, port rotation, or similar service features'' has been eliminated. The definition also differs from the statutory definition of service contract inasmuch as it adds the phrase ''or freight revenue,'' which is consistent with the current regulatory definition. This phrase was originally added to the Commission's definition of ''service contract'' in its 1984 rulemakings. As the Commission explained, the definition was modified ''to recognize that such contracts may be based upon the amount or revenue provided by the shipper as well as a specific minimum volume of cargo.'' Docket No. 84–21, *Publishing and Filing Tariffs by Common Carriers in the Foreign Commerce of the United States—Service Contracts and Time/Volume Contracts,* 46 CFR part 580, 49 FR 24701 (June 14, 1984) (interim rule).

The proposed rule defines ''NSA shipper'' as ''a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, or a shippers' association. The term does not include NVOCCs or a shippers' associations whose membership includes NVOCCs.'' This definition of NSA shipper is different from that of ''shipper'' in the Commission's regulations on service contracts at 46 CFR part 530 and section 3(21) of the Shipping Act, 46 U.S.C. app. 1702(21). This is because the Commission has determined, for the reasons outlined above, that NVOCCs, and groups that include NVOCCs, should not be able to obtain NSAs as shipper parties.

Section 531.4 Confidentiality

This provision reflects the Commission's intent to keep NSAs and their amendments confidential, to the full extent permitted by law. However, the Commission shall provide certain information to other agencies of the Federal government of the United States as it sees fit. Also, the parties to a filed NSA may agree to disclose information contained in it. Breach of any confidentiality agreement contained in an NSA by either party will not, on its own, be considered a violation of these rules.

Section 531.5 Duty to File

As the Commission's rules provide for the filing of service contracts in 46 CFR part 530, the proposed rule requires the NVOCC party to an NSA to file the NSA, amendments and notices and to publish the statement of essential terms. No such obligation is placed on the NSA shipper party to the NSA.

The proposed rule also provides that, similar to the provision set forth in section 13(f)(1) of the Shipping Act, 46 U.S.C. app. 1712(f)(1), the Commission shall not order any person to pay the difference between an amount billed and an amount in an NSA.

Further, this section provides that the filing may be done by an agent or publisher. This section sets for the requirements for registration that must be undertaken before an NVOCC may file its NSAs into the Commission's automated NSA system. There is no provision for paper-based/non-electronic filing.

Section 531.6 NVOCC Service Arrangements

This section sets forth the form and manner requirements for NSAs. It also provides that an NSA must be filed prior to any cargo moves pursuant to that NSA or amendment. The NSA as filed must include the complete terms of the NSA, including, but not limited to the origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements; the destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements; the commodity or commodities involved; the minimum volume or portion; the service commitments; the line-haul rate; the liquidated damages for non-performance (if any); the duration of the NSA, including the effective date and expiration date; the legal names and business addresses of the NSA parties; the names, titles and addresses of the representatives signing the NSA for the

[7] The NPR does not relieve NVOCCs from any of the requirements applicable to them under section 19 of the Shipping Act or the Commission's regulations relating to licensure, financial responsibility, or the compensation NVOCCs may pay freight forwarders. 46 U.S.C. app. 1718. The Commission's regulations at 46 CFR part 515 outline the general duties of OTIs, including NVOCCs. The draft regulation does not contradict any requirement of these regulations. Specifically, we have considered that 46 CFR 535.31(g) requires licensees to make all records connected with its OTI business available to the Commission. While we believe the requirements of these provisions would apply equally to NSA-related records, the proposed rule includes a records-retention provision specifically applicable to NSAs. These requirements also correspond to the Commission's requirements for service contracts. Similarly, NVOCCs will not be relieved of the requirement under 46 CFR 515.42(b) and (d) regarding freight forwarder compensation and certifications.

parties; and the date upon which the NSA was signed; a description of the shipment records which will be maintained to support the NSA and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection; and all other provisions of the NSA. The terms of the NSA may not be uncertain, vague or ambiguous or make reference to terms not explicitly contained in the NSA itself unless those terms are contained in a publication widely available to the public and well known within the industry.

This section also requires that, for service pursuant to an NSA, that no NVOCC may, either alone or in conjunction with any other person, directly or indirectly provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules and practices contained in a filed NSA; engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port; or give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port.

The format requirements are as follows. Each NSA must include a unique NSA number of more than one (1) but less than ten (10) alphanumeric characters in length (''NSA Number''); a consecutively numbered amendment number no more than three digits in length, with initial NSAs using ''0'' (''Amendment number''); and an indication of the method by which the statement of essential terms will be published. This section makes provisions for any malfunction of the Commission's electronic filing system.

Section 531.7 Notices

This section requires that, within thirty days of the occurrence of correction, cancellation, adjustment, final settlement of any adjusted account and any change to the name, legal name and/or business address of any NSA party, the NVOCC shall file a notice, pursuant to the same procedures as those followed for the filing of an amendment to the NSA.

Section 531.8 Amendment, Correction, Cancellation, and Electronic Transmission Errors

This section describes the procedures for amendment, correction, cancellation and electronic transmission errors. Amendment to an NSA may only be done by mutual agreement of the parties. A filing fee will be assessed at the same rate as presently assessed in the Commission's rules at 46 CFR 530.10(c).

Section 531.9 Publication

This section sets out the requirements for the essential terms (''ET'') publication for each NSA filed with the Commission. It also describes the Commission's publication at *http://www.fmc.gov* of a listing of the locations of all NSA essential terms publications and requires that the ET publication indicate the date upon which it has most recently been updated.

Section 531.10 Excepted and Exempted Commodities

This section lists the commodities and services for which no NSA filing may be made.

Section 531.11 Implementation

This section provides that performance under an NSA or amendment thereto may not begin before the day it is effective and filed with the Commission.

Section 531.12 Recordkeeping and Audit

This section sets forth the requirement that all original signed NSAs and related records must be retained by the NVOCC for five years from the termination of each NSA in an organized, readily accessible or retrievable manner. It also requires every NVOCC, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, to submit copies of requested original NSAs or their associated records within thirty days of the date of the request.

Appendix A, Form FMC–78 and Instructions

Appendix A, together with Form FMC–78 and its associated instructions, set forth the registration requirements for filing NSAs electronically with the Commission's automated NSA system.

VI. Statutory Reviews and Request for Comments

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* the Chairman of the Federal Maritime Commission certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. The Commission recognizes that the majority of businesses that would be affected by this rule qualify as small entities under the guidelines of the Small Business Administration. The rule, however, would establish an optional method for NVOCCs to carry cargo for their customers to be used at their discretion. The rule would pose no economic detriment to small business entities. Rather, it exempts NVOCCs from the otherwise applicable requirements of the Shipping Act when such entities comply with the rules set forth herein.

This regulatory action is not a ''major rule'' under 5 U.S.C. 804(2).

The collection of information requirements contained in this proposed 46 CFR part 531 have been submitted to the Office of Management and Budget (''OMB'') for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. The estimated total annual burden for the estimated 110 annual respondents is 165,932 manhours. This estimate includes, as applicable, the time needed to review instructions, develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

The Chairman of the Federal Maritime Commission, pursuant to 5 CFR 1320.13, has requested emergency processing of the proposed collection of information described in proposed Form FMC–78 and that OMB determine to approve or disapprove that proposed collection of information by November 12, 2004. Inasmuch as the exemption is deregulatory and voluntary, OMB's approval of the collection of information required for the registration form prior to the effective date of the proposed regulation will permit the FMC to prepare for the effectiveness of the proposed rule by allowing the agency's staff to begin processing the registration requests and issuing identification numbers and passwords to NVOCCs intending to take advantage of the exemption. The Commission is not permitted to collect information until OMB has approved of it. As the proposed rule will expand by ten-fold the number of common carriers eligible to file their service arrangements with the FMC, it is necessary to begin the process of registering such industry participants before the rule goes into effect. This regulatory oversight is at the heart of the FMC's mission, and will likely be disrupted if the agency cannot

begin processing the registration requests as soon as possible. For these reasons, the Chairman has determined that this collection of information is essential to the mission of the agency and that the FMC cannot reasonably comply with the normal clearance procedures under this part because the use of the normal clearance procedures is reasonably likely to disrupt the collection of information and the efficient implementation of the proposed rule.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Austin L. Schmitt, Director of Operations, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Maritime Commission, Washington, DC 20503.

List of Subjects for 46 CFR Part 531

Exports, Non-vessel-operating common carriers, Ocean transportation intermediaries.

Accordingly, the Federal Maritime Commission proposes to add 46 CFR part 531 as follows:

PART 531—NVOCC SERVICE ARRANGEMENTS

Subpart A—General Provisions

Sec.
531.1 Purpose.
531.2 Scope and applicability.
531.3 Definitions.
531.4 Confidentiality.
531.5 Duty to file.

Subpart B—Filing Requirements

531.6 NVOCC service arrangements.
531.7 Notices.
531.8 Amendment, correction, cancellation, and electronic transmission errors.

Subpart C—Publication of Essential Terms

531.9 Publication.

Subpart D—Exceptions and Implementation

531.10 Excepted and exempted commodities.
531.11 Implementation.

Subpart E—Recordkeeping and Audit

531.12 Recordkeeping and Audit
531.13–531.98 [RESERVED]
531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.
Appendix A to Part 531—Instructions for the Filing of NVOCC Service Arrangements
Exhibit 1 to Part 531—NVOCC Service Arrangement Registration [FORM FMC–78]

Authority: 46 U.S.C. app. 1715.

Subpart A—General Provisions

§ 531.1 Purpose.

This part exempts NVOCCs from certain provisions of the Shipping Act. The purpose of this part is to facilitate the filing of NVOCC service arrangements (''NSAs'') and the publication of certain essential terms of those NSAs as they are exempt from the otherwise applicable provisions of the Shipping Act of 1984 (''Act''). This part enables the Commission to review NSAs to ensure that they and the parties to them comport with the conditions of the exemption as set forth below.

§ 531.2 Scope and applicability.

Only individual NVOCCs compliant with the requirements of section 19 of the Act and the Commission's regulations at 46 CFR part 515 may enter into an NSA with one or more NSA shippers subject to the requirements of these rules. Any NVOCC who has failed to maintain its bond or license or had its tariff suspended or cancelled by the Commission is ineligible to offer and file NSAs.

§ 531.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998;

(b) *Amendment* means any change to a filed NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

(c) *Authorized person* means an NVOCC or duly appointed agent who is authorized to file NSA on behalf of the NVOCC and to publish the corresponding statement of essential terms and is registered by the Commission to file under § 531.5 and Appendix A to this part.

(d) *BTA* means the Commission's Bureau of Trade Analysis, or its successor bureau.

(e) *BCL* means the Commission's Bureau of Certification and Licensing, or its successor bureau.

(f) *Cancellation* means an event which is unanticipated by the NSA, in liquidated damages or otherwise, and is due to the failure of the NSA shipper to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the NVOCC.

(g) *Commission* or *FMC* means the Federal Maritime Commission.

(h) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities; and

(ii) Only with respect to those commodities.

(i) *Correction* means any change to a filed NSA that has retroactive effect.

(j) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the filing date of the NSA or amendment with the Commission.

(k) *Expiration date* means the last day after which the entire NSA is no longer in effect.

(l) *File* or *filing* (of NSAs or amendments thereto) means the use of the Commission's electronic filing system for receipt of an NSA or an amendment thereto by the Commission, consistent with the method set forth in Appendix A of this part, and the recording of its receipt by the Commission.

(m) *OIT* means the Commission's Office of Information Technology, or its successor office.

(n) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person to whom delivery is to be made, or a shippers' association. The term does not include NVOCCs or a shippers' associations whose membership includes NVOCCs.

(o) *NVOCC service arrangement* (''NSA'') means a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level. The NSA may also specify provisions in

the event of nonperformance on the part of any party.

(p) *Statement of essential terms* means a concise statement of the essential terms of an NSA required to be published under this part.

§ 531.4 Confidentiality.

(a) All NSAs and amendments to NSAs filed with the Commission shall, to the fullest extent permitted by law, be held in confidence by the Commission.

(b) Nothing contained in this part shall preclude the Commission from providing certain information from or access to NSAs to another agency of the Federal government of the United States.

(c) Parties to a filed NSA may agree to disclose information contained in it. Breach of any confidentiality agreement contained in an NSA by either party will not, on its own, be considered a violation of these rules.

§ 531.5 Duty to file.

(a) The duty under this part to file NSAs, amendments and notices, and to publish statements of essential terms, shall be upon the NVOCC party to the NSA.

(b) The Commission shall not order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in an NSA by that common carrier for the transportation service provided.

(c) Filing may be accomplished by any duly agreed-upon agent, as the parties to the NSA may designate, and subject to conditions as the parties may agree.

(d) Registration. (1) *Application.* Authority to file or delegate the authority to file must be requested by a responsible official of the NVOCC in writing by submitting to BTA, either by mail to 800 N. Capitol Street, NW., Washington, DC 20573, or by facsimile to (202) 523–5767, a completed NSA Registration Form (FMC–78) (Exhibit 1 to this part).

(2) *Approved registrations.* OIT shall provide approved Registrants a log-on identification number (''I.D.'') and password for filing and amending NSAs, and notify Registrants of such approval via U.S. mail.

Subpart B—Filing Requirements

§ 531.6 NVOCC service arrangements.

(a) Authorized persons shall file with BTA, in the manner set forth in Appendix A of this part, a true and complete copy of every NSA or amendment before any cargo moves pursuant to that NSA or amendment.

(b) Every NSA filed with the Commission shall include the complete terms of the NSA including, but not limited to, the following:

(1) The origin port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(2) The destination port ranges in the case of port-to-port movements and geographic areas in the case of through intermodal movements;

(3) The commodity or commodities involved;

(4) The minimum volume or portion;

(5) The service commitments;

(6) The line-haul rate;

(7) Liquidated damages for non-performance (if any);

(8) Duration, including the:

(i) Effective date; and

(ii) Expiration date;

(9) The legal names and business addresses of the NSA parties; the names, titles and addresses of the representatives signing the NSA for the parties; and the date upon which the NSA was signed. Subsequent references in the NSA to the signatory parties shall be consistent with the first reference.

(10) A description of the shipment records which will be maintained to support the NSA and the address, telephone number, and title of the person who will respond to a request by making shipment records available to the Commission for inspection under § 531.12; and

(11) All other provisions of the NSA.

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly contained in the NSA itself unless those terms are contained in a publication widely available to the public and well known within the industry.

(d) *Other requirements.* (1) For service pursuant to an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, provide service in the liner trade that is not in accordance with the rates, charges, classifications, rules and practices contained in a filed NSA.

(2) For service pursuant to an NSA, no NVOCC, may, either alone or in conjunction with any other person, directly or indirectly, engage in any unfair or unjustly discriminatory practice in the matter of rates or charges with respect to any port; and

(3) For service under an NSA, no NVOCC may, either alone or in conjunction with any other person, directly or indirectly, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port.

(e) *Format requirements.* Every NSA filed with BTA shall include, as set forth in Appendix A to this part:

(1) A unique NSA number of more than one (1) but less than ten (10) alphanumeric characters in length (''NSA Number''); and

(2) A consecutively numbered amendment number no more than three digits in length, with initial NSAs using ''0'' (''Amendment number''); and

(3) An indication of the method by which the statement of essential terms will be published.

(f) *Exception in case of malfunction of Commission electronic filing system.* (1) In the event that the Commission's electronic filing system is not functioning and cannot receive NSAs filings for twenty-four (24) continuous hours or more, affected parties will not be subject to the requirements of paragraph (a) of this section and § 531.11 that an NSA be filed before cargo is shipped under it.

(2) However, NSAs which go into effect before they are filed due to a malfunction of the Commission's electronic filing system pursuant to paragraph (f)(1) of this section, must be filed within twenty-four (24) hours of the Commission's electronic filing system's return to service.

(3) For an NSA that is effective without filing due to a malfunction of the Commission's filing system, failure to file that NSA within twenty-four (24) hours of the Commission's electronic filing system's return to service will be considered a violation of these regulations.

(g) Failure to comply with the provisions of this section shall result in the application of the terms of the otherwise applicable tariff.

§ 531.7 Notices.

Within thirty (30) days of the occurrence of any event listed below, there shall be filed with the Commission, pursuant to the same procedures as those followed for the filing of an amendment pursuant to § 531.5 and Appendix A to this part, a detailed notice of:

(a) Correction;

(b) Cancellation;

(c) Adjustment of accounts, by re-rating, liquidated damages, or otherwise;

(d) Final settlement of any account adjusted as described in paragraph (c) of this section; and

(e) Any change to the name, legal name and/or business address of any NSA party.

§ 531.8 Amendment, correction, cancellation, and electronic transmission errors.

(a) *Amendment.* NSAs may be amended by mutual agreement of the parties. Amendments shall be filed electronically with the Commission in the manner set forth in § 531.5 and Appendix A to this part.

(1) Where feasible, NSAs should be amended by amending only the affected specific term(s) or subterms.

(2) Each time any part of an NSA is amended, the filer shall assign a consecutive amendment number (up to three digits), beginning with the number ''1.''

(3) Each time any part of a filed NSA is amended, the ''Filing Date'' will be the date of filing of the amendment.

(b) *Correction.* (1) Requests shall be filed, in duplicate, with the Commission's Office of the Secretary within forty-five (45) days of the NSA's filing with the Commission, accompanied by remittance of a $276 service fee, and shall include:

(i) A letter of transmittal explaining the purpose of the submission, and providing specific information to identify the initial or amended NSA to be corrected;

(ii) A paper copy of the proposed correct terms.

(2) Corrections shall be indicated as follows:

(i) Matter being deleted shall be struck through; and

(ii) Matter to be added shall immediately follow the language being deleted and be underscored;

(3) An affidavit from the filing party attesting with specificity to the factual circumstances surrounding the clerical or administrative error, with reference to any supporting documentation;

(4) Documents supporting the clerical or administrative error; and

(5) A brief statement from the other party to the NSA concurring in the request for correction.

(6) If the request for correction is granted, the carrier party shall file the corrected provisions using a special case number as described in Appendix A to this part.

(c) *Electronic transmission errors.* An authorized person who experiences a purely technical electronic transmission error or a data conversion error in transmitting an NSA filing or an amendment thereto is permitted to file a Corrected Transmission (''CT'') of that filing within 48 hours of the date and time of receipt recorded in the Commission's electronic filing system (excluding Saturdays, Sundays and legal public holidays). This time-limited permission to correct an initial defective NSA filing is not to be used to make changes in the original NSA rates, terms or conditions that are otherwise provided for in § 531.6(b). The CT tab box in the Commission's electronic filing system must be checked at the time of resubmitting a previously filed NSA, and a description of the corrections made must be stated at the beginning of the corrected NSA in a comment box. Failure to check the CT box and enter a description of the correction will result in the rejection of a file with the same name, as documents with duplicate file names or NSA and amendment numbers are not accepted by the FMC's electronic filing system.

(d) *Cancellation.* (1) An account may be adjusted for events and damages covered by the NSA. This shall include adjustment necessitated by either liability for liquidated damages appearing in the NSA as filed with the Commission under § 531.6(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

(2) In the event of cancellation as defined in § 531.3(3):

(i) Further or continued implementation of the NSA is prohibited; and

(ii) The cargo previously carried under the NSA shall be re-rated according to the otherwise applicable tariff provisions.

(e) If the amendment, correction or cancellation affects an essential term required to be published under § 531.9, the statement of essential terms shall be changed as soon as possible after the filing of the amendment to accurately reflect the change to the NSA terms.

Subpart C—Publication of Essential Terms

§ 531.9 Publication.

(a) *Contents.* All authorized persons who choose to file NSAs under this part are also required to make available to the public, contemporaneously with the filing of each NSA with the Commission, and in tariff format, a concise statement of the following essential terms:

(1) The port ranges:

(i) Origin; and

(ii) Destination;

(2) The commodity or commodities involved;

(3) The minimum volume or portion; and

(4) The duration.

(b) *Certainty of terms.* The terms described in paragraph (a) of this section may not:

(1) Be uncertain, vague or ambiguous; or

(2) Make reference to terms not explicitly detailed in the statement of essential terms, unless those terms are contained in a publication widely available to the public and well known within the industry.

(c) *Location.* The statement of essential terms shall be published as a separate part of the individual NVOCC's automated tariff system.

(d) *References.* The statement of essential terms shall contain a reference to the ''NSA Number'' as described in § 531.6(e)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Commission listing.* The Commission will publish on its Web site, *http://www.fmc.gov,* a listing of the locations of all NSA essential terms publications.

(g) *Updating statements of essential terms.* To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

Subpart D—Exceptions and Implementation

§ 531.10 Excepted and exempted commodities.

(a) *Statutory exceptions.* NSAs for the movement of the following, as defined in section 3 of the Act, the Commission's rules at 46 CFR 530.3 or 46 CFR 520.1, are not subject to the conditions of this exemption:

(1) Bulk cargo;

(2) Forest products;

(3) Recycled metal scrap;

(4) New assembled motor vehicles; and

(5) Waste paper or paper waste.

(b) *Commission exemptions.* The following commodities and/or services are not subject to the conditions of this exemption:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions

approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing NSAs which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) NSAs filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The NSA itself sets forth a rate or charge which will be applied if the NSA is canceled, as defined in § 531.3(e) and § 531.8(d).

(d) *Waiver.* Upon filing an NSA pursuant to paragraph (c) of this section, the NSA shall be subject to the same requirements as those for NSAs generally.

§ 531.11 Implementation.

Generally. Performance under an NSA or amendment thereto may not begin before the day it is effective and filed with the Commission.

Subpart E—Recordkeeping and Audit

§ 531.12 Recordkeeping and audit.

(a) *Records retention for five years.* Every NVOCC shall maintain original signed NSAs, amendments, and their associated records in an organized, readily accessible or retrievable manner for a period of five (5) years from the termination of each NSA. These records must be kept in form that is readily available and usable to the Commission; electronically maintained records shall be no less accessible than if they were maintained in paper form.

(b) *Production for audit within 30 days of request.* Every NVOCC shall, upon written request of the FMC's Director, Bureau of Enforcement, any Area Representative or the Director, Bureau of Trade Analysis, submit copies of requested original NSAs or their associated records within thirty (30) days of the date of the request.

§§ 531.13–531.98 [RESERVED]

§ 531.99 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The Commission has received OMB approval for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. In accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–XXXX.

Appendix A to Part 531—Instructions for the Filing of NVOCC Service Arrangements

NSAs shall be filed in accordance with the instructions found on the Commission's home page, *http://www.fmc.gov.*

A. Registration, Log-On I.D. and Password

To register for filing, an NVOCC or authorized agent must submit the NSA Registration Form (Form FMC–78) to BTA. A separate NSA Registration Form is required for each individual that will file NSAs. BTA will direct OIT to provide approved filers with a log-on identification number (''I.D.'') and password. Filers who would like a third party (agent/publisher) to file their NSAs must so indicate on Form FMC–78. Authority for filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on I.D. and password. The original log-on ID will be canceled when a replacement log-on I.D. is issued. Log-on I.D.s and passwords may not be shared with, loaned to or used by any individual other than the individual registrant. The Commission reserves the right to disable any log-on I.D. that is shared with, loaned to or used by parties other than the registrant.

B. Filing

After receiving a log-on I.D. and a password, a filer may log-on to the NSA filing area on the Commission's home page and file NSAs. The filing screen will request such information as: filer name, organization number (''Registered Persons Index'' or ''RPI'' number); NSA and amendment number; effective date and file name. The filer will attach the entire NSA file and submit it into the system. When the NSA has been submitted for filing, the system will assign a filing date and an FMC control number, both of which will be included in the acknowledgment/confirmation message.

BILLING CODE 6730–01–P

EXHIBIT 1 -- NVOCC SERVICE ARRANGEMENT REGISTRATION [FORM FMC-78] OMB No. 3072-____

FORM FMC-78 (expiration date:_____)

PLEASE TYPE OR PRINT

NVOCC SERVICE ARRANGEMENT REGISTRATION

(SEE ATTACHED INSTRUCTIONS)

1. Organization No. _____
2. Registrant

_____
Full Legal Name of firm (or individual, if not a firm)

_____
(Doing Business As or Trade Name)

3. a. NVOCC OTI License No. _____
Effective date _____
MM/DD/YYYY

OR

b. If foreign-based unlicensed NVOCC, provide the following information for agent for service of process:
Name: _____
Address: _____
_____
_____

4. This Registration is: [ ] Initial [ ] Amendment (Specify change)_____

5. Headquarters Address _____ ( ) _____
(Number and Street) Telephone

_____ ( ) _____
(Number and Street) Fax

_____
(City/State/Zip/Country) (Federal TIN Number, if any) E-Mail (optional)

6. Mailing Address (If different) _____ ( ) _____
(c/o Name) (Number and Street) Telephone

_____ ( ) _____
(Number and Street) Fax

_____
(City/State/Zip/Country) E-Mail (optional)

7. Person(s) to be granted registration. Please list individual(s) for whom a log-on identifier is requested. If this is a transfer of log-on, please list the existing name and existing log-on ID:
Name: _____ Existing Log-on: _____

8. Is the person listed in question 7 a third party? (check one) [ ] Yes [ ] No
If yes, a letter of authority must be submitted with this form.

9.

_____ _____
Signature of Authorized Official Print or type name of Authorized Official

_____ _____
date (MM/DD/YYYY) Title of Authorized Official

FMC USE ONLY

Logon_____Initial Password_____ID_____Directory_____
DateAsg____/____/____AsgBy_____

11/04

Instructions For Form FMC-78

Completed Form FMC-78 should be sent by mail or facsimile to:

Federal Maritime Commission
Bureau of Trade Analysis
800 N. Capitol Street, NW
Washington, DC 20573-0001

Fax (202) 523-5767

Line 1. Organization Number. This is the same as the Regulated Persons Index ("RPI") Number.

Line 2. Registrant. Provide the full name of the firm or individual registering for the automated NSA filing system and any trade names. The Registrant's name should match the corporate charter or business license, etc. The Registrant's name cannot be changed without submission of an amended registration form.

Line 3. FMC License Number. Provide name of Registrant as licensed by the Commission and date of the effectiveness of that license. If Registrant is a bonded but unlicensed foreign-based NVOCC operating pursuant to Commission's regulations at 46 C.F.R. § 515.3, indicate the name and address of the agent for service of process as required by 46 C.F.R. § 515.24. The name and address of the agent for service of process must be the same as that appearing in the NVOCC's tariff, as provided by 46 C.F.R. § 520.11 (b).

Line 4. Registration. Indicate whether this is the initial (first time) registration or an amendment to an existing NSA registration.

Line 5. Address of Headquarters Office. The complete street address of the Registrant's principal place of business should be shown in addition to a post office box (if any). Post office box alone is insufficient. Provide the Registrant's Federal Taxpayer Identification Number, if any.

Line 6. Mailing Address (if different). Provide the mailing address only if it differs from the headquarters address listed in Line 5. Show the street address as well as any post office box. This is the address to which the Registrant's log-on I.D. and password will be mailed via U.S. mail. Also, if the log-on I.D. and password is to be mailed to a third party, indicate here.

Line 7. Persons to be granted registration. Provide the full name of the individual for whom the log-on I.D. and password is requested. If you wish to transfer a log-on I.D. from an existing registration to a new individual, indicate the name of the new registrant and the log-on I.D. to be assigned.

Line 8. Registration by Third Party. Indicate, by checking the applicable box, whether the person to be granted registration in Line 7 is a third party (publisher, agent, etc.) of the registrant named in

Line 1. The registration must be accompanied by an indication that the NVOCC has authorized the third party to file NVOCC service arrangements and related documents on its behalf.

Line 9. Signature of Authorized Official. Indicate the date the registration was signed and title of authorized official.

Paperwork Reduction Act Notice.

The collection of this information is authorized generally by section 16 of the Shipping Act of 1984, 46 U.S.C. app. § 1715.

This is an optional form. Submission is completely voluntary. Failure to submit this form will in no way impact the Federal Maritime Commission's assessment of your firm's financial responsibility; however, you will not be able to use the exemption set forth in the Commission's rules at 46 C.F.R. part 531.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. The valid control number for this information collection is 3072-[XXXX]. Copies of this form will be maintained until the filer indicates s/he will no longer file NSAs into the electronic filing system.

The time needed to complete and file this form will vary depending on individual circumstances. The total estimated average time to complete this form is: Recordkeeping, 20 minutes; Learning about the form, 20 minutes; Preparing and sending the form to the FMC, 20 minutes.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, or e-mail: secretary@fmc.gov.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 04–24467 Filed 11–2–04; 8:45 am]

BILLING CODE 6730–01–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 379, 381, 385, 390, and 395

[Docket No. FMCSA–1998–3706]

RIN 2126–AA76

Hours of Service of Drivers; Supporting Documents

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Supplemental notice of proposed rulemaking (SNPRM); request for comments.

SUMMARY: The FMCSA intends to clarify that each motor carrier has the duty under the current regulations to: Verify the accuracy of drivers' hours of service (HOS) and records of duty status (RODS), and this obligation extends to the HOS and RODS of independent drivers or owner-operators while driving for the motor carrier; ensure each driver collects and submits to the employing motor carrier all supporting documents with the RODS; and ensure all motor carriers know of the requirement to maintain supporting documents in a method that allows cross reference to the RODS. This notice also proposes a supporting document based self-monitoring system that would be the carrier's primary method for ensuring compliance with the HOS regulations. In recognition of developing technologies, the FMCSA proposes to permit the use of electronic documents as a supplement to, and, in certain circumstances, in lieu of, paper supporting documents. The intended effect of this proposal is to provide clearer and more detailed definitions of ''supporting documents'', ''employee'', ''driver'', and a requirement for each motor carrier to use a self-monitoring system to verify accuracy of HOS and RODS.

DATES: We must receive your comments by January 3, 2005.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FMCSA–1998–3706 by any of the following methods:

- *Web site: http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- *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.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

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

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

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

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Fulnecky, Office of Enforcement and Compliance, (202) 366–4553, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

This rulemaking is required by, and based on, section 113 (Driver's Record of Duty Status) of the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103–311, August 26, 1994, 108 Stat. 1673, at 1676 (hereinafter the HMTAA). Section 113, however, assumes the existence of FMCSA's more general authority to regulate the HOS of commercial motor vehicle (CMV) drivers and related matters. That authority is conferred by the Motor Carrier Act of 1935,[1] now codified at 49 U.S.C. 31502(b), and the Motor Carrier Safety Act of 1984,[2] 49 U.S.C. 31136(a).

Section 113(a) requires FMCSA to amend 49 CFR part 395 to improve both driver and carrier compliance with the HOS regulations and the effectiveness and efficiency of HOS enforcement, at a cost reasonable to the motor carrier industry. As described in detail later in the preamble, this proposal would close the loopholes that made it possible for some operators to obscure their violations of the HOS rules by failing to collect, retain, or properly to index, documents that could be used to check the accuracy of drivers' RODS. Drivers—both employees and owner-operators—would be required to collect all documents that could be used to evaluate RODS data, put their name or the vehicle number on those documents and forward them to the employing motor carrier. The carrier would have to maintain these records and collect related documents from other sources that could be used to check each driver's RODS. All of these records would have to be available to special agents in the same manner as RODS themselves. The enforceability of the HOS regulations would be substantially improved. As for the cost of the proposal, there would be none if motor carriers and drivers were in full compliance with the current supporting documents regulation, as interpreted by a series of administrative and Federal appellate court decisions.[3] Because that is not the case, the costs will be borne by motor carriers not now collecting, retaining, and/or indexing supporting documents. FMCSA estimates the annual cost of the rule would be $14.2 million,[4] a modest sum given the very large carrier and driver population that would be covered by it. The

[1] Public Law 74–255, 49 Stat. 543, August 9, 1935.

[2] Public Law 98–554, Title II, 98 Stat. 2832, October 30, 1984.

[3] See the section below headed Motor Carrier Responsibilities for a discussion of the Federal appellate court decisions and the section headed Collection and Retention of Supporting Documents for a discussion of the administrative decisions.

[4] See the section headed Regulatory Impact Analysis for the discussion of how the agency estimated the $14.2 million costs.

requirements of Section 113(a) would therefore be satisfied.

More specifically, section 113(b)(1) provides that the new rules must require written or electronic documents used by a motor carrier in connection with a specific trip to include at least the driver's name or the vehicle's number, thus ensuring that the document can be tied to a particular driver and used as a supporting document to verify the accuracy of his/her RODS. This requirement would be met by proposed § 395.10(e) and (f).[5] The former would require both the driver and the motor carrier to identify each supporting document and to add the driver's name, the date and the vehicle number, if that data does not already appear on the document. The latter would require the motor carrier to identify supporting documents, including those received from sources other than the driver, and to maintain them in a manner that permits them to be matched to a particular driver's RODS on a particular day.

Section 113(b)(2) requires a regulatory provision specifying the number and kind of supporting documents that must be retained by a motor carrier. The new regulatory definition of ''supporting document'' in § 395.2 would cover any document generated or received by a carrier or driver during the normal course of business that could be used to verify a driver's RODS. We are proposing and requesting comments on a long, but not exclusive, list of examples.

Section 113(b)(3) requires a regulatory provision specifying how long a motor carrier must maintain HOS records; that period must be at least 6 months from the date of receipt. This SNPRM would require carriers to maintain RODS and all associated supporting documents for 6 months from the date of receipt (§ 395.8(k)(1)).

Section 113(b)(4) requires a provision authorizing motor carriers (individually or in groups), on a case-by-case basis, to use ''self-compliance systems'' that ensure driver compliance with the HOS rules and allow enforcement officers to audit those systems to validate compliance. As explained below in the section entitled ''Supplemental Proposal,'' FMCSA believes the exemptions authorized in 1998 by section 4007 of the Transportation Equity Act for the 21st Century[6] (TEA–21)—now codified at 49 U.S.C. 31315(b) and 31136(e) and 49 CFR part 381, subpart C—dovetail perfectly with the ''self-compliance systems'' mandated here. The agency will therefore entertain requests for HOS self-compliance systems that meet the statutory standard for an exemption, *i.e.*, maintenance of the same level of safety under the exemption as would be achieved by complying with the Federal Motor Carrier Safety Regulations (FMCSRs).

Section 113(b)(5) requires a regulatory provision allowing case-by-case waivers of the RODS requirements of part 395 for motor carriers (either individually or in groups) when sufficient supporting documentation is provided to enforcement personnel by an intelligent vehicle-highway system, as defined in section 6059 of the Intelligent Vehicle-Highway Systems Act of 1991. FMCSA has determined that, contrary to Congressional expectations, Intelligent Transportation (IT) systems have not yet advanced to the point where electronic monitoring of supporting documents by enforcement officers is a feasible substitute for RODS. The motor carrier industry has been quite reluctant to integrate its data systems with those of the enforcement community in a way that would allow real-time access to supporting documents. FMCSA is therefore unable to carry out this mandate quite the way Congress intended. Nonetheless, the agency will entertain exemption requests under part 381 if motor carriers believe they can demonstrate compliance with the HOS requirement without the use of RODS.

Section 113(c) defines ''supporting document'' for purposes of that section. The agency's new definition of the term in § 395.2 would meet the statutory requirement.

With one exception, all of the requirements of section 113 would therefore be met. That exception reflects the agency's inability to carry out section 113(b)(5), given the current state of IT systems.

As indicated above, section 113 assumes the existence of FMCSA's general rulemaking authority. The Motor Carrier Act of 1935 provides that ''[t]he Secretary of Transportation may prescribe requirements for—(1) Qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation'' (49 U.S.C. 31502(b)). This SNPRM is based on the agency's authority to regulate ''maximum hours of service of employees.'' Although the proposal would not change the substantive HOS regulations, it would make them easier to enforce and thus more effective, an objective implied by the grant of authority.

The Motor Carrier Safety Act of 1984 provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary to ''prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that—(1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators'' (49 U.S.C. 31136(a)).

This SNPRM is based primarily on the mandates to ensure that CMVs are ''operated safely'' and that the responsibilities imposed on drivers ''do not impair their ability to operate the vehicles safely'' (49 U.S.C. 31136(a)(1) and (2), respectively). Enhanced compliance with the HOS regulations will help to improve the operational safety of CMVs. This proposal would also make it easier for FMCSA to document, penalize, and deter cases where motor carriers permit, urge, or require drivers to exceed the HOS limits, thereby impairing their ability to drive safely.

Background on Hours of Service, RODS, and the Verification of RODS

The FMCSA requires that the number of hours a driver may operate a CMV be limited on a daily and weekly basis. These HOS requirements, found in part 395 of Title 49 of the Code of Federal Regulations (49 CFR part 395), are intended to provide drivers with opportunities to obtain sleep, and thereby reduce the risk of drivers operating CMVs while drowsy, tired, or fatigued. There is evidence that the majority of CMV crashes occur as a result of human error, that human error is often the result of inattention or diminished vigilance, and that inattention or diminished vigilance can often be the result of fatigue. Fatigue relates often to poor sleep quality and/or quantity, and poor sleep quality or quantity relates often to working schedules of CMV drivers. To facilitate enforcement of the HOS requirements,

[5] See the section headed Section-By-Section Analysis for the discussion about proposed paragraphs § 395.10(e) and (f).

[6] Public Law 105–178, 112 Stat. 107, at 401, June 9, 1998.

the FMCSA requires that motor carriers collect and maintain paper RODS (daily logs) prepared by the drivers. Motor carriers have the option of requiring that their drivers use automatic on-board recording devices in lieu of paper daily logs. The driver and/or the motor carrier are subject to administrative civil penalties for failure to make or preserve RODS, or for making any false report in connection with RODS. They are also subject to criminal penalties for such violations.

The HOS rules were first issued in the late 1930's (Ex Parte No. MC–2, 3 M.C.C. 665). Since that time, drivers have had the responsibility to prepare RODS. The original pocket rulebook from 1939 states that carriers and drivers would be liable for the accuracy of entries made by drivers on the RODS. The Interstate Commerce Commission (ICC) explained the original two purposes of the RODS as follows:

''[to allow for] a standardized type of record to be maintained of the daily driving time and the weekly hours on duty which would be in the possession of each driver and which would enable a highway patrolman or other enforcement officer to determine immediately upon the stopping of the vehicle whether the driver had been on duty or was driving in violation of our regulations. * * * [and] to provide a record from which our field representatives could readily determine whether or not the carriers are complying with the regulations'' (24 M.C.C. 413).

In order to determine whether carriers are complying with the HOS regulations, the FMCSA is authorized, by 49 U.S.C. 504(c), to inspect and copy any record of a carrier, lessor, or association and to inspect the equipment of a carrier, or lessor, or other person controlling, controlled by, or under common control with a carrier, as long as these actions were made in furtherance of an investigation and regardless of whether or not the records were required to be maintained by the FMCSA regulations or orders.

A third purpose of the RODS is that they enable motor carriers, at the time of dispatch, to ensure their drivers have sufficient time to safely complete trips within the HOS regulations. The FMCSA believes many motor carriers began to realize this purpose in the early years of the regulation.

Over the last 60 years, many motor carriers have regularly audited or inspected drivers' RODS for accuracy to ensure their drivers are complying with the HOS regulations. This enables the motor carriers to verify, through their own self-monitoring system, that drivers are accurately reporting their HOS. It also allows drivers to calculate their available hours before being dispatched. This provides the motor carrier with a valuable management tool to efficiently dispatch trips within the HOS limitations.

The FMCSA has learned from experience that in order for the motor carriers to ensure that drivers are alert and not fatigued, motor carriers must maintain self-monitoring systems that compare RODS to supporting documents. The Federal Highway Administration (FHWA) decided to adopt this practice of maintaining ''RODS supporting documents'' as a part of its regulatory oversight to assist motor carriers in operating safely. The FHWA published a final rule on November 26, 1982 (47 FR 53383) which, in part, required motor carriers operating in interstate commerce to retain supporting documents, along with drivers' records of duty status, for at least six months from the date of receipt (49 CFR 395.8(k)). The FHWA did not define the term ''supporting document'' in that final rule.

In general, motor carriers use many different types of business records to document various business transactions, such as bills of lading, carrier pro forma invoices or waybills, credit and debit card receipts, customs declarations, delivery receipts, dispatch and assignment records, expense vouchers, freight bills, fuel billing statements, toll receipts, weight scale tickets, etc. These records, among others, are generated by motor carriers, drivers, and independent contractors (including independent owner-operators) for their own business purposes, or they are received from third parties which include consignors, consignees, vendors, toll highway authorities and operators, and other business, regulatory, or law enforcement agencies for a variety of motor carrier purposes.

Motor carriers have been using these records not only to document various business transactions, but also to verify the accuracy of their drivers' RODS. Many motor carriers regularly maintain these records for their own internal management purposes. This practice, over the years, has become a standard motor carrier operating procedure among safe motor carriers. While a paper based supporting documents system continues as the primary method for testing the accuracy of drivers' records of duty status, there is a growing use of electronic systems and records by motor carriers that add to a motor carrier's ability to verify drivers' compliance with HOS rules. However, the FMCSA has encountered situations where the carrier often fails to maintain these electronic records for the 6-month period currently required for paper supporting documents.

The FHWA published regulatory guidance in the **Federal Register** on November 17, 1993 (58 FR 60734, 60761), and published revised guidance on April 4, 1997 (62 FR 16370, 16425), that provided examples of the types of supporting documents that should be retained. Both of these publications outlined our position that supporting documents are the records of the motor carrier maintained in the ordinary course of business that are used or could have been used by the motor carrier to verify the information recorded on a driver's record of duty status, such as the examples provided above. An extensive, but not a complete, list of the various types of records considered to be supporting documents is provided in this guidance, and it is available on the FMCSA Web site at *http://www.fmcsa.dot.gov/rulesregs/fmcsr/regs/395reg.htm*. (Scroll to Question 10 in the guidance for § 395.8.)

Motor Carrier Responsibilities

Regardless of the type of supporting document system used by the motor carrier, the motor carrier's responsibility for compliance with the FMCSRs remains clear. It is well settled that the motor carrier is responsible for, and must police the actions of, its employees. This obligation under the FMCSRs was affirmed by the Associate Administrator for what was then the Office of Motor Carriers (of the Federal Highway Administration) in *In the Matter of Horizon Transportation, Inc.,* 55 FR 43292 (October 26, 1990) (Final Order February 12, 1990). A motor carrier's responsibility for the actions of independent contractors and owner operators it uses was outlined in *In re R.W. Bozel Transfers, Inc.,* 58 FR 16918 (March 31, 1993) (Final Order August 6, 1992); and more recently in *In the Matter of Commodity Carriers, Inc.,* Docket No. FHWA–97–2393 (Order Appointing Administrative Law Judge March 25, 1997) (adopted by the Associate Administrator on Review, May 27, 1999). Likewise, each motor carrier must have a system in place that allows it to effectively monitor compliance with the FMCSRs, especially those aimed at driver fatigue, a major safety concern (See *In re National Retail Transportation, Inc.,* Docket No. FHWA–96–6390, document 4 (Final Order: Decision on Review September 12, 1996)).

The United States Court of Appeals for the Sixth Circuit affirmed in *A.D. Transport Express Inc.* v. *Federal Motor Carrier Safety Administration,* 290 F.3d 761 (6th Cir. 2002) that supporting

documents must be maintained in a common sense manner so that FMCSA special agents can ''verify dates, times, and locations of drivers recorded on the RODS.'' The United States Court of Appeals for the District of Columbia Circuit, in *Darrell Andrews Trucking, Inc.* v. *Federal Motor Carrier Safety Administration,* 296 F.3d 1120 (D.C. Cir. 2002), approved FMCSA's position that the term ''supporting document'' encompasses any document that could be used to support the RODS. The D.C. Circuit, in its decision, agreed with the Sixth Circuit that the FMCSA requirement for supporting documents to be maintained in a fashion that permits the matching of those records to the original drivers' RODS is a reasonable interpretation of 49 CFR 395.8(k)(1). In fact, the D.C. Circuit Court concluded that all the FMCSA is asking is that carriers refrain from destroying the agency's ability to match records with their associated drivers.

Previous NPRMs on Hours of Service Supporting Documents

1. 1998 Notice of Proposed Rulemaking

On April 20, 1998, in response to section 113 of the HMTAA, the FHWA published an NPRM (63 FR 19457, RIN 2125–AD52, Docket No. FHWA–98–3706) requesting comments on a proposed definition of ''supporting documents'' for the HOS regulations. The FHWA proposed that motor carriers develop and maintain effective auditing systems that would not have required the retention of supporting documents to monitor the accuracy of the drivers' RODS. The NPRM proposed that, if a motor carrier fails to have such a system, the motor carrier would be required to retain various types of business documents. The use of electronic recordkeeping methods was also proposed as a preferred alternative to paper records.

Comments to the April 20, 1998 NPRM

We received 41 comments in response to the 1998 Supporting Documents NPRM. Two organizations each submitted two comments that were counted as separate comments. The respondents represented three advocacy groups, two consultants to the industry, one labor union, 17 motor carriers, 13 trade associations including one motorcoach association, two on-board recorder manufacturers, and one State government agency.

Three comments fully supported the NPRM. They were from Bestway Express, Inc., Insurance Institute for Highway Safety (IIHS), and the National Propane Gas Association (NPGA). Bestway Express had two suggestions, in addition to its approval of the FMCSA's efforts. One was to develop:

> a process that allows self-assessment in program design for safety management. As an industry, and partner with Government, we need these kinds of initiatives as we go forward with performance-based standards. The approach that you have developed where a carrier can design a self-monitoring system, get pre-determined FMCSA assessment of that program, and then can implement their program is commendable.

Bestway's other suggestion was that, ''A self-monitoring system, if SafeStat is the performance standards, is the only model to use as a long-range implementation plan.''

The NPGA considered the proposal ''a significant step in implementation of electronic document technology into the operations of motor carriers generally.''

In supporting the proposal, the IIHS noted:

> Although the proposal is less stringent than authorized by the Act [HMTAA], it is an important first step in improving truck driver and motor carrier compliance with HOS rules. Any weakening of the proposed rule would contravene the intent of the Act [HMTAA].

Twenty-three (23) of the comments expressed their belief that the supporting documents NPRM should have been deferred until it could be considered in the context of the overall HOS rules. They believed the current HOS rule needs repair before the supporting documents rule is amended.

The National Association of Small Trucking Companies (NASTC) commented that carriers generally recognize their obligation ''not only to 'trust but to verify' the [drivers'] logs as submitted.'' It noted that the proposal squarely aimed at ''placing the burden on the carrier to catch drivers who make fraudulent log entries,'' and that ''the DOT cites over 30 different extrinsic documents which typically cross a trucking company's desk and suggests that some, part, or all of these documents can be used as an external check to stop log falsifications.''

Many commenters believed the proposal would impose significant burdens upon industry by requiring records to be kept that are not now required. Many believed few if any documents are produced for each beginning, intermediate, and end of a trip and that those documents that are produced do not have the information required by the statute, such as driver's name and the vehicle number.

Yellow Corporation's (Yellow) comments are indicative of LTL carriers generally. Yellow operates between fixed terminals, and manages HOS compliance through the payroll system, which, Yellow notes, is also used by investigative personnel during compliance reviews. Like many others, Yellow sees the proposal as expanding the burden of collecting many unnecessary records, when its present systems are adequate to do the job.

A few commenters were very concerned that the FMCSA had misinterpreted and misapplied the definition of ''burden'' in 5 CFR 1320.3(b)(2). They believed that collecting many receipts and keeping them for four months as proposed in the 1998 NPRM is not usual and customary in the motor carrier industry.

The NASTC also believed that the supporting documents rule should provide examples of acceptable carrier programs that would meet the NPRM's requirements. The writer of the comments described an intricate system of log verification employed by ''one of our larger, more sophisticated members.''

> Their dispatcher only dispatches drivers on loads which their hours of service show they can deliver legally. This carrier receives its driver's trip package containing the driver prepared record of duty status, toll receipts, bills of lading, and many of the other 30+ items named in the proposed regulation. All of the driver logs are reviewed for completeness and compliance with the 10, 15, and 70 hour rules. Approximately one third of the logs, selected randomly, are compared to supporting documents to determine if there has been any falsification. All log violations are noted and the offending drivers are notified by letter. Repeated violations result in warnings, out of service letters and ultimately termination.

He notes, however, that although the system could be reduced to writing for auditing purposes, the special agent conducting a compliance review would not be able to verify all the checking done by the record clerk, because the external documents used for that purpose are not retained centrally, or maybe not at all. Without reasonable guidelines, perhaps in the form of models or examples of acceptable systems or programs, the motor carrier can never know whether its system would pass muster. He also observed that the proposal fails to deal with distinctions between system design and system implementation, so that a carrier with an effectively designed system may be required to start over from scratch because a special agent found shortcomings in the way it was implemented.

In addition, a few comments provided specific responses to the nine questions the agency asked primarily related to internal self-compliance systems. The nine questions asked in the 1998 NPRM

are reprinted below, along with the paraphrased comments of several commenters.

Question (1). What types of self-monitoring systems should be considered in addition to the type proposed in this document?

Yellow contended that any software application that verified RODS through comparison with internal documents should be acceptable, and that the FMCSA should not limit a carrier's choice of a self-monitoring system to any specific application(s). Alabama Power agreed with Yellow so long as the self-monitoring scheme would provide a reasonable assurance of compliance. ROCOR Transportation was satisfied with the present system with the possible addition of the existing interpretive guidance.

Question (2). Whether and what conditions should be imposed upon motor carriers (such as accident or out of service prevention performance history) before the FMCSA would authorize a different self-monitoring system as an alternative to compliance with this proposed rule?

Yellow Corporation stated: ''The only conditions that should be considered in determining if the motor carrier must change its self monitoring system should be those directly related to errors/violations in the RODS or repeated violations of HOS.'' Alabama Power, on the other hand, believed the FMCSA should consider relative accident and out-of-service rates. Accident and out-of-service rates should be established for determining when additional monitoring is necessary. ROCOR Transportation was satisfied with the current system.

Question (3). Whether motor carriers seeking additional authorization should have some established safety record with the FMCSA or other State or local enforcement agencies?

This question apparently caused some confusion as Yellow Corporation answered as though the agency were asking about expanded operating authority, and believed the FMCSA should conduct a compliance audit of any carrier seeking to expand its operation by more than 20 percent. Alabama Power believed that carriers or industries with established good safety records should be exempted from all or part of the HOS regulations.

Question (4). What must happen before the FMCSA should disallow the use of a self-monitoring system or an alternative system?

As noted above, Yellow believed that the system should not be blamed for failure of individuals to comply, and that the FMCSA should establish standards for any such system. Alabama Power leaned toward a performance test, which demonstrates the value of the system by performance on the highway, *i.e.*, high accident and out-of-service rates. ROCOR Transportation believed the FMCSA special agent ought to be able to determine whether a carrier is effectively using a system, and make recommendations accordingly.

Question (5). Are there any other advanced technology systems currently in use or under development that the motor carrier industry may use to validate HOS or support the RODS?

Alabama Power believed most advanced systems are cost prohibitive, especially for utility companies where driving is a very minor part of their business. ROCOR Transportation acknowledged the industry has started using satellite technology.

Question (6). Should waivers be considered on a case-by-case basis for other systems that do not quite meet these requirements, but may have other compensating features that produce equivalent safety results?

Yellow's position was that the standards must recognize that differences in operations and practices will mean differences in monitoring programs. Therefore, variances must be considered on a case-by-case basis. Alabama Power advocates a more open system that suits each carrier's needs.

Question (7). Under what circumstances should the use of such alternative systems also operate as a substitute for the requirement to prepare and maintain RODS? Demonstration of the effective use of a system, in whole or in part, for verification should obviate any necessity to further examine the information produced by the system by enforcement personnel.

Yellow preferred criteria that would accurately capture the hours and be verifiable to a particular driver through a failsafe means, *e.g.*, a code or electronic signature. However, the company believed ''(o)nly when all parties requiring HOS information have the most advanced technology can alternative systems fully replace the current requirement.'' Alabama Power would permit any normal timekeeping system when ''the nature of a carrier's or industry's business limits the exposure to public safety,'' and the carrier or industry has an adequate commercial motor vehicle safety record.

Question (8). What impact would a six-month or longer record retention requirement have on the Federal government, State governments, and motor carriers?

Yellow was firmly opposed to any expansion of the present six-month retention requirement, which, it believed, is more than adequate for purposes of evaluating compliance. Assuming the retention requirement includes all supporting records, the company contends a carrier's administrative costs would increase significantly. Alabama Power agreed that, as written, the proposal would significantly increase the administrative burden of carriers. ROCOR Transportation notes the irony of suggesting increased burdens at a time when the pressure is on to reduce administrative workload. ROCOR would have preferred reducing the retention period to four months, which would be enough to enable FMCSA special agents to assess a carrier's safety posture.

The Georgia Public Service Commission (GPSC) believes the idea of reducing the retention time of RODS from six months to four months is unnecessary. It argued that in the current downsizing climate of government, six months is barely enough time to conduct compliance reviews where complaints have been received and to follow-up on serious crashes. It believed reducing the retention period to four months would result in time restraints that would not work for the governments because the workload of State and Federal compliance review personnel is increasing—not decreasing. They concluded that this would allow many serious complaints and crash investigations to go unfinished, as the evidence for substantiating the potential violations would have been discarded by the motor carriers. They suggested this issue is best left alone since most carriers and Congress are comfortable with the six-month time frame.

Question (9). Would we enhance enforcement and prosecution efforts with the longer retention requirement (*e.g.*, the ability to adequately enforce the rules, collect evidence for a criminal case, prepare the case, and successfully prosecute drivers or motor carriers for deliberately or recklessly violating HOS restrictions)?

Neither Yellow nor Alabama Power sees any benefit in longer retention requirements.

FMCSA's Response to the Comments on the 1998 Supporting Documents Proposal

The FMCSA agreed with those commenters who wanted to merge the supporting documents proposal into the HOS rule. The agency was under a legislative mandate to issue the NPRM on supporting documents, and used the opportunity to gather useful opinions

about a more systematic approach to monitoring HOS.

The FMCSA was attentive to the comments concerning the administrative burdens resulting from what some thought was a prescriptive alternative. The FMCSA believes the NPRM may not have been clear. Many commenters seem to have either misunderstood the options in the original proposal, or, more likely, feared too much discretion on the part of special agents, in determining the effectiveness of any alternate system. This was particularly evident in the extensive comments of the NASTC. NASTC's comments described a carrier program that would definitely have satisfied a requirement for an effective system, but the writer was apprehensive about the possibility that such a model program (although it was entirely a paper system) could be thwarted by a finding by a special agent that some element was lacking.

The actual intent of the proposal was captured much more accurately in the comments of Bestway, the NPGA and the IIHS. The FMCSA attempted to convert what, to some, appeared to be a very prescriptive statutory requirement into a rule that could provide an alternative to reliance on paperwork. There still appears to be a pervasive reluctance on the part of industry to employ technology to verify compliance with HOS rules. The agency understands that certain segments of the for-hire motor carrier industry do not favor the FHWA's and FMCSA's IT system joint program encouraging the installation and use of such satellite technologies for IT purposes, and at the same time, permitting FMCSA special agents the use of the same technology devices to assist in discovering violations of HOS regulations. On the other hand, there is a great deal of anxiety about increasing administrative burdens by requiring more verifying records to be kept and maintained.

With respect to the retention period, the GPSC has persuaded the FMCSA that six months worth of records is needed for proper reviewing by Federal and State officials of a driver's and carrier's compliance with the rules and for crash investigations. The FMCSA has decided to retain the six-month requirement in this SNPRM.

2.2000 Notice of Proposed Rulemaking

The April 20, 1998, NPRM was superseded by the May 2, 2000, Hours of Service NPRM (65 FR 25540, RIN 2126–AA23) [Docket No. FMCSA–97–2350; formerly FHWA–97–2350 and MC–96–28]. The supporting documents proposal was incorporated into the 2000 rulemaking based on comments to the 1998 NPRM recommending that the supporting documents rule be considered in the broader context of a complete revision of the Hours of Service rules. In the May 2000 NPRM, the FMCSA attempted to go further than the 1998 supporting documents NPRM by proposing basic changes to both the HOS and the means to verify compliance. The 2000 proposal addressed the issues raised by those commenters who believed the 1998 supporting documents proposal invited a ''one size fits all'' approach. The May 2000 proposal focused on those operations involving long or regional trips away from a home base with little carrier supervision of, contact with, or control over the driver. The FMCSA proposed to minimize the paperwork burden for all other operations and, whenever possible, to accept records that are required by other Federal agencies, notably the Department of Labor's Wage and Hour Division. The FMCSA stated that this approach would be consistent with the requirements of section 113 of the HMTAA.

Comments to the May 2, 2000 NPRM

Because of the new approach taken in the May 2000 NPRM, there were very few comments that specifically addressed supporting documents. Instead commenters focused on the overall approach, stating that they found it confusing and that it would be hard to enforce.

Supplemental Proposal

Today's SNPRM incorporates and supercedes both the April 20, 1998, supporting document NPRM and the supporting documents portion of the May 2, 2000, Hours of Service NPRM. Because of the original delay in issuing an HOS Final Rule based on the May 2000 NPRM and FMCSA's responsibility to issue regulations based on section 113 of the HMTAA, the FMCSA is issuing an SNPRM that is based on the proposed rules from the April 1998 NPRM but also adds entirely new language. Today's proposal addresses self-monitoring systems, records of duty status, and supporting documents for use in monitoring and enforcing the HOS (including minimum hours off duty, rest, and work) of CMV drivers.

Agency case law, as noted above under Motor Carrier Responsibilities, interprets the FMCSRs to require motor carriers to establish commonsense self-monitoring systems to verify the accuracy of drivers' HOS and RODS. This rule would explicitly require the motor carrier to have a systematic inspection, verification, and maintenance system to verify the accuracy of the times and locations of each driver for every working day on each trip, as well as mileage for each trip. The self-monitoring system proposed by this rule is not a self-compliance system as proposed in the 1998 NPRM. Rather, the FMCSA clarifies and strengthens in regulatory language the Agency's implied intent that all carriers must establish a RODS and supporting document self-monitoring system to verify accuracy of HOS and RODS.

FMCSA has decided to address the self-compliance systems referred to in section 113(b)(4) and (b)(5) of the HMTAA by allowing motor carriers to apply for exemptions under 49 CFR part 381, subpart C (§§ 381.300 through 381.330). Although the HMTAA uses the term ''waiver,'' FMCSA believes the section 113(b)(5) provision allowing a waiver is equivalent to the exemption provision under section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (codified at 49 U.S.C. 31315(b)), as distinct from the TEA–21 waiver provision codified at 49 U.S.C. 31315(a)(1). This is because section 31315(a)(1) limits the duration of waivers to a period ''not in excess of three months.'' Thus, FMCSA believes that allowing a carrier to apply for regulatory relief in the form of an exemption, rather than a waiver, would best serve the industry's interests and comport with Congress' intent.

The FMCSA is currently studying and developing standards required for an electronic on-board recorders (EOBR) system. See the September 1, 2004, advance notice of proposed rulemaking (69 FR 53386) requesting public comments about EOBRs by November 30, 2004. It continues to define the minimum set of data elements necessary to allow safety enforcement personnel to determine compliance with the hours of service requirements in part 395 of the Federal Motor Carrier Safety Regulations. The FMCSA will continue to study the feasibility, and cost and benefits of internal self-compliance systems and currently has several workgroups studying and reviewing electronic systems and their capabilities.

In this SNPRM, the FMCSA adopts the position that the use of electronic-based record keeping methods in a supporting documents system is preferred over traditional paper records. The FMCSA proposes to allow motor carriers to use electronic, laser or automated technology, (*e.g.* global positioning systems (GPS), automatic vehicle identifier transponders,

electronic bills of lading used by customs officials in the United States (U.S.) and other countries, and state driver-vehicle inspection reports using pen-based computer systems) in conjunction with *paper* supporting documents as long as the electronic supporting documents are retained for the same period as applies to paper supporting documents, are equally accessible and reviewable by special agents as are their paper counterparts, and can be produced, within 48 hours of demand, in hard copy. This position is in keeping with the requirements of the Paperwork Reduction Act of 1995 that the FMCSA eliminate duplication in record keeping and reduce the information collection burden on motor carriers. However, this SNPRM does not lose sight of the preeminent duty placed upon the Department of Transportation and the FMCSA by Congress to reduce crashes and fatalities, and to make the highways a safer method of travel.

Discussion of Specific Requirements

To satisfy the legislative mandate, the FMCSA is proposing to (1) add definitions for the terms ''supporting document'', ''employee'', and ''driver'' to § 395.2; (2) add a section entitled, ''§ 395.10 Systematic verification and record retention''; (3) modify the record retention requirements in §§ 390.29 and 390.31; and (4) clarify the motor carrier's responsibility to monitor drivers' compliance with the HOS and verify the accuracy of the drivers' RODS.

Definition of Supporting Documents

The FMCSA is proposing in § 395.2 to add the statutory definition of supporting documents as provided by Congress in the HMTAA, with the addition of clarifying language and a list of examples. The proposed list is only a sampling of the types of documents that the FMCSA believes could support the HOS and be used to verify the accuracy of RODS, when used either by themselves or with other documents. The FMCSA is also proposing to clarify that for the purpose of part 395 definitions of ''employee'' and ''driver'' are the same as defined in § 390.5. Thus all commercial motor vehicle drivers (including independent contractors) are considered to be employees of the motor carrier for the purposes of receiving, accepting, and submitting to the motor carrier any document defined as a supporting document while performing a transportation function. The FMCSA reaffirms in this notice that the term ''independent contractor'' includes an owner-operator.

The general rule as to what *type of document* falls into the category of ''supporting documents'' was outlined by the Administrative Law Judge Burton S. Kolko in National Retail Transportation in 1993 (*In re National Retail Transportation, Inc.,* FHWA–96–6390, document 3 (July 20, 1993)). In 1996, the Associate Administrator for Motor Carriers subsequently affirmed and adopted Judge Kolko's holding that ''supporting documents'' are those documents which pass through the carrier's hands in the normal course of business and which could be used to verify the information recorded on a driver's RODS (*In re National Retail Transportation, Inc.,* FHWA–96–6390, document 4 (September 12, 1996)). A similar definition is found within the HMTAA (Pub. L. 103–311, 108 Stat. 1673 (August 26, 1994)).

In order to achieve the FMCSA's goal of carrier compliance with the FMCSRs by effectively monitoring HOS, the motor carrier must be able to accurately determine, for each trip and for each day of the driver's trip, the location of the driver and the corresponding times that the driver was at those locations. To do so, a supporting document (whether it is paper or electronic based) must be verifiable.

Motor Carrier Self-Monitoring Systems

Considering the Congressional mandate in section 113(b)(4) of the HMTAA and current state-of-the-art electronic technology, the FMCSA continues to study, evaluate, and develop standards for design and use of electronic data in establishing self-compliance systems. The current technology permits motor carriers to maintain a dual system of electronic tracking and paper supporting documents.

This rule would explicitly require the motor carrier to have a self-monitoring system to verify the accuracy of the driver's times and locations for each working day on each trip, as well as mileage for each trip. Under § 395.8(d) and (f)(4), drivers already are required to record their total miles driving each workday. The ''self-monitoring system'' in this rulemaking differs from the ''self-compliance system'' mentioned in the HMTAA and the 1998 NPRM. This rule strengthens and clarifies the FMCSA's long-standing position that motor carriers must actively monitor and verify drivers' HOS and RODS.

The FMCSA requires motor carriers to be responsible for establishing and using a system to verify the accuracy of RODS and drivers' HOS. Regardless of the type of system used by the motor carrier (whether a ''supporting document'' system using traditional paper or one using electronic-based supporting documents), the motor carrier must be able to verify drivers' HOS and the accuracy of the duty report categories (on duty, driving, sleeper berth, off duty, time reporting for duty each day, time released from duty each day, and the total number of hours on duty each day) recorded by drivers on their RODS. The FMCSA believes that most carriers already produce, or could produce with relative ease, a document to verify the time and place of the driver and, as required by regulation, the vehicle mileage at the beginning and end of each workday. Various other supporting documents may be obtained during the trip, such as dispatch records, bills of lading, daily call-in records, shipping and receiving invoices, toll receipts, automatic vehicle identifier transponder records, and a variety of other receipts containing verifiable dates, times, and locations that can be identified with a specific driver. FMCSA considers it the motor carrier's responsibility to determine what supporting documents are available to the driver and motor carrier that could be used to verify the accuracy of RODS and HOS and to ensure that any electronic or mechanical means to reference date, time and location in the production of these documents is activated. The motor carrier must then collect, use, and maintain those documents.

Collection and Retention of Supporting Documents

The FMCSA believes all drivers, whether on the company payroll or an owner-operator, have a current regulatory obligation to comply with the HOS and RODS requirements, and to cooperate with their motor carrier employers by collecting and submitting the supporting documents needed to verify compliance with the rules. The FMCSA is clarifying in § 395.10(d)(2) that drivers must submit supporting documents to the motor carrier at the time the corresponding record of duty status is submitted.

The FMCSA would also clarify that motor carriers are currently required to retain all ''supporting documents'' that all drivers (including independent contractors) receive during a trip. This retention requirement applies no matter how the carrier pays drivers for these trips. The FMCSA imposes this requirement on the motor carrier under whose authority the driver is performing transportation services. Documents passing through the hands of leased drivers would be passing through the hands of the motor carrier because

drivers are the employees and representatives of the motor carrier for purposes of the FMCSRs during the course of the transportation service provided. This conclusion is consistent with the decisions in the National Retail Transportation cases discussed above and the FMCSRs, and would resolve the confusion created by two separate administrative cases: (1) *In re Ace Doran Hauling & Rigging Co.,* Final Order Under 49 CFR 385.15, February 24, 2000 (*see* FMCSA–2000–6997, document 4); and *In the Matter of Ace Doran Hauling & Rigging Co.,* FMCSA–2000–6997 (Order, July 11, 2000) (*see* also Order on Reconsideration and Final Order with Regard to Civil Penalties (February 8, 2001) and Order Vacating Order on Reconsideration and Final Order With Regard to Civil Penalties (May 10, 2001)). In *In the Matter of Spears Transfer & Expediting, Inc.,* FMCSA–2001–9110, document 5 (Decision On Petition For Safety Rating Review, April 26, 2002), FMCSA held that toll receipts and other supporting documents passing through the hands of a motor carrier's drivers are considered to be in the possession of a carrier, even if not forwarded to carrier management. FMCSA expressly stated that it was overruling any finding in the *Ace Doran* safety rating appeal inconsistent with the *Spears* decision. However, the *Spears* decision did not overrule *Ace Doran* in its entirety, because the *Spears* case involved company drivers rather than leased operators. This rule, when adopted, would complete the process of overruling the February 24, 2000, Order in *Ace Doran* by clarifying that the obligation to retain supporting documents extends to both independent contractors and company drivers. In doing so, the rule incorporates the long-standing definition of employee in 49 CFR 390.5, which states than an employee ''includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) * * *''

The Senate report accompanying the HMTAA discussed those situations where a motor carrier leases the service of drivers, such as independent contractors, owner-operators, or fleet-broker drivers employed by other motor carriers. S. Rep. No. 217, 103d Cong., 1st Sess. 1640 (1994). The report noted that documentation of a leased driver's duty status was frequently not obtained and retained by the motor carrier using the driver. This report also stated that it was the intent of the HMTAA to ensure that supporting documents, generated by such business arrangements, be retained by the motor carriers that perform the transportation service. Additionally, it is clear that it was Congress' intent to facilitate Federal and State enforcement efforts to document violations of the HOS regulations.

The FMCSA's enforcement personnel have experienced difficulties in obtaining supporting documents for trip lease arrangements between motor carriers and owner-operators. Senator Exon, the legislation's sponsor, discussed the need for this provision during the floor debate preceding final passage of the HMTAA. He explained that ''reports that auditors have been forced to retrieve documents from garbage dumpsters or play hide-and-seek with firms that have a history of habitual HOS violations give rise to the need for this provision.'' Further, Senator Exon stated that ''the object of this provision is to help make the roads safer by giving enforcement personnel the ability to catch flagrant abusers. It is not designed to create a trap for drivers who receive, for example, a pre-stamped toll receipt or to unfairly punish drivers for a de minimus deviation from the current rules.'' *See* 140 Cong. Rec. S11323 (daily ed. August 11, 1994).

The legislation sets a record retention period of at least six months. The FMCSA believes that this requirement was based upon Congress' intent to have supporting documents maintained for an identical period as the time required for duty status record retention, which is also six months. The FMCSA has received a few telephone inquiries regarding the retention period for ''Supporting Data for Reports and Statistics; Supporting data for periodical reports of * * * hours of service, * * *, etc.'' identified in 49 CFR part 379, Appendix A, Item K.2.

This retention period relates to an old FHWA monthly report acquired from the ICC in 1966. The FHWA required the report until December 15, 1967. The FHWA had required every motor carrier, other than a private carrier of property, to report on a Form BMC 60 ''every instance during the calendar month covered thereby in which a driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * *.'' Class I motor carriers of passengers and Classes I and II motor carriers of property also had to file the same Form BMC 60 report ''for every calendar month in which no driver employed or used by it has been required or permitted to be on duty, or to drive or operate a motor vehicle in excess of the hours * * *.'' *See* 32 FR 7128, May 11, 1967.

The FHWA had a retention period of three years. The FHWA removed the reporting requirement on December 15, 1967 (32 FR 17941). The ICC and the Surface Transportation Board never removed the retention period from its preservation of records list. Based upon the savings clause in the ICC Termination Act of 1995, the FHWA transferred the former ICC's preservation of records lists to the FHWA regulations on June 21, 1997 (62 FR 32040). This action provided the initial appearance of a conflict between parts 379 and 395 with respect to HOS supporting data and HOS supporting documents.

The proposal in this document in no way involves ''reporting'' data similar to the former report Form BMC 60. This proposal only relates to motor carrier recordkeeping requirements and a motor carrier's comparison of its own records to the driver's records of duty status. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.3(m) identifying the definitions of a ''recordkeeping requirement'' explain that a report is different than the retention of a record, notification of the existence of records, and disclosure of records. The FMCSA believes a report is a document submitted directly to the FMCSA, as was Form BMC 60 until December 15, 1967. In part 379, Appendix A, item K.2.'s reference to hours of service data, therefore, does not have any actual effect upon this proposal and therefore, the FMCSA proposes to delete item K.2. from Appendix A for these reasons.

Ability To Transfer Paper Supporting Documents That Contain a Signature to Automated, Electronic, or Laser Technology Formats

The FMCSA proposes to allow motor carriers to transfer supporting documents to electronic or laser technology systems. Currently, § 390.31(d) allows all records to be maintained in computer technology format, except those documents containing signatures.

Under this proposal, all supporting documents, including those requiring a signature, would be eligible for retention in electronic, laser or other automated format, so long as the motor carrier can produce an accurate, legible, and unaltered printed copy of the original supporting document within 48 hours of demand. The FMCSA is therefore proposing a conforming amendment to § 390.31(d). Automated, electronic, or laser technology systems that transmit information or a report directly to the driver or the motor carrier would also be acceptable.

However, the FMCSA is also proposing a requirement that automatic, electronic, or laser technology systems must be capable of reproducing the information stored in such systems for inspection at the motor carrier's place of business.

Motor Carrier's Discretion To Use Technology With Paper Supporting Documents

The FMCSA is also proposing to allow motor carriers to use electronic, laser or automated technology, (*e.g.*, GPS, automatic vehicle identifier transponders, electronic bills of lading used by customs officials in the U.S. and other countries, and State driver-vehicle inspection reports prepared by using pen-based computer systems) with paper supporting documents to allow the motor carrier to reduce the retention of some paper documents. However, the electronic data that can be used for verification of RODS must be maintained for 6 months.

The FMCSA would accept the data supplied by these technologies as alternatives to supporting documents, if the motor carrier can produce a legible, unaltered, printed copy of the required information at its principal place of business or other location. In the latter case, production would be required within 48 hours after a request has been made. The FMCSA would allow motor carriers to use any intelligent transportation system, developed now or in the future, in the manner and to the extent it is effective, for HOS and RODS verification.

The FMCSA's use of supporting document information obtained from electronic, laser, or automated technologies would be limited to the specific purpose of compliance with hours of service limits. The FMCSA believes the only information it would need from these systems would be date, time, location, driver, and vehicle specific information. The FMCSA would not use the information for any other purpose. The FMCSA proposes that all confidential, proprietary, and private information would be redacted by the agency before the agency would place the hours of service supporting information in publicly accessible locations. This means that the agency would redact such things as consignees and consignor names, routes, rates, and other proprietary information from any records it has acquired for enforcement purposes before placing the information in public dockets or other places that the public may have general access.

The FMCSA may allow a motor carrier to refrain from keeping all supporting documents when the agency finds a carrier's HOS compliance and its system demonstrate it effectively complies with the HOS rules. The FMCSA will consider a motor carrier's request to be exempt from the supporting document requirements under 49 CFR part 381. The FMCSA will base its decision on the carrier's HOS compliance as shown by the compliance review and the specific request the carrier submits.

The FMCSA also is interested in comments from suppliers and technology developers concerning the possibility of integrating various existing electronic data systems, such as NorPass and PrePass, to assist motor carriers interested in developing supporting-document information systems in lieu of paper documents. If technologically feasible, such alternative systems could reduce burden by allowing carriers, FMCSA, and State and local enforcement agencies to check HOS compliance remotely. The clearinghouse model may be relevant to this concept. The International Registration Plan, for example, uses a clearinghouse to apportion motor carrier registration fees (paid to the base State) among States in which registered vehicles have been driven.

The FMCSA would be particularly interested in supporting-document information systems that could cull out dates, times, locations, drivers, and vehicle-specific information. The latter technology could enable motor carriers and FMCSA to redact confidential, proprietary, and private information (such as consignee and consignor names, routes, and rates) that may be reviewed or audited by law enforcement officials but should not enter the public domain.

Location of Records

Under the proposed changes to § 390.29, motor carriers could retain their time records, RODS and supporting documents at a location of their choice. However, the location would have to be suitable for preserving the records so that they would not be damaged or lost. In addition, a motor carrier must be able to produce such records at its principal place of business within 48 hours of a request by an authorized enforcement official if those records are kept at a location other than the principal place of business. Otherwise, records kept at the principal place of business must be produced upon demand and without unreasonable delay. This request for documents can be made by telephone, fax, mail, or by other means. Saturdays, Sundays and holidays would be excluded from the computation of the 48-hour period of time. This 48-hour period would provide a reasonable amount of time for documents to be sent via overnight mail. Furthermore, most business operations with electronic transfer capabilities could probably produce information in a shorter period.

Retention Period

The FMCSA is proposing that *all* supporting documents, whether in electronic or paper format, be retained for the entire retention period. In this proposal, the term ''all supporting documents'' means all documents, whether electronic or paper, that can be used to verify the driver's RODS and time record entries for any particular trip. These documents must be capable of being matched by a special agent of the FMCSA or other authorized representative or a Federal, State, local, or tribal government to the original drivers' RODS. In addition, supporting documents may be required to be kept for longer periods based upon other Federal, State, or local laws, rules, or orders (*e.g.*, Internal Revenue Service rules). The FMCSA is proposing that these supporting documents must be kept for six months after receipt by the motor carrier, unless a longer period of time is required by another authority (*see* proposed §§ 395.8(k) and 395.10(h)).

Appendix B to Part 385, Explanation of Safety Rating Process

Section VII of Appendix B to part 385 lists critical and acute regulations, which play an important role in assigning a safety rating. The descriptions of section 395.8(i) in this section of the appendix would be updated to conform to the requirements of the SNPRM. New descriptions for the clarifications provided at § 395.10 would also be added, to allow the agency to accurately update the safety rating process on the effective date of the final rule. The FMCSA asks the public to comment on whether these regulatory citations are appropriate or different citations should be used, and whether the citations should be ''critical'' or ''acute'' violations.

Regulatory Impact Analysis

This SNPRM imposes no new regulations and therefore imposes no new costs or benefits. The purpose of this SNPRM is to bring existing rules into conformity with directions given by Congress and to remove any potential for misunderstanding of the rules by motor carriers or enforcement personnel.

As a result of past misunderstandings, some motor carriers and drivers do not believe the November 26, 1982, final

rule applies to them. They would now incur costs which they should have incurred with the promulgation of the 1982 rule. The FMCSA has estimated those costs and puts them in the context of the benefits necessary to make this proposal cost-effective.

Cost-effectiveness occurs when the benefits from a proposal equal or exceed the costs. In this case, that is the cost-effectiveness of clarifying the rule versus ignoring the misinterpretations. Given Congressional direction and an internal desire for clarity, consistency, and fairness, ignoring the misinterpretations is not an option. A meaningful reality check and perspective will be obtained by going through the calculations. For this analysis, FMCSA assumes that 25 percent of drivers and owner-operators are not in compliance with the existing regulation. The cost to bring them into compliance would be $14.2 million per year. As explained in the Regulatory Evaluation in the docket, in order for this proposal to be cost-effective, it would have to deter an estimated 228 crashes, including 2.3 fatal crashes. FMCSA seeks comment and data whether its 25 percent estimate is correct.

Benefits

The direct benefits of this rule are better conformity with the instructions of Congress, better clarity, and more even and thorough enforcement of HOS regulations. Enforcement is only a shadow benefit of the real benefit sought, which is safer roadways. Conformity and clarity are desirable, intangible qualities that do not lend themselves to straightforward quantification; therefore we do not estimate a tangible value for these benefits.

It would be most desirable if the FMCSA could directly compute the decrease in highway accidents and fatalities as a function of easier enforcement of HOS rules. Certainly, such a function exists in a probabilistic sense, but knowing or estimating that function would require experimentation in the real world, costing real lives. Therefore, the agency presents the reduction in accidents necessary to make this rule cost-effective.

The FMCSA knows from previous studies that accidents occur roughly in proportion, with fatalities being the rarest and property-damage-only (PDO) being the most common. The agency has not found anything in this SNPRM to suggest that it would affect one severity category differently from any other, so the agency assumes that those proportions would be unaltered.

TABLE 1.—NUMBER OF CRASHES AND COSTS IN 2000, BY SEVERITY

	PDO	Injury	Fatal	Total
Crashes [7]	338,000	96,000	4,917	438,917
Percentage	77%	22%	1%	100%
Cost per Crash [8]	$5,026	$100,382	$3,650,810	

[7] FMCSA, ''Large Truck Crash Facts 2000,'' Tables 13 through 18. 2002.
[8] Zaloshnja, Eduard, Ted Miller, and Rebecca Spicer (National Technical Information Service, Springfield, VA) *Costs of Large Truck- and Bus-Involved Crashes,* October 2000. (Inflated to 2002 dollars.)

Keeping the ratio constant, averting one accident involving a fatality also averts 22 accidents with injuries and 77 accidents with PDO. Therefore, a measure that averts one fatal accident results in total savings of approximately $6,246,216 from the 100 total accidents avoided. Even if these costs were considered new costs, the rule would only have to avert 228 accidents annually to be cost-beneficial, of which about 2.3 would involve a fatality, 50.2 would involve an injury, and 175.5 would involve PDO. Multiplying these values by the corresponding values from Table 1 yields $14.3 million in savings from reducing the accident rate.

Costs

While the FMCSA does not believe this SNPRM would impose any costs because all of its requirements are already required, the FMCSA has prepared the following analysis to show the effects on those not complying with the current rule. Their costs should be attributed to existing rules, even if, due to misunderstanding, they only begin assuming those costs after this clarification.

Drivers whose records have not been retained would have to place identifying information on all supporting documents that could be used to verify their RODS. Recognizing that no two trips are the same regarding the amount of documentation produced, the FMCSA used standard figures to approximate the central tendency of costs. The FMCSA assumes that ten pieces of information would need to be kept from each full day of travel. The agency estimates that it would take approximately 15 seconds to write the necessary information on each document. Assuming 250 full workdays in a year, this totals 625 minutes, or 10.42 hours, per driver per year. Using Bureau of Labor Statistics (BLS) data on ''Median Weekly Earnings'' from the Occupational Employment and Wages Estimates data for 1999 and 2000, the agency estimates average truck driver's wages of $15.82 per hour (including a 20 percent increase to account for employee fringe benefits). Annualized, this is $165 per driver affected.

The FMCSA assumes that this cost is imposed only on owner-operators not complying correctly with the current rule. According to Professor Francine LaFontaine of the University of Michigan, there are approximately 300,000 owner-operators.[9] The FMCSA believes that most of these owner-operators are complying with these provisions. If only 75 percent of owner-operators are currently collecting and retaining the required supporting documents, 75,000 (0.25 times 300,000) are not. This translates into an annual compliance cost of $12.4 million (75,000 times $165).

Owner-operators would also have to perform the administrative tasks of filing, maintaining, periodically deleting, and, if inspected, retrieving the supporting documents. This whole process would take between 1 and 2 hours annually, depending on many factors. The agency uses a proxy of one and a half hours and the same wage rate (since this calculation would come out of driving for owner-operators). This amounts to just under another $1.8 million, for a total of $14.2 million.

Motor carriers must have a self-monitoring system in place. This system should explain how they use supporting documents (and other means) to ensure

[9] Francine LaFontaine, Incentive Contracting in Practice: A Detailed Look at Owner Operator Leases in the U.S. Truckload Trucking Industry, Working Paper, June 2000, available at *http://webuser.bus.umich.edu/Departments/BusEcon/research/wp.lafontaine.2000.06.06.html.*

that their drivers comply with the HOS regulations. Since this is not a new requirement, it would not impose any additional costs to motor carriers.

Section-by-Section Analysis

Part 379, Appendix A, Row K.2

As discussed above in the section headed ''Collection and Retention of Supporting Documents,'' the FMCSA proposes to amend appendix A to 49 CFR part 379 to remove the phrase ''hours of service,'' from item K.2. This would remove an obsolete reference to a report that has not been required since December 15, 1967.

Part 385, Appendix B, Section VII

As discussed above in the section headed ''Appendix B to Part 385 Explanation of Safety Rating Process,'' the FMCSA proposes to revise the citation for § 395.8(i) and to add citations for § 395.10(a), (e), and (f) to the section VII list of acute and critical regulations. These citations play an important role in assigning a safety rating. The description for § 395.8(i) is being updated to conform to the requirements of this SNPRM. New descriptions for paragraphs § 395.10(a), (e), and (f) are also being added to allow the agency to accurately update the safety rating process on the effective date of a subsequent final rule.

Section 390.5 Definitions

The FMCSA proposes to amend the definition of the term ''employee'' originally adopted from the Motor Carrier Safety Act of 1984, Pub. L. 98–554, Oct. 30, 1984, Sec. 204(2), 98 Stat. 2829, 2833 (MCSA) (now codified at 49 U.S.C. 31132(2)). ''The Committee emphasize[d] that its inclusion of independent contractors under the definition of employee is for the purpose of [the MCSA] only; the Committee [did] not intend that this definition be construed as affecting the interpretation of the Internal Revenue Service as to the status of independent contractors under the tax laws.''

''Independent owner-operators'' employment status posed a unique problem to the [Congressional] drafters' of the MCSA. ''An independent owner-operator owns his own truck and drives it. He also may own several other trucks and have several drivers working for him. There is no question that the commercial motor vehicles he drives and his driving should be subject to the same safety rules as other commercial motor vehicles on the highway. All commercial motor vehicles if improperly maintained or operated pose a significant threat to the public safety.'' S. Rpt. 98–424, page 7.

Independent owner-operators' employment status and inclusion in the MCSA has continually posed unique problems for owner-operators to understand their responsibilities and unique problems for FMCSA's enforcement of the regulations. Based on these continuing problems, the FMCSA proposes to add the phrase ''and an owner-operator'' after the phrase ''independent contractor.'' The Congressional intent was that term ''independent contractor'' would substitute for the term owner-operators, however, many owner-operators and motor carriers may have forgotten this history. Adding the phrase after the phrase ''independent contractor'' should ensure motor carriers and drivers understand that the MCSA's generic term ''employee'' used by the FMCSA includes owner-operators. The FMCSA also wants to restate that using the term ''employee'' continues the FMCSA's and Congressional intent that the term does not affect the interpretation of the Internal Revenue Service as to the status of independent contractors under the tax laws.

Section 390.29 Location of Records and Documents

The FMCSA proposes to amend paragraph (b) by requiring the immediate production of records and documents that a motor carrier maintains at each principal place of business. The current requirement is silent as to when a motor carrier must produce records and documents that a motor carrier maintains at each principal place of business. Motor carriers have attempted to stall FMCSA special agents from conducting unannounced or short notice on-site investigations at the principal place of business generally providing the reason that § 390.29(b) allows them to produce records for up to 48 hours after a demand is made. The FMCSA never intended to allow such practices. The proposal would make clear that all records and documents which are maintained at the principal place of business where an investigation is occurring must be produced upon demand by a special agent of the FMCSA or other authorized representative of a Federal, State, local, or tribal government.

Paragraph (b)(2) would continue to allow records and documents that motor carriers maintain at their regional offices or driver work-reporting locations to be made available for inspection within 48 hours after a demand is made. The FMCSA would continue to exclude Saturdays, Sundays, and Federal holidays from the computation of the 48-hour period of time.

Section 390.31 Copies of Records or Documents

The FMCSA proposes to revise paragraph (d) to incorporate guidance that was published allowing automated, electronic, or laser technology systems to store copies of records or documents provided the motor carrier can produce an accurate, legible, and unaltered printed copy of the required data and provided that alternate means for signature verification are available. If the FMCSA adopts this proposed paragraph, the two interpretations published on April 4, 1997 (62 FR 16730) on page 16408, column three for § 390.31 would become obsolete and unnecessary.

Section 395.1 Scope of the Rules in This Part

The FMCSA proposes to move the introductory phrase of § 395.8(a) to § 395.1(p). The FHWA moved the three exceptions and exemptions contained in the CFR before August 31, 1992 at §§ 395.8(k)(2) *Retention of driver's record of duty status,* 395.8(l)(1) *100 air-mile radius,* and 395.8(l)(2) *Hawaiian driver's records of duty status* to § 395.1 on July 30, 1992 (57 FR 33638, at 33645). The FMCSA intends to move the exception for private motor carrier of passengers (nonbusiness) and its drivers to § 395.1 to list the various exceptions and exemptions in one convenient location at the front of part 395.

Section 395.2 Definitions

The FMCSA proposes to revise the introductory phrase of § 395.2 to ensure that the public knows that all definitions used in Part 395 that are not separately defined in this section are defined in § 390.5.

Section 395.8 Records of Duty Status

As discussed above under the section-by-section subheading *''§ 395.1 Scope of the rules in this part,''* the FMCSA proposes to revise the introductory phrase of paragraph (a) to move the exception for private motor carriers of passengers (nonbusiness) and their drivers to § 395.1(p).

The FMCSA proposes to revise paragraph (d)(3) to include coach and bus vehicle numbers to be included on the record of duty status.

Paragraph (i) would revise the current requirement to include that motor carriers and drivers must collect supporting documents along with the records of duty status. The FMCSA

intends that the use of the term ''systematically'' in this section and subsequent sections would have the ordinary common-sense definition to mean a methodical procedure that is marked by thoroughness and regularity.

The FMCSA proposes paragraph (k) would revise the current requirement to include that motor carriers and drivers must retain systematically supporting documents and the records of duty status.

Section 395.10 Systematic Verification and Record Retention

This proposed new section would clarify existing requirements that have been implied by the FMCSA and its predecessors and upheld by the D.C. and Sixth Circuit Courts.

First, the FMCSA would clarify that every motor carrier must systematically and effectively monitor its drivers' hours of service and the accuracy of the information contained on drivers' records of duty status by comparing paper records of duty status, automatic on-board recording device records, or GPS records with information contained in supporting documents. Supporting documents could include third-party records, including State weight or toll receipts or transponder records maintained on behalf of States by providers such as PrePass or NorPass. The motor carrier's required monitoring procedure would be methodical, thorough, and regular. The procedure must allow an FMCSA special agent to verify drivers' records using the supporting documents.

In addition to the system employed by one of NASTC's larger, more sophisticated members that was described above in the discussion of comments to the NPRM, the FMCSA believes the following example would also be a best practice for what the agency is seeking to attain by this proposal to require systematic and effective monitoring to ensure drivers comply with the Federal HOS.

An Indiana-based motor carrier uses a system that combines electronic technology and paper supporting documents for determining driver compliance with HOS requirements. This carrier's system consists of a three (3) level false RODS checking system.

Level One: The first level of the analysis uses an electronic interface with the fuel billing system automatically comparing all fuel purchases and cash advances—by date and time—with each driver's daily RODS. The system looks for ''on duty not driving'' time which coincides with the particular fuel purchase or cash advance. A non-match may indicate an inaccurate log. However, whether or not there is a match, the carrier passes the RODS on to Level Two.

Level Two: The carrier compares RODS with any and all receipts that are in the driver's trip envelope for that trip. This includes purchase receipts, tolls, scales, and any other dated supporting documents.

Level Three: The carrier audits the RODS by using ''point-to-point'' mileage software to check the miles and hours driven for accuracy.

In addition to the three-level approach above, the carrier also uses information from all moving violations, accident reports, roadside inspections, and motorist complaints to check the accuracy of driver's RODS.

Using this three-level approach, the carrier approaches a 100 percent check of all RODS for falsification. In other words, their goal is 100 percent with the rare instance where there is not enough supporting documents for one trip to accurately verify the RODS.

Paragraph (b) would clarify that the FMCSA would measure the motor carrier's compliance against a certain level to determine its effectiveness. The level where FMCSA currently determines whether too many false records and non-compliance exists is whether an FMCSA special agent finds 10 percent or greater drivers' records to be false or in violation. The FMCSA may use any supporting documents or other evidence, whether or not in the motor carrier's possession, to determine the validity of the drivers' paper or automatic records of duty status and the effectiveness of the motor carrier's supporting document monitoring system. The FMCSA, however, may limit its special agents' use of records that the motor carrier does not possess or could not have possessed, at the FMCSA's discretion.

The FMCSA proposes in paragraph (c) that it would clarify that the motor carrier would be required to begin to systematically use effective supporting documents that FMCSA believes to be more effective to verify the accuracy of the hours of service and paper or automatic records of duty status, if the agency determines the motor carrier's monitoring is ineffective in verifying the drivers' compliance with the hours of service and the accuracy of the paper or automatic records of duty status. In addition, the FMCSA believes it is important to note that the phrase ''verifying the drivers' compliance with the hours of service'' as is currently interpreted would include that the agency would determine that a carrier's system is ineffective if the carrier has a significant number of HOS violations or false RODS.

Paragraph (d) proposes to clarify that the motor carrier's drivers must retain all supporting documents that come into the possession of the driver in the ordinary course of the driving operation. This would include all independent contractors and owner operators as discussed above. In addition, the FMCSA would clarify that the driver must provide the supporting documents and the paper or automatic records of duty status to authorized enforcement officials of Federal, State or local government upon request or demand as well as to the motor carrier.

The FMCSA proposes in paragraph (e) to clarify the motor carrier's and driver's responsibilities to identify supporting documents and the paper or automatic record of duty status they support. In addition, the regulation would include clarifying the responsibility that motor carriers and drivers must not obscure or deface other information contained in the supporting document. The responsibility that motor carriers and drivers must not obscure or deface other information contained in the supporting document comes from 49 U.S.C. 521.

The FMCSA proposes that the identification system may include legibly adding the driver's full name, date, and vehicle number, if those items do not already appear on the document. The FMCSA, however, is not requiring the carrier or driver add such information to cross-reference the documents. The current implication in the rules is only that a means to cross-reference the documents is necessary. Thus, a carrier may use a different system to cross reference supporting documents to RODS.

Paragraph (f) also proposes to clarify the motor carrier's responsibility to identify additional supporting documents that it receives from any source, but that the driver probably does not receive. This would include documents generated by the carrier and documents from both carrier and third-party electronic systems (*e.g.,* GPS reports, on-board computer records, transponder reports, and scanned or electronically mailed documents). Various toll authorities are allowing carriers to pay tolls using transponders for which the carrier may get periodic reports of use or charges that the FMCSA would consider to be supporting documents. In addition, electronic-mail messages have become widely used between drivers and motor carriers. These messages have references to dates, times, or locations, which must remain activated, and must be kept in a manner that permits matching of

records to the driver's RODS. Motor carriers should recognize, however, that such records are not in the public domain, and exert appropriate privacy controls.

The FMCSA proposes in paragraph (g) to restate the current requirement that motor carriers must provide RODS and supporting documents to any duly authorized Federal, State or local government enforcement official upon request or demand as is required currently, and would continue to be required, under §§ 390.29, 390.31, and 395.8(k).

Finally, the FMCSA proposes in paragraph (h) to clarify that the violations of these clarified rules would be considered failures of the motor carrier's and driver's responsibilities to verify and maintain records of duty status and supporting documents. The FMCSA proposes such violations would include civil and criminal penalties under 49 U.S.C. 521 for such violations as:

(1) Failure to prevent a driver from falsifying his records of duty status;

(2) Failure to prevent alteration of supporting documents;

(3) Alteration of supporting documents which changes their accuracy;

(4) Failure to prevent a driver from exceeding the hours-of-service; and

(5) Failure to have an effective system to verify and maintain records of duty status and supporting documents.

Rulemaking Analyses and Notices

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

The FMCSA has determined that this document does not contain an economically significant regulatory action under Executive Order 12866. The FMCSA has estimated that this rulemaking would have an annual economic impact on the motor carrier industry of less than $100 million. The proposal is significant under Executive Order 12866 because of substantial public interest. The proposal has been reviewed by OMB.

The FMCSA has determined this regulatory action is significant under the regulatory policies and procedures of the DOT because of the high level of interest concerning motor carrier safety issues expressed by Congress, motor carriers, their drivers and other employees, State governments, safety advocates, and members of the traveling public.

As discussed below, current FMCSA regulations have required the retention of all supporting documents since January 1, 1983, the effective date of the November 26, 1982, final rule, and responsible motor carriers have collected and retained all such documents both in the ordinary course of business and for purposes of regulatory compliance. This rule would explicitly require motor carriers to have systematic means to inspect, verify, and maintain drivers' HOS and RODS; more clearly would define who must collect and retain supporting documents; and would explain how supporting documents are to be collected, where they must be kept, and for how long. This rulemaking action would not create a serious inconsistency with any other agency's action or materially alter the budgetary impact of any entitlements, grants, user fees, or loan programs. The FMCSA discussed the regulatory impact analysis earlier in this document under the heading Regulatory Impact Analysis. Evaluation of the information collection costs of this proposed rule is described fully below in the Paperwork Reduction Act section.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the agency has evaluated the effects of this rulemaking on small entities. The Regulatory Flexibility Act requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This proposal does not impose any costs on the public and therefore does not impose any costs upon small entities. FMCSA, however, has prepared an Initial Regulatory Flexibility Analysis because of the considerable public interest in this proposal to show the negligible potential economic impact it would have on small entities domiciled in the United States. We performed the analysis in the broadest possible terms by counting all the costs that small entities might begin to bear as a result of this clarification, even if those costs should have been borne by them all along.

This Initial Regulatory Flexibility Analysis must include the following elements:

1. A description of reasons why action is being considered;

2. The objectives of, and legal basis for, the rule;

3. A description and estimated number of small entities regulated and domiciled in the United States;

4. A description and estimate of compliance requirements including differences in cost, if any, for different groups of small entities;

5. Identification of duplication, overlap, and conflict with other rules and regulations; and

6. A description of significant alternatives to the rule.

Initial Regulatory Flexibility Analysis

1. Description of Reasons Action Is Being Taken

The purpose of the proposal is to bring existing rules into conformity with directions given by Congress and to remove any potential for misunderstanding of the rules by motor carriers or enforcement personnel. As a result of past misunderstanding, some motor carriers and drivers did not believe the rule applied to them. They would now incur costs which they should have incurred with the passage of the rule on November 26, 1982 (47 FR 53383).

This SNPRM would clarify existing requirements that have been implied by the FMCSA and its predecessors and upheld by the D.C. and Sixth Circuit Courts as discussed above. The SNPRM would clarify decisions in the National Retail Transportation cases discussed above, and would resolve the confusion created by two separate administrative cases: (1) *In re Ace Doran Hauling & Rigging Co.*, Final Order Under 49 CFR 385.15, February 24, 2000 (*see* FMCSA–2000–6997, document 4); and *In the Matter of Ace Doran Hauling & Rigging Co.*, FMCSA–2000–6997 (Order, July 11, 2000) (*see* also Order on Reconsideration and Final Order with Regard to Civil Penalties (February 8, 2001) and Order Vacating Order on Reconsideration and Final Order With Regard to Civil Penalties (May 10, 2001)). *In the Matter of Spears Transfer & Expediting, Inc.*, FMCSA–2001–9110, document 5 (Decision On Petition For Safety Rating Review, April 26, 2002), FMCSA held that toll receipts and other supporting documents passing through the hands of a motor carrier's drivers are considered to be in the possession of a carrier, even if not forwarded to carrier management. FMCSA expressly stated that it was overruling any finding in the *Ace Doran* safety rating appeal inconsistent with the *Spears* decision. However, the *Spears* decision did not overrule *Ace Doran* in its entirety, because the Spears case involved company drivers rather than leased operators. This proposal, when adopted, would complete the process of overruling the February 24, 2000, Order in *Ace Doran* by clarifying that the obligation to retain supporting documents extends to both independent contractors and company drivers. In doing so, the proposal incorporates the

long-standing definition of employee in 49 CFR 390.5, which states than an employee ''includes a driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) * * *''

2. Objectives and Legal Basis

The objective for this action is to improve both (A) compliance by commercial motor vehicle (CMV) drivers and motor carriers with the HOS requirements, and (B) the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance. As noted above, the legal basis for this rule is section 113 of the Hazardous Materials Transportation Authorization Act of 1994, Pub. L. 103–311, 108 Stat. 1673 (August 26, 1994).

3. Description and Estimated Number of Small Entities Regulated and Domiciled in the United States

The main cost generating element of this proposal is to bring all owner-operators into compliance with the record keeping requirements of the hours-of-service regulations. We assume 25 percent of approximately 300,000 existing owner-operators are not in compliance with the existing regulations for cost estimation purposes. Owner-operators are acting as either drivers or motor carriers.

4. Description and Estimate of Compliance Requirements

This proposal would apply to those small entities regulated by the FMCSA that use CMV drivers. It is difficult to determine exactly how many small entities would be affected by this proposal, partly because it is unknown how many motor carriers were unaware that the existing rule applies to them and partly because it is not known year-to-year how many small entities on average would use CMV drivers. However, as of June 2004, there were 650,000 U.S.-domiciled motor carriers on the FMCSA's Motor Carrier Management Information System (MCMIS) census file. This includes both for-hire and private motor carriers domiciled in the United States. The Small Business Administration (SBA) defines small businesses in the motor carrier industry based on thresholds for average annual revenues, below which SBA considers a motor carrier small. For trucking companies, the threshold is $21.5 million in annual sales, while for motorcoach and related industries the threshold is $6 million in annual sales. Data from the 1997 Economic Census (U.S. Census Bureau), North American Industrial Classification System (NAICS) Code 4841, ''General Freight Trucking,'' indicates that 99 percent of ''general freight'' trucking firms had less than $25 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $21.5 million for motor carriers). In the case of passenger (or motorcoach) carriers, the 1997 Economic Census, NAICS Code 4855, ''Charter Bus Industry,'' indicates that 94 percent of charter bus firms had less than $5 million in annual sales in 1997 (which most closely corresponds to the SBA threshold of $6 million for passenger carriers).

Because the FMCSA does not have annual sales data on private carriers, it assumes the revenue and operational characteristics of private motor carriers are generally similar to those of for-hire motor carriers. Regardless of which of the above percentages is used (99, 94, or 96 percent), FMCSA estimates that over 600,000 of the approximately 650,000 total motor carriers in the MCMIS Census File meet the definition of small businesses.

Although these small entities would have to keep records verifying all of their employees' status regarding the HOS, there is no additional administrative cost borne by most of them because they already have to maintain those records under the current system. Of the three hundred thousand (300,000) owner-operators, some unknown number are not in compliance due to misinterpretation of the rule. Now they would incur the recordkeeping costs they should have incurred since January 1, 1983, which are the same as the costs that other motor carriers have been bearing.

The FMCSA believes that all the costs of this proposal would be borne by owner-operators who were required to bear them all along but were unaware of that fact.

Data from the 1997 Economic Census, NAICS Code 4841 (General Freight Trucking) and NAICS Code 4855 (Charter Bus Industry) are contained in the tables 2 and 3.

TABLE 2.—AVERAGE ANNUAL REVENUES OF SMALL TRUCKING FIRMS

[NAICS Code 4841, General Freight Trucking]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (Millions)	Compliance costs per driver ($165 per driver), as percent of annual revenues per firm
Less than $25 million	*27,609	1.33	0.0124

*99 percent of segment total.

TABLE 3.—AVERAGE ANNUAL REVENUES OF SMALL PASSENGER CARRIERS

[NAICS Code 4855, Charter Bus Industry]

Revenue size	Number of firms (percent of segment total)	Average annual revenues per firm (Millions)	Compliance costs per driver ($165 per driver), as percent of annual revenues per firm
Less than $5 million	*1,022	0.98	0.0168

*94 percent of segment total.

Since we do not have sufficient information to estimate the distribution of the number of drivers per small firm, we provide reasonable bounds of one employee per firm to 30 employees per firm. Between these boundaries, the costs range from 0.0124 percent and 0.372 percent of annual revenues. These bounds overestimate the effect on the

larger motor carriers because they generally have more than the average revenue for firms in this size category. Even at 0.372 percent of annual revenues (*i.e.* $4,950 for a firm with 30 drivers), this rule is clearly not imposing a cost burden that would alter the market or force firms from the industry.

There are other potentially affected industries, listed in Table 4. They are less directly affected than the two listed above, but still may include some firms employing owner-operators who wrongly assumed that their employers were the ones required to maintain the supporting documents for six months. These are listed for completeness only, as we do not expect many affected small entities in any of these industries.

TABLE 4.—OTHER POTENTIALLY AFFECTED INDUSTRIES

NAICS code	Alphabetic keywords	2002 NAICS short title
1112	"Truck farming, field, bedding plant and seed production"	Other Vegetable (except Potato) and Melon Farming.
2389	"Aerial or picker truck, construction, rental with operator"	Site Preparation Contractors.
4251	Fuel oil truck jobbers	Wholesale Trade Agents and Brokers.
4842	"Trucking used household, office, or institutional furniture and equipment".	Used Household and Office Goods Moving.
4852	"Bus line operation, intercity"	Interurban and Rural Bus Transportation.
4854	"Bus operation, school and employee"	School and Employee Bus Transportation.
4871	"Buses, scenic and sightseeing operation"	"Scenic and Sightseeing Transportation, Land".
5621	Dump trucking of rubble or brush with collection or disposal	Other Waste Collection.
7223	Ice cream truck vendors	Mobile Food Services.

5. Compliance Requirements of the Rule

Although these small entities would have to keep records verifying all of their employees' hours-of-service status, there is no additional administrative cost borne by most of them because they already have to maintain those records under the current system. Some portion of the 300,000 owner-operators would now have to incur some additional cost related to providing motor carriers supporting documents that the owner-operators previously maintained for tax reporting and other business expense purposes.

The FMCSA believes that all the costs of this proposal would be borne by owner-operators who failed to comply with our current regulations. These owner-operators would require no special technical or professional skills beyond what they already possess.

6. A Description of Significant Alternatives to the Rule

As explained above, this rule would have minimal impact on small businesses. Any alternatives would be likely to increase the costs rather than decrease them since ignoring the misunderstanding is not a permissible option. For example, changing the reporting system so that records are kept electronically would be likely to impose high initial costs and small maintenance and power costs. Reducing the length of records retention would reduce costs, but only slightly. Short retention periods would restrict the special agent's ability to identify patterns that indicate unsafe practices.

FMCSA welcomes comments on these or other possible alternatives and their impacts on small entities.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year (in 2003 dollars) (2 U.S.C. 1531 *et seq.*). The FMCSA believes the total projected cost of this proposal is $14.2 million per year and that the cost would be borne solely by owner-operators. State and local governments may see a reduction in enforcement costs, but FMCSA has not quantified this because it is not clear whether they would seek the same enforcement level at a lower cost or more enforcement at the same cost. For the purposes of this analysis, the agency assumed the latter. The FMCSA requests additional comments whether this should be considered a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $120.7 million or more in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. An analysis of this Supplemental Notice of Proposed Rulemaking has been made by the FMCSA, and it has been determined that it relates to the currently-approved information collection covered by OMB Control No. 2126–0001, entitled "Hours-of-Service of Drivers Regulations." Information Collection 2126–0001, with an annual burden of 160,376,492 hours, expires on April 30, 2006.

This SNPRM intends to clarify each motor carrier's hour-of-service and records of duty status responsibilities under the current regulations. The FMCSA has preliminarily determined that this proposal would not result in an increase in the existing information collection burden. However, the agency requests public comment on this determination. The OMB currently approves this information collection as follows:

OMB Control Number: 2126–0001.

Title: Hours of Service of Drivers Regulations.

Respondents: 1,538,503,200 (motor carriers, CMV drivers).

Estimated Annual Hour Burden for the Information Collection: 160,376,492.

Estimated Annual Cost to Respondents: $63,306,510 (4,220,434 drivers employing logbooks × $15 per year per driver).

Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to:

(1) Whether the collection of information is necessary for the performance of the functions of the FMCSA, including whether the information has practical utility, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the collected information, and

(4) ways to minimize the collection burden without reducing the quality of the information collected.

If you submit copies of your comments to the Office of Management and Budget concerning the information collection requirements of this document, your comments to OMB will be most useful if received at OMB by December 3, 2004. You should mail, hand deliver, or fax a copy of your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503, fax: (202) 395–6566.

National Environmental Policy Act

The agency analyzed this supplemental proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6.y.(7) of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to the regulations concerning prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this proposed rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General conformity requirement since it involves policy development and civil enforcement activities, such as, investigations, inspections, examinations, and the training of law enforcement personnel. *See* 40 CFR 93.153(c)(2). It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely establishes standards for hours-of-service supporting document entries on records of duty status for motor carriers, agents, officers, representatives, and CMV drivers.

We seek comment on these determinations.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The agency has determined preliminarily that this proposed action would not significantly affect the supply, distribution, or use of energy.

Executive Order 13045 (Protection of Children)

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low income Populations)

The FMCSA evaluated the environmental effects of the proposed action and alternatives in accordance with Executive Order 12898 and determined that there were no environmental justice issues associated with revising the supporting documents for records of duty status for the hours-of-service regulations. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. FMCSA analyzed the demographic makeup of the trucking industry potentially affected by the proposal and determined that there was no disproportionate impact on minority or low-income populations.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that it would not have significant Federalism implications or limit the policymaking discretion of the States.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

List of Subjects

49 CFR Part 379

Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 381

Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FMCSA proposes to amend 49 CFR parts 379, 381, 385, 390, and 395, as set forth below:

PART 379—PRESERVATION OF RECORDS

1. The authority citation for part 379 continues to read as follows:

Authority: 49 U.S.C. 13301, 14122 and 14123; and 49 CFR 1.73.

Appendix A to Part 379—[Amended]

2. Amend Appendix A to 49 CFR part 379 by removing the phrase ''hours of service,'' from item K.2.

* * * * *

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

3. The authority citation for part 381 is revised to read as follows:

Authority: 49 U.S.C. 31136(e) and 31135; sec. 113(b)(4) and (5) of Pub. L. 103–311, 108 Stat. 1677; and 49 CFR 1.73.

PART 385—SAFETY FITNESS PROCEDURES

4. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

5. Amend section VII in Appendix B to part 385 by revising the citation and text for § 395.8(i) and adding citations and text for § 395.10(a), (e), and (f), in alphanumerical order, to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 395.8(i) Failing to require driver to forward within 13 days of completion, the original of the record of duty status and all supporting documents (critical).

* * * * *

§ 395.10(a) Failing to verify the accuracy of paper records of duty status or automatic on-board recording device records by comparing their information with the information contained within each supporting document (critical).

§ 395.10(e) Failing to systematically identify each supporting document and the paper or automatic record of duty status it supports (critical).

§ 395.10(f) Failing to maintain each supporting document in a manner that permits the matching of the record to the original driver's record of duty status (critical).

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

6. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

7. Amend § 390.5 by revising the definition of the term ''employee'' to read as follows:

§ 390.5 Definitions.

* * * * *

Employee means any individual, other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety. Such term includes a driver of a commercial motor vehicle (including an independent contractor and an owner-operator while in the course of operating a commercial motor vehicle), a mechanic, and a freight handler. Such term does not include an employee of the United States, any State, any political subdivision of a State, or any agency established under a compact between States and approved by the Congress of the United States who is acting within the course of such employment. This definition does not affect the status of a driver as an independent contractor or employee under United States Department of the Treasury, Internal Revenue Service interpretations of the tax laws or in any other context beyond this subchapter.

* * * * *

8. Revise § 390.29(b) to read as follows:

§ 390.29 Location of records and documents.

* * * * *

(b)(1) All records and documents required by this subchapter which are maintained at the principal place of business must be produced upon demand by a special agent of the Federal Motor Carrier Safety Administration or other authorized representative of a Federal, State, local, or tribal government.

(2) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location must be made available for inspection, upon demand by a special agent of the Federal Motor Carrier Safety Administration or other authorized representative of a Federal, State, local, or tribal government at the motor carrier's principal place of business or other location specified by the special agent or other authorized representative within 48 hours after a demand is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

9. Revise § 390.31(d) to read as follows:

§ 390.31 Copies of records or documents.

* * * * *

(d) *Exception.* All records may be maintained through the use of automated, electronic, or laser technology systems provided the motor carrier can produce an accurate, legible, and unaltered printed copy of the required data; and provided that alternate means for signature verification are available.

PART 395—HOURS OF SERVICE OF DRIVERS

10. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 14122, 31133, 31136, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; and 49 CFR 1.73.

11. Amend § 395.1 by revising paragraph (a)(1) and adding a new paragraph (p) to read as follows:

§ 395.1 Scope of rules in this part.

(a) *General.* (1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (p) of this section.

* * * * *

(p) *Private motor carriers of passengers (nonbusiness).* The provisions of § 395.8 do not apply to a private motor carrier of passengers (nonbusiness) or its drivers.

12. Amend § 395.2 by revising the introductory text and adding the definition of ''Supporting document,'' alphabetically, to read as follows:

§ 395.2 Definitions.

Words or phrases used in this part are defined in § 390.5 of this subchapter, except as provided in this section—

* * * * *

Supporting document means any document that is generated or received by a motor carrier or commercial motor vehicle driver in the normal course of business that could be used, as produced or with additional identifying information, to verify the accuracy of a driver's record of duty status. For the purposes of this definition, any *document* includes, but is not limited to any record or document, either written or electronic, that is available individually or in combination with other records or documents, to provide a date, time, or location to verify the accuracy of a driver's record of duty status. Examples of supporting documents include: accident/incident reports, bills of lading, border crossing reports, carrier pro forma invoices (pros or waybills), cash advance receipts, credit card receipts and statements, customs declarations, delivery receipts, dispatch/assignment records, driver reports (facsimile or call-in logs), expense vouchers, freight bills, fuel billing statements, fuel receipts, gate receipts, global positioning reports, inspection reports, invoices, interchange reports, International Registration Plan

receipts, International Fuel Tax Agreement receipts, lessor settlement sheets, lodging receipts, lumper receipts, on-board computer reports, over/short and damage reports, overweight/oversize reports and citations, port of entry receipts, telephone billing statements, toll receipts, traffic citations, transponder reports, trip permits, trip reports, waybills, weight/scale tickets, and other transportation and payroll-related documents.

* * * * *

13. Amend § 395.8 by adding introductory text and revising paragraphs (a), (d)(3), (i), and (k) to read as follows:

§ 395.8 Driver's record of duty status.

Subject to the exceptions and exemptions in § 395.1:

(a) Every motor carrier must require every driver used by the motor carrier to systematically and effectively record, inspect, verify, and maintain, records of all hours of service by duty status for each 24-hour period using the methods prescribed in either paragraph (a)(1) or (2) of this section:

(1) Every driver who operates a commercial motor vehicle must record his/her duty status on paper, in duplicate, for each 24-hour period. The duty status time must be recorded on a specified paper grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms. The previously approved format of the Daily Log, Form MCS–59 or the Multi-day Log, MCS–139 and 139A, which meets the requirements of this section, may continue to be used; or

(2) Every driver who operates a commercial motor vehicle must record his/her duty status by using an automatic on-board recording device that meets the requirements of § 395.15 of this part. The requirements of § 395.8 paragraphs (e) and (k)(1) and (2) of this section also apply.

* * * * *

(d) * * *

(3) Vehicle number(s) (Coach, bus, truck, tractor, and trailer number(s));

* * * * *

(i) *Collecting and filing driver's paper records of duty status and supporting documents.* Each motor carrier must systematically collect drivers' records of duty status and associated supporting documents for each driver it uses. The driver must systematically collect and submit or forward by mail the original driver's record of duty status and all associated supporting documents to the regular employing motor carrier within 13 days following the completion of the form.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Each motor carrier must systematically maintain records of duty status and all associated supporting documents for each driver it uses for a period of six months from the date of receipt.

(2) The driver must systematically retain a copy of each record of duty status and all associated supporting documents for the previous seven consecutive days in his or her possession and make it available for inspection while on duty.

* * * * *

14. Add § 395.10 to read as follows:

§ 395.10 Systematic verification and record retention.

(a) Every motor carrier must systematically and effectively monitor its driver's hours of service and the accuracy of the information contained on the driver's record of duty status by comparing paper records of duty status, as required by § 395.8, or automatic on-board recording device records, as required by § 395.15, with information contained within supporting documents. Each system must enable a special agent of the Federal Motor Carrier Safety Administration or other authorized representative of a Federal, State, local, or tribal government to verify the drivers' paper records of duty status or automatic on-board recording device records using the supporting documents.

(b) A special agent of the Federal Motor Carrier Safety Administration or other authorized representative of a Federal, State, local, or tribal government may deem a motor carrier's system to be effective only when the special agent or other authorized representative finds fewer than 10 percent of the drivers' paper records of duty status or automatic on-board recording device records are false. A special agent of the Federal Motor Carrier Safety Administration or other authorized representative of a Federal, State, local, or tribal government may use any supporting documents or other evidence, whether or not in the motor carrier's possession, to determine the validity of the drivers' paper or automatic records of duty status and the effectiveness of the motor carrier's supporting document based monitoring system.

(c) If a special agent of the Federal Motor Carrier Safety Administration or other authorized representative of a Federal, State, local, or tribal government determines a motor carrier's systematic monitoring is ineffective in verifying the drivers' compliance with the hours of service and the accuracy of the paper or automatic records of duty status, the FMCSA may require the carrier to begin to systematically use supporting documents that FMCSA believes are effective to verify the accuracy of the hours of service and paper or automatic records of duty status.

(d) Every motor carrier must require every driver to retain, and every driver must retain, all supporting documents containing references to date, time, or location, that come into the possession of the driver in the ordinary course of the driving operation. The driver must provide the supporting documents and the paper or automatic records of duty status:

(1) To any duly authorized enforcement official of Federal, State or local government upon request or demand; and

(2) To the motor carrier at the time the driver submits the corresponding record of duty status to the motor carrier as required by the motor carrier or § 395.8(i) of this part.

(e) The motor carrier and the driver must identify each supporting document and the paper or automatic record of duty status it supports. A motor carrier and a driver must not obscure or deface other information contained in the supporting document. An identification system may include legibly adding the driver's full name, date, and vehicle number, if those items do not already appear on the document.

(f) The motor carrier must identify each supporting document whether received from the driver or from any other source including carrier-generated documents and electronic systems (*i.e.*, global positioning reports, on-board computer, transponder reports, scanned, or electronically-mailed documents), ensure that any electronic or mechanical means to reference date, time and location in the production of these documents is activated, and maintain those documents in a manner that permits the matching of those records to the original driver's record of duty status.

(g) Supporting documents must be provided to any duly authorized enforcement official of Federal, State or local government upon request or demand along with the corresponding records of duty status as required in §§ 390.29, 390.31, and 395.8(k) of this subchapter.

(h) A motor carrier and a driver may be subject to civil or criminal penalties under 49 U.S.C. 521 for:

(1) A failure by the motor carrier to prevent a driver from falsifying his records of duty status; failure to prevent alteration of supporting documents; alteration of supporting documents which changes their accuracy; or the failure to prevent a driver from exceeding the hours-of-service;

(2) A driver's falsification of a record of duty status or alteration of supporting documents which changes their accuracy; and

(3) A failure by the motor carrier to have an effective system to verify and maintain records of duty status and supporting documents.

Issued on: October 21, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–24176 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–EX–P

Notices

Federal Register

Vol. 69, No. 212

Wednesday, November 3, 2004

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Report of Coupon Issuance and Commodity Distribution for Disaster Relief

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service (FNS) is publishing for public comment a summary of a proposed information collection. The proposed collection is an extension of a collection currently approved for the Food Stamp Program and the Food Distribution Program.

DATES: Comments on this notice must be received by January 3, 2005 to be assured of consideration.

ADDRESSES: Send comments and requests for copies of this information collection to Alan Rich, Program Reports, Analysis and Monitoring Branch, Budget Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Alan Rich, (703) 305–2109.

SUPPLEMENTARY INFORMATION:

Title: Report of Coupon Issuance and Commodity Distribution for Disaster Relief.

OMB Number: 0584–0037.

Expiration Date: February 28, 2005.

Type of Request: Extension of a currently approved collection.

Abstract: Food distribution in disaster situations is authorized under Section 32 of the Act of August 24, 1935 (7 U.S.C. 612c); Section 416 of the Agricultural Act of 1949 (7 U.S.C. 1431); Section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a–l); Section 4(a) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note); and by Sections 412 and 413 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5179, 5180). Program implementing regulations are contained in 7 CFR Part 250. In accordance with § 250.43(f), distributing agencies shall provide a summary report to the agency within 45 days following termination of the disaster assistance.

Respondents: State agencies that administer USDA disaster relief activities.

Number of Respondents: 55.

Estimated Number of Responses per Respondent: The number of responses is estimated to be 1.82 responses per State agency per year.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 25 minutes per respondent for each submission.

Estimated Total Annual Burden on Respondents: 97 hours.

Dated: October 27, 2004.

Roberto Salazar,

Administrator.

[FR Doc. 04–24442 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Legal Notice of Appealable Decisions Under 36 CFR Part 217 and Corrections Under 36 CFR Part 215 and 36 CFR Part 218 for the Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, and Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice and correction.

SUMMARY: Deciding Officers in the Southern Region will publish notice of decisions subject to administrative appeal under 36 CFR part 217 in the legal notice of the newspapers listed in the **SUPPLEMENTARY INFORMATION** section of this notice. As provided in 36 CFR part 217.5(d), the public shall be advised through **Federal Register** notice, of the newspaper of record to be utilized for publishing legal notice of decisions. Newspaper publication of notice of decisions is in addition to direct notice of decisions to those who have requested it and to those who have participated in project planning. The Responsible Official gave annual notice in the **Federal Register** published on May 10, 2004, of newspapers of record to be utilized for publishing notice of proposed actions and of decisions subject to appeal under 36 CFR part 215.5 and for publishing notice of opportunities to object to proposed authorized hazardous fuel reduction projects under 36 CFR part 218.4. The list of newspapers to be used for 215 notice and decision and 218 notice of objection opportunities is as listed in the **SUPPLEMENTARY INFORMATION** section of this notice with no changes from the May 10, 2004, publication.

DATES: Use of these newspapers for purposes of publishing legal notice of decisions subject to appeal under 36 CFR part 217 and the use of the corrected newspaper listed under 36 CFR part 215 and 36 CFR part 218 shall begin on or after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Cheryl Herbster, Regional Appeals Coordinator, Southern Region, Planning,

1720 Peachtree Road, NW., Atlanta, Georgia 30309, Phone: (404) 347–5235.

SUPPLEMENTARY INFORMATION: Deciding Officers in the Southern Region will give legal notice of decisions subject to appeal under 36 CFR part 217 in the following newspapers which are listed by Forest Service Administrative unit. Where more than one newspaper is listed for any Administrative unit, the first newspaper listed is the newspaper of record that will be utilized for publishing the legal notice of decisions and calculating timeframes. Secondary newspapers listed for a particular unit are those newspapers the Deciding Officer expects to use for purposes of providing additional notice. The timeframe for appeal shall be based on the date of publication of the legal notice of the decision in the newspaper of record. The following newspapers will be used to provide notice.

Southern Region

Regional Forester Decisions:

Affecting National Forest System lands in more than one Administrative unit of the 15 in the Southern Region, *Atlanta Journal-Constitution,* published daily in Atlanta, GA.

Affecting National Forest System lands in only one Administrative unit or only one Ranger District will appear in the newspaper of record elected by the National Forest, National grassland, National Recreation Area, or Ranger District as listed below.

National Forests in Alabama, Alabama

Forest Supervisor Decisions: Montgomery Advertiser, published daily in Montgomery, AL.

District Ranger Decisions:

Bankhead Ranger District: *Northwest Alabamian,* published bi-weekly (Wednesday & Saturday) in Haleyville, AL.

Conecuh Ranger District: *The Andalusia Star News,* published daily (Tuesday through Saturday) in Andalusia, AL.

Oakmulgee Ranger District: *The Tuscaloosa News,* published daily in Tuscaloosa, AL.

Shoal Creek Ranger District: *The Anniston Star,* published daily in Anniston, AL.

Talladega Ranger District: *The Daily Home,* published daily in Talladega, AL.

Tuskegee Ranger District: *Tuskegee News,* published weekly (Thursday) in Tuskegee, AL.

Caribbean National Forest, Puerto Rico

Forest Supervisor Decisions:

El Nuevo Dia, published daily in Spanish in San Juan, PR.

San Juan Star, published daily in English in San Juan, PR.

Chattahoochee-Oconee National Forest, Georgia

Forest Supervisor Decisions: The Times, published daily in Gainesville, GA.

District Ranger Decisions:

Armuchee Ranger District: *Walker County Messenger,* published bi-weekly (Wednesday & Friday) in LaFayette, GA.

Brasstown Ranger District: *North Georgia News,* (newspaper of record) published weekly (Wednesday) in Blairsville, GA.

Towns County Herald, (secondary) published weekly (Thursday) in Hiawassee, GA.

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.

Chattooga Ranger District: *Northeast Georgian,* (newspaper of record) published bi-weekly (Tuesday & Friday) in Cornelia, GA.

Chieftain & Toccoa Record, (secondary) published bi-weekly (Tuesday & Friday) in Toccoa, GA.

White County News Telegraph, (secondary) published weekly (Thursday) in Cleveland, GA.

The Dahlonega Nuggett, (secondary) published weekly (Thursday) in Dahlonega, GA.

Cohutta Ranger District: *Chatsworth Times,* published weekly (Wednesday) in Chatsworth, GA.

Oconee Ranger District: *Eatonton Messenger,* published weekly (Thursday) in Eatonton, GA.

Tallulah Ranger District: *Clayton Tribune,* published weekly (Thursday) in Clayton, GA.

Toccoa Ranger District: *The News Observer* (newspaper of record) published bi-weekly (Tuesday & Friday) in Blue Ridge, GA.

The Dahlonega Nuggett, (secondary) published weekly (Wednesday) in Dahlonega, GA.

Cherokee National Forest, Tennessee

Forest Supervisor Decisions: Knoxville News Sentinel, published daily in Knoxville, TN.

District Ranger Decisions:

Nolichucky-Unaka Ranger District: *Greeneville Sun,* published daily (except Sunday) in Greeneville, TN.

Ocoee-Hiwassee Ranger District: *Polk County News,* published weekly (Wednesday) in Benton, TN.

Tellico Ranger District: *Monroe County Advocate,* published tri-weekly (Wednesday, Friday, and Sunday) in Sweetwater, TN.

Watauga Ranger District: *Johnson City Press,* published daily in Johnson City, TN.

Daniel Boone National Forest, Kentucky

Forest Supervisor Decisions: Lexington Herald-Leader, published daily in Lexington, KY.

District Ranger Decisions:

London Ranger District: *The Sentinel-Echo,* published tri-weekly (Monday, Wednesday, and Friday) in London, KY.

Morehead Ranger District: *Morehead News,* published bi-weekly (Tuesday and Friday) in Morehead, KY.

Redbird Ranger District: *Manchester Enterprise,* published weekly (Thursday) in Machester, KY.

Somerset Ranger District: *Commonwealth-Journal,* published daily (Sunday through Friday) in Somerset, KY.

Stanton Ranger District: *The Clay City Times,* published weekly (Thursday) in Stanton, KY.

Stearns Ranger District: *McCreary County Record,* published weekly (Tuesday) in Whitley City, KY.

National Forests in Florida, Florida

Forest Supervisor Decisions: The Tallahassee Democrat, published daily in Tallahassee, FL.

District Ranger Decisions:

Apalachicola Ranger District: *Calhoun-Liberty Journal,* published weekly (Wednesday) in Bristol, FL.

Lake George Ranger District: *The Ocala Star Banner,* published daily in Lake City, FL.

Seminole Ranger District: *The Daily Commercial,* published daily in Leesburg, FL.

Wakulla Ranger District: *The Tallahassee Democrat,* published daily in Tallahassee, FL.

Francis Marion & Sumter National Forests, South Carolina

Forest Supervisor Decisions: The State, published daily in Columbia, SC.

District Ranger Decisions:

Andrew Pickens Ranger District: *The Daily Journal,* published daily (Tuesday through Saturday) in Seneca, SC.

Enoree Ranger District: *Newberry Observer,* published tri-weekly (Monday, Wednesday, and Friday) in Newberry, SC.

Long Cane Ranger District: *The State,* published daily in Columbia, SC.

Wambaw Ranger District: *Post and Courier,* published daily in Charleston, SC.

Witherbee Ranger District: *Post and Courier,* published daily in Charleston, SC.

George Washington and Jefferson National Forests, Virginia and West Virginia

Forest Supervisor Decisions: Roanoke Times, published daily in Roanoke, VA.

District Ranger Decisions:

Clinch Ranger District: *Coalfield Progress,* published bi-weekly (Tuesday and Thursday) in Norton, VA.

Deerfield Ranger District: *Daily News Leader,* published daily in Staunton, VA.

Dry River Ranger District: *Daily News Record,* published daily (except Sunday) in Harrisonburg, VA.

Glenwood/Pedlar Ranger District: *Roanoke Times,* published daily in Roanoke, VA.

James River Ranger District: *Virginian Review,* published daily (except Sunday) in Covington, VA.

Lee Ranger District: *Shenandoah Valley Herald,* published weekly (Wednesday) in Woodstock, VA.

Mount Rogers National Recreation Area: *Bristol Herald Courier,* published daily in Bristol, VA.

New Castle Ranger District: *Roanoke Times,* published daily in Roanoke, VA.

New River Ranger District: *Roanoke Times,* published daily in Roanoke, VA.

Warm Springs Ranger District: *The Recorder,* published weekly (Thursday) in Monterey, VA.

Kisatchie National Forest, Louisiana

Forest Supervisor Decisions: *The Town Talk*, published daily in Alexandria, LA.

District Ranger Decisions:

Calcasieu Ranger District: *The Town Talk,* (newspaper of record) published daily in Alexandria, LA.

The Leesville Ledger, (secondary) published tri-weekly (Tuesday, Friday, and Sunday) in Leesville, LA.

Caney Ranger District: *Minden Press Herald,* (newspaper of record) published daily in Minden, LA.

Homer Guardian Journal, (secondary) published weekly (Wednesday) in Homer, LA.

Catahoula Ranger District: *The Town Talk,* published daily in Alexandria, LA.

Kisatchie Ranger District: *Natchitoches Times,* published daily (Tuesday thru Friday and on Sunday) in Natchitoches, LA.

Winn Ranger District: *Winn Parish Enterprise,* published weekly (Wednesday) in Winnfield, LA.

Land Between The Lakes National Recreation Area, Kentucky and Tennessee

Area Supervisor Decisions: The Paducah Sun, published daily in Paducah, KY.

National Forests in Mississippi, Mississippi

Forest Supervisor Decisions: Clarion-Ledger, published daily in Jackson, MS.

District Ranger Decisions:

Bienville Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Chickasawhay Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Delta Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

De Soto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Holly Springs Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Homochitto Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

Tombigbee Ranger District: *Clarion-Ledger,* published daily in Jackson, MS.

National Forests in North Carolina, North Carolina

Forest Supervisor Decisions: The Asheville Citizen-Times, published daily in Asheville, NC.

District Ranger Decisions:

Appalachian Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC.

Cheoah Ranger District: *Graham Star,* published weekly (Thursday) in Robbinsville, NC.

Croatan Ranger District: *The Sun Journal,* published daily (except Saturday) in New Bern, NC.

Grandfather Ranger District: *McDowell News,* published daily in Marion, NC.

Highlands Ranger District: *The Highlander,* published weekly (mid May–mid Nov, Tues. & Fri.; mid Nov.–mid May, Tues. only) in Highlands, NC.

Pisgah Ranger District: *The Asheville Citizen-Times,* published daily in Asheville, NC.

Tusquitee Ranger District: *Cherokee Scout,* published weekly (Wednesday) in Murphy, NC.

Uwharrie Ranger District: *Montgomery Herald*, published weekly (Wednesday) in Troy, NC.

Wayah Ranger District: *The Franklin Press*, published bi-weekly (Tuesday and Friday) in Franklin, NC.

Ouachita National Forest, Arkansas and Oklahoma

Forest Supervisor Decisions: Arkansas Democrat-Gazette, published daily in Little Rock, AR.

District Ranger Decisions:

Caddo Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR.

Fourche Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR.

Jessieville/Winona Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR.

Mena/Oden Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR.

Oklahoma Ranger District (Choctaw; Kiamichi; and Tiak) *Tulsa World*, published daily in Tulsa, OK.

Poteau/Cold Springs Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR.

Womble Ranger District: *Arkansas Democrat-Gazette*, published daily in Little Rock, AR.

Ozark-St. Francis National Forests, Arkansas

Forest Supervisor Decisions: The Courier, published daily (Tuesday through Sunday) in Russellville, AR.

District Ranger Decisions: Bayou Ranger District: *The Courier*, published daily (Tuesday through Sunday) in Russellville, AR.

Boston Mountain Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR.

Buffalo Ranger District: *Newton County Times*, published weekly in Jasper, AR.

Magazine Ranger District: *Southwest Times Record*, published daily in Fort Smith, AR.

Pleasant Hill Ranger District: *Johnson County Graphic*, published weekly (Wednesday) in Clarksville, AR.

St. Francis National Forest: *The Daily World*, published daily (Sunday through Friday) in Helena, AR.

Sylamore Ranger District: *Stone County Leader*, published weekly (Wednesday) in Mountain View, AR.

National Forests and Grasslands in Texas

Texas Forest Supervisor Decisions: *The Lufkin Daily News*, published daily in Lufkin, TX.

District Ranger Decisions:

Angelina National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX.

Caddo & LBJ National Grasslands: *Denton Record-Chronicle*, published daily in Denton, TX.

Davy Crockett National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX.

Sabine National Forest: *The Lufkin Daily News*, published daily in Lufkin, TX.

Sam Houston National Forest: *The Courier*, published daily in Conroe, TX.

Dated: October 27, 2004.

Roberta A. Moltzen,

Deputy Regional Forester.

[FR Doc. 04–24506 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Bitterroot National Forest, Ravailli County, MT, Middle East Fork Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Forest Service, Bitterroot National Forest will prepare a Draft Environmental Impact Statement to disclose the environmental consequences of the proposed Middle East Fork (MEF) Project. The proposed project would treat vegetation on approximately 6000 acres in the Middle East Fork of the Bitterroot River watershed to help reduce wildland fire threats and restore fire adapted ecosystems.

The need for action in the Middle East Fork area became highlighted by the local community after the wildfires of 2000. This area was identified in the Bitterroot Community Wildfire Protection Plan as a high priority area to reduce wildland fire risk. This plan was developed through community collaborative efforts involving community leaders, organizations, and residents and is reviewed annually.

The Forest Service completed a watershed analysis (EAWS) for the Middle East Fork landscape that included a recommendation to reduce the threat from wildfire in the wildland urban interface. Another recommendation was to restore desired and historical vegetation composition and structure using harvest, prescribed fire, and cultural activities.

The Middle East Fork Project area occupies the middle third of the East Fork of the Bitterroot River drainage. On the north side of the East Fork Bitterroot River, it begins just east of Cameron Creek and extends to and includes Tepee Creek. On the south side it begins east of Tolan Creek and extends to Meadow Creek. The Bitterroot Community Wildfire Protection Plan identifies the wildland urban interface in this area as a high risk area and labeled the area a priority for treating hazardous fuels. The Middle East Fork wildland urban interface extends through the middle of the project area encompassing the community of approximately 700 residents along the East Fork Bitterroot River and the East Fork Road. The East Fork Road provides the only paved emergency access and escape route for the community.

This is an authorized project under the Healthy Forest Restoration Act of 2003 (Pub. L. 108–148). This act contains a variety of provisions to expedite hazardous fuel reduction and forest restoration projects such as this on specific types of Federal land that are at risk from wildland fire or insect and disease epidemics.

Project objectives follow those defined in the National Fire Plan, the Bitterroot Community Wildfire Protection Plan, and the Healthy Forest Restoration Act and include: Reduce wildland fire threat to the East Fork community, restore fire-adapted ecosystems in the Middle East Fork landscape, and restore stands affected by the Douglas-fir beetle epidemic by treating infested areas and lands at imminent risk of spread of the beetle epidemic to promote healthy ecosystem function, composition and structure.

DATES: Comments concerning the scope of the analysis should be received by December 6, 2004. The draft of environmental impact statement is expected to be available for public review in February 2005 and the final environmental impact statement is expected to be available end of April 2005.

ADDRESSES: Submit written, oral, or e-mail comments by: (1) Mail—Middle East Fork Project; Tracy Hollingshead, District Ranger; Sula Ranger Station; 7338 Hwy 93 S; Sula, Montana 59871 (2) phone—(406) 821–3201; (3) e-mail—*comments-northern-bitterroot-sula@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Project Team Leader, Sula Ranger District, Bitterroot National Forest (see address above).

SUPPLEMENTARY INFORMATION:

Purpose

The purpose is to reduce the wildland fire risk to the Middle East Fork community to restore fire adapted ecosystems in the Middle East Fork watershed particularly focusing on the wildland urban interface as defined by the Bitterroot Community Wildfire Protection Plan.

Proposed Action

The proposed action is designed with extensive mitigation to reduce potential impacts. To accomplish the project objectives the following actions would be taken:

—Commercial thinning of Douglas-fir and ponderosa pine stands and salvage of beetle-killed Douglas-fir with yarding of activity fuels followed by prescribed fire, jackpot burning, or burning of high piled slash. Approximately 1650 acres.

—Commercial thinning of Douglas-fir and ponderosa pine stands and salvage of beetle-killed Douglas-fir with yarding to remove activity fuels. Approximately 700 acres.

—Pre-commercial thinning of young stands followed by burning of hand piled slash or lop and scattering slash. Approximately 500 acres.

—Salvage and/or sanitation harvest of diseased and/or dead and dying Douglas-fir stands followed by burning of created slash piles. Approximately 240 acres.

—Regeneration harvest in stands of extensive Douglas-fir beetle mortality with yarding of activity fuels followed by prescribed fire, jackpot burning, or burning of hand piled slash. Approximately 1450 acres.

—Regeneration harvest in stands of extensive Douglas-fir beetle mortality with yarding of activity fuels. Approximately 170 acres.

—Approximately 3 miles of temporary road would be constructed and then obliterated upon project completion.

—Road drainage improvements on approximately 14 miles of major forest roads prior to the project beginning. Other roads would be maintained or improved under terms of project contracts.

—Prescribed fire in grasslands and open forest stands. May include slashing prior to burning, and/or seeding and fertilization treatment on approximately 1500 acres of grassland/open forests.

—Regeneration planting in stands with heavy mortality.

The Bitterroot National Forest also proposes to disclose the effects of a site-specific Forest Plan Amendment that is needed to modify or clarify several standards in the Bitterroot National Forest Plan. This would include adjusting the Forest-wide and management area snag and coarse woody debris standards to better reflect current research, the Forest-wide thermal cover standard as it relates to this area, and standards defining what practices are allowed within certain lands classified as unsuitable for timber production and within old growth habitat. The proposed amendments to the Forest Plan, if approved, would apply only to the Middle East Fork Project area.

Responsible Official

The responsible official for the Middle East Fork Project is Dave T. Bull, Forest Supervisor, Bitterroot National Forest.

Nature of Decision To Be Made

The Responsible Official will determine whether or not to proceed with the proposed project activities.

Scoping Process

Comments will be accepted during the 30-day scoping period as described in this notice of intent. To assist in commenting, a scoping letter providing more detailed information on the project proposal has been prepared and is available to interested parties. Contact Tracy Hollingshead, Sula District Ranger at the address listed in this notice of intent if you would like to receive a copy.

Comment Requested

This notice of intent initiates the scoping process that guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 28, 2004.

David T. Bull,

Forest Supervisor.

[FR Doc. 04–24508 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pickett Lake and Padre Canyon Allotments, Coconino National Forest; Coconino County, AZ

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of authorizing cattle grazing on the Picket Lake and Padre Canyon Allotments.

DATES: Comments concerning the scope of the analysis should be received within 30 days of the date of publication of this Notice of Intent in the **Federal Register**. The draft EIS is expected to be published in December 2004 and the final EIS is expected in February 2005.

ADDRESSES: Send written comments to Terri Marceron, Mormon Lake District Ranger, 4373 South Lake Mary Road, Flagstaff, Arizona 86001, Fax: (928) 214–2460, e-mail: *comments-southwestern-coconino-mormon-lake@fs.fed.us.*

FOR FURTHER INFORMATION CONTACT: Michael Hannemann, Range Staff, or Katherine Sánchez Meador, Range Specialist, Peaks Ranger District, 5075 N Highway 89, Flagstaff, Arizona 86004, (928) 526–0866.

SUPPLEMENTARY INFORMATION: The Pickett Lake and Padre Canyon Allotments are adjacent cattle grazing allotments located approximately nine miles southeast of Flagstaff, Arizona. The Pickett Lake and Padre Canyon Allotments consist of 34,814 and 20,993 acres, respectively. The current Pickett Lake Allotment permit is of 758 cattle from June 1 to October 31. The current Padre Canyon Allotment permit is for 87 cattle from June 1 to October 31. Both Pickett Lake and Padre Canyon grazing permits are issued to the same permittee. This joint ownership makes management coordination between the two allotments possible.

Grazing has occurred continuously on the Pickett Lake and Padre Canyon Allotments since the mid-1880s. Since that time, the Forest Service has reduced cattle numbers and controlled cattle grazing periods more strictly. Cattle grazing management has improved over time with the construction of fences and waters by the Forest Service and permittees. Over the last ten years, cattle numbers on the Pickett Lake Allotment have varied from a high of 758 cattle in 1994 to a low of 300 cattle in 2002. Over the last ten years, cattle numbers on the Padre Canyon Allotment have varied from a high of 87 in 1995 to non-use in 1996, 2000, 2002, 2003, and 2004.

The Pickett Lake and Padre Canyon Allotments are scheduled for environmental analysis of grazing use on the Coconino National Forest, as required by the Burns Amendment (1995). This project was initiated in December 2000 as an EIS and the Proposed Action included cattle grazing, pinyon and juniper treatments, and broadcast burning. After initial public scoping and comment, the Forest Service decided to narrow the scope of the project to analyze only cattle grazing under an environmental assessment (EA). A revised Proposed Action was presented for public scoping in August 2002 and a draft EA published in July 2003. On September 14, 2004, a notice to withdraw the NOI for the EIS was published in the **Federal Register** (volume 69, number 177, page 55403), because it was imminent that a Decision Notice and FONSI were to be signed.

Based on the controversy over the effects of cattle grazing on pronghorn habitat on the Anderson Mesa portion of these allocation, the responsible official has decided to initiate this analysis as an EIS. This project is being completed in order to ensure cattle grazing on the Pickett Lake and Padre Canyon Allotments is consistent with goals, objectives, as well as the standards and guidelines of the Coconino National

Forest Plan (1987, as amended). The Proposed Action for the EIS is primarily based upon the preferred Alternative from the unreleased final EA, Alternative E. This alternative was created after comments on the draft EA were analyzed. The publication of this NOI begins the NEPA process and initiates a 30 day scoping period.

Purpose and Need for Action

The purpose of this project is to continue cattle grazing on the Pickett Lake and Padre Canyon Allotments. There is a need to maintain and/or improve rangeland conditions, and to maintain and protect seasonal and semi-permanent wetlands which includes those wetlands with emergent vegetation on the two allotments. There is also a need to maintain the permittee's access to their water right and consider current water claims within the allotments.

Proposed Action

The Proposed Action would authorize grazing on the Pickett Lake and Padre Canyon allotments while reducing overall cattle use, reducing cattle graze periods, and increasing pasture rest periods. Grazing rotations would be adjusted so cattle do not graze in seasonal and semi-permanent wetlands containing emergent vegetation from June 1 to July 15. No cattle grazing would occur on these allotments at all between May 1 and May 31.

Cattle use on the Pickett Lake Allotment would be reduced 14% by combining the management of these two allotments and shortening the grazing season (currently June 1 to October 31) from June 1 to September 30. Combining the allotments would reduce the pasture graze periods above the rim from five to three months above the Anderson Mesa Rim and from five months to one month below the rim.

The Proposed Action would establish a 35% utilization limit by cattle and/or elk during cattle grazing season. When pasture use approaches 35% by cattle and/or elk, cattle would move to the next pasture in the rotation. If elk use exceeds 35% in a pasture before cattle enter a pasture, cattle would skip this pasture and move to the next pasture in the rotation.

Up to 1.5 miles of fence, in sections, would be constructed in the Elliot Driveway pasture to keep cattle from moving down the Anderson Mesa Rim, and for a small holding pasture in the western corner of the Elliot Driveway pasture. Four miles of pipeline (connected to a well on private land) and five drinkers would be constructed to improve water distribution below the Anderson Mesa Rim. Exclosure fences would be built to protect the hardstem bulrush and surrounding upland buffer at Post and Perry Lakes, with a lane to the stock tank water right at Perry Lake. Exclosure fences would also be built around the emergent vegetation and surrounding upland buffer at Ducknest and Indian Tank Lakes, with a lane to the stock tank water in Indian Tank Lake. Two short road segments within or near Post and Perry Lakes would be closed.

The Proposed Action also includes an adaptive management option to fence Boot, Breezy, West Breezy and Indian Lakes, with a lane to the stock tank waters in Boot and Indian Lakes. To maintain rangeland condition, or for increased flexibility in pasture rotations, the emergent vegetation and the surrounding upland buffer would be fenced at these four wetlands. Fencing would be completed as funding becomes available. These wetlands would likely be fenced within three years. Up to 20% use by cattle on emergent and woody vegetation at Boot and Billy Back Springs would be allowed. If use, by cattle, exceeds this a fence would be constructed by the permittee to exclude cattle use at these two springs.

Possible Alternatives

In addition to the Proposed Action, three other alternatives have been developed for preliminary analysis. One alternative (Current Management) will consider the effects of continuing the current cattle grazing management system on the two allotments. Another alternative (No Action/No Grazing) will consider the effects of closing Pickett Lake and Padre Canyon Allotments to cattle grazing for a ten-year period. Another alternative (Reduction in Utilization) will study the effects of reducing the cattle and/or elk utilization standard (during the cattle grazing season) to 20% on both allotments. The cattle numbers would also be reduced by 15% in this alternative. The development of any other alternatives will be completed following public response to scoping and published in the draft EIS.

Responsible Official

The responsible official for this project is the Mormon Lake District Ranger.

Nature of Decision To Be Made

Based upon the effects of the different alternatives, the responsible official will either decide to implement the Proposed Action, another action alternative, combinations of components from several alternatives, or to not reauthorize grazing for a ten-year period on the allotments at this time.

Scoping Process

Scoping is an ongoing process throughout the planning process. This Notice of Intent serves as the scoping process under NEPA, which will guide development of the EIS. A copy of this Notice of Intent will be mailed to those people and organizations on The Coconino National Forest's mailing list that have indicated a specific interest in the Pickett Lake and Padre Canyon Allotments or grazing management in general. A press release announcing the filing of this Notice of Intent will be sent to local newspapers and media. The public will be notified of any meetings regarding this proposal by mailings and press releases sent to the local newspaper and media. No meetings are planned at this time.

Preliminary Issues

During development of the draft EA, two issues were identified. The first issue involves wetlands and how the proposed cattle grazing system and utilization levels affect seasonal and semi-permanent wetlands habitat for ground-nesting birds and riparian vegetative health within wetlands. The second issue is concerned with the proposed utilization level of 35%, which may inhibit grass plants' growth, reduce vertical height, and remove too many seed heads. A 35% utilization level may also lessen plants' ability to grow to maturity, build necessary root mass, or propagate. the Proposed Action and a Reduction in Utilization Alternative have been developed to address these issues.

Comments Requested

A draft EIS will be prepared for comments. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by

the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality.

Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and if the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.)

Dated: October 28, 2004.

Joseph P. Stringer,

Deputy Forest Supervisor.

[FR Doc. 04–24510 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Noxious Weed Project; Wasatch-Cache National Forest, Box Elder, Cache, Davis, Duchesne, Morgan, Rich, Salt lake, Summit, Tooele, Wasatch, Weber Counties, Utah and Uinta County, WY

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare environmental impact statement.

SUMMARY: The Forest Supervisor of the Wasatch-Cache National Forest (WCNF) gives notice of the agency's intent to prepare an environmental impact statement on a proposal to eradicate (elimination), control (reducing the population over time), and contain (preventing the population from spreading) known infestations and future potential invasions of noxious weed populations on the Forest.

DATES: Comments concerning the scope of the analysis must be received in writing by November 23, 2004. A draft environmental impact statement is expected to be published in April 2006, with public comment on the draft material requested for a period of 45 days, and completion of a final environmental impact statement is expected in October, 2006.

ADDRESSES: Send written comments to. Wasatch-Cache National Forest, 8236 Federal Building, 125 S. State St., Salt Lake City, Utach 84138, ATTN: Noxious Weeds.

FOR FURTHER INFORMATION CONTACT: Mike Duncan, Team Leader, (801) 236–3415.

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The purpose of this proposal is to move forward in achieving the desired conditions, goals, and objectives of the 2003 Wasatch-Cache National Forest Revised Forest Plan. Specifically the purpose of this proposal is to eliminate new invaders (weed species not previously reported in an area) before they become established, prevent or limit the spread of established weeds into areas containing little or no infestation while meeting multiple use objectives, and contain and reduce known and potential weed seed sources throughout the WCNF.

The need for this proposal is evident by reviewing maps of known infestations of noxious weeds within the Wasatch-Cache National Forest. The number of infestations and species is growing yearly. Results of uncontrolled weed spread are well documented. Without treatment, weeds increase about 14% a year under national conditions. The spread of weeds can primarily be attributed to human activities associated with vehicles and roads, trails, contaminated livestock feed, contaminated seed, and ineffective revegetation practices on disturbed lands. Wind, water, birds, wildlife, and livestock also contribute to week spread. According to the recent scientific assessment of the Interior Columbia River Basin, invading weeds can alter ecosystem processes, including productivity, decomposition, hydrology, nutrient cycling, and natural disturbance patterns such as frequency and intensity of wild fires. Changing these processes can lead to displacement of native plant species, eventually impacting wildlife and plant habitat, recreational opportunities, natural hydrologic processes, and scenic beauty.

Proposed Action

A number of steps would be followed under this Proposed Action to determine and implement the most appropriate treatment method for each weed infestation site. They include the following: detection of the weed, prioritization of the site for weed treatment, determination if sensitive environmental receptors are present, determination of the appropriate treatment method for the weed, and monitoring the treatment/restoration site to determine if follow-up or alternative treatment is warranted.

The following priorities will be followed for treating sites. Priority I—Potential or New Invaders: Noxious weeds that are known from only a few, small sites (less than about 10) on the Forest would be highest priority for treatment. These are species for whom eradication is most likely, and whose elimination is likely to be most cost-effective in the long term. Priority II—Satellite Infestations: Small, satellite infestations, particularly on the edges of the local range of a noxious weed species, would be next highest priority for treatment. Treating these satellite infestations is likely to be most effective in halting the spread of noxious weeds into weed-free areas. Priority III—Established Infestations: Relatively large established populations are managed by a containment strategy. Treatment efforts may focus on working in from

the edges, or treating specific areas identified as a particular seed/plant spreading source (ex: trailhead).

Treatment practices available for use in eradicating, controlling, and/or containing noxious, invasive, and non-native weeds include mechanical, biological, controlled grazing, chemical (aerial and ground-based), and combinations of these treatments. Selection of the most appropriate treatment practice depends on numerous factors, including the risk of weed expansion, weed species biology, time of year, environmental setting, soil type, and management objective.

Responsible Official

The Responsible Official is Thomas L. Tidwell, Forest Supervisor, Wasatch-Cache National Forest, 8236 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

Nature of Decision to Be Made

The decision to be made is whether or not to treat noxious weeds, and if so, determining the priority for treating populations and the appropriate treatment option for different weed species.

Scoping Process

The Forest Service invites comments and suggestions on the scope of the analysis to be included in the Draft Environmental Impact Statement (DEIS). In addition, the Forest Service gives notice that it is beginning a full environmental analysis and decision-making process for this proposal so that interested or affected people may know how they can participate in the environmental analysis and contribute to the final decision. This notice of intent initiates the scoping process which guides the development of the environmental impact statement. The Forest Service welcomes any public comments on the proposal.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environment impact statement will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register**. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft environmental impact statement should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inv.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.) Comments received, including the names and addresses of those who comment, will be considered part of the public record on this proposal and will be available for public inspection.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: October 27, 2004.

Faye L. Krueger,

Deputy Forest Supervisor.

[FR Doc. 04–24507 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Meeting

AGENCY: Notice of Resource Advisory Committee, Sundance, Wyoming, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Black Hills National Forests' Crook County Resource Advisory Committee will meet Monday, November 15, 2004 in Sundance, Wyoming for a business meeting. The meeting is open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on November 15, begins at 6:30 p.m., at the USFS Bearlodge Ranger District office, 121 South 21st Street, Sundance, Wyoming. Agenda topics will include a review of previously presented project proposals, a presentation of any new project proposals and updates on previously funded projects. A public forum will begin at 8:30 p.m. (MT).

FOR FURTHER INFORMATION CONTACT: Steve Kozel, Bearlodge District Ranger and Designated Federal Officer at (307) 283–1361.

Dated: October 26, 2004.

Steve Kozel,

District Ranger, Bearlodge Ranger District.

[FR Doc. 04–24509 Filed 11–2–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Youth Volunteering & Civic Engagement Survey.

Form Number(s): YVCES–1L.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 2,090 hours.

Number of Respondents: 3,300.

Avg Hours Per Response: 38 minutes.

Needs and Uses: Volunteerism is a vital aspect of American society that helps to sustain the values that frame American life and strengthen democracy. During his 2002 State of the

Union address, President George W. Bush called upon every American to dedicate at least two years over the course of their lives to volunteering, and a vast network of government agencies, nonprofit organizations and associations, schools, volunteer centers, and community and corporate foundations work to promote volunteering and civic engagement across the country to help Americans meet this call.

In order to measure our progress in these efforts, it is essential to establish baseline data. Through the Youth Volunteering and Civic Engagement Study, we will have the capacity to obtain this baseline data, as well as ascertain progress through future data collections. This study intends to collect data on volunteering and civic engagement among American teenagers, 12 to 18 years of age, and disseminate this information among organizations and individuals that might utilize these data. We plan to collect baseline data in early 2005, and conduct data collections every two years after the baseline. This population was last studied in 1995 by Independent Sector, which released a report subsequent to the study.

The survey will generate information identified as priority data needed by federal agencies, states, nonprofit organizations and associations, schools, foundations, researchers, and other survey users. General categories of information to be collected will include educational attainment and general activities, participation in volunteer activities, attitudes toward and experiences with national and community service, and civic attitudes and behaviors. The survey will also collect information on types of organizations with which teens serve, the work teens perform at these organizations, the attitudes and motivations of teens that volunteer, and the reasons why some teens do not volunteer.

Affected Public: Individuals or households.

Frequency: Every two years.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 8.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dhynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer either by fax (202–395–7245) or e-mail (*susan_schechter@omb.eop.gov*).

Dated: October 28, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24489 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Commercial Service Trade Specialist Counseling Session Survey

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(2)(A)).

DATES: Written comments must be submitted on or before January 3, 2005.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th & Constitution Avenue, NW., Washington, DC 20230. E-mail: *dHynek@doc.gov.*

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Tish Falco, 14th & Constitution Avenue, NW., Washington, DC 20230; Phone number: 202–482–3388; E-mail: *tish.falco@mail.doc.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The International Trade Administration's U.S. Commercial Service is mandated by Congress to help U.S. businesses, particularly small and medium-sized companies, export their products and services to global markets. As part of its mission, the U.S. Commercial Service uses ''Quality Assurance Surveys'' to collect feedback from the U.S. business clients it serves. The subject survey deals with a particular aspect of service provided by U.S. Commercial Service trade specialists. These specialists counsel clients about their international marketing needs and work with the clients to provide global trade solutions. A significant part of a trade specialist's role is to counsel clients, and the majority of time with clients is spent counseling. The subject survey asks clients whether they are satisfied with the counseling they have received from U.S. Commercial Service domestic trade specialists. Results from the survey will be used to make improvements to the agency's business processes, in order to provide better and more effective export assistance to U.S. companies.

II. Method of Collection

Form ITA–XXXX is sent to U.S. companies that receive counseling from U.S. Commercial Service trade specialists

III. Data

OMB Number: 0625–XXXX.

Form Number: ITA–XXXX.

Type of Review: Regular submission.

Affected Public: U.S. companies who have participated in counseling sessions with U.S. Commercial Service trade specialists.

Estimated Number of Respondents: 1700.

Estimated Time Per Response: 10 minutes.

Estimated Total Annual Burden Hours: 170 hours.

Estimated Total Annual Costs: The estimated annual cost for this collection is $8,619.

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for 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 (including hours and costs) 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 forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: October 28, 2004.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 04–24490 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

Bureau: International Trade Administration.

Title: Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty.

Agency Form Number: ITA–362P.

OMB Number: 0625–0118.

Type of Request: Extension-Regular Submission.

Burden: 337 hours.

Number of Respondents: 240.

Avg. Hours Per Response: 4 minutes.

Needs and Uses: Congress, when it enacted legislation to implement the Nairobi Protocol to the Florence Agreement, included a provision for the Departments of Commerce and Homeland Security to collect information on the import of articles for the handicapped. Form ITA–362P, Information on Articles for Physically or Mentally Handicapped Persons Imported Free of Duty, is the vehicle by which statistical information is obtained to assess whether the duty-free treatment of articles for the handicapped has had a significant adverse impact on a domestic industry (or portion thereof) manufacturing or producing a like or directly competitive article. Without the collection of data, it would be almost impossible for a sound determination to be made and for the President to appropriately redress the situation.

Affected Public: Businesses or other for-profit, not-for-profit institutions, state, local or tribal governments, federal government, individuals or households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain a benefit, voluntary.

OMB Desk Officer: David Rostker, (202) 395–7340.

Copies of the above information collection proposal can be obtained by writing Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Ave., NW., Washington, DC 20230; or via the Internet at *dHynek@doc.gov.*

Written comments and recommendations for the proposed information collection should be sent via e-mail to *David_Rostker@omb.eop.gov* within 30 days of publication of this **Federal Register** notice.

Dated: October 28, 2004.

Madeleine Clayton,

Management Analyst, Office of Chief Information Officer.

[FR Doc. 04–24491 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 041021286–4286–01]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: The Bureau of the Census (Census Bureau) is conducting the Annual Retail Trade Survey. The Census Bureau has determined that it needs to collect data covering annual sales, e-commerce sales, percent of e-commerce sales to customers located outside the United States, year-end inventories, purchases, accounts receivables, and, for select industries, merchandise line sales and percent of sales by class of customer.

FOR FURTHER INFORMATION CONTACT: Nancy Piesto, Service Sector Statistics Division, on (301) 763–2747.

SUPPLEMENTARY INFORMATION: The Annual Retail Trade Survey is a continuation of similar retail trade surveys conducted each year since 1951 (except 1954). It provides on a comparable classification basis, annual sales, e-commerce sales, and purchases for 2004 and year-end inventories for 2003 and 2004. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 2004 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

The Census Bureau is authorized to take surveys that are necessary to furnish current data on the subjects covered by the major censuses authorized by Title 13, United States Code, Sections 182, 224, and 225. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. For 2004, the survey will, as it has in the past, operate as a separate sample of retail companies. The data collected in this survey will be similar to that collected in the past and within the general scope and nature of those inquiries covered in the economic census. These data will provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and Budget (OMB) control number. In accordance with the PRA, 44 United States Code, Chapter 35, the OMB approved the Annual Retail Trade Survey under OMB Control Number 0607–0013. We will furnish report forms to organizations included in the survey. Additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: October 28, 2004.

Charles Louis Kincannon,

Director, Bureau of the Census.

[FR Doc. 04–24504 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1357]

Approval of Export Processing Authority Within Foreign-Trade Zone 25; Broward County, FL; S.B. Marketing Worldwide, Inc. (Apparel Printing)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u)

(the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, Broward County, Florida, grantee of FTZ 25, has requested authority under 15 CFR § 400.32(b)(1) of the Board's regulations on behalf of S.B. Marketing Worldwide, Inc., to process (screen printing) foreign-origin shirts for export under zone procedures within FTZ 25 (filed 7–30–2004, FTZ Docket 31–2004);

Whereas, pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is for export only (15 CFR 400.32(b)(1)(ii)); and,

Whereas, the FTZ Staff has reviewed the proposal, taking into account the criteria of 15 CFR 400.31, and the Executive Secretary has recommended approval;

Now, therefore, the Assistant Secretary for Import Administration, acting for the Board pursuant to 15 CFR 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including 15 CFR 400.28.

Signed at Washington, DC, this 18th day of October, 2004.

James J. Jochum,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–24551 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 46–2004]

Foreign-Trade Zone 84—Houston, Texas; Expansion of Manufacturing Authority—Subzone 84O; ExxonMobil Corporation; Baytown, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Houston Authority, grantee of FTZ 84, requesting authority on behalf of ExxonMobil Corporation (ExxonMobil), to expand the scope of manufacturing activity conducted under zone procedures within Subzone 84O at the ExxonMobil oil refinery complex in Baytown, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on October 22, 2004.

Subzone 84O (465,000 BPD capacity 3,000–4,000 employees) was approved by the Board in 1996 for the manufacture of fuel products and certain petrochemical feedstocks and refinery by-products (Board Order 837, 61 FR 38711, 7/25/96, as amended by Board Order 1116, 65 FR 52696, 8/30/00).

The subzone (3,500 acres) is located on the Houston Ship Channel at 2800 Decker Drive, Baytown, Harris County, Texas, some 25 miles east of Houston. The expansion request involves the modification of a crude unit to increase the overall crude distillation capacity of the refinery to 575,000 BPD and allow for the processing of a greater variety of crudes. No additional feedstocks or products have been requested.

Zone procedures would exempt the increased production from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates for certain petrochemical feedstocks (duty-free) by admitting foreign crude oil in non-privileged foreign status. The application indicates that the savings from zone procedures help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the following addresses:

1. Submissions Via Express/Package Delivery Services: Foreign-Trade-Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th St. NW, Washington, DC 20005; or

2. Submissions Via the U.S. Postal Service: Foreign-Trade-Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Ave. NW, Washington, DC 20230.

The closing period for their receipt is January 3, 2005. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to January 18, 2005).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at the first address listed above, and at the U.S. Department of Commerce, Export Assistance Center, 15600 John F. Kennedy Blvd., Suite 530, Houston, TX 77032.

Dated: October 22, 2004.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 04–24550 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–817]

Notice of Postponement of Final Antidumping Duty Determination: Bottle–Grade Polyethylene Terephthalate (PET) Resin from Indonesia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce is postponing the final determination in the antidumping duty investigation on PET Resin from Indonesia from January 3, 2005, until no later than 135 days after publication of the preliminary determination in this investigation. This extension is made pursuant to section 735(a)(2) of the Tariff Act of 1930, as amended, by the Uruguay Round Agreements Act.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Scott Holland at (202) 482–1279 or Andrew McAllister at (202) 482–1174, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Postponement of Final Determination

On October 20, 2004, the Department of Commerce (''the Department'') issued its affirmative preliminary determination in the antidumping duty investigation of Bottle–Grade Polyethylene Terephthalate (''PET'') Resin (''PET resin'') from Indonesia (publication pending). This notice stated we would issue our final determinations in these investigations within 75 days of the date of the preliminary determination. Section 735(a)(2) of the Tariff Act of 1930, as amended (''the Act''), provides that the Department may postpone a final determination until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such

postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioner.

The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four–month period to not more than six months. Pursuant to section 735(a)(2) of the Act, on October 25, 2004, P.T. Indorama Synthetics Tbk (''Indorama''), a mandatory respondent in the above–mentioned proceeding, requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) the respondent accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondents' request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly, for not more than six months, *i.e.*, 180 days.

This notice is published pursuant to section 735(a) of the Act.

Dated: October 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2998 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–854]

Notice of Amended Preliminary Determination of Sales At Not Less Than Fair Value: Certain Circular Welded Carbon Quality Line Pipe from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Amended Preliminary Determination of Sales at Not Less Than Fair Value.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Brandon Farlander or Patrick Edwards at (202) 482–0182 and (202) 482–8029, respectively; AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department) regulations are to 19 CFR part 351 (April 2001).

Amendment of Preliminary Determination

The Department is amending the preliminary determination in the antidumping investigation of certain circular welded carbon quality line pipe from the Republic of Korea. This amended preliminary determination results in a revised antidumping rate for respondent Hyundai HYSCO and the all others rate in this case.

Scope of Investigation

The scope of this investigation includes certain circular welded carbon quality steel line pipe of a kind used in oil and gas pipelines, over 32 mm (1 ¼ inches) in nominal diameter (1.660 inch actual outside diameter) and not more than 406.4 mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, or coated with any coatings compatible with line pipe), and regardless of end finish (plain end, beveled ends for welding, threaded ends or threaded and coupled, as well as any other special end finishes), and regardless of stenciling. The merchandise subject to this investigation may be classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') at heading 7306 and subheadings 7306.10.10.10, 730610.10.50, 7306.10.50.10, and 7306.10.50.50. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the investigation is dispositive.

Background

On September 29, 2004, the Department issued its affirmative preliminary determination in this proceeding. *See Notice of Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Circular Welded Carbon Quality Line Pipe from Korea*, 69 FR 59885 (October 6, 2004) (''*Preliminary Determination*''). The Department's *Preliminary Determination* covered manufacturers/exporters, Hyundai HYSCO (''HYSCO'') and SeAH Steel Corporation Ltd. (''SeAH'').

On October 4, 2004, the Department received from HYSCO a timely allegation of ministerial errors in the preliminary determination. HYSCO alleged that the Department made a significant ministerial error. The alleged ministerial error was in the Department's recalculation of HYSCO's financial expense ratio. Specifically, HYSCO claims that the Department used the wrong currency denomination (single won instead of 1,000 won) in the gains and losses on currency forward transactions figures.

Significant Ministerial Error

A significant ministerial error is defined as an error, the correction of which, singly or in combination with other errors, would result in (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted–average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted–average dumping margin of zero or de minimis and a weighted–average dumping margin of greater than de minimis or vice versa. See 19 CFR 351.224(g).

In this instance, the original preliminary determination resulted in a weighted–average margin of 6.49 percent for HYSCO and for the ''All Others'' rate. Recalculation of the financial expense ratio using the correct denomination in the gains and losses on currency forward transactions results in a *de minimis* weighted–average dumping margin, thus meeting the requirements under 19 CFR 351.224(g)(2).

Amended Determination

The Department has reviewed its preliminary calculations and agrees that the Department made a ministerial error within the meaning of 19 CFR 351.224(f) in its recalculation of HYSCO's financial expense with regard to the calculation of the gains and losses on currency forward transactions using the wrong currency denomination. For a detailed analysis, see the November 1, 2004, Memorandum to Richard O. Weible from Margaret Pusey and Brandon Farlander regarding the Analysis of

Allegation of Ministerial Error for Hyundai HYSCO Co., Ltd. on file in the Department's Central Records Unit, Room B–099 of the Herbert H. Hoover Building, 1401 Constitution Avenue, N.W., Washington, D.C. As a result of our analysis of HYSCO's allegation, we are amending our preliminary determination to revise the antidumping rates in accordance with 19 CFR 351.224(e).

We will revise our suspension of liquidation instructions to U.S. Customs and Border Protection (CBP), instructing CBP that no suspension of liquidation is required at this time, since both respondents in this proceeding now have *de minimis* rates. Parties will be notified of this amended determination, in accordance with section 733(d) and (f) of the Act.

The following weighted–average dumping margins apply:

Exporter/manufacturer	Weighted–average margin (percentage)
Hyundai HYSCO	1.31[1]
SeAH Steel Corporation Ltd.	1.19
All Others Rate	0.0

De minimis

The All Others rate is derived exclusive of all zero and *de minimis* margins and margins based entirely on adverse facts available. The All Others rate has been amended, and applies to all entries of the subject merchandise except for entries from exporters/producers that are identified individually above.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing CBP not to suspend liquidation of all imports of certain circular welded carbon quality line pipe from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the date of publication of this amended preliminary determination in the **Federal Register**. CBP shall not require a cash deposit or the posting of a bond equal to the weighted–average amount by which the normal value exceeds the export price, as indicated above, because we have calculated *de minimis* margins. These instructions not to suspend liquidation will remain in effect until further notice.

International Trade Commission (ITC) Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination of sales at not less than fair value.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: October 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–3000 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of Antidumping Duty New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has received timely requests to conduct new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC). In accordance with 19 CFR 351.214(d), we are initiating reviews for Shanghai Blessing Trade Co. Ltd. (Shanghai Blessing) and its producer Yichang Shilian Foodstuff Co. Ltd. (Yichang Shilian) and for Dafeng Shunli Import & Export Co., Ltd. (Shunli) and its producer Anhui Fuhuang Chaohu Sanzhen Co., Ltd. (AFCS).

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Matthew Renkey or Scott Fullerton, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2312 or (202) 482–1386, respectively.

Background

The Department received timely requests from Shanghai Blessing (September 14, 2004) and Shunli (September 30, 2004), pursuant to section 751(a)(2)(B) of the Tariff Act of 1930, as amended (the Act), and in accordance with 19 CFR 351.214(c)), for new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC.

Initiation of Reviews

Pursuant to 19 CFR 351.214(b)(2)(ii) and 19 CFR 351.214(b)(2)(iii)(A), in their requests for review, Shanghai Blessing and Shunli certified that they did not export the subject merchandise to the United States during the period of investigation (POI) and that they are not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iii)(B), Shanghai Blessing and Shunli further certified that their export activities are not controlled by the central government of the PRC. Also, in accordance with 19 CFR 351.214(b)(2)(iv), Shanghai Blessing and Shunli submitted documentation establishing the date on which each company first shipped the subject merchandise to the United States, the volume of its first shipment, and the date of the first sale to an unaffiliated customer in the United States.

Therefore, in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214(d), we are initiating new shipper reviews of the antidumping duty order on freshwater crawfish tail meat from the PRC. In accordance with 19 CFR 351.214(h)(i), we intend to issue the preliminary results of these reviews not later than 180 days from the date of publication of this notice. All provisions of 19 CFR 351.214 will apply to subject merchandise exported by Shanghai Blessing and produced by Yichang Shilian, and subject merchandise exported by Shunli and produced by AFCS.

In accordance with 19 CFR 351.214(g)(1)(i)(A), the period of review (POR) for a new shipper review initiated in the month immediately following the annual anniversary month is the twelve–month period immediately preceding the annual anniversary month. Therefore, the new shipper reviews will have a POR of September 1, 2003 through August 31, 2004.

Shanghai Blessing has identified Yichang Shilian as the producer of the subject merchandise for the sale under review. In addition, Shunli has identified AFCS as the producer of the subject merchandise for the sale under review. We will apply the bonding option under 19 CFR 351.107(b)(1)(i) only to entries of subject merchandise from these two exporters for which the respective producers under review are the suppliers.

Interested parties may submit applications for disclosure of business proprietary information under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act (19 U.S.C. 1675(a)(2)(B)) and 19 CFR 351.214.

Dated: October 27, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2997 Filed 11–2–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–863]

Honey from the People's Republic of China; Notice of Final Results and Final Rescission, In Part, of Antidumping Duty New Shipper Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On June 3, 2004, the U.S. Department of Commerce (the Department) published the preliminary results and partial rescission of the new shipper review of the antidumping order on honey from the People's Republic of China (69 FR 314348). The review covers one producer/exporter, Cheng Du Wai Yuan Bee Products Co., Ltd. (Cheng Du), and exports of the subject merchandise to the United States during the period of review (POR) of December 1, 2002, through May 31, 2003.

We have determined that the other exporter that requested a new shipper review for the same POR, Jinfu Trading Co., Ltd. (Jinfu PRC), failed to demonstrate its entitlement to a new shipper review. Therefore, we are rescinding the new shipper review of Jinfu PRC.

Based on our analysis of the record, including factual information obtained since the preliminary results, and of comments from the interested parties, we have made changes to Cheng Du's margin calculations to adjust the Indian surrogate values used to value the raw honey input, and to adjust our calculation of the financial ratios and their application in our normal value calculation. Therefore, the final results differ from the preliminary results, and we have determined that Cheng Du has made sales at less than normal value. *See* ''Final Results of Review'' section below.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza or Brandon Farlander at (202) 482–3019 or (202) 482–0182, respectively; Antidumping Duty/Countervailing Duty Operations, Office Seven, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 2004, the Department published the preliminary results and partial rescission of this review. *See Preliminary Results and Partial Rescission of Antidumping Duty New Shipper Review: Honey from the People's Republic of China*, 69 FR 314348 (June 3, 2004) (*Preliminary Results*). On August 11, 2004, the Department extended the final results of this new shipper review by 60 days until October 25, 2004. *See Honey from the People's Republic of China: Extension of Time Limit for Final Results of Antidumping New Shipper Review*, 69 FR 51062 (August 17, 2004).

We invited parties to comment on the *Preliminary Results*. We received case briefs from the American Honey Producers Association and the Sioux Honey Association (collectively, petitioners) and from Jinfu PRC on July 7, 2004. We received rebuttal briefs from Cheng Du on July 12, 2004, and from petitioners on July 16, 2004. Parties did not request a public hearing.

Scope of the Order

The products covered are natural honey, artificial honey containing more than 50 percent natural honey by weight, preparations of natural honey containing more than 50 percent natural honey by weight, and flavored honey. The subject merchandise includes all grades and colors of honey whether in liquid, creamed, comb, cut comb, or chunk form, and whether packaged for retail or in bulk form. The merchandise under review is currently classifiable under item 0409.00.00, 1702.90.90, and 2106.90.99 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under review is dispositive.

Analysis of Comments Received

All issues raised in the briefs are addressed in the Issues and Decision Memorandum, which is hereby adopted by this notice. A list of the issues raised, all of which are in the Issues and Decision Memorandum, is attached to this notice as Appendix I. Parties can find a complete discussion of all issues raised in the briefs and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit (CRU), room B–099 of the Herbert H. Hoover Building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from the interested parties, we have made changes to the margin calculation for Cheng Du. For the final results, we adjusted the surrogate value used to calculate the cost of the raw honey input in order to more accurately reflect the range of raw honey prices in India during the POR. *See* the Issues and Decision Memorandum at Comment 4, and the Memorandum to the File Regarding Final Results of New Shipper Review of the Antidumping Duty Order on Honey from the People's Republic of China; Analysis Memorandum (October 25, 2004) (Cheng Du Final Analysis Memo).

We continue to calculate surrogate financial ratios for factory overhead (FOH), selling, general and administrative expenses (SG&A), and profit using the 2002–2003 annual report from the Mahabaleshwar Honey Producers Cooperative (MHPC). However, we adjusted our calculations of the FOH and SG&A ratios. *See* Issues and Decision Memorandum at Comment 5 and Cheng Du Final Analysis Memo at Attachment 8.

For labor, in the *Preliminary Results*, we used the PRC regression–based wage rate at Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2002 and corrected in February 2003. In September 2004, the Expected Wages of Selected NME Countries was updated. For these *Final Results*, we are using the PRC regression–based wage rate in the Expected Wages of Selected NME Countries, revised in September 2004. *See* Cheng Du Final Analysis Memo at Attachments 3 and 9.

Partial Rescission of New Shipper Review

We are rescinding the new shipper review, with respect to Jinfu PRC, because we have determined that it has not satisfied all required regulatory and certification requirements for a new shipper review. For a full discussion of this issue, see the Issues and Decision Memorandum at Comments 1–3.

In order to qualify for a new shipper review under 19 CFR 351.214 of the Department's regulations, a company must provide certifications and

documentation establishing, among other things, the date of the first sale to an unaffiliated customer in the United States. *See* 19 CFR 351.214(b)(2)(iv)(C) of the Department's regulations. Because Jinfu PRC's certification (which it provided prior to the initiation of the new shipper review) does not include documentation establishing the date of the first sale to an unaffiliated customer in the United States, Jinfu PRC has failed to satisfy the threshold new shipper certification requirements, and is therefore, not entitled to a new shipper review. Therefore, we are rescinding this review with respect to Jinfu PRC. Since Jinfu PRC does not qualify for a separate rate, it is considered part of the non–market-economy (NME) entity, which was subject to the original investigation and, accordingly, will receive the NME/PRC–wide rate of 183.80.

Final Results of New Shipper Review

We determine that the following antidumping margin percentages exist during the period of December 1, 2002, through May 31, 2003:

Manufacturer/Exporter	Weighted–Average Margin (percent)
Cheng Du Wai Yuan Bee Products Co., Ltd.	22.03
Jinfu Trading Co., Ltd.	183.80

Assessment of Antidumping Duties

The Department shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1) of the Department's regulations, we have calculated an exporter/importer specific assessment rate for merchandise subject to this review. The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of the final results of review. We will direct CBP to assess the resulting assessment rates against the entered customs values for the subject merchandise on each of the importer's/customer's entries during the review period. For assessment purposes for the sale by Jinfu PRC, which we have determined is part of the NME/PRC entity, we are applying the NME/PRC–wide rate of 183.80 percent.

Cash Deposit Requirements

Bonding will no longer be permitted to fulfill security requirements for shipments from Cheng Du and Jinfu PRC of honey from the PRC entered, or withdrawn from warehouse, for consumption in the United States on or after the publication of this notice in the **Federal Register**. The following cash deposit rates shall be required for merchandise subject to the order entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results for this new shipper review, as provided for by section 751(a)(1) of the Tariff Act of 1930, as amended: (1) The cash deposit rates for Cheng Du (*i.e.*, for subject merchandise both manufactured and exported by Cheng Du only) and Jinfu PRC (*i.e.*, for subject merchandise manufactured by Cixi City Yikang Bee Industry Co., Ltd. (Yikang Bee) and exported by Jinfu PRC) will be the rates indicated above; (2) the cash deposit rate for PRC exporters who received a separate rate in a prior segment of the proceeding will continue to be the rate assigned in that segment of the proceeding; (3) the cash deposit rate for the NME/PRC entity and for subject merchandise exported by Cheng Du and Jinfu PRC but not manufactured by Cheng Du and Yikang Bee, respectively, will continue to be the NME/PRC- wide rate (*i.e.*, 183.80 percent); and (4) the cash deposit rate for non–PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC exporter/producer that supplied that non–PRC exporter. These deposit requirements shall remain in effect until publication of the final results of the next administrative review. There are no changes to the rates applicable to any other companies under this antidumping duty order.

Notification to Interested Parties

The Department will disclose calculations performed in connection with these final results of review within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b) of its regulations. This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This new shipper review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: October 25, 2004.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix I

Issues in the Decision Memorandum

Comment 1: Submission of New Factual Information by Jinfu PRC
Comment 2: Relationship between Jinfu PRC and Jinfu Trading (USA), Inc. (Jinfu USA)
Comment 3: Bona Fides of the Relevant U.S. Sale
Comment 4: Calculation of the Surrogate Value for Raw Honey
Comment 5: Calculation of the Surrogate Financial Ratios

[FR Doc. E4–2996 Filed 11–2–04; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–405–803, A–201–834, A–421–811, A–401–808]

Purified Carboxymethylcellulose from Finland, Mexico, the Netherlands and Sweden: Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Preliminary Antidumping Duty Determinations.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determinations of the antidumping duty investigations on purified carboxymethylcellulose (CMC) from Finland, Mexico, the Netherlands and Sweden. These investigations cover manufacturers and exporters of the subject merchandise to the United States during the period April 1, 2003 through March 31, 2004. As a result of this extension, the deadline for issuing the preliminary determinations in these investigations is now December 16, 2004.

EFFECTIVE DATE: November 3, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Sheba (Finland) at (202) 482–0145, Mark Flessner (Mexico) at (202)

482–6312, John Drury (Sweden) at (202) 482–0195, or Angelica Mendoza (the Netherlands) at (202) 482–3019; AD/CVD 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 June 30, 2004, the Department initiated antidumping duty investigations of purified CMC from Finland, Mexico, the Netherlands and Sweden for the period April 1, 2003 through March 31, 2004. See Initiation of Antidumping Duty Investigations: Purified Carboxymethylcellulose (CMC) from Finland, Mexico, the Netherlands and Sweden, 69 FR 40617–40621 (July 6, 2004). The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation, or November 16, 2004, unless this deadline is extended.

Postponement of Preliminary Determinations

Pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Tariff Act) and 19 CFR 351.205(e), on October 25, 2004, the petitioners filed a request that the Department postpone the purified CMC preliminary determinations for Finland, Mexico, the Netherlands and Sweden. The petitioners' request for postponement was timely, and the Department finds no compelling reason to deny the request.

Therefore, in accordance with section 733(c)(1)(A) of the Tariff Act, the Department is postponing the deadline for issuing the preliminary determinations of these investigations by 30 days, or until December 16, 2004.

This notice is published pursuant to section 733(c)(2) of the Tariff Act and 19 CFR 351.205(f).

Dated: October 27, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2999 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 030602141–4296–13]

Omnibus Notice Announcing the Availability of Grant Funds for Fiscal Year 2005; Addendum Additional Programs; National Sea Grant College Program; Ballast Water Technology Demonstration Program and National Strategic Initiative in Aquatic Invasive Species Research and Outreach

AGENCY: National Sea Grant College Program, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; extension of deadlines.

DATES: For the Ballast Water Technology Demonstration Program, the application deadlines are as follows: Full proposals must be received by the National Sea Grant Office by 4 p.m. e.s.t. on November 30, 2004.

For the National Strategic Initiative in Aquatic Invasive Species Research and Outreach, the application deadlines are as follows: Full proposal must be received by a state Sea Grant Program (or by the National Sea Grant Office in the case of an applicant in a non-Sea Grant state) by 4 p.m. (local time) on November 16, 2004. State Sea Grant Programs are to forward all full proposals received by the above deadline to the National Sea Grant Office by 4 p.m. e.s.t. on December 1, 2004.

ADDRESSES: The full notices can be found at: *http://fedgrants.gov/Applicants/DOC/NOAA/GMC/11417BWTDP07142004/Attachments.html#upl. http://fedgrants.gov/Applicants/DOC/NOAA/GMC/11417Invasive071404/Attach#upl.*

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to extend the application deadline for the Ballast Water Technology Demonstration Program and the date by which Sea Grant Programs must forward received applications for the National Strategic Initiative in Aquatic Invasive Species Research and Outreach to the National Sea Grant Office (NSGO). This extension is being granted to ease the transition to electronic grants submissions through the Grants.gov portal. The deadline for applications from PI's to the state Sea Grant Office (or to the National Sea Grant Office in the case of an applicant in a non-Sea Grant state) for the National Strategic Initiative in Aquatic Invasive Species Research and Outreach program remains the same.

FOR FURTHER INFORMATION CONTACT: Dorn Carlson, 301–713–2435 ext. 123; e-mail: *Dorn.Carlson@noaa.gov*. For questions regarding electronic submissions contact Jonathan Eigen at 301–713–2438 ext. 188 or *jonathan.eigen@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to extend an application deadline for the Ballast Water Technology Demonstration Program and the National Strategic Initiative in Aquatic Invasive Species Research and Outreach initiated by the NSGO. The original solicitation of applications was published in the **Federal Register** on July 14, 2004 (69 FR 42132).

For the Ballast Water Technology Demonstration Program, NOAA announces that the date by which all full proposals must be received by the National Sea Grant Office has been changed from November 16, 2004 to November 30, 2004.

For the National Strategic Initiative in Aquatic Invasive Species Research and Outreach, the date by which full proposals must be forwarded by State Sea Grant Programs to the National Sea Grant Office has been changed from November 23, 2004 to December 1, 2004. The reason for these changes is to aid the PI's and the Sea Grants programs in the transition to electronic grant submission through Grants.gov. All other application deadlines remain the same.

The Federal Funding Opportunity (FFO) notice has been modified to reflect these changes. In addition, the FFO has been amended to allow proposal submission to these two programs electronically through *http://www.grants.gov*.

This program is excluded under E.O. 12372.

Dated: October 29, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 04–24536 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 030602141–4295–12]

Availability of Grant Funds for Fiscal Year 2005; Sea Grant B The Gulf of Mexico Oyster Industry Program

AGENCY: National Sea Grant College Program, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; extension of Sea Grant Programs forwarding applications.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to extend the date by which Sea Grant Programs must forward applications for the Gulf of Mexico Oyster Industry Program to the National Sea Grant Office (NSGO). The submission date for forwarding applications has been changed to allow more time for the Sea Grant programs to forward proposals to the National Sea Grant College Office. This extension is being granted to ease the transition to electronic grants submissions through the Grants.gov portal. The application deadline for PI's to the state Sea Grant program remains the same.

DATES: The new Preapplication/Application Deadline is as follows: Full proposals must be received by a state Sea Grant Program (or by the National Sea Grant Office (NSGO) in the case of an applicant in a non-Sea Grant state) by 4 p.m. (local time) on November 16, 2004. State Sea Grant Programs must forward all full proposals to the NSGO by 4 p.m. e.s.t. on December 1, 2004.

ADDRESSES: The FFO can be found at *http://fedgrants.gov/Applicants/DOC/NOAA/GMC/11417MexicoOyster063004/listing.html*. The full notice can be found at: *http://fedgrants.gov/Applicants/DOC/NOAA/GMC/11417MexicoOyster063004/listing.html*.

FOR FURTHER INFORMATION CONTACT: Jonathan Eigen, 301–713–2438 ext. 188; e-mail: *jonathan.eigen@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to extend an application deadline for the Gulf of Mexico Oyster Industry Program initiated by the NSGO. The original solicitation of applications was published in the **Federal Register** on June 30, 2004 (69 FR 39417).

The date by which the state Sea Grant Office must forward full applications to the National Sea Grant Office has been changed from November 16, 2004, to December 1, 2004, to allow more time for the Sea Grant programs to forward proposals to the National Sea Grant College Office.

This extension is being granted to ease the transition to electronic grants submissions through the Grants.gov portal. The application deadline for PI's to the state Sea Grant program remains the same.

In addition, the FFO has been modified to permit the submission of Electronic Applications through the Grants.gov Web site and to reduce the number of copies required for paper submission.

Dated: October 29, 2004.

Louisa Koch,

Deputy Assistant Administrator, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. 04–24537 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No.: 030602141–4294–11]

Availability of Grant Funds for Fiscal Year 2005; Sea Grant B The Oyster Disease Research Program

AGENCY: National Sea Grant College Program, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice; Extension of Sea Grant Programs Forwarding Applications.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) publishes this notice to extend the date by which Sea Grant Programs must forward applications for the Oyster Disease Research Program to the National Sea Grant Office (NSGO). The submission date for forwarding applications has been changed to allow more time for the Sea Grant programs to forward proposals to the National Sea Grant College Office. This extension is being granted to ease the transition to electronic grants submissions through the Grants.gov portal. The application deadline for PI's to the state Sea Grant program remains the same.

DATES: Full proposals must be received by a state Sea Grant Program (or by the National Sea Grant Office (NSGO) in the case of an applicant in a non-Sea Grant state) by 4 p.m. (local time) on November 16, 2004. State Sea Grant Programs must submit to the NSGO all full proposals by 4 p.m. EST on December 1, 2004.

ADDRESSES: The full notice can be found at: *http://fedgrants.gov/Applicants/DOC/NOAA/GMC/11417Oyster%26%23032%3BDisease063004/Attachments.html#upload3308*.

FOR FURTHER INFORMATION CONTACT: Jonathan Eigen, 301–713–2438 ext. 188; e-mail: *jonathan.eigen@noaa.gov*.

SUPPLEMENTARY INFORMATION: NOAA publishes this notice to extend an application deadline for the Oyster Disease Research Program initiated by the NSGO. The original solicitation of applications was published in the **Federal Register** on June 30, 2004 (69 FR 39417).

The date by which the state Sea Grant Office must forward full applications to the National Sea Grant Office has been changed from November 16, 2004 to December 1, 2004 to allow more time for the Sea Grant programs to forward proposals to the National Sea Grant College Office.

This extension is being granted to ease the transition to electronic grants submissions through the Grants.gov portal. The application deadline for PI's to the state Sea Grant program remains the same.

In addition, the FFO has been modified to permit the submission of Electronic Applications through the *Grants.gov* Web site.

Dated: October 28, 2004.

Louisa Koch,

Deputy Assistant Administrator, OAR, National Oceanic and Atmospheric Administration.

[FR Doc. 04–24535 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Sea Grant Review Panel

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Sea Grant Review Panel. The meeting will have several purposes. Panel members will discuss and provide advice on the National Sea Grant College Program in the areas of program evaluation, strategic planning, education, communications and extension, science

and technology programs, and other matters as described below:

DATES: The announced meeting is scheduled during two days: Wednesday, November 17, 2 p.m. to 6 p.m.; Thursday, November 18, 8:45 a.m. to 3 p.m.

ADDRESSES: On November 17th, St. Gregory Hotel, 2033 M Street, Northwest, Washington, DC 20036. On November 18th, Sea Grant Association Office, 1201 New York Avenue, Northwest, 4th Floor Conference Room, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Dr. Francis M. Schuler, Designated Federal Official, National Sea Grant College Program, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Room 11837, Silver Spring, Maryland 20910, (301) 713–2445.

SUPPLEMENTARY INFORMATION: The Panel, which consists of a balanced representation from academia, industry, state government and citizens groups, was established in 1976 by Section 209 of the Sea Grant Improvement Act (Public Law 94–461, 33 U.S.C. 1128). The Panel advises the Secretary of Commerce and the Director of the National Sea Grant College Program with respect to operations under the Act, and such other matters as the Secretary refers to them for review and advice. The agenda for the meeting is as follows:

Wednesday, November 17, 2004

2 p.m.–6 p.m.
- 2 p.m.—Welcoming and Opening Remarks.
- 2:15 p.m.—Executive Committee Report.
- 2:30 p.m.—National Sea Grant Office (NSGO) Director Report.
- 3:30 p.m.—NOAA Research Update.
- 4 p.m.—Break.
- 4:15 p.m.—Communications Report Discussion.
- 5:30 p.m.—NOAA's Program Planning, Budget and Execution System.
- 6 p.m.—Adjourn.

Thursday, November 18, 2004

9 a.m.–3 p.m.
- 9 a.m.—NOAA's Climate Change Science Programs.
- 9:30 a.m.—NOAA's Coastal Programs and the Integrated Ocean Observing System.
- 10 a.m.—Update/Recommendations from Program Evaluation.
- 10:30 a.m.—Congressional Committee Updates.
- 11:30 p.m.—Lunch.
- 12:30 p.m.—Universities and the Ocean Commission Report.
- 1 p.m.—Ocean Commission Report—Developing a Sea Grant Strategy: A Panel Discussion.
- 2 p.m.—NSGO Staff Updates.
- 2:45 p.m.—Wrap-Up.
- 3 p.m.—Adjourn.

This meeting will be open to the public.

Dated: October 29, 2004.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research.

[FR Doc. 04–24538 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–KA–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Disclosure Document Program.

Form Number(s): PTO/SB/95.

Agency Approval Number: 0651–0030.

Type of Request: Revision of a currently approved collection.

Burden: 4,445 hours annually.

Number of Respondents: 22,225 responses per year.

Avg. Hours Per Response: The USPTO estimates that it will take 12 minutes (0.20 hours) to submit a Disclosure Document Deposit Request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: An applicant files a disclosure document deposit request to establish a date of conception for an invention. When the USPTO receives a request for disclosure document deposit, an identifying number is assigned and stamped on the document. The document is then filed. The information is used by the USPTO to establish the date of conception for an invention. The USPTO keeps a disclosure document for only two years, unless it is referred to in a related provisional or non-provisional patent application filed within the two-year period. The disclosure document is not a patent application, and the date of its receipt in the USPTO will not become the effective filing date of any patent application subsequently filed.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and the Federal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by any of the following methods:

- E-mail: *susan.brown@uspto.gov.* Include ''0651–0030 copy request'' in the subject line of the message.
- Fax: 703–308–7407, marked to the attention of Susan Brown.
- Mail: Susan K. Brown, Records Officer, Office of the Chief Information Officer, Office of Data Architecture and Services, Data Administration Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, Virginia 22313–1450.

Written comments and recommendations for the proposed information collection should be sent on or before December 3, 2004 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: October 28, 2004.

Susan K. Brown,

Records Officer, USPTO, Office of Data Architecture and Services, Data Administration Division.

[FR Doc. 04–24511 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2004–C–048]

Performance Review Board (PRB)

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice; Update membership list of the United States Patent and Trademark Office Performance Review Board.

SUMMARY: In conformance with the Civil Service Reform Act of 1978, 5 U.S.C. 4314(c)(4), the United States Patent and Trademark Office announces the appointment of persons to serve as members of its Performance Review Board.

ADDRESSES: Operations Manager, Office of Human Resources, United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313–1450.

FOR FURTHER INFORMATION CONTACT: Valencia Martin-Wallace at (703) 305–8062.

SUPPLEMENTARY INFORMATION: The membership of the United States Patent and Trademark Office Performance Review Board is as follows:

Stephen M. Pinkos, Chair, Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 2213–1450, Term expires September 30, 2006

Jo-Anne D. Barnard, Vice Chair, Chief Financial Officer and Chief Administrative Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005

Nicholas Godici, Commissioner for Patents, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005

Lynne Beresford, Deputy Commissioner for Trademark Policy, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005

Ronald Hack, Acting Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005

James Toupin, General Counsel, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2006

Lois E. Boland, Director of International Relations, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, Term expires September 30, 2005

Andrew B. Maner, Chief Financial Officer, Department of Homeland Security, 301–7th Street, SW., Room 4905, Washington, DC 20528, Term expires September 30, 2006

Dated: October 29, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–24554 Filed 11–2–04; 8:45 am]

BILLING CODE 3510–16–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 18 November 2004 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 401 F Street, NW., Washington, DC 20001–2728. Items of discussion affecting the appearance of Washington, DC, may include buildings, parks and memorials.

Draft agendas and additional information regarding the Commission are available on our Web Site *http://www.cfa.gov*. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Frederick J. Lindstrom, Acting Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, 27 October 2004.

Frederick J. Lindstrom,

Acting Secretary.

[FR Doc. 04–24512 Filed 11–2–04; 8:45 am]

BILLING CODE 6330–01–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Solicitation of Public Comments on Request for Textile and Apparel Safeguard Action on Imports from China

October 29, 2004.

AGENCY: The Committee for the Implementation of Textile Agreements (the Committee)

ACTION: Solicitation of public comments concerning a request for safeguard action on imports from China of cotton trousers (Category 347/348).

SUMMARY: The Committee has received a request from the American Manufacturing Trade Action Coalition, the National Council of Textile Organizations, the National Textile Association, SEAMS, and UNITE HERE! (Requestors) asking the Committee to limit imports from China of cotton trousers in accordance with the textile and apparel safeguard provision of the Working Party on the Accession of China to the World Trade Organization (the Accession Agreement). The Committee hereby solicits public comments on this request.

FOR FURTHER INFORMATION CONTACT: Jay Dowling, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4058.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agriculture Act of 1956, as amended; Executive Order 11651, as amended.

BACKGROUND:

The textile and apparel safeguard provision of the Accession Agreement provides for the United States and other members of the World Trade Organization that believe imports of Chinese origin textile and apparel products are, due to market disruption, threatening to impede the orderly development of trade in these products to request consultations with China with a view to easing or avoiding the disruption. Pursuant to this provision, if the United States requests consultations with China, it must, at the time of the request, provide China with a detailed factual statement showing ''(1) the existence or threat of market disruption; and (2) the role of products of Chinese origin in that disruption.'' Beginning on the date that it receives such a request, China must restrict its shipments to the United States to a level no greater than 7.5 percent (6 percent for wool product categories) above the amount entered during the first 12 months of the most recent 14 months preceding the month in which the request was made. If exports from China exceed that amount, the United States may enforce the restriction.

The Committee has published procedures (the Procedures) it follows in considering requests for Accession Agreement textile and apparel safeguard actions (68 FR 27787, May 21, 2003; 68 FR 49440, August 18, 2003), including the information that must be included in such requests in order for the Committee to consider them.

On October 8, 2004, the Requestors asked the Committee to impose an Accession Agreement textile and apparel safeguard action on imports from China of cotton trousers (Category 347/348) on the ground that an anticipated increase in cotton trouser imports after January 1, 2005, threatens to disrupt the U.S. market for cotton trousers. The request is available at http://otexa.ita.doc.gov. In light of the considerations set forth in the Procedures, the Committee has determined that the Requestors have provided the information necessary for the Committee to consider the request.

The Committee is soliciting public comments on the request, in particular with regard to whether there is a threat of disruption to the U.S. market for cotton trousers and, if so, the role of Chinese-origin cotton trousers in that disruption. To this end, the Committee seeks relevant information addressing factors such as the following, which may be relevant in the particular circumstances of this case, involving a product under a quota that will be

removed on January 1, 2005: (1) Whether cotton trouser imports from China are entering, or are expected to enter, the United States at prices that are substantially below prices of the like or directly competitive U.S. product, and whether those imports are likely to have a significant depressing or suppressing effect on domestic prices of the like or directly competitive U.S. product or are likely to increase demand for further imports from China; (2) Whether exports of Chinese-origin cotton trousers to the United States are likely to increase substantially and imminently (due to existing unused production capacity, due to capacity that can easily be shifted from the production of other products to the production of cotton trousers, or due to an imminent and substantial increase in production capacity or investment in production capacity), taking into account the availability of other markets to absorb any additional exports; (3) Whether Chinese-origin cotton trousers that are presently sold in the Chinese market or in third-country markets will be diverted to the U.S. market in the imminent future (for example, due to more favorable pricing in the U.S. market or to existing or imminent import restraints into third country markets); (4) The level and the extent of any recent change in inventories of cotton trousers in China or in U.S. bonded warehouses; (5) Whether conditions of the domestic industry of the like or directly competitive product demonstrate that market disruption is likely (as may be evident from any anticipated factory closures or decline in investment in the production of cotton trousers), and whether actual or anticipated imports of Chinese-origin cotton trousers are likely to affect the development and production efforts of the U.S. cotton trouser industry; and (6) Whether U.S. managers, retailers, purchasers, importers, or other market participants have recognized Chinese producers of cotton trousers as potential suppliers (for example, through pre-qualification procedures or framework agreements).

Comments may be submitted by any interested person. Comments must be received no later than December 3, 2004. Interested persons are invited to submit ten copies of such comments to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001A, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, DC 20230.

The Committee will protect any business confidential information that is marked ''business confidential'' from disclosure to the full extent permitted by law. To the extent that business confidential information is provided, two copies of a non-confidential version must also be provided in which business confidential information is summarized or, if necessary, deleted. Comments received, with the exception of information marked ''business confidential'', will be available for inspection between Monday - Friday, 8:30 a.m and 5:30 p.m in the Trade Reference and Assistance Center Help Desk, Suite 800M, USA Trade Information Center, Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC, (202) 482-3433.

The Committee will make a determination within 60 calendar days of the close of the comment period as to whether the United States will request consultations with China. If the Committee is unable to make a determination within 60 calendar days, it will cause to be published a notice in the **Federal Register**, including the date by which it will make a determination. If the Committee makes a negative determination, it will cause this determination and the reasons therefore to be published in the Federal Register. If the Committee makes an affirmative determination that imports of Chinese origin cotton trousers threaten to disrupt the U.S. market, the United States will request consultations with China with a view to easing or avoiding the disruption.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 04–24653 Filed 11–1–04; 1:31 pm]

BILLING CODE 3510–DS–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 05–C0003]

Dynacraft BSC, Inc., a Massachusetts Corporation, Formally Known as Dynacraft Industries, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Dynacraft BSC, Inc., a Massachusetts corporation, formally known as Dynacraft Industries, Inc., containing a civil penalty of $1,400,000.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 18, 2004.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 05–C0003, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 28, 2004.

Todd A. Stevenson,

Secretary.

Settlement Agreement and Order

1. This Settlement Agreement is made by and between the staff (''the staff'') of the U.S. Consumer Product Safety Commission (''the Commission'') and Dynacraft BSC, Inc., formally known as Dynacraft Industries, Inc. (''Dynacraft'' or ''Respondent''), a corporation, in accordance with 16 CFR 1118.20 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Consumer Product Safety Act (''CPSA''). This Settlement Agreement and the incorporated attached Order settle the staff's allegations set forth below.

I. The Parties

2. The Commission is an independent federal regulatory agency responsible for the enforcement of the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

3. Dynacraft is a corporation organized and existing under the laws of the Commonwealth of Massachusetts with its principal corporate offices located at 2550 Kerner Boulevard, San Rafael, CA 94901. Dynacraft imports bicycle products from China for sale in the United States.

II. Allegations of the Staff

A. Vertical XL2 Mountain Bicycle

4. In July 1999, Respondent manufactured for nationwide distribution 3,562 Vertical XL2, 26″ Mountain Bicycles, Model Number 8526–26. Respondent also manufactured

the JY906 bicycle fork (''fork'') and incorporated it into these bicycles.

5. The bicycles described in paragraph 4 above are sold and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are therefore, ''consumer products'' as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' of the bicycles described in paragraph 4, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11), and (12).

6. Some of the front suspension forks for these bicycles had defective welds that allegedly broke apart during normal and foreseeable use of the bicycles. The flaws in these forks are ''defects'' under section 15 of the CPSA, 15 U.S.C. 2064.

7. If the fork breaks during use, it may cause the rider to lose control, fall and suffer serious injuries such as facial abrasions, concussions, other head injuries, chipped or lost teeth, broken bones, and lacerations requiring sutures. Death is also possible.

8. On or about February 29, 2000, Respondent announced the recall of 19,000 Vertical XL2 Bicycles, Model No. 8526–26 with a manufacturing date of October 11, 1999. At the time, the firm was aware of at least two failures of the bicycles with a manufacturing date of July 1999, but did not provide that information to the Commission staff. In the staff's letter of February 14, 2000 accepting Respondent's corrective action plan, the staff said, ''If the firm [Respondent] receives or learns of any information concerning other incidents or injuries, or information affecting the scope, prevalence or seriousness of the reported problem, it must report to [the Office of Compliance] immediately.''

9. Between January 2000 and July 2000, Respondent received five incident reports involving Vertical XL2, Model 8526–26 bicycles' forks allegedly breaking part during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. These bicycles had a manufacturing date of July 1999. Dynacraft knew about injuries including broken and lost teeth, fractures, and lacerations requiring sutures. Dynacraft did not report this pattern of defect to the Commission until on or about July 26, 2000.

10. Before July 26, 2000, Dynacraft had obtained information which reasonably supported the conclusion that the bicycles' forks described in paragraph 4 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b) and (c).

11. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

12. Dynacraft committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

B. Magna Electroshock Mountain Bicycle

13. Between July 1999 and October 1999, Respondent manufactured for nationwide distribution 21,888 Magna Electroshock 24″ and 26″ Mountain Bicycles, Model Numbers 8504–90, 8504–96, 8548–78, and 8548–94. Respondent also manufactured the JY906 fork (''fork'') and incorporated it into these bicycles.

14. The bicycles described in paragraph 13 above were sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise and are, therefore, ''consumer products'' as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' of the bicycles described in paragraph 13, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11), and (12).

15. Some of the bicycles manufactured from July 1999 through October 1999 had forks that were allegedly not properly welded and could break apart during normal and reasonably foreseeable use of the bicycles. These flaws in the forks constituted ''defects'' within the meaning of section 15 of the CPSA, 15 U.S.C. 2064.

16. If the fork breaks during use, it could cause the rider to lose control, fall and suffer injuries such as facial abrasions, concussions, other head injuries, broken or lost teeth, broken bones, and lacerations requiring sutures. Death is also possible.

17. Between January 8, 2000 and August 4, 2000, the date of Dynacraft's report to the Commission, Dynacraft had received 35 reports alleging that the Magna Electroshock, Model Nos. 8504–90, 8504–96, 8548–78, and 8548–94 bicycles' forks had broken apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. The manufacturing dates of the bicycles ranged from July 1999 to October 1999. Respondent had learned of several injuries in these incidents including concussions, fractures, abrasions, back strain, and chipped and lost teeth.

18. In each of the instances described in paragraphs 13 through 17 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles' forks described above contained a defect which would create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b) and (c).

19. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

20. Dynacraft committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

C. Next Shockzone Mountain Bicycle

21. From September 1999 through March 2001, Dynacraft manufactured for nationwide distribution about 38,000 Next Shockzone 20″ Boys' Mountain Bicycles, Model Number 8536–33. The bicycle's color was orange. Respondent also manufactured the JY906 fork (''fork'') and incorporated it into these bicycles.

22. The bicycles described in paragraph 21 above were sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are, therefore, ''consumer products'' as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' of the bicycles described in paragraph 21, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11), and (12).

23. Some of the forks of these bicycles could break apart during normal and reasonably foreseeable use of the bicycles. The flaws in the forks constitute ''defects'' under section 15 of the CPSA, 15 U.S.C. 2064.

24. If the fork breaks during use, it could cause a rider to lose control, fall, and suffer serious injuries such as facial abrasions, concussions, other head injuries, broken or lost teeth, broken bones, and lacerations requiring sutures. Death is also possible.

25. Between March and September 2000—the time Dynacraft was formulating its corrective action plan to expand its recall of the Vertical XL2 bicycles and its Magna Electroshock bicycles—Dynacraft learned of 19 incident reports alleging fork breakage during normal and reasonably foreseeable use of its Next Shockzone Bicycle, Model No. 8536–33, causing riders to lose control and fall to the ground. Dynacraft also learned about fractures, lacerations requiring sutures, and broken or lost teeth.

26. Between September 2000 and March 16, 2001, the date Dynacraft reported to the Commission, Dynacraft received an additional 12 reports alleging fork breakage involving its Next Shockzone bicycle. By the time Dynacraft reported to the Commission, Dynacraft had received at least 31 incident reports alleging the Next Shockzone's, Model No. 8536–33 bicycles' forks breaking apart during normal and reasonably foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries alleged and known to Dynacraft included a blood clot to the brain, fractures, lacerations requiring sutures, and chipped teeth.

27. In each of the instances described in paragraphs 21 through 26 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles' forks contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b) and (c).

28. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

29. Dynacraft committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

D. Next Ultra Shock Mountain Bicycle

30. Between September 1999 and March 2001, Respondent manufactured for nationwide distribution about 132,000 Next Ultra Shock Mountain Bicycles. Respondent also manufactured the Ballistic 105 bicycle fork (''fork'') and incorporated it into these bicycles.

31. The bicycles described in paragraph 30 were sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are, therefore, ''consumer products'' as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' of the bicycles described in paragraph 30, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11), and (12).

32. Some of the forks of these bicycles could break apart during normal and reasonably foreseeable use of the bicycles. The flaws in the forks constitute ''defects'' under section 15 of the CPSA, 15 U.S.C. 2064.

33. If the fork breaks during use, it could cause a rider to lose control, fall and suffer serious injuries such as facial abrasions, concussions, other head injuries, damaged teeth, broken bones, and lacerations requiring sutures. Death was also possible.

34. Between November 1999 and November 2001, Respondent received 21 incident reports alleging the Next Ultra Shock bicycles' forks breaking apart during normal and foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries known to Dynacraft included abrasions, concussions, and chipped teeth.

35. Dynacraft did not report to the Commission until March 18, 2002 about the defect and incidents regarding the Next Ultra Shock bicycles' forks. When it did report, it did not disclose that one of the incidents allegedly had resulted in the death of the rider.

36. In each of the instances described in paragraphs 30 through 35 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles' forks described in paragraph 30 above contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

37. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

38. Dynacraft committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 IUS.C. 2069.

E. Magna Equator Mountain Bicycle

39. Between December 1999, and May 31, 2000, Dynacraft manufactured for nationwide distribution about 54,000 Magna Equator Mountain Bicycles, Model Nos. 8547–19 and 8546–84.

40. The bicycles described in paragraph 39 above are sold to and/or are used by consumers in or around a permanent or temporary household or residence, a school, in recreation, or otherwise, and are, therefore, ''consumer products'' as defined in section 3(a)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1). Respondent was a ''manufacturer'' of the bicycles described in paragraph 39 above, which were ''distributed in commerce'' as those terms are defined in sections 3(a)(4), and (12) of the CPSA, 15 U.S.C. 2052(a)(4), (11), and (12).

41. Some of the pedals of the bicycles are defective because improper drilling and tapping of the holes caused the pedals to loosen and fall off, causing riders to lose control, fall to the ground, and suffer serious injuries such as concussions, chest trauma, broken bones, sprains, abrasions, lacerations requiring sutures, and muscle strains. Thus, the flaws in the pedals constitute ''defects'' under section 15 of the CPSA, 15 U.S.C. 2064.

42. Between December 1999 and June 2000, Dynacraft received about six incident reports alleging the Magna Equator's bicycle pedals falling off during normal and reasonably foreseeable use of the bicycles, causing riders to lose control and fall to the ground. Injuries known to Dynacraft include concussions, broken bones, sprains, abrasions, lacerations requiring sutures, and muscle strains.

43. On or about June 13, 2000, a retailer of the bicycles faxed an engineering report the retailer had commissioned to Dynacraft. The engineering report concluded that premature loosening of the bicycle's pedals was attributable to manufacturing defects in the pedal cranks associated with those pedals. Dynacraft did not report to the Commission at that time.

44. By the time Dynacraft reported to the Commission in April 2001, Dynacraft had learned of at least 31 incident reports alleging the bicycles' pedals falling off.

45. In each of the instances described in paragraph 39 through 44 above, Dynacraft obtained information which reasonably supported the conclusion that the bicycles' pedals contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death, but failed to report such information in a timely manner to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b) and (3).

46. By failing to provide the information to the Commission in a timely manner as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Dynacraft violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

47. Dynacraft committed this failure to timely report to the Commission ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Dynacraft to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Dynacraft's Response

48. Dynacraft denies the staff's allegations of bicycle defects and that it violated the CPSA as set forth in paragraphs 4 through 47 above.

49. Dynacraft asserts that it is the importer and distributor of the bicycles and all incorporated parts referenced in the allegations above.

50. Dynacraft denies the allegations of the Staff that the Vertical XL2, Magna Electroshock, Next Shockzone, Next Ultra Shock, and Magna Equator bicycles contain or contained a defect or defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death.

51. Dynacraft denies that it obtained information that reasonably supported the conclusion that its bicycles identified above might have contained a defect or defects which could create a substantial product hazard or creates an unreasonable risk of serious injury or death, or that Dynacraft failed to report in a timely manner in violation of the reporting requirements of section 15(b) of the CPSA. Dynacraft further denies that it violated section 19(a) of the CPSA in relation to the bicycles mentioned above and that its failure to timely report to the Commission ''knowingly'' subjected it to civil penalties under section 20 of the CPSA.

52. Dynacraft denies the casual link alleged in paragraph 35 between a rider's death and the Next Ultra Shock or any other Dynacraft product.

53. Dynacraft enters this Settlement Agreement and Order for settlement purposes only, to avoid incurring additional legal costs and expenses. In settling this matter, Dynacraft does not admit any fault, liability, or statutory or regulatory violation, and this Agreement and Order do not constitute nor are they evidence of any fault or wrongdoing on the part of Dynacraft.

54. Notwithstanding its denial that the bicycles contained defects or created an unreasonable risk of serious injury or death, Dynacraft, nevertheless, launched appropriate and timely recalls and cooperated with the Staff in recalling the products.

55. Dynacraft further asserts as a general matter that it received very few complaints concerning the above-mentioned products relative to the numbers of products in distribution; that it implemented product improvements to address the complaints on the bicycles in question; that it considered the complaints and the reporting requirements of the CPSA; and that it made its judgments, about reporting in good faith based on its understanding of the requirements of the law and that it did not ''knowingly'' violate any reporting requirements.

56. Dynacraft denies that any of its bicycles have caused any injuries and does not admit to the truth of any claims or other matters alleged or otherwise stated by the Commission or any other person with respect to its bicycles. Nothing contained in this Agreement and Order precludes Dynacraft from raising any defense in any future litigation.

IV. Agreement of the Parties

57. The Consumer Product Safety Commission has jurisdiction over this matter and over Dynacraft under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

58. This Agreement is entered into for settlement purposes only and does not constitute an admission by Dynacraft or a determination by the Commission that the products referenced in paragraphs 4 through 47 contain or contained a defect or defects which could create a substantial product hazard or create an unreasonable risk of serious injury or death, or that Dynacraft knowingly violated the CPSA's reporting requirement.

59. In settlement of the staff's allegations, Dynacraft agrees to pay a civil penalty in the amount of one million, four hundred thousand dollars ($1,400,000.00) as set forth in the incorporated Order.

60. This Settlement Agreement and Order settle all outstanding issues against Dynacraft relating to the staff's allegations set forth in paragraphs 4 through 47 above.

61. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter to (a) an administrative or judicial hearing, (b) to judicial review or other challenge or contest of the validity of the Commission's actions, (c) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (d) to a statement of findings of fact and conclusions of law, and (e) to any claims under the Equal Access to Justice Act.

62. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1118.20(e). If the Commission does not receive any written objections within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

63. The Commission may publicize the terms of the Settlement Agreement and Order.

64. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of this Order may subject Dynacraft to appropriate legal action.

65. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart form those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

66. The provisions of this Settlement Agreement and Order shall apply to Dynacraft and each of its successors and assigns.

Respondent, Dynacraft BSC, Inc.

Dated: October 5, 2004.

Jerome A. Berman,

President.

Dynacraft BSC, Inc., 2550 Kerner Road, San Rafael, CA 94901.

Dated: October 7, 2004.

Daniel C. Schwartz, Esquire
Jill M. Zucker, Esquire
Brooke E. Geller, Esquire

Attorneys for Respondent, Dynacraft BSC, Inc.

Bryan Cave, LLP, 700 Thirteenth Street, NW., Washington, DC 20005–3960.

Commission Staff

Nicholas V. Machica,

Acting Assistant Executive Director.

Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone,

Legal Division, Office of Compliance.

Dated: October 12, 2004.

Dennis C. Kacoyanis,

Trial Attorney.

Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Dynacraft BSC, Inc., a Massachusetts corporation, formally known as Dynacraft Industries, Inc., (''Dynacraft'' or ''Respondent'') and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Dynacraft; and it appearing that the Settlement Agreement and Order is in the public interest, it is

Ordered that the Settlement Agreement be, and hereby, is accepted; and it is

Further Ordered that upon final acceptance of the Settlement Agreement and Order, Dynacraft shall pay to the Commission a civil penalty in the amount of One Million, Four Hundred Thousand Dollars ($1,400,000.00) in four (4) payments each. Payment shall be made upon the following schedule: The first payment of $350,000 shall be made within twenty (20) days after service upon Respondent of this Final Order of the Commission. The second payment of $350,000 shall be made within 110 days of service of the Final Order, the third payment of $350,000 shall be made within 200 days of service of the Final Order, and the fourth payment of $350,000 shall be made within 365 days of the date of service of the Final Order. Upon the failure by Dynacraft to make a payment or upon the making of a late payment by Dynacraft, (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. §§ 1961(a) and (b).

Provisionally accepted and Provisional Order issued on the 28th day of October, 2004.

By Order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 04–24580 Filed 11–2–04; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

DOD Advisory Group on Electron Devices; Notice of Meeting

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0830, Tuesday, November 16, 2004.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 241 18 Street, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on microwave technology, microelectronics, electro-optics, and electronics materials.

In accordance with Section 10(d) of Public Law No. 92–463, as amended, (5 U.S.C. App. § 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: October 25, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–24474 Filed 11–2–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee Meeting Cancellations.

SUMMARY: The Defense Science Board Task Force on Identification Technologies of the Future meeting scheduled for November 4–5, 2004, has been canceled.

Dated: October 28, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–24471 Filed 11–2–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary; Membership of the Office of the Secretary of Defense; Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Missile Defense Agency, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The Performance Review Board (PRB) provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: October 1, 2004.

FOR FURTHER INFORMATION CONTACT: Sandra Burrell, Executive and Political Personnel Division, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 693–8347.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year

renewable term, effective October 1, 2004.

Office of the Secretary of Defense

Chairperson

Jennifer Buck
Bruce Bade
Michael Ioffredo
Robert Leheny
Eric Coulter
Get Moy
Robert Nemetz
George Lotz
Rebecca Schmidt
Joel Sitrin
Paul Koffsky
Richard Burke
Norma St. Claire
William Lowry
Robert Bruce
James Johnson
Cheryl Roby
Kathie Johnson
Mark Schaeffer
James Townsend
Ann Reese
Richard Sylvester
Robert Foster
Alan Shaffer
Margaret Myers
Gary Payton
Ellen Embrey
James J. Townsend
William Lehr
Richard Millies
Sallie Flavin

Dated: October 28, 2004.

Jeannette Owings-Ballard,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–24472 Filed 11–2–04; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM05–1–000]

Regulations Governing the Conduct of Open Seasons for Alaska Natural Gas Transportation Projects; Notice of Rulemaking Schedule

October 26, 2004.

Section 103(e) of the Alaska Natural Gas Pipeline Act of 2004, enacted into law on October 13, 2004, requires the Federal Energy Regulatory Commission to issue regulations governing the conduct of open seasons for Alaska natural gas transportation projects, as defined in that legislation, within 120 days of enactment, that is, by February 10, 2005. The Commission proposes the following tentative schedule for issuing the required regulations:

November 18, 2004—Commission issues Notice of Proposed Rulemaking, including draft of proposed regulations.

December 6–10, 2004 (exact date to be announced)—One-day public technical conference at a site to be determined in Alaska, to receive public comment on the proposed regulations.

December 17, 2004—Written comments due on Notice of Proposed Rulemaking.

February 9, 2005—Commission issues final rule.

The Commission will provide further public notice of the details of the rulemaking proceeding, including the date and location of the technical conference. For information about this proceeding, interested persons may go the e-Library link at the Commission's Web site, *http://www.ferc.gov*, and search under the docket number for this proceeding, Docket No. RM05–1. Any questions or comments about this proposed schedule may be directed to: Edwin Holden, 202–502–8089, or *Edwin.Holden@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 04–24470 Filed 11–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP03–353–001 and CP03–355–001]

Eastern American Energy Corporation; Notice of Filing

October 27, 2004.

Take notice that on September 8, 2004, Eastern American Energy Corporation (Eastern) filed a Service Agreement between Eastern and Mountaineer Gas Company establishing Eastern's initial rate as a special rate schedule under Section 154.112(a) of the Commission's regulations. Eastern states that the filing is intended to comply with the filing requirement ordered in the Commission's March 25, 2004 Order in Docket Nos. CP03–353–000 and CP03–355–000, 106 FERC ¶ 61,297.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed in accordance with the provisions of Section 154.210 of the Commission's regulations (18 CFR 154.210). Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie Salas,

Secretary.

[FR Doc. E4–2986 Filed 11–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–7–000, et al.]

Mesquite Investors, L.L.C., et al.; Electric Rate and Corporate Filings

October 26, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Mesquite Investors, L.L.C., Cedar Brakes I, L.L.C., Cedar Brakes II, L.L.C., Okwari CB Holdings LP

[Docket No. EC05–7–000]

Take notice that on October 22, 2004, Mesquite Investors, L.L.C. (Mesquite), Cedar Brakes I, L.L.C. (CB I), Cedar Brakes II, L.L.C. (CB II) and Okwari CB Holdings LP (Okwari CB) (jointly,

Applicants) filed with the Federal Energy Regulatory Commission an application pursuant to section 203 of the Federal Power Act requesting that the Commission authorize the transfer of all of Mesquite's membership interests in CB I and CB II to Okwari CB. Applicants requested privileged treatment for certain exhibits pursuant to 18 CFR 33.9 and 388.112.

Comment Date: 5 p.m. eastern time on November 12, 2004.

2. Oasis Power Partners LLC

[Docket No. EC05–8–000]

Take notice that on October 22, 2004, Oasis Power Partners LLC (Oasis), filed an application requesting the Federal Energy Regulatory Commission to authorize the transfer and issuance of passive membership interests in Oasis to FC Energy Finance I, Inc., and The Northwestern Mutual Life Insurance Company, and, potentially, the transfer of membership interests in Oasis to Eurus Sagebrush I LLC, pursuant to section 203 of the Federal Power Act.

Comment Date: 5 p.m. eastern time on November 12, 2004.

3. California Independent System Operator Corporation

[Docket Nos. ER98–997–005, ER98–1309–004, ER02–2297–004, ER02–2298–004]

Take notice that on October 21, 2004, the California Independent System Operator Corporation (ISO) submitted a filing in compliance with the Commission's order issued September 21, 2004, in Docket No. ER98–997–003, *et al.* 108 FERC ¶ 61,273.

ISO states that this filing has been served upon all parties on the official service list for the captioned dockets. In addition, the ISO has posted this filing on the ISO Home Page.

Comment Date: 5 p.m. eastern time on November 12, 2004.

4. Duke Energy Moapa, LLC

[Docket No. ER05–59–000]

Take notice that on October 21, 2004, Duke Energy Moapa, LLC (Duke Moapa) submitted a Notice of Cancellation of FERC Electric Tariff, Original Volume No. 1, which was made effective by the Commission as of April 9, 2001, in Docket Nos. ER01–1208–000 and ER01–1208–001.

Duke Moapa states that a notice of the proposed cancellation has not been served on any party because Duke Energy Moapa, LLC does not engage in the marketing of electric energy or power at wholesale and has no customers.

Comment Date: 5 p.m. eastern time on November 12, 2004.

5. Southern California Edison Company

[Docket No. ER05–60–000]

Take notice that on October 20, 2004, Southern California Edison Company (SCE) submitted for filing the amended and restated Operating Procedures for the Power Contract between SCE and the Department of Water Resources of the State of California (CDWR). SCE states that the purpose of this filing is to change the method by which SCE compensates CDWR for transmission losses incurred in transmitting energy from SCE's entitlement to the power output of CDWR's Hyatt and Thermalito Powerplants between Table Mountain and Midway substations.

SCE states that copies of the filing were served upon the Public Utilities Commission of the State of California and CDWR.

Comment Date: 5 p.m. eastern time on November 10, 2004.

6. PJM Interconnection, L.L.C.

[Docket No. ER05–62–000]

Take notice that on October 21, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing an executed construction service agreement among PJM, Rolling Hills Landfill Gas, LLC, and Metropolitan Edison Company a FirstEnergy Company. PJM requests an effective date of September 21, 2004.

PJM states that copies of this filing were served upon the parties to the agreement and the state regulatory commissions within the PJM region.

Comment Date: 5 p.m. eastern time on November 12, 2004.

7. Merrill Lynch Commodities, Inc

[Docket No. ER05–63–000]

Take notice that on October 21, 2004, Merrill Lynch Commodities, Inc. (MLCI) petitioned the Commission to amend the Western Systems Power Pool Agreement to include MLCI as a participant.

Comment Date: 5 p.m. eastern time on November 12, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, D.C. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2983 Filed 11–2–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC05–1–000, et al.]

Old Dominion Electric Cooperative, et al.; Electric Rate and Corporate Filings

October 7, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Old Dominion Electric Cooperative and New Dominion Energy Cooperative; New Dominion Energy Cooperative

[Docket Nos. EC05–1–000 and ER05–18–000]

Take notice that on October 5, 2004, Old Dominion Electric Cooperative (Old Dominion) and New Dominion Energy Cooperative (New Dominion) (together, the Parties) filed a joint application under sections 203 and 205 of the Federal Power Act and sections 33.2 through 33.4 and 35.12 of the Commission's Rules and Regulations, for approval of Old Dominion's proposed assignment of its Wholesale Power Contracts (Contracts) to New Dominion, New Dominion's request for acceptance of conforming changes to the

formulary rate applied under the Contracts and New Dominion's request for authority to make wholesale power sales at market-based rates. Submitted for filing were New Dominion Energy Cooperative FERC Electric Tariffs Original Volume Nos. 1 and 2, providing for cost-of-service rates under a rate formula in Volume No. 1 and market-based rates in Volume No. 2.

The Parties state that copies of the filing was served upon each of the Member Cooperatives and the public service commissions in the Commonwealth of Virginia and the states of Delaware, Maryland and West Virginia.

Comment Date: 5 p.m. Eastern Time on October 26, 2004.

2. PowerMinn 9090, LLC

[Docket No. EG05–1–000]

Take notice that on October 1, 2004, PowerMinn 9090, LLC (PowerMinn) with a principal place of business at 2295 Corporate Blvd., NW., Suite 222, Boca Raton, Florida 33431, filed with the Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to part 365 of the Commission's regulations in connection with PowerMinn's intended ownership in a new 50 MW (nominal) biomass generating facility to be constructed in the City of Benson, Minnesota that is to be leased and operated by Fibrominn LLC.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

3. Washington LLC, on Behalf of Skookumchuck Dam, LLC

[Docket No. EG05–2–000]

On October 1, 2004, 2677588 Washington LLC (Washington LLC), on behalf of Skookumchuck Dam, LLC, filed with the Commission an application for determination of exempt wholesale generator (EWG) status pursuant to part 365 of the Commission's regulations with respect to its ownership and operation of a 1 MW hydroelectric generating plant located in the vicinity of Centralia, Washington. Washington LLC states that copies of the application were sent to the Securities and Exchange Commission and the Oregon Public Utility Commission, the Washington Utilities and Transportation Commission, the California Public Utilities Commission, the Wyoming Public Service Commission, the Idaho Public Utility Commission, and the Utah Public Service Commission.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

4. PEI Power Corp.

[Docket No. ER98–2270–004]

Take notice that on October 1, 2004, PEI Power Corp. (PEI) submitted an amendment to its triennial updated market power analysis. PEI states that this analysis supports the continuation of PEI's authority to make sales at market-based rates. PEI also submits revisions to its market-based rate tariff, which update the tariff and incorporate the Commission's Market Behavior Rules adopted in Docket No. EL01–118–000.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

5. Consumers Energy Company

[Docket No. ER98–4421–004]

CMS Energy Resource Management Company

[Docket No. ER96–2350–024]

Grayling Generating Station Limited

[Docket No. ER99–791–002]

Partnership Tennessee Power Station Limited Partnership

[Docket No. ER99–806–001]

CMS Generation Michigan Power, L.L.C.

[Docket No. ER99–3677–003]

Dearborn Industrial Generation, L.L.C.

[Docket No. ER01–570–004]

Take notice that on October 1, 2004, Consumers Energy Company (Consumers, CMS Energy Resource Management Company (CMS ERM), Grayling Generating Station Limited Partnership (Grayling), Genesee Power Station Limited Partnership (Genesee), CMS Generation Michigan Power, L.L.C. (Michigan Power), and Dearborn Industrial Generation, L.L.C. (DIG) (collectively, Consumers and the MI Affiliates) submitted a consolidated revised generation market analysis as required by the Commission in its May 13, 2004 Order Implementing New Generation Market Power Analysis and Mitigation Procedures (107 FERC ¶ 61,168) and in response to an informal request by FERC Staff. Consumers and the MI Affiliates state that this consolidated revised generation market power analysis filing is intended to supercede and replace the individual revised generation market power analysis filings made by Consumers and the MI Affiliates on August 11, 2004 (Consumers); August 12, 2004 (CMS ERM, Michigan Power and DIG) and September 8, 2004 (Grayling and Genesee).

Consumers and the MI Affiliates state that a copy of the filing was served upon the Michigan Public Service Commission and those on the official service list in each of the captioned dockets.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

6. Pacific Gas and Electric Company

[Docket No. ER04–415–002]

Take notice that on October 1, 2004, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its January 20, 2004 filing as Amended on April 15, 2004 of a Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) with Berry Petroleum Company—Tannehill Cogen (Berry Tannehill), Berry Petroleum Company—University Cogen (Berry University), and Big Creek Water Works, Ltd. (Big Creek). PG&E states that this filing is intended to replace the April 15, 2004 filing in its entirety.

PG&E states that copies of this filing have been served upon Berry Tannehill, Berry University, Big Creek, the California Independent System Operator Corporation, the California Public Utilities Commission, and the parties to this docket.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

7. Mystic I, LLC; Mystic Development, LLC and Fore River Development, LLC

[Docket Nos. ER04–657–003, ER04–660–003, and ER04–659–003]

Take notice that on October 1, 2004, Boston Generating, LLC on behalf of its three projects companies Mystic I, LLC, Mystic Development, LLC and Fore River Development, LLC submitted for filing a joint Triennial Updated Market Analysis.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

8. Southern California Edison Company

[Docket No. ER04–724–002]

Take notice that, on October 1, 2004, Southern California Edison (SCE) submitted a compliance filing pursuant to the Commission's Order issued September 2, 2004 in Docket Nos. ER04–724–000 and 001, Approving Uncontested Settlement, 108 FERC ¶ 61,218.

SCE states that copies of the filing were served on parties on the official service list in the above-captioned proceeding.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

9. Virginia Electric and Power Company

[Docket No. ER04–834–001]

Take notice that on October 1, 2004, Virginia Electric and Power Company, (Dominion Virginia Power) submitted a compliance filing pursuant to the Commission's order issued September 16, 2004 in Docket No. ER04–834–001, 108 FERC ¶ 61,242.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

10. Niagara Mohawk Power Corporation, a National Grid Company

[Docket No. ER05–1–000]

Take notice that on October 1, 2004, Niagara Mohawk Power Corporation, a National Grid Company (Niagara Mohawk) tendered for filing pursuant to section 35.15 of the Commission's regulations, 18 CFR 35.15 (2003), a Notice of Cancellation No. 313. Niagara Mohawk requests an effective date of October 31, 2004.

Niagara Mohawk states that it served copies of the Notice of Cancellation upon the customer receiving service under Rate Schedule No. 313, AES–NY, L.L.C., as well as upon the New York Independent System Operator and the New York Public Service Commission.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

11. Central Maine Power Company

[Docket No. ER05–2–000]

Please take notice that on October 1, 2004, Central Maine Power Company (CMP) submitted an Executed Local Network Transmission Service Agreement and an Executed Long Term Firm Point-to-Point Transmission Service Agreement between CMP and FPL Energy Maine Hydro, LLC, which replace unexecuted transmission service agreements filed with and accepted by the Commission in Docket No. ER00–209–4000. These executed transmission service agreements are designated as (1) Local Network Transmission Service Agreement: FERC Electric Tariff, Fifth Revised, Vol. No. 3, 1st Revised Service Agreement No. 207, effective December 23, 2003; and (2) Long Term Firm Point-to-Point Transmission Service Agreement: FERC Electric Tariff, Fifth Revised, Vol. No. 3, 1st Revised Service Agreement No. 208, effective December 23, 2003.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

12. New England Power Pool

[Docket No. ER05–3–000]

Take notice that on October 1, 2004, the New England Power Pool (NEPOOL) Participants Committee submitted the One Hundred Eighth Agreement Amending New England Power Pool Agreement (108th Agreement) which amends the NEPOOL Tariff in order to reduce to zero the Through or Out service charge for transactions through or out of NEPOOL that have the New York control area boundary as their point of delivery. NEPOOL requests an effective date of December 1, 2004.

NEPOOL Participants Committee and ISO–NE state that copies of these materials were sent to the NEPOOL Participants and the New England state governors and regulatory commissions.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

13. New England Power Pool

[Docket No. ER05–4–000]

Take notice that on October 1, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials to (1) permit NEPOOL to expand its membership to include Citigroup Energy Inc. (Citigroup Energy) and Merrill Lynch Commodities, Inc. (MLC); and (2) to terminate the membership of Conectiv Energy Supply, Inc. (Conectiv). NEPOOL Participants Committee requests effective dates of September 1, 2004 for the termination of Conectiv; November 1, 2004 for commencement of participation in NEPOOL by MLC; and December 1, 2004 for the commencement of participation in NEPOOL by Citigroup Energy.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

14. Virginia Electric and Power Company

[Docket No. ER05–7–000]

Take notice that on October 1, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing a Service Agreement for Network Integration Transmission Service (Retail) and Network Operating Agreement (Retail) by Dominion Virginia Power to Dominion Retail, Inc., designated as Service Agreement Number 389, under the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers dated June 7, 2000. Dominion Virginia Power requests an effective date of November 1, 2004.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

15. MidAmerican Energy Company

[Docket No. ER05–8–000]

Take notice that on October 1, 2004, MidAmerican Energy Company (MEC) tendered for filing Notices of Cancellation of (1) Electric Service Agreement under FERC Wholesale Electric Tariff Original Volume No. 1 filed by MEC's predecessor, Iowa-Illinois Gas and Electric Company (IIGE), dated November 16, 1976 (Buffalo ESA) between IIGE and the City of Buffalo, Iowa; and (2) Electric Service Agreement under FERC Wholesale Electric Tariff Original Volume No. 1 filed by IIGE, dated November 1, 1976 (Callender ESA) between IIGE and the City of Callender, Iowa. MEC requests an effective date of December 31, 2004.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

16. New England Power Pool

[Docket No. ER05–9–000]

Take notice that on October 1, 2004, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance of changes to NEPOOL Market Rule 1 and Appendix F affecting the eligibility for Operating Reserve Credits. NEPOOL Participants Committee requests an effective date of December 1, 2004.

NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

17. PJM Interconnection, L.L.C.

[Docket No. ER05–10–000]

Take notice that on October 1, 2004, PJM Interconnection, L.L.C. (PJM) filed for a change in rates to permit market-based offers in the expanded PJM market for regulation service in the portion of the PJM region covered by the geographic territories of Allegheny Power, American Electric Power Company (AEP), Commonwealth Edison Company (including Commonwealth Edison Company of Indiana) (ComEd), The Dayton Power and Light Company (Dayton), Dusquesne Light Company (Dusquesne), and Virginia Electric Power Company (Virginia Power).

PJM states that copies of the filing were served upon all PJM Members including Allegheny Power, AEP, ComEd, Dayton, Dusquesne, and Virginia Power, and each state electric utility regulatory commission in the PJM region.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

18. PJM Interconnection, L.L.C.

[Docket No. ER05–11–000]

Take notice that on October 1, 2004, PJM Interconnection, L.L.C. (PJM), submitted for filing a revised Attachment L to PJM's Open Access Transmission Tariff. PJM states that the proposed changes to Attachment L are required to reflect recent changes, in the status of Rock Springs Generation, L.L.C. and CED Rock Springs, Inc., two of the PJM Transmission Owners listed on the currently effective Attachment L. PJM requests an effective date of October 4, 2004.

PJM states that copies of this filing were served upon all members of PJM and the state electric utility regulatory commissions within the PJM region.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

19. PJM Interconnection, L.L.C.

[Docket No. ER05–12–000]

Take notice that on October 1, 2004, PJM Interconnection, L.L.C. (PJM) submitted for filing amendments to the PJM Open Access Transmission Tariff to make miscellaneous minor modifications, improvements, and clarifications to the PJM Credit Policy and related Tariff provisions. PJM requests an effective date of December 1, 2004.

PJM states that copies of this filing have been served on all PJM members and the utility regulatory commissions in the PJM region.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

20. Sierra Pacific Resources Operating Companies

[Docket No. ER05–14–000]

Take notice that on October 1, 2004, Sierra Pacific Resources Operating Companies, on behalf of Sierra Pacific Power Company and Nevada Power Company (together, SPR) submitted a change in the rates for transmission services under SPR's open-access transmission tariff, FERC Third Revised Volume No. 1. SPR states that this rate change affects Zone A transmission rates only, those pertaining to the transmission system of SPR's wholly-owned subsidiary Sierra Pacific Power Company (SPP).

SPR states that copies of the filing were served on SPR's jurisdictional customers and the public utility commissions of Nevada and California.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

21. East Kentucky Power Cooperative, Inc.

[Docket No. TX05–1–000]

Take notice that on October 1, 2004, East Kentucky Power Cooperative, Inc. (EKPC) submits an application for an order requiring the Tennessee Valley Authority (TVA) to interconnect the TVA transmission System with EKPC's transmission system pursuant to sections 210 and 212 of the Federal Power Act.

Comment Date: 5 p.m. Eastern Time on November 1, 2004.

Standard Paragraph

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all parties to this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2989 Filed 11–2–04; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL ENERGY REGULATORY COMMISSION

[Docket No. PF05–1–000]

Colorado Interstate Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for Colorado Interstate Natural Gas Company's Proposed Raton Basin 2005 Expansion Project and Request for Comments on Environmental Issues

October 27, 2004.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of Colorado Interstate Natural Gas Company's (CIG's) proposed Raton Basin 2005 Expansion Project. The project is located in Las Animas and Baca Counties, Colorado; in Morton County, Kansas; and Texas and Beaver Counties, Oklahoma. This notice announces the opening of the scoping process we [1] will use to gather input from the public and interested agencies on the project. Your input will help us determine which issues need to be evaluated in the EA. The Commission will use the EA in its decision-making process to determine whether to authorize the project. Please note that the scoping period will close on December 15, 2004.

The FERC will be the lead federal agency in the preparation of the EA which will satisfy the requirements of the National Environmental Policy Act (NEPA). The Raton Basin 2005 Expansion Project is in the preliminary design stage. At this time no formal application has been filed with the FERC. For this project, the FERC staff is initiating its NEPA review prior to receiving the application. The purpose of our pre-filing process is to involve interested stakeholders early in project planning and to identify and resolve issues before an application is filed with the FERC. A docket number (PF05–1–000) has been established to place information filed by CIG, and related documents issued by the Commission, into the public record.[2] Once a formal application is filed with the FERC, a new docket number will be established.

This notice is being sent to landowners; federal, state, and local government agencies; Indian tribes;

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the FERC's Office of Energy Projects.

[2] To view information in the docket, follow the instructions for using the eLibrary link at the end of this notice.

elected officials; environmental and public interest groups; and local libraries and newspapers. With this notice, we are asking federal, state, and local agencies with jurisdiction and/or special expertise with respect to environmental issues to formally cooperate with us in the preparation of the EA. Agencies that would like to request cooperating status should send a letter describing the extent to which they want to be involved. Follow the instructions for filing comments provided below.

Some affected landowners may be contacted by a project representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. If they are, the company would seek to negotiate a mutually acceptable agreement. However, if the project is certificated by the Commission, that approval conveys the right of eminent domain for securing easements for the pipeline. Therefore, if easement negotiations fail to produce an agreement, the company could initiate condemnation proceedings in accordance with state law.

Summary of the Proposed Project

CIG requests Commission authorization to construct and operate approximately 102 miles of natural gas pipeline looping, and to upgrade existing and install new above-ground facilities, parallel to CIG's existing Picketwire Lateral, Campo Lateral, 10A, and 12A natural gas pipelines. The Little Bear and Wet Canyon Meter Stations on nearby lateral natural gas pipelines would also be upgraded. The pipeline loops would consist of the following:

- Line 151B 20″ Expansion—1.9 miles of 20-inch-diameter pipeline in Las Animas County, Colorado;
- Line 200B 16″ Expansion West—4.8 miles of 16-inch-diameter pipeline in Las Animas County, Colorado;
- Line 200B 16″ Expansion Middle—30.3 miles of 16-inch-diameter pipeline in Las Animas County, Colorado;
- Line 200B 16″ Expansion East—34.3 miles of 16-inch-diameter pipeline in Baca County, Colorado;
- Line 10C 24″ Expansion—23.6 miles of 24-inch-diameter pipeline in Baca County, Colorado and Morton County, Kansas;
- Line 12B 24″ Expansion—7.2 miles of 24-inch-diameter pipeline in Texas County, Oklahoma

Upgrading of existing, and installation of new, above-ground facilities would occur at four locations along Line 151B, three locations along Line 200B West, three locations along Line 200B Middle, three locations along Line 200B East, four locations along Line 10C, and three locations along Line 12B. In addition, CIG would install 1,775 horsepower of compression at the Beaver Compressor Station on Line 12A in Beaver County, Oklahoma.

A map depicting the proposed pipeline loops is provided in Appendix 1.[3]

At this time, CIG has executed five precedent agreements with natural gas producers in the Rotan Basin production area for 104,600 decatherms/day of the proposed transportation capacity on CIG's system. These producers have requested an in-service date as early as October 1, 2005. Therefore, CIG would seek an order authorizing the project to be issued no later than May 2005 in order construct and place the requested facilities into service in October 2005. CIG plans to file its application between December 2004 and January 2005.

Land Requirements for Construction

The loops would be spaced about 35 feet from the existing pipelines. The nominal construction right-of-way (ROW) would be 85 feet wide, partially overlapping the existing 50-foot-wide ROW. The nominal width would be reduced to 75 feet through wetlands and the Comanche National Grasslands, and would be increased up to 120 feet for storage of segregated topsoil in agricultural areas and for safe working conditions in rugged terrain. CIG would require extra work areas along the nominal ROW at roads, railroads, waterbody and wetland crossings as well as 1–5 acre-size contractor yards, pipe yards and staging yards at the ends of loops or in off-line areas. CIG would reroute 0.9 miles of Line 200B West near Trinidad in Las Animas County, Colorado, to avoid potential residential development. Following construction, CIG would require a new total permanent ROW width of 80 feet to be kept under easement.

Construction of the proposed facilities would require a total of about 1,224 acres of land, which includes 364 acres of additional permanent ROW, 690 acres of temporary nominal ROW, 56 acres of extra work spaces alongside the nominal ROW, and 114 acres of off-line work spaces for pipe yards, contractor yards and staging areas. CIG would use numerous access roads during construction. Most of these roads would be existing roads, and several access roads may be widened and/or lengthened.

Upgrading and installation of above-ground facilities would be done within CIG's existing ROW and would involve construction mostly within previously disturbed fenced-in graveled areas. Following construction, all temporary ROW and extra work spaces for the loop installations would be restored and allowed to revert to its former use.

The EA Process

NEPA requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address issues and concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues and reasonable alternatives. By this notice, we are requesting agency and public comments on the scope of the issues to be analyzed and presented in the EA. All scoping comments received will be considered during the preparation of the EA. To ensure your comments are considered, please carefully follow the instructions in the public participation section of this notice.

Our independent analysis of the issues will be included in an EA. The EA may be mailed to Federal, state, and local government agencies; Indian tribes; elected officials; environmental and public interest groups; affected landowners; other interested parties; local libraries and newspapers; and the Commission(s official service list for this proceeding. Depending on the response to this notice and the nature of issues raised during the review process, a 30-day comment period may be allotted for review of the EA. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CIG. This preliminary list of issues may

[3] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies of all appendices, other than Appendix 1 (maps), are available on the Commission's Web site at the ''eLibrary'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary refer to page 6 of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

be changed based on your comments and our analysis.

- Geology and Soils
  —Soils with high erosion and poor revegetation potential.
  —Lands set-aside for the Conservation Reserve Program.
- Water Resources and Wetlands
  —Crossing of 5 perennial streams.
  —Crossing small wetlands.
- Vegetation
  —Crossing approximately 40 miles of short grass prairie, mostly on the west end.
  —Crossing approximately 60 miles of cultivated cropland/hayfields, mostly on the east end.
- Threatened and Endangered Species
  —Arkansas river shiner, bald eagle, interior least tern, Mexican spotted owl, piping plover, whooping crane, black-footed ferret potentially present in construction area.
  —Other listed, candidate, or sensitive species potentially present in the project area include the burrowing owl, ferruginous hawk, lesser prairie-chicken, long-billed curlew, mountain plover, northern goshawk, northern harrier, short-eared owl, and swift fox.
- Cultural Resources
  —Santa Fe Trail crossed on Line 200B Middle
  —Potential impacts on cultural resources.
  —Consultations with Native Americans.
- Land Use
  —Crossing primarily rangeland, hay land and cultivated cropland.
  —Crossing approximately 10 miles of the Comanche National Grasslands from loops along Line 200B East, Line 200B Middle, and Line 10C.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. You should focus on the potential environmental effects of the proposal, reasonable alternatives (including alternative compressor station sites and pipeline routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. To ensure that your comments are timely and properly recorded, please mail your comments so that they will be received in Washington, DC on or before December 15, 2004, and carefully follow these instructions:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1A, Washington, DC 20426;
- Label one copy of your comments for the attention of Gas Branch 2, DG2E; and
- Reference Docket No. PF05–1–000 on the original and both copies.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. Therefore, the Commission encourages electronic filing of comments. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Internet Web site at *http://www.ferc.gov* under the ''e-Filing'' link and the link to the User's Guide. Prepare your submission in the same manner as you would if filing on paper and save it to a file on your hard drive. Before you can file comments you will need to create a free account by clicking on ''Login to File'' and then ''New User Account.'' You will be asked to select the type of filing you are making. This filing is considered a ''Comment on Filing.''

If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (Appendix 3). If you do not return the Information Request, you will be taken off the mailing list.

Intervention

When CIG files its application for authorization to construct the proposed pipeline, the Commission will publish notice of the application in the **Federal Register** and establish a deadline for interested persons to intervene in the proceeding. Because the Pre-Filing Process occurs before an application to begin a proceeding is officially filed, petitions to intervene during this process are premature and will not be accepted by the Commission. You do not need intervenor status to have your environmental comments considered.

Environmental Mailing List

An effort is being made to send this notice to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project. This includes all landowners who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within distances defined in the Commission's regulations of certain aboveground facilities. By this notice we are also asking governmental agencies, especially those in Appendix 2, to express their interest in becoming cooperating agencies for the preparation of the EA.

Availability of Additional Information

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' is also available for viewing on the FERC Internet website. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance with eLibrary, the eLibrary helpline can be reached at 1–866–208–3676, TTY (202) 502–8659, or at *FERCOnlineSupport@ferc.gov*. The eLibrary link on the FERC Internet Web site also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Information about the project is also available from CIG. CIG has established a single point of contact for the project. The contact is Mr. David Anderson, Manager, Land Department, and can be reached by phone at 1–877–598–5263 or e-mail at *david.r.anderson@ElPaso.com.*

Magalie R. Salas,
Secretary.

[FR Doc. E4–2984 Filed 11–2–04; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP04–386–000 and CP04–395–000]

Golden Pass and Vista del Sol LNG Terminals, L.P.; Notice of Technical Conference

October 27, 2004.

On Wednesday, November 17, 2004, at 8:30 a.m. (CST), staff of the Office of

Energy Projects will convene a cryogenic design and technical conference regarding the proposed Golden Pass and Vista del Sol LNG import terminals. The cryogenic conference will be held in the Sheraton North Houston at George Bush Intercontinental Airport. The hotel is located at 15700 John F. Kennedy Boulevard, Houston, Texas 77032. For hotel details call (281) 442–5100.

In view of the nature of critical energy infrastructure information and security issues to be explored, the cryogenic conference will not be open to the public. Attendance at this conference will be limited to existing parties to the proceeding (anyone who has specifically requested to intervene as a party) and to representatives of interested federal, state, and local agencies. Any person planning to attend the November 17th cryogenic conference *must register* by close of business on Monday, November 15, 2004. Registrations may be submitted either online at *http://www.ferc.gov/whats-new/registration/cryo-conf-form.asp* or by faxing a copy of the form (found at the referenced online link) to (202) 208–0353. All attendees must sign a non-disclosure statement prior to entering the conference. Upon arrival at the hotel, check the reader board in the hotel lobby for venue. For additional information regarding the cryogenic conference, please contact Kareem Monib at (202) 502–6265.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2985 Filed 11–2–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OECA–2004–0005; FRL–7833–3]

Agency Information Collection Activities; Submission for OMB Review and Approval; Comment Request; NSPS for Onshore Natural Gas Processing Plants (Renewal), ICR Number 1086.07, OMB Number 2060–0120

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act, this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 3, 2004.

ADDRESSES: Submit your comments, referencing docket ID number OECA–2004–0005, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *docket.oeca@epa.gov*, or by mail to: Environmental Protection Agency, EPA Docket Center (EPA/DC), Enforcement and Compliance Docket and Information Center, Mail Code 2201T, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Dan Chadwick, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2223A, Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (202) 564–7054; fax number: (202) 564–0050; email address: *chadwick.dan@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 25, 2004, (69 FR 29718), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments.

EPA has established a public docket for this ICR under Docket ID No. OECA–2004–0005, which is available for public viewing at the Enforcement and Compliance Docket and Information Center in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center is: (202) 566–1752. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. When in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: NSPS for Onshore Natural Gas Processing Plants (40 CFR Part 60, Subparts KKK and LLL) (Renewal)

Abstract: The New Source Performance Standards (NSPS) for Equipment Leaks of VOC From Onshore Natural Gas Processing Plants, published at 40 CFR part 60, subpart KKK, were proposed on January 20, 1984, and promulgated on June 24, 1985. These standards apply to the following affected facilities located at onshore natural gas processing plants: Compressors in VOC service or in wet gas service, and the group of all equipment (except compressors) within a process unit. Affected facilities commenced construction, modification or reconstruction after the date of proposal.

The New Source Performance Standards (NSPS) for Onshore Natural Gas Processing: SO_2 Emissions, published at 40 CFR part 60, subpart LLL, were proposed on January 20, 1984 and promulgated on October 1, 1985. These standards apply to the following affected facilities located at onshore natural gas processing plants: Each sweetening unit, and each sweetening unit followed by a sulfur recovery unit. Affected facilities commenced

construction, modification or reconstruction after the date of proposal.

Owners or operators of affected facilities must submit notifications of any construction/reconstruction, modification, actual date of startup, demonstration of a continuous monitoring system, and date of a performance test. Note that the use of control devices and continuous monitoring is not required by subpart KKK, but is an option for compliance. Owners or operators of affected facilities must submit semiannual reports and performance test results. Note that subpart LLL requires semiannual reporting of excess emissions. Owners or operators subject to subpart KKK must keep various records, including records of leak detection and repair, records of compliance tests, and records of pumps and valves that are exempted from certain monitoring requirements. Owners or operators subject to subpart LLL must keep records of various calculations and measurements.

This information is being collected to determine compliance with NSPS subparts KKK and LLL. Responses to this information collection are deemed to be mandatory, per section 114 (a) of the Clean Air Act.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. The OMB Control Numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15, and are identified on the form and/or instrument, if applicable.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 91 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of onshore natural gas processing plants with affected facilities constructed, reconstructed or modified after January 20, 1984.

Estimated Number of Respondents: 563.

Frequency of Response: On occasion, semiannual.

Estimated Total Annual Hour Burden: 149,174 hours.

Estimated Total Annual Costs: $9,857,058, which includes $219,000 annualized capital/startup costs, $119,700 annual O&M costs, and $9,518,358 annual labor costs.

Changes in the Estimates: There is an increase of 35,138 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This increase is due to an increase in the number of respondents and an adjustment to the recordkeeping and reporting burden.

Dated: October 27, 2004.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 04–24527 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7833–4]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency Clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

FOR FURTHER INFORMATION CONTACT: Susan Auby (202) 566–1672, or email at *auby.susan@epa.gov* and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1058.08; NSPS for Incinerators; in 40 CFR part 60, subpart E; was approved 09/29/2004; OMB Number 2060–0040; expires 09/30/2007.

EPA ICR No. 1687.06; NESHAP for Aerospace Manufacturing and Rework Facilities; in 40 CFR part 63, subpart GG; was approved 09/28/2004; OMB Number 2060–0314; expires 09/30/2007.

EPA ICR No. 1287.07; Questionnaire for Nominees for the Annual National Clean Water Act Recognition Awards Program; in 40 CFR part 105; was approved 09/28/2004; OMB Number 2040–0101; expires 09/30/2007.

EPA ICR No. 1959.02; National Listing of Advisories; was approved 09/28/2004; OMB Number 2040–0226; expires 09/30/2007.

EPA ICR No. 0657.08; NSPS for the Graphic Arts Industry; in 40 CFR part 60, subpart QQ; was approved 09/29/2004; OMB Number 2060–0105; expires 09/30/2007.

EPA ICR No. 1427.07; NPDES Compliance Assessment/Certification Information; in 40 CFR 122.41(j)(2), 122.41(l)(5–7); 122.44(i)(4)(ii); 40 CFR 122.45(b)(2)(B)(1); 40 CFR 501.15(a)(6); 40 CFR 501.15(b)(12); 40 CFR part 435; was approved 09/28/2004; OMB Number 2040–0110; expires 09/30/2007.

EPA ICR No. 2087.02; Concentrated Aquatic Animal Production Effluent Guidelines; in 40 CFR part 451; was approved 09/28/2004; OMB Number 2040–0258; expires 09/30/2007.

EPA ICR No. 1904.02; The Sun Wise School Program; was approved 09/29/2004; OMB Number 2060–0439; expires 09/30/2007.

EPA ICR No. 0222.07; Investigation into Possible Noncompliance of Motor Vehicles with Federal Emissions Standards; was approved 09/24/2004; OMB Number 2060–0086; expires 09/30/2007.

EPA ICR No. 1063.09; NSPS for Sewage Sludge Treatment Plants; in 40 CFR part 60, subpart O; was approved 09/24/2004; OMB Number 2060–0035; expires 09/30/2007.

EPA ICR No. 1643.05; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local, and Tribal Agencies; in 40 CFR part 63, subpart E; was approved 09/24/2004; OMB Number 2060–0264; expires 09/30/2007.

EPA ICR No. 1593.06; Air Emission Standards for Tanks, Surface Impoundments and Containers; in 40 CFR part 264, subpart CC; 40 CFR part 265, subpart CC; was approved 09/24/2004; OMB Number 2060–0318; expires 09/30/2007.

EPA ICR No. 2100.01; Reporting Requirements Under EPA's Climate Leaders Program; was approved 09/

30/2004; OMB Number 2060–0532; expires 09/30/2006.

EPA ICR No. 2103.02; Title IV of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002: Drinking Water Security and Safety, was approved 09/30/2004; OMB Number 2040–0253; expires 09/30/2007.

EPA ICR No. 1560.07; National Water Quality Inventory Reports; in 40 CFR part 130, CWA sections 305(b), 303(d), 314(a) and 106(e); was approved 09/30/2004; OMB Number 2040–0071; expires 09/30/2007.

EPA ICR No. 0002.11; National Pretreatment Program; in 40 CFR 403.1–20, 40 CFR 437, 437.41, 40 CFR part 105, 40 CFR 455.41, 40 CFR 123.24, 40 CFR 123.62, 40 CFR 122.42(b)(2); was approved 09/30/2004; OMB Number 2040–0009; expires 09/30/2007.

EPA ICR No. 2153.01; Final Guidelines for the Best Available Retrofit Technology (BART) Determinations Under the Regional Haze Rule; was approved 09/30/2004; OMB Number 2060–0559; expires 03/31/2005.

Short Term Extensions

EPA ICR No. 1725.03; Marine Engine Manufacturer Production Line Testing Reporting and Recordkeeping Requirements; in 40 CFR part 91; on 9/15/2004 OMB extended the expiration date to 12/31/2004.

Comment Filed

EPA ICR No. 1684.07; Compression, Ignition, Non-Road Engines Certification Application (Proposed Rule for In-Use Testing of On-Road Heavy-Duty Diesel Engines and Vehicles); on 09/24/2004 OMB filed a comment.

EPA ICR No. 2137.01; NESHAP for Coal and Oil-Fired Electric Utility Steam Generating Unit (Proposed Rule) on 09/23/2004; in OMB, 40 CFR part 63, subpart UUUUU; OMB filed a comment.

EPA ICR No. 1362.05; NESHAP for Coke Oven Batteries (Proposed Rule for Risk Assessments); in 40 CFR part 63, subpart L; on 9/27/2004 OMB filed comment.

Dated: October 27, 2004.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 04–24528 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[RCRA–2004–0006; FRL–7833–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Hazardous Waste Generator Standards (Renewal), EPA ICR Number 0820.09, OMB Control Number 2050–0035

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its expected burden and cost.

DATES: Additional comments may be submitted on or before December 3, 2004.

ADDRESSES: Submit your comments, referencing docket ID number RCRA–2004–0006, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *rcra-docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Resource Conservation and Recovery Act (RCRA) Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Anna Tschursin, Office of Solid Waste, Mail Code 5304W, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8805; fax number: (703) 308–0514; e-mail address: *tschursin.anna@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On July 7, 2004 (69 FR 40901), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments on this ICR.

EPA has established a public docket for this ICR under Docket ID number RCRA–2004–0006, which is available for public viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the RCRA Docket is (202) 566–0270. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, Confidential Business Information (CBI), or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, see EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/epadocket.*

Title: Hazardous Waste Generator Standards (Renewal).

Abstract: Under the Resource Conservation and Recovery Act (RCRA), as amended, Congress directed the U.S. Environmental Protection Agency to implement a comprehensive program for the safe management of hazardous waste. The core of the national waste management program is the regulation of hazardous waste from generation to transport to treatment and eventual

disposal, or from ''cradle to grave.'' Section 3001(d) of RCRA requires EPA to develop standards for small quantity generators. Section 3002 of RCRA among other things states that EPA shall establish requirements for hazardous waste generators regarding recordkeeping practices. Section 3002 also requires EPA to establish standards on appropriate use of containers by generators.

Finally, Section 3017 of RCRA specifies requirements for individuals exporting hazardous waste from the United States, including a notification of the intent to export, and an annual report summarizing the types, quantities, frequency, and ultimate destination of all exported hazardous waste.

This ICR addresses the following categories of informational requirements in part 262: Pre-transport requirements for both large (LQG) and small (SQG) quantity generators; air emission standards requirements for LQGs (referenced in 40 CFR part 265, subparts I and J); recordkeeping and reporting requirements for LQGs and SQGs; and export requirements for LQGs and SQGs (*i.e.*, notification of intent to export and annual reporting).

This collection of information is necessary to help generators and EPA: (1) Identify and understand the waste streams being generated and the hazards associated with them; (2) determine whether employees have acquired the necessary expertise to perform their jobs; and (3) determine whether LQGs have developed adequate procedures to respond to unplanned sudden or non-sudden releases of hazardous waste or hazardous constituents to air, soil, or surface water. This information is also needed to help EPA determine whether tank systems are operated in a manner that is fully protective of human health and the environment and to ensure that releases to the environment are managed quickly and efficiently.

Additionally, this information contributes to EPA's goal of preventing contamination of the environment from hazardous waste accumulation practices, including contamination from equipment leaks and process vents. Export information is needed to ensure that: (1) Foreign governments consent to U.S. exported wastes; (2) exported waste is actually managed at facilities listed in the original notifications; and (3) documents are available for compliance audits and enforcement actions. In general, these requirements contribute to EPA's goal of preventing contamination of the environment.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The average public reporting and recordkeeping burden for LQGs under this collection of information is estimated to be 13.18 hours (averaged across all LQG respondents). The average public reporting and recordkeeping burden for SQGs under this collection of information is estimated to be 1.22 hours (averaged across all SQG respondents). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Hazardous Waste generators; Hazardous Waste transporters who co-mingle waste with different Department of Transportation descriptions; and Importers/Exporters of hazardous waste.

Estimated Number of Respondents: 124,382.

Frequency of Response: Occasionally and biennially.

Estimated Total Annual Hour Burden: 455,387.

Estimated Total Annual Cost: $28,532,136, includes $22,770 in annualized capital costs, $33,524 in O&M costs, and $28,475,842 in Respondent Labor costs.

Changes in the Estimates: There is a decrease of 29,749 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This decrease is a result due primarily to a decrease in the universe of facilities affected by the hazardous waste generator rules.

Dated: October 27, 2004.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 04–24529 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[SFUND–2004–0006; FRL–7833–6]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal), EPA ICR Number 1352.10, OMB Control Number 2050–0072

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. This ICR is scheduled to expire on October 31, 2004. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. This ICR describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before December 3, 2004.

ADDRESSES: Submit your comments, referencing docket ID number SFUND–2004–0006, to (1) EPA online using EDOCKET (our preferred method), by e-mail to *superfund.docket@epa.gov*, or by mail to: EPA Docket Center, Environmental Protection Agency, Superfund Docket, Mail Code 5305T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Sicy Jacob, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8019; fax number: (202) 564–8233; e-mail address: *jacob.sicy@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On May 21, 2004 (69 FR 29304), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA has addressed the comments received.

EPA has established a public docket for this ICR under Docket ID No. SFUND–2004–0006, which is available for public viewing at the Superfund Docket in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Superfund Docket is (202) 566–0276. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket*. Use EDOCKET to submit or view public comments, access the index listing of the contents of the public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified above.

Any comments related to this ICR should be submitted to EPA and OMB within 30 days of this notice. EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EDOCKET as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose public disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EDOCKET. The entire printed comment, including the copyrighted material, will be available in the public docket. Although identified as an item in the official docket, information claimed as CBI, or whose disclosure is otherwise restricted by statute, is not included in the official public docket, and will not be available for public viewing in EDOCKET. For further information about the electronic docket, *see* EPA's **Federal Register** notice describing the electronic docket at 67 FR 38102 (May 31, 2002), or go to *http://www.epa.gov/edocket*.

Title: Community Right-to-Know Reporting Requirements Under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Renewal).

Abstract: The authority for these requirements is sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 1986 (42 U.S.C. 11011, 11012). EPCRA section 311 requires owners and operators of facilities subject to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS) to submit a list of chemicals or Material Safety Data Sheets (MSDSs) (for those chemicals that exceed thresholds, specified in 40 CFR part 370) to the State Emergency Response Commission (SERC), Local Emergency Planning Committee (LEPC) and the local fire department (LFD) with jurisdiction over their facility. This is a one-time requirement unless a new facility becomes subject to the regulations or updating the information by facilities that are already covered by the regulations. EPCRA section 312 requires owners and operators of facilities subject to OSHA HCS to submit an inventory form (for those chemicals that exceed the thresholds, specified in 40 CFR part 370) to the SERC, LEPC, and LFD with jurisdiction over their facility. This activity is to be completed on March 1 of each year, on the inventory of chemicals in the previous calendar year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9 and are identified on the form and/or instrument, if applicable.

Burden Statement: The average burden for MSDS reporting under 40 CFR 370.21 is estimated at 1.5 hours for new and newly regulated facilities and approximately 0.5 hours for those existing facilities that obtain new or revised MSDSs or receive requests for MSDSs from local governments. For new and newly regulated facilities, this burden includes the time required to read and understand the regulations, to determine which chemicals meet or exceed reporting thresholds, and to submit MSDSs or lists of chemicals to SERC, LEPCs, and local fire departments. For existing facilities, this burden includes the time required to submit revised MSDSs and new MSDSs to local officials. The average reporting burden for facilities to perform Tier I or Tier II inventory reporting under 40 CFR 370.25 is estimated to be approximately 3 hours per facility, including the time to develop and submit the information. There are no recordkeeping requirements for facilities under EPCRA sections 311 and 312.

The average burden for State and local governments to respond to requests for MSDSs or Tier II information under 40 CFR 370.30 is estimated to be 0.2 hours per request. The average burden for State and local governments for managing and maintaining the reports is estimated to be 32 hours. The average burden for maintaining and updating the 312 database is 320 hours. The total burden to facilities over the three-year information collection period is estimated to be 5,686,000 hours, at a cost of $186 million, with an associated state and local burden of 401,000 hours at a cost of $9.2 million. The burden hours listed here are from the previously approved ICR. The labor costs have been adjusted to December 2003 wage rate published by U.S. Bureau of Labor Statistics.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Entities potentially affected by this action are those facilities required to prepare or have available an MSDS for a hazardous chemical under the Hazard Communication Standard (HCS) of the Occupational Safety and Health Administration. Entities more likely to be affected by this action may include chemical, non-chemical manufacturers, retailers, petroleum refineries, utilities, etc.

Estimated Number of Respondents: 563,500.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 2,028,700.

Estimated Total Annual Cost: $71,251,000, includes $4,000 annual startup/capital costs, $6,386,000 O&M costs and $64,861,000 annual labor costs.

Changes in the Estimates: There is no increase or decrease in the burden hours or costs in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. The estimated average annual burden to facility respondents for reporting and recordkeeping activities under EPCRA sections 311 and 312 is same as in the previous ICR, 1,895,000 hours per year. The estimated average annual burden for SERCs, LEPCs, and fire departments is also same as in the previous ICR, 133,700 hours. The Agency believes that

electronic reporting may have reduced burden on many facilities and the implementing agencies. However, EPA has used the same burden estimates as it was in the previous ICR. The 2002 U.S. Census data have not been published, so EPA have applied the same growth factor for manufacturing facilities as in the previous ICR. The number of non-manufacturing facilities were also assumed to be the same as in the previous ICR. There are no programmatic changes in the reporting or recordkeeping requirements associated with EPCRA sections 311 and 312.

Dated: October 27, 2004.

Joseph A. Sierra,

Acting Director, Collection Strategies Division.

[FR Doc. 04–24530 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0283; FRL–7675–3]

Nitrapyrin; Availability of Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of risk assessments that were developed as part of EPA's process for making pesticide Reregistration Eligibility Decisions (REDs) and tolerance reassessments consistent with the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (FQPA). These risk assessments are the human health and environmental fate and effects risk assessments and related documents for nitrapyrin. This notice also starts a 60–day public comment period for the risk assessments. By allowing access and opportunity for comment on the risk assessments, EPA is seeking to strengthen stakeholder involvement and help ensure decisions made under FQPA are transparent and based on the best available information. The tolerance reassessment process will ensure that the United States continues to have the safest and most abundant food supply.

DATES: Comments, identified by the docket identification (ID) number OPP–2004–0283, must be received on or before January 3, 2005.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Stephanie Plummer, Special Review and Reregistration Division (7508-C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 305–0076; e-mail address: *plummer.stephanie@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general; nevertheless, a wide range of stakeholders will be interested in obtaining the risk assessments for nitrapyrin, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket ID number OPP–2004–0283. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select "search," then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

docket along with a brief description written by the docket staff.

II. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0283. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID number OPP–2004–0283. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB) (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID number OPP–2004–0283.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID number OPP–2004–0283. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

B. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

III. What Action is the Agency Taking?

EPA is making available to the public the risk assessments that have been developed as part of the Agency's public participation process for tolerance reassessment and reregistration. During the next 60 days, EPA will accept comments on the human health and environmental fate and effects risk assessments and other related documents for nitrapyrin, available in the individual pesticide docket. Like many other REDs for pesticides developed under this process, the nitrapyrin RED will be made available for public comment.

EPA and United States Department of Agriculture (USDA) have been using a pilot public participation process for the assessment of organophosphate pesticides since August 1998. In considering how to accomplish the movement from the pilot used for the organophosphate pesticides to the public participation process used for non-organophosphates, such as nitrapyrin, EPA and USDA adopted an interim public participation process. This public participation process ensures public access to the Agency's risk assessments while also allowing

EPA to meet its reregistration commitments. The public participation process involves: A registrant error correction period; a period for the Agency to respond to the registrant's error correction comments; the release of the refined risk assessments and risk characterizations to the public via the docket and EPA's internet website; a significant effort on stakeholder consultations, such as meetings and conference calls; and the issuance of the risk management decision document (i.e., RED) after the consideration of issues and discussions with stakeholders. USDA plans to hold meetings and conference calls with the public (i.e., interested stakeholders such as growers, USDA Cooperative Extension Offices, commodity groups, and other Federal Government agencies) to discuss any identified risks and solicit input on risk management strategies. EPA will participate in USDA's meetings and conference calls with the public. This feedback will be used to complete the risk management decisions and the RED. EPA plans to conduct a close-out conference call with interested stakeholders to describe the regulatory decisions presented in the RED. REDs for pesticides developed under this process will be made available for public comment.

Included in the public version of the official record are the Agency's risk assessments and related documents for nitrapyrin. As additional comments, reviews, and risk assessment modifications become available, these will also be docketed. The nitrapyrin risk assessments reflect only the work and analysis conducted as of the time they were produced and it is appropriate that, as new information becomes available and/or additional analyses are performed, the conclusions they contain may change.

List of Subjects

Environmental protection, Chemicals, Pesticides and Pests.

Dated: September 7, 2004.

Debra Edwards,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 04–24420 Filed 11–2–04 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2004–0274]; FRL–7676–2]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing a new active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket identification (ID) number OPP–2004–0274, must be received on or before December 3, 2004.

ADDRESSES: Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Ann Hanger, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 306–0395; e-mail address: *hanger.ann@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

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

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

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of this Document and Other Related Information?

1. *Docket*. EPA has established an official public docket for this action under docket identification (ID) number OPP–2004–0274. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA. This docket facility is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The docket telephone number is (703) 305–5805.

2. *Electronic access*. You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr/*.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket ID number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. To the extent feasible, publicly available docket materials will be made available in EPA's electronic public docket. When a document is selected from the index list in EPA Dockets, the system will identify whether the document is available for viewing in EPA's electronic public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket

facility identified in Unit I.B.1. EPA intends to work towards providing electronic access to all of the publicly available docket materials through EPA's electronic public docket.

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

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

C. How and To Whom Do I Submit Comments?

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket ID number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in Unit I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

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

i. *EPA Dockets*. Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at*http://www.epa.gov/edocket/*, and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in docket ID number OPP–2004–0274. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

ii. *E-mail*. Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2004–0274. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

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

2. *By mail*. Send your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency (7502C), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, Attention: Docket ID Number OPP–2004–0274.

3. *By hand delivery or courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1801 S. Bell St., Arlington, VA, Attention: Docket ID Number OPP–2004–0274. Such deliveries are only accepted during the docket's normal hours of operation as identified in Unit I.B.1.

D. How Should I Submit CBI to the Agency?

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

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD ROM, mark the outside of the disk or CD ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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

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

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response.

You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing an active ingredient not included in any previously registered product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing an Active Ingredient not Included in any Previously Registered Products

1. *File symbol*: 7969–EEA.*Applicant*: BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709.*Product name*: BAS 320 I Technical.*Type of product*: Insecticide.*Active ingredients*: BAS 320 I (a mixture comprising 4-{(2*E*)-2-({[4-(trifluoromethoxy)anilino] carbonyl}hydrazono)-2-[3-(trifluoromethyl)phenyl] ethyl}benzonitrile and 4-{(2*Z*)-2-({[4-(trifluoromethoxy)anilino] carbonyl}hydrazono)-2-[3-(trifluoromethyl)phenyl] ethyl}benzonitrile at 96.1%.*Proposed classification/Use*: For the formulation of insecticides for growing crops and companion animal products.

2. *File symbol*: 7969–EET. *Applicant*: BASF Corporation. *Product name*: BAS 320 00I SC. *Type of product*: Insecticide. *Active ingredients*: BAS 320 I (a mixture comprising 4-{(2*E*)-2-({[4-(trifluoromethoxy)anilino] carbonyl}hydrazono)-2-[3-(trifluoromethyl) phenyl]ethyl}benzonitrile and 4-{(2*Z*)-2-({[4-(trifluoromethoxy)anilino] carbonyl}hydrazono)-2-[3-(trifluoromethyl)phenyl] ethyl}benzonitrile at 22%. *Proposed classification/Use*: For insect control on tuberous and corm vegetables (potatoes) (crop subgroup 1-C), fruiting vegetables (crop group 8), leafy vegetables (crop group 4) and brassica (cole) leafy vegetables (crop group 5).

List of Subjects

Environmental protection, Pesticides and pest.

Dated: October 19, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 04–24248 Filed 11–2–04; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as a Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants:

Starlink Consolidation Service, Inc., 3780 W. Century Blvd., Inglewood, CA 90303. Officer: Michael Kuan, CEO/Secretary/CFO, Qualifying Individual).

First Choice International Travel and Cargo, 2357 S. Azusa Avenue, West Covina, CA 91792, Napoleon C. Mutuc, Sole Proprietor.

Global Alliance Logistics (NYC) Inc., One Cross Island Plaza, 133–33 Brooklyn Ave., Suite #209, Rosedale, NY 11422. Officers: Yuen W. Yeung, Secretary/Treasurer, (Qualifying Individual), Jacky Ip, President.

Convenient Freight System, Inc., 690 Knox Street, Suite 220, Torrance, CA 90502. Officers: Byoung Ho Son, Vice President, (Qualifying Individual), Bum Kyo Suh, President/CFO.

J.F. International Logistics, Inc., 5910 Pine Hill Road, Unit #6, Port Richey, FL 34668. Officers: Joseph Ferrugia, President, (Qualifying Individual), Lori Ann Ferrugia, Secretary.

Sunway Express, Inc., 7902 Lemonwood Circle, La Palma, CA 90623. Officers: Qiling Wu, CEO, (Qualifying Individua), Yi Lu, Director.

Mateo Shipping, Corp., 1441 Ogden Avenue, Bronx, NY 10452. Officers: Julio Mateo, President, (Qualifying Individual), Julian Nunez, Vice President.

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants:

Star Freight Solutions, Inc., 21 Vermillion, Irving, CA 92603. Officer: Haiying Chen, CEO, (Qualifying Individual).

MLR Exports Inc. dba MLR Export Consolidations Inc., 11713 SW 91 Terrace, Miami, FL 33186. Officers: Michelle Pedroso, Director, (Qualifying Individual), Rossy Rodriguez, Director.

Dated: October 29, 2004.

Karen V. Gregory,

Assistant Secretary.

[FR Doc. 04–24545 Filed 11–2–04; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than November 17, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. D. Marlene Huls, Gifford, Illinois, acting individually and as trustee of the Ernest H. Huls Family Trust; to retain voting shares of Illini Corporation, Springfield, Illinois, and thereby indirectly retain voting shares of Illini Bank, Springfield, Illinois.

Board of Governors of the Federal Reserve System, October 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24477 Filed 11–2–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or

bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 29, 2004.

A. Federal Reserve Bank of Kansas City (Donna J. Ward, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Bank of Choice Holding Company, Evans, Colorado; to acquire 100 percent of the voting shares of Palisade Bancshares, Inc., Palisade, Colorado, and thereby indirectly acquire voting shares of The Palisades National Bank, Palisade, Colorado.

Board of Governors of the Federal Reserve System, October 28, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–24476 Filed 11–2–04; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

Office of Governmentwide Policy

Revision of SF 129, Solicitation Mailing List Application

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Notice.

SUMMARY: The General Services Administration, Office of the Chief Acquisition Officer, has revised SF 129, Solicitation Mailing List Application. The data on this form is now collected on the following Web site: *http://www.ccr.gov*. This Web site is the official form. In July of 2003, the paper construction was cancelled and can no longer be used. Effective immediately, data can only be submitted through the above-cited Web site. No paper form will be accepted.

FOR FURTHER INFORMATION CONTACT: Regulatory and Federal Assistance Publication Division, (202) 501–4755.

DATES: Effective November 3, 2004.

Dated: October 28, 2004.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 04–24526 Filed 11–2–04; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Chronic Disease Prevention and Health Promotion Conference Support Program

Announcement Type: New.

Funding Opportunity Number: PA 05031.

Catalog of Federal Domestic Assistance Numbers: 93.283, 93.919, 93.938 and 93.945.

Key Dates:

Letter of Intent Deadline:

Cycle A: November 22, 2004
Cycle B: February 3, 2005

Application Deadline:

Cycle A: December 22, 2004
Cycle B: April 6, 2005

Letter of Intent (LOI) and Application deadline dates for cycles in FY 2006, 2007, 2008 and 2009 will be published in the **Federal Register** each year.

I. Funding Opportunity Description

Authority:

The Centers for Disease Control and Prevention (CDC) program is authorized under section 317(k) (2) (c) and (d) of the Public Health Service Act, [42 U.S.C. 247b (k) (2) (c) and (d)].

Purpose:

The Centers for Disease Control and Prevention (CDC) announce the pending availability of appropriated fiscal year (FY) 2005 funds for National Center for the Chronic Disease Prevention and Health Promotion Conference Support Program. This program addresses the ''Healthy People 2010'' focus areas of Arthritis, Osteoporosis, and Chronic Back Conditions, Cancer, Diabetes, Educational and Community-Based Programs, Heart Disease and Stroke, Maternal, Infant and Child Health, Vision and Newborn Hearing (specifically newborn screening, evaluation and intervention), Oral Health, Physical Activity and Fitness, Respiratory Diseases, Sexually Transmitted Diseases, and Tobacco Use.

HIV Conferences and HIV subject matter are covered under another program and are not permitted under this announcement.

The purpose of conference support funding is to provide partial support for specific non-Federal conferences in the areas of health promotion and disease prevention information and education programs, and applied research.

Applicants can submit applications for conferences that are not a part of series for a one-year project period or an applicant can submit a proposal for a five year project period when a series of annual conferences are proposed by a sponsoring organization. The applicant can submit applications on an annual basis for up to five years for a series of conferences or the applicant can submit one application for five years of proposed activities. A series is proposed as the exact same focus area within the scope of the program announcement conducted more than one time during the project period. An applicant can apply for funding for more than one different conference during the project period. Each application must focus on one topic area.

Conference support by CDC creates the appearance of CDC co-sponsorship, where there will be active participation by CDC in the development and approval of the conference agenda to make sure there are no subjects that would be contradictory to the goals of the Government or be an improper use of funds. CDC funds will be expended only for approved portions of the conference.

The mission of CDC is to promote health and improve the quality of life by preventing and controlling disease, injury, and disability.

This is occurring through the support of conferences and meetings in the areas of public health research, education, prevention research in program and policy development in managed care and also through prevention application. CDC is meeting its overall goal of dissemination and implementation of new cost-effective intervention strategies.

Measurable outcomes of the program will be in alignment with one or more of the following performance goal(s) for the National Center for Chronic Disease Prevention and Promotion: (1) Increase early detection of breast and cervical cancer by building nationwide programs in breast and cervical cancer prevention,

especially among high-risk, underserved women. (2) Expand community-based breast and cervical cancer screening and diagnostic services to low income, medically underserved women. For women diagnosed with cancer or pre-cancer, ensure access to treatment services. (3) Reduce cigarette smoking among youth. (4) Support prevention research to develop sustainable and transferable community-based behavioral interventions. (5) Increase the capacity of state cardiovascular health programs to address prevention of cardiovascular disease at the community level. (6) Reduce death and disability due to heart disease and stroke and eliminate disparities. (7) Increase the capacity of state diabetes control programs to address the prevention of diabetes and its complications at the community level. (8) Improve the quality of state-based cancer registries. (9) Help states monitor the prevalence of major behavioral risks associated with premature morbidity and mortality in adults to improve the planning, implementation, and evaluation of health promotion and disease prevention programs. (10) Decrease levels of obesity, or reduce the rate of growth of obesity, in communities through nutrition and physical interventions. (See Attachment I for the specific topic areas as posted at the CDC Web site, at, *www.cdc.gov,* Click on ''Funding'' then ''Grants and Cooperative Agreements'', and then locate the specific topic areas for this announcement.)

This announcement is only for non-research activities supported by CDC. If research is proposed, the application will not be reviewed and the application will be returned to the applicant. For the definition of research, please see the CDC Web site at the following Internet address: *http://www.cdc.gov/od/ads/opspoll1.htm.*

Activities:

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the following activities:

- The conference organizer(s) may use CDC's name only in accurate public relations for the conference, meaning information that is true and factual. CDC involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, products, or the content of speakers' presentations.
- All conferences co-sponsored under this announcement shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG) (Does not apply to international conferences). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations.
- Manage all activities related to program content (*e.g.*, objectives, topics, attendees, session design, workshops, special exhibits, speaker's fees, agenda composition, and printing). Many of these items may be developed in concert with assigned CDC project personnel.
- Provide draft copies of the agenda and proposed ancillary activities to CDC for approval. All but ten percent of the total funds awarded for the proposed conference will be initially restricted pending approval of a full, final agenda by CDC. The remaining 90 percent of funds will be released by letter to the grantee upon the approval of the final agenda. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. CDC funds will not be expended for non-approved portions of meetings. In addition, CDC will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. CDC reserves the right to terminate co-sponsorship if it does not concur with the final agenda.
- Determine and manage all promotional activities (*e.g.*, title, logo, announcements, mailers, press, etc.). CDC must review and approve any materials with reference to CDC involvement or support.
- Manage all registration processes with participants, invitees, and registrants (*e.g.*, travel, reservations, correspondence, conference materials and handouts, badges, registration procedures, etc.).
- Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2005.

Approximate Total Funding: $2.0 million dollars (These amounts are estimates, and are subject to availability of funds).

Approximate Number of Awards: 40 to 50.

Approximate Average of Awards: It is expected that the average award range for a one year project period will be $25,000 to $75,000. It is expected that the average award range for a five year project period will be $25,000 to 100,000. (These amounts are for the first 12-month budget period).

Floor of Award Range: None.

Ceiling of Award Range: None.

Anticipated Award Date: Approximately sixty days before the date of the conference.

Budget Period Length: 12 month budget period for each cycle.

Project Period Lengths: One year project period and a five-year project period.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Applications may be submitted for CDC support by public and private nonprofit organizations and by governments and their agencies, such as:

- Public nonprofit organizations.
- Private nonprofit organizations.
- Faith-Based organizations.
- Universities and Colleges.
- Voluntary associations.
- Foundations and civic groups.
- Scientific or professional associations.
- Federally recognized Indian tribal governments.
- Indian tribes.
- Indian tribal organizations.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3 Other

Programmatic Interest Areas:

To be eligible to apply, the applicant must: Propose a conference that matches only one topic area identified in the ''Topic Areas of Programmatic Interest'' as listed in Attachment I, as posted on the CDC Web site, at *www.cdc.gov,* Click on ''Funding'' then ''Grants and Cooperative Agreements''. Each application should address one specific topic area for the 12 month budget. Applications for the five year project period should address the topic area of focus for years two through five. A separate application must be submitted to address the different topic areas of focus.

Use of Funds:

Funds may be used for direct cost expenditures: Salaries; speaker fees (for services rendered); rental of necessary

conference-related equipment; registration fees; and transportation costs (not to exceed economy class fare) for non-Federal individuals.

Funds may be used for only those parts of the conference specifically supported by CDC or ATSDR as documented in the grant award.

CDC will accept and review applications with budgets greater than the ceiling of the award range.

Special Requirements:

• CDC Conference Support awards will be in two categories: Awards with a one year project period; and awards with a five year project period.

• Each year the applicant must meet the posted deadline dates in the **Federal Register** to be eligible for funding in FY 2006, 2007, 2008 and 2009.

• Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.

• Applicants who do not submit a Letter of Intent (LOI) will not be eligible to submit an application for review or funding.

• **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161–1 (OMB Number 0937–0189). Application forms and instructions are available on the CDC Web site, at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.* If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIM) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI):

A LOI is required for this Program Announcement. The LOI will not be evaluated or scored. Your letter of intent will be used to estimate the potential reviewer workload and to avoid conflicts of interest during the review. If you do not submit a LOI, you will not be allowed to submit an application.

Your LOI must be written in the following format:

• Maximum number of pages: Two to three typewritten pages.

• Font size: 12-point unreduced.

• Double spaced.

• Paper size: 8.5 by 11 inches.

• Page margin size: One inch.

• Printed only on one side of page.

• Written in plain English language, avoid jargon.

Your LOI must contain the following information:

• The name of the organization.

• Primary contact person's name.

• Mailing address.

• Telephone number and, if available, fax and e-mail.

• Title of the proposed conference—include the term ''conference,'' ''symposium,'' or similar designation.

• Date(s) of conference—inclusive dates of the conference. A series would be the exact same conference focus area conducted more than one time.

• Location of city, state, and physical facilities required for the conduct of the meeting.

• Project topics (no more than one). See attachment II.

• Total conference cost and total requested from CDC (must be less than 100 percent).

• Intended audience, approximate number, and profession of persons expected to attend.

• Justification for the conference

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

• Maximum number of pages: 12 pages. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.

• Font size: 12 point unreduced.

• Double spaced.

• Paper size: 8.5 by 11 inches.

• Page margin size: One inch.

• Printed only on one side of page.

• Clearly numbered pages.

• A complete index to the application and appendices.

• Held together only by rubber bands or metal clips; not bound in any other way.

Your narrative should address activities to be conducted over the entire project period:

• A brief background of the organization—include the organizational history, purpose, and previous experience related to the proposed conference topic. Provide information on your last five conferences that addressing when and where the conference was held.

• A clear statement of the need for and purpose of the conference. This statement should also describe any problems the conference will address or seek to solve, and the action items or resolutions it may stimulate.

• An elaboration on the conference objectives and target audience. A list should be included of the principal areas or topics to be addressed. If a series of conferences are proposed for a five year project period, the applicant must provide information on proposed conferences for years two through five.

• A proposed or final agenda must be included.

• A clear description of the evaluation plan and how it will assess the accomplishments of the conference objectives. A sample of the evaluation instrument that will be used must be included and a step-by-step schedule and detailed operation plan of major conference planning activities necessary to attain specified objectives.

• Budget plan and justification—A detailed and clearly justified budget narrative that is consistent with the purpose, objectives, and operation plan of the conference for FY 2005. Applications that are part of the five year project period must submit a detailed budget and justification for year one and a categorical budget consistent with budget form 424a for years two through five that describes the financial resources needed over the five year project period. It should include the share requested from this grant as well as those funds from other sources, including organizations, institutions, conference income, and/or registration fees. (The 12 page limit does not include the budget.)

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

• Biographical sketches are required for the individuals responsible for planning and implementing the conference. Experience and training related to conference planning and implementation as it relates to the proposed topic should be noted.

• Letters of endorsement or support—Letters of endorsement or support for the sponsoring organization and its capability to perform the proposed conference activity.

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com or call 1–866–705–5711.*

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/*

funding/pubcommt.htm. Please include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: Cycle A: November 22, 2004. Cycle B: February 3, 2005.

CDC requires that you submit a LOI if you intend to apply for this program. Although the LOI will not be evaluated, and does not enter into review of your subsequent application, failure to submit a timely LOI will preclude you from submitting an application.

Application Deadline Date: Earliest Possible Award Dates: Cycle A: December 22, 2004–April, 2005. Cycle B: April 6, 2005–August, 2005.

Explanation of Deadlines: LOIs and Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your LOI or application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIM staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed Federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Funds may not be used for the purchase of equipment; payments of honoraria (for conferring distinction); alterations or renovations; organizational dues; support entertainment or personal expenses; food or snack breaks; cost of travel and payment of a Federal employee or per diem or expenses for local participants (other than local mileage). Travel for CDC employees will be supported by CDC. Travel for other Federal employees will be supported by the employees' Federal agency.
- Funds may not be used for reimbursement of indirect costs.
- CDC will not fund 100 percent of any conference proposed under this announcement. Part of the cost of the proposed conference must be supported with funds other than Federal funds.
- CDC will not fund a conference after it has taken place.
- Federal funds may not be used to fund novelty items or souvenirs.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit the original and two hard copies of your LOI by express mail or delivery service to: Technical Information Management Section, PA 05031, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

LOIs may not be submitted electronically at this time.

Application Submission Address: Submit the original and two hard copies of application by express mail or delivery service to: Technical Information Management Section, PA 05031, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Applications may not be submitted electronically at this time.

If your conference dates fall between May 1, 2005 to April 30, 2006, you should apply under Cycle A under this announcement for year one budget period. If your conference dates fall between August 1, 2005 to September 30, 2006, you should apply under Cycle B under this announcement for year one budget period.

If your conference dates fall between May 1, 2006 to April 30, 2007, you should apply under Cycle A under this announcement for year two budget period. If your conference dates fall between August 1, 2006 to September 30, 2007, you should apply under Cycle B under this announcement for year two budget period.

If your conference dates fall between May 1, 2007 to April 30, 2008, you should apply under Cycle A under this announcement for year three budget period. If your conference dates fall between August 1, 2007 to September 30, 2008, you should apply under Cycle B under this announcement for year three budget period.

If your conference dates fall between May 1, 2008 to April 30, 2009, you should apply under Cycle A under this announcement for year four budget period. If your conference dates fall between August 1, 2008 to September 30, 2009, you should apply under Cycle B under this announcement for year four budget period.

If your conference dates fall between May 1, 2009 to April 30, 2010, you should apply under Cycle A under this announcement for year five budget period. If your conference dates fall between August 1, 2009 to September 30, 2010, you should apply under Cycle B under this announcement for year five budget period.

If your conference dates fall between October 1, 2004 and April 30, 2005, you should have applied under the previous Announcement 04004, and your LOI will be considered non-responsive to Program Announcement 05031.

V. Application Review Information

V.1. Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures of effectiveness must

relate to the performance goals stated in the ''Purpose'' section of this announcement. Measures must be objective and quantitative, and must measure the intended outcome. These measures of effectiveness must be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Each application will be evaluated based on the following criteria:

1. Proposed Program and Technical Approach (25 Points)

The applicant's description of the proposed conference as it relates to specific non-Federal conferences in the areas of health promotion and disease prevention information/education programs (except substance abuse), including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices. Evaluation will also be based on the extent of the applicant's collaboration with other organizations serving the intended audience. The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan will also be evaluated.

2. Conference Objectives (25 Points)

a. The overall quality, reasonableness, feasibility, and logic of the designed conference objectives, including the overall work plan and timetable are accomplished.

b. The likelihood of accomplishing conference objectives as they relate to disease prevention and health promotion goals, and the feasibility of the project in terms of the operational plan.

3. The Qualifications of Program Personnel (20 Points)

Evaluation will be based on the extent to which the application has described.

a. The extent to which the application provides evidence of the qualifications, experience, and commitment of the principal staff person, and his/her ability to devote adequate time and effort to provide effective leadership.

b. The extent to which the application provides evidence of the competence of associate staff persons, discussion leaders, speakers, and presenters to accomplish conference objectives.

c. The extent to which the application demonstrates the knowledge of nationwide and educational efforts currently underway which may affect, and be affected by, the proposed conference.

4. Evaluation Methods (20 Points)

Evaluation instrument(s) for the conference should adequately assess increased knowledge, attitudes, and behaviors of the target audience.

5. Applicant's Capability (10 Points)

a. The applicant's capability includes the adequacy of the applicant's resources (additional sources of funding, organization's strengths, staff time, proposed physical facilities, etc.) available for conducting conference activities.

b. The extent to which the applicant demonstrates a history (at least three years) of managing conferences.

6. Budget Justification and Adequacy of Facilities (Not Scored)

The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, and consistent with the intended use of grant funds. The application will also be reviewed as to the adequacy of existing or proposed facilities and resources for conducting conference activities.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff and for responsiveness by the National Center for Chronic Disease Prevention. Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above presented by three reviewers from CDC employees that are all outside the funding cognizant program office.

Applications will be funded in order by score and rank determined by the review panel.

Applications received in subsequent budget periods that are part of a series will be technically reviewed by an assigned CDC project officer providing their application is consistent with the scope of this program announcement and their originally approved application. Any application proposed in a series where the scope of the application is not consistent with their original application will be reviewed by an objective review panel according to the evaluation criteria.

V.3. Anticipated Announcement and Award Dates

The anticipated announcement date is November 5, 2004 and the award dates will be 30–60 days before the conferences begin.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Part 74 and Part 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–7 Executive Order 12372.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities.
- AR–15 Proof of Non-Profit Status.
- AR–20 Conference Support.
- AR–23 State Grantees and Faith-Based Organizations.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report, due no later than 90 days after the end of the budget period/project.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement. For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program technical assistance, contact: Vivian Bryant, Program Analyst, CDC National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Hwy NE., Atlanta, GA 30341–3717, Telephone: 770–488–6292, E-mail: *vbryant@cdc.gov.*

For financial, grant management, or budget assistance, contact: Rick Jaeger, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2727, E-mail: *rjaeger@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: October 28, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24513 Filed 11–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

State Implementation Projects for Preventing Secondary Conditions and Promoting the Health of People With Disabilities

Announcement Type: New.

Funding Opportunity Number: RFA 05007.

Catalog of Federal Domestic Assistance Number: 93.184.

Key Dates: Letter of Intent Deadline (LOI): December 3, 2004.

Application Deadline: January 3, 2005.

Executive Summary: The State capacity cooperative agreements are providing financial assistance to: (1) Establish and/or sustain State offices for preventing secondary conditions and promoting the health of people with disabilities as a State public health priority, and serve as a technical assistance (TA) resource and statewide focus for the prevention of secondary conditions; (2) support an advisory function to coordinate and provide policy and program direction guidance in the State; (3) develop and/or implement a State strategic plan or policy instrument for health promotion for persons with disabilities; (4) establish and implement partnerships with universities or state health departments or other state agencies to support and complement project activities; (5) maintain and refine prescribed public health surveillance or survey activities related to disability and/or secondary conditions in order to implement prevention efforts and program evaluation activities; (6) provide TA to communities; and (7) promote education and health promotion programs for persons with disabilities, conduct training of health professionals, and facilitate access to services for persons with disabilities.

I. Funding Opportunity Description

Authority: This program is authorized under Sections 311, 317(k)(2), and 317C of the Public Health Service Act, (42 U.S.C. 243, 247b(k)(2), and 247b–4) as amended.

Purpose: The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2005 funds for cooperative agreements for State implementation projects for preventing secondary conditions and promoting the health of persons with disabilities. This program addresses the ''Healthy People 2010'' focus area(s) of Disability and Secondary Conditions.

The purpose of this program is to support States in preventing secondary conditions in persons with disabilities and in implementing effective health promotion and wellness programs for persons with disabilities. This announcement is comprised of two levels of cooperative agreements:

Level II—State Implementation Projects

Level III—State Infrastructure Development Projects

Measurable outcomes of the program will be in alignment with one (or more) of the following performance goal(s) for the National Center on Birth Defects and Developmental Disabilities: Improve the health and quality of life of Americans with disabilities.

Activities: Activities for Levels II and III: Note that items (a) through (e) relate to activities for both Level II and III State applicants. Items (f) and (g) below relate only to Level II State applicants.

(a) Establish the organizational location and focus for the project within the applicant agency and engage key collaborators (*e.g.*, disability service organizations, advocacy groups, universities) in the design and attainment of program goals and objectives.

(b) Expand or develop an advisory function comprised of key partners representing the disability community. The advisory group will contribute to the policy and planning functions of the applicant. At least 30 percent of the advisory membership must have a disabling condition.

(c) Collect and analyze data using survey questions in the Behavioral Risk Factor Surveillance System (BRFSS) or other survey instruments.

(d) Investigate and document the process (to be or already) established of gaining access to or obtaining information from administrative data within the State to plan and implement activities to prevent secondary conditions and improve the health of people with disabilities to which the data relate.

(e) Disseminate health promotion information through diverse and innovative marketing plans.

(f) Plan, implement and evaluate over the project period health promotion interventions related to Chapter 6 objectives in Healthy People 2010 or the leading health indicators for people with disabilities.

(g) Promote and help develop strategic planning instruments that will influence State-level public health and health promotion activities such as Healthy People 2010 objectives.

In a cooperative agreement, CDC staff is substantially involved in the program activities, above and beyond routine grant monitoring.

CDC Activities for this program are as follows:

- Provide scientific and programmatic TA as requested or indicated in the planning and conduct of disability data collection, communications, and health promotion activities.
- Provide a point of referral and coordination for State, regional and/or national data pertinent to the disabling process.

• Provide assistance to States in regard to BRFSS, or other survey-based sources of data.

• Facilitate coordination with other federal statistical research and data resources.

• Assist State projects in their development of program evaluation measures and processes.

II. Award Information

Type of Award: Cooperative Agreement. CDC involvement in this program is listed in the Activities Section above.

Fiscal Year Funds: 2005.

Approximate Total Funding: $2,500,000. (This amount is an estimate, and is subject to availability of funds.)

Approximate Number of Awards: 9–11.

Approximate Average Award: $280,000 for Level II; $125,000 for Level III. (These amounts are for the first 12-month budget period, and includes both direct and indirect costs.)

Floor of Award Range: $175,000 for Level II; $125,000 for Level III.

Ceiling of Award Range: $360,000 for Level II; $150,000 for Level III.

Anticipated Award Date: April 1, 2005.

Budget Period Length: 12 months.

Project Period Length: Two years.

Level II: CDC anticipates making up to 7 awards for projects which will be designated as Level II states. Funding constraints dictate that no more than one of the eligible states will receive an award at the $360,000 level. The average award for remaining states eligible as a Level II applicant will be $280,000. Requests for Level II awards in excess of $360,000 will be considered as non-responsive and will be returned to the applicant. The major criteria for Level II awards will be that intervention programs for persons with disabilities are established and being implemented within the agency jurisdiction and constituency served.

Level III: CDC anticipates making up to 4 awards for projects which will be designated as Level III states. It is expected that Level III awards will average $125,000 with no award to be made in excess of $150,000. Requests for Level III awards in excess of $150,000 will be considered as non-responsive and will be returned to the applicant. Funding for Level III projects is designed to develop State infrastructure, and short-term implementation of intervention activities is not required.

Throughout the project period, CDC's commitment to continuation of awards will be conditioned on the availability of funds, evidence of satisfactory progress by the recipient (as documented in required reports), and the determination that continued funding is in the best interest of the Federal Government.

III. Eligibility Information

III.1. Eligible Applicants

Assistance will be provided to the health departments of States or their bona fide agents or designees, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally recognized Indian tribal governments, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

Eligibility is also extended to agencies and organizations other than the official health department. In those cases, these entities must provide written concurrence from that health agency and describe the proposed collaborative relationship. Under that circumstance, the role of the official State health agency must be shown to be complementary, collaborative, and demonstrate clearly defined programmatic commitments and obligations.

Only one application from each State or Territory may be submitted. The agency determined to be the applicant for the State may apply for more than one Level (*i.e.* Level II or Level III) of funding under the eligibility requirements for each. Once that agency is determined, no other agency within that State can submit an application for any other Level of funding. However, a complete and separate application must be submitted from that same applicant agency/entity based on the program requirements and evaluation criteria for that component (Level) of this announcement. Only one award will be issued per State.

States are considered the most appropriate applicants since the national goals of this program include developing capacity in all States and their delivery systems to monitor, characterize, and improve the health of people with disabilities and prevent secondary conditions.

Two levels of cooperative agreements will be awarded:

Level II: Eligible applicants for Level II funding are States currently funded under CDC PA 02007, State Implementation Projects for Preventing Secondary Conditions and Promoting the Health of People with Disabilities. Eligible states include Arkansas, California, Illinois, Massachusetts, Montana, New Jersey, Oregon, Rhode Island, Vermont, and Virginia. In addition, eligible applicants include the District of Columbia, all States, federally recognized Indian Tribes and United States Territories.

To be eligible, applicants for Level II must also provide:

(a) The State Plan for Disability and Health. The Plan can be in final form or in the process of final review.

(b) An established and functioning disability and health advisory component of which at least 30 percent of the members are people with disabilities. The advisory group contributes to the policy and planning functions of the applicant. A listing of the advisory committee membership with their areas of expertise and interest is to be provided and certified by the committee/council chairperson, with an indication only as to the number of persons with disabilities within that group.

A copy of the State Plan and the composition and function statement of the Advisory Council must be provided as attachments to the application.

Level III: Eligible applicants for Level III funding are the District of Columbia, all States, federally recognized Indian Tribes and United States Territories regardless of their current CDC Disability and Health Program funding status.

CDC will conduct a conference call November 16, 2004 with prospective applicants to answer questions regarding this announcement. If you wish to participate, contact by e-mail the official noted for Program TA in the ''Agency Contacts'' section of this announcement (*dbetts@cdc.gov*). You will be informed by return e-mail as to the time, telephone number, and passcode for that call. You are encouraged to provide advance questions that will be part of the general discussion during the call.

III.2. Cost Sharing or Matching

Matching funds are not required for this program.

III.3. Other

If you request a funding amount greater than the ceiling of the award range, your application will be considered non-responsive, and will not be entered into the review process. You will be notified that your application did not meet the submission requirements.

Special Requirements:

If your application is incomplete or non-responsive to the special requirements listed in this section, it will not be entered into the review

process. You will be notified that your application did not meet submission requirements.

- Late applications will be considered non-responsive. See section ''IV.3. Submission Dates and Times'' for more information on deadlines.
- **Note:** Title 2 of the United States Code Section 1611 states that an organization described in Section 501(c)(3) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

IV. Application and Submission Information

IV.1. Address To Request Application Package

To apply for this funding opportunity use application form PHS 5161. Application forms and instructions are available on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm.*

If you do not have access to the Internet, or if you have difficulty accessing the forms on-line, you may contact the CDC Procurement and Grants Office Technical Information Management Section (PGO–TIMS) staff at: 770–488–2700. Application forms can be mailed to you.

IV.2. Content and Form of Submission

Letter of Intent (LOI): A non-binding letter of intent is requested from prospective applicants. The letter should not exceed one page. It should identify the announcement number, the proposed project director, and denote whether funding Level II or III is being proposed. This letter will allow CDC to determine the amount of interest in the announcement, to plan the review more efficiently, and to ensure that each applicant receives timely and relevant information prior to the application submission date. Your LOI must be written in the following format:

- Maximum number of pages: One
- Font size: 12-point unreduced
- Single spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Written in plain language, avoid jargon

Application: You must submit a project narrative with your application forms. The narrative must be submitted in the following format:

- Maximum number of pages: 35 pages if applying for Level II; 25 pages if applying for Level III. If your narrative exceeds the page limit, only the first pages which are within the page limit will be reviewed.
- Font size: 12–14 point unreduced
- Double spaced
- Paper size: 8.5 by 11 inches
- Page margin size: One inch
- Printed only on one side of page
- Held together only by rubber bands or metal clips; not bound in any other way
- Attachments to the application should be held to a minimum in keeping to those items referenced or required by this Announcement. The attachments do not count toward the page application limit for that funding level

Your narrative should address activities to be conducted over the entire project period. Level II and Level III applicants must include the following items in the order listed:

1. *Background and Need:*

a. Describe the current status of disability and health programs in the state, and describe your understanding of the need for this program in the state. Identify the extent of the problem, available services and support resources, at-risk groups, knowledge gaps, and the use of this award in meeting such needs. Provide the data sources that document the need for the program.

b. Provide justification for emphasizing select populations or the sub-group of disabling conditions to be targeted by the applicant. Provide references for any studies or sources from which this information was obtained.

2. *Collaborations:*

a. Discuss the collaborations proposed with principal partners in the conduct of the project, such as a formal university or state agency alliance that will have an impact on the capacity of the State to mount or improve efforts in health promotion and the prevention of secondary conditions. Provide letters of support describing the nature of each collaboration, and the extent of the collaborative commitment in the scope of work and human and financial resources.

b. Describe progress in developing or implementing a formal State Plan for the prevention of secondary conditions and promoting the health of people with disabilities, and describe the role of a new or existing advisory function to aid in that effort and in other assigned responsibilities.

3. *Epidemiologic Capacity:*

a. Furnish descriptions of the epidemiologic capacity structure in place or proposed to coordinate and promote data collection and analysis including the BRFSS, other state data sources, selected administrative data sets, and those in conjunction with identified partners.

b. Describe how the university or state agency partnership or collaboration with the state BRFSS Coordinator or other agencies has or will be engaged to facilitate epidemiologic excellence. Provide data from the BRFSS, other state sources, or selected administrative data describing both the magnitude of disability, and the risk and protective factors related to the onset and progress of secondary conditions.

c. Describe how data will, or is being used, for policy development and planning.

4. *Program Work Plan:*

a. Provide measurable and time-phased goals and objectives for the project period. Objectives should be outcome oriented as much as possible, rather than focusing on processes or outputs. Provide baselines for each objective. The work plan should include the goal of defining the burden of disabilities.

b. Describe proposed activities that will lead to the achievement of the stated goals and objectives. Activities may include the following:

- Conducting the BRFSS survey and analyzing the data
- Initiating or expanding strategic partnerships with specific activities identified
- Providing TA to communities
- Promoting education and health promotion programs for persons with disabilities
- Conducting training of health professionals
- Facilitating access to services for persons with disabilities

5. *Evaluation Plan:* Discuss how the project will measure the outcomes of proposed targeted activities (*e.g.*, increases in public awareness, knowledge, behavior, and the overall benefits of State Planning and advisory activities). Include a description of the evaluation design, methods, partners, and processes to be followed for conducting program evaluation.

6. *Management/Staffing Plan:*

a. Provide a description of the proposed staffing for the project, and the plan to expedite filling of all positions. The plan must include the appointment of a full time program manager/coordinator.

b. Discuss the responsibilities of individual staff members including the level of effort and time allocation for each project objective by staff position.

c. Describe plans for on-going management and operation of the project in the event of unexpected vacancies, hiring restrictions, or difficulty in recruiting for key positions.

d. Describe how the integration of disability and health functions as an integral component of applicant/health agency services and operations will be achieved.

e. Present a graphic flowchart (*i.e.*, Gantt chart) denoting time interval performance expectations over the first budget year.

7. *Budget and Narrative Justification:* Provide a detailed line-item budget and narrative justification for all operating expenses consistent with and clearly related to the proposed objectives and planned activities.

Additional information may be included in the application appendices. The appendices will not be counted toward the narrative page limit. This additional information includes:

- Curriculum Vitaes
- Resumes
- Organizational Charts
- Letters of Support
- Graphic workplans
- State plans for disability and health (Level II only)
- Listing of Advisory Committee membership (Level II only)

You are required to have a Dun and Bradstreet Data Universal Numbering System (DUNS) number to apply for a grant or cooperative agreement from the Federal government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dunandbradstreet.com* or call 1–866–705–5711.

For more information, see the CDC Web site at: *http://www.cdc.gov/od/pgo/funding/pubcommt.htm.* If your application form does not have a DUNS number field, please write your DUNS number at the top of the first page of your application, and/or include your DUNS number in your application cover letter.

Additional requirements that may require you to submit additional documentation with your application are listed in section ''VI.2. Administrative and National Policy Requirements.''

IV.3. Submission Dates and Times

LOI Deadline Date: December 3, 2004.

CDC requests that you send an LOI if you intend to apply for this program. Although the LOI is not required, not binding, and does not enter into the review of your subsequent application, the LOI will be used to gauge the level of interest in this program, and to allow CDC to plan the application review.

Application Deadline Date: January 3, 2005.

Explanation of Deadlines: Applications must be received in the CDC Procurement and Grants Office by 4 p.m. Eastern Time on the deadline date. If you submit your application by the United States Postal Service or commercial delivery service, you must ensure that the carrier will be able to guarantee delivery by the closing date and time. If CDC receives your submission after closing due to: (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, you will be given the opportunity to submit documentation of the carriers guarantee. If the documentation verifies a carrier problem, CDC will consider the submission as having been received by the deadline.

This announcement is the definitive guide on LOI and application content, submission address, and deadline. It supersedes information provided in the application instructions. If your submission does not meet the deadline above, it will not be eligible for review, and will be discarded. You will be notified that you did not meet the submission requirements.

CDC will not notify you upon receipt of your submission. If you have a question about the receipt of your LOI or application, first contact your courier. If you still have a question, contact the PGO–TIMS staff at: 770–488–2700. Before calling, please wait two to three days after the submission deadline. This will allow time for submissions to be processed and logged.

IV.4. Intergovernmental Review of Applications

Your application is subject to Intergovernmental Review of Federal Programs, as governed by Executive Order (EO) 12372. This order sets up a system for state and local governmental review of proposed federal assistance applications. You should contact your state single point of contact (SPOC) as early as possible to alert the SPOC to prospective applications, and to receive instructions on your state's process. Click on the following link to get the current SPOC list: *http://www.whitehouse.gov/omb/grants/spoc.html.*

IV.5. Funding Restrictions

Restrictions, which must be taken into account while writing your budget, are as follows:

- Reimbursement of pre-award costs is not allowed.
- Funds may not be used for construction.
- Funds may not be used to supplant State, local, or other applicant funds for the purpose of this cooperative agreement.
- Funds may not be used to lease or purchase space or facilities.
- Funds may not be used for patient care.

If you are requesting indirect costs in your budget, you must include a copy of your indirect cost rate agreement. If your indirect cost rate is a provisional rate, the agreement should be less than 12 months of age.

Guidance for completing your budget can be found on the CDC Web site, at the following Internet address: *http://www.cdc.gov/od/pgo/funding/budgetguide.htm.*

IV.6. Other Submission Requirements

LOI Submission Address: Submit your LOI by express mail, delivery service, fax, or e-mail to: Donald Betts, CDC, NCBDDD, 1600 Clifton Road, MS E 88, Atlanta, GA 30333, 404–498–3957, 404–498–3060, *dbetts@cdc.gov.*

Application Submission Address: Submit the original and two hard copies of your application by mail or express delivery service to: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341.

Applications may not be submitted electronically at this time.

V. Application Review Information

V.1. Criteria

Level II and Level III applicants will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Program Work Plan: (20 Points)

a. The extent to which the formal work plan includes a clear and concise presentation of project goals and objectives which are specific, measurable, achievable, and time-referenced.

b. The extent to which the applicant effectively documents its plan to provide TA, education and training, and health promotion programs.

c. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in proposed research. This includes:

(1) The proposed justification when representation is limited or absent;

(2) A statement as to whether the design of the study is adequate to measure differences when warranted; and

(3) A statement as to whether the plans for recruitment and outreach for

study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

2. Evidence of Collaboration: (20 Points)

a. The extent to which the proposed collaborations are well documented with letters of commitment conveying specific indications as to the level of involvement and material effort to be provided in support of project objectives.

b. The extent to which the applicant adequately describes the proposed or existing advisory function, including evidence of representation of persons with disabilities and their role and capacity to influence State-level policy.

c. The extent to which the applicant presents evidence of strong partnerships between the state health department, universities, and community-based organizations, and describes how these collaborations will result in successful infrastructure development.

d. The extent to which the proposed approach demonstrates an effective process to develop and publish a State strategic plan with a Healthy People 2010 emphasis, and/or policy directive for the prevention of secondary conditions as a precursor to the development of the State Plan.

3. Epidemiologic Capacity: (20 Points)

a. The extent to which the application conveys the epidemiologic capacity and structure in place to coordinate and facilitate disability-related data collection, analysis, interpretation, and dissemination.

b. The extent to which the applicant adequately describes how it will conduct the BRFSS, access other State disability information sources related to the population of interest such as administrative data sets; and how such data is currently, or will be utilized.

4. Program Evaluation: (20 Points)

a. The extent to which the applicant presents an appropriate and viable plan for the overall evaluation of the project; including the design, methods (quantitative methods as well as qualitative approaches such as focus groups), partners, and processes to be followed for conducting project evaluation.

b. The extent to which the applicant adequately outlines the methods and process by which it will self-evaluate its performance towards meeting all specified time-phased objectives.

5. Evidence of Need and Understanding of the Problem: (10 Points)

a. The extent to which the applicant provides an adequate description and understanding of the magnitude of disabilities showing evidence (as available) of estimates of prevalence, demographic indicators, severity, effect on families and caregivers, and associated costs.

b. The degree to which the applicant provides a suitable description of the extent of current activities related to disability and health, including those addressing the prevention of secondary conditions within the State.

6. Management/Staffing Plan: (10 Points)

a. The extent to which the applicant provides adequate descriptions of key staff responsibilities addressing proposed major activities.

b. The extent to which the organizational placement of the project assures optimal visibility and influence based on evidence provided by applicant agency leadership.

c. The extent to which the applicant addresses how it will assure and achieve integration of disability and health functions as an integral component of applicant/health agency services and operations.

7. Budget Justification: (Not Scored)

The extent to which the proposed budget is reasonable, related to the proposed objectives and activities.

8. Human Subjects if Applicable: (Not Scored)

The extent to which the applicant complies with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects.

V.2. Review and Selection Process

Applications will be reviewed for completeness by the Procurement and Grants Office (PGO) staff, and for responsiveness by the National Center on Birth Defects and Developmental Disabilities (NCBDDD). Incomplete applications and applications that are non-responsive to the eligibility criteria will not advance through the review process. Applicants will be notified that their application did not meet submission requirements.

An objective review panel appointed by CDC will evaluate complete and responsive applications according to the criteria listed in the ''V.1. Criteria'' section above. Members of the objective review panel will be appointed in accordance with Department of Health and Human Services policy.

Applications will be funded in order by score and rank determined by the review panel. In addition, the following factors may affect the funding decission: maintaining geographic diversity, and preference to applicants funded in a previous project period.

CDC will provide justification for any decision to fund out of rank order.

V.3. Anticipated Announcement and Award Dates

It is anticipated that awards will be announced on March 15, 2005.

VI. Award Administration Information

VI.1. Award Notices

Successful applicants will receive a Notice of Grant Award (NGA) from the CDC Procurement and Grants Office. The NGA shall be the only binding, authorizing document between the recipient and CDC. The NGA will be signed by an authorized Grants Management Officer, and mailed to the recipient fiscal officer identified in the application.

Unsuccessful applicants will receive notification of the results of the application review by mail.

VI.2. Administrative and National Policy Requirements

45 CFR Parts 74 and 92

For more information on the Code of Federal Regulations, see the National Archives and Records Administration at the following Internet address: *http://www.access.gpo.gov/nara/cfr/cfr-table-search.html.*

The following additional requirements apply to this project:

- AR–1 Human Subjects Requirements.
- AR–2 Requirement for Inclusion of Women and Racial Minorities in Research.
- AR–7 Executive Order 12372.
- AR–9 Paperwork Reduction Act Requirements.
- AR–10 Smoke-Free Workplace Requirements.
- AR–11 Healthy People 2010.
- AR–12 Lobbying Restrictions.
- AR–22 Research Integrity.

Additional information on these requirements can be found on the CDC Web site at the following Internet address: *http://www.cdc.gov/od/pgo/funding/ARs.htm.*

VI.3. Reporting Requirements

You must provide CDC with an original, plus two hard copies of the following reports:

1. Interim progress report, due no less than 90 days before the end of the budget period. The progress report will

serve as your non-competing continuation application, and must contain the following elements:

a. Current Budget Period Activities Objectives.

b. Current Budget Period Financial Progress.

c. New Budget Period Program Proposed Activity Objectives.

d. Budget.

e. Measures of Effectiveness.

f. Additional Requested Information.

2. Financial status report no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

These reports must be mailed to the Grants Management or Contract Specialist listed in the ''Agency Contacts'' section of this announcement.

VII. Agency Contacts

We encourage inquiries concerning this announcement.

For general questions, contact: Technical Information Management Section, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2700.

For program TA, contact: Donald Betts, Lead Public Health Analyst, CDC, NCBDDD, 1600 Clifton Road, NE (MS E 88), Telephone: 404–498–3957, E-mail: *dbetts@cdc.gov.*

For financial, grants management, or budget assistance, contact:

Gary Teague, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–1981, E-mail: *GTeague@cdc.gov.*

VIII. Other Information

This and other CDC funding opportunity announcements can be found on the CDC Web site, Internet address: *http://www.cdc.gov.* Click on ''Funding'' then ''Grants and Cooperative Agreements.''

Dated: October 28, 2004.

William P. Nichols,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24514 Filed 11–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Injury Prevention and Control

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following subcommittee and committee meetings.

Name: Science and Program Review Subcommittee (SPRS).

Time and Date: 8 a.m.–12 p.m., November 17, 2004.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, Atlanta, Georgia 30303–1294.

Status: Open to the public, limited only by the space available.

Purpose: The SPRS provides advice on the needs, structure, progress and performance of programs of the National Center for Injury Prevention and Control (NCIPC), as well as second-level scientific and programmatic review for applications for research grants, cooperative agreements, and training grants related to injury control and violence prevention, and recommends approval of projects that merit further consideration for funding support. The SPRS also advises on priorities for research to be supported by contracts, grants, and cooperative agreements and provides concept review of program proposals and announcements.

Matters to be Discussed: The SPRS will discuss the acute care research agenda and details of the 2005 secondary review meeting to be held in Atlanta.

Name: Subcommittee on Intimate Partner Violence and Sexual Assault (SIPVSA).

Time and Date: 8:45 a.m.–11:30 a.m., November 17, 2004.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, Atlanta, Georgia 30303–1294.

Status: Open to the public, limited only by the space available.

Purpose: To advise and make recommendations to the full advisory committee and the Director, NCIPC, regarding feasible goals for prevention and control of domestic and sexual violence. The SIPVSA makes recommendations regarding strategies, objectives, and priorities in programs, policies and research, and continually evaluates NCIPC's research agenda priorities and implementation related to intimate partner violence and sexual assault.

Matters to be Discussed: The SIPVSA will hold a conference call meeting to discuss and review a draft white paper on intimate partner and sexual violence prevention.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, Atlanta, Georgia 30303–1294.

Status: Open to the public, limited only by the space available.

Name: Advisory Committee for Injury Prevention and Control.

Time and Dates: 1 p.m.–5 p.m., November 17, 2004, 8:30 a.m.–2:30 p.m., November 18, 2004.

Place: Hyatt Regency Atlanta, 265 Peachtree Street, Atlanta, Georgia 30303–1294.

Status: Open to the public, limited only by the space available.

Purpose: The Committee advises and makes recommendations to the Secretary, Health and Human Services, the Director, CDC, and the Director, NCIPC, regarding feasible goals for the prevention and control of injury. The Committee makes recommendations regarding policies, strategies, objectives, and priorities, and reviews progress toward injury prevention and control.

Matters to be Discussed: Prior to the full committee meeting, there will be a brief meeting conducted by conference call of the Working Group on Injury Control and Infrastructure Enhancement, a group formed to report to the full committee identifying gaps and suggesting ways to enhance injury prevention efforts. The Working Group will discuss drafting a white paper focusing on defining injury infrastructure and developing a simple mechanism to assess current efforts underway throughout the injury field to enhance that infrastructure. Starting at 1 p.m., the full committee will meet. Agenda items include reports from the Subcommittees and Working Group; an update by the Acting Director, NCIPC, on CDC/Agency for Toxic Substances and Disease Registry (ATSDR) Futures Initiative; goals management at CDC/ATSDR process to date, by life stages, for preparedness and response and goals management for injury prevention and control; core competencies for injury and violence prevention; surveillance for fatal and non-fatal injuries; health economics research at NCIPC; and an update on NCIPC preparedness and response activities.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Ms. Louise Galaska, Executive Secretary, ACIPC, NCIPC, CDC, 4770 Buford Highway, NE, M/S K02, Atlanta, Georgia 30341–3724, telephone (770) 488–4694.

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 ATSDR.

Dated: October 24, 2004.

B. Kathy Skipper,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–24515 Filed 11–2–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Notice of Allotment Percentages to States for Child Welfare Services State Grants

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, Department of Health and Human Services.

ACTION: Biennial publication of allotment percentages for States under the Title IV–B subpart 1, Child Welfare Services State Grants Program.

SUMMARY: As required by section 421(c) of the Social Security Act (42 U.S.C. 621(c)), the Department is publishing the allotment percentage for each State under the Title IV–B subpart 1, Child Welfare Services State Grants Program. Under section 421(a), the allotment percentages are one of the factors used in the computation of the Federal grants awarded under the Program.

EFFECTIVE DATE: The allotment percentages shall be effective for Fiscal Years 2006 and 2007.

FOR FURTHER INFORMATION CONTACT: Doris Lee, Grants Fiscal Management Specialist, Office of Grants Management, Office of Administration, Administration for Children and Families, telephone (202) 205–4626.

SUPPLEMENTARY INFORMATION: The allotment percentage for each State is determined on the basis of paragraphs (b) and (c) of section 421 of the Act. These figures are available on the ACF home page on the Internet: *http://www.acf.dhhs.gov/programs/cb/*. The allotment percentage for each State is as follows:

State	Allotment percentage
Alabama	58.78
Alaska	47.24
Arizona	57.42
Arkansas	61.90
California	46.47
Colorado	45.19
Connecticut	31.13
Delaware	48.21
District of Columbia	30.00
Florida	51.94
Georgia	53.36
Hawaii	51.93
Idaho	58.99
Illinois	46.53
Indiana	54.64
Iowa	54.61
Kansas	53.08
Kentucky	58.79
Louisiana	59.22
Maine	54.86
Maryland	41.44
Massachusetts	36.69
Michigan	51.78
Minnesota	46.01
Mississippi	63.49
Missouri	53.96
Montana	59.82
Nebraska	52.37
Nevada	50.48
New Hampshire	44.95
New Jersey	36.08
New Mexico	60.09
New York	41.97
North Carolina	55.13
North Dakota	56.01
Ohio	52.85
Oklahoma	58.07
Oregon	53.45
Pennsylvania	49.80
Rhode Island	50.10
South Carolina	58.79
South Dakota	55.37
Tennessee	55.42
Texas	53.07
Utah	60.24
Vermont	51.92
Virginia	46.92
Washington	47.22
West Virginia	61.73
Wisconsin	51.48
Wyoming	49.48
American Samoa	70.00
Guam	70.00
N. Mariana Islands	70.00
Puerto Rico	70.00
Virgin Islands	70.00

Dated: October 20, 2004.

Joan E. Ohl,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 04–24350 Filed 11–2–04; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0269]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Radioactive Drug Research Committees

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 3, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Radioactive Drug Research Committees—(OMB Control Number 0910–0053)

Under sections 201, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 355, and 371), FDA has the authority to issue regulations governing the use of radioactive drugs for basic informational research. Section 361.1 (21 CFR 361.1) sets forth specific regulations regarding the establishment and composition of Radioactive Drug Research Committees and their role in approving and monitoring basic research studies utilizing radiopharmaceuticals. No basic research study involving any administration of a radioactive drug to research subjects is permitted without the authorization of an FDA approved Radioactive Drug Research Committee (§ 361.1(d)(7)). The type of research that may be undertaken with a radiopharmaceutical drug must be intended to obtain basic information and not to carry out a clinical trial. The types of basic research permitted are specified in the regulation, and include studies of metabolism, human physiology, pathophysiology, or biochemistry.

Section 361.1(c)(2) requires that each Radioactive Drug Research Committee shall select a chairman, who shall sign all applications, minutes, and reports of the committee. Each committee shall meet at least once each quarter in which research activity has been authorized or conducted. Minutes shall be kept and shall include the numerical results of votes on protocols involving use in human subjects. Under § 361.1(c)(3), each Radioactive Drug Research Committee shall submit an annual

report to FDA. The annual report shall include the names and qualifications of the members of, and of any consultants used by, the Radioactive Drug Research Committee, using FDA Form 2914, and a summary of each study conducted during the proceeding year, using FDA Form 2915.

Under § 361.1(d)(5), each investigator shall obtain the proper consent required under the regulations. Each female research subject of childbearing potential must state in writing that she is not pregnant, or on the basis of a pregnancy test be confirmed as not pregnant.

Under § 361.1(d)(8), the investigator shall immediately report to the Radioactive Drug Research Committee all adverse effects associated with use of the drug, and the committee shall then report to FDA all adverse reactions probably attributed to the use of the radioactive drug.

Section 361.1(f) sets forth labeling requirements for radioactive drugs. These requirements are not in the reporting burden estimate because they are information supplied by the Federal Government to the recipient for the purposes of disclosure to the public (5 CFR 1320.3(c)(2)).

Types of research studies not permitted under this regulation are also specified, and include those intended for immediate therapeutic, diagnostic, or similar purposes or to determine the safety and effectiveness of the drug in humans for such purposes (i.e., to carry out a clinical trial). These studies require filing of an investigational new drug application (IND) under 21 CFR 312.1, and the associated information collections are covered in OMB approval number 0910–0014.

The primary purpose of this collection of information is to determine if the research studies are being conducted in accordance with required regulations. If these studies were not reviewed, human subjects could be subjected to inappropriate radiation and/or safety risks. Respondents to this information collection are the chairperson(s) of each individual Radioactive Drug Research Committee, investigators, and participants in the studies.

The source of the burden estimates was a phone survey of three chairpersons who were selected from Radioactive Drug Research Committees of different geographical areas and of varying levels of activity. These chairpersons were asked for their assessment of time expended, cost, and views on completing the necessary reporting forms.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Forms	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
361.1(c)(3)	FDA 2914	80	1	80	1	80
361.1(c)(3)	FDA 2915	50	6.8	340	3.5	1,190
361.1(d)(8)		50	6.8	340	0.1	34
Total						1,304

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	Forms	No. of Recordkeepers	Annual Frequency per Recordkeeping	Hours per Recordkeeper	Total Hours
361.1(c)(2)		80	1 per qtr= 4 per yr	10	800
361.1(d)(5)		50	6.8	0.75	38
Total					838

[1]There are no capital costs or operating and maintenance costs associated with this collection of information

In the **Federal Register** of July 23, 2004 (69 FR 44037), FDA published a 60-day notice requesting public comment on the information collection provisions. No comments were received.

Dated: October 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24444 Filed 11–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0469]

Agency Information Collection Activities; Proposed Collection; Comment Request; Adverse Experience Reporting for Licensed Biological Products; and General Records

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to FDA's adverse experience

reporting (AER) for licensed biological products, and general records associated with the manufacture and distribution of biological products.

DATES: Submit written or electronic comments on the collection of information by January 3, 2004.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.fda.gov/dockets/ecomments*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency request or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60–day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques when appropriate, and other forms of information technology.

Adverse Experience Reporting for Licensed Biological Products; and General Records—21 CFR Part 600 (OMB Control Number 0910–0308)—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA is required to ensure the marketing of only those biological products which are safe and effective. FDA must, therefore, be informed of all adverse experiences occasioned by the use of licensed biological products. FDA issued the AER requirements in part 600 (21 CFR part 600) to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's AER system is to flag potentially serious safety problems with licensed biological products, focusing especially on newly licensed products. Although premarket testing discloses a general safety profile of a biological product's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, physicians, foreign regulatory agencies, and clinical investigators. Information derived from the adverse experience reporting system contributes directly to increased public health protection because such information enables FDA to recommend important changes to the product's labeling (such as adding a new warning), to initiate removal of a biological product from the market when necessary, and to assure the manufacturer has taken adequate corrective action if necessary.

The regulation in § 600.80(c)(1) requires the licensed manufacturer to report each adverse experience that is both serious and unexpected, whether foreign or domestic, as soon as possible but in no case later than 15 calendar days of initial receipt of the information by the licensed manufacturer and to submit any follow-up reports within 15 calendar days of receipt of new information or as requested by FDA. Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report obtained from a postmarketing clinical study only if there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires the licensed manufacturer to report each adverse experience not reported under paragraph (c)(1)(i) at quarterly intervals, for 3 years from the date of issuance of the biologics license, and then at annual intervals. The majority of the periodic reports will be submitted annually since a large percentage of the current licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires the licensed manufacturer to maintain, for a period of 10 years, records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 requires the licensed manufacturer to submit information about the quantity of the product distributed under the biologics license, including the quantity distributed to distributors at an interval of every 6 months. The semiannual distribution report informs FDA of the quantity, certain lot numbers, labeled date of expiration, the number of doses, and date of release. Under § 600.90, a licensed manufacturer may submit a waiver request that applies to the licensed manufacturer under §§ 600.80 and 600.81. A waiver request submitted under § 600.90 must be submitted with supporting documentation.

Manufacturers of biological products for human use must keep records of each step in the manufacture and distribution of products including the recalls of the product. The recordkeeping requirements serve preventative and remedial purposes. These requirements establish accountability and traceability in the manufacture and distribution of products, and enable FDA to perform meaningful inspections.

Section 600.12 requires that all records of each step in the manufacture and distribution of a product be made and retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, records of sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing of a product are required to be maintained. Section 600.12(b)(2) requires complete records to be maintained pertaining to the recall from distribution of any product.

Respondents to this collection of information are manufacturers of biological products. In table 1 of this document, the number of respondents is based on the estimated number of manufacturers that submitted the required information to FDA in fiscal year (FY) 2002 and 2003. Based on information obtained from the Center for Biologics Evaluation and Research's

(CBER's) database system, there were 90 licensed biologics manufacturers. This number excludes those manufacturers who produce blood and blood components and in-vitro diagnostic licensed products because these products are specifically exempt from the regulations under § 600.80(k). The total annual responses are based on the average estimated number of submissions received annually by FDA for FY 2002 and 2003. However, not all manufacturers have submissions in a given year and some may have multiple submissions. There were an estimated 15,126 15-day alert reports, 6,550 periodic reports, and 323 lot distribution reports submitted to FDA. The number of 15-day alert report for postmarketing studies under § 600.80(e) is included in the total number of 15-day alert reports. FDA received an average of 5 waiver requests for FY 2002 and 2003 under § 600.90, all of which were approved for exemption of the AER requirements. The hours per response are based on FDA's experience. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB control number 0910–0291.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
600.80(c)(1) and 600.80(e)	90	168.07	15,126	1	15,126
600.80(c)(2)	90	72.78	6,550	28	183,400
600.81	90	3.59	323	1	355
600.90	5	1	5	1	5
Total					198,886

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.

In table 2 of this document, the number of respondents is based on the number of manufacturers subject to those regulations. Based on information obtained from CBER's database system, there were 320 licensed manufacturers of biological products in FY 2002 and 2003. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding paragraph (b)(2) is estimated to be 116. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under § 606.160 in OMB control number 0910–0116. The total annual records is based on the annual average of lots released (6,630), number of recalls made (1,958), and total number of AER reports received (35,484) in FY 2002 and 2003. The hours per record are based on FDA's experience.

FDA estimates the burden of this recordkeeping as follows:

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Response	Total Hours
600.12	116	57.16	6,630	32	212,160
600.12(b)(2)	320	6.12	1,958	24	46,992
600.80(i)	90	394.27	35,484	1	35,484
Total					294,636

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.

Dated: October 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24445 Filed 11–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0179]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; New Animal Drug Application, Form FDA 356 V

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by December 3, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written

comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

New Animal Drug Application, Form 356 V—21 CFR Part 514 (OMB Control Number 0910–0032)—Extension

FDA has the responsibility under the Federal Food, Drug and Cosmetic Act (the act), for the approval of new animal drugs that are safe and effective. Section 512(b) of the act (21 U.S.C. 360b(b)) requires that a sponsor submit and receive approval of a new animal drug application (NADA) before interstate marketing is allowed. The regulations implementing statutory requirements for NADA approval have been codified under 21 CFR part 514. NADA applicants generally use a single form, FDA 356 V. The NADA must contain, among other things, safety and effectiveness data for the drug, labeling, a list of components, manufacturing and controls information, and complete information on any methods used to determine residues of drug chemicals in edible tissues. While the NADA is pending, an amended application may be submitted for proposed changes. After an NADA has been approved, a supplemental application must be submitted for certain proposed changes, including changes beyond the variations provided for in the NADA and other labeling changes. An amended application and a supplemental application may omit statements concerning which no change is proposed. This information is reviewed by FDA scientific personnel to ensure that the intended use of an animal drug, whether as a pharmaceutical dosage form, in drinking water, or in medicated feed, is safe and effective. The respondents are pharmaceutical firms that produce veterinary products and commercial feed mills.

In the **Federal Register** of May 19, 2004 (69 FR 28930), FDA published a 60-day notice soliciting comments on the collection of information requirements. In response to that notice, no comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
514.1 and 514.6	190	7.39	1,405	211.6	297,298
514.8	190	7.39	1,405	30	42,150
514.11	190	7.39	1,405	1	1,405
558.5(i)	1	1	1.0	5	5
Total					340,858

[1] There are no capitol costs or operating and maintenance costs associated with this collection of information.

The estimate of the burden hours required for reporting are based on FY 2003 data. The burden estimate includes original NADAs, supplemental NADAs and amendments to unapproved applications.

The burden estimate for obtaining a waiver (filing a petition) from labeling requirements for certain drugs intended for use in animal feed or drinking water was derived from data by FDA's Division of Animal Feeds in the Center for Veterinary Medicine.

Dated: October 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24446 Filed 11–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2003D–0383]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Robbins, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 5, 2004 (69 FR 47448), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. 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. OMB has now approved the information collection and has assigned OMB control number 0910–0553. The approval expires on October 31, 2007. A copy of the supporting statement for this information collection is available on the Internet at *http://www.fda.gov/ohrms/dockets*.

Dated: October 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24447 Filed 11–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0245]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Current Good Manufacturing Practice Regulations for Medicated Feeds

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Fax written comments on the collection of information by December 2, 2004.

ADDRESSES: OMB is still experiencing significant delays in the regular mail, including first class and express mail, and messenger deliveries are not being accepted. To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: Fumie Yokota, Desk Officer for FDA, FAX 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Management Programs (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Medicated Feeds—21 CFR Part 225—(OMB Control Number 0910–0152)—Extension

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation, or treatment of disease or growth promotion and feed efficiency. Statutory requirements for cGMPs have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to assure that proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e. batch and stability testing), labels, and product distribution.

This information is needed so FDA can monitor drug usage and possible misformulation of medicated feeds, to investigate violative drug residues in products from treated animals and investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to assure that their feeds meet the requirements of the act as to safety and also meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act.

A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs which FDA has determined requires more control because of the need for a withdrawal period before slaughter or carcinogenic concerns. Conversely, for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control, a license is not required and the recordkeeping requirements are less demanding.

In the **Federal Register** of June 14, 2004 (69 FR 33040), FDA published a 60-day notice, soliciting comments on the collection of information requirements for this clearance. In response, no comments were received.

Respondents to this collection of information are commercial feed mills and mixer-feeders.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED COMMERCIAL FEED MILLS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeper	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	1,150	260	299,000	1	299,000
225.58(c) and (d)	1,150	45	51,750	.5	28,875
225.80(b)(2)	1,150	1,600	1,840,000	.12	220,800
225.102(b)(1)	1,150	7,800	8,970,000	.08	717,600
225.110(b)(1) and (b)(2)	1,150	7,800	8,970,000	.015	134,550
225.115(b)(1) and (b)(2)	1,150	5	5,750	.12	690
Total					1,397,825

[1] There are no capital or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSED MIXER-FEEDERS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	100	260	26,000	.15	3,900
225.58(c) and (d)	100	36	3,600	.5	1,800
225.80(b)(2)	100	48	4,800	.12	576
225.102(b)(1) through (b)(5)	100	260	26,000	.4	10,400
TOTAL					16,676

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED COMMERCIAL FEED MILLS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	8,000	4	32,000	1	32,000
225.158	8,000	1	8,000	4	32,000
225.180	8,000	96	768,000	.12	92,160
225.202	8,000	260	2,080,000	.65	1,352,000
TOTAL					1,508,160

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED UNLICENSED MIXER-FEEDERS)[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	45,000	4	180,000	1	180,000
225.158	45,000	1	45,000	4	180,000
225.180	45,000	32	1,440,000	.12	172,000
225.202	45,000	260	11,700,000	.33	3,861,000
TOTAL					4,393,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to finally calculate the total burden hours (i.e., number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: October 27, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–24448 Filed 11–2–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference on Improving End-of-Life Care

ACTION: Notice.

Notice is hereby given of the National Institutes of Health (NIH) ''State-of-the-Science Conference on Improving End-of-Life Care'' to be held December 6–8, 2004, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8:30 a.m. on December 6 and 7, and at 9 a.m. on December 8, and will be open to the public.

Improvements in medical science and health care have gradually changed the nature of dying. Death is no longer as likely to be the sudden result of infection or injury but is now more likely to occur slowly, in old age, and at the end of a period of chronic illness. As a result, a demographic shift is beginning to occur that will include an increase in the number of seriously ill and dying people at the same time that the number of caregivers decreases. To meet this challenge, the best that science can offer must be applied to guarantee the quality of care provided to the dying.

The 1997 publication of the Institute of Medicine report ''Approaching Death: Improving Care at the End of Life'' triggered a series of activities to improve

the quality of care and the quality of life at the end of life. Topics of resulting NIH initiatives have included the clinical management of symptoms at the end of life; patterns of communication among patients, families, and providers; ethics and health care decision making; caregiver support; the context of care delivery; complementary and alternative medicine at the end of life; dying children and their families; and informal care-giving. This conference will examine the results of these many efforts and evaluate the current state of the science.

During the first day-and-a-half of the conference, experts will present the latest research findings on end-of-life care to an independent panel. After weighing all of the scientific evidence, the panel will draft a statement, addressing the following key questions:

- What defines the transition to end of life?
- What outcome variables are important indicators of the quality of the end of life experience for the dying person and for the surviving loved ones?
- What patient, family, and health care system factors are associated with improved or worsened outcomes?
- What processes and interventions are associated with improved or worsened outcomes?
- What are future research directions for improving end-of-life care?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Institute of Nursing Research and the NIH Office of Medical Applications of Research.

Advance information about the conference and conference registration materials may be obtained from American Institutes for Research of Silver Spring, Maryland, by calling 888–644–2667, or by sending e-mail to *endoflifecare@air.org.* American Institutes for Research's mailing address is 10720 Columbia Pike, Silver Spring, MD, 20901. Registration information is also available on the NIH Consensus Development Program Web site at *http://consensus.nih.gov.*

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. For more information about the new security measures at NIH, please visit the Web site at *http://www.nih.gov/about/visitorssecurity.htm.*

Dated: October 22, 2004.

Raynard S. Kington,

Deputy Director, National Institutes of Health.

[FR Doc. 04–24479 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of a meeting of the Sleep Disorders Research Advisory Board.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Sleep Disorders Research Advisory Board.

Date: December 7, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To discus sleep research and education priorities and programs.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Carl E. Hunt, MD, Director, National Center of Sleep Disorders Research, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 10138, Bethesda, MD 20892, 301/435–0199.

Any interested person may file written comments with the committee by forwarding the statement to the ''Contact Person'' listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

Information is also available on the Institute's/Center's Home page: *http://www.nhlbi.nih.gov/meetings/index.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS.)

Dated: October 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24485 Filed 11–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such a patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Fatty Acids and Food Intake Regulation.

Date: November 30, 2004.

Time: 5 p.m. to 6:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Maria E. Davila-Bloom, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 758, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7637, *davila-bloomm@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Sepsis and Renal Failure.

Date: December 15, 2004.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Michele L. Barnard, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 753, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–8898, *barnardm@extra.niddk.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: October 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24482 Filed 11–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurovirology.

Date: November 11, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert Freund, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3200, MSC 7848, Bethesda, MD 20892, (301) 435–1050, *freundr@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Neurophysiology, Devices and Neuroprosthetics/Brain Disorders and Clinical Neuroscience/SBIR.

Date: November 15–16, 2004.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196 MSC 7846, Bethesda, MD 20892, (301) 435–0902, *charlesvi@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC J 04: Tumor Biology of Melanoma.

Date: November 15, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiovascular Sciences Small Business Activities.

Date: November 17–18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Lawrence E. Boerboom, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7814, Bethesda, MD 20892, (301) 435–8367, *boerboom@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Mechanism of Tumorigenesis.

Date: November 17, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zhiqiang Zou, MD, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6190, MSC 7804, Bethesda, MD 20892, (301) 451–0132, *zouzhiq@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Social Sciences and Population Studies.

Date: November 17, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN E (03) Sensory Integration.

Date: November 17, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, System Lupus Erythematosus (SLE).

Date: November 17, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Cathleen L. Cooper, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7812, Bethesda, MD 20892, (301) 435–3566, *cooperc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Antibiotic Resistance.

Date: November 17, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Diane L. Stassi, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3202, MSC 7808, Bethesda, MD 20892, (301) 435–2514, *stassid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Transplant Immunology.

Date: November 17, 2004.

Time: 3 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Calbert A. Laing, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4210, MSC 7812, Bethesda, MD 20892, (301) 435–1221, *laingc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Coxiella.

Date: November 17, 2004.

Time: 3 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Fouad A. El-Zaatari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3206, MSC 7808, Bethesda, MD 20892, (301) 435–1149, *elzaataf@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MOSS G 03M: Member Conflict: Musculoskeletal Tissue Engineering.

Date: November 17, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular Biology of Parasites.

Date: November 17, 2004.

Time: 4 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John C. Pugh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 435–2398, *pughjohn@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Aldosterone.

Date: November 17, 2004.

Time: 5 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joyce C. Gibson, DSC, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4130, MSC 7814, Bethesda, MD 20892, (301) 435–4522, *gibsonj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Physiology, Pharmacology and Molecular Structure.

Date: November 18, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Willard Intercontinental, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Carole L. Jelsema, PhD, Scientific Review Administrator and Chief, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892, (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR/STTR Genes, Genomes and Genetics.

Date: November 18–19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Michael A. Marino, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2216, MSC 7890, Bethesda, MD 20892, (301) 435–0601, *marinomi@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, NeuroAIDS and other End-Organ Diseases Study Section.

Date: November 18–19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Hotel Embassy Row, 2015 Massachusetts Avenue, NW., Washington, DC 20036.

Contact Person: Abraham P. Bautista, MS, MSC, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7852, Bethesda, MD 20892, (301) 435–1506, *bautista@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Drug Delivery Systems.

Date: November 18–19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points Sheraton, Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Steven J. Zullo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192 MCS 7849, Bethesda, MD 20892, (301) 435–2810, *zullost@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Viral and Eukaryotic Pathogens.

Date: November 18–19, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Rouge Hotel, 1315 16th Street, NW., Washington, DC 20036.

Contact Person: Richard G. Kostriken, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184 MCS 7808, Bethesda, MD 20892, (301) 402–4454, *kostrikr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Children Exposed to Violence.

Date: November 18–19, 2004.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3176 MCS 7848, Bethesda, MD 20892, (301) 435–0676, *sirococok@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Brain Disorders and Clinical Neuroscience/BDCN–E(02) Members.

Date: November 18–19, 2004.

Time: 8:30 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Rene Etcheberrigaray, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5196 MCS 7846, Bethesda, MD 20892, (301) 435–1246, *etcheber@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Tools for Collaborations Involve Data Sharing.

Date: November 18–19, 2004.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Malgorzata Klosek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188 MCS 7849, Bethesda, MD 20892, (301) 435–2211, *klosekm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Emphasis Panel, Gene Therapy and Inborn Errors Study Section.

Date: November 18, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Whitmarsh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2206, MSC 7890, Bethesda, MD 20892, (301) 435–4511, *whitmarshb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Chemical Senses.

Date: November 18, 2004.

Time: 11 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, HSOD Members Special Emphasis Panel.

Date: November 18, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Brain Disorders and Clinical Neuroscience/BDCN–F(03) Members.

Date: November 18, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Radisson Barcello, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507, *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Ischemia Reperfusion Injury.

Date: November 18, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Rajiv Kumar, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7802, Bethesda, MD 20892, (301) 435–1212, *kumarra@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cardiac Support Devices.

Date: November 18, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ai-Ping Zou, PhD, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, (301) 435–1777, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 B (04) Vision Sciences.

Date: November 18, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Optical Mapping.

Date: November 18, 2004.

Time: 2:30 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Russell T. Dowell, PhD, Scientific Administrator Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7814, Bethesda, MD 20892, (301) 435–1850, *dowellr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, AARR–C 02 Immunity and Pathogenesis in AIDS.

Date: November 19, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary Clare Walker, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5208, MSC 7852, Bethesda, MD 20892, (301) 435–1165, *walkermc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genetic Basis of Psychiatric Disorders.

Date: November 19, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2210, MSC 7890, Bethesda, MD 20892, (301) 435–1038, *remondid@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Genes and Heart Failure.

Date: November 19, 2004.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert T. Su, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4134, MSC 7802, Bethesda, MD 20892, (301) 435–1195, *sur@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24483 Filed 11–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ONC–J(03): Genetic Regulation of Cancer.

Date: November 3, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6212, MSC 7804, Bethesda, MD 20892, (301) 435–1717, *padaratm@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 ICP–3 90S: Health Consequences Among DWI Offenders in China.

Date: November 5, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Inn, 1310 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Dan D. Gerendasy, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5132, MSC 7843, Bethesda, MD 20892, (301) 594–6830, *gerendad@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Signaling of Bioactive Lipids.

Date: November 8, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (301) 435–1023, *steinbem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, F06 (20) L—Endocrinology, Reproductive Science, and Nutritional Metabolism.

Date: November 8–9, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Krish Kirshnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (310) 435–1041, *krishnak@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Enzyme Dynamics Program Project.

Date: November 9, 2004.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Churchill Hotel, 1914 Connecticut Avenue, NW., Washington, DC 20009.

Contact Person: David R. Jollie, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (310) 435–1722, *jollieda@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Renal Pathobiology of Kidney Disease.

Date: November 9, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Hilton Washington Embassy Row, 2015 Massachusetts Ave., NW., Washington, DC 20036.

Contact Person: Shirley Hilden, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, MSC 7814, Bethesda, MD 20892, (310) 435–1198, *hildens@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cellular Motility and Communication—Calcium Mobilization and Interaction with ECM.

Date: November 9, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5130, MSC 7840, Bethesda, MD 20892, (310) 435–1023, *steinbem@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Member Conflicts-Physiology.

Date: November 10, 2004.

Time: 10 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Sofitel Lafayette Square Hotel, 806 15th Street, NW., Washington, DC 20005.

Contact Person: Carole L. Jelsema, PhD, Chief and Scientific Review Administrator, MDCN Scientific Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7850, Bethesda, MD 20892. (301) 435–1248, *jelsemac@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Musculoskeletal Rehabilitation Sciences Special Emphasis Panel.

Date: November 10–12, 2004.

Time: 8 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington, 1400 M Street, NW., Washington, DC 20005.

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7814, Bethesda, MD 20892. (301) 435–1786, *pelhamj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Clinical Research and Field Studies.

Date: November 12, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Wyndham Miami Beach Resort, 4833 Collins Avenue, Miami Beach, FL 33140.

Contact Person: Alexander D. Politis, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3210, MSC 7808, Bethesda, MD 20892. (301) 435–1150, *politisa@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Clinical Studies and Epidemiology Study Section.

Date: November 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Hilary D. Sigmon, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892. (301) 435–2211, *sigmonh@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 SBIB J 90S: Development of Methods for in vivo Imaging and Bioengineering Research.

Date: November 15–16, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Tysons Corner Marriott Hotel, 8028 Leesburg Pike, Vienna, VA 22182.

Contact Person: Behrouz Shabestari, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5106, MSC 7854, Bethesda, MD 20892. (301) 435–2409, *shabestb@csr.nih.gov.*

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS-associated Opportunistic Infections and Cancer Study Section.

Date: November 15–16, 2004.

Time: 8 a.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Eduardo A. Montalvo, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1168, *montalve@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Visuals Systems SBIR.

Date: November 15–16, 2004.

Time: 8 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507, *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BPC–R (50) Nanotechnology.

Date: November 15–16, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: John L. Bowers, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4178, MSC 7806, Bethesda, MD 20892, (301) 435–1725, *bowersj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 BPC–R (50) S Nanotechnology.

Date: November 15–16, 2004.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Watergate, 2650 Virginia Avenue, NW., Washington, DC 20037.

Contact Person: Kathryn M. Koeller, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4095D, MSC 7806, Bethesda, MD 20892, (301) 435–2681, *koellerk@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business Grant Applications: Microbial Vaccine Development.

Date: November 15–16, 2004.

Time: 8:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2412, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BGES Members Special Emphasis Panel A.

Date: November 15, 2004.

Time: 10 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict.

Date: November 15, 2004.

Time: 11 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Marc Rigas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4194, MSC 7826, Bethesda, MD 20892, (301) 402–1074, *rigasm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Somatosensory Pain Member Conflicts.

Date: November 15, 2004.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Joseph G. Rudolph, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5186, MSC 7844, Bethesda, MD 20892, (301) 435–2212, *josephru@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 IFCN B (03) Somatosensory and Pain Systems.

Date: November 15, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John Bishop, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5180, MSC 7844, Bethesda, MD 20892, (301) 435–1250, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Epidemiology Members Special Emphasis Panel.

Date: November 15, 2004.

Time: 2:30 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Gene Regulation in Drosophila and Yeast.

Date: November 15, 2004.

Time: 3 p.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Lawrence Baizer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7850, Bethesda, MD 20892, (301) 435–1257, *baizerl@csr.nih.gov.*

Name of Committee: Genes, Genomes, and Genetics Integrated Review Group, Ethical, Legal, and Social Implications of Human Genetics–1.

Date: November 15–16, 2004.

Time: 7:30 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Cheryl M. Corsaro, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2204, MSC 7890, Bethesda, MD 20892, (301) 435–1045, *corsaroc@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, MDCN Fellowship Review Meeting.

Date: November 16–17, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Willard InterContinental Hotel, 1401 Pennsylvania Avenue, NW., Washington, DC 20004.

Contact Person: Mary Custer, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5102, MSC 7850, Bethesda, MD 20892, (301) 435–1164, *custerm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, BGES Members Special Emphasis Panel B.

Date: November 16, 2004.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda MD 20892, (Telephone Conference Call).

Contact Person: William N. Elwood, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3162, MSC 7770, Bethesda, MD 20892, (301) 435–1503, *elwoodwi@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Emotion and Perception.

Date: November 16, 2004.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, SBIR Medical Devices.

Date: November 16, 2004.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

Contact Person: Jerome R. Wujek, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5194, MSC 7846, Bethesda, MD 20892, (301) 435–2507, *wujekjer@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fungal Pathogenesis.

Date: November 16, 2004.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3212, MSC 7808, Bethesda, MD 20892, (301) 435–1147, *henryt@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ALPHA–1 Adrenergic Receptors in Cardiomyopathy.

Date: November 16, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Chhanda L. Ganguly, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7802, Bethesda, MD 20892, (301) 435–1739, *ganguly c@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurobiology of HPA Axis Hormones and Transmitters ZRG1 IFCN D (02).

Date: November 16, 2004.

Time: 2 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Gamil C Debbas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018, *debbasg@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Platelet Microparticles in Hemostasis.

Date: November 16, 2004.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Delia Tang, MD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–2506, *tangd@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 MOSS–G 01S: Musculoskeletal Tissue Engineering.

Date: November 16–17, 2004.

Time: 4 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Jurys Doyle Hotel, 1500 New Hampshire Avenue, NW., Washington, DC 20036.

Contact Person: Jean D. Sipe, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1743, *sipej@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Microbial Vaccine Development.

Date: November 16, 2004.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, Washington, DC 20037.

Contact Person: Stephen M. Nigida, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4212, MSC 7812, Bethesda, MD 20892, (301) 435–1222, *nigidas@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: October 27, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–24484 Filed 11–2–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 68 FR 10743, March 6, 2003, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reflect the elevation of the NIH Ethics Office from the Office of Management, Office of the Director, NIH, to the Office of the Director, NIH.

Section N–B, Organization and Functions, under the heading Office of the Director (NA, formerly HNA) is amended as follows:

Under the heading Office of the Director (NA, formerly HNA), insert the following:

NIH Ethics Office (NAT, formerly HNAT). (1) Develops and administers the NIH policies for implementing the government-wide conflict of interest statutes and regulations, the HHS supplemental conflict of interest regulations, and HHS and NIH policies; (2) provides ethics policy guidance, training, and advice to: (a) The ICs' ethics staffs, (b) Office of the Director, NIH, staff, and (c) employees whose Deputy Ethics Counselor (DEC) is the NIH DEC; and (3) coordinates the NIH response to requests from Congress, the Inspector General, DHHS and/or the Office of Government Ethics.

Delegations of Authority Statement

All delegations and redelegations of authority to officers and employees of NIH that were in effect immediately prior to the effective date of this establishment and are consistent with this amendment shall continue in effect, pending further redelegation.

Dated: September 14, 2004.

Elias A. Zerhouni,

Director, National Institutes of Health.

[FR Doc. 04–24480 Filed 11–2–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences (NIEHS); National Institutes of Health (NIH) Notice of an Expert Panel Meeting To Assess the Current Validation Status of In Vitro Testing Methods for Identifying Potential Ocular Irritants; Request for Comments

Summary

Notice is hereby given of a meeting sponsored by the NIEHS and the National Toxicology Program (NTP), and organized by the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM) in collaboration with the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM). At this meeting, an expert panel (''Panel'') will assess the current validation status and develop recommendations for further validation of in vitro test methods proposed for identifying substances that may cause serious eye damage. The meeting will take place on January 11–12, 2005, from 8:30 a.m. to 5 p.m., at the National Institutes of Health (NIH), Natcher Center, Bethesda, MD. The meeting is open to the public with attendance limited only by the space available.

Evaluation of In Vitro Ocular Test Methods Background

In August 2003, the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM) recommended that ICCVAM review the validation status of screening test methods that could be used to identify severe and irreversible ocular effects and carry out appropriate reviews of these test methods. In October 2003, the U.S. Environmental Protection Agency nominated several ocular-related activities to ICCVAM including evaluation of the validation status of four in vitro ocular toxicity test methods for screening for severe/irreversible ocular effects: (1) The Bovine Corneal Opacity and Permeability (BCOP) test; (2) the Hen's Egg Test—Chorion Allantoic Membrane (HET–CAM); (3) the Isolated Rabbit Eye (IRE) test; and (4) the Isolated Chicken Eye (ICE) test. ICCVAM endorsed the review of the methods as a high priority and recommended that Background Review Documents be developed for each method by NICEATM in collaboration with the ICCVAM Ocular Toxicity Working Group. ICCVAM also

recommended that an expert panel be convened to independently review the validation status of these methods and the proposed, standardized, test method protocols.

A request for public comment on the nomination of these and other ocular toxicity test methods and related activities and a request for data on chemicals evaluated by in vitro or in vivo ocular irritancy test methods was previously published in the **Federal Register** (Vol. 69, No. 57, pp. 13859–13861, March 24, 2004, available at *http://iccvam.niehs.nih.gov/*). Additionally, NICEATM solicited the nomination of scientific experts for independent expert panel evaluations and/or reviews of in vitro testing methods for identifying potential ocular irritants through the **Federal Register** (Vol. 69, No. 77, pg. 21565, April 21, 2004, available at *http://iccvam.niehs.nih.gov/*). This notice also announced that ICCVAM and NICEATM would coordinate an expert panel meeting to evaluate in vitro ocular test methods for their ability to detect severe and irreversible ocular irritants. No additional methods for identifying severe/irreversible ocular effects other than the four named above were identified in response to the **Federal Register** notices.

NICEATM has prepared Background Review Documents (BRDs) on the four test methods nominated by the EPA (BCOP, HET-CAM, IRE and ICE). Each of the BRDs contains comprehensive summaries of available data, analyses of the accuracy and reliability of the available test method protocols, and related information characterizing the current validation status of these assays. At this meeting, the Panel will review each of the four BRDs and develop conclusions and recommendations on the following:

- The current usefulness and limitations of the test methods for identifying severe/irreversible ocular irritants and corrosives.
- The adequacy of the specific protocols recommended for future validation and testing studies.
- The adequacy of recommended test method validation studies.
- The adequacy and appropriateness of substances recommended for future validation studies.

Agenda

The public meeting will take place January 11–12, 2005, at the NIH Campus, Natcher Center, Bethesda, MD (a map of the NIH Campus and other visitor information are available at *http://www.nih.gov/about/visitor/index.htm*). The meeting will begin at 8:30 a.m. each day and conclude at approximately 5 p.m. A preliminary agenda is given below. A detailed agenda and roster of the expert panel members will be available two weeks prior to the meeting on the ICCVAM/NICETATM Web site (*http://iccvam.niehs.nih.gov*) or by contacting NICEATM (contact information below). Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NICEATM at least seven business days in advance of the meeting.

On the morning of January 11th, there will be a brief orientation on ICCVAM and the ICCVAM test method review process, followed by the Panel's evaluation of the BRDs for the ICE and BCOP assays. It is anticipated that review of the HET–CAM assay will continue on the morning of January 12th after which the review of the BRD for the IRE assay will take place. The Panel will evaluate the current status of each of the four different types of in vitro assays and develop recommendations regarding their future validation and use.

Availability of Background Review Documents

NICEATM has prepared four BRDs, one for each of the assays being evaluated. Copies of each BRD can be obtained on the ICCVAM/NICEATM Web site at *http://iccvam.niehs.nih.gov,* or by contacting NICEATM, NIEHS, PO Box 12233, MD EC–17, Research Triangle Park, NC, 27709, (phone) 919–541–3398, (fax) 919–541–0947, (email) *iccvam@niehs.nih.gov.*

Request for Comments

NICEATM invites the submission of written comments on each of the BRDs. When submitting written comments please include appropriate contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable). Written comments and additional information should be sent by mail, fax, or email to Dr. William Stokes, Director of NICEATM, at the address listed above not later than December 30, 2004. Written comments will be placed on the ICCVAM/NICEATM website and made available to the Panel, ICCVAM agency representatives and experts, and attendees at the meeting.

The meeting is open to the public and time will be provided for the presentation of public oral comments at designated times during the peer review. Members of the public who wish to present oral statements at the meeting (one speaker per organization) should contact NICEATM (at the address above) no later than noon on January 5, 2005. Speakers will be assigned on a consecutive basis and up to seven minutes will be allotted per speaker. Persons registering to make comments are asked to provide a written copy of their statement by January 5th, so that copies can be distributed to the Panel prior to the meeting or if this is not possible to bring 40 copies to the meeting. Written statements can supplement and expand the oral presentation. Each speaker is asked to provide contact information (name, affiliation, mailing address, phone, fax, email and sponsoring organization, if applicable) when registering to make oral comments.

Summary minutes and a final report of the Panel will be available following the meeting at the ICCVAM/NICEATM Web site (*http://iccvam.niehs.nih.gov*).

Background Information on ICCVAM and NICEATM

ICCVAM is an interagency committee charged with the technical review and evaluation of new, revised, and alternative test methods applicable for specific regulatory uses. The committee is composed of representatives from 15 Federal regulatory and research agencies that use or generate toxicological information. ICCVAM promotes the development, validation, regulatory acceptance, and national and international harmonization of toxicological test methods that more accurately assess the safety or hazards of chemicals and products and that refine, reduce, or replace animal use. The ICCVAM Authorization Act of 2000 (Pub. L. 106–545, available at http://iccvam.niehs.nih.gov/about/PL106545.htm) established ICCVAM as a permanent interagency committee of the NIEHS under the NICEATM. NICEATM administers the ICCVAM and provides scientific support for ICCVAM and ICCVAM-related activities. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods applicable to the needs of Federal agencies. Additional information about ICCVAM and NICEATM can be found at the following Web site: *http://iccvam.niehs.nih.gov.*

Dated: October 21, 2004.

Samuel Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 04–24481 Filed 11–2–04; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Cross-Site Assessment of the Residential Treatment for Pregnant and Postpartum Women (PPW) and Their Children Program—New

The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), is funding the Services Grant Program for Residential Treatment for Pregnant and Postpartum Women (PPW). The purpose of the PPW is to expand the availability of comprehensive, high quality residential treatment services for pregnant and postpartum women who suffer from alcohol and other drug use problems, and for their infants and children impacted by the perinatal and environmental effects of maternal substance use and abuse.

Section 508 [290bb–1] (o) of the Public Health Service Act mandates the evaluation and dissemination of findings of residential treatment programs for pregnant and postpartum women. This cross-site accountability assessment will assess project activities implemented for these services.

With input from multiple experts in the field of women and children's treatment programs, projects selected by consensus a common core of data collection instruments that will be used for program and treatment planning, local evaluations, and for this cross-site accountability evaluation. For mothers, five different interview instruments will be used: (1) Child Data Collection Tool, Part 1 (personal background) and Part 2 (infant and child background); (2) Child Well-Being Scale (brief observation of mother/child interaction); (3) Quality of Life survey; (4) BASIS 32 (behavioral health assessment); and (5) Allen's Barriers to Treatment. For children of all ages, program staff will collect information from observation, interview, and records review. Children's data collection tools include: (1) Child Well-Being Scales (all children), (2) Denver Developmental Screening Inventory II (ages 1m–6y), (3) Middle Childhood Developmental Chart (ages 7 to 10), (4) Adolescent Development Chart (ages 11 to 17), and (5) the CRAFFT substance abuse screening instrument (ages 11–17). Additional records review will be conducted by program staff on all program participants at discharge.

All data will be collected using a combination of observation, records review, and computer-based personal interviews. CSAT will use this data for this evaluation to influence public policy, research, and programming as they relate to the provision of women's services. Data produced by this study will provide direction to the type of technical assistance that will be required by service providers of women's programming. In addition, the data will be used by individual grantees to support progress report efforts.

The following is the estimated annual response burden for this collection.

Form name	Respondent	Estimated number of respondents	Number of responses per respondent	Total responses	Average hours per response	Total hour burden
Women Interviews by Staff:						
Child Data Collection Tool.	Mother	414	3.23	1,337	.83	1,110
Child Well-Being Scale # 24.	Mother	414	4	1,656	.03	50
Allen's Barriers to Treatment.	Mother	414	3	1,242	.33	410
Quality of Life	Mother	414	3	1,242	.50	621
BASIS 32	Mother	414	3	1,242	.25	311
Total for Women:		414		6,719		2,502
Child Interviews/Observations by Staff:						
Child Well-Being Scales (age 0–17).	Child observation and records.	924	4	3,696	.33	1,220
Denver Developmental Screening Inventory II (ages 1m–6y).	Child interview and observation.	462	3	1,386	.33	457
CRAFFT (ages 11–17)	Child interview	294	3	882	.08	71
Middle Childhood Developmental Chart (ages 7 to 10).	Child interview	168	3	504	.33	166
Adolescent Development Chart (ages 11 to 17).	Child interview	294	3	882	.33	291
Total for Children/Staff:.		924		7,350		2,205

Form name	Respondent	Estimated number of respondents	Number of responses per respondent	Total responses	Average hours per response	Total hour burden
Records Review by Staff:						
Women's Discharge Tool.	Records review	414	1	414	.25	104
Children's Discharge Tool.	Records review	924	1	924	.25	231
Total for Staff:		1,338		1,338		335
3-Year Total		1,338		15,407		5,042
3 Year Average Annual.		446		5,136		1,681

Note: For mothers, administration of data collection instruments will occur at: (1) Admission to treatment, (2) 6 months post-admission, and (3) 12 months post-admission. For the Child Data Collection Tool, each mother will respond for herself and each of her estimated 2.23 children. For infants and children, data collection will occur: (1) Within 30 days of birth or admission, (2) at 3 months post-admission, and (3) at 6 months post-admission. The appropriate Child Well-Being Scales will be administered four times over the course of treatment: (1) Within 30 days of admission, (2) 3 months post-admission, (3) 6 months post-admission, and (4) 12 months post-admission.

Send comments to Summer King, SAMHSA Reports Clearance Officer, Room 7–1045, 1 Choke Cherry Road, Rockville, MD 20850. Written comments should be received by January 3, 2005.

Dated: October 25, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–24516 Filed 11–2–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Customs and Border Protection

Senior Executive Service Performance Review Board

AGENCY: U.S. Department of Homeland Security, U.S. Customs and Border Protection.

SUMMARY: Pursuant to 5 U.S.C. 4314(c)(4), this notice announces the appointment of the members of the U.S. Customs and Border Protection Performance Review Board (PRB). The purpose of this PRB is to review and make recommendations concerning proposed performance appraisals, ratings, bonuses, pay adjustments, and other appropriate personnel actions for incumbents of SES positions for which the Commissioner, U.S. Customs and Border Protection, is the appointing authority. The Board will perform PRB functions for other U.S. Department of Homeland Security SES positions if requested.

Composition of Departmental PRB

The Board shall consist of at least three members. In the case of an appraisal of a career appointee, more than half of the members shall consist of career appointees. The names and titles of the PRB members are as follows:

Cresencio S. Arcos, Jr., Director, Office of International Affairs, Office of the Secretary, U.S. Department of Homeland Security;

Marc S. Hollander, Deputy Director, Laboratory Facilities and Management, Office of Under Secretary for Science and Technology, U. S. Department of Homeland Security;

Gregory D. Rothwell, Chief Procurement Executive, Office of the Under Secretary for Management, U.S. Department of Homeland Security;

James A. Williams, Director, US-VISIT Program, Office of the Under Secretary for Border and Transportation, U.S. Department of Homeland Security;

William R. Yates, Associate Director of Operations, U.S. Citizenship and Immigration Services; and the following Assistant Commissioners, U.S. Customs and Border Protection:

David V. Aguilar, Border Patrol.

Jayson P. Ahern, Field Operations.

Richard L. Balaban, Finance.

William A. Keefer, Internal Affairs.

Michael T. Schmitz, Regulations and Rulings.

Robert M. Smith, Human Resources Management.

E. Keith Thomson, International Affairs.

EFFECTIVE DATE: Membership is effective on the date of this notice.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Smith, Assistant Commissioner, Human Resources Management, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue, NW., Room 2.4–A, Washington, DC 20229. Telephone (202) 344–1250.

This notice does not meet the U.S. Customs and Border Protection criteria for significant regulations.

Dated: October 29, 2004.

Robert C. Bonner,

Commissioner, Bureau of Customs and Border Protection.

[FR Doc. 04–24500 Filed 11–2–04; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2331–04]

RIN 1615–ZA08

Extension of the Designation of Temporary Protected Status for Honduras; Automatic Extension of Employment Authorization Documentation for Honduras TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The Temporary Protected Status (TPS) designation for Honduras will expire on January 5, 2005. This notice extends the designation of TPS for Honduras for 18 months, until July 5, 2006, and sets forth procedures necessary for nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) for the additional 18-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on January 5, 1999) and also timely re-registered under each subsequent extension of the designation. Eligible aliens must also have maintained continuous physical

presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998. Certain nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the large number of Hondurans affected by this notice, the Department of Homeland Security (DHS) recognizes that many re-registrants may not receive their new EADs until after their current EADs expire on January 5, 2005. Accordingly, this notice automatically extends the validity of EADs issued under Honduras TPS for six months until July 5, 2005, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: *Effective Dates:* The extension of TPS for Honduras is effective January 5, 2005, and will remain in effect until July 5, 2006. The 60-day re-registration period begins November 3, 2004 and will remain in effect until January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, U.S. 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 DHS Have To Extend the Designation of TPS for Honduras?

On March 1, 2003, the functions of the Immigration and Naturalization Service (INS) transferred from the Department of Justice (DOJ) to DHS pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering TPS held by INS were transferred to U.S. Citizenship and Immigration Services (USCIS).

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 expiration 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 the TPS designation. 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 is due to end, 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 Honduras?

On January 5, 1999, a notice was published in the **Federal Register** at 64 FR 524, designating Honduras for TPS due to the devastation resulting from Hurricane Mitch. The designation of Honduras for TPS subsequently has been extended four times, with notice of such determinations published in the **Federal Register** (65 FR 30438; 66 FR 23269; 67 FR 22451; 68 FR 23744). The most recent notice was published in the **Federal Register** on May 5, 2003, and it is due to end on January 5, 2005.

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Honduras. Due to continued reconstruction of infrastructure damaged by Hurricane Mitch, the Secretary of DHS has determined that an 18-month extension of the TPS designation is warranted because Honduras remains unable, temporarily, to adequately handle the return of its nationals. 8 U.S.C. 1254a(b)(1)(B).

DOS notes that the 82,828 houses destroyed or damaged by Hurricane Mitch, only 42,768 have been rebuilt. (DOS Recommendation (August 31, 2004)). The USCIS Resource Information Center (RIC) also reports that housing reconstruction projects are ongoing (RIC Report (August 2004)).

Reconstruction efforts will continue through at least 2005. (DOS Recommendation (August 31, 2004)). Honduras is still recovering from damage to its water and power supplies. The Honduran Social Investment Fund (FHIS) is building 36 complex urban water systems that will benefit more than one million people in 35 municipalities. (RIC Report (August 2004)). The Honduran national water company is also rebuilding 33 urban water systems. *Id.* Reliable sources of electrical power remain a problem. For example, the hydroelectric plant at El Cajon is not functioning at prehurricane capacity, because water levels have never recovered. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate Government agencies, finds that the conditions that prompted designation of Honduras for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in Honduras as the result of an environmental disaster, and Honduras continues to be unable, temporarily to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Honduras should be extended for an additional 18-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Designation of Honduras for TPS, Do I Still Re-register for TPS?

Yes. If you already have received TPS benefits through the designation of Honduras for TPS, your benefits will expire on January 5, 2005. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain TPS benefits through July 5, 2006. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 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 designation of Honduras who wish to maintain such status must apply for an extension by filing the following: (1) Form I-821, Application for Temporary Protected Status; (2) Form I-765, Application for Employment Authorization (*see* the chart below to determine whether you must submit the one hundred and seventy-five dollar ($175) filing fee with Form I-765); and (3) a biometric services fee of seventy dollars ($70) if you are 14 or older, or if you are under 14 and requesting an EAD. The biometric services fee cannot be waived. 8 CFR. 103.2(e)(4)(i), (iii). Unlike previous registration periods, TPS applicants need not submit

photographs with the TPS application because a photograph will be taken when the alien appears at an Application Support Center (ASC) for collection of biometrics.

An application submitted without the required fees will be returned to the applicant. Please note that Form I-821 has been revised and only the new form with Revision Date 7/30/04 will be accepted. Submissions of older versions of Form I-821 will be rejected. Submit the completed forms and applicable fee, if any, to the USCIS Chicago, IL Lockbox during the 60-day re-registration period that begins November 3, 2004 and ends January 3, 2005. An interim EAD will not be issued unless the Form I-765, as part of the TPS registration package, has been pending with USCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an ASC. *See* 8 CFR 103.2(b)(10)(ii) and 8 CFR 274a.13(d).

If . . .	Then . . .
You are applying for an EAD valid until July 5, 2006, regardless of your age.	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee.
You are not requesting an EAD, or are applying under late initial registration provisions and are under age 14 or over age 65.	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.[1]
You are applying for an EAD 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 supporting information) in accordance with 8 CFR 244.20.

[1] An applicant who does not want an employment authorization document does not need to submit the $175 fee, but must still complete and submit Form I–755 for data gathering purposes.

Where Should an Applicant Submit His or Her Application To Re-register or Late Initial Register for TPS?

The Form I–821, Form I–765, fees, and all supporting documentation should be filed at the USCIS Chicago Lockbox at: U.S. Citizenship and Immigration Services, P.O. Box 87583, Chicago, IL 60680–0583; or for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, 427 S. LaSalle–3rd floor, Chicago, IL 60605.

Please note that this address is not the location where you have submitted your forms during previous re-registration periods. Aliens re-registering or late initial registering for TPS under the designation of Honduras should not send their TPS forms and fees directly to a USCIS Service Center or district office. Failure to follow these instructions may delay processing of your TPS re-registration application.

Who Must Submit the $175 Filing Fee for the Form I–765?

Although all re-registrants must submit the Form I–765, only those applicants who are requesting an EAD, regardless of age, must submit the $175 filing fee or a fee waiver request pursuant to 8 CFR 244.20. Late initial registrants between the ages of 14 and 65, inclusive, who are requesting an EAD, must submit the $175 fee or a fee waiver request pursuant to 8 CFR 244.20. This requirement includes any individuals who do not need an EAD for employment or alien registration document purposes, but nevertheless choose to apply for an EAD for use solely as an identity document. Applicants who are submitting Form I–765 only for data-gathering purposes are not required to submit a $175 filing fee, nor are they required to submit a fee waiver request.

Who Must Submit the $70 Biometric Service Fee?

All re-registrants and late initial registrants 14 years of age and older must submit the $70 biometric services fee. In addition, any applicant under the age of 14 choosing to apply for an EAD must submit the $70 biometric services fee, as a photograph, signature, and fingerprint are required to produce the card. This fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

Who Is Eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who has applied for and received an EAD under the TPS designation of Honduras. This automatic extension is limited to EADs bearing an expiration date of January 5, 2005, that were issued on either Form I–766, Employment Authorization Document, or Form I–688B, Employment Authorization Card. The EAD must also be either (1) a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' or (2) a Form I–688B bearing the notation ''274a.12(a)(12)'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law.''

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing Form I–9, Employment Eligibility Verification?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received a six-month extension of their EADs by virtue of this **Federal Register** notice may present to their employer a TPS-based EAD as proof of identity and employment authorization until July 5, 2005. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic extension of employment authorization documentation to July 5, 2005. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Whether an EAD Has Been Automatically Extended through July 5, 2005 and Is Therefore Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until July 5, 2005, employers of Honduran TPS beneficiaries whose EADs have been automatically extended by this notice must accept such EAD if presented. An EAD that has been automatically extended by this notice to July 5, 2005 will actually contain an expiration date of January 5, 2005, and must be either (1) a Form I–766 bearing

the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' or (2) a Form I–688B bearing the notation ''274a.12(a)(12)'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law.'' New EADs or extension stickers showing the July 5, 2005 expiration date will not be issued.

Employers should not request proof of Honduran citizenship. Employers presented with an EAD that has been extended pursuant to this **Federal Register** notice, if the EAD appears to be genuine and appears to relate to the employee, should accept the EAD as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of DHS through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the law prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicant may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http:&fnl;// www.usdoj.gov/crt/osc/index. html.*

May 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, from filing for adjustment of status based on an immigrant petition, or from applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). TPS alone, however, does not lead to lawful permanent residence. 8 U.S.C. 1254a(e), (f)(1), (h). For the purposes of change of nonimmigrant 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).

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).

Does This Extension Allow Nationals of Honduras (or Aliens Having No Nationality Who Last Habitually Resided in Honduras) Who Entered the United States After December 30, 1998, To File for TPS?

No. This is a notice of an extension of the TPS designation of Honduras, not a noice re-designating Honduras for TPS. An extension of a TPS designation 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 for Honduras. To be eligible for benefits under this extension, nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) must have continuously resided in the United States since December 30, 1998 and been continuously physically present in the United States since January 5, 1999, the date of the initial designation of TPS for Honduras.

Are Certain Aliens Ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a (c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B) of the Act, 8 U.S.C. 1254a(c)(2)(B), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A).

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A)(iv) and 8 CFR 244.2(f)(2) and (g). To apply for late initial registration an applicant must:

(1) Be a national of Honduras (or alien who has no nationality and who last habitually resided in Honduras);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 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 initial registration period (from January 5, 1999 to August 20, 1999), 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) Is 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). All late initial registration applications for TPS pursuant to the TPS designation of Honduras should be submitted to the Lockbox address in Chicago, Illinois.

What Happens When This Extension of TPS Expires on July 5, 2006?

At least 60 days before this extension of TPS designation of Honduras expires on July 5, 2006, the Secretary of DSH, after consultation with appropriate agencies of the Government, will review conditions in Honduras 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). 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 Honduras

By the authority vested in DHS under sections 244(b)(1)(B), (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 Honduras for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Honduras under section 244(b)(1)(B) of the Act is extended for an additional 18-month period from January 5, 2005, to July 5, 2006. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 81,875 nationals of Honduras (or aliens having no nationality who last habitually resided in Honduras) who have been

granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Honduras (or an alien having no nationality who last habitually resided in Honduras) who was granted TPS during the initial designation period and the subsequent extensions of this designation, or who was granted TPS during late initial registration, must re-register for TPS during the 60-day re-registration period from November 3, 2004 until January 3, 2005.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) a biometric services fee of seventy dollars ($70) if applicant is age 14 or older, or if applicant is under age 14 and requesting an employment authorization document. Applications submitted without the required fees 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 Form I–765. An applicant who does not request employment authorization must still 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 ends on July 5, 2006, the Secretary of DHS, after consultation with appropriate agencies of the Government, will review the designation Honduras 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**. *Id.*

(6) Information concerning the extension of designation of Honduras for TPS will be available at local USCIS offices upon publication of this notice and on the USCIS Web site at *http://uscis.gov.*

Dated: October 28, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–24608 Filed 11–1–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Citizenship and Immigration Services

[CIS No. 2332–04]

RIN 1615–ZA09

Extension of the Designation of Temporary Protected Status for Nicaragua; Automatic Extension of Employment Authorization Documentation for Nicaragua TPS Beneficiaries

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Notice.

SUMMARY: The Temporary Protected Status (TPS) designation for Nicaragua will expire on January 5, 2005. This notice extends the designation of Nicaragua for 18 months, until July 5, 2006, and sets forth procedures necessary for nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) with TPS to re-register and to apply for an extension of their employment authorization documents (EADs) for the additional 18-month period. Re-registration is limited to persons who registered under the initial designation (which was announced on January 5, 1999) and also timely re-registered under each subsequent extension of the designation. Eligible aliens must also have maintained continuous physical presence in the United States since January 5, 1999, and continuous residence in the United States since December 30, 1998. Certain nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions.

Given the large number of Nicaraguans affected by this notice, the Department of Homeland Security (DHS) recognizes that many re-registrants may not receive their new EADs until after their current EADs expire on January 5, 2005. Accordingly, this notice automatically extends the validity of EADs issued under Nicaragua TPS for six months until July 5, 2005, and explains how TPS beneficiaries and their employers may determine which EADs are automatically extended.

DATES: *Effective Dates:* The extension of TPS for Nicaragua is effective January 5, 2005, and will remain in effect until July 5, 2006. The 60-day re-registration period begins November 3, 2004 and will remain in effect until January 3, 2005.

FOR FURTHER INFORMATION CONTACT: Colleen Cook, Residence and Status Services, Office of Programs and Regulations Development, U.S. 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 DHS Have To Extend the Designation of TPS for Nicaragua

On March 1, 2003, the functions of the Immigration and Naturalization Service (INS) transferred from the Department of Justice (DOJ) to DHS pursuant to the Homeland Security Act of 2002, Public Law 107–296. The responsibilities for administering TPS held by INS were transferred to U.S. Citizenship and Immigration Services (USCIS).

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 expiration 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 the TPS designation. 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 is due to end, 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 Nicaragua?

On January 5, 1999, notice was published in the **Federal Register** at 64

FR 524, designating Nicaragua for TPS due to the devastation resulting from Hurricane Mitch. The designation of Nicaragua for TPS subsequently has been subsequently extended four times, with notice of such determinations published in the **Federal Register** (65 FR 30440; 66 FR 23271; 67 FR 2245; 68 FR 23748). The most recent notice was published in the **Federal Register** on May 5, 2003, and it is due to end on January 5, 2005.

Since the date of the most recent extension, DHS and the Department of State (DOS) have continued to review conditions in Nicaragua. Due to continued reconstruction of infrastructure damaged by Hurricane Mitch, the Secretary of DHS has determined that an 18-month extension of the TPS designation is warranted because Nicaragua remains unable, temporarily, to handle adequately the return of its nations. 8 U.S.C. 1254a(b)(1)(B).

DOS notes that ''the conditions that initially gave rise to the designation continue to exist.'' (DOS Recommendation (August 31, 2004)). The USCIS Resource Information Center (RIC) reports that the Spanish organization Infancia sin Fronteras continues to provide food, medical care, and educational training to 12,000 children affected by Hurricane Mitch. (RIC Report (August 2004)).

Reconstruction of infrastructure damaged by Hurricane Mitch continues. There is a shortage of potable water in the northwestern department of Chinandega, one of the areas hardest hit by Hurricane Mitch. *Id.* The Government of Canada has promised funding to build wells in three communities to address the lack of potable water. *Id.* Also in Chinandega, continued erosion related to Hurricane Mitch resulted in damage to 60% and loss of 4–7% of arable land. *Id.* There are continued efforts to lessen the risk of floods and mudslides in forty communities still vulnerable in the wake of Hurricane Mitch via efforts such as emergency drilling. *Id.* Nationwide, reconstruction of roads damaged by Mitch has been concentrated in urban areas. *Id.* However, roads in the Central Rural and Atlantic Rural regions have deteriorated. *Id.*

Based upon this review, the Secretary of DHS, after consultation with appropriate Government agencies, finds that the conditions that prompted designation of Nicaragua for TPS continue to be met. 8 U.S.C. 1254a(b)(3)(A). There continues to be a substantial, but temporary, disruption in living conditions in Nicaragua as the result of an environmental disaster, and Nicaragua continues to be unable, temporarily to handle adequately the return of its nationals. 8 U.S.C. 1254a(b)(1)(B). On the basis of these findings, the Secretary of DHS concludes that the TPS designation for Nicaragua should be extended for an additional 18-month period. 8 U.S.C. 1254a(b)(3)(C).

If I Currently Have TPS Through the Designation of Nicaragua for TPS, Do I Still Register for TPS?

Yes. If you already have received TPS benefits through the designation of Nicaragua for TPS, your benefits will expire on January 5, 2005. Accordingly, individual TPS beneficiaries must comply with the re-registration requirements described below in order to maintain TPS benefits through July 5, 2006. TPS benefits include temporary protection against removal from the United States, as well as employment authorization, during the TPS designation period. 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 designation of Nicaragua who wish to maintain such status must apply for an extension by filing the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization (*see* the chart below to determine whether you must submit the one hundred and seventy-five dollar ($175) filing fee with Form I 765); and (3) a biometric services fee of seventy dollars ($70) if you are 14 or older, or if you are under 14 and requesting an EAD. The biometric services fee cannot be waived. 8 CFR. 103.2(e)(i), (iii). Unlike previous registration periods, TPS applicants need not submit photographs with the TPS application because a photograph will be taken when the alien appears at an Application Support Center (ASC) for collection of biometrics.

An application submitted without the required fees will be returned to the applicant. Please note that Form I–821 has been revised and only the new form with Revision Date 7/30/04 will be accepted. Submissions of older versions of Form I–821 will be rejected. Submit the completed forms and applicable fee, if any, to the USCIS Chicago, IL Lockbox during the 60-day re-registration period that begins November 3, 2004 and ends January 3, 2005. An interim EAD will not be issued unless the Form I–765, as part of the TPS registration package, has been pending with USCIS more than 90 days after all requested initial evidence has been received, including collection of the applicant's fingerprints at an ASC. *See* 8 CFR 103.2(b)(10)(ii) and 8 CFR 274a.13(d).

If	Then
You are applying for an EAD valid until July 5, 2006, regardless of your age.	You must complete and file the Form I–765, Application for Employment Authorization, with the $175 fee.
You are not requesting an EAD, or are applying under late initial registration provisions and are under age 14 or over age 65.	You must complete and file Form I–765 (for data-gathering purposes only) with no fee.[1]
You are applying for an EAD 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 supporting information) in accordance with 8 CFR 244.20.

[1] An applicant who does not want an employment authorization document does not need to submit the $175 fee, but must still complete and submit Form I–765 for data gathering purposes.

Where Should an Applicant Submit His or Her Application to Re-Register or Late Initial Register for TPS?

The Form I–821, Form I–765, fees, and all supporting documentation should be filed at the USCIS Chicago Lockbox at: U.S. Citizenship and Immigration Services, P.O. Box 87583, Chicago, IL 60680–0583. Or, for non-United States Postal Service (USPS) deliveries: U.S. Citizenship and Immigration Services, 427 S. LaSalle—3rd Floor, Chicago, IL 60605.

Please note that this address is not the location where you have submitted your forms during previous re-registration periods. Aliens re-registering or late initial registering for TPS under the designation of Nicaragua should not sent their TPS forms and fees directly to

a USCIS Service Center or district office. Failure to follow these instructions may delay processing of your TPS re-registration application.

Who Must Submit the $175 Filing Fee for the Form I–765?

Although all re-registrants must submit the Form I–765, only those applicants who are requesting an EAD, regardless of age, must submit the $175 filing fee or a fee waiver request pursuant to 8 CFR 244.20. Late initial registrants between the ages of 14 and 65, inclusive, who are requesting an EAD, must submit the $175 fee or a fee waiver request pursuant to 8 CFR 244.20. This requirement includes any individuals who do not need an EAD for employment or alien registration document purposes, but nevertheless choose to apply for an EAD for use solely as an identity document. Applicants who are submitting form I–765 only for data-gathering purposes are not required to submit a $175 filing fee, nor are they required to submit a fee waiver request.

Who Must Submit the $175 Biometric Services Fee?

All re-registrants and late initial registrants 14 years of age and older must submit the $70 biometric services fee. In addition, any applicant under the age of 14 choosing to apply for an EAD must submit the $70 biometric services fee, as a photograph, signature, and fingerprint are required to produce the card. This fee will not be waived. 8 CFR 103.2(e)(4)(i), (iii).

Who Is Eligible To Receive an Automatic Extension of His or Her EAD?

To receive an automatic extension of his or her EAD, an individual must be a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who has applied for and received an EAD under the TPS designation of Nicaragua. This automatic extension is limited to EADs bearing an expiration date of January 5, 2005, that were issued on either Form I–766, Employment Authorization Document, or Form I–688B, Employment Authorization Card. The EAD must also be either (1) a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' or (2) a Form I–688B bearing the notation ''274a.12(a)(12)'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law.''

What Documents May a Qualified Individual Show to His or Her Employer as Proof of Employment Authorization and Identity When Completing Form I–9, Employment Eligibility Verification?

For completion of the Form I–9 at the time of hire or re-verification, qualified individuals who have received a six-month extension of their EADs by virtue of this **Federal Register** notice may present to their employer a TPS-based EAD as proof of identity and employment authorization until July 5, 2005. To minimize confusion over this extension at the time of hire or re-verification, qualified individuals may also present to their employer a copy of this **Federal Register** notice regarding the automatic extension of employment authorization documentation to July 5, 2005. In the alternative, any legally acceptable document or combination of documents listed in List A, List B, or List C of the Form I–9 may be presented as proof of identity and employment eligibility; it is the choice of the employee.

How May Employers Determine Whether an EAD Has Been Automatically Extended Through July 5, 2005 and Is Therefore Acceptable for Completion of the Form I–9?

For purposes of verifying identity and employment eligibility or re-verifying employment eligibility on the Form I–9 until July 5, 2005, employers of Nicaraguan TPS beneficiaries whose EADs have been automatically extended by this notice must accept such EAD if presented. An EAD that has been automatically extended by this notice to July 5, 2005 will actually contain an expiration date of January 5, 2005, and must be either (1) a Form I–766 bearing the notation ''A–12'' or ''C–19'' on the face of the card under ''Category,'' or (2) a Form I–688B bearing the notation ''274a.12(a)(12)'' or ''274a.12(c)(19)'' on the face of the card under ''Provision of Law.'' New EADs or extension stickers showing the July 5, 2005 expiration date will not be issued.

Employers should not request proof of Nicaraguan citizenship. Employers presented with an EAD that has been extended pursuant to this **Federal Register** notice, if it appears to be genuine and appears to relate to the employee, should accept the EAD as a valid ''List A'' document and should not ask for additional Form I–9 documentation. This action by the Secretary of DHS through this **Federal Register** notice does not affect the right of an employee to present any legally acceptable document as proof of identity and eligibility for employment.

Employers are reminded that the laws prohibiting unfair immigration-related employment practices remain in full force. For questions, employers may call the USCIS Office of Business Liaison Employer Hotline at 1–800–357–2099 to speak to a USCIS representative. Also, employers may call the U.S. Department of Justice Office of Special Counsel for Immigration Related Unfair Employment Practices (OSC) Employer Hotline at 1–800–255–8155 or 1–800–362–2735 (TDD). Employees or applicants may call the OSC Employee Hotline at 1–800–255–7688 or 1–800–237–2515 (TDD) for information regarding the automatic extension. Additional information is available on the OSC Web site at *http://www.usdoj.gov/crt/osc/index.html.*

May 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, from filing for adjustment of status based on an immigrant petition, or from applying for any other immigration benefit or protection. 8 U.S.C. 1254a(a)(5). TPS alone, however, does not lead to lawful permanent residence. 8 U.S.C. 1254a(e), (f)(1), (h). For the purposes of change of nonimmigrant 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).

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).

Does This Extension Allow Nationals of Nicaragua (or Aliens Having No Nationality Who Last Habitually Resided in Nicaragua) Who Entered the United States After December 30, 1998, To File for TPS?

No. This is a notice of an extension of the TPS designation of Nicaragua, not a notice re-designating Nicaragua for TPS. An extension of a TPS designation 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 for Nicaragua. To be eligible for benefits under this extension, nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) must have continuously resided in the United States since December 30, 1998 and been continuously physically present in the United States since January 5, 1999, the date of the initial designation of TPS for Nicaragua.

Are Certain Aliens Ineligible for TPS?

Yes. There are certain criminal and terrorism-related inadmissibility grounds that render an alien ineligible for TPS. 8 U.S.C. 1254a(c)(2)(A)(iii). Further, aliens who have been convicted of any felony or two or more misdemeanors committed in the United States are ineligible for TPS under section 244(c)(2)(B) of the Act, 8 U.S.C. 254a(c)(2)(B), as are aliens described in the bars to asylum in section 208(b)(2)(A) of the Act, 8 U.S.C. 1158(b)(2)(A).

What Is Late Initial Registration?

Some persons may be eligible for late initial registration under 8 U.S.C. 1254a(c)(1)(A)(iv) and 8 CFR 244.2(f)(2) and (g). To apply for late initial registration an applicant must:

(1) Be a national of Nicaragua (or alien who has no nationality and who last habitually resided in Nicaragua);

(2) Have continuously resided in the United States since December 30, 1998;

(3) Have been continuously physically present in the United States since January 5, 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 initial registration period (from January 5, 1999 to August 20, 1999), 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) Is 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). All late initial registration applications for TPS pursuant to the TPS designation of Nicaragua should be submitted to the Lockbox address in Chicago, Illinois.

What Happens When This Extension of TPS Expires on July 5, 2006?

At least 60 days before this extension of TPS designation of Nicaragua expires on July 5, 2006, the Secretary of DHS, after consultation with appropriate agencies of the Government, will review conditions in Nicaragua 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). 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 Nicaragua

By the authority vested in DHS under section 244(b)(1)(B), (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 Nicaragua for TPS continue to be met. Accordingly, DHS orders as follows:

(1) The designation of Nicaragua under section 244(b)(1)(B) of the Act is extended for an additional 18-month period from January 5, 2005, to July 5, 2006. 8 U.S.C. 1254a(b)(3)(C).

(2) There are approximately 4,309 nationals of Nicaragua (or aliens having no nationality who last habitually resided in Nicaragua) who have been granted TPS and who are eligible for re-registration.

(3) To maintain TPS, a national of Nicaragua (or an alien having no nationality who last habitually resided in Nicaragua) who was granted TPS during the initial designation period and the subsequent extensions of this designation, or who was granted TPS during late initial registration, must re-register for TPS during the 60-day re-registration period from November 3, 2004 until January 3, 2005.

(4) To re-register, the applicant must file the following: (1) Form I–821, Application for Temporary Protected Status; (2) Form I–765, Application for Employment Authorization; and (3) a biometric services fee of seventy dollars ($70) if applicant is age 14 or older, or if applicant is under age 14, and

(5) At least 60 days before this extension ends on July 5, 2006, the Secretary of DHS, after consultation with appropriate agencies of the Government, will review the designation of Nicaragua 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.** *Id.*

(6) Information concerning the extension of designation of Nicaragua for TPS will be available at local USCIS offices upon publication of this notice and on the USCIS Web site at *http://uscis.gov.*

Dated: October 28, 2004.

Tom Ridge,

Secretary of Homeland Security.

[FR Doc. 04–24607 Filed 11–1–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

National Communications System

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting cancellation.

The November 9, 2004 meeting of the Telecommunications Service Priority (TSP) System Oversight Committee has been cancelled and will be rescheduled at a later date to be determined.

FOR FURTHER INFORMATION CONTACT: Susan Flint, Office of Priority Telecommunications, (703) 607–4932. Media or press must contact Mr. Steve Barrett at (703) 607–6211.

Peter M. Fonash,

Certifying Officer.

[FR Doc. 04–24505 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–90]

Notice of Submission of Proposed Information Collection to OMB; Materials and Equipment Specifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below

has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information from the architect employed by a Public Housing Agency (PHA) or Turnkey Developers to establish quality and kinds of materials and equipment to be used in public housing developments.

DATES: *Comments Due Date:* December 3, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0012 and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Materials and Equipment Specifications.

OMB Approval Number: 2577–0012.

Form Numbers: HUD–5087.

Description of the Need for the Information and Its Proposed Use: This information is provided by the architect employed by a Public Housing Agency (PHA) or Turnkey Developers to establish quality and kinds of materials and equipment to be used in public housing developments.

Frequency of Submission: On occasion.

	Number of respondents	Annual responses	x	Hours per response	=	Burden hours
Reporting Burden	160	352		3		1,144

Total Estimated Burden Hours: 1,144.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 28, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2992 Filed 11–2–04; 8:45 am]

BILLING CODE 4210–72–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–89]

Notice of Submission of Proposed Information Collection to OMB; Owner's Certification With HUD Tenant Eligibility and Rent Procedures

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for an extension of the approval to collect the subject information.

Collection of tenant data to ensure owners comply with Federal statues and regulations that: (1) Establish policies to who may be admitted to subsidized housing; (2) specify which eligible applicants may be given priority over others for rental assistance; (3) prohibit discrimination in conjunction with selection of tenants and unit; (4) specify how tenants' incomes and rents must be compiled; and (5) require Annual Reports to Congress.

DATES: *Comments Due Date:* December 3, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–0204) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms. Deitzer and at HUD's Web site at *http://www.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate

automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Owner's Certification with HUD Tenant Eligibility and Rent Procedures.

OMB Approval Number: 2502–0204.

Form Numbers: HUD–27061, HUD–9887, and HUD–9887A.

Description of the Need for the Information and its Proposed Use: Collection of tenant data to ensure owners comply with Federal statues and regulations that: (1) Establish policies to who may be admitted to subsidized housing; (2) specify which eligible applicants may be given priority over others for rental assistance; (3) prohibit discrimination in conjunction with selection of tenants and unit; (4) specify how tenants' incomes and rents must be compiled; and (5) require Annual Reports to Congress.

Frequency of Submission: Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	2,210,139	1		0.953		2,108,052

Total Estimated Burden Hours: 2,108,052.

Status: Extension of a currently approved collection.

AUTHORITY: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 28, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2993 Filed 11–2–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4903–N–91]

Notice of Submission of Proposed Information Collection to OMB: Analysis of Proposed Main Construction Contract

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for continued approval to collect information from Housing Agencies (Has) on main construction contracts for conventionally developed projects under the Low-Income Housing program indicating approved, pre-bid budget amounts, the actual bids, any proposed changes in the amounts, and the final adjusted bid for each category. The collection provides for a comparison between bids and the approved, pre-bid estimate. The information is submitted for approval to award of a construction contract.

DATES: *Comments Due Date:* December 3, 2004.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577–0037) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; or Lillian Deitzer at *Lillian_L_Deitzer@HUD.gov* or telephone (202) 708–2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer and at HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Analysis of Proposed Main Construction Contract.

OMB Approval Number: 2577–0037.

Form Numbers: HUD–52396.

Description of the Need for the Information and its Proposed Use: Housing Agencies (Has) submit main construction contracts for conventionally developed projects under the Low-Income Housing program indicating approved, pre-bid budget amounts, the actual bids, any proposed changes in the amounts, and the final adjusted bid for each category. The collection provides for a comparison between bids and the approved, pre-bid estimate. The information is submitted for approval to award of a construction contract.

Frequency of Submission: On occassion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	96	96	....	2.25	....	216

Total Estimated Burden Hours: 216.

Status: Extension of a currently approved collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 29, 2004.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E4–2994 Filed 11–2–04; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Hanford Reach National Monument Federal Advisory Committee Meetings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Hanford Reach National Monument Federal Planning Advisory Committee meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) is announcing two upcoming meetings of the Hanford Reach National Monument Federal Planning Advisory Committee (Committee). In these meetings, the Committee will continue their work on making recommendations to the Service and the Department of Energy (DOE) on the preparation of a long-term management plan for the Hanford Reach National Monument Comprehensive Conservation Plan and associated Environmental Impact Statement (CCP/EIS). The Committee is focusing on advice that identifies and reconciles land management issues while meeting the directives of Presidential Proclamation 7319 that established the Monument.

DATES: The Committee has scheduled the following meetings:

1. Thursday, November 17, 2004, 9:30 a.m. to 4:30 p.m., Richland, WA.
2. Thursday, January 6, 2005, 9:30 a.m. to 4:30 p.m., Richland, WA.

ADDRESSES: The meetings will take place at the Washington State University Tri-Cities Consolidated Information Center, 2770 University Drive, Rooms 120 and 120 A, Richland, WA.

Written comments may be submitted to Mr. Greg Hughes, Designated Federal Official for the Hanford Reach National Monument (HRNM) Federal Planning Advisory Committee, Hanford Reach National Monument/Saddle Mountain National Wildlife Refuge, 3250 Port of Benton Blvd., Richland, WA 99352; fax (509) 375–0196. Copies of the draft meeting agendas can be obtained from the Designated Federal Official. Comments may be submitted via email to *hanfordreach@fws.gov.* Additional information regarding the monument and the CCP is available on the monument's Internet site at *http://hanfordreach.fws.gov.*

FOR FURTHER INFORMATION CONTACT: For further information concerning the meetings, contact Mr. Greg Hughes, Designated Federal Official, via telephone at (509) 371–1801, or fax at (509) 375–0196.

SUPPLEMENTARY INFORMATION: Committee meetings are open to the public. Verbal comments may be submitted during the course of the meetings, and written comments may be submitted at the close of the meetings, mailed to the Monument office address, or submitted via e-mail.

Dated: October 27, 2004.

David J. Wesley,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 04–24612 Filed 11–2–04; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Courts of Indian Offenses—Application Marriage/Dissolution

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed renewal of information collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs is seeking comments on the renewal of OMB Control No. 1076–0094, Law and Order on Indian Reservations. Under subpart F of the regulations, basic information is requested of applicants for the issuance of a marriage license or for the dissolution of a marriage by a Court of Indian Offenses.

DATES: Submit comments on or before January 3, 2005.

ADDRESSES: Send comments to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1951 Constitution Avenue, NW., Mail Stop Room 320, South Interior Building, Washington, DC 20240; Telephone: 202–513–7629.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from Ralph Gonzales at (202) 513–7629.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs, Department of the Interior, must collect personal information to carry out the requirements of 25 CFR Part 11, sections 11.600(c), Marriage, and 11.606(c), Dissolution of Marriage. Information is collected by the Clerk of the Court of Indian Offenses in order for the Court to issue a marriage license or dissolve a marriage. The information is collected on a one-page application requesting only basic information necessary for the Court to properly dispose of the matter.

II. Method of Collection

The information is collected on a one-page application for the marriage license or for a dissolution of marriage.

III. Information Collected

Courts of Indian Offenses (CFR Courts) have been established on certain Indian reservations under the authority vested in the Secretary of the Interior by 5 U.S.C. 301, 25 U.S.C. 2 and 9, and 25 U.S.C. 13, which authorizes appropriations for ''Indian judges.'' See *Tillett* v. *Hodel,* 730 F. Supp. 381 (W.D. Okla. 1990), *aff'd* 931 F.2d 636 (10th Cir. 1991) *United States* v. *Clapox,* 13 Sawy. 349, 35 F. 575 (D. Ore. 1888). The CFR Courts provide adequate machinery for the administration of justice for Indian tribes in those areas where tribes retain jurisdiction over Indians and is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction. Accordingly, CFR Courts exercise jurisdiction under part 11 of Title 25 of the Code of Federal Regulations. Domestic relations are governed by 25 CFR 11.600 which authorizes the CFR Court to conduct marriages and dissolve marriages. In order to be married in a CFR Court, a marriage license must be obtained (25 CFR 11.600, 601). To comply with this requirement, an applicant must respond to the following six questions found at 25 CFR 11.600(c):

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth for each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship;

(5) The name and date of birth of any child of which both parties are parents,

born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated; and

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

For the purposes of section 11.600, Marriage, Social Security number information is requested to confirm identity. Previous marriage information is requested to avoid multiple simultaneous marriages, and to ensure that any pre-existing legal relationships are dissolved. Information on consanguinity is requested to avoid conflict with state or tribal laws against marriages between parties who are related by blood as defined in such laws. Medical examination information may be requested if required under the laws of the state in which the Court of Indian Offenses is located.

To comply with the requirement for dissolution of marriage, an applicant must respond to the following six questions found at 25 CFR 11.606(c):

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either—

(i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding; or

(ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

For the purposes of section 11.606, Dissolution proceedings, information on occupation and residency is necessary to establish court jurisdiction. Information on the status of the parties, whether they have lived apart 180 days or if there is serious marital discord warranting dissolution, is necessary for the court to determine if dissolution is proper. Information on the children of the marriage, their ages and whether the wife is pregnant is necessary for the court to determine the appropriate level of support that may be required from the non-custodial parent.

Description of the need for the information and proposed use of the information: The information is submitted in order to obtain or retain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Affected entities: Indian applicants that are under the jurisdiction of one of the Courts of Indian Offenses.

Estimated number of respondents: Approximately 260 applications for a marriage license or petition for dissolution of marriage will be filed in the Courts of Indian Offenses listed at 25 CFR 11.100(a) annually.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting a marriage license or petition for dissolution of marriage is 15 minutes per application. The total annual burden is estimated as 65 hours.

Estimated cost: There are no costs to consider, except estimated costs of $100 per court annually, for the material, supplies and staff time required by the Court of Indian Offenses.

IV. Request for Comments

The Bureau of Indian Affairs requests your comments on this collection concerning:

(a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumption used;

(c) Ways we could enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways we could minimize the burden of the collection of information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. The OMB Control Number for this collection is 1076–0094.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, Room 320–SIB, during the hours of 8 a.m. to 5 p.m., e.s.t., Monday through Friday, excluding legal holidays. If you wish to have your name and/or address withheld, you must state this prominently at the beginning of your comments. We will honor your request according to the requirements of the law. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0094.

Type of Review: Renewal.

Title: Title 25 CFR 11, Subpart F, Law and Order on Indian Reservations.

Brief Description of Collection: It is mandatory for respondent to complete an application, to receive a marriage license or obtain a decree of dissolution of marriage.

Respondents: Persons who reside on land within the jurisdiction of a Court of Indian Offenses.

Number of Respondents: 260.

Estimated Time per Response: 15 minutes.

Frequency of Response: On occasion.

Total Annual Burden to Respondents: 65 hours.

Total Annual Cost to Respondents: Negligible.

Dated: October 18, 2004.

David W. Anderson,

Assistant Secretary—Indian Affairs.

[FR Doc. 04–24518 Filed 11–2–04; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Seasonal Closure of Crystal Cave, Installation of Locking Gate, and Implementation of Crystal Cave Recreation Management Plan Including Visitor Use Permit System

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that public access to Crystal Cave in the Salt Lake Field Office District of the Bureau of Land Management (BLM) will be controlled via a visitor use permit system to protect a maternity colony of Townsend's Big-eared Bats (*Corynorhinus townsendii*, a Utah sensitive species of special concern), to maintain the integrity of unique geologic cave formations, and to ensure visitor safety and compliance through the installation of a bat-friendly locking gate. The seasonal closure and permit system will begin upon the installation of the bat-friendly locking gate and implementation of the Crystal Cave Management Plan.

DATES: Public access to Crystal Cave will be controlled via permit system

from Oct 1–March 31 and seasonally closed from April 1–Sept 30 each year. Future changes to these closure dates may be necessary as ongoing bat migration research at Crystal Cave is accomplished. Any changes to access dates will be given via subsequent **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: For information regarding public access to Crystal Cave, contact the BLM's Salt Lake Field Office at (801) 977–4300.

SUPPLEMENTARY INFORMATION: This seasonal closure to public access of Crystal Cave will serve to protect both a maternity colony of Townsend's Big-eared Bats and unique geologic cave formations, and to ensure visitor safety and compliance through the installation of a bat-friendly locking gate. The BLM decision is to manage access to Crystal Cave by constructing a bat-friendly gate and implementing a Cave Management Plan coupled with a visitor use permit system.

With increasing visitation, additional measures are needed to effectively protect the cave. Formations are being illegally removed and critical bat habitat is being disturbed. A permit system will provide an opportunity to educate the public on the importance of protecting critical cave resources.

Installation of a gate will provide the maximum security for Crystal Cave resources while minimizing the negative effects on the cave's ecology. The gate will be constructed as a joint effort between the Salt Lake BLM Field Office, Timpanogos Cave National Monument, Salt Lake NSS Grotto, the Timpanogos NSS Grotto, and other interested individuals.

The Crystal Cave Management Plan will set forth direction for long-range management planning and oversight of this important resource and identify specific management actions for recreation use at Crystal Cave. The management plan will emphasize recreational use while providing for natural resource conservation and enhancement.

The authority for establishing this restriction is found at 43 CFR 8364.1(a). This restriction does not apply to:

(1) Any Federal, State or local government officer or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any Bureau of Land Management employee, agent, contractor, or cooperator while in the performance of an official duty.

(3) Any Federal, State, local, or contract law enforcement officer, while in the performance of their official duties, or while enforcing this closure notice.

Violation of this closure is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360–0.7 as further defined in 18 U.S.C. 3571.

Dated: September 20, 2004.

Glenn A. Carpenter,

Field Office Manager.

[FR Doc. 04–24662 Filed 11–1–04; 1:52 pm]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation (Reclamation), Interior.

ACTION: Notice of proposed decision regarding the operating criteria and announcement of public consultation meeting.

SUMMARY: The purpose of this action is to provide notice of a public consultation meeting. In addition, based on information submitted for review by the Department of the Interior, Reclamation is proposing that the Secretary of the Interior (Secretary) make a number of identified modifications to the text of the Operating Criteria developed pursuant to Section 602 of the Colorado River Basin Project Act of 1968. The bases for the proposed changes are: (1) Specific changes in Federal law applicable to the Operating Criteria, (2) language in the current text of the Operating Criteria that is outdated, and (3) specific modifications to Article IV(b) of the Operating Criteria that reflect actual operating experience.

DATES: To receive input on the proposed decision regarding specific limited changes to the Operating criteria, Reclamation will conduct a public consultation meeting in Henderson, Nevada. The meeting will be held at the following time and location:

- November 19, 2004—9 a.m. to 1 p.m. at the Henderson Convention Center, 200 South Water Street, Henderson, Nevada.

All comments relevant to the proposed decision should be received no later than December 6, 2004.

ADDRESSES: Interested parties should send comments or questions to: Regional Director, Attention: BCOO–4600, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470.

FOR FURTHER INFORMATION CONTACT: Jayne Harkins, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, Nevada 89006–1470; telephone (702) 293–8411; faxogram (702) 293–8614; e-mail: *jharkins@lc.usbr.gov*; or Tom Ryan, Bureau of Reclamation, Upper Colorado Region, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1147; telephone (801) 524–3732; faxogram (801) 524–5499; e-mail: *tryan@uc.usbr.gov.*

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** Notice published on January 15, 2002, announcing the sixth review of the Operating Criteria and inviting comments regarding whether the Operating Criteria should be modified, and if so, how they should be modified. The January 15, 2002, Notice provided for a comment period that ended on March 18, 2002. On March 6, 2002, a second Notice was published in the **Federal Register** extending the comment period to March 29, 2002, and inviting public feedback on whether or not Reclamation should conduct a public meeting to solicit comments as part of the sixth review of the Operating Criteria. A letter was then sent to all interested parties, tribes, and stakeholders on March 7, 2002, that included copies of both **Federal Register** Notices and the Operating Criteria.

On June 27, 2002, a Fact Sheet providing information on the Operating Criteria, scope of the review process, public participation, timeline for the review process, and contact information was sent to all interested parties and stakeholders. In addition to the Fact Sheet, Reclamation set up a Web site (*http://www.usbr.gov/lc/region/g4000/lroc*) for the sixth review of the Operating Criteria that contained further information on the review, copies of all comment letters received, and links to technical documents Reclamation felt would be useful during the review process.

Detailed written comments were received from 16 interested parties providing Reclamation with numerous issues, comments, and concerns regarding possible changes to the Operating Criteria. The comment letters were posted on the Operating Criteria Web site in May 2002 and have been reviewed by Reclamation for identification and analysis of the issues.

As required by Federal law, formal consultation with the representatives of the seven Basin States, and with members of the general public, was conducted during this review of the

Operating Criteria. The January 15, 2002, **Federal Register** Notice stated that open public meetings would be conducted as part of this review, and in the March 6, 2002, **Federal Register** Notice, Reclamation asked for comments on whether or not a public meeting should be held. At the end of the comment period (March 29, 2002), several of those who provided comments stated that a public meeting to solicit comments on the need to revise the Operating Criteria was not needed. Accordingly, Reclamation did not conduct a public meeting at that point in the review process. However, pursuant to this **Federal Register** Notice, a public consultation meeting will be conducted on November 19, 2004, allowing interested parties and the general public an opportunity to provide comments on the proposed changes to the Operating Criteria identified in this **Federal Register** Notice. This meeting will be considered a consultation with the States, interested parties, and stakeholders, as well as government-to-government consultation with tribal representatives.

Following analysis of any additional comments received as a result of this Notice, any proposed Federal action will be evaluated by Reclamation to determine the applicability of National Environmental Policy Act compliance. A final Secretarial decision regarding this five-year review will be published in the **Federal Register**.

Public Disclosure

It is Reclamation's practice to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identify from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

Background: The Operating Criteria, promulgated pursuant to Section 602 of the 1968 Colorado River Basin Project Act (Pub. L. 90–537), were published in the **Federal Register** on June 10, 1970 (35 FR 8951). In order to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty, the Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act and the Boulder Canyon Project Act.

The Operating Criteria state that the Secretary will sponsor a formal review of the Operating Criteria at least every five years with participation by Colorado River Basin State representatives as each Governor may designate and other parties and agencies as the Secretary may deem appropriate. As required by Pub. L. 102–575 (the Grand Canyon Protection Act of 1992), the Secretary also consults in this review process with the general public including representatives of academic and scientific communities, environmental organizations, the recreation industry, and contractors for the purchase of federal power produced at Glen Canyon Dam.

Previous reviews of the Operating Criteria were conducted in 1975, 1980, 1985, 1990, and 1995. These reviews did not propose any changes to the Operating Criteria. Prior to 1990, reviews were conducted primarily through meetings with and correspondence among representatives of the seven Basin States and Reclamation. Because the long-range operation of the Colorado River Reservoirs is important to many agencies and individuals, in 1990, through an active public involvement process, Reclamation expanded the review of the Operating Criteria to include all interested stakeholders. A team consisting of Reclamation staff from Salt Lake City, Utah, and Boulder City, Nevada, was organized to conduct the 1995 review. For this review, Reclamation staff from Boulder City and Salt Lake City followed a similar public process.

The scope of the review has been consistent with the statutory purposes of the Operating Criteria which are ''to comply with and carry out the provisions of the Colorado River Compact, Upper Colorado River Basin Compact, and Mexican Water Treaty'' 43 U.S.C. 1552(a). Long-range operations generally refer to the planning of reservoir operations over several decades, as opposed to the Annual Operating Plan which details specific reservoir operations for the next operating year, as required by 43 U.S.C. 1552(b).

Proposed Modifications to the Operating Criteria: As a result of this review, Reclamation is proposing the following modifications to the Operating Criteria (additions are shown with highlighted text and deletions are shown with a line):

BILLING CODE 4310–MN–M

LONG-RANGE OPERATING CRITERIA

CRITERIA FOR COORDINATED LONG-RANGE OPERATION OF COLORADO RIVER RESERVOIRS PURSUANT TO THE COLORADO RIVER BASIN PROJECT ACT OF SEPTEMBER 30, 1968 (P.L. 90-537)

These Operating Criteria are promulgated in compliance with Section 602 of Public Law 90-537. They are to control the coordinated long-range operation of the storage reservoirs in the Colorado River Basin constructed under the authority of the Colorado River Storage Act (hereinafter "Upper Basin Storage Reservoirs") and the Boulder Canyon Project Act (Lake Mead). The Operating Criteria will be administered consistent with applicable Federal laws, the Mexican Water Treaty, interstate compacts, and decrees relating to the use of the waters of the Colorado River.

The Secretary of the Interior (hereinafter the "Secretary") may modify the Operating Criteria from time to time in accordance with Section 602(b) of P.L. 90-537. The Secretary will sponsor a formal public review of the Operating Criteria at least every 5 years, with participation by State representatives as each Governor may designate and such other parties and agencies as the Secretary may deem appropriate.

I. Annual Report

(1) On ~~January 1, 1972, and on~~ January 1 of each year ~~thereafter~~, the Secretary shall transmit to the Congress and to the Governors of the Colorado River Basin States a report describing the actual operation under the adopted criteria for the preceding compact water year and the projected plan of operation for the current year.

(2) The plan of operation shall include such detailed rules and quantities as may be necessary and consistent with the criteria contained herein, and shall reflect appropriate consideration of the uses of the reservoirs for all purposes, including flood control, river regulation, beneficial consumptive uses, power production, water quality control, recreation, enhancement of fish and wildlife, and other environmental factors. The projected plan of operation may be revised to reflect the current hydrologic conditions, and the Congress and the Governors of the Colorado River Basin States be advised of any changes by June of each year.

II. Operation of Upper Basin Reservoirs

(1) The annual plan of operation shall include a determination by the Secretary of the quantity of water considered necessary as of September 30 of each year to be in storage as required by Section 602(a) of P.L. 90-537 (hereinafter "602(a) Storage"). The quantity of 602(a) Storage shall be determined by the Secretary after consideration of all applicable laws and relevant factors, including, but not limited to, the following:

(a) Historic streamflows;
(b) The most critical period of record;
(c) Probabilities of water supply;
(d) Estimated future depletions of the upper basin, including the effects of recurrence of critical periods of water supply;
(e) The "Report of the Committee on Probabilities and Test Studies to the Task Force on Operating Criteria for the Colorado River," dated October 30, 1969, and such additional studies as the Secretary deems necessary;
(f) The necessity to assure that upper basin consumptive uses not be impaired because of failure to store sufficient water to assure deliveries under Section 602(a)(1) and (2) of P.L. 90-537.

(2) If in the plan of operation, either:

(a) the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current year is less than the quantity of 602(a) Storage determined by the Secretary under Article II(1) hereof, for that date; or
(b) the Lake Powell active storage forecast for that date is less than the Lake Mead active storage forecast for that date;

the objective shall be to maintain a minimum release of water from Lake Powell of 8.23 million acre-feet for that year. ~~However, for the years ending September 30, 1971 and 1972, the release may be greater than 8.23 million acre-feet if necessary to deliver 75,000,000 acre-feet at Lee Ferry for the 10-year period ending September 30, 1972.~~

(3) If, in the plan of operation, the Upper Basin Storage Reservoirs active storage forecast for September 30 of the current water year is greater than the quantity of 602(a) Storage determination for that date, water shall be released annually from Lake Powell at a rate greater than 8.23 million acre-feet per year to the extent necessary to accomplish any or all of the following objectives:

(a) to the extent it can be reasonably applied in the States of the Lower Division to the uses specified in Article III(e) of the Colorado River Compact, but no such releases shall be made when the active storage in Lake Powell is less than the active storage in Lake Mead,
(b) to maintain, as nearly as practicable, active storage in Lake Mead equal to the active storage in Lake Powell, and
(c) to avoid anticipated spills from Lake Powell.

(4) In the application of Article II(3)(b) herein, the annual release will be made to the extent that it can be passed through Glen Canyon Powerplant when operated at the available capability of the powerplant. Any water thus retained in Lake Powell to avoid bypass of water at the Glen Canyon Powerplant will be released through the Glen Canyon Powerplant as soon as practicable to equalize the active storage in Lake Powell and Lake Mead.

(5) Releases from Lake Powell pursuant to these criteria shall not prejudice the position of either the upper or lower basin interests with respect to required deliveries at Lee Ferry pursuant to the Colorado River Compact.

III. Operation of Lake Mead

(1) Water released from Lake Powell, plus the tributary inflows between Lake Powell and Lake Mead, shall be regulated in Lake Mead and either pumped from Lake Mead or released to the Colorado River to meet requirements as follows:

(a) Mexican Treaty obligations;
(b) Reasonable consumptive use requirements of mainstream users in the Lower Basin;
(c) Net river losses;
(d) Net reservoir losses;
(e) Regulatory wastes.

(2) ~~Until such time as mainstream water is delivered by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met.~~ Deleted [Adopted: 6/10/1970, Deleted: X/X/2004]

(3) After commencement of delivery of mainstream water by means of the Central Arizona Project, the consumptive use requirements of Article III(1)(b) of these Operating Criteria will be met to the following extent:

(a) Normal: The annual pumping and release from Lake Mead will be sufficient to satisfy 7,500,000 acre-feet of annual consumptive use in accordance with the decree in Arizona v. California, 376 U.S. 340 (1964).

(b) Surplus: The Secretary shall determine from time to time when water in quantities greater than "Normal" is available for either pumping or release from Lake Mead pursuant to Article II(b)(2) of the decree in Arizona v. California after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;
(ii) requests for water by holders of water delivery contracts with the United States, and of other rights recognized in the decree in Arizona v. California;
(iii) actual and forecast quantities of active storage in Lake Mead and the Upper Basin Storage Reservoirs; and
(iv) estimated net inflow to Lake Mead.

(c) Shortage: The Secretary shall determine from time to time when insufficient mainstream water is available to satisfy annual consumptive use requirements of 7,500,000 acre-feet after consideration of all relevant factors, including, but not limited to, the following:

(i) the requirements stated in Article III(1) of these Operating Criteria;
(ii) actual and forecast quantities of active storage in Lake Mead;
(iii) estimate of net inflow to Lake Mead for the current year;
(iv) historic streamflows, including the most critical period of record;
(v) priorities set forth in Article II(A) of the decree in *Arizona v. California*; and
(vi) the purposes stated in Article I(2) of these Operating Criteria.

The shortage provisions of Article II(B)(3) of the decree in *Arizona v. California* shall thereupon become effective and consumptive uses from the mainstream shall be restricted to the extent determined by the Secretary to be required by Section 301(b) of Public Law 90-537.

IV. Definitions

(1) In addition to the definitions in Section 606 of P.L. 90-537, the following shall also apply:

(a) "Spills," as used in Article II(3)(c) herein, means water released from Lake Powell which cannot be utilized for project purposes, including, but not limited to, the generation of power and energy.
(b) "Surplus," as used in Article III(3)(b) herein, is water which can be used to meet consumptive use ~~demands~~ in the three Lower Division States in excess of 7,500,000 acre-feet annually. The term "surplus" as used in these Operating Criteria is not to be construed as applied to, being interpretive of, or in any manner having reference to the term "surplus" in either the Colorado River Compact or the 1944 Mexican Treaty.
(c) "Net inflow to Lake Mead," as used in Article III(3)(b)(iv) and (c)(iii) herein, represents the annual inflow to Lake Mead in excess of losses from Lake Mead.
(d) "Available capability," used in Article II(4) herein, means that portion of the total capacity of the powerplant that is physically available for generation.

BILLING CODE 4310–MN–C

Proposed Decision: The Department of the Interior has considered the comments received during this review of the Operating Criteria. After a careful review of the comments received, solicitation of public review to Reclamation's responses, and consultation with the Governor's representatives of the seven Basin States, Reclamation is proposing that the Secretary of the Interior make a number of identified modifications to the text of the Operating Criteria. The bases for the proposed changes are (1) specific changes in Federal law applicable to the Operating Criteria, (2) language in the current text of the Operating Criteria that is outdated, and (3) specific modifications to Article IV(b) of the Operating Criteria that reflect actual operating experience.

Dated: September 28, 2004.

William E. Rinne,

Deputy Commissioner, Bureau of Reclamation.

[FR Doc. 04–24552 Filed 11–2–04; 8:45 am]

BILLING CODE 4310–MN–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. NAFTA–103–009]

Certain Sanitary Articles of Tri-Lobal Rayon Staple Fibers: Effect of Modification of NAFTA Rules of Origin for Goods of Canada and Mexico

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and request for written submissions.

EFFECTIVE DATE: October 27, 2004.

SUMMARY: Following receipt of a request on October 20, 2004, from the United States Trade Representative (USTR) under authority delegated by the President and pursuant to section 103 of the North American Free Trade Agreement (NAFTA) Implementation Act (19 U.S.C. 3313), the Commission instituted investigation No. NAFTA–103–009, Certain Sanitary Articles of Tri-Lobal Rayon Staple Fibers: Effect of Modification of NAFTA Rules of Origin for Goods of Canada and Mexico.

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Kimberlie Freund, Office of Industries (202–708–5402, *kimberlie.freund@usitc.gov*); for information on legal aspects, contact William Gearhart of the Office of the General Counsel (202–205–3091, *wgearhart@usitc.gov*). The media should contact Margaret O'Laughlin, Office of Public Affairs (202–205–1819, *margaret.olaughlin@usitc.gov*).

Background: Annex 300–B, Chapter 4, and Annex 401 of the NAFTA contain the rules of origin for textiles and apparel for application of the tariff provisions of the NAFTA. These rules are set forth for the United States in general note 12 to the Harmonized Tariff Schedule (HTS). According to the USTR request letter, U.S. negotiators have recently reached agreement in principle with representatives of the Governments of Canada and Mexico to modify the NAFTA rule of origin for certain sanitary towels or tampons classified in HTS subheading 5601.10 and made from tri-lobal rayon staple fibers (38 mm, 3.3 decitex) of HTS subheading 5504.10. If implemented, the proposed rule of origin would apply to U.S. imports from and exports to the NAFTA parties. Section 202(q) of the North American Free Trade Agreement Implementation Act (the Act) authorizes the President, subject to the consultation and layover requirements of section 103 of the Act, to proclaim such modifications to the rules of origin as are necessary to implement an agreement with one or more of the NAFTA countries pursuant to paragraph 2 of section 7 of Annex 300–B of the Agreement. One of the requirements set out in section 103 of the Act is that the President obtain advice from the United States International Trade Commission.

In his letter, the USTR requested that the Commission provide advice on the probable effect of the proposed modification of the NAFTA rule of origin for certain sanitary articles (as described above) on U.S. trade under the NAFTA, on total U.S. trade, and on domestic producers of the affected articles. As requested, the Commission will submit its advice to the USTR by December 20, 2004, and soon thereafter, issue a public version of the report with any confidential business information deleted. Additional information concerning the articles and the proposed modifications can be obtained by accessing the electronic version of this notice at the Commission Internet site (*http://www.usitc.gov*). The current NAFTA rules of origin applicable to U.S. imports can be found in general note 12 of the 2004 HTS (see "General Notes" link at *http://hotdocs.usitc.gov/tariff_chapters_current/toc.html*).

Written Submissions: No public hearing is planned. However, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in this investigation. Submissions should be addressed to the Secretary, United States International Trade Commission,

500 E Street, SW., Washington, DC 20436. To be assured of consideration by the Commission, written statements related to the Commission's reports should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on November 15, 2004. All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 CFR 201.8). Section 201.8 of the rules requires that a signed original (or copy designated as an original) and fourteen (14) copies of each document be filed. In the event that confidential treatment of the document is requested, at least four (4) additional copies must be filed, in which the confidential business information must be deleted (see the following paragraph for further information regarding confidential business information). The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *ftp://ftp.usitc.gov/pub/reports/electronic_filing_handbook.pdf*).

Any submissions that contain confidential business information (CBI) must also conform with the requirements of section 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). Section 201.6 of the rules requires that the cover of the document and the individual pages be clearly marked as to whether they are the ''confidential'' or ''nonconfidential'' version, and that the CBI be clearly identified by means of brackets. All written submissions, except for CBI, will be made available in the Office of the Secretary to the Commission for inspection by interested parties.

The Commission may include some or all of the CBI it receives in the report it sends to the President. However, the Commission will not publish CBI in the public version of the report in a manner that would reveal the operations of the firm supplying the information. The public version will be made available to the public on the Commission's Internet site (*http://www.usitc.gov*).

The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) *http://edis.usitc.gov.* Hearing impaired individuals may obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

NAFTA, rules of origin, textiles, fibers.

By order of the Commission.

Issued: October 28, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–24478 Filed 11–2–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—3–A Sanitary Standards, Inc.

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), 3–A Sanitary Standards, Inc. (''3–A SSI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: 3–A Sanitary Standards, Inc., McLean, VA. The nature and scope of 3–A SSI's standards development activities are: The development, maintenance and publishing of standards for the sanitary design, fabrication, installation and operation of equipment and machinery in the following areas: Vessels; fillers; valves and fittings; pumps and mixers; heat exchangers; conveyors and feeders; instruments; concentrating equipment; farm/raw milk; cheese and butter equipment; process and cleaning systems; plant support systems; materials and materials testing; and Active Pharmaceutical Ingredients.

Additional information may be obtained from Timothy R. Rugh, CAE, Executive Director of 3–A Sanitary Standards, Inc., at (703) 790–0295.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24567 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Air Conditioning Contractors of America Educational Institute, Inc.

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Air Conditioning Contractors of America Educational Institute, Inc. (''ACCA–EI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Air Conditioning Contractors of America Educational Institute, Inc., Arlington, VA. The nature and scope of ACCA–EI's standards development activities are: The development of standards that promote proper design, correct equipment selection and installation, energy efficient operation, proper maintenance and repair of heating, ventilating, air and system balance for optimal performance or operation of the HVACR systems. The goals of standards may include requirements for comfort and well being, design, equipment installation, and maintenance and repair and may include standards that promote optimum comfort, safe and efficient operation at minimal energy utilization, performance or operation or qualification of personnel.

Additional information concerning ACCA–EI can be obtained from Hilary P.

Atkins, Executive Director of ACCA–EI, at (703) 824–8855.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–24565 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Gas Association

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Gas Association (''AGA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of involving the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Gas Association, Washington, DC. The nature and scope of AGA's standards development activities are: (1) Installation and operation of gas piping and equipment on customer premises, (2) gas measurement and metering, (3) gas transmission and distribution piping systems, (4) gas engineering and operating practices, and (5) gas fire prevention and safety.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24557 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—American Welding Society, Inc.

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), American Welding Society, Inc. (''AWS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: American Welding Society, Inc., Miami, FL. The nature and scope of AWS's standards development activities are: The development, maintenance, and publishing of standards in the areas of Metric Practices, Definitions & Symbols, Filler Metals & Allied Products, Computerization of Welding Information, Instrumentation for Welding, Methods of Inspection, Welding Qualification, Mechanical Testing of Welds, Resistance Welding, Thermal Spray, Brazing & Soldering, Oxyfuel Gas Welding & Cutting, Arc Welding & Cutting, Friction Welding, High Energy Beam Welding/Cutting, Structural Welding, Piping & Tubing, Welding Iron Castings, Machinery & Equipment, Railroad Welding, Robotics & Automatic Welding, Aircraft & Aerospace, Food Processing Equipment, Welding in Marine Construction, Automotive Welding, Welding of Sheet Metal, Joining Plastics & Composites, Joining of Metals & Alloys, Personnel & Facilities Qualification and Safety & Health.

Additional Information may be obtained from Andrew Davis, Managing Director of the Technical Services Division of the American Welding Society, (800) 443–9353.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24559 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Automotive Glass Replacement Safety Standards Council

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Automotive Glass Replacement Safety Standards Council (''AGRSS'') has filed notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Automotive Glass Replacement Safety Standards Council, Glen Ellyn, IL. The nature and scope of AGRSS' standards development activities are: To develop, publish and maintain nationally recognized automotive glass replacement safety and related standards. At a minimum, these standards will address procedures, education and product performance for the purpose of enhancing public safety.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–24564 Filed 11–02–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—BDA Administration Corporation D/B/A Blu-ray Disc Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), BDA Administration Corporation D/B/A Blu-ray Disc Association (''BDA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of

business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: BDA Administration Corporation D/B/A Blu-ray Disc Association, Universal City, CA. The nature and scope of BDA's standards development activities are: (1) To establish Blu-ray Disc Formats for those applications that would be in the best interests of consumers and users, including revisions, improvements and enhancements thereto; (2) to organize activities to verify compliance with the Blu-ray Disc Formats, thus enabling the board acceptance of the Blu-ray Disc Formats; (3) to promote the Blu-ray Disc Formats for recording, playback, storage and distribution of large volume content, including high definition content; and (4) to provide useful information to those who are interested in supporting the Blu-ray Disc Formats.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–24563 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cold Formed Parts and Machine Institute

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Cold Formed Parts and Machine Institute (''CFPMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Cold Formed Parts and Machine Institute, Tarrytown, NY. The nature and scope of CFPMI's standards development activities are: development and maintenance of the American National Standard for Rivet Setting Machines. CFPMI is an ANSI accredited Standards Development Organization.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24570 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Compressed Gas Association, Inc.

Notice is hereby given that, on September 17, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Compressed Gas Association, Inc. (''CGA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of business of the standards development organization is: Compressed Gas Association, Inc., Chantilly, VA. The nature and scope of CGA's standards development activities are: the development and promotion of standards for safe and environmentally responsible practices in the industrial and medical gas industry. More than 135 CGA member companies worldwide work together through a committee system to create technical specifications, safety standards, and training and educational materials for the manufacture, storage, transportation and distribution of industrial gases, cryogenic liquids, and related products. CGA's activities encompass industrial, medical and specialty gases in compressed or liquefied form, and a range of gas handling equipment.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–24573 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Consumer Electronics Association

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Consumer Electronics Association (''CEA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Consumer Electronics Association, Arlington, VA. The nature and scope of CEA's standards development activities are: Activities associated with the design and manufacture of consumer electronics (''CE'') products and related services, CE device/service and device/device interoperability and transmission signals that may traverse the demarcation points of telecommunications infrastructures.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24578 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—DSL Forum

Notice is hereby given that, on September 17, 2004, pursuant to Section 6(a) of the National Cooperative

Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), DSL Forum (''DSLF'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: DSL Forum, Fremont, CA. The nature and scope of DSLF's standards development activities are: To support the rapid advancement of end-end network systems employing DSL in a manner that promotes a competitive DSL marketplace. The Corporation's activities will include: Promoting global development of DSL systems technology; identifying global DSL applications and corresponding services; providing global educational services; promoting nationwide and worldwide compatibility and interoperability; encouraging input to appropriate national and international standards bodies; and identifying, selecting, augmenting as appropriate, and publishing DSL—centric equipment specifications drawn from appropriate national and international standards.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24572 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—EOS/ESD Association, Inc.

Notice is hereby given that, on September 10, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), EOS/ESD Association, Inc. (''ESD Association'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: EOS/ESD Association, Inc., Rome, NY. The nature and scope of ESD Association's standards development activities are: The development of test methods and guidelines used for the control of electrical overstress and electrostatic discharge.

Additional information concerning ESD Association's standards development activities may be obtained from Tammy Muldoon at (315) 339–6937.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24566 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Health Level Seven, Inc.

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Health Level Seven, Inc. (''HL7'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Health Level Seven, Inc., Ann Arbor, MI. The nature and scope of HL7's standards development activities are: To provide a comprehensive framework and related standards for the exchange, integration, sharing, and retrieval of electronic health information that supports clinical practice and the management, delivery and evaluation of health services. Specifically, to create flexible, cost effective standards, guidelines, and methodologies to enable healthcare information system interoperability and sharing of electronic health records.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24568 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Institute of Electrical and Electronics Engineers

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Institute of Electrical and Electronics Engineers (''IEEE'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization, and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Institute of Electrical and Electronics Engineers, Piscataway, NJ. The nature and scope of IEEE's standards development activities are: To develop consensus standards through an open process that brings diverse parts of the electrical engineering industry together. Through its portfolio of more than 870 completed standards and over 400 in development, IEEE promotes the electrical engineering process by creating, developing, integrating, sharing and applying knowledge about electro- and information technologies and sciences.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24561 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—InterNational Electrical Testing Association

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), InterNational Electrical Testing Association (''NETA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: InterNational Electrical Testing Association, Morrison, CO. The nature and scope of NETA's standards development activities are: To provide electrical acceptance testing standards and specifications which provide requirements for the testing of newly installed electrical equipment and systems, and to provide electrical maintenance testing standards and specifications which provide requirements for the testing of existing electrical facilities.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24562 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Kitchen Cabinet Manufacturers Association

Notice is hereby given that, on September 15, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Kitchen Cabinet Manufacturers Association (''KCMA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Kitchen Cabinet Manufacturers Association, Reston, VA. The nature and scope of KCMA's standards development activities are: The development of performance and construction standards for kitchen and vanity cabinets and performance standards for fabricated high pressure decorative laminate countertops.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24577 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Mobile Imaging and Printing Consortium, Inc.

Notice is hereby given that, on September 17, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Mobile Imaging and Printing Consortium, Inc. (''MIPC'') has filed written notificationssimultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Mobile Imaging and Printing Consortium, Inc., Escondido, CA. The nature and scope of MIPC's standards development activities are: (a) To promote and support the development and adoption of implementation guidelines relating to the direct printing of images and other content from Mobile Terminal Devices (defined below) to home printers (the ''Deliverables''); for purposes of this notice, ''Mobile Terminal Devices'' means mobile phones (with or without camera features) and other handheld mobile devices with image capture or transfer capabilities and long distance wireless connectivity; (b) to promote such Deliverables and other solutions worldwide to ensure that a broad spectrum of goods and services that are compliant with the Deliverables is developed; (c) to ensure the compliance of goods and services with the Deliverables through the dissemination and promotion of high-quality and unambiguous Deliverables; (d) to promote confidence in products designed in compliance with the Deliverables; (e) to create high customer awareness of, demand for, and confidence in products designed in compliance with Deliverables; (f) to create a variety of printed and/or electronic materials relating to the Deliverables for distribution to members and non-members of the Corporation; (g) to maintain its own Web site; (h) to coordinate marketing activities and create marketing materials relating to the promotion of the Deliverables; (i) to establish and maintain formal relations with (and, as appropriate, leverage off of standards developed by) other standard setting consortia to ensure coherence among the Deliverables and specifications and implementation guidelines of such other organizations; and (j) to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24571 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Multiservice Switching Forum

Notice is hereby given that, on September 20, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Multiservice Switching Forum (''MSF'') filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization

and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is Multiservice Switching Forum, Fremont, CA. The nature and scope of MSF's standards development activities are: developing and promoting implementation agreements that allow open-architecture, multiservice switching systems in the telecommunications industry.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24579 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Multi Housing Council

Notice is hereby given that, on September 17, 2004, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the National Multi Housing Council (''NMHC'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: National Multi Housing Council, Washington, DC. The nature and scope of NMHC's standards development activities are: To develop and promulgate open and voluntary standards for the apartment industry, thereby assisting the members of the industry and their business partners with the electronic exchange of information and enhancing the efficient operation of their businesses.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24576 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—North American Energy Standards Board

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), North American Energy Standards Board (''NAESB'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: North American Energy Standards Board, Houston, TX. The nature and scope of NAESB's standards development activities are: The development and maintenance of voluntary energy industry standards and model business practices.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24558 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Packaging Machinery Manufacturers Institute, Inc.

Notice is hereby given that, on September 14, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the Packaging Machinery Manufacturers Institute, Inc. (''PMMI'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Packaging Machinery Manufacturers Institute, Inc., Arlington, VA. The nature and scope of PMMI's standards development activities are: Safety standards with respect to the construction, care, and use of packaging and packaging-related converting machinery.

Additional information may be obtained from Charles F. Hayes, Director of Technical Services for the Packaging Machinery Manufacturers Institute, Inc.

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24569 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Security Industry Association

Notice is hereby given that, on September 20, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Security Industry Association (''SIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: Security Industry Association, Alexandria, VA. The nature and scope of SIA's standards development

activities are: Standards for the manufacturers of electronic security equipment, including those activities related to the design, production, installation, monitoring, maintenance, and other treatments or aspects of electronic security equipment, including alarm and non-alarm equipment, such as law enforcement response and telecommunication signaling utilizing the Public Switched Telephone Network (PSTN).

Dorothy B. Fountain,

Deputy Director of Operations, Antitrust Division.

[FR Doc. 04–24560 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Storage Networking Industry Association

Notice is hereby given that, on September 16, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), The Storage Networking Industry Association (''SNIA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: The Storage Networking Industry Association, San Francisco, CA. The nature and scope of SNIA's standards development activities are: Identifying interoperability issues and developing solutions for the interoperability of storage and networking systems and technologies; and developing specifications, infrastructure and proposed standards for storage networking systems and technologies.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–24574 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—World Airline Entertainment Association

Notice if hereby given that, on September 15, 2004, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), the World Airline Entertainment Association (''WAEA'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to section 6(b) of the Act, the name and principal place of business of the standards development organization is: World Airline Entertainment Association, McLean, VA. The nature and scope of WAEA's standards development activities are: development of standards and other technical specifications for in-flight airline entertainment and related products.

Dorothy B. Fountain,

Deputy Director of Operations Antitrust Division.

[FR Doc. 04–24575 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: drug questionnaire.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA) 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 67, page 18405 on April 7, 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 December 3, 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) *Title of the Form/Collection:* Drug Questionnaire.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: DEA Form 341. Drug Enforcement Administration, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Applicants for employment with the Drug Enforcement Administration. Other: None. The Drug Enforcement Administration has stated, as a matter of policy, that a past history

of illegal drug use may be disqualifying for employment with DEA. This forms seeks, directly from applicants for positions with DEA, information pertaining to person history of illegal drug use.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* DEA estimates that 30,000 respondents will take 5 minutes to complete the form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates this collection has a public burden of 2,500 hours.

If additional information is required contact: Brenda E. Dyer, Department 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 28, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24486 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-day notice of information collection under review: application for permit to export controlled substances—DEA Form 161.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 3, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

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) *Title of the form/collection:* Application for Permit to Export Controlled Substances—DEA Form 161.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 161. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. Other: None. Abstract: Title 21 CFR 1312.22 requires persons who export controlled substances in Schedules I and II to obtain a permit from DEA. Information is used to issue export permits, exercise control over exportation of controlled substances, and compile data for submission to United Nations to comply with treaty requirements.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that it takes 222 respondents an average of 30 minutes to respond on an as needed basis, submitting 2,444 forms annually.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates that the annual burden for this collection is 1,222 hours.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department 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 28, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24487 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of information collection under review: Registrants' Inventory of Drugs Surrendered—DEA Form 41.

The Department of Justice (DOJ), Drug Enforcement Administration (DEA), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until January 3, 2005. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments, especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Patricia M. Good, Chief, Liaison and Policy Section, Office of Diversion Control, Drug Enforcement Administration, Washington, DC 20537.

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) *Title of the Form/Collection:* Registrants' Inventory of Drugs Surrendered—DEA Form 41.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: DEA Form 41. Office of Diversion Control, Drug Enforcement Administration, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: Not-for-profit institutions, federal government, state, local or tribal government. Abstract: Title 21 CFR 1307.21 requires that any registrant desiring to voluntarily dispose of controlled substances shall list these controlled substances on DEA Form 41 and submit the form to the nearest DEA office. The DEA Form 41 is used to account for destroyed controlled substances, and its use is mandatory.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* DEA estimates that 22,000 respondents respond annually to this collection, averaging 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* DEA estimates the total public burden for this collection to be 11,000 hours annually.

FOR FURTHER INFORMATION CONTACT: Brenda E. Dyer, Department 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 28, 2004.

Brenda E. Dyer,

Department Clearance Officer, Department of Justice.

[FR Doc. 04–24488 Filed 11–2–04; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Apple Jacks Coal Company, Inc.

[Docket No. M–2004–043–C]

Apple Jacks Coal Company, Inc., Box 584, North Tazewell, Virginia 24630 has filed a petition to modify the application of 30 CFR 75.1710–1 (Canopies and cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Mine No. 3 (MSHA I.D. No. 44–06939) located in Dickenson County, Virginia. The petitioner proposes to operate self-propelled electric face equipment without canopies in seam heights of 48 inches or less. The petitioner asserts that application of the existing standard at the Mine No. 3 will result in a diminution of safety to the miners.

2. Maple Creek Mining, Inc.

[Docket No. M–2004–044–C]

Maple Creek Mining, Inc., 981 Route 917, Bentleyville, Pennsylvania 15314 has filed a petition to modify the application of 30 CFR 75.507 (Power connection points) to its High Quality Mine (MSHA I.D. No. 36–08375) located in Washington County, Pennsylvania. The petitioner proposes to use low and medium volt, three phase, alternating current, non-permissible, submersible pump(s) in return and bleeder entries and sealed areas, conditioned upon the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard; pumps will be limited to low or medium voltages; and the pump motor will be maintained under water at all times to isolate it from the mine atmosphere.

3. Consolidation Coal Company

[Docket No. M–2004–045–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364(b) (Weekly examination) to its Blacksville No. 2 Mine (MSHA I.D. No. 46–01968) located in Monongalia County, West Virginia. The petitioner proposes to establish checkpoints in certain areas of the return aircourse due to deteriorating roof conditions. The petitioner will establish checkpoints numbers B–CK–10 and B–CK–11 to measure the quantity and quality of air at the inlet to the affected aircourse, and checkpoint number B–CK–12 to measure the quantity and quality of air at the outlet from the affected aircourse. The petitioner states that the checkpoints will be maintained in safe condition at all times; tests for methane and the quantity of air at each checkpoint will be determined weekly by a certified person; and the certified person will place his/her initials and date in a record book that will be kept on the surface and made available for inspection by interested persons. The certified person will also place his/her initials, and date on a date board at the checkpoint sites. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via Federal eRulemaking Portal: *http://www.regulations.gov;* E-mail: *Comments@MSHA.gov;* Fax: (202) 693–9441; or Regular Mail/Hand Delivery/Courier: Mine Safety and Health Administration, Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2350, Arlington, Virginia 22209. All comments must be postmarked or received in that office on or before December 3, 2004. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 28th day of October 2004.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 04–24523 Filed 11–2–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection Under OMB Review

AGENCY: National Aeronautics and Space Administration (NASA).

[Notice: (04–117)]

ACTION: Notice of information collection under OMB review.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the

general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 30 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Desk Officer for NASA; Office of Information and Regulatory Affairs; Room 10236; New Executive Office Building; Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Kathleen Shaeffer, Acting NASA Reports Officer, NASA Headquarters, 300 E Street SW., Mail Code V, Washington, DC 20546, (202) 358–1230, *kshaeff1@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Aeronautics and Space Administration (NASA) is requesting Office of Management and Budget approval for a new information collection which will be used by NASA for the purpose of evaluating and selecting applicants for the NASA Science and Technology Scholarship Program (STSP). The NASA STSP's establishment was authorized by the NASA Workforce Flexibility Act of 2004.

II. Method of Collection

Collection of information will be entirely through an on line web-based questionnaire in order to minimize respondent burden.

III. Data

Title: NASA Science and Technology Scholarship Program (STSP) Application.

OMB Number: 2700–XXXX.

Type of review: New collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 2,500.

Estimated Time Per Response: 1.5 hours.

Estimated Total Annual Burden Hours: 3,750.

Estimated Total Annual Cost: $0.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

John W. McManus,

Deputy Chief Information Officer.

[FR Doc. 04–24449 Filed 11–2–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (04–118)]

NASA Advisory Council; Notice of Establishment Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App Section 1 *et seq*

Agency: National Aeronautics and Space Administration (NASA). The Administrator of the National Aeronautics and Space Administration has determined that the establishment of an Exploration Systems Advisory Committee is necessary and in the public interest in connection with the performance of duties imposed upon NASA by law. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Name of Committee: Exploration Systems Advisory Committee.

Purpose and Objective: The Committee will advise NASA Administrator on matters related to Exploration Systems. The Committee will draw on the expertise of its members and other sources to provide its advice and recommendations to the Agency. The Committee will hold meetings and make site visits as necessary to accomplish their responsibilities. The Committee will function solely as an advisory board and will comply fully with the provisions of the Federal Advisory Committee Act.

Balanced Membership Plans: The Committee will consist of non-NASA employees. In addition, there may be associated members selected for Committee, Subcommittees or Panels. The Committee may also request appointment of consultants to support specific tasks. Members of the Committee, Subcommittee and Panels will be chosen from among industry, academia, and government with recognized knowledge and expertise in fields relevant to Exploration Systems. Total membership will reflect a balanced view.

Duration: Continuing.

Responsible NASA Official: Dr. Terri Lomax, Explorations Systems Mission Directorate, Office of Research, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546, telephone (202) 358–1418.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 04–24450 Filed 11–2–04; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before December 3, 2004 to be assured of consideration.

ADDRESSES: Comments should be electronically mailed to: *Daniel_J._Costello@omb.eop.gov*; or faxed to 202–395–5806, Attn: Mr. Daniel Costello, Desk Officer for NARA.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–837–1694 or fax number 301–837–3213.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on August 17, 2004 (69 FR 51109). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper

performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives Experience—Visitors Survey.

OMB number: 3095–00XX.

Agency form number: N/A.

Type of review: Regular.

Affected public: Individuals who visit the National Archives Experience in Washington, DC.

Estimated number of respondents: 4,200.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when an individual visits the National Archives Experience in Washington, DC).

Estimated total annual burden hours: 700 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this voluntary data collection is to (1) provide baseline data concerning the effectiveness of the National Archives Experience and its several venues in enhancing visitors' understanding that records matter, (2) measure customer satisfaction with the NAE, and (3) identify additional opportunities for improving the customers' experience.

Dated: October 28, 2004.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 04–24441 Filed 11–2–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notices at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before December 20, 2004. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: records.mgt@nara.gov.

Fax: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency that submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Paul M. Wester, Jr., Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 837–3120. E-mail: *records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. National Archives and Records Administration, Government-wide (N1–GRS–04–05, 1 item, 1 temporary item). Revision to General Record Schedule 23, Item 7, which covers records of short term interest (including e-mail messages) which have minimal or no documentary or evidential value. The revisions reduce the retention period of these records, which were previously approved for disposal, and also clarify the series description.

Dated: October 28, 2004.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. 04–24501 Filed 11–2–04; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval to Revise and Extend an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request clearance of this collection. In accordance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 1 year.

DATES: Written comments on this notice must be received by January 3, 2005, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Contact Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, VA 22230; telephone (703) 292–7556; or send e-mail to *splimpto@nsf.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. You also may obtain a copy of the data collection instrument and instructions from Ms. Plimpton.

SUPPLEMENTARY INFORMATION:

Title of Collection: Follow-up Research on Undergraduate Research Opportunities (URO–2).

OMB Number: 3145–0121.

Expiration Date of Approval: April 30, 2006.

Type of request: Intent to seek approval to revise and extend an information collection for one year.

Abstract: Follow-up Research on Undergraduate Research Opportunities (URO–2).

Proposed Project: The National Science Foundation (NSF) manages a number of programs that provide meaningful research experiences for undergraduate students. This suite of programs includes: Research Experiences for Undergraduates (REU), both the Site and Supplement components; Research in Undergraduate Institutions (RUI); the undergraduate research components in several of NSF's large research centers programs, *e.g.,* Engineering Research Centers (ERC) Programs, Science and Technology Centers (STCs); and several institution-wide resources development programs in which undergraduate research experiences are often one component.

These Programs provide a wide range of US undergraduate students with opportunities to conduct hands-on research under the mentorship of graduate students, postdoctoral fellows, and faculty in various types of higher education institutions, including small liberal arts colleges, minority-serving institutions, research universities, as well as non-profit institutions in which science or engineering research is conducted.

The purpose of the proposed evaluation is to follow-up on undergraduate participants in research experiences supported by NSF who were surveyed in 2003. The 2003 survey collected information about why participants chose to participate in research, the nature of the research activities, effects of research on participants knowledge, skills, confidence, awareness, and academic and career interests and aspirations. The proposed survey will provide information about participants' current academic and employment status (in 2003, most of the respondents were in their senior year of college) and participants' current perceptions of the effects of their undergraduate research experiences on their career and academic decisions. The survey database will be linked to that of the 2003 survey to assess differences on a number of dimensions, including NSF program, academic major, type of academic institution, and sex and race/ethnicity of the participant.

Use of the information: NSF and others who design undergraduate research programs will be able to use the information to help design programs that meet the needs of different kinds of students in different kinds of settings.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 30 minutes per response.

Respondents: Individuals.

Estimated Number of Respondents: 2900.

Estimated Total Annual Burden on Respondents: 1450 hours—2900 respondents at 30 minutes each.

Frequency of response: One time.

Comments: 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 on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond.

Dated: October 29, 2004.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 04–24533 Filed 11–2–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company; South Texas Project, Unit No. 1 and 2; Exemption

1.0 Background

The STP Nuclear Operating Company (STPNOC or the licensee) is the holder of Facility Operating License Nos. NPF–76 and NPF–80, which authorize operation of South Texas Project (STP), Units 1 and 2, respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of two pressurized water reactors located in Matagorda County, Texas.

2.0 Request/Action

Title 10 of the Code of Federal Regulations (10 CFR) part 50, section 50.44, specifies requirements for the control of hydrogen gas generated after a postulated loss-of-coolant accident (LOCA). Section 50.46 of 10 CFR contains acceptance criteria for the emergency core cooling system (ECCS) for reactors with zircaloy or ZIRLO™ clad fuel. Appendix K to 10 CFR part 50 requires, among other things, that the Baker-Just equation be used to predict the rates of energy release, hydrogen concentration, and cladding oxidation from the metal-water reaction. Of these three regulations (10 CFR 50.44, 50.46, and Appendix K to 10 CFR part 50), 10 CFR 50.44 is the only one that has undergone considerable changes relative to its previous version, changes that became effective on January 1, 2004.

Prior to that date, 10 CFR 50.44 specified requirements for the control of hydrogen gas generated after a postulated LOCA for reactors with zircaloy or ZIRLO™ clad fuel. The new regulation in 10 CFR 50.44 no longer identifies zircaloy or ZIRLO™ as requisite fuel cladding, nor does it identify the LOCA or 10 CFR 50.46 as bases. Because the intent of this exemption request relates solely to the specific types of cladding material specified in these regulations, no exemption is needed from the requirements of 10 CFR 50.44. As written, zircaloy or ZIRLO™ cladding continues to be the requisite fuel cladding that is explicitly identified in 10 CFR 50.46 and Appendix K to 10 CFR part 50. Therefore, an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50 is needed in order to irradiate up to eight lead test assemblies (LTAs) comprised of low tin (Optimized) ZIRLO™ at the STP, Units 1 and/or 2.

In summary, in a letter dated May 27, 2004 (Reference 1)[1], as supplemented by letter dated August 23, 2004 (Reference 2)[2], STPNOC requested an exemption from 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors''; 10 CFR 50.46, ''Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors''; and Appendix K to 10 CFR part 50, ''ECCS Evaluation Models,'' which would allow irradiation of up to eight LTAs containing fuel rods, guide tubes, and instrumentation tubes fabricated with Optimized ZIRLO™. Optimized ZIRLO™ is not within the licensing basis of the approved ZIRLO™ as described in WCAP–12610–P–A (Reference 3)[3] for STP, Units 1 and 2. Irradiation of up to eight Optimized ZIRLO™ LTAs in STP Units 1 and/or 2 will provide data on fuel and material performance to support future licensing activities.

3.0 Discussion

The staff has previously reviewed exemption requests for LTA programs comprised of fuel with Optimized ZIRLO™ cladding material manufactured by Westinghouse Electric Company (Westinghouse). Exemptions from 10 CFR 50.46 and Appendix K to 10 CFR part 50 for use of Optimized ZIRLO™ have been issued by the NRC staff for Millstone, Unit 3 (Reference 4)[4], Catawba Station (Reference 5)[5], and Calvert Cliffs, Unit 2 (Reference 6)[6].

3.1 Material Evaluation

3.1.1 Fuel Mechanical Design

Tin is a solid solution strengthener and α-phase stabilizer present entirely in the base α-phase zirconium crystalline structure. Potential impacts of a reduced tin content on material properties include (1) a reduced tensile strength, (2) an increased thermal creep rate, (3) an increased irradiation growth rate, (4) a reduced $\alpha \leftrightarrow \alpha+\beta$ phase transition temperature, and (5) an improved corrosion resistance. The slight reduction in tin content will not affect the size, shape, or distribution of any second phase or inter-metallic precipitates nor the overall microstructure of this developmental zirconium alloy. With a consistent microstructure, Optimized ZIRLO™ will exhibit material characteristics very similar to that of ZIRLO™.

In Reference 2, the licensee provided information concerning their post-irradiation examination plan. In Reference 2, the licensee stated that their plan would be consistent with those of the other Optimized ZIRLO™ irradiation programs currently underway. As with the post-irradiation examinations involved in the other irradiation programs, the detailed examinations in the licensee's Optimized ZIRLO™ irradiation program will be based on the fuel duty, cycle performance, need for specific information, and time available on site during refueling outages. The measured parameters will include rod profilometry, rod wear, assembly and rod growth, assembly bow, grid cell dimensions, and oxide thickness. As a result of these post-irradiation examinations, any negative aspects of the Optimized ZIRLO™ performance, including the potential impacts of reduced tin content identified above, will be identified and resolved. Furthermore, significant deviations from model predictions will be reconciled.

The fuel rod burnup and fuel duty experienced by the Optimized ZIRLO™ LTAs in STP, Units 1 and 2, will remain well within the operating experience base and applicable licensed limits for ZIRLO™.

Utilizing currently approved fuel performance and fuel mechanical design models and methods, the STP, Units 1 and 2, and Westinghouse will perform cycle-specific reload evaluations to ensure that the Optimized ZIRLO™ LTAs satisfy design criteria.

Based upon the irradiation experience of LTAs with ZIRLO™ of a similar low tin content, expected performance due to similar material properties, and an extensive LTA post-irradiation examination program aimed at qualifying model predictions, the NRC staff finds the Optimized ZIRLO™ LTA mechanical design acceptable for STP, Units 1 and 2.

3.1.2 Core Physics and Non-LOCA Safety Analysis

The STP, Units 1 and 2, exemption request relates solely to the specific types of cladding material specified in the regulations. Due to similar material properties, any impact of Optimized ZIRLO™ on the safety analysis models and methods is expected to be minimal. Utilizing currently approved core physics, core thermal-hydraulics, and non-LOCA safety analysis models and methods, the licensee and Westinghouse will perform cycle-specific reload evaluations to ensure that the LTAs satisfy design criteria. Fuel management guidelines will require that LTAs be placed in non-limiting core locations. In Reference 2, the licensee described how the power peaking margin would be used to ensure that LTAs will not be limiting.

Based upon the use of approved models and methods, expected material performance, and the placement of LTAs in non-limiting core locations, the NRC staff finds that the irradiation of up to eight Optimized ZIRLO™ LTAs in STP, Units 1 and 2, will not result in unsafe operation nor violation of specified acceptable fuel design limits. Furthermore, in the event of a design-basis accident, these LTAs will not

[1] Letter from T.J. Jordan (South Texas) to U.S. Nuclear Regulatory Commission, ''The South Texas Project, Units 1 and 2 Request for Exemption Pursuant to 10 CFR 50.12 Exemption to the Fuel Cladding Material Specified in 10 CFR 50.44, 10 CFR 50.46, and 10 CFR 50 Appendix K,'' Docket Nos. STN 50–498 and STN 50–499, May 27, 2004, ADAMS Accession No. ML041590200.

[2] Letter from T.J. Jordan (South Texas) to U.S. Nuclear Regulatory Commission, ''The South Texas Project, Units 1 and 2 Response to Request for Additional Information Regarding Exemption to Use a Low Tin Cladding,'' Docket Nos. STN 50–498 and STN 50–499, August 23, 2004, ADAMS Accession No. ML042430272.

[3] Westinghouse Electric Company Topical Report, WCAP–12610–P–A, ''VANTAGE+ Fuel Assembly Reference Core Report,'' April 1995.

[4] Letter from U.S. Nuclear Regulatory Commission to D.A. Christian (Dominion), ''Millstone Power Station, Unit No. 3, Exemption from the Requirements of Title 10 of the Code of Federal Regulations (10 CFR) Part 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K,'' Docket No. 50–423, February 11, 2004, ADAMS Accession No. ML040070238.

[5] Letter from U.S. Nuclear Regulatory Commission to D.M. Jamil (Duke), ''Catawba Nuclear Station, Units 1 and 2 RE: Exemption from the Requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR 50 Appendix K,'' August 4, 2003, ADAMS Accession No. ML032060473.

[6] Letter from U.S. Nuclear Regulatory Commission to P.E. Katz (Constellation), ''Calvert Cliffs Nuclear Power Plant, Unit No. 2,'' December 3, 2002, ADAMS Accession No. ML022540002.

promote consequences beyond those currently analyzed.

3.2 ECCS Performance and Exemptions

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or own initiative, grant exemptions from the requirements of 10 CFR part 50 when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) special circumstances are present. Special circumstances are present if application of the regulation in the particular circumstances would not serve the underlying purpose of the rule, or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46 is to establish acceptance criteria for ECCS performance. In Addendum 1 to WCAP–12610–P–A (Reference 7)[7], Westinghouse demonstrates that the material properties of Optimized ZIRLO™ are similar to those of the currently approved ZIRLO™ cladding and that the ECCS acceptance criteria for ZIRLO™ clad fuel are also applicable to fuel with Optimized ZIRLO™ cladding. Ring compression tests performed by Westinghouse on Optimized ZIRLO™ demonstrate an acceptable retention of ductility up to 10 CFR 50.46 limits of 2200 °F peak cladding temperature and 17 percent total oxidation. Utilizing currently approved LOCA models and methods, Westinghouse will perform cycle-specific reload evaluations to ensure that the Optimized ZIRLO™ LTAs satisfy 10 CFR 50.46 acceptance criteria.

Paragraph I.A.5 of Appendix K to 10 CFR part 50 states that the rates of energy, hydrogen concentration, and cladding oxidation from the metal-water reaction shall be calculated using the Baker-Just equation. Since the Baker-Just equation presumes the use of zircaloy clad fuel, strict application of the rule would not permit use of the equation for the Optimized ZIRLO™ LTA cladding for determining acceptable fuel performance. Metal-water reaction tests performed by Westinghouse on Optimized ZIRLO™ (documented in Appendix B of Addendum 1 to WCAP–12610–P–A) demonstrate conservative reaction rates relative to the Baker-Just equation. Thus, application of Appendix K, Paragraph I.A.5, in these circumstances, is not necessary for the licensee to achieve the underlying purpose of the regulation.

Based upon the results of metal-water reaction tests and ring-compression tests, which ensure the applicability of ECCS models and acceptance criteria and the use of approved LOCA models to ensure that the Optimized ZIRLO™ LTAs satisfy 10 CFR 50.46 acceptance criteria, the NRC staff finds it acceptable to grant an exemption from the requirements of 10 CFR 50.46 and Appendix K to 10 CFR part 50 for the use of up to eight LTAs in STP, Units 1 and 2.

3.3 Special Circumstances

In summary, the NRC staff has reviewed the licensee's request for an exemption to allow up to eight LTAs containing fuel rods, guide thimble tubes, and instrumentation tubes fabricated with Optimized ZIRLO™ to be used in STP, Units 1 and 2. Based on the NRC staff's evaluation, as set forth above, the NRC staff considers that granting the proposed exemption will not defeat the underlying purpose of 10 CFR 50.46, or Appendix K to 10 CFR part 50. Accordingly, special circumstances, are present pursuant to 10 CFR 50.12(a)(2)(ii).

3.4 Other Standards in 10 CFR 50.12

The NRC staff reviewed information provided by the licensee in References 1 and 2 to support the exemption request, and concluded that the use of Optimized ZIRLO™ would satisfy 10 CFR 50.12(a) as follows:

(1) The requested exemption is authorized by law:

No law precludes the activities covered by this exemption request. The Commission, based on technical reasons set forth in rulemaking records, specified the specific cladding materials identified in 10 CFR 50.46 and 10 CFR part 50, Appendix K. Cladding materials are not specified by statute.

(2) The requested exemption does not present an undue risk to the public health and safety. As stated by the licensee in Reference 1:

> The lead test assembly safety evaluation will ensure that these acceptance criteria are met following insertion of the assemblies containing Optimized ZIRLO™ material. Fuel assemblies using Optimized ZIRLO™ cladding will be evaluated using NRC-approved analytical methods and will address the changes in the cladding material properties. The safety analysis for the South Texas Project is supported by the applicable technical specifications. The South Texas Project reload cores containing Optimized ZIRLO™ cladding will continue to be operated in accordance with the operating limits specified in the technical specifications. Lead test assemblies using Optimized ZIRLO™ cladding will be placed in non-limiting core locations. Therefore, this exemption will not pose an undue risk to public health and safety.

The NRC staff has evaluated these considerations as set forth in Section 3.1 and 3.2 of this Exemption. For the reasons set forth in Sections 3.1 and 3.2, the NRC staff concludes that Optimized ZIRLO™ may be used as a cladding material for up to eight LTAs to be placed in non-limiting core locations in STP, Units 1 and 2, and that an exemption from the requirements of 10 CFR 50.46 and 10 CFR part 50, Appendix K, does not pose an undue risk to the public health and safety.

(3) The common defense and security are not affected and, therefore, not endangered by this exemption.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants STPNOC an exemption from the requirements of 10 CFR part 50, Appendix K and Section 50.46, for the use of up to eight LTAs containing Optimized ZIRLO™ in STP, Units 1 and 2, up to a lead rod average burnup of 62,000 megawatt days per metric ton of uranium.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (69 FR 45352).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 04–24493 Filed 11–2–04; 8:45 am]

BILLING CODE 7590–01–P

[7] Westinghouse Electric Company Topical Report, Addendum 1 to WCAP–12610–P–A and CENPD–404–P–A, ''Optimized ZIRLO'', February 2003.

NUCLEAR REGULATORY COMMISSION

Draft Appendix C (DG–1138) to Regulatory Guide 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities,'' Workshop

The U.S. Nuclear Regulatory Commission (NRC) has issued draft Appendix C, ''NRC Staff Position on ANS External Hazards PRA Standard'' in August 2004. This Appendix will be

part of Regulatory Guide 1.200, ''An Approach for Determining the Technical Adequacy of Probabilistic Risk Assessment Results for Risk-Informed Activities'' which was issued for trial use. The Appendix C was issued for public comment on August 31, 2004, and is available under ADAMS Accession Number ML042430314. Revision 1 to RG 1.200, which will include a final draft Appendix C, will be issued next year for public comment. Regulatory Guides (RGs) are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

This draft Appendix C is being developed to provide the staff's preliminary position on the American Nuclear Society, (ANS) Standard, External-Events Probabilistic Risk Assessment (PRA) Methodology. This draft Appendix C has not received complete staff approval and does not represent an official NRC staff position. It is the NRC's intent to update Appendix C when a revised ANS standard on external events is published. Therefore, if a revision of the current ANS standard impacts the staff position, this Appendix C will be revised.

The NRC will conduct a workshop on November 9, 2004, to be held in room O4B6 at NRC headquarters, 11545 Rockville Pike, Rockville, Maryland. The purpose of the workshop is to facilitate the comment process. In the workshop, the staff will discuss the staff's response to the public comments received and the basis for the staff's position, and answer questions. A preliminary agenda is attached. The staff is also requesting comments on the following general issues and two specific issues. The general issues are:

• The intent was that the ANS standard be seamless with the American Society of Mechanical Engineers (ASME) PRA standard for internal events. However, this has not been achieved for the following reasons:

In the ASME Standard, the word ''shall'' is only used in high level requirements, and permissive words such as ''should'' or ''may'' are not used in any requirements. The ANS Standard on external-events uses permissive words in both high level and supporting requirements. Permissive words are not to be used because they cannot be used to define a minimum requirement.

The ANS Standard interprets the use of supporting requirements that cut across capability categories in a different manner from the ASME Standard (see discussion in Section 1.4 of the ANS Standard). In the ASME Standard, a requirement that is the same for more than one capability category, is to be interpreted as a pass/no-pass requirement with no requirement to allocate a capability category.

♦ The organization of the ANS Standard is different from that of the ASME Standard. In the ASME Standard the applications chapter is Chapter 3, whereas in the ANS Standard it is Chapter 6.

♦ Some definitions are not consistent with those in the ASME Standard.

• The staff considers the use of explanatory notes is helpful in principle. However, several of the notes contain what the staff interprets as requirements (*see* example, SR WIND–A1).

• The staff has identified several missing supporting requirements. These include, for each of the hazards, requirements to identify the Structures Systems and Components (SSCs) that are critical to plant safety, SSCs that are vulnerable to the hazard being evaluated, identification of specific failure modes, and identification of the modification of PRA logic to model these failures.

In addition to these general issues, there are two specific issues on which the staff requests comment.

• Section 3.4 of the ANS Standard addresses screening of external hazards. In Section 3.4.2, three fundamental (sic) quantitative screening criteria are introduced, that focus on core damage frequency (CDF). The last paragraph recognizes that large early release frequency (LERF) should also be considered in the screening but does not suggest additional requirements. One approach is to lower the numerical criteria (*e.g.*, in REQ.EXT–C1) to result in screening at a CDF of 1E–07 rather than 1E–06. Is this an acceptable approach, or are there alternative approaches based on a more qualitative approach dealing with the releases?

• Appendix D in the ANS Standard is a nonmandatory appendix that provides guidance on uses of a seismic margins assessment with enhancements. The seismic margin approach, while can be used for certain applications, is not a PRA. Since this standard is providing requirements for an external events PRA, the staff takes objection to this appendix. The staff believes the appropriate place to provide its position on this appendix would be in the NUREG being prepared by the Office of Nuclear Regulatory Research addressing the use of non-PRA methods in risk-informed decision-making. Is this an appropriate strategy?

For information about the draft Appendix C and the workshop, contact Mr. A. Singh at (301) 415–0250; e-mail *axs3@NRC.GOV.*

Although a time limit is given for comments on this draft Appendix C, 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.

Authority: (5 U.S.C. 552(a)).

Dated at Rockville, Maryland, this 26th day of October 2004.

For the Nuclear Regulatory Commission.

Charles E. Ader,

Director, Division of Risk Analysis and Applications, Office of Nuclear Regulatory Research.

Public Workshop on Draft Appendix C ''NRC Staff Regulatory Position on ANS External Hazards PRA Standard'' to Regulatory Guide 1.200 for Trial Use ''An Approach for Determining the Technical Adequacy of Probabalistic Risk Assessment Results for Risk Informed Activities''

November 9, 2004—10 a.m.–3 p.m. Room O–4B6

Preliminary Agenda

10 a.m.–10:15 a.m.
Introduction—NRC
10:15 a.m.–10:30 a.m.
Overview of Appendix C—NRC
10:30 a.m.–11 a.m.
Overall, general staff's response to public comments
11 a.m.–12 Noon
Detailed discussion on specific Comments
12 Noon–1 p.m.
LUNCH
1 p.m.–2 p.m.
Detailed discussion (cont'd)
2 p.m.–2:45 p.m.
Open Discussion
2:45 p.m.–3 p.m.
Wrap-up
3 p.m.
ADJOURN

[FR Doc. 04–24494 Filed 11–2–04; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon written request, copies available from: Securities and Exchange

Commission, Office of Filings and Information Services,Washington, DC 20549.

Extension: Form CB, OMB Control No. 3235–0518, SEC File No. 270–457

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form CB (OMB Control No. 3235–0518; SEC File No. 270–457) is a tender offer statement filed in connection with a tender offer for a foreign private issuer. This form is used to report an issuer tender offer conducted in compliance with Exchange Act Rule 13e–4(h)(8) and a third-party tender offer conducted in compliance with Exchange Act Rule 14d–1(c). It also is used by a subject company pursuant to Exchange Act Rule 14e–2(d). Approximately 200 respondents file Form CB annually at an estimated .5 hours per response for a total annual burden of 100 hours. It is estimated that 25% of the total burden (25 reporting burden hours) is prepared by the filer. The remaining 75% of the burden hours is prepared by outside counsel.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (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 respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549.

October 27, 2004.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2987 Filed 11–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26645; File No. 812–13046]

Asset Alliance Advisors, Inc. et al.; Notice of Application and Temporary Order

October 28, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Temporary order and notice of application under section 9(c) of the Investment Company Act of 1940 (''Act'').

Summary of Application: Alternative Investment Partners, LLC (''AIP'') and Trust Advisors, LLC (''TA'') have received a temporary order exempting them from section 9(a) of the Act with respect to an injunction entered against Beacon Hill Asset Management LLC (''BHAM'') on October 28, 2004, until the Commission takes final action on an application for a permanent order. Applicants also have requested a permanent order.

Applicants: Asset Alliance Advisors, Inc., (''Advisor''), Asset Alliance Corporation (''AAC''), AIP, and TA (together, the ''Applicants'').[1]

Filing Dates: The application was filed on November 26, 2003 and amended on October 28, 2004.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on November 22, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: Advisor, AAC, AIP, and TA, 800 Third Avenue, New York, New York 10022.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Annette Capretta, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Advisor, a Delaware corporation, intends to serve as investment adviser to BTOP50 CTA Index Fund (the ''Fund''), a newly formed investment company that has registered as a closed-end management investment company under the Act and has not yet commenced operations. The Advisor is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act'') and is registered with the U. S. Commodity Futures Trading Commission and the National Futures Association as a commodity pool operator and a commodity-trading adviser. AIP is a Delaware limited liability company registered as an investment adviser under the Advisers Act. AIP serves as the investment adviser to Alpha Hedged Strategies Fund (''Alpha Fund''), which is a series of AIP Alternative Strategies Funds, an open-end management investment company registered under the Act. TA, a Delaware limited liability company, is registered as an investment adviser under the Advisers Act and serves as a research consultant to AIP and to Alpha Fund pursuant to an advisory contract. AAC wholly owns Asset Alliance Holding Corporation, which wholly owns the Advisor, owns 75% of AIP, and owns 50% of TA. AAC also indirectly owns a 50% equity interest in BHAM.

2. On October 28, 2004, the U.S. District Court for the Southern District of New York entered an order of injunction and other relief against BHAM (''Permanent Injunction'') in a matter brought by the Commission (the ''Action'').[2] The transactions that are the

[1] Applicants request that any permanent order granted pursuant to the application also apply to any other company that is controlled by AAC within the meaning of section 2(a)(9) of the Act, except for BHAM and any company that is an affiliated person of BHAM by reason other than the company's being an affiliated person of AAC (together with Applicants, the ''Covered Companies'').

[2] *Securities and Exchange Commission* v. *Beacon Hill Asset Management, LLC,* Case No. 02cv8855 (S.D.N.Y., filed Nov. 7, 2002). The U.S. District Court previously entered a preliminary injunction against BHAM enjoining BHAM from violating section 206(2) of the Advisers Act. *Securities and Exchange Commission* v. *Beacon Hill Asset Management, LLC,* Stipulation of Order Granting Preliminary Injunction and Other Relief, Case No. 02cv8855 (S.D.N.Y., Nov. 13, 2002) (''Preliminary Injunction''). On December 18, 2002, AIP and TA received a permanent order exempting them from

Continued

subject of the Action involved the alleged improper valuations of certain unregistered investment funds managed by BHAM, resulting in BHAM's alleged violation of the Federal securities laws. The Permanent Injunction enjoined BHAM, directly or through its agents, servants, employees, and attorneys from violating sections 17(a)(1), (2) and (3) of the Securities Act of 1933, section 10(b) of the Securities Exchange Act of 1934 and rule 10b-5 thereunder, and sections 206(1), (2) and (3) of the Advisers Act.

Applicants' Legal Analysis

1. Section 9(a)(2) of the Act, in relevant part, prohibits a person who has been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of a security from acting, among other things, as an investment adviser or depositor of any registered investment company or a principal underwriter for any registered open-end investment company, registered unit investment trust, or registered face-amount certificate company. Section 9(a)(3) of the Act makes the prohibition in section 9(a)(2) applicable to a company any affiliated person of which has been disqualified under the provisions of section 9(a)(2). Section 2(a)(3) of the Act defines ''affiliated person'' to include any person directly or indirectly controlling, controlled by, or under common control, with the other person. Applicants state that, taken together, sections 9(a)(2) and 9(a)(3) have the effect of precluding them and any other company of which BHAM is an affiliated person, including any other subsidiary of AAC, from serving as investment adviser for any registered investment company or as principal underwriter for any registered open-end investment company.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicants, are unduly or disproportionately severe or that the applicants' conduct has been such as not to make it against the public interest or the protection of investors to grant the application. Applicants have filed an application pursuant to section 9(c) of the Act requesting temporary and permanent orders exempting them from the provisions of section 9(a) of the Act with respect to the Permanent Injunction.

3. Applicants state that the prohibitions of section 9(a) as applied to them would be unduly and disproportionately severe and that the conduct of Applicants has been such as not to make it against the public interest or the protection of investors to grant the exemption from section 9(a). Applicants state that none of their current or former officers, directors, or employees participated in or had any knowledge of the conduct underlying the Action. Applicants have not been the subject of any federal or state enforcement or other administrative or judicial disciplinary proceeding, nor has any of the Applicants been named as a defendant in any other action relating to the securities laws, except that AAC has been named as a defendant in three actions brought by investors in the unregistered investment funds formerly managed by BHAM.[3]

4. Applicants state that the inability of AIP and TA to continue providing advisory services to the Alpha Fund would result in the Alpha Fund and its shareholders facing potentially severe hardships. Additionally, Applicants assert that if they were barred from providing investment advisory services to the Alpha Fund and other registered investment companies in the future, the effect on their businesses and employees would be severe.

5. Applicants assert that the prohibition also would have a significant effect on the Advisor's business and employees. The Advisor has identified registered investment companies as an area in which it wishes to participate and has committed resources for that purpose, including engaging a portfolio manager and a financial, accounting and regulatory officer for the Fund.

6. Applicants state that at the organizational meeting for the Fund, the Advisor discussed with the Fund's board of directors (''Board''), including the directors who are not interested persons as that term is defined in section 2(a)(19) of the Act, the BHAM situation, AAC's response to it, the Action and the requested exemptive order. Applicants state that the Board approved the investment management agreement with the Advisor, subject to the grant of the exemptive relief and requested a further update at the next Board meeting. Finally, Applicants state that the Advisor has provided and will continue to provide the Fund with all information concerning the Action and the exemptive application necessary for the Fund to fulfill its disclosure and other obligations under the federal securities laws.

7. AIP and TA will distribute written materials, including an offer to meet in person to discuss the materials, to the board of directors of the Alpha Fund regarding the Action and the reasons they believe relief pursuant to section 9(c) is appropriate. AIP and TA will provide the Alpha Fund with all information concerning the Action and the exemptive application necessary for the Alpha Fund to fulfill its disclosure and other obligations under the federal securities laws.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Any temporary exemption granted pursuant to the application shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any Commission investigation of, or administrative proceedings involving or against, Applicants or their affiliated persons, including without limitation, the consideration by the Commission of a permanent exemption from section 9(a) of the Act requested pursuant to the application or the revocation or removal of any temporary exemptions granted under the Act in connection with the application.

Temporary Order

The Commission has considered the matter and finds that Applicants have made the necessary showing to justify granting a temporary exemption.

Accordingly,

It is hereby ordered, pursuant to section 9(c) of the Act, that AIP and TA are granted a temporary exemption from the provisions of section 9(a), effective forthwith, solely with respect to the Permanent Injunction, subject to the condition in the application, until the date the Commission takes final action on the application for a permanent order.

By the Commission.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2990 Filed 11–2–04; 8:45 am]

BILLING CODE 8010–01–P

section 9(a) of the Act with respect to the Preliminary Injunction solely so they could continue providing services to the Alpha Fund. Alternative Investment Partners, LLC and Trust Advisors, LLC, Investment Company Release No. 25850 (Dec. 18, 2002).

[3] The actions were brought against BHAM, AAC, and others, and allege that AAC, as a control person of BHAM, aided and abetted BHAM's securities law violations.

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–26644; File No. 812–13080]

Pacific Life Insurance Company, et al.; Notice of Application

October 28, 2004.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for an amended order pursuant to Section 6(c) of the Investment Company Act of 1940 (the ''1940 Act'') granting exemption from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act, and Rule 22c–1 thereunder.

Applicants: Pacific Life Insurance Company (''Pacific Life''), Separate Account A of Pacific Life (''Pacific Separate Account A''), Pacific Select Variable Annuity Separate Account of Pacific Life (''PSVA Separate Account''), Pacific Life and Annuity Company (''PL&A'') (together with Pacific Life and any other life insurance company that is a successor in interest to Pacific Life or PL&A, the ''PL Insurers''), Separate Account A of PL&A (''PL&A Separate Account A) (together with Pacific Separate Account A and PSVA Separate Account, and any other separate account of PL Insurers supporting variable annuity contracts, the ''Separate Accounts''), and Pacific Select Distributors (''PSD'') (together with the PL Insurers and the Separate Accounts, the ''Applicants'').

Filing Date: The application was filed on April 30, 2004, and amended and restated on August 20, 2004.

Summary of Application: Applicants seek an amended order to permit, under specified circumstances, (i) the recapture of certain credit enhancements (''Credit Enhancements'') applied to the ''Contract Value'' (as defined herein) of Contractholders [1] under: (a) Pacific Value variable annuity, a flexible premium deferred variable annuity contract that PL&A issues through PL&A Separate Account A (''PL&A Pacific Value''), (b) Pacific Value variable annuity, a flexible premium deferred variable annuity contract that Pacific Life issues through Pacific Separate Account A (''Pacific Value'') and (c) other Variable Contracts and any Future Variable Contracts offered by the PL Insurers that would be funded by a Separate Account or a separate account that will be established in the future by a PL Insurer to support variable annuity contracts issued by a PL Insurer (''Future Account''), provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to PL&A Pacific Value and Pacific Value; and (ii) the recapture of any amounts credited under Pacific Portfolios variable annuity (''Pacific Portfolios''), Pacific Innovations Select variable annuity (''Pacific Innovations Select''), and Pacific One variable annuity (''Pacific One''), each a flexible premium deferred variable annuity contract funded by Pacific Separate Account A; Pacific Select Variable Annuity, a flexible premium deferred annuity and variable accumulation contract funded by Pacific Select Variable Annuity Separate Account (''PSVA''), Pacific Innovations Select variable annuity, a flexible premium deferred variable annuity contract funded by PL&A Separate Account A (''PL&A Pacific Innovations Select''), or any Variable Contract or Future Variable Contract that is sold to Contractholders in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced (''Cost Reduction Credit'') [2] or to Contractholders who meet certain criteria as established by the relevant PL Insurer (''Eligible Person Credit''),[3] provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to PSVA, Pacific Portfolios, Pacific One, Pacific Innovations Select or PL&A Pacific Innovations Select.[4]

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on November 22, 2004, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicant: Pacific Life Insurance Company, 700 Newport Center Drive, Newport Beach, CA 92660, Attn: Robin S. Yonis, Esq.

FOR FURTHER INFORMATION, CONTACT: Thu Ta, Senior Counsel, or Lorna MacLeod, Branch Chief at (202) 942–0670 (Division of Investment Management, Office of Insurance Products).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC, 20549 (tel. (202) 942–8090).

Applicants' Representations

1. Pacific Life is a life insurance company that is domiciled in California. Along with subsidiaries and affiliates, Pacific Life's operations include life insurance, annuities, pension and institutional products, group employee benefits, broker/dealer operations and investment advisory services. Pacific Life is authorized to conduct life insurance and annuity business in the District of Columbia and all states except New York. Its principal offices are located at 700 Newport Center Drive, Newport Beach, California 92660.

2. Pacific Separate Account A was established on September 7, 1994, as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust under the 1940 Act. Pacific Life is the legal owner of the assets in Pacific Separate Account A. Pacific Separate Account A funds the variable benefits available under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select variable annuity (''Pacific One Select''), Pacific Innovations variable annuity (''Pacific Innovations''),

[1] Unless otherwise designated, the term ''Contractholder,'' for purposes of the Application, refers to contractholders of any variable annuity contract funded by a Separate Account (each a ''Variable Contract'' and collectively, ''Variable Contracts''), and also to contractholders of any variable annuity contract funded in the future by a Separate Account or a Future Account (collectively, ''Future Variable Contracts'').

[2] Such situations may include the sale of several Contracts to the same Contractholder(s), sales of large Contracts, sales of Contracts in connection with a group or sponsored arrangement or mass transactions over multiple Contracts.

[3] For example, for purposes of Pacific Innovations Select variable annuity, Pacific Select Variable Annuity and Pacific Portfolios variable annuity issued by Pacific Life, and Pacific Innovations Select variable annuity issued by PL&A, an Eligible Person may include current and retired officers, directors and employees of Pacific Life and its affiliates, trustees of Pacific Select Fund, registered representatives and employees of broker/dealers with a current broker/dealers, employees of affiliated asset management firms and certain other service providers, and immediate family members of such persons.

[4] The current order grants Applicants exemptions from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder in order to permit the recapture of Credit Enhancements, Cost Reduction Credit, and Eligible Person Credit applied to a Contract Value when a Contractholder returns a contract during the free-look period. Pacific Life Insurance Company, et al., Inventment Company Act Rel. Nos. IC–25998 (April 9, 2003) (Notice) and 26042 (May 2, 2003) (Order).

and Pacific Odyssey variable annuity (''Pacific Odyssey''). Interests in Pacific Separate Account A under Pacific Value, Pacific Innovations Select, Pacific Portfolios, Pacific One, Pacific One Select, Pacific Innovations, and Pacific Odyssey are registered under the Securities Act of 1933, as amended (the ''1933 Act'').

3. Pacific Separate Account A currently has 41 subaccounts or ''Variable Investment Options.'' Each Variable Investment Option invests in a corresponding series of Pacific Select Fund (''Select Fund''), an open-end registered management investment company for which Pacific Life serves as investment adviser; or The Prudential Series Fund, Inc., an open-end registered investment company for which Prudential Investments Fund Management LLC (''PIFM'') serves as investment adviser; or the One Group Investment Trust, an open-end registered investment company for which Banc One Investment Advisors (''BOIA'') serves as investment adviser. It is anticipated that Pacific Life will offer Variable Contracts that will provide Variable Investment Options that invest in funds that are not sponsored or advised by Pacific Life or its affiliates. Neither PIFM nor BOIA is an ''affiliated person'' of Pacific Life as such term is defined in Section 2(a)(3) of the 1940 Act.

4. PSVA Separate Account was established on November 30, 1989, as a segregated asset account of Pacific Life and is registered with the Commission as a unit investment trust under the 1940 Act. Pacific Life is the legal owner of the assets in PSVA Separate Account. PSVA Separate Account currently has 31 Variable Investment Options. Each Variable Investment Option invests in a corresponding series of Select Fund. PSVA Separate Account currently funds the variable benefits available under a variable annuity contract designated as PSVA. Interests in PSVA Separate Account under PSVA are registered under the 1933 Act.

5. PL&A is a life insurance company domiciled in Arizona. PL&A's operations include life insurance, annuity and institutional products, group life and health insurance and various other insurance products and services. At the end of 2003, PL&A's total statutory assets were $1,155 million. PL&A is authorized to conduct life insurance and annuity business in Arizona, New York and certain other states. PL&A's principal office is located at 700 Newport Center Drive, Newport Beach, California 92660.

6. PL&A Separate Account A was established on January 25, 1999, as a segregated asset account of PL&A and is registered with the Commission as a unit investment trust under the 1940 Act. PL&A is the legal owner of the assets in PL&A Separate Account A. PL&A Separate Account A currently has 31 Variable Investment Options. Each Variable Investment Option invests in a corresponding series of Select Fund. PL&A Separate Account A funds the variable benefits available under variable annuity contracts designated as PL&A Pacific Innovations Select and will fund the variable benefits available under variable annuity contracts designated as PL&A Pacific Odyssey and PL&A Pacific Value. Interests in PL&A Separate Account A under PL&A Pacific Innovations Select, PL&A Pacific Odyssey and PL&A Pacific Value are registered under the 1933 Act.

7. PSD, a wholly owned subsidiary of Pacific Life, serves as the principal underwriter for the Variable Contracts issued by the PL Insurers. It is also anticipated that PSD will serve as the principal underwriter for any Future Variable Contracts issued by the PL Insurers. PSD is registered with the Commission as a broker/dealer under the Securities Exchange Act of 1934, as amended. The PL Insurers and PSD have entered into selling agreements with various broker/dealers, under which such broker/dealers act as agents of the relevant PL Insurer and PSD in the sale of the relevant PL Insurer's Variable Contracts.

8. Pacific Value and PL&A Pacific Value offer a ''Credit Enhancement'' feature under which PL Insurers automatically add an amount to each Contractholder's overall ''Contract Value'' at the time any amount is paid to PL Insurers by or on behalf of the Contractholder as consideration of the benefits provided under the Variable Contract (referred to herein as ''Purchase Payments''). For purposes of the Application, the term ''Contract Value'' refers to the sum (as calculated at the end of each business day) of: (i) The aggregate amount of Purchase Payments and any prior Credit Enhancements, and any earnings or losses thereon, less any fees and charges, held for a Contractholder's Variable Contract in any Variable Investment Option; (ii) the aggregate amount of Purchase Payments and any prior Credit Enhancements, and any interest earned thereon, less any fees and charges held for a Contractholder's Variable Contract in any fixed option available under his or her Variable Contract; (iii) the amount, including any interest accrued, held to secure the principal amount the Contractholder has on any outstanding loan under his or her Variable Contract; less (iv) the amount, including any associated withdrawal charge, of any withdrawal from the Variable Contract.

9. Credit Enhancements are allocated among a Contractholder's investment options then in effect in the same proportion that the applicable Purchase Payment is allocated. The Credit Enhancement with respect to each Purchase Payment is based on the Contractholder's total Purchase Payments made into Pacific Value and PL&A Pacific Value less total withdrawals, including any withdrawal charges, from Pacific Value and PL&A Pacific Value as of the date the Purchase Payment is applied. The Credit Enhancement available under Pacific Value and PL&A Pacific Value, expressed as a percentage of the relevant Purchase Payment, is set forth below:

FOR CONTRACTS ISSUED ON OR AFTER APRIL 1, 2000

Total purchase payments less total withdrawals	Credit enhancement (percent)
Less than $250,000	4.0
$250,000 or more	5.0
Less than $100,000	3.0
At least $100,000 but less than $2.5 million	4.0
$2.5 million or more	5.0

10. PL Insurers may agree to credit a Cost Reduction Credit under the Variable Contracts (other than Pacific Innovations), in situations where selling and/or maintenance costs associated with the Variable Contracts are reduced, such as the sale of several Variable Contracts to the same Contractholder(s), sales of large Variable Contracts, sales of Variable Contracts in connection with a group or sponsored arrangement or mass transactions over multiple Variable Contracts.

11. The amount of any Cost Reduction Credit will be determined based upon the amount of reduction in the selling and/or maintenance cost associated with the sale of that particular Variable Contract. A Cost Reduction Credit may be applied at the time that a Purchase Payment is made. Any Cost Reduction Credit applied at that time will not exceed 1.45% of the amount of such Purchase Payment. Alternatively, Cost Reduction Credits may be credited on the basis of Contract Value. Any Cost Reduction Credit credited on the basis of Contract Value will not exceed 1.45% of Contract Value at the time it is credited. The PL Insurers wish to reserve the flexibility to offer the Cost Reduction Credit under Variable Contracts and Future Variable Contracts,

provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to Pacific Innovations Select, Pacific Portfolios, PL&A Pacific Innovations Select, Pacific One, or PSVA.

12. PL Insurers may agree to credit an Eligible Person Credit under the Variable Contracts (other than Pacific One Select) owned by persons who meet criteria established by the relevant PL Insurer. These persons may include current and retired officers, directors and employees of Pacific Life and its affiliates, trustees of Pacific Select Fund, registered representatives and employees of broker/dealers with a current selling agreement with Pacific Life or PL&A, respectively, and the affiliates of those broker/dealers, employees of affiliated asset management firms and certain other service providers, and immediate family members of such persons (collectively referred to as ''Eligible Persons''). Under the Eligible Person Credit Program, the relevant PL Insurer credits additional amounts to Pacific Innovations Select, Pacific Portfolios, PSVA or PL&A Pacific Innovations Select Variable Contracts owned by Eligible Persons if such Variable Contracts are purchased directly through PSD. Under these circumstances, Eligible Persons will not be afforded the benefit of services of any other broker/dealer nor will any commission be payable to any broker/dealer in connection with such purchases. Rather, Eligible Persons must contact the relevant PL Insurer or PSD directly with servicing questions, changes in their Variable Contracts and related matters.

13. The amount currently credited to Variable Contracts owned by Eligible Persons will approximate the reduction in expenses realized by the relevant PL Insurer by not incurring brokerage commission in selling such Variable Contracts, with the determination of the expense reduction and of such crediting being made in accordance with administrative procedures established by the relevant PL Insurer. Eligible Persons are currently credited with a 5% Eligible Person Credit on each Purchase Payment plus a .25% (annualized) Credit of Contract Value, payable quarterly in advance, from the second Contract Year through the third Contract Year for Pacific Innovations Select and PL&A Pacific Innovation Select and a 1% (annualized) Credit of Contract Value, payable quarterly in advance from the fourth Contract Year until annuitization, on an annual basis. The PL Insurers wish to reserve the flexibility to offer the Eligible Person Credit under Variable Contracts and Future Variable Contracts, provided that any such Variable Contract or Future Variable Contract is substantially similar in all material respects to Pacific Portfolios, Pacific One, PSVA, Pacific Innovations Select or PL&A Pacific Innovations Select.

14. In the future, PL Insurers may credit Contracts issued to Eligible Persons with Eligible Persons Credit greater than 5% of each Purchase Payment, except that with respect to the Purchase Payments made during: (i) The relevant free-look period; and (ii) after the relevant free-look period has expired, but during the first Contract month, the amount of any Eligible Person Credit will be limited to no more than 9% of such Purchase Payment.

15. Although the PL Insurers currently offer Credit Enhancements, Eligible Person Credits and Cost Reduction Credits (collectively, ''Credits'') through Variable Contracts and Future Variable Contracts, no PL Insurer currently applies, and no PL Insurer will apply in the future, more than one Credit to the Contract Value of a Contractholder's Variable Contract or Future Variable Contract. Thus if a PL Insurer applies the Credit Enhancement Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Cost Reduction Credit. Similarly, if a PL Insurer applies the Eligible Person Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply a Cost Reduction Credit or a Credit Enhancement. If a PL Insurer offers a Cost Reduction Credit to the Contract Value of a particular Variable Contract or Future Variable Contract, it will not also apply an Eligible Person Credit or a Credit Enhancement.

16. Under the Variable Contracts issued by the PL Insurers, death benefit proceeds may be payable prior to the Annuity Date as of the date that a PL Insurer receives, in proper form: (i) Proof of death of the sole surviving annuitant, or of the first Contractholder who is also an annuitant; and (ii) instructions regarding payment of death benefit proceeds (''Notice Date''). Unless the Contractholder has purchased an optional rider that would provide a larger death benefit, the amount of the death benefit (''Death Benefit Amount'') will equal the greater of: (i) A Contractholder's Contract Value as of the Notice Date; or (ii) the Contractholder's aggregate Purchase Payments reduced by an amount for each withdrawal, which is calculated by multiplying the aggregate Purchase Payments received prior to each withdrawal by the ratio of the amount of the withdrawal, including any withdrawal charge, to the Contract Value immediately prior to each withdrawal.

17. PL Insurers may make further deductions from the death benefit proceeds in the following two situations. First, if any Pacific Value or PL&A Pacific Value Contractholder or sole surviving annuitant dies before the annuity date, then the relevant PL Insurer will deduct the amount of any Credit Enhancement added to the Contract Value of a Pacific Value or PL&A Pacific Value Contractholder during the 12-month period prior to the date of death. The death benefit proceeds will be reduced by the amount of any such deduction. Second, the amount of any Cost Reduction Credit or Eligible Person Credit that is added to the Contract Value of a Pacific One, Pacific Portfolios, PSVA, Pacific Innovations Select, and PL&A Pacific Innovations Select Contractholder during the 12-month period prior to the date of death of the Contractholder or sole surviving annuitant may be deducted from the death benefit proceeds. Applicants seek relief to permit PL Insurers to deduct from the death benefit proceeds the amounts of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit added to the Contract Value of any Variable Contract or Future Variable Contract, funded by a Separate Account or a Future Account added to the Contract Value, during the 12-month period prior to the date of death of the sole surviving annuitant, or of the first Contractholder who is also an annuitant.

Applicants' Legal Analysis

1. Applicants seek exemptive relief pursuant to Section 6(c) from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the PL Insurers to recapture Credit Enhancements, Cost Reduction Credits and Eligible Person Credits in the manner described herein.

2. Subsection (i) of Section 27 of the 1940 Act provides that Section 27 does not apply to any registered separate account funding variable insurance contracts, or to the sponsoring insurance company and principal underwriter of such separate account, except as provided in paragraph (2) of that subsection. Paragraph (2) provides that it shall be unlawful for such a separate account or sponsoring insurance company to sell a contract funded by the registered separate account unless

''(A) such contract is a redeemable security.'' Section 2(a)(32) of the 1940 Act defines ''redeemable security'' as any security, other than short-term paper, under the terms of which the holder, upon presentation to the issuer, is entitled to receive approximately his or her proportionate shares of the issuer's current net assets, or the cash equivalent thereof.

3. Because the death benefit proceeds may not include the amount of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit added to the Contractholder's Contract Value during the 12-month period prior to the date of death, the Contractholder arguably is not receiving his or her proportionate share of the applicable Separate Account's then-current net assets. Applicants submit, however, that the recapture of the Credit Enhancement offered under Pacific Value and PL&A Pacific Value or the Cost Reduction Credit and the Eligible Person Credit offered under the Variable Contracts, as described in this Application, would not deprive a Contractholder of his or her proportionate share of the issuer's current net assets.

4. The recapture of any Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is intended only to protect the relevant PL Insurer against anti-selection under certain specified contingencies. ''Anti-selection'' can generally be described as a risk that persons obtain coverage based on knowledge that a contingency that triggers payment of an insurance benefit is likely to occur, or is to occur shortly. In the case of the Variable Contracts, the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is provided on a guaranteed issue basis. The protection against anti-selection by persons who are ill is the reduction of the death benefit proceeds by the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit applied to Purchase Payments made within 12 months prior to the date of death of the Contractholder or sole surviving annuitant.

5. A Contractholder's interest in the amount of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit allocated to his or her Contract Value will not vest if the credits applied to the Contract Value relate to Purchase Payments made within 12 months of the date of death of the Contractholder or sole surviving annuitant. Unless and until the amount of the Credit Enhancement, Cost Reduction Credit or Eligible Person Credit is vested, the relevant PL Insurer retains the right and interest in the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit. Thus, when the relevant PL Insurer recaptures any Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit, it is simply retrieving its own assets, and because a Contractholder's interest in the Credit Enhancement, Cost Reduction Credit and/or Eligible Person Credit is not vested, the Contractholder is not deprived of a proportionate share of the net assets of the applicable Separate Account. Based on the foregoing, Applicants request an exemption from Sections 2(a)(32) and 27(i)(2)(A), to the extent deemed necessary, to permit the recapture of any Credit Enhancement, Cost Reduction Credit and Eligible Person Credit in the manner described above with respect to the Variable Contracts and any Future Variable Contracts, without losing the relief from Section 27 provided by Section 27(i).

6. Section 22(c) of the 1940 Act authorizes the Commission to make rules and regulations applicable to registered investment companies and to principal underwriters of, and dealers in, the redeemable securities of any registered investment company. Rule 22c–1 thereunder prohibits a registered investment company issuing any redeemable security, a person designated in such issuer's prospectus as authorized to consummate transactions in any such security, and a principal underwriter of, or dealer in, such security from selling, redeeming or repurchasing any such security, except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption, or of an order to purchase or sell such security.

7. PL Insurers' deduction of the amount of certain Credit Enhancements, Cost Reduction Credits or Eligible Person Credits applied to Contract Value from the death benefit proceeds of the Contract if those Credit Enhancements, Cost Reduction Credits or Eligible Person Credits were applied to the Contract Value during the 12-month period prior to the date of death, might arguably be viewed as resulting in the redemption of redeemable securities for a price other than one based on the current net asset value of the applicable Variable Investment Option of a Separate Account. In other words, because any such Credit Enhancements, Cost Reduction Credits and Eligible Person Credits credited by a PL Insurer are immediately added, on a conditional basis, to the Contract Value of certain Contractholders, and further because these amounts are allocated by the Contractholder to certain Variable Investment Options for the benefit of the participating Contractholder, the net asset value of each Variable Investment Option arguably is affected by these credits. Applicants contend, however, that the recapture of the Credit Enhancement, Cost Reduction Credit and Eligible Person Credit under the circumstances described in this Application should not be deemed to be a violation of Section 22(c) and Rule 22c–1.

8. The recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit does not involve either of the practices that Rule 22c–1 was intended to eliminate or reduce as far as reasonably practicable, namely: (i) The dilution of the value of outstanding redeemable securities of registered investment companies through their sale at a price below net asset value or their redemption or repurchase at a price above it, and (ii) other unfair results, including speculative trading practices. Those practices were the result of backward pricing, the practice of basing the price of mutual fund shares on the net asset value per share determined as of the close of the market on the previous day. Backward pricing allowed investors to take advantage of increases or decreases in net asset value that were not yet reflected in the price, thereby diluting the values of outstanding mutual fund shares.

9. The proposed recapture of the Credit Enhancement, Cost Reduction Credit and the Eligible Person Credit poses no such threat of dilution. To effect a recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit, PL Insurers redeem interests in a Contractholder's Variable Investment Option at a price determined on the basis of the current net asset value of each of the Variable Investment Options of the Separate Account in which the Contractholder's Contract Value is allocated. The amount recaptured will be equal to the amount of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit paid out of the general account assets of the relevant PL Insurer. Although Contractholders will be entitled to retain any investment gain attributable to the Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit, the amount of such gain will be determined based upon the current net asset value of each of the Variable Investment Options of the Separate Account in which the Contractholder's Contract Value is allocated. Thus, no dilution will occur upon the recapture of a Credit Enhancement, Cost Reduction Credit or an Eligible Person Credit.

10. Applicants also submit that the second practice that Rule 22c–1 was designed to address, namely, speculative trading practices calculated to take advantage of backward pricing, will not occur as a result of the recapture of the Credit Enhancement, Cost Reduction Credit or the Eligible Person Credit.

11. Because neither of the practices that Rule 22c–1 was meant to address is found in the recapture of the Credit Enhancement, Cost Reduction Credit, or the Eligible Person Credit, Rule 22c–1 and Section 22(c) of the 1940 Act are not implicated. However, to avoid any uncertainty as to full compliance with the 1940 Act, Applicants request an exemption from the provisions of Section 22(c) and Rule 22c–1 to the extent deemed necessary to permit the recapture of any Credit Enhancement, Cost Reduction Credit and Eligible Person Credit in the manner described above.

Conclusion

Applicants request an order pursuant to Section 6(c) of the 1940 Act exempting them from Sections 2(a)(32), 22(c), and 27(i)(2)(A) of the 1940 Act and Rule 22c–1 thereunder to the extent deemed necessary to permit the PL Insurers to recapture Credit Enhancements, Cost Reduction Credits and Eligible Person Credits in the manner described herein. Applicants submit that their request for an order for the exemptive relief described above is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2991 Filed 11–2–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50596; File No. SR–NSCC–2004–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Amend the National Securities Clearing Corporation's Fee Schedule To Eliminate Reference to the PC Data Entry Fee and To Incorporate Fees for its Mutual Fund Profile and Fund/SPEED Service

October 27, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 8, 2004, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of revisions to Addendum A to NSCC's Rules relating to (i) the deletion of fees for PC Data Entry, which was a Web interface that is no longer offered by NSCC, and (ii) the incorporation of revised Mutual Fund Service fees that were previously approved by the Commission.[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Addendum A of NSCC's Rules (i) to delete fees for PC Data Entry, which was a Web interface that is no longer offered by NSCC, and (ii) to incorporate revised fees for Mutual Fund Services that were previously approved by the Commission.

PC Data Entry was a Web interface to NSCC's systems that is no longer available. PC Data Entry was replaced in 1999 by PC Web Direct for which there is no fee apart from the fees applicable to NSCC services which are accessed through PC Web Direct. The fee schedule, Addendum A to NSCC's Rules, is therefore amended to delete reference to the PC Data Entry fee.

The revised Mutual Fund Service fees which are incorporated in Addendum A by this proposed rule change were approved by the Commission by order dated July 27, 2004.[4] These fees relate to Fund/SPEED Account Maintenance transactions and revised Profile subscription fees.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[5] and the rules and regulations thereunder applicable to NSCC because the proposed change provides for the equitable allocation of dues, fees and other charges among NSCC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder because the

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 50095 (July 27, 2004), 69 FR 46611 [File No. SR–NSCC–2004–03].

[3] The Commission had modified the text of the summaries prepared by NSCC.

[4] Securities Exchange Act Release No. 50095, 69 FR 46611 [File No. SR–NSCC–2004–03].

[5] 15 U.S.C. 78q–1.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

proposed rule establishes or changes a due, fee, or other charge. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2004–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–NSCC–2004–06. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.nscc.com/legal.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2004–06 and should be submitted on or before November 24, 2004.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E4–2988 Filed 11–2–04; 8:45 am]

BILLING CODE 8010–01–P

[8] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3633]

State of West Virginia (Amendment #4)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency—effective October 28, 2004, the above numbered declaration is hereby amended to include Logan County as a disaster area due to damages caused by severe storms, flooding and landslides occurring on September 16, 2004, and continuing through September 27, 2004.

All other counties contiguous to the above named primary county have previously been declared. All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is November 19, 2004 and for economic injury the deadline is June 20, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: October 28, 2004.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 04–24496 Filed 11–2–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Public Federal Regulatory Enforcement Fairness Roundtable; Region VII Regulatory Fairness Board

The Small Business Administration Region VII Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Roundtable on Thursday, November 18, 2004 at 8:30 a.m. at the Bradbury Thompson Center on the Campus of Washburn University, 1700 SW College Avenue, Topeka, KS 66621–0001, to provide small business owners and representatives of trade associations with an opportunity to share information concerning the Federal regulatory enforcement and compliance environment.

Anyone wishing to attend or to make a presentation must contact Gary Cook in writing or by fax, in order to be put on the agenda. Gary Cook, District Director, SBA Kansas City District Office, 323 W 8th Street, Suite 501, Kansas City, MO 64105, phone (816) 374–6897, fax (816) 374–6759, e-mail: *gary.cook@sba.gov.*

For more information, see our Web site at *http://www.sba.gov/ombudsman.*

Dated: October 28, 2004.

Peter Sorum,

Senior Advisor, Office of the National Ombudsman.

[FR Doc. 04–24497 Filed 11–2–04; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Small Business Size Standards: Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of termination of waiver of the Nonmanufacturer Rule for Power-Driven Handtools Manufacturing.

SUMMARY: The U.S. Small Business Administration (SBA) is terminating the waiver of the Nonmanufacturer Rule for Power-Driven Handtools 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 businesses, service-disabled veteran-owned small businesses, SBA's Very Small Business Program 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 November 18, 2004.

FOR FURTHER INFORMATION CONTACT: Edith Butler, Program Analyst, by telephone at (202) 619–0422; by FAX at (202) 481–1788; 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, service-disabled veteran-owned small businesses, SBA's Very Small Business Program 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 Power-Driven Handtools 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 Power-Driven Handtools 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 Power-Driven Handtools Manufacturing, NAICS 333991.

Authority: 15 U.S.C. 637(a)(17).

Dated: October 27, 2004.

Arthur E. Collins,

Acting Deputy Associate Administrator for Office of Government Contracting.

[FR Doc. 04–24499 Filed 11–2–04; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4883]

60-Day Notice of Proposed Information Collection: Form DS–2019, Certificate of Eligibility for Exchange Visitor (J–1) Status, OMB Control Number 1405–0119

ACTION: Notice of request for public comments.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995.

- Title of Information Collection: Certificate of Eligibility for Exchange Visitor (J–1) Status.
- OMB Control Number: 1405–0119.
- Type of Request: Extension of Currently Approved Collection.
- Originating Office: Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs (ECA/EC/ECD).
- Form Number: DS–2019.
- Respondents: Department of State designated Exchange Visitor Program sponsors and exchange visitors.
- Estimated Number of Respondents: 300,000.
- Estimated Number of Responses: 300,000.
- Average Hours Per Response: 45 minutes.
- Total Estimated Burden: 225,000 hours.
- Frequency: On occasion.
- Obligation to Respond: Required to Obtain or Retain a Benefit.

DATES: The Department will accept comments from the public up to 60 days from November 3, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- E-mail: *RoseVT@state.gov.* You must include the DS form number, information collection title, and OMB control number in the subject line of your message.
- Mail (paper, disk, or CD–ROM submissions): Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 Fourth Street, SW., Room 734, U.S. Department of State, Washington, DC 20547.
- Fax: (202) 401–9809.
- Hand Delivery or Courier: 301 Fourth Street, SW., Room 734, U.S. Department of State, Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed information collection and supporting documents, to Vicki Rose, Office of Exchange Coordination and Designation, Bureau of Educational and Cultural Affairs, 301 Fourth Street, SW., Room 734, U.S. Department of State, Washington, DC 20547, who may be reached on (202) 401–9810 or by e-mail at *RoseVT@state.gov.*

SUPPLEMENTARY INFORMATION: We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper performance of our functions.
- Evaluate the accuracy of our estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of technology.

Abstract of proposed collection: This Form collects information on nonimmigrants for the purpose of producing a document to enable a non-immigrant to seek a visa to participate in the Exchange Visitor Program.

Methodology: The information is collected electronically and is maintained in the Student and Exchange Visitor Information System (SEVIS).

Dated: October 14, 2004.

Cathy T. Chikes,

Executive Director, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 04–24547 Filed 11–2–04; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4870]

Notice of Meeting of the Advisory Committee on International Law

A meeting of the Advisory Committee on International Law will take place on Friday, November 19, 2004, from 10 a.m. to approximately 4 p.m., as necessary, in Room 1105 of the United States Department of State, 2201 C Street, NW., Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, William H. Taft, IV, and will be open to the public up to the capacity of the meeting room. The meeting will cover various issues relating to current international legal topics, including the role of the State Department in domestic litigation in light of the Supreme Court's decisions in *Republic of Austria* v. *Altmann and Sosa* v. *Alvarez-Machain,* an update on the work of the International Law Commission, an update on prisoners and detainees, and

UN Security Council resolutions on general threats to peace and security.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, by Wednesday, November 17, 2004 notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–2767) of their name, Social Security number, date of birth, professional affiliation, address and telephone number in order to arrange admittance. This includes admittance for government employees as well as others. All attendees must use the ''C'' Street entrance. One of the following valid IDs will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Because an escort is required at all times, attendees should expect to remain in the meeting for the entire morning or afternoon session.

Dated: October 27, 2004.

Judith L. Osborn,

Attorney-Adviser, Office of United Nations Affairs, Office of the Legal Adviser, Executive Director, Advisory Committee on International Law, Department of State.

[FR Doc. 04–24548 Filed 11–2–04; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Rusk County Airport, Henderson, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Request to Release Airport Property.

SUMMARY: The FAA proposes to rule and invite public comment on the release of land at the Rusk County Airport under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or before December 3, 2004.

ADDRESSES: Comments on this application may be mailed or delivered to the FAA at the following address: Mr. Mike Nicely, Manager, Federal Aviation Administration, Southwest Region, Airports Division, Texas Airports Development Office, ASW–650, Fort Worth, Texas 76193–0650.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to the Honorable Sandra Hodges, Rusk County Judge, at the following address: Rusk County Courthouse, Henderson, Texas 75652.

FOR FURTHER INFORMATION CONTACT: Mr. Rodney Clark, Program Manager, Federal Aviation Administration, Texas Airports Development Office, ASW–650, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0650, Telephone: (817) 222–5659, e-mail: *Rodney.Clark@faa.gov,* fax: (817) 222–5989.

The request to release property may be reviewed in person at the same location.

SUPPLEMENTARY INFORMATION: The FAA invites public comment on the request to release property at the Rusk County Airport under the provisions of the AIR 21.

The following is a brief overview of the request:

The County of Rusk requests the release of 42.93 acres of non-aeronautical airport property. The land was acquired by deed in 1941. The property to be released will be exchanged for a like sum of property to allow for a future runway extension. No funds will be generated from the release.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents relevant to the application in person at the Rusk County Airport, telephone number (903) 657–0302.

Issued in Fort Worth, Texas on October 25, 2004.

Naomi L. Saunders,

Manager, Airports Division.

[FR Doc. 04–24462 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 189/EUROCAE Working Group 53 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 189/ EUROCAE Working Group 53: Air Traffic Services (ATS) Safety and Interoperability Requirements.

DATES: The meeting will be held November 15–19, 2004 starting at 9 a.m.

ADDRESSES: The meeting will be held at STNA Headquarters, 1, avenue du Dr Maurice Grynfogel, F–301035, Toulouse, France.

FOR FURTHER INFORMATION CONTACT: (1) RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*; (2) STNA Contact, Anne Marie Charron; +33 5 62 14 58 81; fax +33 5 62 14 58 53; e-mail *laurent.teissier@aviation-civile.gouv.fr*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 189/EUROCAE Working Group 53 meeting. The agenda will include:

- November 15:
  - Opening Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda, Review/Approval of Meeting Minutes)
  - Sub-group and related reports; SC–189/WG–53 co-chair progress report and review of work program
  - Resolution of Comments on PU 29 (ED 100/DO258 Rev. A)
  - Review of ISFs to ED78A
- November 16–17:
  - Sub-group Meetings
  - Review and resolve comments on PU–24 V3.0, Oceanic Safety and Performance Requirements Standard
- November 17–19:
  - Sub-group Meetings
  - FANS 1/A—ATN Interop Start of Activity (Review Statement of Work, Review of Initial Inputs, Coordination)
- November 19:
  - Closing Plenary Session (Welcome and Introductory Remarks, Review/ Approval of Meeting Agenda)
  - Sub-group and related reports; Position papers planned for plenary agreement; SC–189/WG–53 co-chair progress report and wrap-up.

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on October 22, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–24463 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[FTA Docket No. 2004–19516]

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for approval. The **Federal Register** Notice with a 60-day comment period soliciting comments was published on July 23, 2004.

DATES: Comments must be submitted before December 3, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

SUPPLEMENTARY INFORMATION:

Title: Charter Service Operations (*OMB Number: 2132–0549*).

Abstract: 49 U.S.C. 5323(d) requires all applicants for financial assistance from FTA to enter into a charter bus agreement with the Secretary of Transportation (delegated to the Administrator of FTA in 49 CFR 1.51(a)). 49 U.S.C. 5323(d) provides protections for private intercity charter bus operators from unfair competition by FTA recipients. 49 U.S.C. 5302(a)(7) as interpreted by the Comptroller General permits FTA recipients, but does not state that recipients have a right, to provide charter bus service with FTA-funded facilities and equipment only if it is incidental to the provision of mass transportation service. These statutory requirements have been implemented in FTA's charter regulation, 49 CFR 604.

49 CFR 604.7 requires all applicants for financial assistance under 49 U.S.C. Sections 5309, 5336, or 5311 to include two copies of a charter bus agreement with the first grant application submitted after the effective date of the rule. The applicant signs the agreements, but FTA executes it only upon approval of the application. This is a one-time submission with incorporation by reference in subsequent grant applications. 49 CFR 604.11(b) requires recipients to provide notice to all private charter operators and allows them to submit written evidence demonstrating that they are willing and able to provide the charter service the recipient is proposing to provide. The notice must be published in a newspaper and sent to any private operator requesting notice and to the United Bus Owners of America and the American Bus Association, the two trade associations to which most private charter operators belong. To continue receiving federal financial assistance, recipients must publish this notice annually. 49 CFR 604.13(b) requires recipients to review the evidence submitted and notify the submitter of its decision. This notice is also an annual requirement. On December 30, 1988, FTA issued an amendment to the Charter Service regulation that allows additional exceptions for certain non-profit social groups that meet eligibility requirements.

Estimated Total Annual Burden: 1,984 hours.

ADDRESSES: All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

Comments Are Invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Dated: October 27, 2004.

Ann M. Linnertz,

Deputy Associate Administrator for Administrator.

[FR Doc. 04–24464 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19486]

Notice of Receipt of Petition for Decision That Nonconforming 2001–2002 Mercedes Benz C Class (203) Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2001–2002 Mercedes Benz C Class (203) passenger cars are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2001–2002 Mercedes Benz C Class (203) passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 3, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission

into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

US SPECS of Aberdeen, Maryland (Registered Importer 03–321) has petitioned NHTSA to decide whether nonconforming 2001–2002 Mercedes Benz C Class (203) passenger cars are eligible for importation into the United States. The vehicles which U.S. SPECS believes are substantially similar are 2001–2002 Mercedes Benz C Class (203) passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2001–2002 Mercedes Benz C Class (203) passenger cars to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

US SPECS submitted information with its petition intended to demonstrate that non-U.S. certified 2001–2002 Mercedes Benz C Class (203) passenger cars as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2001–2002 Mercedes Benz C Class (203) passenger cars are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch System*, 116 *Motor Vehicle Brake Fluids*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, *216 Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials.*

In addition, the petitioner claims that the vehicles comply with the Bumper Standard found in 49 CFR part 581.

The petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* (a) Substitution of a lens marked ''Brake'' for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) recalibration of the speedometer/odometer from kilometers to miles per hour; and (c) installation of U.S.-model cruise control lever.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model headlamps, front side marker lamps, taillamp assemblies that incorporate rear side marker lamps, a high-mounted stoplamp assembly, and front and rear side reflex reflectors.

Standard No. 110 *Tire Selection and Rims:* Tire placard must be installed to ensure compliance with the standard.

Standard No. 111 *Rearview Mirrors:* Installation of U.S.-model passenger side rearview mirror, or inscription of the required warning statement on the face of the passenger side rearview mirror.

Standard No. 114 *Theft Protection:* Installation of U.S.-version software, or installation of a supplemental key warning buzzer system to meet the requirements of this standard.

Standard No. 118 *Power-Operated Window, Partition, and Roof Panel Systems:* Inspection of all vehicles, and reprogramming and rewiring the systems, as required, to meet the requirements of this standard.

Standard No. 201 *Occupant Protection in Interior Impact:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model interior trim components that are necessary to comply with the standard's upper interior impact requirements.

Standard No. 206 *Door Locks and Door Retention Components:* Inspection of all vehicles and installation, on vehicles that are not already so equipped, of U.S.-model components as necessary, to meet the requirements of this standard.

Standard No. 208 *Occupant Crash Protection:* (a) Inspection of all vehicles and replacement of any non U.S.-model seat belts, airbag control units, airbags, sensors, and knee bolsters with U.S.-model components on vehicles that are not already so equipped; and (b) installation of a supplemental warning buzzer which is wired to the seat belt latch to ensure that the seat belt warning system activates in the proper manner.

The petitioner states that the restraint system used in these vehicles consists of dual front airbags and knee bolsters, and that the vehicles have combination lap and shoulder belts at the outboard front seating positions as well as at the rear outboard seating positions. These manual systems are automatic, self-tensioning, and are released by means of a single red push-button.

Standard No. 209 *Seat Belt Assemblies:* Inspection of all vehicles and replacement of non U.S.-model seat belt assemblies with U.S.-model components on vehicles that are not already so equipped.

Standard No. 225 *Child Restraint Anchorage Systems:* Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped, to ensure compliance with the standard.

Standard No. 301 *Fuel System Integrity:* Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped, to ensure compliance with the standard.

Standard No. 401 *Interior Trunk Release:* Inspection of all vehicles and installation of U.S.-model components, on vehicles that are not already so equipped, to ensure compliance with the standard.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 04–24466 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19485]

Notice of Receipt of Petition for Decision That Nonconforming 2004 Jeep Liberty Multipurpose Passenger Vehicles Manufactured for the Mexican Market Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is December 3, 2004.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. (WETL) of Houston, TX (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2004 Jeep Liberty multipurpose passenger vehicles that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with all applicable Federal motor vehicle safety standards.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market as originally manufactured, conform to all applicable Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts.

Specifically, the petitioner claims that non-U.S. certified 2004 Jeep Liberty multipurpose passenger vehicles manufactured for the Mexican market are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 101 *Controls and Displays*, 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect*, 103 *Windshield Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 106 Brake Hoses, 108 Lamps, Reflective Devices and Associated Equipment, 111 *Rearview Mirrors*, 113 *Hood Latch System*, 114 *Theft Protection*, 116 *Motor Vehicle Brake Fluids*, 118 *Power-Operated Window, Partition, and Roof Panel Systems*, 119 *New Pneumatic Tires for Vehicles Other than Passenger Cars*, 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars*, 124 *Accelerator Control Systems*, 135 *Passenger Car Brake Systems*, 201 *Occupant Protection in Interior Impact*, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 206 *Door Locks and Door Retention Components*, 207 *Seating Systems*, 208 *Occupant Crash Protection*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Mounting*, 214 *Side Impact Protection*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, 225 *Child Restraint Anchorage Systems*, 301 *Fuel System Integrity*, and 302 *Flammability of Interior Materials*.

The petitioner also states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590. [Docket hours are from 9 a.m. to 5 p.m.]. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and

will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Claude H. Harris,

Director, Office of Vehicle, Safety Compliance.

[FR Doc. 04–24549 Filed 11–2–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of application delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer Billings, Office of Hazardous Materials Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reason for Delay"

1. Awaiting additional information for applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of exemption applications.

Meaning of Application Number Suffixes

N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on October 28, 2004.

R. Ryan Posten,

Exemptions Program Officer, Office of Hazardous Materials Safety Exemptions & Approvals.

NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	12–31–2004
12381–N	Ideal Chemical & Supply Co., Memphis, TN	2	01–31–2005
12412–N	Great Western Chemical Company, Portland, OR	3	01–31–2005
12751–N	Defense Technology Corporation, Casper, WY	4	12–31–2004
12797–N	Environmental Quality Co., Belleville, MI	4	01–31–2005
12960–N	International Fuel Cells, South Windsor, CT	1	11–30–2004
13055–N	Stenstrom Petroleum Equipment Group, Rockford, IL	4	01–31–2005
13183–N	Becton Dickinson, Sandy, UT	4	12–31–2004
13188–N	General Dynamics, Lincoln, NE	1	12–31–2004
13309–N	OPW Engineered Systems, Lebanon, OH	4	01–31–2005
13295–N	Taylor-Wharton, Harrisburg, PA	1	12–31–2004
13266–N	Luxfer Gas Cylinders, Riverside, CA	1	12–31–2004
13265–N	Aeropres Corporation, Shreveport, LA	4	11–30–2004
13228–N	AirSep Creekside Corp., Buffalo, NY	4	12–31–2004
13225–N	Quantum Technologies, Irvine, CA	1	12–31–2004
13281–N	The Dow Chemical Company, Midland, MI	4	11–30–2004
13422–N	Puritan Bennett, Plainfield, IN	3	12–31–2004
12949–N	Railway Progress Institute, Inc., Alexandria, VA	4	01–31–2005
13482–N	U.S. Vanadium Corporation (Subsidiary of Strategic Minerals Corporation), Niagra Falls, NY	4	11–30–2004
13443–N	Koch Materials Company, Wichita, KS	4	11–30–2004
13423–N	E.I. DuPont de Nemours & Company, Inc., Wilmington, DE	1	01–31–2005
13461–N	FIBA Technologies, Inc., Westboro, MA	4	12–31–2004
13346–N	Stand-By-Systems, Inc., Dallas, TX	1	12–31–2004
13347–N	ShipMate, Inc., Torrance, CA	4	12–31–2004
13341–N	National Propane Gas Association, Washington, DC	1	12–31–2004
13302–N	FIBA Technologies, Inc., Westboro, MA	4	12–31–2004
13314–N	Sunoco Inc., Philadelphia, PA	4	01–31–2005
13560–N	Texaco Ovonic Hydrogen Systems L.L.C. (TOHS), Rochester Hills, MI	4	12–31–2004
13554–N	The Fertilizer Institute, Washington, DC	4	12–31–2004
13547–N	CP Industries, McKeesport, PA	4	01–31–2005
13976–N	Osmose Utilities Services, Inc., Buffalo, NY	4	11–30–2004
13551–N	INO Therapeutics LLC, Port Allen, LA	4	12–31–2004
13484–N	Air Liquide Ameria L.P., Houston, TX	4	11–30–2004
13176–N	Union Pacific Railroad Company, Omaha, NE	4	01–31–2005
13054–N	CHS Transportation, Mason City, IA	4	11–30–2004
13077–N	MacIntyre, Middlebury, VT	4	01–31–2005
12950–N	Walnut Industries, Inc., Bensalem, PA	4	01–31–2005

MODIFICATION TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11769–M	Great Western Chemical Company, Portland, OR	2	01–31–2005
12065–M	Petrolab Company, Latham, NY	4	12–31–2004
10019–M	Structural Composites Industries, Pomona, CA	3	12–31–2004
12443–M	Dow Reichhold Specialty Latex, LLC, Chickamauga, GA	4	01–31–2005
8650–M	Ethyl Corporation, Richmond, VA	4	12–31–2004
9149–M	Ethyl Corporation, Richmond, VA	4	12–31–2004
7073–M	Ethyl Corporation, Richmond, VA	4	12–31–2004
12443–M	Kinder Morgan Materials Services, Sewickley, PA	4	01–31–2005
13080–M	Pressed Steel Tank Co., Milwaukee, WI	1	12–31–2004
10915–M	Luxfer Gas Cylinders (Composite Cylinder Division), Riverside, CA	1	01–31–2005
10878–M	Tankcon FRP Inc., Boisbriand, QC	1,3	11–30–2004
12443–M	Kinder Morgan Materials Services, Sewickley, PA	4	01–31–2005
9421–M	Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA	4	12–31–2004
12022–M	Taylor-Wharton (Gas & Fluid Control Group), Harrisburg, PA	4	12–31–2004
11537–M	Interstate Chemical Company, Inc., Hermitage, PA	2	01–31–2005
10882–M	Espar Products, Inc., Mississauga, Ontario, Canada	4	11–30–2004
12443–M	Buckbee-Mears Cortland (BMC), Minneapolis, MN	4	01–31–2005
11537–M	Hawkins, Inc., Minneapolis, MN	2	01–31–2005
7280–M	Department of Defense, Ft. Eustis, VA	4	12–31–2004
8718–M	Structural Composites Industries, Pomona, CA	3	12–31–2004
8162–M	Structural Composites Industries, Pomona, CA	3	12–31–2004
7277–M	Structural Composites Industries, Pomona, CA	3	12–31–2004
7060–M	Federal Express, Memphis, TN	4	12–31–2004
11769–M	Great Western Chemical Company, Portland, OR	2	01–31–2005
11537–M	JCI Jones Chemicals, Inc., Milford, VA	2	01–31–2005
11769–M	Hydrite Chemical Company, Brookfield, WI	2	01–31–2005

[FR Doc. 04–24524 Filed 11–2–04; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–391 (Sub-No. 10X)]

Red River Valley and Western Railroad Company—Abandonment Exemption—in Foster and Wells Counties, ND

Red River Valley & Western Railroad Company (RRVW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon approximately 27.76 miles of rail line from approximately milepost 21.4 in or near Carrington, ND, to the end of the line at approximately milepost 29.16 in or near Bowdon, ND, in Foster and Wells Counties, ND. The line traverses United States Postal Service Zip Codes 58486, 58418 and 58421.

RRVW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Board or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.[1]

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 3, 2004, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by November 12, 2004. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 23, 2004, with: Surface Transportation Board, 1925 K Street NW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to applicant's representative: Rose-Michele Weinryb, Weiner Brodsky Sidman Kider PC, 1300 19th Street NW., 5th Floor, Washington, DC 20036–1609.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

RRVW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. SEA will issue an environmental assessment (EA) by November 28, 2004. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board,

[1] RRVW states that it has used the subject line to store cars for off-line shippers during the preceding 2 years. RRVW points out that use of a rail line to store rail cars for the convenience of off-line shippers or the railroad is not traffic originating or terminating on the line within the meaning of 49 CFR 1152.50(b), citing, *Union Pacific Railroad Company—Abandonment Exemption—in Ada County, ID*, STB Docket No. AB–33 (Sub-No. 137X) (STB served Aug. 6, 1999).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each OFA must be accompanied by the filing fee, which increases to $1,200, effective October 31, 2004. *See Regulations Governing Fees for Services Performed in Connection with Licensing and Related Services—2004 Update*, STB Ex Parte No. 542 (Sub-No. 11) (STB served Oct. 1, 2004). *See* 49 CFR 1002.2(f)(25).

Washington, DC 20423–0001) or by calling SEA, at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339]. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), RRVW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by RRVW's filing of a notice of consummation by November 3, 2005, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov*.''

Decided: October 27, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–24502 Filed 11–2–04; 8:45 am]

BILLING CODE 4915–01–P

Corrections

Federal Register
Vol. 69, No. 212
Wednesday, November 3, 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.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[OAR–2003–0083; FRL–7651–8]

RIN 2060–

Air Quality Designations and Classifications for the 8-Hour Ozone National Ambient Air Quality Standards; Early Action Compact Areas With Deferred Effective Dates

Correction

In rule document 04–9152 beginning on page 23858 in the issue of Friday, April 30, 2004, make the following correction:

§81.336 [Amended]

On page 23926, in §81.336, the table ''Ohio—Ozone (8-Hour Standard),'' is corrected to read in part set forth below.

OHIO—OZONE (8-HOUR STANDARD)

Designated area	Designation [a]		Category/classification	
	Date [1]	Type	Date [1]	Type
Canton-Massillion, OH: Stark County		Nonattainment		Subpart 1.
Cincinnati-Hamilton, OH–KY–IN:				
Butler County		Nonattainment		Subpart 1.
Clermont County		Nonattainment		Subpart 1.
Clinton County		Nonattainment		Subpart 1.
Hamilton County		Nonattainment		Subpart 1.
Warren County		Nonattainment		Subpart 1.
Cleveland-Akron-Lorain, OH		Nonattainment		Subpart 2/Moderate.
Ashtabula County				
Cuyahoga County				
Geauga County				
Lake County				
Lorain County				
Medina County				
Portage County				
Summit County				
Columbus, OH:				
Delaware County		Nonattainment		Subpart 1.
Fairfield County		Nonattainment		Subpart 1.
Franklin County		Nonattainment		Subpart 1.
Knox County		Nonattainment		Subpart 1.
Licking County		Nonattainment		Subpart 1.
Madison County		Nonattainment		Subpart 1.
Dayton-Springfield, OH:				
Clark County		Nonattainment		Subpart 1.
Greene County		Nonattainment		Subpart 1.
Miami County		Nonattainment		Subpart 1.
Montgomery County		Nonattainment		Subpart 1.

* * * * * * *

[a] Includes Indian Country located in each county or area, except as otherwise specified.
[1] This date is June 15, 2004, unless otherwise noted.

[FR Doc. C4–9152 Filed 11–2–04; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50501; File No. SR–NASD–2004–138]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Listing and Trading of Performance Leveraged Upside Securities Based on the Value of the Dow Jones Euro Stoxx 50 Index

Correction

In notice document E4–2709 beginning on page 61533 in the issue of Tuesday, October 19, 2004, make the following correction:

On page 61536, in the second column, under section **IV. Solicitation of Comments**, in the last paragraph, in the last line, the date ''November 8, 2004'' should read, ''November 9, 2004''.

[FR Doc. Z4–2709 Filed 11–2–04; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Wednesday,
November 3, 2004

Part II

Department of Housing and Urban Development

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization Grants Fiscal Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4921–N–01]

Notice of Funding Availability for Revitalization of Severely Distressed Public Housing; HOPE VI Revitalization Grants Fiscal Year 2004

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

Overview Information:

A. *Federal Agency Name.* Department of Housing and Urban Development, Office of Public and Indian Housing.

B. *Funding Opportunity Title.* Revitalization of Severely Distressed Public Housing HOPE VI Revitalization Grants Fiscal Year 2004.

C. *Announcement Type.* Initial announcement.

D. *Funding Opportunity Number.* The **Federal Register** number for this NOFA is: FR–4921–N–01. The OMB approval number for this program is: 2577–0208.

E. *Catalog of Federal Domestic Assistance (CFDA) Number.* The CFDA number for this NOFA is 14–866, ''Demolition and Revitalization of Severely Distressed Public Housing (HOPE VI).''

F. *Dates.* 1. *Application Due Date:* The application due date shall be February 1, 2005. See the General Section of the SuperNOFA (69 FR 26941) for application submission, delivery, and timely receipt requirements.

2. *Estimated Grant Award Date:* The estimated award date will be approximately May 2, 2005.

G. *Optional, Additional Overview Content Information.* 1. This NOFA announces the availability of approximately $120 million in FY2004 funds for HOPE VI Revitalization Program grants, with approximately $20 million additional for grant-related housing choice voucher (HCV) assistance.

2. The maximum amount of each grant award is $20 million. It is anticipated that six grant awards will be made.

3. Housing choice voucher assistance is available to successful applicants that receive the revitalization grant award. The dollar amount of HCV assistance is in addition to the $20 million maximum award amount.

4. All public housing authorities (PHAs) with severely distressed public housing are eligible to apply. PHAs that manage only a HCV program, tribal PHAs and tribally-designated housing entities are not eligible.

5. A match of five percent is required.

6. Each applicant may submit only one HOPE VI revitalization application.

7. Application materials may be obtained over the Internet from HUD's grants site: *http://www.hud.gov/offices/adm/grants/otherhud.cfm.* Technical corrections and frequently asked questions will also be posted on this Web site.

8. HUD's general policy requirements apply to all HUD federal financial assistance NOFAs for Fiscal Year (FY) 2004. These policies cover those NOFAs issued under HUD's Super Notice of Funding Availability (SuperNOFA) (69 FR 26941) as well as those issued after the SuperNOFA is published in the **Federal Register**.

Full Text of Announcement

I. Funding Opportunity Description

A. *Program Description.* In accordance with Section 24(a) of the United States Housing Act of 1937 (1937 Act) (42 U.S.C. 1437v), the purpose of HOPE VI revitalization grants is to assist PHAs to:

1. Improve the living environment for public housing residents of severely distressed public housing projects through the demolition, rehabilitation, reconfiguration, or replacement of obsolete public housing projects (or portions thereof);

2. Revitalize sites (including remaining public housing dwelling units) on which such public housing projects are located and contribute to the improvement of the surrounding neighborhood;

3. Provide housing that will avoid or decrease the concentration of very low-income families; and

4. Build sustainable communities.

B. *Authority.* 1. The funding authority for HOPE VI revitalization grants under this HOPE VI NOFA is provided by the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, approved January 23, 2004) under the heading ''Revitalization of Severely Distressed Public Housing (HOPE VI).''

2. The program authority for the HOPE VI program is Section 24 of the 1937 Act, as amended by Section 402 of the HOPE VI Program Reauthorization and Small Community Mainstreet Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, approved December 16, 2003).

C. *Definitions.* 1. *Developer.* A developer is an entity contracted to develop (and possibly operate) a mixed finance development that includes public housing units, pursuant to 24 CFR part 941, subpart F. A developer most often has an ownership interest in the entity that is established to own and operate the replacement units (*e.g.*, as the general partner of a limited partnership).

2. *Leverage.* See Section III.C.4. and IV.B.6.c. of this NOFA for the meaning of leverage.

3. *Replacement Housing.* Under this HOPE VI NOFA, a HOPE VI replacement housing unit shall be deemed to be any combination of public housing rental units, eligible homeownership units under Section 24(d)(1)(J) of the 1937 Act, and HCV assistance that does not exceed the number of units demolished and disposed of at the targeted severely distressed public housing project.

4. *Severely Distressed.* a. In accordance with Section 24(j)(2) of the 1937 Act, the term ''severely distressed public housing'' means a public housing project (or building in a project) that:

(1) Requires major redesign, reconstruction, or redevelopment—or partial or total demolition—to correct serious deficiencies in the original design (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plan of the project;

(2) Is a significant contributing factor to the physical decline of, and disinvestment by public and private entities in, the surrounding neighborhood;

(3) (a) Is occupied predominantly by families who are very low-income families with children, have unemployed members, and are dependent on various forms of public assistance; (b) has high rates of vandalism and criminal activity (including drug-related criminal activity) in comparison to other housing in the area; or (c) is lacking in sufficient appropriate transportation, supportive services, economic opportunity, schools, civic and religious institutions, or public services, resulting in severe social distress in the project;

(4) Cannot be revitalized through assistance under other programs, such as the Capital Fund and Operating Fund programs for public housing under the 1937 Act, or the programs under Sections 9 or 14 of the 1937 Act (as in effect before the effective date under Section 503(a) of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, approved October 21, 1998), because of cost constraints and inadequacy of available amounts; and

(5) In the case of an individual building:

(a) Is sufficiently separable from the remainder of the project of which the

building is part, such that the revitalization of the building is feasible; or

(b) Was part of a project described in your application's response to Section V.A. of this NOFA that has been legally vacated or demolished, but for which HUD has not yet provided replacement housing assistance (other than tenant-based assistance). ''Replacement housing assistance'' are funds that have been furnished by HUD to perform major rehabilitation on, or reconstruction of, the public housing units that have been legally vacated or demolished.

b. For the purposes of the ''severely distressed'' threshold requirement, Replacement Housing Factor funds will not be considered as ''replacement housing assistance.''

c. A severely distressed project that has been legally vacated or demolished (but for which HUD has not yet provided replacement housing assistance, other than tenant-based assistance) must have met the definition of physical distress not later than the day the demolition application approval letter was dated by HUD.

D. *Eligible Revitalization Activities.* HOPE VI Revitalization grants may be used for activities to carry out revitalization programs for severely distressed public housing in accordance with Section 24(d) of the 1937 Act. Revitalization activities approved by HUD must be conducted in accordance with the requirements of this NOFA. The following is a list of eligible activities.

1. *Relocation.* Relocation, including reasonable moving expenses, for residents displaced as a result of the revitalization of the project. See Sections III.C., IV.B. and V.A.6. of this NOFA for relocation requirements.

2. *Demolition.* Demolition of dwelling units or nondwelling facilities, in whole or in part, although demolition is not a required element of a HOPE VI Revitalization Plan.

3. *Disposition.* Disposition of a severely distressed public housing site, by sale or lease, in whole or in part, in accordance with Section 18 of the 1937 Act and implementing regulations at 24 CFR part 970. A lease of one year or more that is not incident to the normal operation of a project is considered a disposition that is subject to Section 18 of the 1937 Act.

4. *Rehabilitation and Physical Improvement.* Rehabilitation and physical improvement of public housing and community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the project and residents of off-site replacement housing, in accordance with 24 CFR 968.112(b), (d), (e), and (g)–(o) and 24 CFR 968.130 and 968.135(b) and (d) or successor regulations, as applicable.

5. *Development.* Development of public housing replacement units and other units (*e.g.*, market-rate units), provided a need exists for such units and such development is performed with non-public housing funds.

6. *Homeownership Activities.* Assistance involving the rehabilitation and development of homeownership units. Assistance may include:

a. Downpayment or closing cost assistance;

b. Second mortgages; or

c. Construction or permanent financing for new construction, acquisition, or rehabilitation costs related to homeownership replacement units.

7. *Acquisition.* Acquisition of rental units, land for the development of off-site replacement units, and land for economic development-related activities.

8. *Management Improvements.* Necessary management improvements, including transitional security activities.

9. *Administration, Planning, Etc.* Administration, planning, technical assistance, and other activities (including architectural and engineering work, program management, and reasonable legal fees) that are related to the implementation of the Revitalization Plan, as approved by HUD. See Cost Control Standards in Section IV.E. of this NOFA.

10. *Community and Supportive Services (CSS).* a. The CSS component of the HOPE VI program encompasses all activities that are designed to promote upward mobility, self-sufficiency, and improved quality of life for the residents of the public housing project involved.

b. *CSS activities.* CSS activities may include, but are not limited to:

(1) Educational activities that promote learning and serve as the foundation for young people from infancy through high school graduation, helping them to succeed in academia and the professional world. Such activities, which include after-school programs, mentoring, and tutoring, must be created with strong partnerships with public and private educational institutions.

(2) Adult educational activities, including remedial education, literacy training, tutoring for completion of secondary or postsecondary education, assistance in the attainment of certificates of high school equivalency, and English as a Second Language courses, as needed.

(3) Readiness and retention activities, which frequently are key to securing private sector commitments to the provision of jobs.

(4) Employment training activities that include results-based job training, preparation, counseling, development, placement, and follow-up assistance after job placement.

(5) Programs that provide entry-level, registered apprenticeships in construction, construction-related, maintenance, or other related activities. A registered apprenticeship program is a program that has been registered with either a State Apprenticeship Agency recognized by the Department of Labor's (DOL) Office of Apprenticeship Training, Employer and Labor Services (OATELS) or, if there is no recognized state agency, by OATELS. See also DOL regulations at 29 CFR part 29.

(6) Life skills training on topics such as parenting, consumer education, and family budgeting.

(7) Creation and operation of credit unions to serve residents, including capitalization and technical assistance to foster new credit unions on-site and to encourage existing community credit unions to expand their coverage to include on-site coverage.

(8) Homeownership counseling that is scheduled to begin promptly after grant award so that, to the maximum extent possible, qualified residents will be ready to purchase new homeownership units when they are completed. The Family Self-Sufficiency program can also be used to promote homeownership, providing assistance with escrow accounts and counseling.

(9) Coordinating with health care providers or providing on-site space for health clinics, doctors, wellness centers, dentists, etc. that will primarily serve the public housing residents. HOPE VI funds may not be used to provide direct medical care to residents.

(10) Substance and alcohol abuse treatment and counseling.

(11) Activities that address domestic violence treatment and prevention.

(12) Child care services that provide sufficient hours of operation to facilitate parental access to education and job opportunities, serve appropriate age groups, and stimulate children to learn.

(13) Transportation, as necessary, to enable all family members to participate in available CSS activities and to commute to their places of employment.

(14) Entrepreneurship training and mentoring, with the goal of establishing resident-owned businesses.

11. *Leveraging.* Leveraging other resources, including additional housing

resources, supportive services, job creation, and other economic development uses on or near the project that will benefit future residents of the site.

12. *SuperNOFA Reference.* Section I, ''Funding Opportunity Description,'' of the *Notice of HUD's Fiscal Year 2004 Notice of Funding Availability (NOFA) Policy Requirements and General Section to the Super NOFA for HUD's Discretionary Programs* (SuperNOFA), Docket No. FR–4900-N–01, published in the **Federal Register** on May 14, 2004, is hereby incorporated by reference.

II. Award Information

A. *Availability of HOPE VI Funds.*

Type of assistance	Funds available for award in this HOPE VI NOFA (approximate)
Revitalization Grants	$120,000,000
Housing Choice Voucher Assistance	20,000,000
Total	140,000,000

1. *Revitalization Grants.* Approximately $120 million of the FY2004 HOPE VI appropriation has been allocated to fund HOPE VI Revitalization grants and will be awarded in accordance with this NOFA. There will be approximately six awards.

2. *Housing Choice Voucher Assistance.* Approximately $20 million of the HOPE VI appropriation will be allocated for Housing Choice Voucher (HCV) assistance. HCV assistance will be provided to HOPE VI Revitalization NOFA awardees. If $20 million is more than the amount necessary to fund the HOPE VI grantee's HCV needs, the remaining funds will be used for other eligible activities under Section 24 of the 1937 Act.

5. *SuperNOFA Reference.* Section II., ''Funding Available,'' of the SuperNOFA is hereby incorporated by reference.

III. Eligibility Information

A. *Eligible Applicants.* 1. PHAs that have severely distressed housing in their inventory and are otherwise in conformance with the threshold requirements provided in Section III.C. of this NOFA. See Section IV.B.4. of this NOFA for threshold documentation requirements.

2. *Housing Choice Voucher Programs Only and Tribal Housing Agencies.* PHAs that only administer HCV programs, *e.g.*, Section 8, HCV, and tribal PHAs and tribally-designated housing entities, are not eligible to apply.

3. *Troubled Status.* If HUD has designated your housing authority as troubled pursuant to Section 6(j)(2) of the 1937 Act, HUD will use documents and information available to it to determine whether you qualify as an eligible applicant. In accordance with Section 24(j) of the 1937 Act, the term ''applicant'' means:

a. Any PHA that is not designated as ''troubled'' pursuant to Section 6(j)(2) of the 1937 Act; b. Any PHA for which a private housing management agent has been selected, or a receiver has been appointed, pursuant to Section 6(j)(3) of the 1937 Act; and c. Any PHA that is designated as ''troubled'' pursuant to Section 6(j)(2) of the 1937 Act and that:

(1) Is designated as troubled principally for reasons that will not affect its capacity to carry out a revitalization program;

(2) Is making substantial progress toward eliminating the deficiencies of the agency that resulted in its troubled status; or

(3) Is otherwise determined by HUD to be capable of carrying out a revitalization program.

B. Cost Sharing or Matching.

1. *Match Requirements.*

a. *Revitalization Grant Match.* HUD is required by the Quality Housing and Work Responsibility Act (42 U.S.C. 1437v(c)(1)(A)) to include the requirement for matching funds for all HOPE VI-related grants. You are required to have in place a match in the amount of 5 percent of the requested grant amount in cash or in-kind donations. Applications that do not demonstrate the minimum 5 percent match will not be considered for funding.

b. *Additional Community and Supportive Services (CSS) Match.*

(1) In addition to the 5 percent revitalization grant match in Section a. above, you may be required to have in place a CSS match. Funds used for the Revitalization grant match cannot be used for the CSS match.

(2) If you are selected for funding through this NOFA, you may use up to 15 percent of your grant for such activities. However, if you propose to use more than 5 percent of your HOPE VI grant for CSS activities, you must have in place funds from sources other than HOPE VI, that match the amount between 5 and 15 percent of the grant that you will use for CSS activities.

c. In accordance with Section 24(c) of the Act, for purposes of calculating the amount of matching funds required by Sections a. and b. above, you may include amounts from public housing sources other than HOPE VI Revitalization (such as HOPE VI Demolition grants and Capital Funds may be included). In addition, other federal sources, any state or local government source, any private contributions, the value of donated material or buildings, the value of any lease on a building, the value of the time and services contributed by volunteers, and the value of any other in-kind services or administrative costs provided.

d. Match donations must be firmly committed. ''Firmly committed'' means that the amount of match resources and their dedication to HOPE VI Revitalization activities must be explicit, in writing, and signed by a person authorized to make the commitment.

e. You may propose to use your own non-public housing grant funds to meet the match requirement.

f. Matching funds must be directly applicable to the revitalization of the site and the transformation of the lives of residents.

g. The PHA's staff time is not an eligible cash or in-kind match.

h. See Section IV.B.3 of this NOFA for match documentation requirements.

C. Other.

1. Thresholds. If you have not met a threshold, or have not included in the application the complete, correct, required documentation that demonstrates the threshold has been met, the application will not be rated or ranked and will be ineligible for funding. Threshold insufficiency cannot be cured after the application due date. See Section IV.B. of this NOFA for documentation requirements.

a. *One application.* Each applicant may submit only one HOPE VI Revitalization application as described in this NOFA. If a single applicant submits more than one application, all applications will be disqualified and no application will be eligible for funding.

b. *Appropriateness of Proposal.* In accordance with Section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal and explain why your plan is more appropriate. This is a statutory requirement and an application threshold. If you do not demonstrate the appropriateness of the proposal (revitalization plan) in the context of the local housing market relative to other alternatives, your application will not be rated or ranked and will be ineligible for funding. Examples of alternative proposals may include:

(1) Rebuilding or rehabilitating an existing project or units at an off-site location that is in an isolated, non-residential, or otherwise inappropriate area;

(2) Proposing a range of incomes, housing types (rental, homeownership, market-rate, public housing, townhouse, detached house, etc.), or costs which cannot be supported by a market analysis; or

(3) Proposing to use the land in a manner that is contrary to the goals of your agency.

c. *Contiguous, Single, and Scattered-Site Projects.* Except as provided in sections (1) and (2) below, each application must target one severely distressed public housing project (*i.e.*, with one project number).

(1) *Contiguous Projects.* Each application may request funds for more than one project if those projects are immediately adjacent to one another or within a quarter-mile of each other. If you include more than one project in your application, you must provide a map that clearly indicates that the projects are within a quarter-mile of each other. If HUD determines that they are not, your application will be ineligible for funding.

(2) *Scattered Site Projects.* Your application may request funds to revitalize a scattered site public housing project. The sites targeted in an application proposing to revitalize scattered sites (regardless of whether the scattered sites are under multiple project numbers) must fall within an area with a one-mile radius. You may identify a larger site if you can show that all of the targeted scattered site units are located within the hard edges (*e.g.*, major highways, railroad tracks, lakeshore, *etc.*) of a neighborhood. If you propose to revitalize a project that extends beyond a one-mile radius or is otherwise beyond the hard edges of a neighborhood, your application will not be rated or ranked and will be ineligible for funding.

d. *Desegregation Orders.* You must be in full compliance with any desegregation or other court order and voluntary compliance agreements related to Fair Housing (*e.g.*, Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects your public housing program and that is in effect on the date of application submission. If you are not in full compliance with any desegregation or other court orders, your application will be ineligible for funding.

e. *Non-Public Housing Funding for Non-Public Housing or Replacement Units.* If the application demonstrates that you are planning to use public housing funds, which include HOPE VI funds, to develop: retail or commercial space; economic development space (community building, *etc.*); or housing units that are not Replacement Housing (See Section I.C. of this NOFA), your application will not be rated or ranked and will be ineligible for funding. See Section IV.B.4. for documentation requirements regarding this threshold.

f. *Open Inspector General Audits.* (1) If you have an open Inspector General (IG) or Government Accountability Office (GAO) audit finding that has not been resolved to HUD's satisfaction before the due date of this NOFA, the application will not be rated or ranked and will be ineligible for funding.

(2) HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based on whether appropriate actions have been taken to address the findings.

g. *Performance of Existing HOPE VI Grantees.* (1) The application will not be rated or ranked and will be ineligible for funding if you have an existing HOPE VI Revitalization grant, and

(a) The grant development is delinquent due to actions or inactions that are not beyond the control of the grantee; and

(b) The grantee is not making substantial progress toward eliminating the delinquency.

(2) ''Delinquent'' means that resident relocation, unit demolition, unit construction, unit rehabilitation, unit occupancy, or unit re-occupancy have not occurred in accordance with the grantee's current Revitalization Plan.

(3) Reasons that are beyond the control of the grantee include, but are not limited to, the following:

(a) Litigation;

(b) Court Orders; and

(c) Emergency and natural disasters.

(4) HUD will use documents and information available to it to determine whether the grant is delinquent due to reasons that are beyond the control of the grantee and whether the grantee is making substantial progress toward eliminating the delinquency.

h. *Previously Funded Sites.* You may submit a Revitalization application that targets a project that is being revitalized or replaced under an existing HOPE VI Revitalization grant. However, you may not apply for new HOPE VI Revitalization funds for units in that project that were funded by the existing HOPE VI Revitalization grant or other HUD funds which are used to achieve significant revitalization of units (as opposed to regular upkeep), even if those funds are inadequate to pay the costs to revitalize or replace all of the targeted units. For example, if a project has 700 units and you were awarded a HOPE VI Revitalization grant or other HUD public housing funds to address 300 of those units, you may submit an FY2004 HOPE VI Revitalization application to revitalize the remaining 400 units. You may not apply for funds to supplement work on the original 300 units. If you request funds to revitalize units or buildings that have been funded by an existing HOPE VI Revitalization grant or other HUD funds, your application will not be rated or ranked and will be ineligible for funding.

i. *Program Schedule.* Your application must contain a program schedule that provides a feasible plan to meet the schedule requirements of Section VI.B.2. of this NOFA, with no impediments such as litigation that would prevent timely startup. The program schedule must indicate the date on which the development proposal, *i.e.*, whether mixed-finance development, homeownership development, *etc.,* for each phase of the revitalization plan will be submitted to HUD. For application evaluation only, you should assume the following award and post-award dates.

Milestone	Date
Grant Award	April 1, 2005.
Grant Agreement Execution.	July 1, 2005.
HUD's written request for Supplemental Submissions.	August 1, 2005.
HUD's approval of Supplemental Submissions.	September 1, 2005.

If grant award takes place after October 1, 2004, the grantee's program schedule may be changed in the Supplemental Submissions to account for the period of time between October 1, 2004, and the actual date of grant award. If your application does not contain a program schedule, as described above, the application will not be rated or ranked and will be ineligible for funding.

j. *Separability.* In accordance with Section 24(j)(2)(A)(v) of the 1937 Act, if you propose to target only a portion of a project for revitalization, you must:

(1) Demonstrate to HUD's satisfaction that the severely distressed public housing is sufficiently separable from the remainder of the project of which the building is part to make use of the building feasible for revitalization. Separations may include a road, berm, catch basin, or other recognized neighborhood distinction.

(2) Demonstrate that the site plan and building designs of the revitalized

portion will provide defensible space for the occupants of the revitalized building(s) and that the properties that remain will not have a negative influence on the revitalized buildings(s), either physically or socially.

(3) If your application does not demonstrate separability, your application will not be rated or ranked and will be ineligible for funding.

k. *Severe Distress of Target Project.* The targeted public housing project or building in a project targeted by a HOPE VI Revitalization application must be severely distressed. See Section I.C. of this NOFA for the definition of ''severely distressed.'' If the targeted project or building is not severely distressed, your application will not be rated or ranked and will be ineligible for funding.

l. *Site Control.* (1) If you propose to develop off-site housing in any phase of your proposed revitalization plan, you MUST provide evidence in your application that you (not your developer) have site control of the property(ies).

(2) Site control may only be contingent upon:

(a) The receipt of the HOPE VI grant;

(b) Satisfactory compliance with the environmental review requirements of this NOFA; and

(c) The site and neighborhood standards in Section III.C.4. of this NOFA.

(3) If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application due date.

(4) If you propose to develop off-site housing and you do not provide acceptable evidence of site control, your ENTIRE application will not be rated or ranked and will be ineligible for funding.

m. *Zoning Approval.* (1) If you are proposing to use off-site parcels of land for housing development or other uses that, until this point in time have been zoned for a purpose different than the one proposed in your revitalization plan, your application must include:

(a) A certification from the appropriate local official documenting that all required zoning approvals have been secured for such parcels; or

(b) The actual zoning approval document(s) for the parcel(s).

(2) If you are proposing to use off-site parcels of land for housing development or other uses and those parcels are already zoned for your chosen use, your application must include a certification signed by the executive director stating that all current zoning allows all proposed HOPE VI activities.

(3) For example, if you propose to develop housing on land that is currently zoned as parkland, you must provide evidence in the application that the zoning change has been secured to permit housing development. If you propose to keep the land as parkland, you must provide a certification in the application that the zoning is for parkland.

(4) If zoning approval/certification is not properly included in your application, the application will not be rated or ranked and will be ineligible for funding.

n. *Requirements and Procedures Applicable to All Programs:* (1) SuperNOFA References. The following subsections of Section III.C. of the SuperNOFA are hereby incorporated by reference:

(a) Dun and Bradstreet Data Universal Numbering System (DUNS) Number Requirement;

(b) Compliance with Fair Housing and Civil Rights Laws;

(c) Conducting Business In Accordance with Core Values and Ethical Standards;

(d) Delinquent Federal Debts;

(e) Name Check Review;

(f) False Statements;

(g) Prohibition Against Lobbying Activities;

(h) Debarment and Suspension.

(i) Statutory and Regulatory Requirements; and

(j) Ineligible Applicants.

(2) Salary Limitation for Consultants. FY2004 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant whether retained by the federal government or the grantee at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

2. *Thresholds—Applicant Certifications Covered by the Standard Form 424.* By signing and submitting the Application for Federal Assistance, Standard Form 424, you are certifying to all of the thresholds listed in this section. A false statement in an application is grounds for denial or termination of an award and grounds for possible punishment as provided in 18 U.S.C. 1001, 1010, and 1012, and 32 U.S.C. 3729 and 3802. See Section IV.B. of this NOFA for any documentation requirements related to these certifications. a. If you have not met a threshold on or before the application due date, or have not included in the application the complete, correct, required documentation that demonstrates the threshold has been met, the application will not rated or ranked and will be ineligible for funding. For these thresholds, insufficiency cannot be cured after the application due date. See Section IV.B. of this NOFA for documentation requirements.

(1) Selection of Developer. You must certify that:

(a) You have initiated an RFQ by the application due date for the competitive procurement of a developer for your first phase of construction, in accordance with 24 CFR 85.36 and 24 CFR 941.602(d) (as applicable). If you change developers after you are selected for funding, HUD reserves the right to rescind the grant; or

(b) You will act as your own developer for the proposed project. If you change your plan and procure an outside developer after you are selected for funding, HUD reserves the right to rescind the grant.

(2) Resident Involvement in Revitalization Program.

You must certify that you have involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of your application. If you have not included affected residents your application will not be rated or ranked and will be ineligible for funding. See Section III.C.4. of this NOFA for minimum training and meeting requirements and Section IV.B. of this NOFA for documentation requirements.

b. Omission of any of the mandatory documentation listed in Section IV.B. of this NOFA is considered a Technical Deficiency and must be cured (corrected) within the cure period stated in Section IV.B. of the SuperNOFA. Applications that remain deficient after the cure period will not be rated or ranked and will be ineligible for funding.

(1) Operation and Management Principles and Policies Certification. You must certify that you will implement the Operation and Management Principles and Policies stated in Section III.C.4.h. of this NOFA.

(2) Relocation Plan Certification.

(a) You must certify that the HOPE VI Relocation Plan has been completed and that it conforms to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) requirements as described in Section V.A.6. of this NOFA.

(b) If relocation was completed (*i.e.*, the targeted public housing site is vacant) as of the application due date, rather than certifying that the HOPE VI Relocation Plan has been completed, you certify that the relocation was completed.

(3) Resident Involvement in the Revitalization Program Certification. You must certify that resident training sessions and public meetings were held and that you involved affected public housing residents at the beginning and during the planning process for the revitalization program prior to submission of an application.

(4) Standard Certifications. The last part of your application will be comprised of standard certifications common to many HUD programs. Required forms must be included in the HOPE VI application and will be available over the Internet at *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

3. *Thresholds—Third-Party Certifications.* The following third-party certifications must be included in your application. a. If you have not included in the application, on or before the application due date, the complete, correct, required documentation that demonstrates the threshold has been met, the application will not rated or ranked and will be either ineligible for funding or have its funding limited, based upon the threshold. For these thresholds, insufficiency regarding these thresholds cannot be cured after the application due date. See Section IV.B. of this NOFA for any documentation requirements related to these certifications.

(1) Cost Control Standards. Your cost estimates must be certified to meet the cost control standards stated in Section IV.E. by an independent cost estimator, architect, engineer, contractor, or other qualified third party professional. If your costs are not certified, your application will not be rated or ranked and will be ineligible for funding.

(2) Severely Distressed Certification. You must certify that the target project is severely distressed. In order to certify to severe physical distress, your application must include a certification that is signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city. A Certification of Severe Physical Distress is provided on the Internet at *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

b. Omission of any of the mandatory documentation listed in this section is considered a technical deficiency and must be cured (corrected) within the cure period stated in Section IV.B.4. of the SuperNOFA. Applications that remain deficient after the cure period will not be rated or ranked and will be ineligible for funding. See Section IV.B. of this NOFA for any documentation requirements related to these certifications.

(1) Market-rate Housing: Market Assessment Certification. If you include market-rate housing, community facilities (if market-driven, *e.g.*, a YMCA or a community facility that is primarily intended to facilitate the delivery of community and supportive services for residents of the targeted severely distressed public housing project and of off-site replacement housing does not need to be addressed in the market assessment letter), economic development, and retail structures in your Revitalization Plan, you must provide a certification by an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units and any community facilities, economic development, and retail structures, based on the market and economic conditions of the project area.

(2) HOPE VI Revitalization Applicant Certifications. You must include in your application a certification from the Chairman of your Board of Commissioners to the requirements listed in the HOPE VI Revitalization Applicant Certifications. This certification is provided on the Internet at *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

4. *Program Requirements.*

a. *Demolition.* (1) You may not carry out nor permit others to carry out the demolition of the project or any portion of the project until HUD approves, in writing, one of the following, and until HUD has also approved a Request for Release of Funds submitted in accordance with 24 CFR part 58 or, if HUD performs an environmental review under 24 CFR part 50, until HUD has approved in writing the property for demolition following its environmental review.

(a) Information in your HOPE VI Revitalization Application, along with Supplemental Submissions requested by HUD after the award of the grant. Section 24(g) of the 1937 Act provides that severely distressed public housing demolished pursuant to a Revitalization Plan is not required to be approved by a demolition application under Section 18 of the 1937 Act or regulations at 24 CFR part 970. If you do not receive a HOPE VI Revitalization grant, the information in your application will not be used to process a request for demolition;

(b) A demolition application under Section 18 of the 1937 Act. While a Section 18 approval is not required by HOPE VI demolition, you will not have to wait for demolition approval through your supplemental submissions, as described in Section (a) above; or

(c) A Section 202 Mandatory Conversion Plan, in compliance with regulations at 24 CFR part 971 and other applicable HUD requirements, if the project is subject to Mandatory Conversion (Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996 Pub. L. 104–134, approved on April 26, 1996). A Mandatory Conversion Plan concerns the removal of a public housing project from a PHA's inventory.

b. *Development.* (1) For any standard (non-mixed finance) public housing development activity (whether on-site reconstruction or off-site development), you must obtain HUD approval of a standard development proposal submitted under 24 CFR part 941 (or successor part).

(2) For mixed-finance housing development, you must obtain HUD approval of a mixed finance proposal, submitted under 24 CFR part 941, subpart F (or successor part and subpart).

(3) For new construction of community facilities primarily intended to facilitate the delivery of community and supportive services for residents of the project and residents of off-site replacement housing, you must comply with 24 CFR part 941 (or successor part). Information required for this activity must be included in either a standard or mixed finance development proposal, as applicable.

c. *Homeownership.* (1) For homeownership replacement units developed under a Revitalization Plan, you must obtain HUD approval of a homeownership proposal. Your homeownership proposal must conform to either:

(a) Section 24(d)(1)(J) of the 1937 Act; or

(b) Section 32 of the 1937 Act (see 24 CFR part 906). Additional information on this option may be found at *http://www.hud.gov/offices/pih/centers/sac/homeownership.*

(2) The homeownership proposal must be consistent with the 80 percent of Area Median Income (AMI) limitations and any other applicable provisions under the 1937 Act. (HUD publishes AMI tables for each family size in each locality annually. The income limit tables can be found at *http://www.huduser.org/datasets/il/il04/index.html.*)

d. *Acquisition.* (1) Acquisition Proposal. Before you undertake any acquisition activities with HOPE VI or other public housing funds, you must obtain HUD approval of an acquisition proposal that meets the requirements of 24 CFR 941.303.

(2) Rental Units. For acquisition of rental units in existing or new apartment buildings, single family subdivisions, etc., with or without rehabilitation, for use as public housing replacement units, you must obtain HUD approval of a Development Proposal in accordance with 24 CFR 941.304 (conventional development) or 24 CFR 941.606 (mixed finance development).

(2) Land for Off-Site Replacement Units. For acquisition of land for public housing or homeownership development, you must comply with 24 CFR part 941 or successor part.

(3) Land for Economic Development-Related Activities.

(a) Acquisition of land for this purpose is eligible only if the economic development-related activities specifically promote the economic self-sufficiency of residents.

(b) Limited infrastructure and site improvements associated with developing retail, commercial, or office facilities, such as rough grading and bringing utilities to (but not on) the site are eligible activities with prior HUD approval.

e. *Access to Services.* For both on-site and any off-site units, your overall Revitalization Plan must result in increased access to municipal services, jobs, mentoring opportunities, transportation, and educational facilities; *i.e.*, the physical plan and self-sufficiency strategy must be well-integrated and strong linkages must be established with the appropriate federal, state, and local agencies, nonprofit organizations, and the private sector to achieve such access.

f. *Building Standards.* (1) Building Codes. All activities that include construction, rehabilitation, lead-based paint removal, and related activities must meet or exceed local building codes. You are encouraged to read the policy statement and final report of the HUD Review of Model Building Codes that identifies the variances between the design and construction requirements of the Fair Housing Act and several model building codes. That report can be found on the HUD Web site at *http://www.hud.gov/fhe/modelcodes*.

(2) Deconstruction. HUD encourages you to design programs that incorporate sustainable construction and demolition practices, such as the dismantling or ''deconstruction'' of public housing units, recycling of demolition debris, and reusing of salvage materials in new construction. ''A Guide to Deconstruction'' can be found at *http://www.hud.gov/deconstr.pdf.*

(3) Partnership for Advancing Technology in Housing (PATH). HUD encourages you to use PATH technologies in the construction and delivery of replacement housing. PATH is a voluntary initiative that seeks to accelerate the creation and widespread use of advanced technologies to radically improve the quality, durability, environmental performance, energy efficiency, and affordability of our Nation's housing.

(a) PATH's goal is to achieve dramatic improvement in the quality of American housing by the year 2010. PATH encourages leaders from the home building, product manufacturing, insurance and financial industries, and representatives from federal agencies dealing with housing issues to work together to spur housing design and construction innovations. PATH will provide technical support in design and cost analysis of advanced technologies to be incorporated in project construction.

(b) Applicants are encouraged to employ PATH technologies to exceed prevailing national building practices by:

(i) Reducing costs;

(ii) Improving durability;

(iii) Increasing energy efficiency;

(iv) Improving disaster resistance; and

(v) Reducing environmental impact.

(c) More information, the list of technologies, the latest PATH Newsletter, results from field demonstrations, and PATH projects can be found at *http://www.pathnet.org*.

(4) Energy Efficiency. (a) New construction must comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

(b) HUD encourages you to set higher standards for energy and water efficiency in HOPE VI new construction, which can achieve utility savings of 30 to 50 percent with minimal extra cost.

(c) You are encouraged to negotiate with your local utility company to obtain a lower rate. Utility rates and tax laws vary widely throughout the country. In some areas, PHAs are exempt or partially exempt from utility rate taxes. Some PHAs have paid unnecessarily high utility rates because they were billed at an incorrect rate classification.

(d) Local utility companies may be able to provide grant funds to assist in energy efficiency activities. States may also have programs that will assist in energy efficient building techniques.

(e) You must use new technologies that will conserve energy and decrease operating costs where cost effective. Examples of such technologies include:

(i) Geothermal heating and cooling;

(ii) Placement of buildings and size of eaves that take advantage of the directions of the sun throughout the year;

(iii) Photovoltaics (technologies that convert light into electrical power);

(iv) Extra insulation;

(v) Smart windows; and

(vi) Energy Star appliances.

(5) Universal Design. HUD encourages you to incorporate the principles of universal design in the construction or rehabilitation of housing, retail establishments, and community facilities, or when communicating with community residents at public meetings or events. Universal design is the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design. The intent of universal design is to simplify life for everyone by making products, communications, and the built environment more usable by as many people as possible at little or no extra cost. Universal design benefits people of all ages and abilities. Examples include designing wider doorways, installing levers instead of doorknobs, and putting bathtub/shower grab bars in all units. Computers and telephones can also be set up in ways that enable as many residents as possible to use them. The Department has a publication that contains a number of ideas about how the principles of Universal Design can benefit persons with disabilities. To order a copy of *Strategies for Providing Accessibility and Visitability for HOPE VI and Mixed Finance Homeownership*, go to the publications and resource page of the HOPE VI Web site at *http://www.huduser.org/publications/pubasst/strategies.html*.

(6) Energy Star. HUD has adopted a wide-ranging energy action plan for improving energy efficiency in all program areas. As a first step in implementing the energy plan, HUD, the Environmental Protection Agency (EPA), and the Department of Energy (DoE) have signed a joint partnership to promote energy efficiency in HUD's affordable housing efforts and programs. The purpose of the Energy Star partnership is to promote energy efficiency of the affordable housing stock, but also to help protect the environment. Applicants constructing, rehabilitating, or maintaining housing or community facilities are encouraged to

promote energy efficiency in design and operations. They are urged especially to purchase and use Energy Star-labeled products. Applicants providing housing assistance or counseling services are encouraged to promote Energy Star building by homebuyers and renters. Program activities can include developing Energy Star promotional and information materials, outreach to low- and moderate-income renters and buyers on the benefits and savings when using Energy Star products and appliances, and promoting the designation of community buildings and homes as Energy Star compliant. For further information about Energy Star, see *http://www.energystar.gov* or call 888–STAR–YES (888–782–7937), or for the hearing-impaired, call 888–588–9920 TTY. See also the energy efficiency requirements in Section III.C.4. of this NOFA.

(7) Lead-Based Paint. You must comply with lead-based paint evaluation and reduction requirements as provided for under the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, *et seq.*). You also must comply with regulations at 24 CFR part 35, 24 CFR 965.701, and 24 CFR 968.110(k), as they may be amended or revised from time to time. Unless otherwise provided, you will be responsible for lead-based paint evaluation and reduction activities. The National Lead Information Hotline is 800–424–5323.

g. *Labor Standards.* The following standards must be implemented as appropriate in regard to HOPE VI grants.

(1) Labor Standards.

(a) Davis-Bacon wage rates apply to development of any public housing rental units or homeownership units developed with HOPE VI grant funds and to demolition followed by construction on the site. Davis-Bacon rates are ''prevailing'' minimum wage rates set by the Secretary of Labor that all laborers and mechanics employed in the development, including rehabilitation other than routine maintenance of a public housing project must be paid, as set forth in a wage determination that the PHA must obtain prior to bidding on each construction contract. The wage determination and provisions requiring payment of these wage rates must be included in the construction contract;

(b) HUD-determined wage rates apply to:

(i) Operation (including nonroutine maintenance) of revitalized housing, and

(ii) Demolition followed only by filling in the site and establishing a lawn.

(2) Exclusions. Under Section 12(b) of the 1937 Act, wage rate requirements do not apply to individuals who:

(a) Perform services for which they volunteered;

(b) Do not receive compensation for those services or are paid expenses, reasonable benefits, or a nominal fee for the services;

(c) Are not otherwise employed in the work involved (24 CFR part 70).

(3) If other federal programs are used in connection with your HOPE VI activities, labor standards requirements apply to the extent required by the other federal programs on portions of the project that are not subject to Davis-Bacon rates under the 1937 Act.

h. *Operation and Management Policies and Principles.* (1) You and your procured property manager, if applicable, must comply (to the extent required) with the provisions of 24 CFR part 966 in planning for the implementation of the operation and management principles and policies described below.

(a) Rewarding work and promoting family stability by promoting positive incentives such as income disregards and ceiling rents;

(b) Instituting a system of local preferences adopted in response to local housing needs and priorities, *e.g.*, preferences for victims of domestic violence, residency preferences, and disaster victims;

(c) Encouraging self-sufficiency by including lease requirements that promote involvement in the resident association, performance of community service, participation in self-sufficiency activities, and transitioning from public housing;

(d) Implementing site-based waiting lists for the redeveloped public housing and following project-based management principles;

(e) Instituting strict applicant screening requirements such as credit checks, references, home visits, and criminal records checks;

(f) Strictly enforcing lease and eviction provisions;

(g) Improving the safety and security of residents through the implementation of defensible space principles and the installation of physical security systems such as surveillance equipment, control engineering systems, *etc*;

(h) Enhancing ongoing efforts to eliminate drugs and crime from neighborhoods through collaborative efforts with federal, state, and local crime prevention programs and entities such as:

(i) Local law enforcement agencies;

(ii) Your local United States Attorney;

(iii) The Weed and Seed Program, if the targeted project is located in a designated Weed and Seed area. Operation Weed and Seed is a multi-agency strategy that ''weeds out'' violent crime, gang activity, drug use, and drug trafficking in targeted neighborhoods and then ''seeds'' the target area by restoring these neighborhoods through social and economic revitalization. Law enforcement activities constitute the ''weed'' portion of the program. Revitalization, which includes prevention, intervention, and treatment services as well as neighborhood restoration, constitutes the ''seed'' element. For more information, *see* the Community and Safety and Conservation Web site at *http://www.hud.gov/offices/pih/divisions/cscd/*.

i. *Non-Fungibility for MTW PHAs.* Funds awarded under this NOFA are not fungible under MTW agreements and must be accounted for separately, in accordance with the HOPE VI Revitalization Grant Agreement, the requirements in Section III.C.4.m. of the SuperNOFA, entitled, *''OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs,''* and GAAP.

j. *Resident and Community Involvement.* (1) General. You are required to involve the affected public housing residents, state and local governments, private service providers, financing agencies, and developers in the planning process, proposed implementation, and management of your Revitalization Plan. This involvement must be continuous from the beginning of the planning process through the implementation and management of the grant, if awarded.

(2) Resident Training Session. You must conduct at least one training session for residents of the severely distressed project on the HOPE VI development process. HUD does not prescribe the content of this meeting.

(3) Public Meetings. (a) You must conduct at least three public meetings with residents and the broader community, in order to involve them in a meaningful way in the process of developing the Revitalization Plan and preparing the application. One of these meetings must have taken place at the beginning of the planning process.

(b) These three public meetings must take place on different days from each other and from the resident training session.

(c) During the course of the three meetings, you must address the following issues listed below (*i.e.*, all issues need not be addressed at each meeting):

(i) The HOPE VI planning and implementation process;

(ii) The proposed physical plan, including site and unit design, and whether the unit design is in compliance with Fair Housing Act and UFAS standards;

(iii) The extent of proposed demolition;

(iv) Planned community and supportive service activities;

(v) Other proposed revitalization activities;

(vi) Relocation issues, including relocation planning, mobility counseling, and maintaining the HOPE VI community planning process during the demolition and reconstruction phases where temporary relocation is involved;

(vii) Reoccupancy plans and policies, including site-based waiting lists; and

(viii) Section 3 and employment opportunities to be created as a result of redevelopment activities.

(4) Accessibility. All training sessions and meetings must be held in facilities that are accessible to persons with disabilities, provide services such as day care, transportation, and sign language interpreters as appropriate, and as practical and applicable, be conducted in English and the language(s) most appropriate for the community.

(5) Allowable Time Period for Training and Meetings.

(a) At least one public meeting, which included representation from both the involved public housing residents and the community, must have been held at the beginning of the revitalization planning period;

(b) At least one training session must have been held after the publication date of this NOFA in the **Federal Register**; and

(c) The minimum of two more public meetings must have been held after the publication date of this NOFA in the **Federal Register**.

(d) The above minimum number of trainings and meetings are required to meet the Resident Involvement threshold in Section III.C. of this NOFA. Additional meetings and trainings will be counted toward demonstration of continual inclusion of the residents and community in the rating factors.

k. *CSS Program Requirements.* (1) Term Period. CSS programs and services must last for the life of the grant and must be carefully planned so that they will be sustainable after the HOPE VI grant period ends.

(2) Allowed Funding Mechanisms:

(a) Maximum CSS grant amount. Consistent with Section 24(j)(3) of the 1937 Act, you may use up to 15 percent of the total HOPE VI grant to pay the costs of CSS activities. See Section III.B.1. of this NOFA for CSS grant matching requirements. You may spend additional sums on CSS activities using donations, other HUD funds made available for that purpose (leverage), or other PHA funds.

(b) CSS Endowment Trust. Consistent with Section 24(d)(2) of the 1937 Act, you may deposit up to 15 percent of your HOPE VI grant (the maximum amount of the award allowable for CSS activities) into an endowment trust to provide CSS activities. In order to establish an endowment trust, you must first execute with HUD a HOPE VI Endowment Trust Addendum to the grant agreement. When reviewing your request to set up an endowment trust, HUD will take into consideration your ability to pay for current CSS activities with HOPE VI or other funds and the projected long-term sustainability of the endowment trust to carry out those activities.

(3) CSS Team and Partners. (a) The term ''CSS Team'' refers to PHA staff members and any consultants who will have the responsibility to design, implement, and manage your CSS program.

(b) The term ''CSS Partners'' refers to the agencies and organizations that you will work with to provide supportive services for residents. A partner could be a local service organization such as a Boys or Girls Club that donates its building and staff to the program, or an agency such as the local TANF agency that works with you to ensure that their services are coordinated and comprehensive.

(c) Partner Agreements. There are several relationships that you may have with your partners:

(i) Subgrant Agreements. You may enter into subgrant agreements with nonprofit organizations or state or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(ii) Contracts. You may enter into a contract with for-profit businesses, nonprofit organizations, or state or local governments for the performance of CSS activities in accordance with your approved CSS work plan.

(iii) Memoranda of Understanding (MOU). You may enter into an MOU with any entity that furnishes CSS services for the performance of activities in accordance with your approved CSS work plan. However, if money is to change hands, the MOU must be codified with a contract or subgrant.

(iv) Informal Relationships. You may accept assistance from partners without prior documentation of your partner relationship. However, informal relationships do not lend themselves to planning and should definitely be codified with a contract or subgrant if money changes hands.

(4) Tracking and Case Management. If selected, the grantee is responsible for tracking and providing CSS programs and services to residents currently living on the targeted public housing site and residents already relocated from the site. It is imperative that case management services begin immediately upon award so that residents who will be relocated have time to participate in and benefit from CSS activities before leaving the site, and that residents who have already been relocated are able to participate in and benefit from CSS activities.

(5) CSS Strategy and Objectives Requirements (a) Transition to Housing Self-Sufficiency. One of HUD's major priorities is to assist public housing residents in their efforts to become financially self-sufficient and less dependent upon direct government housing assistance. Your CSS program must include a well-defined, measurable endeavor that will enable public housing residents to transition to other affordable housing programs and to market housing. FSS and CSS activities that are designed to increase education and income levels are considered a part of this endeavor, as is the establishment of reasonable limits on the length of time any resident can reside in a public housing unit within a HOPE VI Revitalization Development.

(b) Neighborhood Networks. All FY2004 Revitalization grantees will be required to establish Neighborhood Networks Centers (NCC). This program provides residents with on-site access to computer and training resources that create knowledge and experience with computers and the Internet as tools to increase access to CSS, job training, and the job market. Grantees may use HOPE VI funds to establish NCCs. More information on the requirements of the NCC program is available on the Neighborhood Networks Web site at *http://www.hud.gov/nnw/nnwindex.html*. There will not be a separate FY2004 funded NOFA for HOPE VI Neighborhood Networks programs.

(c) Quantifiable Goals. The objectives of your CSS program must be results-oriented, with quantifiable goals and outcomes that can be used to measure progress and make changes in activities as necessary.

(d) Appropriate Scale and Type.

(i) CSS activities must be of an appropriate scale, type, and variety to meet the needs of all residents (including adults, seniors, youth ages 16 to 21, and children) of the severely

distressed project, including residents remaining on-site, residents who will relocate permanently to other PHA units or Housing Choice Voucher-assisted housing, residents who will relocate temporarily during the construction phase, and new residents of the revitalized units.

(ii) Non-public housing residents may also participate in CSS activities, as long as the primary participants in the activities are residents as described in Section (i) above.

(e) Coordination. (i) CSS activities must be consistent with state and local welfare reform requirements and goals.

(ii) Your CSS activities must be coordinated with the efforts of other service providers in your locality, including nonprofit organizations, educational institutions, and state and local programs.

(iii) CSS activities must be well-integrated with the physical development process, both in terms of timing and the provision of facilities to house on-site service and educational activities.

(f) Your CSS program must provide appropriate community and supportive services to residents prior to any relocation.

l. *CSS Partnerships and Resources.* The following are the kinds of organizations and agencies that can provide you with resources necessary to carry out and sustain your CSS activities. Note that in order to count as leverage, these funds must be newly generated. Existing and newly generated TANF cash benefits will not count as leverage. Newly generated non-cash services provided by TANF agencies will count as leverage.

(1) Local Boards of Education, public libraries, local community colleges, institutions of higher learning, nonprofit or for-profit educational institutions, and public/private mentoring programs that will lead to new or improved educational facilities and improved educational achievement of young people in the revitalized development, from birth through higher education.

(2) TANF agencies/welfare departments for TANF and non-TANF in-kind services, and non-TANF cash donations, *e.g.*, donation of TANF agency staff. Note that TANF cash benfits themselves will not be counted as leverage.

(3) Job development organizations that link private sector or nonprofit employers with low-income prospective employees.

(4) Workforce Development Agencies.

(5) Organizations that provide residents with job readiness and retention training and support.

(6) Economic development agencies such as the Small Business Administration, which provide entrepreneurial training and small business development centers.

(7) National corporations, local businesses, and other large institutions such as hospitals that can commit to provide entry-level jobs. Employers may agree to train residents or commit to hire residents after they complete jobs preparedness or training programs that are provided by you, other partners, or the employer itself.

(8) Programs that integrate employment training, education, and counseling, and where creative partnerships with local boards of education, state charter schools, TANF agencies, foundations, and private funding sources have been or could be established, such as:

(a) Youthbuild. HUD's Youthbuild program provides grants to organizations that provide education and job training to young adults ages 16 to 24 who have dropped out of school. Participants spend half their time rehabilitating low-income housing and the other half in educational programs. Youthbuild provides a vehicle for achieving compliance with the objective of Section 3, as described in Section III.C.4.c. of the SuperNOFA. More information on HUD's Youthbuild program can be found at *http://www.hud.gov/progdesc/youthb.cfm.*

(b) Step-Up, an apprenticeship-based employment and training program that provides career potential for low-income persons by enabling them to work on construction projects that have certain prevailing wage requirements. Step-Up encourages work by offering apprenticeships through which low-income participants earn wages while learning skills on the job, supplemented by classroom-related instruction. Step-Up can also contribute to a PHA's effort to meet the requirements of Section 3. More information can be found at *http://www.hud.gov/progdesc/stepup.cfm.*

(9) Sources of capital such as foundations, banks, credit unions, and charitable, fraternal, and business organizations.

(10) Nonprofit organizations such as the Girl Scouts and the Urban League, both of which have Memoranda of Agreement (MOA) with HUD. Copies of these MOAs can be found on the Community and Supportive Services page of the HOPE VI Web site at *http://www.hud.gov/hopevi.*

(11) Civil rights and fair housing organizations.

(12) Local area agencies on aging.

(13) Local agencies and organizations serving persons with disabilities.

(14) Nonprofit organizations such as grassroots faith-based and other community-based organizations. HUD encourages you to partner or subgrant with nonprofit organizations, including grassroots faith-based and other community-based organizations, to provide CSS activities. Such organizations have a strong history of providing vital community services such as job training, childcare, relocation supportive services, youth programs, technology training, transportation, substance abuse programs, crime prevention, health services, assistance to the homeless and homelessness prevention, counseling individuals and families on fair housing rights, providing elderly housing opportunities, and homeownership and rental housing opportunities in the neighborhood of their choice. HUD believes that grassroots organizations, *e.g.*, civic organizations, faith-communities, national and local self-help homeownership organizations, faith-based, and other community-based organizations should be more effectively used, and has placed a high priority on expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. See HUD's Center for Faith-Based and Community Initiatives Web site at *http://www.hud.gov/offices/fbci/index.cfm.*

(a) HUD will consider an organization a ''grassroots'' organization if it is headquartered in the local community to which it provides services; and

(i) Has an annual social services budget of no more than $300,000. This cap includes only the portion of the organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses; or

(ii) Has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.''

m. *Fair Housing and Equal Opportunity Requirements.* (1) Site and Neighborhood Standards for Replacement Housing. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and regulations thereunder. In determining the location of any replacement housing, you must comply with either the site and neighborhood standards regulations at 24 CFR 941.202 ((b)–(d)) or with the standards outlined in this NOFA. Because the objective of the HOPE VI program is to alleviate distressed conditions at the

development and in the surrounding neighborhood, replacement housing under HOPE VI that is located on the site of the existing development or in its surrounding neighborhood will not require independent approval by HUD under Site and Neighborhood Standards. The term ''surrounding neighborhood'' means the neighborhood within a three-mile radius of the site of the existing development.

(a) HOPE VI Goals Related to Site and Neighborhood Standards. You are expected to ensure that your revitalization plan will expand assisted housing opportunities in non-poor and non-minority neighborhoods and will accomplish substantial revitalization in the project and its surrounding neighborhood. You are also expected to ensure that eligible households of all races and ethnic groups will have equal and meaningful access to the housing.

(b) Objectives in Selecting HUD-Assisted Sites. The fundamental goal of HUD's fair housing policy is to make full and free housing choice a reality. Housing choice requires that households of all races and ethnicity, or with disabilities, can freely decide the type of neighborhood where they wish to reside, that minority neighborhoods are no longer deprived of essential public and private resources, and that stable, racially-mixed neighborhoods are available as a meaningful choice for all. To make full and free housing choice a reality, sites for HUD-assisted housing investment should be selected so as to advance two complementary goals:

(i) Expand assisted housing opportunities in non-minority neighborhoods, opening up choices throughout the metropolitan area for all assisted households; and

(ii) Reinvest in minority neighborhoods, improving the quality and affordability of housing there to represent a real choice for assisted households.

(c) Compliance with Fair Housing Act and Title VI of the Civil Rights Act of 1964. You must comply with the Fair Housing Act and Title VI of the Civil Rights Act of 1964, and implementing regulations in determining the location of any replacement housing.

(d) Grantee Election of Requirements. You may, at your election, separately with regard to each site you propose comply with the development regulations regarding Site and Neighborhood Standards (24 CFR 941.202 (b)–(d)), or with the Site and Neighborhood Standards contained in this Section.

(e) Replacement housing located on site or in the surrounding neighborhood. Replacement housing under HOPE VI that is located on the site of the existing project or in its surrounding neighborhood will not require independent approval under Site and Neighborhood Standards, since HUD will consider the scope and impact of the proposed revitalization to alleviate severely distressed conditions at the public housing project and its surrounding neighborhood in assessing the application to be funded under this NOFA.

(f) Off-Site Replacement Housing Located Outside of the Surrounding Neighborhood. Unless you demonstrate that there are already significant opportunities in the metropolitan area for assisted households to choose non-minority neighborhoods (or these opportunities are under development), HOPE VI replacement housing not covered by Section (e) above may not be located in an area of minority concentration (as defined in paragraph (g) below) without the prior approval of HUD. Such approval may be granted if you demonstrate to the satisfaction of HUD that:

(i) You have made determined and good faith efforts, and found it impossible with the resources available, to acquire an appropriate site(s) in an area not of minority concentration; or

(ii) The replacement housing, taking into consideration both the CSS activities or other revitalizing activities included in the Revitalization plan, and any other revitalization activities in operation or firmly planned, will contribute to the stabilization or improvement of the neighborhood in which it is located, by addressing any serious deficiencies in services, safety, economic opportunity, educational opportunity, and housing stock.

(g) Area of Minority Concentration. The term ''area of minority concentration'' is any neighborhood in which:

(i) The percentage of households in a particular racial or ethnic minority group is at least 20 points higher than the percentage of that minority group for the housing market area; *i.e.*, the Metropolitan Statistical Area (MSA) in which the proposed housing is to be located; or

(ii) The neighborhood's total percentage minority is at least 20 points higher than the total percentage of all minorities for the MSA as a whole; or

(iii) In the case of a metropolitan area, the neighborhood's total percentage of minority persons exceeds 50 percent of its population.

(2) Housing and Services for Persons with Disabilities. (a) Accessibility Requirements. HOPE VI developments are subject to the accessibility requirements contained in several federal laws. All applicable laws must be read together and followed. PIH Notice 2003–31, available at *http://www.hud.gov/offices/pih/publications/notices/,* and subsequent updates, provides an overview of all pertinent laws and implementing regulations pertaining to HOPE VI. All HOPE VI multifamily housing projects, whether they involve new construction and rehabilitation, are subject to the Section 504 accessibility requirements described in 24 CFR part 8. See in particular, 24 CFR 8.20–8.24. In addition, under the Fair Housing Act, all new construction of covered multifamily buildings must contain certain features of accessible and adaptable design. Units covered are all those in elevator buildings with four or more units and all ground floor units in buildings without elevators. The relevant accessibility requirements are provided in HUD's FHEO Web site at *http://www.hud.gov/groups/fairhousing.cfm.*

(b) Specific Fair Housing requirements are:

(i) The Fair Housing Act (42 U.S.C. 3601–19) and regulations at 24 CFR part 100.

(ii) The prohibitions against discrimination on the basis of disability, including requirements that multifamily housing projects comply with the Uniform Federal Accessibility Standards, and that you make reasonable accommodations to individuals with disabilities under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8.

(iii) Title II of the Americans with Disabilities Act (42 U.S.C 12101 *et seq.*) and its implementing regulations at 28 CFR part 35.

(iv) The Architectural Barriers Act of 1968 (42 U.S.C. 4151) and the regulations at 24 CFR part 40.

(c) Accessible Technology. The Rehabilitation Act Amendments of 1998 apply to all electronic information technology (EIT) used by a grantee for transmitting, receiving, using, or storing information to carry out the responsibilities of any federal grant awarded. It includes, but is not limited to, computers (hardware, software, word processing, e-mail, and Web pages) facsimile machines, copiers, and telephones. When developing, procuring, maintaining, or using EIT, grantees must ensure that the EIT allows:

(i) Employees with disabilities to have access to and use information and data that is comparable to the access and use of data by employees who do not have disabilities; and

(ii) Members of the public with disabilities seeking information or service from a grantee must have access to and use of information and data that is comparable to the access and use of data by members of the public who do not have disabilities. If these standards impose an undue burden on a grantee, they may provide an alternative means to allow the individual to use the information and data. No grantee will be required to provide information services to a person with disabilities at any location other than the location at which the information services are generally provided.

n. *Relocation Requirements.* (1) Requirements.

(a) You must carry out relocation activities in compliance with a relocation plan that conforms to the following statutory and regulatory requirements, as applicable:

(i) Relocation or temporary relocation carried out as a result of rehabilitation under an approved Revitalization plan is subject to the URA, the URA regulations at 24 CFR part 24, and regulations at 24 CFR 968.108 or successor part.

(ii) Relocation carried out as a result of acquisition under an approved Revitalization plan is subject to the URA and regulations at 24 CFR 941.207 or successor part.

(iii) Relocation carried out as a result of disposition under an approved Revitalization plan is subject to Section 18 of the 1937 Act, as amended.

(iv) Relocation carried out as a result of demolition under an approved Revitalization plan is subject to the URA regulations at 24 CFR part 24.

(b) You must provide suitable, accessible, decent, safe, and sanitary housing for each family required to relocate as a result of revitalization activities under your Revitalization plan. Any person (including individuals, partnerships, corporations, or associations) who moves from real property or moves personal property from real property directly (1) because of a written notice to acquire real property in whole or in part, or (2) because of the acquisition of the real property, in whole or in part, for a HUD-assisted activity, is covered by federal relocation statute and regulations. Specifically, this type of move is covered by the acquisition policies and procedures and the relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA), and the implementing government-wide regulation at 49 CFR part 24, and CPD Notice 02–08, Guidance on the Applications of the URA and Real Property Acquisition Policies Act of 1970, as amended, in HOPE VI Projects. The relocation requirements of the URA and the government-wide regulations, as well as CPD Notice 02–08, cover any person who moves permanently from real property or moves personal property from real property directly because of acquisition, rehabilitation, or demolition for an activity undertaken with HUD assistance.

(2) Relocation Plan. Each applicant must complete a HOPE VI Relocation plan in accordance with the requirements stated in Section IV.B.6. of this NOFA.

(a) The HOPE VI Relocation plan is intended to ensure that PHAs adhere to the URA and that all residents who have been or will be temporarily or permanently relocated from the site are provided with CSS activities such as mobility counseling and direct assistance in locating housing. Your HOPE VI Relocation plan must serve to minimize permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community. Your HOPE VI Relocation plan must also furnish alternative permanent housing for current residents of the public housing site who do not wish to remain in or return to the revitalized community. Your CSS program must provide for the delivery of community and supportive services to residents prior to any relocation, temporary or permanent.

(b) You are encouraged to involve HUD-approved housing counseling agencies, including faith-based, nonprofit and other organizations, and individuals in the community to which relocatees choose to move, in order to ease the transition and minimize the impact on the neighborhood. HUD will view favorably innovative programs such as community mentors, support groups, and the like.

(c) If applicable, you are encouraged to work with surrounding jurisdictions to assure a smooth transition if residents choose to move from your jurisdiction to the surrounding area.

o. *Well-Functioning Communities.* See Section V.A.8. of this NOFA for requirements that on-site, off-site and homeownership units create a well-functioning community.

p. *Soundness of Approach: Design and Evaluation.* See Section V.A.9. of this NOFA for design and evaluation requirements.

q. *Internet Access.* You must have access to the Internet and provide HUD with e-mail addresses of key staff and contact people.

5. *Number of Units.* The number of units that you plan to develop should reflect your need for replacement units, the need and market demand for other affordable units and market units, and financial feasibility. The total number of units to be developed may be less than, or more than, the original number of public housing units in the targeted public housing project. HUD will review requests to revitalize projects with small numbers of units on an equal basis with those with large numbers of units.

6. *Environmental Requirements.* a. HUD Approval. HUD notification that you have been selected to receive a HOPE VI grant constitutes only preliminary approval. Grant funds may not be released under this NOFA (except for activities that are excluded from environmental review under 24 CFR part 58 or 50) until the responsible entity, as defined in 24 CFR 58.2(a)(7), completes an environmental review and you submit and obtain HUD approval of a request for release of funds and the responsible entity's environmental certification in accordance with 24 CFR part 58 (or HUD has completed an environmental review under 24 CFR part 50 where HUD has determined to do the environmental review).

b. Responsibility. If you are selected for funding and an environmental review has not been conducted on the targeted site, the responsible entity must assume the environmental review responsibilities for projects being funded by HOPE VI. If you object to the responsible entity conducting the environmental review, on the basis of performance, timing, or compatibility of objectives, HUD will review the facts and determine who will perform the environmental review. At any time, HUD may reject the use of a responsible entity to conduct the environmental review in a particular case on the basis of performance, timing, or compatibility of objectives, or in accordance with 24 CFR 58.77(d)(1). If a responsible entity objects to performing an environmental review, or if HUD determines that the responsible entity should not perform the environmental review, HUD may designate another responsible entity to conduct the review or may itself conduct the environmental review in accordance with the provisions of 24 CFR part 50. You must provide any documentation to the responsible entity (or HUD, where applicable) that is needed to perform the environmental review.

c. Phase I and Phase II Environmental Site Assessments. If you are selected for funding, you must have a Phase I environmental site assessment completed in accordance with the ASTM Standards E 1527–00, as amended, for each affected site. A Phase

I assessment is required whether the environmental review is completed under 24 CFR part 50 or 24 CFR part 58. The results of the Phase I assessment must be included in the documents that must be provided to the responsible entity (or HUD) for the environmental review. If the Phase I assessment recognizes environmental concerns or if the results are inconclusive, a Phase II environmental site assessment will be required.

d. Request for Release of Funds. You, and any participant in the development process, may not undertake any actions with respect to the project that are choice-limiting or could have environmentally adverse effects, including demolishing, acquiring, rehabilitating, converting, leasing, repairing, or constructing property proposed to be assisted under this NOFA, and you, and any participant in the development process, may not commit or expend HUD or local funds for these activities, until HUD has approved a Request for Release of Funds following a responsible entity's environmental review under 24 CFR part 58, or until HUD has completed an environmental review and given approval for the action under 24 CFR part 50. In addition, you must carry out any mitigating/remedial measures required by the responsible entity (or HUD). If a remediation plan, where required, is not approved by HUD and a fully-funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

e. If the environmental review is completed before HUD approval of the HOPE VI Supplemental Submissions and you have submitted your Request for Release of Funds (RROF), the supplemental submissions approval letter shall state any conditions, modifications, prohibitions, *etc.* as a result of the environmental review, including the need for any further environmental review. You must carry out any mitigating/remedial measures required by HUD, or select an alternate eligible property, if permitted by HUD. If HUD does not approve the remediation plan and a fully funded contract with a qualified contractor licensed to perform the required type of remediation is not executed, HUD reserves the right to determine that the grant is in default.

f. If the environmental review is not completed and you have not submitted the RROF before HUD approval of the supplemental submissions, the letter approving the supplemental submissions will instruct you and any participant in the revitalization process to refrain from undertaking, obligating, or expending funds on physical activities or other choice-limiting actions until HUD approves your RROF and the related certification of the responsible entity (or HUD has completed the environmental review). The supplemental submissions approval letter also will advise you that the approved supplemental submissions may be modified on the basis of the results of the environmental review.

g. There must not be any environmental or public policy factors such as sewer moratoriums that would preclude development in the requested locality. You will certify to this when signing the HOPE VI Revitalization Grant Application Certifications.

h. HUD's environmental Web site is located at *http://www.hud.gov/offices/cpd/energyenviron/environment/index.cfm*.

7. *SuperNOFA References*. The following sub-sections of Section III.C. of the SuperNOFA are hereby incorporated by reference:

(1) The Americans with Disabilities Act of 1990;

(2) Affirmatively Furthering Fair Housing;

(3) Economic Opportunities for Low- and Very Low-Income Persons (Section 3);

(4) Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP);

(5) Accessible Technology;

(6) Procurement of Recovered Materials;

(7) Participation in HUD–Sponsored Program Evaluation;

(8) Executive Order 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects;

(9) OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs; and

(10) Drug-Free Workplace.

IV. Application and Submission Information

A. *Addresses to Request Application Package*. 1. This section describes how you may obtain application forms, additional information about the HUD program NOFAs, and technical assistance. Copies of the published NOFAs and application forms for HUD programs announced via NOFA may be downloaded from the Grants.gov Find website: *http://www.grants.gov/Find*, or by calling or sending an e-mail message to Lawrence Gnessin, Office of Public and Indian Housing at 202–401–8812, extension 2676, *Lawrence_Gnessin@HUD.gov*.

a. *Application Kits.* There are no application kits for our programs this year. All the information you need to apply will be in the NOFA and available on the Internet. The published **Federal Register** document is the official document that HUD uses to evaluate applications. Therefore, if there is a discrepancy between any materials published by HUD in its **Federal Register** publications and other information provided in paper copy or on *http://www.Grants.gov/Find*, the **Federal Register** publication prevails. Please be sure to review your application submission against the requirements in the **Federal Register** file of the NOFA.

b. *Further Application Information*. (1) The required HOPE VI Revitalization application documentation is listed in this NOFA. Some required forms, certifications, and other documents may be obtained via the Internet at *http://www.hud.gov/offices/adm/grants/otherhud.cfm*. This NOFA provides explicit, specific instructions as to the format and contents of your HOPE VI application. Your application must conform to the requirements of this NOFA and follow the format described in this NOFA.

(2) The HOPE VI Revitalization application will be available through the Grants.gov Web site at *http://www.grants.gov/Find* and at HUD's grants site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm*. It will not be made available in hardcopy form.

(3) Technical corrections to the NOFA will be posted to the Grants.gov/Find and HUD's grants Web sites. Any technical corrections will also be published in the **Federal Register**. Applicants are responsible for monitoring these Web sites and the **Federal Register** during the application preparation period.

B. *Content and Form of Application Submission*. 1. *General*.

a. *Signatures*. Unless otherwise indicated, the Executive Director of the applicant PHA, or his or her designee, must sign each form or certification that is required to be submitted with the application, whether part of an attachment or a standard certification. Signatures need not be original in the duplicate Headquarters copy and the duplicate field office copy.

b. *Page Layout*. (1) Double-space your narrative pages. Single-spaced pages will be counted as two pages.

(2) Use 8½x11-inch paper, one side only. Only the city map may be submitted on an 8½ by 14-inch sheet of

paper. Larger pages will be counted as two pages.

(3) All margins should be approximately 1 inch. If any margin is smaller than ½ inch the page will be counted as two pages.

(4) Use 12-point font.

(5) Any pages marked as sub-pages (*e.g.*, with numbers and letters such as 75A, 75B, 75C), will be treated as separate pages.

(6) If a section is not applicable, omit it; do not insert a page marked n/a.

(7) Mark each Exhibit and Attachment with the appropriate tab listed in section IV.B.2. No material on the tab will be considered for review purposes, although pictures are allowed.

(8) No more than one page of text may be placed on one sheet of paper; *i.e.*, you may not shrink pages to get two or more on a page. Shrunken pages will be counted as multiple pages.

(9) Do not format your narrative in columns. Pages with text in columns will be counted as two pages.

(10) The applications (copy and original) should each be packaged in a three-ring binder.

c. *Page Count.* (1) Narrative Exhibits.

(a) The first part of your application will be comprised of narrative exhibits. Your narratives will respond to each rating factor in the NOFA and will also respond to threshold requirements. Among other things, your narratives must describe your overall planning activities, including but not limited to relocation, community, and supportive services, and development issues.

(b) Each HOPE VI Revitalization application must contain no more than 100 pages of narrative exhibits. Any pages after the first 100 pages of narrative exhibits will not be reviewed. Although submitting pages in excess of the page limitations will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure of a threshold. Text submitted at the request of HUD to correct a technical deficiency will not be counted in the 100-page limit.

(2) Attachments. (a) The second part of your application will be comprised of Attachments. These documents will also respond to the rating factors in the NOFA, as well as threshold and mandatory documentation requirements. They will include documents such as maps, photographs, letters of commitment, application data forms, various certifications unique to HOPE VI Revitalization, and other certifications.

(b) Each HOPE VI Revitalization application must contain no more than 125 pages of attachments. Any pages after the first 125 pages of attachments will not be considered. Although submitting pages in excess of the page limit will not disqualify an application, HUD will not consider the information on any excess pages, which may result in a lower score or failure to meet a threshold.

(3) Exceptions to page limits. The documents listed below constitute the only exceptions and are not counted in the page limits listed in Sections (1) and (2) above:

(a) Additional pages submitted at the request of HUD in response to a technical deficiency.

(b) Attachments that provide documentation of commitments from resource providers or CSS providers.

(c) Attachments that provide documentation of site control and site acquisition in accordance with Section IV.B.4. of this NOFA.

(d) Narratives and Attachments, as relevant, required to be submitted only by existing HOPE VI Revitalization grantees in accordance with Sections V.A.1. of this NOFA (Capacity).

(e) Information required of MTW applicants only.

2. *Application Content.* The following is a list of narrative exhibits and forms that are required as part of the application. Narrative exhibits and forms should be included in the application in the order listed below. Non-submission of these items may lower your rating score or make you ineligible for award under this NOFA. Review the threshold requirements in Section III.C. and mandatory documentation requirements in Section IV.B. of this NOFA to ascertain the affects of non-submission. HUD forms required by this NOFA can be obtained on the Internet at *http://www.hud.gov/offices/adm/grants/otherhud.cfm*.

a. *Narrative Exhibits.*

(1) Acknowledgment of Application Receipt (form HUD–2993)
(2) Application for Federal Assistance, Standard Form SF–424
(3) HOPE VI Revitalization Application Checklist (form HUD–52800)
(4) Narrative Exhibit A: Summary Information
(5) Narrative Exhibit B: Capacity
(6) Narrative Exhibit C: Need
(7) Narrative Exhibit D: Resident and Community Involvement
(8) Narrative Exhibit E: Community and Supportive Services
(9) Narrative Exhibit F: Relocation
(10) Narrative Exhibit G: Fair Housing and Equal Opportunity
(11) Narrative Exhibit H: Well-Functioning Communities
(12) Narrative Exhibit I: Soundness of Approach

b. *Attachments.*

(1) Attachments 1 through 7: HOPE VI Application Data Form, form HUD–52860–A
(2) Attachment 8: HOPE VI Budget, form HUD–52825–A
(3) Attachment 9: TDC–Grant Limitations Worksheet, form HUD–52799
(4) Attachment 10: Extraordinary Site Costs Certification
(5) Attachment 11: Cost Control Standards Certification
(6) Attachment 12: City Map
(7) Attachment 13: Developer Certification
(8) Attachment 14: Property Management Policy Certification Documentation
(9) Attachment 15: Program Schedule
(10) Attachment 16: Certification of Severe Physical Distress
(11) Attachment 17: Photographs of the Severely Distressed Housing
(12) Attachment 18: Neighborhood Conditions
(13) Attachments 19 through 22: HOPE VI Revitalization Leverage Resources, form HUD–52797
(14) Attachment 23: HOPE VI Revitalization Resident Training & Public Meeting Certification, form HUD–52785
(15) Attachment 24: Commitments with CSS Providers
(16) Attachment 25: Relocation Plan Certification Documentation
(17) Attachment 26: Completed Relocation Certification Documentation
(18) Attachment 27: Documentation of Site Control for Off-Site Public Housing
(19) Attachment 28: Documentation of Site Control, Environmental, & Neighborhood Standards
(20) Attachment 29: Preliminary Market Assessment Letter
(21) Attachment 30: Zoning Approval Certification or Documentation
(22) Attachment 31: HOPE VI Revitalization Project Readiness Certification, form HUD–52787
(23) Attachment 32: Current Site Plan
(24) Attachment 33: Photographs of Architecture in the Surrounding Community
(25) Attachment 34: Conceptual Site Plan
(26) Attachment 35: Conceptual Building Elevations
(27) Attachment 36: Evaluation Commitment Letter(s)
(28) Attachment 37: Portions of the PHA Plan
(29) Attachment 38: Logic Model, form HUD–96010
(30) Attachment 39: America's Affordable Communities Initiative, form HUD–27300

(31) Attachment 40: HOPE VI Revitalization Application Certifications
(32) Attachment 41: Standard Forms and Certifications
(a) Applicant Assurances and Certifications, form HUD–424–B,
(b) Disclosure of Lobbying Activities, Standard Form LLL, as applicable
(c) Applicant/Recipient Disclosure/Update Report, form HUD–2880,
(d) Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, form HUD–52515, if applicable.

3. *Match Commitment Letters/MOUs.* If the commitment letter/MOU for any match funds/in-kind services is not included in the application and provided before the NOFA due date, the related match will not be considered. This is not a technical deficiency and cannot be corrected during the deficiency period. If the match is not met, the application will not be rated or ranked and will be ineligible for funding.

4. *Threshold Documentation.*

a. *Appropriateness of Proposal.* In accordance with Section 24(e)(1) of the 1937 Act, each application must demonstrate the appropriateness of the proposal in the context of the local housing market relative to other alternatives. You must briefly discuss other possible alternatives to your proposal and explain why your plan is more appropriate. This is a statutory requirement and an application threshold. Any deficiencies in your narrative may not be corrected after the application is submitted. For examples of alternative proposals, see the Appropriateness of Proposal Threshold in Section III.C.

b. *Contiguous Projects.* If you include more than one project in your application, you must provide a map that clearly indicates that the projects are within a quarter-mile of each other.

c. *Cost Control Standards Certification.* You must include a certification by an independent cost estimator, architect, engineer, contractor, or other qualified third party professional that your cost estimates meet the standards of Section IV.E. of this NOFA. The certifier cannot work for you.

d. *Need for HOPE VI Funding.* In order to document that you need HOPE VI funding to complete your proposed revitalization effort, you must include in your application:

(1) The portion of your PHA plan that lists the planned uses of your FY1999–2004 Capital Funds (including CGP and CIAP funds). Funds earmarked in the PHA plan for uses other than the revitalization proposed in this application will not be considered available; and

(2) A table that states:

(a) The amount of your total FY1999–2004 Capital Funds;

(b) The amount of your total unobligated FY1999–2004 Capital Funds; and

(c) The planned amounts and uses of unobligated funds earmarked in your PHA plan for purposes other than your application's proposed HOPE VI activities.

(3) Applicants must ensure that their obligation and expenditure information was updated in LOCCS prior to the application deadline, except in the case of some moving to work applicants, which are not required to enter obligations into LOCCS in accordance with their MTW agreements.

(3) For MTW PHAS that do not record capital funds obligations in LOCCS, you must provide a certification of your obligation rate in order to receive any points for the Need for HOPE VI Funding rating factor.

e. *Non-Public Housing Funding for Non-Public Housing or Replacement Units.* Public housing funds must not be used to develop non-Replacement Housing Units. To demonstrate that non-public housing funds will be of a sufficient amount to develop non-Replacement Housing Units, Attachments 4 and 7 in the Application Data Form, form HUD–52860–A, must show that the ratio of leverage development funds to public housing funds meets or exceeds the ratio of non-Replacement Housing Units to Replacement Housing Units. For example, if Attachment 4 states that you plan to develop a total of 25 affordable and market-rate units plus a total of 50 public housing and Homeownership units, and Attachment 7 shows a total of $10 million in HOPE VI plus other public housing funds (CGP, CFP, *etc.*), you must show at least $5 million in leverage funds. That is, 25 units/50 units: $5 million/$10 million.

f. *Program Schedule.* Your application must contain a program schedule that provides a feasible plan to meet the schedule requirements of Section VI.B.2. of this NOFA, with no impediments such as litigation that would prevent timely startup. The program schedule must indicate the date when the development proposal, *i.e.*, whether mixed-finance development, homeownership development, *etc.,* for each phase of the revitalization plan will be submitted to HUD. For application evaluation only, you should assume the following award and post-award dates.

Milestone	Date
Grant Award	April 1, 2005.
Grant Agreement Execution.	July 1, 2005.
HUD's written request for Supplemental Submissions.	August 1, 2005.
HUD's approval of Supplemental Submissions.	September 1, 2005.

If grant award takes place after October 1, 2004, the grantee's program schedule may be changed in the supplemental submissions to account for the period of time between October 1, 2004, and the actual date of grant award.

g. *Selection of Developer.* In order to be eligible for funding, you must provide a signed certification that:

(1) You have initiated an RFQ by the application due date for the competitive procurement of a developer for your first phase of construction. It is not necessary to have executed a Master Development Agreement with the selected developer in order to meet the threshold; or,

(2) You will act as your own developer for the proposed project.

h. *Site Control.* If you propose to develop off-site housing in any phase of your proposed revitalization plan, you MUST provide evidence in your application that you (not your developer) have site control of the property(ies). Evidence may include an option to purchase the property, a sales agreement, a land swap, or a deed. Evidence may not include a letter from the Mayor or other official, letters of support from members of the appropriate municipal entities, or a resolution evidencing the PHA's intent to exercise its power of eminent domain. Evidence of site control may only be made contingent upon the receipt of the HOPE VI grant, satisfactory compliance with the environmental review requirements in accordance with this NOFA, and the site and neighborhood standards in Section III.C.4.m. of this NOFA. If you demonstrate site control through an option to purchase, the option must extend for at least 180 days after the application due date. If you propose to develop off-site housing and you do not provide acceptable site control, your entire application will be ineligible for funding.

i. *Zoning Approval.*

(a) If you are proposing to use off-site parcels of land for housing development or other uses that, until this point in time, have been zoned for a purpose

different than the one proposed in your revitalization plan, your application must include:

(i) a certification from the appropriate local official documenting that all required zoning approvals have been secured for such parcels; or,

(ii) the actual zoning approval document for the parcel(s).

(b) If you are proposing to use off-site parcels of land for housing development or other uses and those parcels are already zoned for your chosen use, your application must include a certification signed by the Executive Director stating that all zoning is correct.

(c) For example, if you propose to develop housing on land that is currently zoned as parkland, you must provide evidence in the application that the zoning change has been secured to permit housing development. If you propose to keep the land as parkland, you must provide a certification in the application that the zoning is for parkland.

5. *Certification Thresholds Documentation.* Omission of, or incorrect/improper signature on, any of the following documents is considered a technical deficiency and must be cured (corrected) within the cure period stated in Section IV.B. of the SuperNOFA. Applications that remain deficient after the cure period will not be rated or ranked and will be ineligible for funding.

a. *Market-rate Housing: Market Assessment Letter.* (1) If you include market-rate housing, community facilities (if market-driven, *e.g.*, a YMCA; a community facility that is primarily intended to facilitate the delivery of community and supportive services for residents of the targeted severely distressed public housing project and of off-site replacement housing does not need to be addressed in the market assessment letter), economic development and retail structures in your Revitalization plan, you must demonstrate that there is a demand for these market-rate housing units, community facilities, economic development and retail structures of the type, number, and size proposed in the location you have chosen.

(2) In your application you must provide a preliminary market assessment letter prepared by an independent, third party, credentialed market research firm, or professional that describes its assessment of the demand and associated pricing structure for the proposed residential units and any community facilities, economic development, and retail structures, based on the market and economic conditions of the project area.

(3) If, after the cure period, this letter is not included in your application, the application will not be rated or ranked and will be ineligible for funding.

b. *Operation and Management Principles and Policies Certification.* You must certify that you will implement the Operation and Management Principles and Policies stated in Section III.C. of this NOFA. The certification should reference 24 CFR part 966 and should outline the requirements in Section III.C.4.h. If, after the deficiency cure period, this certification is not properly included in your application, the application will be ineligible for funding.

c. *Relocation Plan Certification.* (1) You must certify that the HOPE VI Relocation plan has been completed and that it conforms to the URA requirements as described in Section V.A.6. of this NOFA.

(2) If relocation was completed (*i.e.*, the targeted public housing site is vacant) as of the application due date, rather than providing a certification that the HOPE VI Relocation plan has been completed, a certification that the relocation was completed must be included in the application. This certification may be provided in the form of a letter.

(3) If, after the deficiency cure period, neither of these certifications is properly included in your application, the application will not be rated or ranked and will be ineligible for funding.

d. *Resident Involvement in the Revitalization Program Certification.* You must submit a signed certification that resident training sessions and public meetings were held and that you involved affected public housing residents at the beginning and during the planning process for the revitalization program, prior to submission of an application. The certification must state that listed topics, as described in Section III.C.4. of this NOFA were covered, that one of the meetings took place at the beginning of the revitalization planning process, and that two of the meetings and one training session took place after the publication date of this NOFA in the **Federal Register**. The certification must include the dates of the training session and meetings. The certification must show that each of the public meetings and resident training took place on different days.

e. *Severely Distressed Certification.* You must certify that the target project is severely distressed. See Section I.C. of this NOFA for the definition of ''severely distressed.'' In order to certify to severe physical distress, your application must include a certification that is signed by an engineer or architect licensed by a state licensing board. The license does not need to have been issued in the same state as the severely distressed project. The engineer or architect must include his or her license number and state of registration on the certification. The engineer or architect may not be an employee of the housing authority or the city. A Certification of Severe Physical Distress is provided on the Internet at *http://www.grants.gov.*

f. *Standard Forms and Certifications.* (1) The last part of your application will be comprised of standard certifications common to many HUD programs. Required forms are included in the HOPE VI Application and will be available electronically on the grants.gov Web site.

(2) These forms must be placed at the back of the application, except for the Application for Federal Assistance (SF–424) and the Acknowledgment of Application Receipt (HUD–2993). These two forms must be the first two pages of your application.

g. *TDC and Extraordinary Site Costs Certification.* (1) An Extraordinary Site Costs Certification must be included in your application if such costs are included in the calculations you used to determine your requested award amount. If this certification is not included in the application on or before the end of the deficient application cure period, extraordinary site costs will not be allowed in the award amount.

(2) The certification must be signed by a licensed engineer or architect who is not an employee of the housing authority or the city. The certification must include an engineer's or architect's license number and state of registration.

6. *Rating Factor Documentation.* To receive points for certain rating factors, you must include specific documentation that is stated in this NOFA. When specific documentation is necessary, that documentation is stated in this section of the NOFA or is cross-referenced here and is included with the related rating factors in Section V.A. of this NOFA.

a. *Documentation for Capacity.* See Section V.A.1. of this NOFA for documentation requirements.

b. *Documentation for Need.* (1) State the number of units that you currently have under ACC.

(2) See Section V.A.2. of this NOFA for the subjects and items that you should include in your Rating Factor narrative.

c. *Documentation for Leverage Resources.* In your application, you will enter basic information about each resource on the appropriate resource summary form: name of the organization

providing the resource, the dollar value of the resource, and its proposed use.

(1) Basic Documentation Requirements. (a) For each resource you list, you must provide a commitment document, such as a letter, memorandum of understanding, agreement to participate, city council resolution, or other evidence of the resource to be committed, which may be subject to the receipt of a HOPE VI Revitalization grant. An official of the organization legally authorized to make commitments on behalf of the organization must sign the commitment document.

(b) Each commitment document must include the dollar value and time duration of the commitment (*e.g.*, $10,000 will be provided each year for four years for a total commitment of $40,000). The dollar value must be consistent with the amount entered on the resource summary form. On the form, you will also enter the page number of your application where the commitment document is located.

(c) Endorsements or general letters of support from organizations or vendors alone will not count as resources and should not be included in the application or on a Resources Summary Form.

(d) For CSS leverage resources, include only funds/in-kind services that will be newly generated for HOPE VI activities. If an existing service provider significantly increases the level of services provided at the site, the increased amount of funds may be counted, except for TANF cash benefits. HUD will not count any funds that have already been provided on a routine basis, such as TANF cash benefits and in-kind services that have been supporting ongoing CSS-type activities.

(e) Even though an in-kind CSS contribution may count as a resource, it may not be appropriate to include on the sources and uses attachment. Each source on the sources and uses attachment must be matched by a specific and appropriate use. For example, donations of staff time may not be used to offset costs for infrastructure.

(2) Types of Development Resources. (a) HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other physical development funds, particularly from private sources, that will result in revitalized public housing, other types of assisted and market-rate housing, and private retail and economic development. Each resource may be used for only one leverage category: Development, CSS, Anticipatory, or Collateral, as described in Section V. A. of this NOFA. Any resource listed in more than one category will be disqualified from all categories. Types of resources that may be counted include:

(i) Private mortgage-secured loans and other debt. Your application must include each loan's expected term maturity and sources of repayment.

(A) Where there is both a construction loan and a permanent take-out loan that will replace that construction loan, you must provide documentation of both, but only the value of the permanent loan will be counted as leverage.

(B) For privately financed homeownership construction loans, acceptable documentation of construction loans will be considered as leverage. Documentation of permanent financing is not required.

(C) If you have obtained a construction loan but not a permanent loan, the value of the acceptably documented construction loan will be counted as leverage.

(ii) Insured loans.

(iii) Donations and contributions.

(iv) Housing trust funds.

(v) Net sales proceeds from a homeownership project. Down payments from homebuyers will not be counted. Down payment assistance may be counted as a physical development resource if it is provided by a third party entity not related to the homebuyer.

(vi) Funds committed to build private sector housing in direct connection with the HOPE VI Revitalization plan.

(vii) Tax Increment Funding (TIF).

(viii) Tax Exempt Bonds. Your application must include a description of the use and term.

(ix) Other Public Housing Funds. Other public housing sources include HOPE VI Revitalization funds from other grants, HOPE VI Demolition funds, Capital Fund program funds, and proposals to use operating subsidy for debt service. These HUD public housing funds will not be counted for points under CSS, Development and Collateral leverage in this NOFA. However, they can be used as part of your revitalization plan. Other public housing sources, except for HOPE VI Revitalization funds, will be counted toward your leverage rating for anticipatory leverage and may be used toward your match requirement.

(x) Other Federal Funds. Other federal sources may include non-public housing funds provided by HUD.

(xi) Sale of Land. The value of land may be included as a development resource only if this value is a sales proceed. Absent a sales transaction, the value of land may not be counted.

(xii) Donations of Land. Donations of land may be counted as a development resource, only if the donating entity owns the land to be donated. Donating entities may include a city, county, church, community organization, *etc.* The application must include documentation of this ownership, signed by the appropriate authorizing official.

(xiii) Low-Income Housing Tax Credits (LIHTC). Low-Income Tax Credits are authorized by Section 42 of the IRS Code which allows investors to receive a credit against federal tax owed in return for providing funds to developers to help build or renovate housing that will be rented only to lower-income households for a minimum period of 15 years. There are two types of credits, both of which are available over a 10-year period: a nine percent credit on construction/rehab costs, and a four percent credit on acquisition costs and all development costs financed partially with below-market federal loans (*e.g.*, tax exempt bonds). Tax credits are generally reserved annually through State Housing Finance Agencies, a directory of which can be found at *http://www.ncsha.org/ncsha/public/statehfadirectory/index.htm.* Only tax credits that have been reserved for the project will be counted as development leveraging.

(A) If you propose to include LIHTC equity as a development resource for any phase of development, your application must include a LIHTC reservation letter from your state or local housing finance agency in order to have the tax credit amounts counted as development leveraging. This letter must constitute a firm commitment and can only be conditioned on the receipt of the HOPE VI grant. HUD acknowledges that, depending on the housing finance agency, documentation for four percent tax credits may be represented in the form of a tax-exempt bond award letter. Accordingly, it will be accepted for leverage scoring purposes under this section, if you demonstrate that this is the only available evidence of four percent tax credits, and assuming that this documentation clearly indicates that tax-exempt bonds have been committed to the project.

(B) Only LIHTC commitments that have been secured as of the application deadline will be considered for the scoring under this section. LIHTC commitments that are not secured (*i.e.*, documentation in the application does not demonstrate they have been reserved by the state or local housing

finance agency) will not be counted as leverage for scoring under this section.

(3) Sources of Development Resources. You must actively enlist other stakeholders who are vested in and can provide significant financial assistance to your revitalization effort. Sources of resources that can be used for leveraging may include:

(a) Public, private, and nonprofit entities, including LIHTC purchasers;

(b) State and local housing finance agencies;

(c) Local governments;

(d) The city's housing and redevelopment agency or other comparable agency. HUD will consider this to be a separate entity with which you are partnering if your PHA is also a redevelopment agency or otherwise has citywide responsibilities.

(i) You are strongly urged to seek a pledge of Community Development Block Grant (CDBG) funds for improvements to public infrastructure such as streets, water mains, etc. related to the revitalization effort. CDBG funds are awarded by HUD by formula to units of general local government and to states, which may then award a grant or loan to a PHA, a partnership, a nonprofit organization, or other entity for revitalization activities, including loans to a project's for-profit partnership. More information about the CDBG Program can be found at *http://www.hud.gov/offices/cpd/index.cfm*.

(ii) The city, county, or state may provide HOME funds to be used in conjunction with HOPE VI funds. The Home Investment Partnership program provides housing funds that are distributed from HUD to units of general local governments and states. Funds may be used for new construction, rehabilitation, acquisition of standard housing, assistance to homebuyers, and tenant-based rental assistance. Current legislation allows HOME funds to be used in conjunction with HOPE VI funds, but they may not be used in conjunction with public housing capital funds under Section 9(d) of the 1937 Act. Information about the HOME program can be found at: *http://www.hud.gov/offices/cpd/affordablehousing/programs/home/index.cfm*.

(e) Foundations;

(f) Government Sponsored Enterprises such as the Federal Home Loan Bank, Fannie Mae, and Freddie Mac;

(g) HUD and other federal agencies;

(h) Financial institutions, banks, or insurers; and

(i) Other private funders.

(4) Types of CSS Resources. (a) HUD seeks to fund mixed-finance developments that use HOPE VI funds to leverage the maximum amount of other resources to support CSS activities in order to ensure the successful transformation of the lives of residents and the sustainability of the revitalized public housing development. Leveraging scarce HOPE VI CSS funds with other funds and services is critical to the sustainability of CSS activities so that they will continue after the HOPE VI funds have been expended. Commitments of funding or in-kind services related to the provision of CSS activities may be counted as CSS resources and toward the calculation of CSS leverage. Note that you may include ONLY funds that will be newly generated for HOPE VI activities, per Section III.C.4.l. of this NOFA. Types of resources that may be counted include but are not limited to:

(i) Materials;

(ii) A building;

(iii) A lease on a building;

(iv) Other infrastructure;

(v) Time and services contributed by volunteers;

(vi) Staff salaries and benefits;

(vii) Supplies; and

(viii) Other types of CSS resources as described in Section III.C.4.l. of this NOFA.

(b) Note that wages projected to be paid to residents through jobs, or projected benefits (*e.g.*, health/insurance/retirement benefits) related to those projected jobs, provided by CSS partners will not be counted as leverage.

(5) Sources of CSS Resources. In order to achieve quantifiable self-sufficiency results, you must form partnerships with organizations that are skilled in the delivery of services to residents of public housing and that can provide commitments of resources to support those services. You must actively enlist as partners other stakeholders who are vested in and can provide commitments of funds and in-kind services for the CSS portion of your revitalization effort. See Section III.C.4.k. and l. for a list of the kinds of organizations, agencies, and other providers that may be used as sources of CSS resources.

d. *Documentation for Resident Involvement.* See Sections IV.B.5. and V.A.4. of this NOFA for documentation requirements.

e. *Documentation for CSS.* See Sections III.C.4. and V.A.5. for documentation requirements.

f. *Documentation for Relocation.* There is a program requirement that you must complete a HOPE VI Relocation plan.

(1) In your application, you must certify that the HOPE VI Relocation plan has been completed and that it:

(a) Conforms to the URA requirements as described in Section d. below;

(b) Is designed to minimize permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community, while furnishing alternative housing to current residents of the public housing site who do not wish to remain in or return to the revitalized community;

(c) Gives existing residents priority for occupancy in planned public housing units, or for residents that can afford to live in other units, priority for those planned units and

(d) In connection with your CSS program, provides for community and supportive services to residents prior to any relocation.

(2) If relocation was completed as of the application deadline (*i.e.*, the targeted public housing site is vacant), rather than providing a certification that the HOPE VI Relocation plan has been completed, a certification that the relocation was completed must be included in the application. This certification may be provided in the form of a letter.

g. *Documentation for Fair Housing and Equal Opportunity.* See Sections III.C.4., IV.B. and V.A.7. for documentation requirements.

h. *Documentation for Well-Functioning Community.* See Sections III.C.4., IV.B. and V.A.8. of this NOFA for documentation requirements.

i. *Documentation for Soundness of Approach.* See Sections IV.B. and V.A.9. of this NOFA for documentation requirements.

j. *Documentation for Incentive Criteria on Regulatory Barrier Removal.* You must include the completed form HUD–27300 in your application.

6. *Housing Choice Voucher (HCV) Assistance.* (1) This NOFA will fund HCVs that are necessary to relocate HOPE VI affected public housing residents. In accordance with HUD Notice PIH 2004–4 (HA), *Submission and Processing of Public Housing Agency (PHA) Applications for Housing Choice Vouchers for Relocation or Replacement Housing Related to Demolition or Disposition (Including HOPE VI), and Plans for Removal (Required/Voluntary Conversion Under Section 33 of the 1937 Act, As Amended, and Mandatory Conversion Under Section 202 of the Omnibus Consolidated Rescissions and Appropriations Act of 1996) of Public Housing Units*, you should determine the number of vouchers that it is eligible for, that are related to this HOPE VI Revitalization development.

(2) You should submit the HCV application, in accordance with HUD Notice PIH 2004–4 (HA), for these HOPE VI related vouchers, as a part of the application.

(a) If you are funded by this NOFA, the HCV application will be processed.

(b) If you are not funded by this NOFA, the HCV application will not be processed.

(3) The HCV request should be located with the Standard Forms and Certifications at the back of the application.

(4) The notice can be obtained through the Internet at *http://www.hudclips.org/cgi/index.cgi.*

(5) To assist HUD in estimating the overall cost of HCV assistance, you should include a copy of the Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program, form HUD–52515, in your NOFA application.

7. *Further Application Instructions.* For more detailed application instructions, you should read, ''HOPE VI Revitalization Application Instructions,'' available on the *Grants.gov* Web site.

C. *Submission Dates and Times.*

1. *Application Submission Timeframes.* a. *Application Due Date.* Revitalization grant applications are due at HUD Headquarters on February 1, 2005. See Sections IV.F. of this NOFA and the SuperNOFA for application, submission and timely receipt requirements.

2. *Form of Acceptance.* HUD will consider an application as being accepted when it is delivered to the Office of Public Housing Investments, Room 4130, HUD Headquarters, 451 7th Street, SW., Washington, DC 20410. Upon delivery and acceptance, the Grant Administrator will manually add the application's PHA name, development name, time of receipt, and date of receipt to an application receipt log.

3. *Submission Address.* See Section IV.F.1. of this NOFA for the application submission address.

4. *Field Office Copy.* You must send one duplicate copy of your application to your HUD field office. The HUD field office copy of the application is due before 4 p.m. on the application due date. If the HUD field office receives an application on time, but the application is not received on time at Headquarters, it will not be considered.

5. *No Facsimiles or Videos.* HUD will not accept for review and evaluation, or fund, any applications sent by facsimile (fax). However, facsimile corrections to technical deficiencies will be accepted, as described in Section V.B.4. of the SuperNOFA. Also, videos submitted as part of an application will not be viewed.

6. *Acknowledgement of Application Receipt.* If you wish to receive acknowledgement of HUD's receipt of the application, the Acknowledgment of Application Receipt, form HUD–2993, should be included in the front of the application. After receipt, HUD will return the form to you.

D. *Intergovernmental Review.* Executive Order 12372 was issued to foster intergovernmental partnership and strengthen federalism by relying on state and local processes for the coordination and review of federal financial assistance and direct federal development. The order allows each state to designate an entity to perform a state review function. The official listing of state points of contact (SPOC) for this review process can be found at: *http://www.whitehouse.gov/omb/grants/spoc.html.* States that are not listed on the Web site have chosen not to participate in the intergovernmental review process, and therefore do not have a SPOC. If you are located within one of those states, you may send applications directly to HUD. If your state has a SPOC, you should contact it to see if it is interested in reviewing your application prior to submission to HUD. Please make sure that you allow ample time for this review process when developing and submitting your application.

E. *Funding Restrictions.*

1. *Statutory Time Limits.* a. *Required Obligation Date.* Funds appropriated for the HOPE VI program for FY2004 must be obligated on or before September 30, 2005. Any funds that are not obligated by that date will be recaptured by the Treasury, and thereafter will not be available for obligation for any purpose.

b. *Required Expenditure Date.* In accordance with 31 U.S.C. 1552, all FY2004 HOPE VI funds must be expended by September 30, 2010. Any funds that are not expended by that date will be cancelled and recaptured by the Treasury, and thereafter will not be available for obligation or expenditure for any purpose.

2. *Funding for Applications to this NOFA Only.* HUD will not use any funds from this NOFA to fund any non-selected HOPE VI related applications submitted in previous years. Only applications submitted under this FY2004 NOFA will be considered for funding.

3. *Grant Amount Limitations.* a. *Requested Amount.* The maximum amount you may request in your application for grant award is limited to $20 million or the sum of the amounts in Section IV.E.5. below, whichever is lower. HCV assistance is in addition to this amount.

4. *Ineligible Activities.* a. You may not use HOPE VI Revitalization Grant funds to pay for any revitalization activities carried out on or before the date of the letter announcing the award of the HOPE VI Grant.

b. *Market-Rate Units.* HOPE VI funds may not be used to develop market-rate units or affordable housing units that do not qualify as public housing or homeownership replacement units.

c. *Retail or Commercial Development.* HOPE VI funds may not be used for hard construction costs related to, or for the purchase of equipment for, retail, commercial, or non-public housing office facilities.

5. *Total Development Cost (TDC).* a. The ''TDC Limit'' (24 CFR 941.306, Notice PIH 2004–6 (HA)) refers to the maximum amount of HUD funding that HUD will approve for development of specific public housing units in a given location. The TDC limit applies only to the costs of development of public housing that are paid directly with HUD public housing funds, including HOPE VI funds; a PHA may exceed the TDC limit using non-public housing funds such as CDBG, HOME, low-income housing tax credit equity, *etc.*

b. The HUD TDC Cost Tables are issued for each calendar year for the building type and bedroom distribution for the public housing replacement units. Use the TDC limits in effect at the time this HOPE VI NOFA is published when making your TDC calculations. TDC definitions and limits in the final rule are summarized as follows:

(1) The total cost of development, including relocation costs, is limited to the sum of:

(a) HUD's TDC limits up to 100 percent of HUD's published TDC limits for the costs of demolition and new construction, multiplied by the number of HOPE VI public housing replacement units; or

(b) Ninety percent of the TDC limits, multiplied by the number of public housing units after substantial rehabilitation and reconfiguration.

(2) The TDC limit for a project is made up of the following components:

(a) Housing Cost Cap (HCC): HUD's published limit on the use of public housing funds for the cost of constructing the public housing units, which includes unit hard costs, builder's overhead and profit, utilities from the street, finish landscaping, and a hard cost contingency. Estimates should take into consideration the Davis-Bacon wage rate and other requirements as described in ''Labor

Standards'', Section III.C.4.g. of this NOFA.

(b) Community Renewal (CR): The balance of funds remaining within the project's TDC limit after the housing construction costs described in (i) above are subtracted from the TDC limit. This is the amount of public housing funds available to pay for PHA administration, planning, infrastructure and other site improvements, community and economic development facilities, acquisition, relocation, demolition, and remediation of units to be replaced on site, and all other development costs.

(3) CSS. You may request an amount not to exceed 15 percent of the total HOPE VI grant to pay the costs of CSS activities, as described in Section III.C.4.k.(2) of this NOFA. These costs are in addition to, *i.e.*, excluded from, the TDC calculation above.

(4) Demolition and Site Remediation Costs of Unreplaced On-site Units. You may request an amount necessary for demolition and site remediation costs of units that will not be replaced on-site. This cost is in addition to (*i.e.*, excluded from) the TDC calculation above.

(5) Extraordinary Site Costs. (a) You may request a reasonable amount to pay extraordinary site costs, which are construction costs related to unusual pre-existing site conditions that are incurred, or anticipated to be incurred. If such costs are significantly greater than those typically required for similar construction, are verified by an independent, certified engineer or architect (*See* Section IV.B. for documentation requirements.), and are approved by HUD, they may be excluded from the TDC calculation above. Extraordinary site costs may be incurred in the remediation and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: Abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, *etc.*; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint from structures are normal demolition costs. Extraordinary measures to remove lead-based paint that has leached into the soil would constitute an extraordinary site cost.

(b) Extraordinary site costs must be justified and verified by a licensed engineer or architect who is not an employee of the housing authority or the city. The engineer or architect must provide his or her license number and state of registration. If this certification is not included in the application after the cure period described in Section IV.B.4. of the SuperNOFA, extraordinary site costs will not be allowed in the award amount. In this case, the amount of the extraordinary site costs included in the application will be subtracted from the grant amount.

6. *Cost Control Standards.* a. Your projected hard development costs must be realistic, developed through the use of technically competent methodologies, including cost estimating services, and comparable to industry standards for the kind of construction to be performed in the proposed geographic area.

b. Your cost estimates must represent an economically viable preliminary plan for designing, planning, and carrying out your proposed activities in accordance with local costs of labor, materials, and services.

c. Your projected soft costs must be reasonable and comparable to industry standards. Upon award, soft costs will be subject to HUD's ''Safe Harbor'' cost control standards. For rental units, these safe harbors provide specific limitations on such costs as developer's fees (between 9 and 12 percent), PHA administration/consultant cost (no more than 3 to 6 percent of the total project budget), contractor's fee (6 percent), overhead (2 percent), and general conditions (6 percent). HUD's Cost Control and Safe Harbor Standards can be found on the *Grants.gov Web site.*

d. If you are eligible for funding, HUD will delete any unallowable items from your budget and may reduce your grant accordingly.

7. *Withdrawal of Grant Amounts.* In accordance with Section 24(i) of the 1937 Act, if a grantee does not proceed within a reasonable timeframe, as described in Section VI.B.2. of this NOFA, HUD shall withdraw any unobligated grant amounts. HUD shall redistribute any withdrawn amounts to one or more other applicants eligible for HOPE VI assistance or to one or more other entities capable of proceeding expeditiously in the same locality in carrying out the Revitalization plan of the original grantee.

F. *Other Submission Requirements.*

1. *Address for Submitting Applications.* Send the original and one copy of your completed application to Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000. Please make sure that you note the room number. The correct room number is very important in ensuring that your application is properly accepted and not misdirected.

2. *Wrong Address.* Applications mailed to the wrong location or office designated for receipt of the application, which result in the designated office not receiving your application in accordance with the requirements for timely submission, will result in your application being considered late and will not receive funding consideration. HUD will not be responsible for directing packages to the appropriate office(s).

3. *Delivery and Receipt Procedures.* ''Delivery and Receipt Procedures'' in Section IV.F. of the SuperNOFA applies, with the following exception:

a. Applications sent to HUD through the United States Postal Service (USPS) will be considered late and ineligible to receive funding if not received on or before the application due date, regardless of the postmark date.

4. *Proof of Timely Submission.* ''Proof of Timely Submission ''in Section IV.F. of the SuperNOFA applies, with the following exception:

a. Proof of timely submission for all applications, regardless of whether they are delivered through USPS, overnight mail service, courier service or hand-carried, shall be the date and time recorded by the Grant Administrator in the application receipt log. See Section IV.C.2. of this NOFA for information on the application receipt log.

5. *SuperNOFA References.* The following sub-sections of Section IV. of the SuperNOFA are hereby incorporated by reference:

(1) Addresses to Request Application Package;

(2) Application Kits;

(3) Guidebook and Further Information; and

(5) Addresses.

V. Application Review Information

A. *Criteria.*

1. *Rating Factor: Capacity—25 Points Total.*

a. The term ''your Team'' includes PHA staff who will be involved in HOPE VI grant administration, and any alternative management entity that will manage the revitalization process, be responsible for meeting construction time tables, and obligating amounts in a timely manner. This includes any developer partners, program managers, property managers, subcontractors, consultants, attorneys, financial consultants, and other entities or individuals identified and proposed to carry out program activities.

b. *Development Capacity.*

(1) Capacity of developer—6 points

(a) You will receive 6 points if your application demonstrates that:

(i) Your developer or other team members have extensive, recent (within the last five years), and successful experience in planning, implementing, and managing physical development, financing, leveraging, and partnership activities that are comparable in character, scale, and complexity to your proposed revitalization activities;

(ii) Your developer or other team members have extensive, recent (within the last five years), and successful experience in planning, implementing, and managing Capital Fund program projects.

(iii) You propose development using low-income tax credits, and you, your developer, or other team members have relevant tax credit experience; and

(iv) If homeownership, rent-to-own, cooperative ownership, or other major development components are proposed, you, your developer, or other team members have relevant, successful experience in development, sales, or conversion activities.

(b) You will receive 4 points if your developer or other team members have some but not extensive experience in the factors described above.

(c) You will receive 0 points if your developer or other team members do not have the experience described and the application does not demonstrate that it has the capacity to carry out your Revitalization plan. You will also receive 0 points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. Development Capacity of Applicant—6 points.

(1) You will receive 6 points if your application demonstrates that:

(i) You have identified potential gaps in your current staffing in relation to development activities, and you have plans to fill such gaps, internally or externally, in a timely manner in order to implement successfully your Revitalization plan;

(ii) You have demonstrated that physical development activities will proceed as promptly as possible following grant award, and you will be able to begin significant construction within 18 months of the award of the grant.

(iii) Your program schedule indicates the date on which the development proposal, *i.e.*, whether mixed-finance development, homeownership development, *etc.*, for each phase of the revitalization plan will be submitted to HUD. For application evaluation only, you should assume the following award and post-award dates.

Milestone	Date
Grant Award	April 1, 2005.
Grant Agreement Execution.	July 1, 2005.
HUD's written request for Supplemental Submissions.	August 1, 2005.
HUD's approval of Supplemental Submissions.	September 1, 2005.

If grant award takes place after October 1, 2004, the grantee's program schedule may be changed in the Supplemental Submissions to account for the period of time between October 1, 2004, and the actual date of grant award; and

(iv) Your management experience and previous experience with development activities, including the dollar amount and timeframe for completion of the project(s), is sufficient to show that you have experience in overseeing affordable housing development, whether it be in-house or implemented by a private entity.

(2) You will receive 4 points if your application demonstrates that you have had experience in managing affordable housing development in accordance with the factors above, but your experience has not been extensive, and your project(s) were completed within the timeframe originally established for the project.

(3) You will receive 1 point if your application demonstrates that you have had experience in managing affordable housing development in accordance with the factors above, but your experience has not been extensive, and your project(s) were not completed within the timeframe originally established for the project.

(4) You will receive 0 points if your application does not demonstrate any experience in managing development activities, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

d. *Capacity of Existing HOPE VI Revitalization Grantees.* (1) This Section applies only to applicants that have received HOPE VI Revitalization grants for fiscal years 1993–2001. If an applicant has more than one HOPE VI Revitalization grant, each will be rated separately, not averaged, and the highest deduction will be made. Applicants with HOPE VI Revitalization grants only from FY2002 or FY2003, or no existing HOPE VI Revitalization grants are not subject to this section.

(2) As indicated in the following tables, up to 5 points will be deducted if a grantee has failed to achieve adequate progress in relation to cumulative public housing rental unit production. Production achievement numbers will be taken from the quarterly reporting system for the quarter most recently completed at the time the NOFA is published in the **Federal Register**.

Percent of public housing unit production completed	Points deducted
Grants Awarded in FY1993–1997:	
Less than 100	5
Grants Awarded in FY1998:	
90–100	0
80–89	1
75–79	2
70–74	3
65–69	4
Less than 65	5
Grants Awarded in FY1999:	
80–100	0
70–79	1
60–69	2
50–59	3
40–49	4
Less than 40	5
Grants Awarded in FY2000:	
60–100	0
50–59	1
40–49	2
30–39	3
20–29	4
Less than 20	5
Grants Awarded in FY2001:	
25–100	0
20–24	1
15–19	2
10–14	3
5–9	4
Less than 5	5

e. *CSS Program Capacity—3 points.* See Sections I.D.10., and III.C.4.k and l, of this NOFA for detailed information on CSS activities.

(1) You will receive 2 points if your application demonstrates one of the following. If you fail to demonstrate one of the following, you will receive 0 points:

(a) If you propose to carry out your CSS plan in-house and you have recent, quantifiable, successful experience in planning, implementing, and managing the types of CSS activities proposed in your application, or

(b) If you propose that a member(s) of your team will carry out your CSS plan, that this procured team member(s) has the qualifications and demonstrated experience to plan, implement, manage, and coordinate the types of activities proposed, and that you have a plan for promptly hiring staff or procuring a team member to do so.

(2) You will receive 1 point if your application demonstrates that:

(a) You have an existing HOPE VI grant and your current CSS team will be

adequate to implement a new program, including new or changing programs, without weakening your existing team.

(b) You do not have an existing HOPE VI Revitalization grant and you demonstrate how your proposed CSS team will be adequate to implement a new program, including new or changing services, without weakening your existing staffing structure.

f. *Property Management Capacity—5 points.* (1) Property management activities may be the responsibility of the PHA or another member of the team, which may include a separate entity that you have procured or will procure to carry out property management activities. In your application you will describe the number of units and the condition of the units currently managed by you or your property manager, your annual budget for those activities, and any awards or recognition that you or your property manager have received.

(2) Past Property Management Experience—3 points. (a) You will receive 3 points if your application demonstrates that you or your property manager currently have extensive knowledge and recent (within the last five years), successful experience in property management of the housing types included in your revitalization plan. This may include market-rate rental housing, public housing, and other affordable housing, including rental units developed with low-income housing tax credit assistance. If your Revitalization plan includes cooperatively-owned housing, rent-to-own units, or other types of managed housing, in order to receive the points for this factor, you must demonstrate recent, successful experience in the management of such housing by the relevant member(s) of your team.

(b) You will receive 1 point if your application demonstrates that you or your property manager have some but not extensive experience of the kind required for your Revitalization plan.

(c) You will receive 0 points if your application does not demonstrate that you or your property manager have the experience to manage your proposed plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(2) Property Management Plan—2 points. (a) You will receive 2 points if your application demonstrates that you or your property manager have the goals and plans necessary to administer the following elements of a property management plan:

(i) Property maintenance
(ii) Rent collection
(iii) PIC 50058 reporting
(iv) Site-based management experience
(v) Tenant grievances
(vi) Evictions
(vii) Occupancy rate
(viii) Unit turnaround
(ix) Preventive maintenance
(x) Work order completion
(xi) Project-based budgeting
(xii) Management of Homeownership and rent-to-own programs
(xiii) Energy Audits
(xiv) Utility/Energy Incentives

(b) You will receive 0 points if your application does not demonstrate that you or your property manager have the goals and plans necessary to administer the above elements of a property management plan.

g. *PHA Plan—1 point.* (1) You will receive 1 point if your application demonstrates that you have incorporated the revitalization plan described in your application into your most recent PHA plan (whether approved by HUD or pending approval). In order to qualify as ''incorporated'' under this factor, your PHA plan must indicate the intent to pursue a HOPE VI Revitalization grant and the public housing development for which it is targeted.

(2) You will receive 0 points if you have not incorporated the revitalization plan described in your application into your PHA plan, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

h. *Public Housing Assessment System* (PHAS)—2 points. (1) If you have been rated as a High Performer for your most recent PHAS review, you will receive 2 points.

(2) If you have been rated as a Standard Performer for your most recent PHAS review, you will receive 1 point.

(3) If you have been rated as a Troubled Performer that is either Troubled in One Area or Overall Troubled, you will receive 0 points.

i. *Section 8 Management Assessment Program (SEMAP)—2 points.* (1) If you have been rated as a High Performer for your most recent SEMAP rating, you will receive 2 points.

(2) If you have been rated as Standard for your most recent SEMAP rating, you will receive 1 point.

(3) If you have been rated as Troubled for your most recent SEMAP rating, you will receive 0 points.

2. *Rating Factor: Need—24 Points Total.*

a. *Need for Revitalization: Severe Physical Distress of the Public Housing Development—10 Points.* (1) HUD will evaluate the extent of the severe physical distress of the targeted public housing development. If the targeted units have already been demolished, HUD will evaluate your description of the extent of the severe physical distress of the site as of the day the demolition application was approved by HUD. You will receive points for the following separate subfactors, as indicated.

(a) You will receive 2 points if your application demonstrates that there are major deficiencies in the project's infrastructure, roofs, electrical, plumbing, heating and cooling, mechanical systems, settlement, and other deficiencies in Housing Quality Standards.

(b) You will receive 2 points if your application demonstrates that there are poor soil conditions, inadequate drainage, deteriorated laterals and sewers, and inappropriate topography.

(c) You will receive 3 points if your application demonstrates that the project has at least three of the following major design deficiencies, including:

(i) Inappropriately high population density, room, and unit size and configurations;

(ii) Isolation;

(iii) Indefensible space;

(iv) Significant utility expenses caused by energy conservation deficiencies that may be documented by an energy audit; and

(v) Inaccessibility for persons with disabilities with regard to individual units, entranceways, and common areas.

(d) You will receive 3 points if your application demonstrates that there are (or were, if the site is already demolished) levels of unmitigated lead-based paint, PCBs, mold, and asbestos that make the site or a portion of the site and its housing structures unsuitable for residential use.

b. *Need for Revitalization: Impact of the Severely Distressed Site on the Surrounding Neighborhood—3 Points.* (1) HUD will evaluate the extent to which the severely distressed public housing project is a significant contributing factor to the physical decline of, and disinvestment by, public and private entities in the surrounding neighborhood. In making this determination, HUD will evaluate your narrative, crime statistics, photographs or renderings, socio-economic data, trends in property values, evidence of property deterioration and abandonment, evidence of underutilization of surrounding properties, and indications of neighborhood disinvestment.

(2) You will receive 3 Points if your application demonstrates that the project has a significant impact on the

surrounding neighborhood, as documented by each item listed above.

(3) You will receive 2 Points if your application demonstrates that the project has a moderate impact on the neighborhood, and only some of the items listed above are adequately documented.

(4) You will receive 0 Points if your application does not demonstrate that the project has an impact on the surrounding neighborhood, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. *Need for HOPE VI Funding—8 Points.* (1) HUD will evaluate the extent to which you could undertake the proposed revitalization activities without a HOPE VI grant. Large amounts of available Capital Funds indicate that the revitalization could be carried out without a HOPE VI grant. Available Capital Funds are defined as non-obligated funds that have not been earmarked for other purposes in your PHA Plan. To determine the amount of FY1999–2004 Capital Fund Program (including CIAP and CGP) funds currently available that could be used to carry out the proposed revitalization activities, HUD will employ data from LOCCS available at the time of the grant application due date and information from the portions of the PHA Plan that you have submitted as part of your application. Funds earmarked in the PHA Plan for uses other than the revitalization proposed in this application will not be considered available. See Section IV.B. of this NOFA for documentation requirements.

(2) You will receive 8 Points if your available Capital Funds balance is up to 20 percent of the amount of HOPE VI funds requested.

(3) You will receive 6 Points if your available balance is 21–45 percent of the amount of HOPE VI funds requested.

(4) You will receive 4 Points if your available balance is 46–70 percent of the amount of HOPE VI funds requested.

(5) You will receive 2 Points if your available balance is 71–90 percent of the amount of HOPE VI funds requested.

(6) You will receive 0 Points if your available balance is more than 90 percent of the amount of HOPE VI funds requested.

c. *Need for Affordable Accessible Housing in the Community—3 Points.* (1) Your application must demonstrate the need for other housing available and affordable to families receiving tenant-based assistance under section 8 (HCV), as described below and must be the most recent information available at the time of the application deadline.

(2) For purposes of this factor, the need for affordable housing in the community will be measured by Housing Choice Voucher program utilization rates and public housing occupancy rates, excluding the public housing site targeted for revitalization. In figuring the Housing Choice Voucher utilization rate, provide the percentage of units under lease out of the total authorized. In figuring the public housing occupancy rate, provide the percentage of units occupied out of the total in your public housing inventory, not including the targeted public housing site. You should base your calculation on the federal public housing units you manage. You may not exclude units in your public housing inventory that are being reserved for relocation needs related to other HOPE VI Revitalization grant(s); or units in your public housing inventory that are being held vacant for uses related to a Section 504 voluntary compliance agreement. If you are a non-MTW site, you must use information consistent with the Section Eight Management Assessment Program (SEMAP) and/or the Public Housing Assessment System (PHAS) submissions. If you are an MTW site, and do not report into SEMAP and/or PHAS, you must demonstrate your utilization and/or occupancy rate using similar methods and information sources in order to earn points under this rating factor.

(3) You will receive 3 Points if your application demonstrates that:

(a) The utilization rate of your Housing Choice Voucher program is 97 percent or higher; or

(b) The occupancy rate of your public housing inventory is 97 percent or higher.

(4) You will receive 2 Points if your application demonstrates that:

(a) The utilization rate of your Housing Choice Voucher program is between 95 and 96 percent; or,

(b) The occupancy rate of your public housing inventory is between 95 and 96 percent.

(5) You will receive 1 Point if your application demonstrates that:

(a) The utilization rate of your Housing Choice Voucher program is between 93 and 94 percent; or

(b) The occupancy rate of your public housing inventory is between 93 and 94 percent.

(6) You will receive 0 Points if your application demonstrates that:

(a) The utilization rate of your Housing Choice Voucher program is less than 93 percent; or

(b) The occupancy rate of your public housing inventory is less than 93 percent.

3. *Rating Factor:* Leveraging—16 Points Total.

a. *Leverage.* Although related to match, leverage is strictly a rating factor. Leverage consists of firm commitments of funds and other resources. HUD will rate your application based on the amount of funds and other resources that will be leveraged by the HOPE VI grant as a percentage of the amount of HOPE VI funds requested. If leverage sources and amounts are not documented in accordance with Sections III.C.4.l. and IV.B.5. of this NOFA, they will not be counted toward your leverage amounts.

b. *Development Leveraging*—7 Points. For each commitment document, HUD will evaluate the strength of commitment and add the amounts that are acceptably documented. HUD will then calculate the ratio of the amount of HUD funds requested to the amount of funds that HUD deems acceptably documented. HUD will round figures to two decimal points, using standard rounding rules.

(1) You will receive 7 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS, administration or relocation) to the dollar value of documented, committed development resources from other sources is 1:3 or higher.

(2) You will receive 6 Points if the ratio is between 1:2.50 and 1:2.99.

(3) You will receive 5 Points if the ratio is between 1:2.0 and 1:2.49.

(4) You will receive 4 Points if the ratio is between 1:1.50 and 1:1.99.

(5) You will receive 3 Points if the ratio is between 1:1.0 and 1:1.49.

(6) You will receive 2 Points if the ratio is between 1:0.50 and 1:0.99.

(7) You will receive 1 Point if the ratio is between 1:0.25 to 1:0.49.

(8) You will receive 0 Points if the ratio is less than 1:0.25, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

c. *CSS Leveraging*—5 Points. (1) You will receive 5 Points if the ratio of the amount of HOPE VI funds requested for CSS activities to the dollar value of documented, committed CSS resources leveraged from other sources is 1:2 or higher. If no HOPE VI funds are requested for CSS activities because all CSS funds will come from outside sources, all adequately-documented funds from such outside sources will be counted and you will receive 5 Points.

(2) You will receive 4 Points if the ratio is between 1:1.75 and 1:1.99.

(3) You will receive 3 Points if the ratio is between 1:1.5 and 1:745.

(4) You will receive 2 Points if the ratio is between 1:25 and 1:49.

(5) You will receive 1 Point if the ratio is between 1:1 and 1:1.249.

(6) You will receive 0 Points if the ratio is less than 1:1, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

d. *Anticipatory Resources Leveraging*—2 Points.

Anticipatory Resources relate to activities that have taken place in the past and that were conducted in direct relation to a HOPE VI Revitalization grant. In many cases, PHAs, cities, or other entities may have carried out revitalization activities (including demolition) in previous years in anticipation of your receipt of a HOPE VI Revitalization grant. These expenditures, if documented, may be counted as leveraged anticipatory resources. They cannot duplicate any other type of resource and cannot be counted towards match. Public Housing funds other than HOPE VI Revitalization, *e.g.*, HOPE VI Demolition grant funds, HOPE VI Neighborhood Networks grant funds, Capital Fund Program, may be included, and will be counted, toward your Anticipatory Resources rating below.

(1) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities, not including CSS or administration) to the amount of your documented anticipatory resources is 1:0.1 or higher. Your requested amount for CSS is shown in Budget Line Item 1408 of form HUD–52825–A, HOPE VI Budget and your requested amount for administration is shown in Budget Line Item 1410 of form HUD–52825–A.

(2) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities, not including CSS or administration to the amount of your documented anticipatory resources is less than 1:0.1.

e. *Collateral Investment Leveraging—2 Points.* Collateral investment includes physical redevelopment activities that are currently underway, or that have yet to begin but are projected to be completed before October 2009. In order for a leverage source to be counted as collateral investment, your application must demonstrate that the related activities will directly enhance the new HOPE VI community, but will occur whether or not a Revitalization grant is awarded to you and the public housing project is revitalized. This includes economic or other kinds of development activities that would have occurred with or without the anticipation of HOPE VI funds. These resources cannot duplicate any other type of resource and cannot be counted as match. Examples of collateral investments include local schools, libraries, subways, light rail stations, improved roads, day care facilities, and medical facilities.

(1) You will receive 2 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is 1:1.0 or higher.

(2) You will receive 0 Points if the ratio of the amount of HOPE VI funds requested for physical development activities (not including CSS or administration) to the amount of your documented collateral resources is less than 1:1.0.

4. *Rating Factor: Resident and Community Involvement—3 Points Total.*

a. HUD will evaluate the nature, extent, and quality of the resident and community outreach and involvement you have achieved by the time your application is submitted, as well as your plans for continued and additional outreach and involvement beyond the minimum threshold requirements. See Section III.C. of this NOFA for Resident and Community Involvement requirements.

b. *Resident and Community Involvement—3 Points.* You will receive 1 Point for each of the following criteria met in your application, which are over and above the threshold requirements listed in Section III.C.4. of this NOFA.

(1) Your application demonstrates that you have communicated regularly and significantly with affected residents, state and local governments, private service providers, financing entities, developers, and other members of the surrounding community about the development of your Revitalization plan by giving residents and community members information about your actions regarding the Revitalization plan and providing a forum where residents and community members can contribute recommendations and opinions with regard to the development and implementation of the Revitalization plan.

(2) Your application demonstrates your efforts, past and proposed, to make appropriate HUD communications about HOPE VI available (*i.e.*, a copy of the NOFA, computer access to the HUD Web site, *etc.*).

(3) Your application demonstrates your plans to provide affected residents with reasonable training on the general principles of development, technical assistance, and capacity building so that they may participate meaningfully in the development and implementation process.

5. *Rating Factor: Community and Supportive Services—10 Points Total.*

a. *CSS Program Requirements.* See Section III.C.4. for CSS program requirements. In your application, you will describe your CSS plan, including any plans to implement a CSS Endowment Trust. Each of the following subfactors will be rated separately.

b. *Case Management—2 points.* You will receive 2 Points if your application demonstrates that you will be able to provide case management within 30 days from the date of grant award execution so that residents who will be relocated have time to participate and benefit from CSS activities before leaving the site.

c. *Needs Identification—1 point.* You will receive 1 Point if your CSS Program has been developed in response to a rigorous resident needs identification process and directly responds to the identified needs.

d. *Transition to Housing Self-Sufficiency—4 points.* You will receive up to 4 Points if you address the methods you will use to assist public housing residents in their efforts to transition to other affordable and market-rate housing, *i.e.*, to gain ''housing self-sufficiency.''

(1) You will receive up to 4 Points if your application demonstrates that your CSS Program includes and addresses all four of the below items. Your CSS Program:

(a) Provides measurable outcomes for this endeavor;

(b) Relates your other CSS and FSS activities and efforts to the transition of public housing residents to housing self-sufficiency;

(c) Specifically addresses the community partners, faith-based organizations, etc. that will join you in the endeavor; and

(d) Establishes reasonable limits on the length of time any resident can reside in a public housing unit within a HOPE VI Revitalization Development.

(2) You will receive up to 2 Points if your CSS Program includes and addresses two of four of the above items (a) through (d).

(3) You will receive 0 Points if your CSS Program includes and addresses less than two of the above items (a) through (d).

e. *Partner Commitments—1 point.* You will receive 1 Point if you provide letters from a variety of experienced organizations and service providers that represent strong relationships and commitments to participate in your CSS

activities and accomplish your CSS goals of the program.

f. *Quality and Results Orientation—2 points.* You will receive 2 Points if you have proposed a high quality, results-oriented CSS program that is based on a comprehensive case management system and enables residents affected by the revitalization plan to access, at a minimum, basic elements of education, job training, and other services that will assist them in transforming their lives and becoming self-sufficient.

6. *Rating Factor: Relocation—5 Points Total.* See Sections III.C.4. and IV.B. of this NOFA for Relocation and Relocation Plan requirements.

a. *You will receive 5 Points for this Factor if:* (1) Your Relocation plan:

(a) Includes a description of specific activities that have (or will) minimize permanent displacement of residents of the units that will be rehabilitated or demolished in the targeted public housing site, provided that those residents wish to remain in or return to the revitalized community;

(b) Includes a description of specific activities that will give existing residents priority over other families for future occupancy of public housing units in completed HOPE VI Revitalization Development projects, or, for existing residents that can afford to live in non-public housing HOPE VI units, priority for future occupancy of those planned units; and

(c) contains a description of specific CSS activities that will be provided to residents prior to any relocation.

(2) You provide a certification that *all* of the residents of the targeted severely distressed public housing project have been relocated *and tracked* as of the HOPE VI Revitalization application due date;

b. *You will receive 4 Points for this Factor if:* (1) Your Relocation Plan:

(a) minimizes permanent displacement of current residents of the public housing site who wish to remain in or return to the revitalized community and you provide general information on the method you will use to promote this;

(b) contains general information about the amount of CSS that will be provided to residents prior to any relocation; and

(c) gives existing residents priority for occupancy of planned public housing units, or for residents that can afford to live in other HOPE VI units, priority for those planned units and includes general information on the method you will use to provide this; and

(2) You: (a) Provide a certification that *all* of the residents of the targeted severely distressed public housing project have been relocated but you were unable to track all residents, as of the HOPE VI Revitalization application due date. You must describe the efforts undertaken to track residents and reasons why all residents were not tracked; or

(b) Describe in your application: (i) An effective plan to track residents who have been or will be relocated from the targeted project; and

(ii) A comprehensive plan that will provide mobility counseling and direct assistance in locating housing to residents who choose Housing Choice Voucher assistance that will help them to fully understand the full range of housing opportunities available to them in neighborhoods throughout the jurisdiction and to find housing in non-poverty areas. You must provide a list of available units to persons with disabilities as required under 24 CFR 8.28(a)(3);

c. *You will receive 2 Points if:* (1) You meet only one of the factors described in Section b. above and only state that your plan will minimize permanent relocation and give housing priority to current residents.

d. *You will receive 0 Points if:* (a) Your application:

(i) Does not meet either of the factors described in Section (2)(a)(ii) above;

(ii) Does not include minimization of permanent displacement; or

(iii) Does not give priority for occupancy in completed HOPE VI Revitalization developments to current residents; or

(b) Your application does not address this factor to an extent that makes HUD's rating of this factor possible.

7. *Rating Factor: Fair Housing and Equal Opportunity—7 Points Total.*

a. *FHEO Disability Issues—4 Points Total.* (1) Accessibility—2 Points.

(a) Over and above the accessibility requirements listed in Section III.C. of this NOFA, you will receive 2 Points if your application demonstrates that you have a *detailed* plan to:

(i) Provide accessibility in homeownership units (*e.g.*, setting a goal of constructing a percentage of the homeownership units as accessible units for persons with mobility impairments; promising to work with prospective disabled buyers on modifications to be carried out at a buyer's request; exploring design alternatives that result in townhouses that are accessible to persons with disabilities);

(ii) Provide one-bedroom accessible rental units for single individuals with disabilities;

(iii) Provide for accessibility modifications, where necessary, to Housing Choice Voucher-assisted units of residents who relocate from the targeted project to private or other public housing due to revitalization activities. The Department has determined that the costs of such modifications are eligible costs under the HOPE VI program;

(iv) Where playgrounds are planned, propose ways to make them accessible to children with disabilities, over and above statutory and regulatory requirements; and

(v) Where possible, design units with accessible front entrances.

(b) You will receive 1 Point if your application demonstrates that you have a detailed plan to implement from one to four of the accessibility priorities stated above, explaining why and how you will implement the identified accessibility priorities.

(c) You will receive 0 Points if your application does not demonstrate that you have a detailed plan that meets the specifications above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(2) Universal Design—2 Points. (a) You will receive 2 Points if your application demonstrates that you have a specific plan to meet:

(i) The adaptability standards adopted by HUD at 24 CFR 8.3 that apply to those units not otherwise covered by the accessibility requirements. Adaptability is the ability of certain elements of a dwelling unit, such as kitchen counters, sinks, and grab bars, to be added to, raised, lowered, or otherwise altered, to accommodate the needs of persons with or without disabilities, or to accommodate the needs of persons with different types or degrees of disability. For example, the wiring for visible emergency alarms may be installed so that a unit can be made ready for occupancy by a hearing-impaired person (For information on adaptability, see *http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf); and*

(ii) The visitability standards recommended by HUD that apply to units not otherwise covered by the accessibility requirements. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. See *http://www.hud.gov/offices/pih/programs/ph/hope6/pubs/glossary.pdf* for information on visitability. The two standards of visitability are:

(A) At least one entrance at grade (no steps), approached by a sidewalk; and

(B) The entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space.

(b) You will receive 0 Points if your application does not demonstrate that you have specific plans to implement both (i) and (ii) as specified above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. *Fair Housing and Section 3—3 Points Total.* (1) Fair Housing—2 Points.

(a) You will receive 2 Points if your application demonstrates that:

(i) You have made and will make specific efforts to attract families from all segments of the population on a non-discriminatory basis and with a broad spectrum of incomes to the revitalized site through intensive affirmative marketing efforts and how these efforts contribute to the deconcentration of low-income neighborhoods;

(ii) You have made and will make specific efforts to target your marketing and outreach activities to those persons and groups least likely to know about these housing opportunities, in order to promote housing choice and opportunity throughout your jurisdiction and contribute to the deconcentration of both minority and low-income neighborhoods. In your application, you must describe how your outreach and marketing efforts will reach out to persons of different races and ethnic groups, families with or without children, persons with disabilities and able-bodied persons, and the elderly; and

(iii) The specific steps you plan to take through your proposed activities to affirmatively further fair housing. These steps can include, but are not limited to:

(A) Addressing impediments to fair housing choice relating to your operations;

(B) Working with local jurisdictions to implement their initiatives to affirmatively further fair housing;

(C) Implementing, in accordance with Departmental guidance, relocation plans that result in increased housing choice and opportunity for residents affected by HOPE VI revitalization activities funded under this NOFA;

(D) Implementing admissions and occupancy policies that are nondiscriminatory and help reduce racial and national origin concentrations; and

(E) Initiating other steps to remedy discrimination in housing and promote fair housing rights and fair housing choice.

(b) You will receive 1 Point if you address all of the above issues only in a general way.

(c) You will receive 0 Points if you do not address all of the above issues, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

(2) Economic Opportunities for Low- and Very Low-Income Persons (Section 3)—1 Point.

(a) HOPE VI grantees must comply with Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Economic Opportunities for Low- and Very Low-Income Persons in Connection with assisted Projects) and its implementing regulations at 24 CFR part 135. Information about Section 3 can be found at HUD's Section 3 Web site at *http://www.hud.gov/fhe/sec3over.html.*

(b) You will receive 1 Point if your application demonstrates that you have a feasible plan to implement Section 3 that not only meets the minimum requirements described in Section (a) above but also exceeds those requirements. Your plan must include your goals by age group, types of jobs and other opportunities to be provided, and plans for tracking and evaluation. Section 3 firms must be in place quickly so that residents are trained in time to take advantage of employment opportunities such as jobs and other contractual opportunities in the pre-development, demolition, and construction phases of the revitalization. Your Section 3 plan must demonstrate that you will, to the greatest extent feasible, direct training, employment, and other economic opportunities to:

(i) Low- and very low-income persons, particularly those who are recipients of government assistance for housing, and

(ii) Business concerns which provide economic opportunities to low- and very low-income persons.

(b) You will receive 0 Points if your plan to implement Section 3 does not meet the standards listed in Section (b) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

8. *Rating Factor: Well-Functioning Communities—8 Points Total.*

a. *Affordable Housing.* (1) Housing Definitions. For the purposes of this rating section, housing units are defined differently than in PIH housing programs, as follows:

(a) ''project-based affordable housing units'' are defined as housing units where there are affordable-housing use restrictions, *e.g.*, public housing, project-based Section 8 (HCV), LIHTC units, HOME units, etc.

(b) ''public housing rental units'' are defined as rental units that will be subject to the ACC.

(c) Homeownership units and lease-purchase units are not considered as public housing.

(d) Units sold under Section 32 are not considered as public housing.

(2) Unit Mix and Need for Affordable Housing—3 Points. (a) Your proposed unit mix should sustain or create more project-based affordable housing units that will be available to persons eligible for public housing in markets where the plan shows there is demand for the maintenance or creation of such units. While it is up to you to determine the unit mix that is appropriate for your site, it is essential that this unit mix include a sufficient amount of public housing rental units and other project-based affordable units. To the extent that the local market shows there is a demand for it, applicants are encouraged to create additional project-based affordable housing units to be made available for persons eligible for public housing.

(b) No Need for Additional Affordable Housing.

(i) You will receive 1 Point for this factor if your application demonstrates that:

(A) The utilization rate of your Housing Choice Voucher program is less than 95 percent; or

(B) The occupancy rate of your public housing inventory is less than 95 percent.

(c) Need for Additional Affordable Housing.

(i) For this factor, HUD considers you in need of project-based affordable housing if:

(A) The utilization rate of your Housing Choice Voucher program is 95 percent or more; or

(B) The occupancy rate of your public housing inventory is 95 percent or more.

(ii) The percentages below are defined as the number of planned project-based affordable units divided by the number of public housing units that the targeted project contained on the application due date;

(iii) You will receive 3 Points if your application demonstrates that the number of project-based affordable units in your plan is 125 percent of the number of public housing units that the targeted project contained on the application due date;

(iv) You will receive 2 Points if your application demonstrates that the number of project-based affordable units in your plan is 110 percent of the number of public housing units that the targeted project contained on the application due date

(v) You will receive 1 Point if your application demonstrates that the number of project-based affordable units in your plan is 100 percent of the number of public housing units that the targeted project contained on the application due date.

(vi) You will receive 0 Points if your application demonstrates that the number of project-based affordable units in your plan is less than the number of public housing units that the targeted project contained on the application due date or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

b. *Off-Site Housing.* (1) Factor Background.

(a) Although not required, you are encouraged to consider development of replacement housing in locations other than the original severely distressed site (*i.e.*, off-site housing). Locating off-site housing in neighborhoods with low levels of poverty and low concentrations of minorities will provide maximized housing alternatives for low-income residents who are currently on-site and assist the goal of creating desegregated, mixed-income communities. The effect on-site will be to assist in the deconcentration of low-income residents and increase the number of replacement units.

(b) Although it is acknowledged that off-site housing is not appropriate in some communities, if you do not propose to include off-site housing in your Revitalization plan, you are not eligible to receive this point.

(c) If you propose an off-site housing component in your application, you must be sure to include that component when you discuss other components (*e.g.* on-site housing, homeownership housing, *etc.*). Throughout your application, your unit counts and other numerical data must take into account the off-site component.

(2) Off-Site Housing—1 Point. You will receive 1 Point if you propose to develop an off-site housing component(s) and document that: you have site control of the property(ies), that the site(s) meets all environmental review requirements, and that the site(s) meets site and neighborhood standards, in accordance with Section III.C.4.m(1) of this NOFA.

c. *Homeownership Housing—4 Points.* The Department has placed the highest priority on increasing homeownership opportunities for low- and moderate-income persons, persons with disabilities, the elderly, minorities, and families where English may be a second language. Too often these individuals and families are shut out of the housing market through no fault of their own. HUD encourages applicants to work aggressively to open up the realm of homeownership.

(1) Your application will receive 4 Points if your application demonstrates that your Revitalization plan includes homeownership and that you have a feasible, well-defined plan for homeownership. In order to demonstrate this, your application should include descriptions of the following:

(a) The purpose of your homeownership program;

(b) The number of units planned and their location(s);

(c) A description and justification of the families that will be targeted for the program;

(d) The proposed source of your construction and permanent financing of the units; and

(e) A description of the homeownership counseling you or a HUD-approved housing counseling agency will provide to prospective families, including such subjects as the homeownership process, housing in non-impacted areas, credit repair, budgeting, and home maintenance.

(2) You will receive 2 Points for this factor if you address in your description from one to four of the items listed under (1).

(3) You will receive 0 Points for this factor if you do not propose to include homeownership units in your Revitalization plan, your proposed program is not feasible and well defined, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

9. *Rating Factor: Soundness of Approach—25 Points Total.*

a. *Quality and Consistency of the Application—2 Points.* (1) The information and strategies described in your application must be well organized, coherent, and internally consistent. Numbers and statistics in your narratives must be consistent with the information provided in the attachments. Also, the physical and CSS aspects of the application must be compatible and coordinated with each other. Pay particular attention to the data provided for:

(a) Types and numbers of units;

(b) Budgets;

(c) Other financial estimates, including sources and uses; and

(d) Numbers of residents affected.

(2) You will receive 2 points if your application demonstrates a high level of quality and consistency;

(3) You will receive 1 point if your application has a high level of quality, but contains minor internal discrepancies;

(4) You will receive 0 points if your application fails to demonstrate an acceptable level of quality and consistency;

b. *Appropriateness and Feasibility of the Plan—5 Points.* (1) You will receive 5 points if your application demonstrates that your Revitalization plan is:

(a) Appropriate and suitable, in the context of the community and other revitalization options, in accordance with the Appropriateness of Proposal threshold in Section III.C. of this NOFA;

(b) Marketable, in the context of local conditions;

(c) Financially feasible, as demonstrated in the financial structure(s) proposed in the application.

(2) You will receive 3 points if your application only moderately demonstrates the criteria of (1)(a)–(c) above.

(3) You will receive 0 Points if your application does not demonstrate the criteria of (1)(a)–(c) above.

c. *Neighborhood Impact and Sustainability of the Plan—5 Points.* (1) You will receive 5 Points if your application demonstrates your Revitalization plan, including plans for retail, office, other economic development activities, as appropriate, will:

(a) Result in a revitalized site that will enhance the neighborhood in which the project is located;

(b) Spur outside investment into the surrounding community;

(c) Enhance economic opportunities for residents; and

(d) Remove an impediment to continued redevelopment or start a community-wide revitalization process.

(2) You will receive 3 Points if your application demonstrates that your Revitalization plan will have only a moderate effect on activities in the surrounding community, as described in (a)(i)–(iv) above.

(3) You will receive 0 Points if your application does not demonstrate that your Revitalization plan will have an effect on the surrounding community, as described in (a)(i)–(iv) above, or if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

d. *Project Readiness—7 Points.* HUD places top priority on projects that will be able to commence immediately after grant award. You will receive the following points for each applicable subfactor certified in your application.

(1) You will receive 2 Points if the targeted severely distressed public housing site is completely vacant, *i.e.*, all residents have been relocated.

(2) You will receive 2 Points if the targeted severely distressed public housing site is cleared, *i.e.*, all buildings are demolished, or your Revitalization plan only includes rehabilitation and no demolition of public housing units..

(3) You will receive 1 Point if a Master Development Agreement (MDA) has been developed and is ready to submit to HUD. However, in cases where the PHA (not an affiliate/subsidiary/instrumentality) will act as its own developer for all components of the Revitalization plan, then an MDA is not needed and the one point will be awarded automatically.

(4) You will receive 1 Point if your preliminary site design is complete.

(5) You will receive 1 Point if you have held five (5) or more public planning sessions leading to resident acceptance of the plan.

e. *Design—3 Points.* HUD is seeking excellence in design. We urge you to carefully select your architects and planners, and to enlist local affiliates of national architectural and planning organizations such as the American Institute of Architects, the American Society of Landscape Architects, the American Planning Association, the Congress for the New Urbanism, and the department of architecture at a local college or university to assist you in assessing qualifications of design professionals or participating on a selection panel that results in the procurement of excellent design services.

HUD encourages you to select a design team that is committed to a process in which residents, including young people and seniors, the broader community, and other stakeholders participate in designing the new community.

Your proposed site plan, new units, and other buildings must be designed to be compatible with and enrich the surrounding neighborhood. Local architecture and design elements and amenities should be incorporated into the new or rehabilitated homes so that the revitalized sites and structures will blend into the broader community and appeal to the market segments for which they are intended. Housing, community facilities, and economic development space must be well integrated. You must select members of your team who have the ability to meet these requirements.

(1) You will receive 3 Points if your proposed site plan, new dwelling units, and buildings demonstrate that:

(a) You have proposed a site plan that is compact, pedestrian-friendly, with an interconnected network of streets and public open space;

(b) Your proposed housing, community facilities, and economic development facilities are thoroughly integrated into the community through the use of local architectural tradition, building scale, grouping of buildings, and design elements; and

(c) Your plan proposes appropriate enhancements of the natural environment.

(2) You will receive 1 Point if your proposed site plan, new dwelling units, and buildings demonstrate design that adequately addresses one or two, but not all three of the elements above.

(3) You will receive 0 Points if your proposed design is perfunctory or otherwise does not address the above elements. You will also receive 0 Points if your application does not address this factor to an extent that makes HUD's rating of this factor possible.

f. *Evaluation—3 Points.* You are encouraged to work with your local university(ies), other institutions of learning, foundations, or others to evaluate the performance and impact of their HOPE VI Revitalization plan over the life of the grant. The proposed methodology must measure success against goals you set at the outset of your revitalization activities. Evaluators must establish baselines and provide ongoing interim reports that will allow you to make changes as necessary as your project proceeds. Where possible, you are encouraged to form partnerships with Historically Black Colleges and Universities (HBCUs); Hispanic-Serving Institutions (HSIs); Community Outreach Partnership Centers (COPCs); the Alaskan Native/Native Hawaiian Institution Assisting Communities Program (as appropriate); and others in HUD's University Partnerships Program.

(1) You will receive 3 Points if your application includes a letter(s) from an institution(s) of higher learning, foundations, or other organization that specializes in research and evaluation that provides a commitment to work with you to evaluate your program and describes its proposed approach to carry out the evaluation if your application is selected for funding. The letter must provide the extent of the commitment and involvement, the extent to which you and the local institution of higher learning will cooperate, and the proposed approach. The commitment letter must address all of the following areas for evaluation:

(a) The impact of your HOPE VI effort on the lives of the residents;

(b) The nature and extent of economic development generated in the community;

(c) The effect of the revitalization effort on the surrounding community, including spillover revitalization activities, property values, etc.; and

(d) Your success at integrating the physical and CSS aspects of your strategy.

(2) You will receive 0 Points if your application does not include a commitment letter that conforms to the specifications in paragraph (b) above.

10. *Rating Factor: Incentive Criteria on Regulatory Barrier Removal—2 Points Total.*

a. *Description.* (1) HUD's Notice, *America's Affordable Communities Initiative, HUD's Initiative on Removal of Regulatory Barriers: Announcement of Incentive Criteria on Barrier Removal in HUD's FY 2004 Competitive Funding Allocations,* **Federal Register** Docket Number FR–4882–N–03, published on March 22, 2004, provides that most HUD competitive NOFAs will include an incentive for local and state governments to decrease their regulatory barriers to the development of affordable housing.

(2) Form HUD–27300 contains questions that describe your local and state governments' efforts to decrease regulatory barriers.

b. *Scoring.* (1) If you are considered a local unit of government with land use and building regulatory authority, an agency or department of a local unit of government, a nonprofit organization, or other qualified applicant applying for funding for a project located in the local unit of government's jurisdiction, you are invited to answer the 20 questions in PART A of form HUD–27300. For those applications in which regulatory authority is split between jurisdictions (*e.g.*, county and town) the applicant should answer the question for that jurisdiction that has regulatory authority over the issue at question.

(a) If you check Column 2 for five to ten questions from PART A, you will receive 1 point in the NOFA evaluation.

(b) If you check Column 2 for eleven or more questions from PART A, you will receive 2 points in the NOFA evaluation.

(2) If you are considered a state government, or an agency or department of a state government, applying for funding for a project located in the state government's jurisdiction, or areas otherwise not covered in Part A, you are invited to answer the 15 questions in PART B.

(a) If you check Column 2 for four to seven questions from PART B, you will receive one point in the NOFA evaluation.

(b) If you check Column 2 for eight or more questions from PART B, you will receive two points in the NOFA evaluation.

(3) Applicants that will be providing services in multiple jurisdictions may choose to address the questions in either PART A or PART B for that jurisdiction in which the preponderance of services will be performed if an award is made.

(4) In no case will an applicant receive for this policy priority greater than two points for barrier removal activities.

B. *Reviews and Selection Process.* HUD's selection process is designed to ensure that grants are awarded to eligible PHAs with the most meritorious applications. HUD will consider the information you submit by the application due date. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information that you or any third party may want to provide.

1. *Application Screening.* a. HUD will screen each application to determine if:

(1) it meets the threshold criteria listed in Section III.C. of this NOFA; and

(2) it is deficient, *i.e.*, contains any Technical Deficiencies.

b. See Section III.C. of this NOFA for case-by-case information regarding thresholds and technical deficiencies. See Section IV.B. of this NOFA for documentation requirements that will support threshold compliance and will avoid technical deficiencies.

c. *Corrections to Deficient Applications.* The subsection entitled, ''Corrections to Deficient Applications,'' in Section V.B.4. of the SuperNOFA applies. This sub-section describes the Technical Deficiencies cure period.

d. *Applications that will not be rated or ranked.* HUD will not rate or rank applications that are deficient at the end of the cure period stated in Section V.B. of the SuperNOFA or have not met the thresholds described in Section III.C. of this NOFA. Such applications will not be eligible for funding.

2. *Preliminary Rating and Ranking.*

a. *Rating.* (1) HUD staff will preliminarily rate each eligible application, SOLELY on the basis of the rating factors described in Section V.A of this NOFA.

(2) When rating applications, HUD reviewers will not use any information included in any HOPE VI application submitted in a prior year.

(3) HUD will assign a preliminary score for each rating factor and a preliminary total score for each eligible application.

(4) The maximum number of points for each application is 125.

b. *Ranking.* (1) After preliminary review, applications will be ranked in score order.

3. *Final Panel Review.* a. A Final Review Panel made up of HUD staff will:

(1) Review the Preliminary Rating and Ranking documentation to:

(a) Ensure that any inconsistencies between preliminary reviewers have been identified and rectified; and

(b) Ensure that the Preliminary Rating and Ranking documentation accurately reflects the contents of the application.

(2) Assign a final score to each application; and

(3) Recommend for selection the most highly rated applications, subject to the amount of available funding, in accordance with the allocation of funds described in Section II of this NOFA.

4. HUD reserves the right to make reductions in funding for any ineligible items included in an applicant's proposed budget.

5. In accordance with the FY2003 HOPE VI appropriation, HUD may not use HOPE VI funds to grant competitive advantage in awards to settle litigation or pay judgments.

6. *Tie Scores.* If two or more applications have the same score and there are insufficient funds to select all of them, HUD will select for funding the application(s) with the highest score for the Soundness of Approach Rating Factor. If a tie remains, HUD will select for funding the application(s) with the highest score for the Capacity Rating Factor. HUD will select further tied applications with the highest score for the Need Rating Factor.

7. *Remaining Funds.* a. HUD reserves the right to reallocate remaining funds from this NOFA to other eligible activities under Section 24 of the Act.

(1) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is less than the amount of funds available from this NOFA, all eligible applications will be funded and those funds in excess of the total requested amount will be considered remaining funds.

(2) If the total amount of funds requested by all applications found eligible for funding under Section V.B. of this NOFA is greater than the amount of funds available from this NOFA, eligible applications will be funded until the amount of non-awarded funds is less than the amount required to feasibly fund the next eligible application. In this case, the funds that have not been awarded will be considered remaining funds.

8. The following sub-sections of Section V. of the SuperNOFA are hereby incorporated by reference:

a. HUD's Strategic Goals;

b. Policy Priorities;

c. Threshold Compliance;

d. Corrections to Deficient Applications;

e. Rating; and

f. Ranking.

VI. Award Administration Information

A. *Award Notices.*

1. *Initial Announcement.* The HUD Reform Act prohibits HUD from notifying you as to whether or not you have been selected to receive a grant until it has announced all grant recipients. If your application has been found to be ineligible or if it did not receive enough Points to be funded, you will not be notified until the successful applicants have been notified. HUD will provide written notification to all applicants, whether or not they have been selected for funding.

2. *Authorizing Document.* The notice of award signed by the Assistant Secretary for Public and Indian Housing (grants officer) is the authorizing document. This notice will be delivered by fax and the U.S. Postal Service.

3. *Revitalization Grant Agreement.* When you are selected to receive a Revitalization grant, HUD will send you a HOPE VI Revitalization Grant Agreement, which constitutes the contract between you and HUD to carry out and fund public housing revitalization activities. Both you and HUD will sign the cover sheet of the grant agreement. It is effective on the date of HUD's signature. The grant agreement differs from year to year. Past Revitalization Grant Agreements can be found on the HOPE VI Web site at *http://www.hud.gov/hopevi.*

4. *Applicant Debriefing.* Upon request, HUD will provide an applicant a copy of the total score received by their application and the score received for each rating factor.

5. *SuperNOFA References.* The following sub-section of Section VI.A. of the SuperNOFA is hereby incorporated by reference: a. Adjustments to Funding.

B. *Administrative and National Policy Requirements.*

1. *Grant term.* The time period for completion shall not exceed 54 months from the date the NOFA award is executed.

2. *Timeliness of Development Activity.* Grantees must proceed within a reasonable timeframe, as indicated below. In determining reasonableness of such timeframe, HUD will take into consideration those delays caused by factors beyond your control. These timeframes must be reflected in the form of a program schedule, in accordance with the threshold requirement at Section V.A.

a. Grantees must submit Supplemental Submissions within 90 days from the date of HUD's written request.

b. Grantees must submit CSS work plans within 90 days from the execution of the grant agreement.

c. All other required components of the Revitalization plan and any other submissions not mentioned above must be submitted in accordance with the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

d. Grantees must start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the grant agreement is executed.

e. Grantees must submit the development proposal (*i.e.*, whether mixed-finance development, homeownership development, etc.) for the first phase of construction within 12 months of grant award. The program schedule must indicate the date on which the development proposal for each phase of the revitalization plan will be submitted to HUD.

f. The closing of the first phase must take place within 15 months of grant award. For this purpose, ''closing'' means all financial and legal arrangements have been executed and actual activities (construction, etc.) are ready to commence.

g. Grantees must complete construction within 48 months from the date of HUD's approval of your Supplemental Submissions. This time period for completion may not exceed 54 months from the date the grant agreement is executed.

3. *HOPE VI Endowment Trust Addendum to the Grant Agreement.* This document must be executed between the grantee and HUD in order for the grantee to use CSS funds in accordance with Section III.C.4.k.(2) of this NOFA.

4. *Revitalization Plan.* After HUD conducts a post-award review of your application and makes a visit to the site, you will be required to submit components of your Revitalization plan to HUD, as provided in the HOPE VI Revitalization Grant Agreement. These components include, but are not limited to:

a. Supplemental Submissions, including a HOPE VI Program Budget;

b. A Community and Supportive Services work plan, in accordance with guidance provided by HUD;

c. A standard or mixed-finance development proposal, as applicable;

d. A demolition and disposition application, as applicable; and

e. A homeownership proposal, as applicable.

5. *Management Agreement.* HOPE VI Revitalization grantees will be required to develop Management Agreements that describe their operation and management principles and policies for their public housing units.

6. *Match.* a. Grantees will be required to show evidence that matching resources were actually received and used for their intended purposes through quarterly reports as the project proceeds. Sources of matching funds may be substituted after grant award, as long as the dollar requirement is met.

b. Grantees must pursue and enforce any commitment (including commitments for services) obtained from any public or private entity for any contribution or commitment to the project or surrounding area that was part of the match amount.

7. *LOCCS Requirements.* The grantee must record all obligations and expenditures in LOCCS.

8. *Conflict of Interest in Grant Activities.* a. *Prohibition.* In addition to the conflict of interest requirements in 24 CFR part 85, no person who is an employee, agent, consultant, officer, or elected or appointed official of a grantee and who exercises or has exercised any functions or responsibilities with respect to activities assisted under a HOPE VI grant, or who is in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

b. *HUD-Approved Exception.* (1) Standard. HUD may grant an exception to the prohibition in Section (1) above on a case-by-case basis when it determines that such an exception will serve to further the purposes of HOPE VI and its effective and efficient administration.

(2) Procedure. HUD will consider granting an exception only after the grantee has provided a disclosure of the nature of the conflict, accompanied by:

(a) An assurance that there has been public disclosure of the conflict;

(b) A description of how the public disclosure was made; and

(c) An opinion of the grantee's attorney that the interest for which the exception is sought does not violate state or local laws.

(d) Consideration of Relevant Factors. In determining whether to grant a requested exception under Section (b) above, HUD will consider the cumulative effect of the following factors, where applicable:

(A) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the Revitalization plan and demolition activities that would otherwise not be available;

(B) Whether an opportunity was provided for open competitive bidding or negotiation;

(C) Whether the person affected is a member of a group or class intended to be the beneficiaries of the Revitalization plan and Demolition plan and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(D) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process, with respect to the specific activity in question;

(E) Whether the interest or benefit was present before the affected person was in a position as described in Section (iii) above;

(F) Whether undue hardship will result either to the grantee or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(G) Any other relevant considerations.

9. *Flood Insurance.* In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001–4128), your application may not propose to provide financial assistance for acquisition or construction (including rehabilitation) of properties located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

a. The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

b. Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a grant agreement.

10. *Coastal Barrier Resources Act.* In accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501), your application may not target properties in the Coastal Barrier Resources System.

11. *Final Audit.* Grantees are required to obtain a complete final closeout audit of the grant's financial statements by a certified public accountant (CPA), in accordance with generally accepted

government audit standards. A written report of the audit must be forwarded to HUD within 60 days of issuance. Grant recipients must comply with the requirements of 24 CFR part 84 or 24 CFR part 85 as stated in OMB Circulars A–110, A–87, and A–122, as applicable.

12. *Policy Requirements.* a. *OMB Circulars and Administrative Requirements.* You must comply with the following administrative requirements related to the expenditure of federal funds. OMB circulars can be found at *http://www.whitehouse.gov/omb/circulars/index.html.* Copies of the OMB circulars may be obtained from EOP Publications, Room 2200, New Executive Office Building, Washington, DC 20503; telephone (202) 395–7332 (this is not a toll-free number). The Code of Federal Regulations can be found at *http://www.access.gpo.gov/nara/cfr/index.html.*

(1) Administrative requirements applicable to PHAs are:

(a) 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

(b) OMB Circular A–87 (Cost Principles for State, Local, and Indian Tribal Governments);

(c) 24 CFR 85.26 (audit requirements).

(2) Administrative requirements applicable to nonprofit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) OMB Circular A–122 (Cost Principles for Nonprofit Organizations);

(c) 24 CFR 84.26 (audit requirements).

(3) Administrative requirements applicable to for profit organizations are:

(a) 24 CFR part 84 (Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations);

(b) 48 CFR part 31 (contract cost principles and procedures);

(c) 24 CFR 84.26 (audit requirements).

C. *Reporting.*

1. *Quarterly Report.* a. If you are selected for funding, you must submit a quarterly report to HUD.

(1) HUD will provide training and technical assistance on the filing and submitting of quarterly reports.

(2) Filing of quarterly reports is mandatory for all grantees, and failure to do so within the required timeframe will result in suspension of grant funds until the report is filed and approved by HUD.

(3) Grantees will be held to the milestones that are reported on the Quarterly Report Administrative and Compliance Checkpoints Report, as approved by HUD.

(4) Grantees must also report obligations and expenditures in LOCCS, or its successor system, on a quarterly basis.

2. *Logic Model Reporting.* a. The reporting shall include submission of a completed Logic Model indicating results achieved against the proposed output goal(s) and proposed outcome(s) which you stated in your approved application and agreed upon with HUD. The submission of the Logic Model and required information should be in accord with the reporting timeframes as identified in your grant agreement.

b. As a condition of the receipt of financial assistance under a HUD Program NOFA, all successful applicants will be required to cooperate with all HUD staff or contractors performing HUD-funded research and evaluation studies.

3. *Final Report.* The grantees shall submit a final report, which will include a financial report and a narrative evaluating overall performance against its HOPE VI Revitalization plan. Grantees shall use quantifiable data to measure performance against goals and objectives outlined in its application. The financial report shall contain a summary of all expenditures made from the beginning of the grant agreement to the end of the grant agreement and shall include any unexpended balances. The final narrative and financial report shall be due to HUD 90 days after either the full expenditure of funds, or when the grant term expires, whichever comes first.

VII. Agency Contacts

A. *Technical Assistance.* 1. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance. However, HUD staff is not permitted to assist in preparing your application. If you have a question or need a clarification, you may call, fax, or write Mr. Milan Ozdinec, Deputy Assistant Secretary for Public Housing Investments, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 4130, Washington, DC 20410–5000; telephone (202) 401–8812; fax (202) 401–2370 (these are not toll-free numbers). Persons with hearing or speech challenges may access these telephone numbers through a text telephone (TTY) by calling the toll-free Federal Information Relay Service at (800) 877–8339.

2. *Frequently Asked Questions.* Before the application due date, frequently asked questions (FAQ) on the NOFA will be posted to HUD's grants Web site at *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

B. *Technical Corrections to the NOFA.* 1. Technical corrections to this NOFA will be posted to the Grants.gov/Find Web site and to *http://www.hud.gov/offices/adm/grants/otherhud.cfm.*

2. Any technical corrections will also be published in the **Federal Register**.

3. You are responsible for monitoring these sites during the application preparation period.

C. *General Information.* General information about HUD's H6 program can be found on the Internet at *http://www.hud.gov/offices/pih/programs/ph/hope6/.*

VIII. Other Information

A. *Waivers.* Any HOPE VI-funded activities at public housing projects are subject to statutory requirements applicable to public housing projects under the 1937 Act, other statutes, and the annual contributions contract (ACC). Within such restrictions, HUD seeks innovative solutions to the long-standing problems of severely distressed public housing projects. You may request, for the revitalized project, a waiver of HUD regulations, subject to statutory limitations and a finding of good cause under 24 CFR 5.110 if the waiver will permit you to undertake measures that enhance the long-term viability of a project revitalized under this program. HUD will assess each request to determine whether good cause is established to grant the waiver.

B. *Environmental Impact.* A Finding of No Significant Impact with respect to the environment has been made for this notice in accordance with HUD regulations at 24 CFR part 50 that implement Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection between 8 a.m. and 5 p.m. in the Office of the General Counsel, Regulations Division, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

C. *SuperNOFA References.* The following sub-sections of Section VIII. of the SuperNOFA are hereby incorporated by reference:

1. Executive Order 13132, Federalism;

2. Public Access, Documentation and Disclosure;

4. Section 103 of the HUD Reform Act;

5. The FY 2004 HUD NOFA Process and Future HUD Funding Processes; and

6. Sense of Congress.

D. *Paperwork Reduction Act Statement.* The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB), under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB Control Number 2577–0208. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and an person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number. Public reporting burden for the collection of information is estimated to average 68 hours per annum per respondent for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data for the application, quarterly reports and final report. The information will be used for grantee selection and monitoring the administration of funds. Response to this request for information is required in order to receive the benefits to be derived.

Dated: October 25, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–P

HOPE VI Revitalization Application Checklist

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208
(exp. 3/31/2007)

The public reporting burden for this collection of information for the HOPE VI Revitalization Program is estimated to average fifteen minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

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form **HUD-52800** (12/2003)

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form **HUD-52800** (12/2003)

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- HUD-52515, "Funding Application, Section 8 Tenant-Based Assistance Rental Certificate Program, Rental Voucher Program," as applicable

Acknowledgment of Application Receipt

U.S. Department of Housing and Urban Development

Type or clearly print the Applicant's name and full address in the space below.

(fold line)

Type or clearly print the following information:

Name of the Federal Program to which the applicant is applying: _____

To Be Completed by HUD

☐ HUD received your application by the deadline and will consider it for funding. In accordance with Section 103 of the Department of Housing and Urban Development Reform Act of 1989, no information will be released by HUD regarding the relative standing of any applicant until funding announcements are made. However, you may be contacted by HUD after initial screening to permit you to correct certain application deficiencies.

☐ HUD did not receive your application by the deadline; therefore, your application will not receive further consideration. Your application is:

- ☐ Enclosed
- ☐ Being sent under separate cover

Processor's Name _____

Date of Receipt _____

form **HUD-2993** (2/99)

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

2. DATE SUBMITTED	Applicant Identifier	
3. DATE RECEIVED BY STATE	State Application Identifier	
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier	

1. TYPE OF SUBMISSION:

Application: ☐ **Construction** ☐ **Non-Construction**

Pre-application: ☐ **Construction** ☐ **Non-Construction**

5. APPLICANT INFORMATION

Legal Name:	**Organizational Unit:** Department:
Organizational DUNS:	Division:
Address: Street:	**Name and telephone number of person to be contacted on matters involving this application (give area code)** Prefix: First Name:
City:	Middle Name
County:	Last Name
State: Zip Code	Suffix:
Country:	Email:
6. EMPLOYER IDENTIFICATION NUMBER *(EIN)*: ☐☐-☐☐☐☐☐☐☐	Phone Number (give area code) Fax Number (give area code)
8. TYPE OF APPLICATION: ☐ **New** ☐ **Continuation** ☐ **Revision** If Revision, enter appropriate letter(s) in box(es) (See back of form for description of letters.) ☐ ☐ Other (specify)	**7. TYPE OF APPLICANT:** (See back of form for Application Types) Other (specify)
	9. NAME OF FEDERAL AGENCY:
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐-☐☐☐ TITLE (Name of Program):	**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**
12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.)*:	
13. PROPOSED PROJECT Start Date: Ending Date:	**14. CONGRESSIONAL DISTRICTS OF:** a. Applicant b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE:

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes" attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Authorized Representative

Prefix	First Name	Middle Name
Last Name		Suffix
b. Title		c. Telephone Number (give area code)
d. Signature of Authorized Representative		e. Date Signed

Previous Edition Usable
Authorized for Local Reproduction

Standard Form 424 (Rev.9-2003)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required face sheet for pre-applications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:	Item:	Entry:
1.	Select Type of Submission.	11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).	12.	List only the largest political entities affected (e.g., State, counties, cities).
3.	State use only (if applicable).	13	Enter the proposed start date and end date of the project.
4.	Enter Date Received by Federal Agency Federal identifier number: If this application is a continuation or revision to an existing award, enter the present Federal Identifier number. If for a new project, leave blank.	14.	List the applicant's Congressional District and any District(s) affected by the program or project
5.	Enter legal name of applicant, name of primary organizational unit (including division, if applicable), which will undertake the assistance activity, enter the organization's DUNS number (received from Dun and Bradstreet), enter the complete address of the applicant (including country), and name, telephone number, e-mail and fax of the person to contact on matters related to this application.	15	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.	16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
7.	Select the appropriate letter in the space provided. A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School District I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) O. Not for Profit Organization	17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
8.	Select the type from the following list: • "New" means a new assistance award. • "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. • "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. If a revision enter the appropriate letter: A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration	18	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)
9.	Name of Federal agency from which assistance is being requested with this application.		
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.		

HOPE VI Revitalization
Application Data Form

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208
(exp. 3/31/2007)

Public Reporting Burden for this collection of information is estimated to average 80 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this collection of information is mandatory to obtain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Attachment 1: *Application Data Form: Cover Sheet*

Existing Development Name(s): _____

Applicant Information *PHA Number:* _____

PHA Name: _____

PHA Mailing Address: _____

City, State, Zip: _____ *Main Telephone:* _____

PHA Executive Director: _____ *Telephone:* _____ *Fax:* _____

Email Address: _____

HOPE VI Coordinator: _____ *Telephone:* _____ *Fax:* _____

Email Address: _____

HOPE VI Developer (if any): _____ *Telephone:* _____ *Fax:* _____

HOPE VI Developer Contact: _____ *Email Address:* _____

Program Manager (if any): _____ *Telephone:* _____ *Fax:* _____

Email Address: _____

Additional Partner: _____ *Functional Title:* _____

Additional Partner: _____ *Functional Title:* _____

Street Address, City, State, Zip: _____

Existing Project Number(s): _____ *Neighborhood/ Area of town:* _____

New Development Name (if any): _____

Mixed Income Proposed? *Yes/No* *Mixed Finance Proposed?* *Yes/No*

Data Summary

	Existing	*Post-Revitalization*
Number of replacement public housing units (on/off-site, including Affordable Lease/Purchase, Affordable Fee Simple Homeownership and Second Mortgage Only--excluding rehabilitated units)		
Number of non-public housing, subsidized units (on/off-site, including homeownership)		
Number of market-rate units (no income restrictions)		
Number of other units		
TOTAL NUMBER OF POST-DEVELOPMENT UNITS		
Number of units to be rehabilitated (excluding acquisition with rehab)		
Number of newly constructed on-site units (including acquisition with rehab)		
Number of newly constructed off-site units (including acquisition with rehab)		
Number of occupied units (at time of application)		
Number of vacant units (at time of application)		

form **HUD-52860-A** (08/2002)

Attachment 2: *Application Data Form: Existing Units, Occupancy, and Vacancy*

Existing Housing Units at Time of Grant Application

Building Type	*Size*	*Number Occupied*	*Number Vacant*	*Total Units*	*Converted to Non-Dwelling*	*Demo Planned*
Row	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Detached/ Semi-Detached	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Walkup	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Elevator	0 BR					
	1 BR					
	2 BR					
	3 BR					
	4 BR					
	5 BR					
	6 BR					
	Total					
Grand Total						

form **HUD-52860-A** (08/2002)

Attachment 3: *Application Data Form: Relocation, Income, and Non-Dwelling Structures*

Relocation/Occupancy

Relocation Strategy	Planned
Original households to be provided Section 8 certificates/vouchers	
Original households to be moved within public housing (on and off-site)	
Original households to move to non-assisted housing/unknown	
Total	

Number of Section 8 certificates/vouchers requested/received from HUD for this project:	Requested	Received

Number of occupied units at time of grant application: _____

Projected number of occupied units at time of demolition application approval: _____

Returning Households	Planned
Number of original households estimated to return to revitalized HOPE VI units (both on-site and off-site):	
Number of these households to be housed in new construction	

Household Income	Existing	Post Development
Average income (as percentage of Median) of public housing residents in development		
Average income (as percentage of Median) of otherwise subsidized residents in neighborhood		
Average income (as percentage of Median) of market-rate residents in the neighborhood		
Resident Profile (not mutually exclusive)		
Total number of residents		
Number of children 6-18 years of age		
Number of senior citizens		
Number of individuals with disabilities		

Non-Dwelling Structure Summary				
Proposed non-dwelling structures (please describe, including type of facility and whether proposing new construction or rehabilitation)	*New or Rehab*	*Square Footage*	*Total Cost*	*Cost per Sq. Ft.*

form **HUD-52860-A** (08/2002)

Attachment 4: *Application Data Form: Proposed Unit Mix Post-Revitalization*

New Construction (include any acquisition w/rehab) — *Rehabilitation*

Row: New						*Row: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Detached/Semi-detached: New						*Detached/Semi-detached: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Walkups: New						*Walkups: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Elevator: New						*Elevator: Rehabilitation*					
Size	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*	*Size*	*Sq. Ft.*	*ACC Units**	*Non-ACC Units***	*HOPE VI and/or PH funded HO*	*Other Home-Ownership*
0 BR						0 BR					
1 BR						1 BR					
2 BR						2 BR					
3 BR						3 BR					
4 BR						4 BR					
5 BR						5 BR					
6 BR						6 BR					
Total						*Total*					

Grand Total						Grand Total					

*** ACC units include PH rental, PH/LIHTC, and Affordable Lease/Purchase with HOPE VI and/or PH funds.**

**** Non-ACC units have no PH or HOPE VI funds and will not be under ACC.**

form **HUD-52860-A** (08/2002)

Attachment 5: *Application Data Form: Units, Accessibility, and Concentration*

Planned Units

Rental Units: ACC							
PH Only		PH/LIHTC		PH/Other		Total ACC	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Rental Units: Non-ACC							
LIHTC		CDBG, HOME, or other subsidy		No Income Restrictions		Total Non-ACC	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Homeownership Units											
Affordable Lease/Purchase with HOPE VI and/or PH funds		Affordable Fee Simple Homeownership with HOPE VI and/or PH funds		Second Mortgage Only with HOPE VI and/or PH funds		Homeownership with other subsidies (No HOPE VI or PH funds)		Market Rate Homeownership (No subsidies)		Total Homeownership	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Other Units (operating subsidy only, etc)							
Type:		Type:		Type:		Total Other Units	
On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site	On-Site	Off-Site

Grand Total	
On-Site	Off-Site
Grand Total - All Units	

Accessibility

New Construction	Rental Units (including Lease/Purchase) % of Category	Homeownership Units % of Category	Total % of Category
Mobility-Impaired (wheelchair)			
Hearing-Impaired			
Sight-Impaired			
Visitability			

Rehabilitation	Rental Units (including Lease/Purchase) % of Category	Homeownership Units % of Category	Total % of Category
Mobility-Impaired (wheelchair)			
Hearing-Impaired			
Sight-Impaired			
Visitability			

Concentration

	Pre-Development	Post-Development
Density of on-site development (units per acre)		
Percent of very low income households in the development (30% of median or below)		

form HUD-52860-A (08/2002)

Attachment 6: *Application Data Form: Self-Sufficiency, Page 1*

NOTE: If property is vacant, describe previous residents.

	During Last 12 Months	At Time of Application	At Grant Award	Projected One Year after Grant Award	Projected Two Years after Grant Award	Projected at Close of Grant
A. Graduation from Public Assistance						
Number of households whose primary monthly source of income is:						
Wages/Salary						
TANF						
Other						
B. Employment/Obstacles to Employment						
Number of TANF participants enrolled in job training programs						
Number of non-TANF participants enrolled in job training programs						
Number of unemployed residents placed in:						
Section 3 jobs						
Non-Section 3 jobs						
C. Economic Development						
Number of resident-owned businesses						
D. Section 3						
Dollar amount of HOPE VI contracts going to Section 3 firms						
E. Education						
Number of residents without a high school diploma or G.E.D.						
Number of residents with a high school diploma, G.E.D., or higher degree						
F. Homeownership						
Number of residents in homeownership counseling						
G. Case Management						
If you have a Family Supportive Services program:						
Number of residents enrolled in FSS program						
Dollar amount in escrow accounts						
H. Youth Programs						
Number of youth participating in youth programs						
Number of children participating in day care programs						
I. Health						
Number of partnerships with healthcare agencies (e.g., clinics, hospitals, universities)						
J. Transportation						
Number of residents who use public transportation to get to work or services						

form **HUD-52860-A** (08/2002)

Attachment 6: *Application Data Form: Self-Sufficiency, Page 2*

K. Self-Sufficiency Projected Spending

Planned Spending	HOPE VI Funds	Other Funds	Total
Day Care			
Health Care			
Education			
Job Training			
Business Development Training			
Case Management			
Other (specify)			
Other (specify)			
Other (specify)			
Other (specify)			
Other (specify)			
Other (specify)			
TOTAL			

L. Self-Sufficiency: Programs and Partners

List of Self-Sufficiency (CSS) Programs	*List of Self-Sufficiency Partners*

form **HUD-52860-A** (08/2002)

Attachment 7: *Application Data Form: Sources and Uses, Page 1*

Uses ($)*	HOPE VI Uses ($)	+	Non-HOPE VI Uses ($)	=	Total
Administration					
Administration					
Management Improvements					
Management Improvements - Dev					
Management Improvements - CSS					
Acquisition					
Site Acquisition					
Building Acquisition, Turnkey					
Building Acquisition, Rehabilitation					
Building Acquisition, Non-Dwelling					
Building Remediation/Demolition					
Remediation, Dwelling Units					
Demolition, Dwelling Units					
Remediation, Non-Dwelling Units					
Demolition, Non-Dwelling Units					
Demolition, Other					
Site Improvements					
Site Remediation					
Site Infrastructure					
Off-site Improvements					
Construction					
Dwelling Structures - Hard Costs					
Non-Dwelling - Hard Costs					
General Requirements					
Builder's Profit					
Builder's Overhead					
Bond Premium					
Hard Cost Contingency					
Equipment					
Dwelling Equipment					
Non-Dwelling Equipment					
Professional Fees/Consultant Services					
Program Management Services					
Architectural					
Engineering					
Construction Management Services					
Appraisal					
Environmental					
Market Study					
Historic Preservation Documentation					
Other					
Legal					
Organizational					
Syndication					
PHA Outside Counsel					
Other					
Tax Credit					
Accounting					
Tax Credit Application					
Tax Credit Monitoring Fee					
Consultant					
Other					
Page 1 Total	$		$		$

form **HUD-52860-A** (08/2002)

Attachment 7: *Application Data Form: Sources and Uses, Page 2*

Uses ($)*	HOPE VI Uses ($)	+	Non-HOPE VI Uses ($)	=	Total
Other Development Costs (Soft Costs)					
Accounting Fees					
Financing Fees					
Permit Fees					
Title/Recording/Settlement Fees					
Real Estate Taxes During Construction					
Insurance During Construction					
Interest During Construction					
Bridge Loan Interest					
Marking/Rent-up Expenses					
Initial Operating Deficit					
Soft Cost Contingency					
Other					
Relocation					
Relocation Costs					
Developer Fee					
Developer Fee					
Reserves					
Operating Reserve					
Other Reserves					
Page 2 Total					
GRAND TOTAL USES:					
	$		$		$
	$		$		$
			Total Uses		$

Sources ($)	
HUD Funds	
HOPE VI Revitalization	
PH Capital Fund	
Modernization	
PH Development	
MROP	
HOPE VI Demolition Grant	
Other HUD Funds	
HOME	
CDBG	
Other	
Total HUD Funds	$
Non-HUD Public Funds	
State Funds	
Local Funds (Non PHA)	
PHA Funds	
Other Funds	
Describe Other	
Total Non-HUD Public Funds	$
Private Funds	
Tax Exempt Bonds	
Taxable Bonds	
Private LIHTC	
Other Equity	
Homebuyer Down Payment	
Donations/Grants	
Private Lender	
Other	
Describe Other:	
Total Private Funds	$
Total Sources	$

form **HUD-52860-A** (08/2002)

HOPE VI Budget

Part I: Summary

U. S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208
(exp. 3/31/2007)

Public Reporting Burden for this collection of information is estimated to average 3 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.
This information is necessary to provide details on the funds requested by Housing Authorities. The form displays the amount requested, broken down by budget line item, with each use explained on Part II. The requested information will be reviewed by HUD to determine if the amount requested is reasonable and whether the required percentages of capital and supportive services funds are met.
Responses to the collection are required by the appropriation under which the HOPE VI grant was funded. The information collected does not lend itself to confidentiality.
HUD may not conduct or sponsor, and a person is not required to respond to collection of information unless it displays a currently valid OMB control number.

PHA Name: _____ HOPE VI Grant Number: _____
Devel. Name: _____ Budget Revision Number: _____

Line No.		Summary by Budget Line Item	Revised Overall HOPE VI Budget for All Project Phases	Previous Authorized Amount of Funds in LOCCS	Changes Requested in this Revision	HUD-Approved Total Authorized Amount of Funds in LOCCS
1	1408	Management Improvements/ Community and Supportive Services				
2	1410	Administration				
3	1430	Fees and Costs				
4	1440	Site Acquisition				
5	1450	Site Improvement				
6	1460	Dwelling Structures				
7	1465	Dwelling Equipment-Nonexpendable				
8	1470	Nondwelling Structures				
9	1475	Nondwelling Equipment				
10	1485	Demolition				
11	1495	Relocation Costs				
12	**Total Funds Authorization** (Sum Of Lines 1-11)					
13	U2000	Funds held in Reserve				
14	**Amount of HOPE VI Grant** (Sum Of Lines 1-13)					

Signature of PHA Executive Director

X Date

HUD Certification: In approving this budget and providing assistance to a specific housing development(s), I hereby certify that the assistance will not be more than is necessary to make the assisted activity feasible after taking into account assistance from other government sources (24 CFR 12.50).

Signature of Authorized HUD Official

X Date

form **HUD-52825-A** (12/2003)

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Prior Bdgt Date	PHA:	Budget Revision Number	Grant Number
	Development Name:		

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1408	MANAGEMENT IMPROVEMENTS / COMMUNITY AND SUPPORTIVE SERVICES						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

1410	ADMINISTRATION						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1430	FEES AND COSTS						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						
1440	SITE ACQUISITION						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1450	SITE IMPROVEMENTS						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						
1460	DWELLING STRUCTURES						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: Part II: **Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1465	DWELLING EQUIPMENT - NONEXPENDABLE						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						
1470	NONDWELLING STRUCTURES						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1475	NONDWELLING EQUIPMENT						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						
1485	DEMOLITION						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

form HUD-52825-A

HOPE VI Budget: **Part II: Supporting Pages for Revision to Overall Budget, Expenditure Allocation and/or Authorized Spending Amount**

Budget Line Item Number	Description of Proposed/Approved Action Use of Additional Authorized Funds	Current Overall HOPE VI Budget (All phases)	Requested Change in Overall HOPE VI Budget (All phases)	Requested Change in Disbursed Funds (Realignment)	Current Authorized Amount (Current Spread)	Requested Change in Amount Authorized for Expenditure (Change in Spread)	Total Funds to be Authorized for Expenditure (New Spread)
1	2	3	4	5	6	7	8
1495	RELOCATION COSTS						
Prior Bdgt Date	**Total Changes**						
	Previous Approved Budget Totals						
	NEW TOTALS FOR HUD APPROVAL						
	Percentage of BLI Budget						

Total Changes					
Previous Approved Budget Totals					
NEW BLI TOTAL					

form HUD-52825-A

OMB Approval No. 2577-0208
(exp. 3/31/2007)

Public Reporting Burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this collection of information is mandatory to obtain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Attachment 9:
TDC/Grant Limitations Worksheet

COMPLETE THIS WORKSHEET LAST

To determine the maximum grant amount that may be requested in this HOPE VI revitalization application, enter the requested information. If you are using the Excel form, totals are calculated automatically.
If you are manually calculating the maximum grant amount that may be requested on this Attachment 9, follow the calculation instructions provided below on this worksheet.

6(d) TDC limit, unadjusted (entered automatically from "TDC Limit Calculation") $ -
(To calculate manually, enter the TDC Limit Total for all New and Rehabilitation Units from 6(c), page 2)

Step 7. Enter HOPE VI request for CSS funding. $ -
(from Attachment 7, Sources and Uses Budget)
(Note: request for HOPE VI Community and Supportive Services (CSS) funding may not exceed 15% of total grant requested, and amounts above 5% of grant must be matched by other sources.)

Step 8. Enter HOPE VI funds requested for demolition and remediation of dwelling units. $ -
(Enter the combined total of the dwelling unit remediation and dwelling unit demolition line items from Attachment 7, Sources and Uses Budget)

Step 9. Enter number of PH units to be demolished (after date of application only).

Step 10. Enter number of PH units to be built back on the original site. (-)
(Do not include existing public housing units to be rehabilitated)

10(a) *Number of PH units to be demolished and not replaced back on original site* -
(Number of units identified in Step 9, minus the number of units identified in Step 10)

10(b) Percent of original PH units to be demolished and not replaced back on original site - %
(Number of units identified in 10(a), divided by number of units identified in Step 9)
Example: Step 9 = 100 units to be demolished. Step 10 = 40 PH units to be built back on original site. 10(a) = 60 units demolished and not built back on original site. 10(b) = 60/100 = 60%

10(c) Demo/abatement costs attributable to units to be demolished and not replaced on orig. site $ -
(Dollar amount identified in Step 8, multiplied by percentage identified in 10(b))

Step 11. Enter HOPE VI request for "extraordinary site costs" (certified by architect or engineer). $ -

11(a) Subtotal: TDC limit, adjusted (for CSS, abatement/demolition, and extraordinary site costs) $ -
(Total of amounts above: 6(d) + Step 7 + 10(c) + Step 11)

Step 12. Enter all other HUD PH capital assistance proposed for HOPE VI development. ($ -)
(Include any project funds from the following sources: Public Housing Capital Funds or Mod funds (e.g., CIAP or CGP funds); Public Housing Development grants; previously-awarded HOPE VI demolition-only grants; and any borrowed funds secured by Capital Funds (from Attachment 7, Sources and Uses Budget))

12(a) Subtotal: Adjusted maximum allowable grant, after accounting for additional capital assistance $ -
(Total of Subtotal in 11(a), minus amount identified in Step 12)

12(b) Maximum allowable HOPE VI Revitalization Grant $20,000,000
(In accordance with provisions of the HUD 2003 HOPE VI Notice of Funding Availability)

12(c) Maximum allowable 2003 HOPE VI revitalization grant request $ -
(The lesser of 12(a) (adjusted max. possible grant), and 12(b) ($20,000,000))

Step 13. Enter the amount of your 2003 HOPE VI Revitalization Grant Request $ -
(If different than maximum allowable grant request, above)

form **HUD-52799** (2/2003)

Attachment 9:
TDC/Grant Limitations Worksheet

Page 2

Step 4. Enter name of PHA:

Step 5. (a) Enter name(s) of project(s):

(b) Enter City (from TDC table): (All)
(c) Enter State (from TDC table): (All)

Note: If the selected City or State is wrong, return to Page 1, Steps 1 and 2, to correct your selections (click on "Select City & State" tab below).

Step 6. In the appropriate BUILDING TYPE and Bedroom (BR) categories below, enter the number of NEW UNITS in section 6(a), and/or REHABILITATION UNITS in section 6(b), proposed for funding under this application.

The Excel form will calculate totals for each unit type, and worksheet totals in section 6(c), based on City and State selected on page 1.

If you are completing this Attachment 9 manually, use the applicable TDC limits for each unit type found in HUD Notice PIH 2003-8.

Definitions

NEW UNITS include all on-site and off-site rental units that will receive public housing operating subsidy. Also include any homeownership units (including lease-purchase), that will be newly-constructed or acquired (with or without rehabilitation) utilizing any HOPE VI grant funds or other public housing capital assistance for development.

REHABILITATION UNITS include only existing public housing units that are proposed for rehabilitation utilizing HOPE VI grant funds or other public housing capital assistance.

Building Types

Detached buildings are single-family dwellings.
Semi-Detached buildings, also referred to as "duplex" units, are structures that include only two units.
Elevator buildings include only those structures with an elevator and four or more floors above ground.
Row House refers to any structure with three or more units that has only vertical common walls.
If a building with three or more units has upper/lower units (and is not an elevator building), it is classified as a Walkup.
Walkup buildings include all structures with three or more units that are not classified as Elevator or Row House.

6(a) **NEW UNITS (new construction, and units to be acquired and rehabilitated)**

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Community Renewal Allowance Total	TDC Limit per Unit	TDC Limit Totals
Detached / Semi-Detached	1BR					$ 47,645,617	$ -
	2BR					$ 62,182,902	$ -
	3BR					$ 75,018,658	$ -
	4BR					$ 88,640,855	$ -
	5BR					$ 97,131,096	$ -
Elevator	1BR					$ 37,943,019	$ -
	2BR					$ 48,783,882	$ -
	3BR					$ 65,045,175	$ -
	4BR					$ 81,306,469	$ -
	5BR					$ 92,147,332	$ -
Row House	1BR					$ 42,377,194	$ -
	2BR					$ 54,964,417	$ -
	3BR					$ 66,130,920	$ -
	4BR					$ 77,849,269	$ -
	5BR					$ 85,295,434	$ -
Walkup	1BR					$ 36,713,564	$ -
	2BR					$ 46,713,996	$ -
	3BR					$ 62,041,836	$ -
	4BR					$ 76,791,383	$ -
	5BR					$ 86,599,050	$ -

Subtotal New Units: 0

6(b) **REHABILITATION UNITS (existing pubic housing units to be rehabilitated)***

BUILDING TYPE	BR's	Number of Units	HCC Limit per Unit	HCC Totals	Comm Renewal Allowance Total	TDC Limit per Unit*	TDC Limit Totals
Detached / Semi-Detached	1BR					$ 42,881,056	$ -
	2BR					$ 55,964,612	$ -
	3BR					$ 67,516,793	$ -
	4BR					$ 79,776,769	$ -
	5BR					$ 87,417,986	$ -
Elevator	1BR					$ 34,148,717	$ -
	2BR					$ 43,905,493	$ -
	3BR					$ 58,540,658	$ -
	4BR					$ 73,175,822	$ -
	5BR					$ 82,932,599	$ -
Row House	1BR					$ 38,139,475	$ -
	2BR					$ 49,467,976	$ -
	3BR					$ 59,517,828	$ -
	4BR					$ 70,064,342	$ -
	5BR					$ 76,765,891	$ -
Walkup	1BR					$ 33,042,208	$ -
	2BR					$ 42,042,597	$ -
	3BR					$ 55,837,653	$ -
	4BR					$ 69,112,245	$ -
	5BR					$ 77,939,145	$ -

Subtotal Rehab Units: 0

6(c)

Totals for all New and Rehabilitation Units	0					$ -

* Rehabilitation Units are eligible for 90% of the TDC limit. If the project unit configuration (number of units or bedrooms) will change due to rehabilitation activities, use the number of units and bedroom sizes after rehabilitation, not the unit configuration before rehabilitation.

ATTACHMENT 10: EXTRAORDINARY SITE COSTS CERTIFICATION

I hereby certify that:

1. I am a licensed engineer ☐ architect ☐ (check one).

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. Extraordinary site costs may be incurred in the revitalization and demolition of existing property, as well as in the development of new and rehabilitated units. Examples of such costs include, but are not limited to: abatement of extraordinary environmental site hazards; removal or replacement of extensive underground utility systems; extensive rock and/or soil removal and replacement; removal of hazardous underground tanks; work to address unusual site conditions such as slopes, terraces, water catchments, lakes, etc.; and work to address flood plain and other environmental remediation issues. Costs to abate asbestos and lead-based paint should be included in normal demolition costs where such items are found within the structures themselves. An example of extraordinary lead-based paint would be where the lead has leached into the soil and extraordinary measures are needed to remove the lead.

4. I have reviewed the attached description of the extraordinary site costs requested by the applicant Housing Authority identified below, and affirm that these costs qualify as extraordinary site costs (as that term is defined in Paragraph 3 above) and that the costs are justified and reasonable in light of my assessment of the site of the severely distressed project and the work proposed to be completed at that site.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Required Attachment: Description and itemized listing of extraordinary site costs.

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

ATTACHMENT 16: CERTIFICATION OF SEVERE PHYSICAL DISTRESS

I hereby certify that:

1. I am a licensed engineer ☐ architect ☐ (check one).

2. I am not an employee of the applicant public housing authority or unit of local government in which the public housing project identified below is located.

3. The public housing development listed below meets (in the manner described in either subparagraph (A) or (B) below) the following definition of severe physical distress:

   Requires major redesign, reconstruction or redevelopment, or partial or total demolition, to correct serious deficiencies in the original (including inappropriately high population density), deferred maintenance, physical deterioration or obsolescence of major systems, and other deficiencies in the physical plant of the project

check one:

A. ☐ The development currently meets the above definition of severe physical distress; or

B. ☐ The development has been legally demolished and HUD has not yet provided replacement housing assistance, other than tenant-based assistance, for the demolished units. However, the development satisfied the definition of severe physical distress (as defined above) as of the day the demolition was approved by HUD.

Name: _____

Signature: _____
Date

License number: _____ State of Registration: _____

Applicant PHA: _____

Development Name: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

HOPE VI Revitalization
Leverage Resources

U.S. Department of Housing
and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0208
(exp.3/31/2007)

Public Reporting Burden for this collection of information is estimated to average 12 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Response to this collection of information is mandatory to obtain a benefit. The information requested does not lend itself to confidentiality. HUD may not conduct or sponsor, and an applicant is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Attachment 19: *Physical Development Resources*

List all funds that will be used for Physical Development only. For each resource you list, you must provide a commitment document behind this Attachment that meets the standards described in the match and leveraging section of the NOFA. The amounts listed on this form must be consistent with the amounts listed on Attachment 7 (Sources & Uses) and the amounts in each resource commitment document.

Source of Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

form **HUD-52797** (12/2003)

Attachment 20: *Community and Supportive Services Resources*

List all funds or services that will be used for Community and Supportive Services only. For each resource you list, you must provide a commitment document behind this attachment that meets the standards described the match and leveraging section of the NOFA. The amounts listed on this form must be consistent with the amounts listed on Attachment 7 (Sources & Uses) and the amounts in each resource commitment document.

Source of CSS Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

Attachment 21: *Anticipatory Resources*

List any anticipatory resources as described in the NOFA. For each resource, attach a letter certifying the expenditures incurred. Anticipatory resources cannot be counted as match and cannot be listed on Attachments 19, 20, or 22.

Source of Anticipatory Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

Attachment 22: *Collateral Investment Resources*

List any funds or services that will be used for Collateral Investments only, as described in the NOFA. For each resource you list, attach a letter verifying the value of the collateral investment by the appropriate official (not the PHA). Collateral investment resources cannot be counted as match and cannot be listed on Attachments 19, 20, or 21.

Source of Collateral Investment Resource	Dollar Value of Resource	Page # of Commitment Document	HUD Use Only Amount Approved
_____	$ _____	_____	$ _____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Page Total	$ _____		$ _____

Page ____ of ____

HOPE VI Revitalization Resident Training and Public Meeting Certification

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp. 3/31/2007)

The public reporting burden for this collection of information for the HOPE VI Revitalization Program is estimated to average thirty minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

ATTACHMENT 23: RESIDENT TRAINING AND PUBLIC MEETING CERTIFICATION

I hereby certify, on behalf of the Public Housing Authority identified below, that a Resident Training Session on the HOPE VI development process was held in accordance with the requirements of Section VII(A)(2) of the HOPE VI NOFA.

Date of HOPE VI Resident Training Session: _____

I hereby certify, on behalf of the Public Housing Authority identified below, that at least three Public Meetings were held in accordance with the requirements of Section VII(A)(3) of the HOPE VI NOFA.

Dates of Public Meetings:

#1_____

#2_____

#3_____

#4_____

#5_____

Name of Executive Director: _____

Signature: _____
Date

Name of PHA: _____

Development Name: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

form **HUD-52785** (12/2003)

HOPE VI Revitalization Project Readiness Certification

U.S. Department of Housing and Urban Development Office of Public and Indian Housing

OMB Approval No. 2577-0208 (exp.3/31/2007)

The public reporting burden for this collection of information for the HOPE VI Revitalization Program is estimated to average thirty minutes, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD.

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, to the Office of Information Technology, US. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2577-0208. HUD may not conduct and sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

The information submitted in response to the Notice of Funding Availability for the HOPE VI Program is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

ATTACHMENT 31: PROJECT READINESS

I hereby certify, on behalf of the Public Housing Authority identified below, that the activities checked below have been completed in accordance with Section XII(B)(4) of the NOFA.

_____ The targeted severely distressed public housing project is completely vacant.

_____ The targeted severely distressed public housing site is cleared or your Revitalization Plan only includes rehabilitation and no demolition of public housing units.

_____ A Master Development Agreement has been developed and is ready to submit to HUD.

_____ The preliminary site design is complete.

_____ The PHA has held 5 or more public planning sessions (including resident training sessions and public meetings) leading to resident acceptance of the Plan. No more than three of these meetings may be the same as those certified to in Attachment 23. The dates of those meetings are as follows:

#1_____

#2_____

#3_____

#4_____

#5_____

Name of Executive Director: _____

Signature: _____

Date

Name of PHA: _____

Development Name: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001, 1010, 1012, 31 U.S.C. 3729, 3802)

form **HUD-52787** (12/2003)

Logic Model

U.S. Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114
(exp. 12/31/2006)

Program Name:_____ **Component Name:**_____

Strategic Goals	Policy Priorities	Problem, Need, Situation	Service or Activity	Benchmarks		Outcomes		Measurement Reporting Tools	Evaluation Process
				Output Goal	Output Result	Achievement Outcome Goals	End Results		
1		2	3	4	5	6	7	8	9
Policy		Planning		Intervention		Impact		Accountability	
				Short Term				a. b. c. d. e.	
				Intermediate Term				a. b. c. d. e.	
				Long Term				a. b. c. d. e.	

HUD's Strategic Goals

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

Policy Priorities

1. Provide Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organization in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs
6. Ending Chronic Homelessness within Ten Years.
7. Removal of Barriers to Affordable Housing.

form **HUD-96010** (11/2003)

Logic Model Instructions U.S. Department of Housing And Urban Development Office of Departmental Grants Management and Oversight

OMB Approval No. 2535-0114 (exp. 12/31/2006)

The public reporting burden for this collection of information for the Logic Model is estimated to average 18 hours per response for applicants, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information and preparing the application package for submission to HUD. HUD may not conduct, and a person is not required to respond to, a collection of information unless the collection displays a valid control number. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions to reduce this burden, to the Reports Management Officer, Paperwork Reduction Project, in the Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, DC 20410-3600. When providing comments, please refer to OMB Approval No. 2535-0114.

The information submitted in response to the Notice of Funding Availability for the Logic Model is subject to the disclosure requirements of the Department of Housing and Urban Development Reform Act of 1989 (Public Law 101-235, approved December 15, 1989, 42 U.S.C. 3545).

Instructions:

Responses to rating factor five should be in this format. Your response should be in bullet format rather than narrative. Please read each NOFA carefully to ensure the performance measures requested for this factor are reflected on the logic model form.

Program Name: The HUD funding program under which you are applying. If you are applying for a component of a program please include the Program Name as well as the Component Name.

Component Name: The HUD funding program under which you are applying.

Column 1: ***HUD's Strategic Goals***: Indicate in this column **the number** of the goal(s) that your proposed service or activity is designed to achieve. HUD's strategic goals are:

1. Increase homeownership opportunities.
2. Promote decent affordable housing.
3. Strengthen communities.
4. Ensure equal opportunity in housing.
5. Embrace high standards of ethics, management, and accountability.
6. Promote participation of grass-roots faith-based and other community-based organizations.

***Policy Priority*:** Indicate in this column **the number** of the HUD Policy Priority(ies), if any, your proposed service or activity promotes. Applicants are encouraged to undertake specific activities that will assist the Department in implementing its Policy Priorities. HUD's Policy Priorities are:

1. Provide Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.
2. Improving the Quality of Life in our Nation's Communities.
3. Encouraging Accessible Design Features.
4. Providing Full and Equal Access to Grass-Roots Faith-Based and Other Community-Based Organization in HUD Program Implementation.
5. Participation of Minority-Serving Institutions in HUD Programs
6. Ending Chronic Homelessness within Ten Years.
7. Removal of Barriers to Affordable Housing.

Column 2: **Problem, Need, or Situation**: Provide a general statement of need that provides the rationale for the proposed service or activity.

Column 3: **Service or Activity:** Identify the activities or services that you are undertaking in your work plan, which are crucial to the success of your program. Not every activity or service yields a direct outcome.

Column 4 and Column 5: **Benchmarks:** These columns ask you to identify benchmarks that will be used in measuring the progress of your services or activities. Column 4 asks for specific interim or final products (called outputs) that you establish for your program's services or activities. Column 5 should identify the results associated with the product or output. These may be numerical measures characterizing the results of a program activity, service or intervention and are used to measure performance. These outputs should lead to targets for achievement of outcomes. Results should be represented by both the actual # and % of the goal achieved.

Column 4: **Benchmarks/Output Goal:** Set quantifiable output goals, including timeframes. These should be products or interim products, which will allow you and HUD to monitor and assess your progress in achieving your program workplan.

Column 5: **Benchmark/ Output Result:** Report actual result of your benchmarks. The actual result could be number of housing units developed or rehabilitated, jobs created, or number of persons assisted. Outputs may be short, intermediate or long-term. ***(Do not fill out this section with the application)***

Column 6 and Column 7: **Outcomes:** Column 6 and Column 7 ask you to report on your expected and actual outcomes – the ultimate impact you hope to achieve. Column 6 asks you to identify outcomes in terms of the impact on the community, people's lives, changes in economic or social status, etc. Column 7 asks for the actual result of the outcome measure listed in Column 6, which should be updated as applicable.

Column 6: **Outcomes/ Goals:** Identify the outcomes that resulted in broader impacts for individuals, families/households, and/or the community. For example, the program may seek to improve the environmental conditions in a neighborhood, increase affordable housing, increase the assets of a low-income family, or improve self-sufficiency.

Proxy Outcome(s): Often direct measurement of the intended outcome is difficult or even impossible -- to measure. In these cases, applicants/grantees should use a proxy or surrogate measure that corresponds with the desired outcome. For example, improving quality of life in a neighborhood could be measured by a proxy indicator such as increases in home prices or decreases in crime. Training programs could be measured by the participant's increased wages or reading skills. The person receiving the service must meet eligibility requirements of the program.

Column 7: **Outcomes/Actual Result:** Identify specific achievements of outcomes listed in Column 6. ***(Do not fill out this section with the application)***

Column 8: **Measurement Reporting Tools:** (a) List the tools used to track output or outcome information (e.g., survey instrument; attendance log; case report; pre-post test; waiting list; etc); (b) Identify the place where data is maintained, e.g. central database; individual case records; specialized access database, tax assessor database; local precinct; other; (c) Identify the location, e.g. on-site; subcontractor; other; (d) Indicate how often data is required to be collected, who will collect it and how often data is reported to HUD; and (e) Describe methods for retrieving data, e.g. data from case records is retrieved manually, data is maintained in an automated database. This tool will be available for HUD review and monitoring and should be used in submitting reporting information.

Column 9: **Evaluation Process:** Identify the methodology you will periodically use to assess your success in meeting your benchmark output goals and output results, outcomes associated to the achievement of the purposes of the program, as well as the impact that the work has made on the individuals assisted, the community, and the strategic goals of the Department. If you are not meeting the goals and results projected for your performance period, the evaluation process should be used as a tool to ensure that you can adjust schedules, timing, or business practices to ensure that goals are met within your performance period.

America's Affordable Communities Initiative	U.S. Department of Housing and Urban Development	OMB approval no. 2510-0013 (exp. 01/01/2006)

Public reporting burden for this collection of information is estimated to average 3 hours. This includes the time for collecting, reviewing, and reporting the data. The information will be used for encourage applicants to pursue and promote efforts to remove regulatory barriers to affordable housing. Response to this request for information is required in order to receive the benefits to be derived. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Questionnaire for HUD's Initiative on Removal of Regulatory Barriers

Part A. Local Jurisdictions. Counties Exercising Land Use and Building Regulatory Authority and Other Applicants Applying for Projects Located in such Jurisdictions or Counties [Collectively, Jurisdiction]

	1	2
1. Does your jurisdiction's comprehensive plan (or in the case of a tribe or TDHE, a local Indian Housing Plan) include a "housing element? A local comprehensive plan means the adopted official statement of a legislative body of a local government that sets forth (in words, maps, illustrations, and/or tables) goals, policies, and guidelines intended to direct the present and future physical, social, and economic development that occurs within its planning jurisdiction and that includes a unified physical plan for the public development of land and water. If your jurisdiction does not have a local comprehensive plan with a "housing element," please enter no. If no, skip to question # 4.	☐ No	☐ Yes
2. If your jurisdiction has a comprehensive plan with a housing element, does the plan provide estimates of current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate and middle income families, for at least the next five years?	☐ No	☐ Yes
3. Does your zoning ordinance and map, development and subdivision regulations or other land use controls conform to the jurisdiction's comprehensive plan regarding housing needs by providing: a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped "as of right" in these categories, that can permit the building of affordable housing addressing the needs identified in the plan? (For purposes of this notice, "as-of-right," as applied to zoning, means uses and development standards that are determined in advance and specifically authorized by the zoning ordinance. The ordinance is largely self-enforcing because little or no discretion occurs in its administration.). If the jurisdiction has chosen not to have either zoning, or other development controls that have varying standards based upon districts or zones, the applicant may also enter yes.	☐ No	☐ Yes
4. Does your jurisdiction's zoning ordinance set minimum building size requirements that exceed the local housing or health code or is otherwise not based upon explicit health standards?	☐ Yes	☐ No

5. If your jurisdiction has development impact fees, are the fees specified and calculated under local or state statutory criteria? If no, skip to question #7. Alternatively, if your jurisdiction does not have impact fees, you may enter yes.	☐ No	☐ Yes
6. If yes to question #5, does the statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (nexus), and a method for fee calculation?	☐ No	☐ Yes
7. If your jurisdiction has impact or other significant fees, does the jurisdiction provide waivers of these fees for affordable housing?	☐ No	☐ Yes
8. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
9. Does your jurisdiction use a recent version (i.e. published within the last 5 years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification. In the case of a tribe or TDHE, has a recent version of one of the model building codes as described above been adopted or, alternatively, has the tribe or TDHE adopted a building code that is substantially equivalent to one or more of the recognized model building codes? Alternatively, if a significant technical amendment has been made to the above model codes, can the jurisdiction supply supporting data that the amendments do not negatively impact affordability.	☐ No	☐ Yes
10. Does your jurisdiction's zoning ordinance or land use regulations permit manufactured (HUD-Code) housing "as of right" in all residential districts and zoning classifications in which similar site-built housing is permitted, subject to design, density, building size, foundation requirements, and other similar requirements applicable to other housing that will be deemed realty, irrespective of the method of production?	☐ No	☐ Yes

11. Within the past five years, has a jurisdiction official (i.e., chief executive, mayor, county chairman, city manager, administrator, or a tribally recognized official, etc.), the local legislative body, or planning commission, directly, or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or hearings, or has the jurisdiction established a formal ongoing process, to review the rules, regulations, development standards, and processes of the jurisdiction to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
12. Within the past five years, has the jurisdiction initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the jurisdiction's "HUD Consolidated Plan?" If yes, attach a brief list of these major regulatory reforms.	☐ No	☐ Yes
13. Within the past five years has your jurisdiction modified infrastructure standards and/or authorized the use of new infrastructure technologies (*e.g.* water, sewer, street width) to significantly reduce the cost of housing?	☐ No	☐ Yes
14. Does your jurisdiction give "as-of-right" density bonuses sufficient to offset the cost of building below market units as an incentive for any market rate residential development that includes a portion of affordable housing? (As applied to density bonuses, "as of right" means a density bonus granted for a fixed percentage or number of additional market rate dwelling units in exchange for the provision of a fixed number or percentage of affordable dwelling units and without the use of discretion in determining the number of additional market rate units.)	☐ No	☐ Yes
15. Has your jurisdiction established a single, consolidated permit application process for housing development that includes building, zoning, engineering, environmental, and related permits? Alternatively, does your jurisdiction conduct concurrent, not sequential, reviews for all required permits and approvals?	☐ No	☐ Yes
16. Does your jurisdiction provide for expedited or "fast track" permitting and approvals for all affordable housing projects in your community?	☐ No	☐ Yes
17. Has your jurisdiction established time limits for government review and approval or disapproval of development permits in which failure to act, after the application is deemed complete, by the government within the designated time period, results in automatic approval?	☐ No	☐ Yes
18. Does your jurisdiction allow "accessory apartments" either as: a) a special exception or conditional use in all single-family residential zones or, b) "as of right" in a majority of residential districts otherwise zoned for single-family housing?	☐ No	☐ Yes
19. Does your jurisdiction have an explicit policy that adjusts or waives existing parking requirements for all affordable housing developments?	☐ No	☐ Yes
20. Does your jurisdiction require affordable housing projects to undergo public review or special hearings when the project is otherwise in full compliance with the zoning ordinance and other development regulations?	☐ Yes	☐ No
Total Points:		

Part B. State Agencies and Departments or Other Applicants for Projects Located in Unincorporated Areas or Areas Otherwise Not Covered in Part A

		1	2
1	Does your state, either in its planning and zoning enabling legislation or in any other legislation, require localities regulating development have a comprehensive plan with a "housing element?" If no, skip to question # 4	☐ No	☐ Yes
2.	Does you state require that a local jurisdiction's comprehensive plan estimate current and anticipated housing needs, taking into account the anticipated growth of the region, for existing and future residents, including low, moderate, and middle income families, for at least the next five years?	☐ No	☐ Yes
3.	Does your state's zoning enabling legislation require that a local jurisdiction's zoning ordinance have a) sufficient land use and density categories (multifamily housing, duplexes, small lot homes and other similar elements); and, b) sufficient land zoned or mapped in these categories, that can permit the building of affordable housing that addresses the needs identified in the comprehensive plan?	☐ No	☐ Yes
4.	Does your state have an agency or office that includes a specific mission to determine whether local governments have policies or procedures that are raising costs or otherwise discouraging affordable housing?	☐ No	☐ Yes
5.	Does your state have a legal or administrative requirement that local governments undertake periodic self-evaluation of regulations and processes to assess their impact upon housing affordability address these barriers to affordability?	☐ No	☐ Yes
6.	Does your state have a technical assistance or education program for local jurisdictions that includes assisting them in identifying regulatory barriers and in recommending strategies to local governments for their removal?	☐ No	☐ Yes
7.	Does your state have specific enabling legislation for local impact fees? If no skip to question #9.	☐ No	☐ Yes
8.	If yes to the question #7, does the state statute provide criteria that sets standards for the allowable type of capital investments that have a direct relationship between the fee and the development (*nexus*) and a method for fee calculation?	☐ No	☐ Yes
9.	Does your state provide significant financial assistance to local governments for housing, community development and/or transportation that includes funding prioritization or linking funding on the basis of local regulatory barrier removal activities?	☐ No	☐ Yes

10. Does your state have a mandatory state-wide building code that a) does not permit local technical amendments and b) uses a recent version (i.e. published within the last five years or, if no recent version has been published, the last version published) of one of the nationally recognized model building codes (i.e. the International Code Council (ICC), the Building Officials and Code Administrators International (BOCA), the Southern Building Code Congress International (SBCI), the International Conference of Building Officials (ICBO), the National Fire Protection Association (NFPA)) without significant technical amendment or modification? Alternatively, if the state has made significant technical amendment to the model code, can the state supply supporting data that the amendments do not negatively impact affordability?	☐ No	☐ Yes
11. Has your jurisdiction adopted specific building code language regarding housing rehabilitation that encourages such rehabilitation through gradated regulatory requirements applicable as different levels of work are performed in existing buildings? Such code language increases regulatory requirements (the additional improvements required as a matter of regulatory policy) in proportion to the extent of rehabilitation that an owner/developer chooses to do on a voluntary basis. For further information see HUD publication: "*Smart Codes in Your Community: A Guide to Building Rehabilitation Codes*" (www.huduser.org/publications/destech/smartcodes.html)	☐ No	☐ Yes
12. Within the past five years has your state made any changes to its own processes or requirements to streamline or consolidate the state's own approval processes involving permits for water or wastewater, environmental review, or other State-administered permits or programs involving housing development. If yes, briefly list these changes.	☐ No	☐ Yes
13. Within the past five years, has your state (i.e., Governor, legislature, planning department) directly or in partnership with major private or public stakeholders, convened or funded comprehensive studies, commissions, or panels to review state or local rules, regulations, development standards, and processes to assess their impact on the supply of affordable housing?	☐ No	☐ Yes
14. Within the past five years, has the state initiated major regulatory reforms either as a result of the above study or as a result of information identified in the barrier component of the states' "Consolidated Plan submitted to HUD?" If yes, briefly list these major regulatory reforms.	☐ No	☐ Yes
15. Has the state undertaken any other actions regarding local jurisdiction's regulation of housing development including permitting, land use, building or subdivision regulations, or other related administrative procedures? If yes, briefly list these actions.	☐ No	☐ Yes
Total Points:		

ATTACHMENT 40

HOPE VI REVITALIZATION APPLICANT CERTIFICATIONS

Acting on behalf of the Board of Commissioners of the Housing Authority listed below, as its Chairman, I approve the submission of the HOPE VI Revitalization application of which this document is a part and make the following certifications to and agreements with the Department of Housing and Urban Development (HUD) in connection with the application and implementation thereof:

1. The public housing project or building in a project targeted in this HOPE VI Revitalization grant application meets the definition of severe distress in accordance with Section 24(j)(2) of the United States Housing Act of 1937 ("1937Act").

2. The PHA has not received assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities for which funding is requested in the HOPE VI Revitalization application.

3. The PHA does not have any litigation pending which would preclude timely startup of activities.

4. The PHA is in full compliance with any desegregation or other court order related to Fair Housing (e.g., Title VI of the Civil Rights Act of 1964, the Fair Housing Act, and Section 504 of the Rehabilitation Act of 1973) that affects the PHA's public housing program and that is in effect on the date of application submission.

5. The PHA has returned any excess advances received during development or modernization, or amounts determined by HUD to constitute excess financing based on a HUD-approved Actual Development Cost Certificate (ADCC) or Actual Modernization Cost Certificate (AMCC), or that HUD has approved a pay-back plan.

6. There are no environmental factors, such as sewer moratoriums, precluding development in the requested locality.

7. In accordance with the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001-4128), the property targeted for acquisition or construction (including rehabilitation) is not located in an area identified by the Federal Emergency Management Agency (FEMA) as having special flood hazards, unless:

(a) The community in which the area is situated is participating in the National Flood Insurance program (see 44 CFR parts 59 through 79), or less than one year has passed since FEMA notification regarding such hazards; and

(b) Where the community is participating in the National Flood Insurance Program, flood insurance is obtained as a condition of execution of a Grant Agreement and approval of any subsequent demolition or disposition application.

8. The application does not target properties in the Coastal Barrier Resources System, in accordance with the Coastal Barrier Resources Act (16 U.S.C. 3501).

If selected for HOPE VI Revitalization funding:

9. The PHA will comply with all policies, procedures, and requirements prescribed by HUD for the HOPE VI Program, including the implementation of HOPE VI revitalization activities, in a timely, efficient, and economical manner.

10. The PHA will not receive assistance from the Federal government, State, or unit of local government, or any agency or instrumentality, for the specific activities funded by the HOPE VI Revitalization grant. The PHA has established controls to ensure that any activity funded by the HOPE VI Revitalization grant is not also funded by any other HUD program, thereby preventing duplicate funding of any activity.

11. The PHA will not provide to any development more assistance under the HOPE VI Revitalization grant than is necessary to provide affordable housing after taking into account other governmental assistance provided.

12. The PHA will supplement the aggregate amount of the HOPE VI Revitalization grant with funds from sources other than HOPE VI in an amount not less than 5 percent of the amount of HOPE VI grant.

13. In addition to supplemental amounts provided in accordance with Certification 12 above, if the PHA uses more than 5 percent of the HOPE VI grant for the community and supportive services component, it will provide supplemental funds from sources other than HOPE VI, dollar for dollar, for the amount over 5 percent of the grant used for the community and supportive services component.

14. Disposition activity under the grant will be conducted in accordance with Section 18 of the 1937 Act.

15. The PHA will carry out acquisition of land, or acquisition of off-site units with or without rehabilitation to be used as public housing, in accordance with 24 CFR part 941, or successor part.

16. The PHA will carry out major rehabilitation and other physical improvements of housing and non-dwelling facilities in accordance with 24 CFR 968.11 2(b), (d), (e), and (g)-(o), 24 CFR 968.130, and 24 CFR 968.135(b) and (d) or successor part.

17. The PHA will carry out construction of public housing rental replacement housing, both on-site and off-site, and community facilities, in accordance with 24 CFR part 941 or successor part, including mixed-finance development in accordance with subpart F.

18. The PHA will carry out replacement homeownership activities in conformance with the requirements of section 24(d)(1)(J), which may include a homeownership proposal under Section 32 of the 1937 Act, the income limitations, and other applicable homeownership requirements of the 1937 Act.

19. The PHA will administer and operate public housing rental units in accordance with all requirements applicable to public housing, including the 1937 Act, HUD's implementing regulations thereunder, the ACC, the Mixed-Finance ACC Amendment (if applicable), and all other applicable Federal statutory, Executive Order, and regulatory requirements as such requirements may be amended from time to time.

20. The PHA will comply with:

(a) The Fair Housing Act (42 U.S.C. 3601-19) and regulations at 24 CFR part 100;

(b) The prohibitions against discrimination on the basis of disability under Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations at 24 CFR part 8);

(c) Title II of the Americans with Disabilities Act (42 U.S.C 12101 et seq.) and its implementing regulations at 28 CFR part 36;

(d) The Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151) and regulations at 24 CFR part 40).

21. The PHA will comply with regulations at 24 CFR 85.36(e) which require recipients of assistance (grantees and subgrantees) to take all necessary affirmative steps in contracting for purchase of goods or services to assure that small businesses, small disadvantaged businesses, minority firms, women's business enterprises, and labor surplus area firms are used when possible.

22. The PHA will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Employment Opportunities for Lower Income Persons in Connection with Assisted Projects) and its implementing regulation at 24 CFR part 135, including the reporting requirements of subpart E.

23. The PHA will comply with Davis-Bacon or HUD-determined prevailing wage rate requirements to the extent required under Section 12 of the 1937 Act.

24. As applicable, the PHA will comply with the relocation assistance and real property acquisition requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and government-wide implementing regulations at 49 CFR part 24; relocation regulations at 24 CFR 968.108 or successor regulation (rehabilitation, temporary relocation); 24 CFR 941.207 or successor regulation (acquisition); and Section 18 of the 1937 Act as amended (disposition).

25. The PHA will comply with all HOPE VI requirements for reporting and providing access to records.

26. The PHA will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821, et seq.) and is subject to 24 CFR part 35 and 24 CFR 965.701, as they may be amended from time to time, and Section 968.110(k) or successor regulation.

27. The PHA will comply with the policies, guidelines, and requirements of OMB Circular A-87 (Cost Principles Applicable to Grants, Contracts, and Other Agreements with State and Local Governments).

28. The PHA will comply with 24 CFR part 85 (Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments), as modified by 24 CFR 941 or successor part, subpart F, relating to the procurement of partners in mixed finance developments.

29. The PHA will keep records in accordance with 24 CFR 85.20 that facilitate an effective audit to determine compliance with program requirements, and comply with the audit requirements of 24 CFR 85.26.

30. The PHA will start construction within 12 months from the date of HUD's approval of the Supplemental Submissions as requested by HUD after grant award. This time period may not exceed 18 months from the date the Grant Agreement is executed.

31. The PHA will submit the development proposal for the first phase of construction within 12 months of grant award.

32. The PHA will complete construction within 48 months from the date of HUD's approval of the Supplemental Submissions. This time period for completion may not exceed 54 months from the date the Grant Agreement is executed.

33. All activities that include construction, rehabilitation, lead-based paint removal, and related activities will meet or exceed local building codes. New construction will comply with the latest HUD-adopted Model Energy Code issued by the Council of American Building Officials.

34. Prior to entering into an agreement with HUD, the PHA will submit a copy of their Code of Conduct, which will also describe the methods they will use to ensure that all officers, employees, and agents of their organization are aware of the Code of Conduct. This certification may be provided in the form of a letter.

Name of Housing Authority: _____

Attested By: Board Chairman's Name: _____

Board Chairman's Signature: _____

Date: _____

Warning: HUD will prosecute false claims and statements. Conviction may result in the imposition of criminal and civil penalties. (18 U.S.C. 1001,1010,1012, 32 U.S.C. 3729,3802)

Applicant Assurances and Certifications

U.S. Department of Housing and Urban Development

OMB Approval No. 2501-0017
(expires 03/31/2005)

Instructions for the HUD-424-B Assurances and Certifications

As part of your application for HUD funding, you, as the official authorized to sign on behalf of your organization or as an individual must provide the following assurances and certifications. By submitting this form, you are stating that to the best of your knowledge and belief, all assertions are true and correct.

As the duly authorized representative of the applicant, I certify that the applicant [Insert below the Name and title of the Authorized Representative, name of Organization and the date of signature]:

Name:_____, Title:_____.

Organization:_____, Date:_____.

1. Has the legal authority to apply for Federal assistance, has the institutional, managerial and financial capability (including funds to pay the non-Federal share of program costs) to plan, manage and complete the program as described in the application and the governing body has duly authorized the submission of the application, including these assurances and certifications, and authorized me as the official representative of the applicant to act in connection with the application and to provide any additional information as may be required.
2. Will administer the grant in compliance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000(d)) and implementing regulations (24 CFR Part 1), which provide that no person in the United States shall, on the grounds of race, color or national origin, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance **OR** if the applicant is a Federally recognized Indian tribe or its tribally designated housing entity, is subject to the Indian Civil Rights Act (25 U.S.C. 1301-1303).
3. Will administer the grant in compliance with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as amended, and implementing regulations at 24 CFR Part 8, and the Age Discrimination Act of 1975 (42 U.S.C. 6101-07), as amended, and implementing regulations at 24 CFR Part 146 which together provide that no person in the United States shall, on the grounds of disability or age, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity that receives Federal financial assistance; except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.
4. Will comply with the Fair Housing Act (42 U.S.C. 3601-19), as amended, and the implementing regulations at 24 CFR Part 100, which prohibit discrimination in housing on the basis of race, color, religion, sex, disability, familial status, or national origin; except an applicant which is an Indian tribe or its instrumentality which is excluded by statute from coverage does not make this certification; and further except if the grant program authorizes or limits participation to designated populations, then the applicant will comply with the nondiscrimination requirements within the designated population.
5. Will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601) and implementing regulations at 49 CFR Part 24 and 24 CFR 42, Subpart A.
6. Will comply with the environmental requirements of the National Environmental Policy Act (42 U.S.C.4321 et seq.) and related Federal authorities prior to the commitment or expenditure of funds for property acquisition and physical development activities subject to implementing regulations at 24 CFR parts 50 or 58.
7. That no Federal appropriated funds have been paid, or will be paid, by or on behalf of the applicant, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, and officer or employee of Congress, or an employee of a Member of Congress, in connection with the awarding of this Federal grant or its extension, renewal, amendment or modification. If funds other than Federal appropriated funds have or will be paid for influencing or attempting to influence the persons listed above, I shall complete and submit Standard Form-LLL, Disclosure Form to Report Lobbying. I certify that I shall require all sub awards at all tiers (including sub-grants and contracts) to similarly certify and disclose accordingly.

Federally recognized Indian Tribes and tribally designated housing entities (TDHEs) established by Federally-recognized Indian tribes as a result of the exercise of the tribe's sovereign power are excluded from coverage by the Byrd Amendment, but State-recognized Indian tribes and TDHEs established under State law are not excluded from the statute's coverage.

These certifications and assurances are material representations of the fact upon which HUD can rely when awarding a grant. If it is later determined that, I the applicant, knowingly made an erroneous certification or assurance, I may be subject to criminal prosecution. HUD may also terminate the grant and take other available remedies.

form **HUD-424-B** (02/2004)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*: 4c	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Applicant/Recipient Disclosure/Update Report

U.S. Department of Housing and Urban Development

OMB Approval No. 2510-0011 (exp. 08/31/2006)

Instructions. (See Public Reporting Statement and Privacy Act Statement and detailed instructions on page 2.)

Applicant/Recipient Information

Indicate whether this is an Initial Report ☐ **or an Update Report** ☐

1. Applicant/Recipient Name, Address, and Phone (include area code):	2. Social Security Number or Employer ID Number:
3. HUD Program Name	4. Amount of HUD Assistance Requested/Received

5. State the name and location (street address, City and State) of the project or activity:

Part I Threshold Determinations

1. Are you applying for assistance for a specific project or activity? These terms do not include formula grants, such as public housing operating subsidy or CDBG block grants. (For further information see 24 CFR Sec. 4.3).
   ☐ **Yes** ☐ **No**

2. Have you received or do you expect to receive assistance within the jurisdiction of the Department (HUD), involving the project or activity in this application, in excess of $200,000 during this fiscal year (Oct. 1 - Sep. 30)? For further information, see 24 CFR Sec. 4.9
   ☐ **Yes** ☐ **No.**

If you answered "**No**" to either question 1 or 2, **Stop!** You do not need to complete the remainder of this form. ***However***, you must sign the certification at the end of the report.

Part II Other Government Assistance Provided or Requested / Expected Sources and Use of Funds.

Such assistance includes, but is not limited to, any grant, loan, subsidy, guarantee, insurance, payment, credit, or tax benefit.

Department/State/Local Agency Name and Address	Type of Assistance	Amount Requested/Provided	Expected Uses of the Funds

(**Note**: Use Additional pages if necessary.)

Part III Interested Parties. You must disclose:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).

Alphabetical list of all persons with a reportable financial interest in the project or activity (For individuals, give the last name first)	Social Security No. or Employee ID No.	Type of Participation in Project/Activity	Financial Interest in Project/Activity ($ and %)

(**Note**: Use Additional pages if necessary.)

Certification

Warning: If you knowingly make a false statement on this form, you may be subject to civil or criminal penalties under Section 1001 of Title 18 of the United States Code. In addition, any person who knowingly and materially violates any required disclosures of information, including intentional non-disclosure, is subject to civil money penalty not to exceed $10,000 for each violation.

I certify that this information is true and complete.

Signature: X	Date: (mm/dd/yyyy)

Public reporting burden for this collection of information is estimated to average 2.0 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless that collection displays a valid OMB control number.

Privacy Act Statement. Except for Social Security Numbers (SSNs) and Employer Identification Numbers (EINs), the Department of Housing and Urban Development (HUD) is authorized to collect all the information required by this form under section 102 of the Department of Housing and Urban Development Reform Act of 1989, 42 U.S.C. 3531. Disclosure of SSNs and EINs is optional. The SSN or EIN is used as a unique identifier. The information you provide will enable HUD to carry out its responsibilities under Sections 102(b), (c), and (d) of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101-235, approved December 15, 1989. These provisions will help ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. They will also help ensure that HUD assistance for a specific housing project under Section 102(d) is not more than is necessary to make the project feasible after taking account of other government assistance. HUD will make available to the public all applicant disclosure reports for five years in the case of applications for competitive assistance, and for generally three years in the case of other applications. Update reports will be made available along with the disclosure reports, but in no case for a period generally less than three years. All reports, both initial reports and update reports, will be made available in accordance with the Freedom of Information Act (5 U.S.C. §552) and HUD's implementing regulations at 24 CFR Part 15. HUD will use the information in evaluating individual assistance applications and in performing internal administrative analyses to assist in the management of specific HUD programs. The information will also be used in making the determination under Section 102(d) whether HUD assistance for a specific housing project is more than is necessary to make the project feasible after taking account of other government assistance. You must provide all the required information. Failure to provide any required information may delay the processing of your application, and may result in sanctions and penalties, including imposition of the administrative and civil money penalties specified under 24 CFR §4.38.

Note: This form only covers assistance made available by the Department. States and units of general local government that carry out responsibilities under Sections 102(b) and (c) of the Reform Act must develop their own procedures for complying with the Act.

Instructions

Overview.

A. Coverage. You must complete this report if:
   (1) You are applying for assistance from HUD for a specific project or activity **and** you have received, or expect to receive, assistance from HUD in excess of $200,000 during the during the fiscal year;
   (2) You are updating a prior report as discussed below; or
   (3) You are submitting an application for assistance to an entity other than HUD, a State or local government if the application is required by statute or regulation to be submitted to HUD for approval or for any other purpose.

B. **Update reports (filed by "Recipients" of HUD Assistance): General.** All recipients of covered assistance must submit update reports to the Department to reflect substantial changes to the initial applicant disclosure reports.

Line-by-Line Instructions.

Applicant/Recipient Information.
All applicants for HUD competitive assistance, must complete the information required in blocks 1-5 of form HUD-2880:

1. Enter the full name, address, city, State, zip code, and telephone number (including area code) of the applicant/recipient. Where the applicant/recipient is an individual, the last name, first name, and middle initial must be entered.
2. Entry of the applicant/recipient's SSN or EIN, as appropriate, is optional.
3. Applicants enter the HUD program name under which the assistance is being requested.
4. Applicants enter the amount of HUD assistance that is being requested. Recipients enter the amount of HUD assistance that has been provided and to which the update report relates. The amounts are those stated in the application or award documentation. NOTE: In the case of assistance that is provided pursuant to contract over a period of time (such as project-based assistance under section 8 of the United States Housing Act of 1937), the amount of assistance to be reported includes all amounts that are to be provided over the term of the contract, irrespective of when they are to be received.
5. Applicants enter the name and full address of the project or activity for which the HUD assistance is sought. Recipients enter the name and full address of the HUD-assisted project or activity to which the update report relates. The most appropriate government identifying number must be used (e.g., RFP No.; IFB No.; grant announcement No.; or contract, grant, or loan No.) Include prefixes.

Part I. Threshold Determinations - Applicants Only

Part I contains information to help the applicant determine whether the remainder of the form must be completed. **Recipients filing Update Reports should not complete this Part.**

If the answer to ***either*** questions 1 or 2 is No, the applicant need not complete Parts II and III of the report, but must sign the certification at the end of the form.

Part II. Other Government Assistance and Expected Sources and Uses of Funds.

A. Other Government Assistance. This Part is to be completed by both applicants and recipients for assistance and recipients filing update reports. Applicants and recipients must report any other government assistance involved in the project or activity for which assistance is sought. Applicants and recipients must report any other government assistance involved in the project or activity. Other government assistance is defined in note 4 on the last page. For purposes of this definition, other government assistance is expected to be made available if, based on an assessment of all the circumstances involved, there are reasonable grounds to anticipate that the assistance will be forthcoming.

   Both applicant and recipient disclosures must include all other government assistance involved with the HUD assistance, as well as any other government assistance that was made available before the request, but that has continuing vitality at the time of the request. Examples of this latter category include tax credits that provide for a number of years of tax benefits, and grant assistance that continues to benefit the project at the time of the assistance request.

   The following information must be provided:

   1. Enter the name and address, city, State, and zip code of the government agency making the assistance available.
   2. State the type of other government assistance (e.g., loan, grant, loan insurance).
   3. Enter the dollar amount of the other government assistance that is, or is expected to be, made available with respect to the project or activities for which the HUD assistance is sought (applicants) or has been provided (recipients).
   4. Uses of funds. Each reportable use of funds must clearly identify the purpose to which they are to be put. Reasonable aggregations may be used, such as "total structure" to include a number of structural costs, such as roof, elevators, exterior masonry, etc.

B. Non-Government Assistance. Note that the applicant and recipient disclosure report must specify all expected sources and uses of funds - both from HUD ***and any other source*** - that have been or are to be, made available for the project or activity. Non-government sources of

funds typically include (but are not limited to) foundations and private contributors.

Part III. Interested Parties.

This Part is to be completed by both applicants and recipients filing update reports. Applicants must provide information on:

1. All developers, contractors, or consultants involved in the application for the assistance or in the planning, development, or implementation of the project or activity and
2. any other person who has a financial interest in the project or activity for which the assistance is sought that exceeds $50,000 or 10 percent of the assistance (whichever is lower).
   Note: A financial interest means any financial involvement in the project or activity, including (but not limited to) situations in which an individual or entity has an equity interest in the project or activity, shares in any profit on resale or any distribution of surplus cash or other assets of the project or activity, or receives compensation for any goods or services provided in connection with the project or activity. Residency of an individual in housing for which assistance is being sought is not, by itself, considered a covered financial interest.

The information required below must be provided.

1. Enter the full names and addresses. If the person is an entity, the listing must include the full name and address of the entity as well as the CEO. Please list all names alphabetically.
2. Entry of the Social Security Number (SSN) or Employee Identification Number (EIN), as appropriate, for each person listed is optional.
3. Enter the type of participation in the project or activity for each person listed: i.e., the person's specific role in the project (e.g., contractor, consultant, planner, investor).
4. Enter the financial interest in the project or activity for each person listed. The interest must be expressed both as a dollar amount and as a percentage of the amount of the HUD assistance involved.

Note that if any of the source/use information required by this report has been provided elsewhere in this application package, the applicant need not repeat the information, but need only refer to the form and location to incorporate it into this report. (It is likely that some of the information required by this report has been provided on SF 424A, and on various budget forms accompanying the application.) If this report requires information beyond that provided elsewhere in the application package, the applicant must include in this report all the additional information required.

Recipients must submit an update report for any change in previously disclosed sources and uses of funds as provided in Section I.D.5., above.

Notes:

1. All citations are to 24 CFR Part 4, which was published in the Federal Register. [April 1, 1996, at 63 Fed. Reg. 14448.]
2. Assistance means any contract, grant, loan, cooperative agreement, or other form of assistance, including the insurance or guarantee of a loan or mortgage, that is provided with respect to a specific project or activity under a program administered by the Department. The term does not include contracts, such as procurements contracts, that are subject to the Fed. Acquisition Regulation (FAR) (48 CFR Chapter 1).
3. See 24 CFR §4.9 for detailed guidance on how the threshold is calculated.
4. "Other government assistance" is defined to include any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance from the Federal government (other than that requested from HUD in the application), a State, or a unit of general local government, or any agency or instrumentality thereof, that is, or is expected to be made, available with respect to the project or activities for which the assistance is sought.
5. For the purpose of this form and 24 CFR Part 4, "person" means an individual (including a consultant, lobbyist, or lawyer); corporation; company; association; authority; firm; partnership; society; State, unit of general local government, or other government entity, or agency thereof (including a public housing agency); Indian tribe; and any other organization or group of people.

Funding Application

Section 8 Tenant-Based Assistance
Rental Certificate Program
Rental Voucher Program

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0169
(exp. 07/31/2007)

Send the original and two copies of this application form and attachments to the local HUD Field Office

Public reporting burden for this collection of information is estimated to average 1 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number.

Eligible applicants (HAs) must submit this information when applying for grant funding for tenant-based housing assistance programs under Section 8 of the U.S. Housing Act of 1937 (42 U.S.C. 1437f). HUD will use the information to evaluate an application based on selection criteria stated in the Notice of Funding Availability (NOFA). HUD will notify the HA of its approval/disapproval of the funding application. Responses are required to obtain a benefit from the Federal Govenment. The information requested does not lend itself to confidentiality.

Name and Mailing Address of the Housing Agency (HA) requesting housing assistance payments

Application/Project No. (HUD use only)

Do you have an ACC with HUD	No	Yes	Date of Application	Legal Area of Operation (area in which the HA has authority under State and local law to administer the program)
for Section 8 Certificates?	☐	☐		
for Section 8 Vouchers?	☐	☐		

A. Area(s) From Which Families To Be Assisted Will Be Drawn.

Locality (city, town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units. (Complete this section based on the unit sizes of the applicants at the top of the waiting list)

	Number of Dwelling Units by Bedroom Size							Total Dwelling Units
	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR	
Certificates								
Vouchers								

C. Average Monthly Adjusted Income. Complete this section based on actual incomes of current participants by unit size. Enter average monthly adjusted income for each program separately and only for the unit sizes requested in Section B.

	0-BR	1-BR	2-BR	3-BR	4-BR	5-BR	6+BR
Certificates	$	$	$	$	$	$	$
Vouchers	$	$	$	$	$	$	$

D. Need for Housing Assistance. Demonstrate that the project requested in this application is responsive to the condition of the housing stock in the community and the housing assistance needs of low-income families residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

E. Housing Quality Standards (HQS). (Check applicable box)

☐ HUD's HQS will be used with no modifications ☐ Attached for HUD approval are HQS acceptability criteria variations

F. New HA Information. Complete this section if HA currently does not administer a tenant-based certificate or voucher program.

Financial and Administrative Capability. Describe the experience of the HA in administering housing or other programs and provide any other relevant information which evidences present or potential management capability for the proposed rental assistance program. Submit this narrative on a separate page.

Qualification as an HA. Demonstrate that the applicant qualifies as an HA and is legally qualified and authorized to administer the funds applied for in this application. Submit the relevant enabling legislation and a supporting legal opinion.

Note: If this application is approved, the HA must submit for HUD approval a utility allowance schedule and budget documents.

G. Certifications. The following certifications are incorporated as a part of this application form. The signature on the last page of this application of the HA representative authorized to sign the application signifies compliance with the terms of these certifications.

Equal Opportunity Certification

The Housing Agency (HA) certifies that:

(1) The HA will comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and regulations issued pursuant thereto (24 CFR Part 1) which state that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the applicant receives financial assistance; and will take any measures necessary to effectuate this agreement.

(2) The HA will comply with the Fair Housing Act (42 U.S.C. 3601-19) and regulations issued pursuant thereto (24 CFR Part 100) which prohibit discrimination in housing on the basis of race, color, religion, sex, handicap, familial status, or national origin, and administer its programs and activities relating to housing in a manner to affirmatively further fair housing.

(3) The HA will comply with Executive Order 11063 on Equal Opportunity in Housing which prohibits discrimination because of race, color, creed, or national origin in housing and related facilities provided with Federal financial assistance and HUD regulations (24 CFR Part 107).

(4) The HA will comply with Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and regulations issued pursuant thereto (24 CFR Part 8) which state that no otherwise qualified individual with handicaps in the United States shall solely by reason of the handicap be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(5) The HA will comply with the provisions of the Age Discrimination Act of 1975 (42 U.S.C. 6101-07) and regulations issued pursuant thereto (24 CFR Part 146) which state that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under a program or activity receiving Federal financial assistance.

(6) The Housing Agency will comply with the provisions of Title II of the Americans with Disabilities Act (42 U.S.C. 12131) and regulations issued pursuant thereto (28 CFR Part 35) which state that subject to the provisions of Title II, no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs or activities of a public entity, or be subjected to discrimination by any such entity.

The following provisions apply only to housing assisted with Project-Based Certificates:

(7) The HA will comply with Executive Order 11246 and all regulations pursuant thereto (41 CFR Chapter 60-1) which state that no person shall be discriminated against on the basis of race, color, religion, sex or national origin in all phases of employment during the performance of Federal contracts and shall take affirmative action to ensure equal employment opportunity.

(8) The HA will comply with Section 3 of the Housing and Urban Development Act of 1968, as amended (12 U.S.C. 1701u) and regulations issued pursuant thereto (24 CFR Part 135), which require that, to the greatest extent feasible, opportunities for training and employment be given to low-income persons residing within the unit of local government for metropolitan area (or non-metropolitan county) in which the project is located.

Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Certification Regarding Drug-Free Workplace Requirements

Instructions for Drug-Free Workplace Requirements Certification:

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

4. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

5. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph three).

6. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All *direct charge* employees; (ii) All *indirect charge* employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees or subrecipients or subcontractors in covered workplaces).

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, State, zip code)

Check ☐ if there are workplaces on file that are not identified here.

Housing Agency Signature

Signature of HA Representative	Print or Type Name of Signatory	
	Phone No.	Date

Previous editions are obsolete

form **HUD-52515** (1/96)
ref. Handbook 7420.8

[FR Doc. 04–24275 Filed 11–2–04; 8:45 am]
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Federal Register

Wednesday,
November 3, 2004

Part III

Department of Labor

Office of Labor-Management Standards

29 CFR Part 458
Standards of Conduct for Federal Sector Labor Organizations; Proposed Rule

DEPARTMENT OF LABOR

Office of Labor-Management Standards

29 CFR Part 458

RIN 1215–AB48

Standards of Conduct for Federal Sector Labor Organizations

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, Department of Labor.

ACTION: Notice of Proposed Rulemaking; request for comments.

SUMMARY: The Department of Labor's Employment Standards Administration is proposing to revise the regulations applicable to federal sector labor organizations subject to the Civil Service Reform Act of 1978 (CSRA), the Foreign Service Act of 1980 (FSA), and the Congressional Accountability Act of 1995 (CAA). The purpose of this revision is to require labor organizations subject to the Acts to periodically inform members of their democratic rights as set forth in the standards of conduct provisions of the Acts and the implementing regulations. These rights include the right to participate in union affairs, freedom of speech and assembly, and the right to nominate candidates for office and run for office.

The Department invites comment on this Proposed Rule with respect to the benefits of these changes, the ease or difficulty with which labor organizations will be able to comply, and whether the notice that would be provided to union members would be meaningful, useful, and in accordance with the purposes of the CSRA, FSA, and CAA. Additionally, comments are invited to address several particular questions to better inform the Department about how to best craft a final rule that serves the interests of labor organizations subject to the rule, the members of such organizations, and the public.

DATES: Comments must be received on or before January 3, 2005.

ADDRESSES: You may submit comments, identified by RIN 1215–AB48, by any of the following methods:

Federal eRulemaking Portal: http://www.regulations.gov. Please follow the instructions for submitting comments.

E-mail: OLMS–REG–1215–AB48@dol.gov.

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards.

Mail: Mailed comments should be sent to Lary Yud, Deputy Director, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

It is recommended that you confirm receipt of your comment by calling (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The preamble to the Proposed Rule is organized as follows:

I. Background—provides a brief description of the development of the Proposed Rule.
II. Authority—cites the legal authority supporting the Proposed Rule, Departmental redelegation authority and interagency coordination authority.
III. Overview of the Rule—summarizes pertinent aspects of the regulatory text, and describes the purposes and application of that text.
IV. Regulatory Procedure—sets forth the applicable regulatory requirements and requests comments on specific issues.

I. Background

On April 5, 2002, the Association for Union Democracy, which describes itself as a non-profit, non-partisan organization that seeks to promote democratic principles with the American labor movement and to educate workers concerning their legal rights, petitioned the Secretary of Labor to initiate a rulemaking proceeding. Stating that ''[a]ll rights are meaningless if those who possess them are ignorant of them,'' the letter urged the Secretary to require unions to inform their members of their democratic rights, by publishing the rights in newsletters, Web sites, and as an appendix to their constitutions. On May 11, 2004, the Department convened a meeting of those individuals and organizations that would be affected by the Proposed Rule, including officers and members of labor organizations.

The proposed rulemaking amends the regulations for unions subject to the standards of conduct provisions of the Civil Service Reform Act of 1978, 5 U.S.C. 7120 (CSRA), the Foreign Service Act of 1980, 22 U.S.C. 4117(d) (FSA), and the Congressional Accountability Act of 1995, 2 U.S.C. 1351(a)(1) (CAA), to require such unions to inform members of the standards of conduct provisions found at 29 CFR Parts 457–459.[1] The CSRA standards of conduct regulations make certain provisions of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 401, *et seq.* (LMRDA) applicable to federal sector labor organizations. The standards of conduct regulations incorporate Title I of the LMRDA (Bill of Rights of Members of Labor Organizations) virtually verbatim, *see* 29 CFR 458.2 (prescribing, among other requirements, equal rights of members, freedom of speech and assembly, safeguards against improper discipline, and the right to a copy of a collective bargaining agreement (for members and other employees affected by the agreement)), except for the important protection found in section 105 of the LMRDA, which states that ''every labor organization shall inform its members concerning the provisions of this Act.'' 29 U.S.C. 415. This proposed change revises the standards of conduct regulations to correct this omission by including this duty to notify members.

Labor organizations are free to devise their own notice language as long as it accurately states all union member democratic rights contained in the standards of conduct regulations. The Office of Labor-Management Standards (OLMS) will provide language that a labor organization may use if it so chooses. Labor organizations will be required to provide all new union members with a notice of their rights and, if they have a Web site, the option to post their own notice stating all such union member democratic rights or to create a hyperlink to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act on the OLMS Web site. The organizations

[1] To avoid unnecessary repetition, this notice of proposed rulemaking will refer to the standards of conduct provisions of the Civil Service Reform Act, the Foreign Service Act, and the Congressional Accountability Act as the ''CSRA standards of conduct.'' See 5 U.S.C. 7120(d), 22 U.S.C. 4117(d), 2 U.S.C. 1351(a)(1).

will also be required to provide written notice to all members every three years either by enclosing a notice with the statutorily mandated notice of elections or by other methods the organization may choose. A labor organization may demonstrate compliance with these requirements by showing that another labor organization provided an appropriate notice to all the organization's members during the necessary time frame. OLMS will have the authority to initiate investigations and take enforcement action to remedy any violations of the regulation through existing administrative enforcement mechanisms.

Private litigation under the LMRDA has demonstrated that unions have a continuing obligation to inform members of their rights. In *Thomas* v. *International Ass'n. of Machinists,* 201 F.3d 517 (4th Cir. 2000), a labor organization took the position that a notice provided forty years ago, shortly after the passage of the LMRDA, satisfied its notice obligations under the LMRDA. The Court of Appeals rejected this position, stating that the democratic principles in the statute ''are meaningless * * * if members do not know of their existence [because] if a member does not know of his rights, he cannot exercise them.'' *Machinists,* 201 F.3d at 520.

The reasoning set forth above in *Machinists,* an LMRDA case, applies with equal force to unions governed by the CSRA. Furnishing a notice of the CSRA standards of conduct provisions furthers the fundamental policies of federal labor law. Union members aware of these provisions are more likely to monitor their labor organization and act to remedy any breach in the integrity of that organization. Union members who are not informed or aware of their rights are less able, or even likely, to take such action.

The Proposed Rule has three specific parts. First, it would amend the regulations to require labor organizations representing federal employees to inform their members of the CSRA standards of conduct provisions and the regulations promulgated to carry out the purposes of the CSRA, 29 CFR 458.1 to 458.38. Second, the rule would provide options for these organizations to consider in devising their methodology for informing members. Finally, the rule would utilize the existing enforcement procedure that is currently used for violations of reporting and fiscal integrity requirements. *See* 29 CFR 458.50–458.53, 458.66–458.93. The Department invites comment on this Proposed Rule with respect to the benefits of these changes, the ease or difficulty with which labor organizations will be able to comply, and whether the notice that would be provided to union members would be meaningful, useful, and in accordance with the purposes of the CSRA, FSA, and CAA. Additionally, comments are invited to address several particular questions to better inform the Department about how to best craft a final rule that serves the interests of labor organizations subject to the rule, the members of such organizations, and the public.

II. Legal Authority

A. Legal Authority

The legal authority for this notice of proposed rulemaking is the standards of conduct provisions of the CSRA, 29 U.S.C. 7120(d), 7134, and the FSA, 22 U.S.C. 4117. These provisions expressly authorize the Assistant Secretary to issue regulations implementing the standards of conduct that conform generally to the principles applicable to labor organizations in the private sector, that is, the LMRDA. Under the CAA, the Office of Compliance, U.S. Congress, has issued regulations, expressly approved by the House and Senate, providing that the Secretary is responsible for issuing decisions and orders on standards of conduct matters. *See* 142 Cong. Rec. S12062–01, S12074 (Oct. 1, 1996); 142 Cong. Rec. H10369–06, 10382 (Sept. 12, 1996). This Proposed Rule would add the provisions of LMRDA section 105 to the CSRA standards of conduct regulations.

As discussed above, the Fourth Circuit in *Thomas* v. *International Ass'n. of Machinists* held that labor organizations have a continuing obligation to inform members of their rights and the union's responsibilities. Although the court did not specify the nature of that continuing obligation, the Department has determined to specify the details of that obligation under the rulemaking authority of the Acts in order to avoid uncertainty and confusion.

Under the LMRDA, some provisions are enforced by members in private litigation while other provisions are enforced by the Department. Title I of the LMRDA, which includes section 105, is enforced by members only except for section 104 (Right to Copies of Collective Bargaining Agreements) which may be enforced by members or by the Department. Under the CSRA, the provisions of Title I of the LMRDA that have long been incorporated in the CSRA standards of conduct are enforced in administrative proceedings initiated by a member filing a complaint with a district office, or any other office, of OLMS pursuant to 29 CFR 458.53–.54. If the OLMS District Director determines, after obtaining any additional information deemed necessary, that there is a reasonable basis for the complaint and there is no satisfactory offer of settlement, he or she will refer the matter for a hearing before an administrative law judge. 29 CFR 458.60. The Department has determined, however, that enforcement of this new provision of the standards of conduct regulations would be more effective if undertaken by OLMS acting on its own information, rather than relying on an individual to file a complaint with OLMS or to prosecute the action on his own. A union member who has not been informed of his rights as a union member cannot be expected to be knowledgeable about the role of OLMS in administering the CSRA standards of conduct, and cannot, therefore, be reasonably expected to file a complaint with OLMS in order to remedy the violation. Under these circumstances, the authority of OLMS to seek redress for a union's failure to inform members about their rights should not be made contingent upon the receipt of a complaint. Therefore, under the proposal, an OLMS District Director is authorized to conduct an investigation whenever it is necessary to determine whether any person has violated the duty imposed by this Proposed Rule. These enforcement procedures are similar to those currently in effect for provisions such as the labor organization reporting requirements, 29 CFR 458.3, and the fiscal integrity requirements, 29 CFR 458.31, which are initiated by notification to any appropriate person or labor organization as provided at 29 CFR 458.66(b).

B. Departmental Authorization

Secretary's Order No. 4–2001, issued May 24, 2001, and published in the **Federal Register** on May 31, 2001 (66 FR 29656), provides that the Assistant Secretary for Employment Standards has the responsibility and authority for implementing the standards of conduct provisions of the CSRA, the FSA, and the CAA as well as the standards of conduct regulations at 29 CFR parts 457–459.

III. Overview of the Rule

The Proposed Rule would amend the CSRA standards of conduct regulations to require labor organizations representing federal employees to inform their members of the CSRA standards of conduct provisions and the regulations promulgated to carry out the

purposes of the CSRA, 29 CFR 458.1 to 458.38. Labor organizations that represent both federal employees and non-federal employees (such as a national or local union that represents technicians employed by the Department of Defense and private contractors) are not subject to the CSRA standards of conduct. Such unions are directly covered by the LMRDA. An intermediate body, such as a conference, general committee, joint or system board, or joint council, which is subordinate to an LMRDA-covered national or international labor organization, is governed by the LMRDA even if the intermediate body has no dealings itself with private employers and no members who are employed in the private sector. *See* 68 FR 58383–84, 58473. Labor organizations subject to the CSRA standards may meet their duty to inform members about their union member rights by using language in the DOL publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act (available on the OLMS Web site at *http://www.olms.dol.gov*) or, alternatively, by devising their own language as long as it accurately states all CSRA standards of conduct provisions. A copy of the current version of Union Member Rights and Officer Responsibilities under the Civil Service Reform Act is appended to this proposal.

The notice is to be provided to individual members when they join the labor organization and to all members at least once every three years. The notice may be included with the required notice of local union officer elections or by another method so long as it is reasonably calculated to reach all members. The Proposed Rule further requires that if a labor organization has a Web site, its site must contain a hyperlink to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act on the OLMS Web site at *http://www.olms.dol.gov,* or, alternatively provide the organization's own notice as long as the notice accurately states all of the CSRA standards of conduct provisions.

The Proposed Rule will be enforced by OLMS under the procedure currently established to remedy violations of certain substantive requirements of the standards of conduct provisions in the regulations. The existing regulations provide that OLMS may initiate an investigation and take enforcement action without a complaint to enforce, for example, labor organization reporting requirements, 29 CFR 458.3, and fiscal integrity and other financial safeguards requirements, 29 CFR 458.31–458.36. Such enforcement actions are not contingent on whether a union member has filed a complaint. Rather, whenever it appears to an OLMS District Director that a violation has occurred and not been remedied, the District Director shall notify any appropriate person or labor organization. If no settlement is reached, the District Director may file a complaint with the Department's Chief Administrative Law Judge, who will assign it to an administrative law judge (ALJ) and, in such instance, an OLMS District Director will be named as the complainant. 29 CFR 458.67. Following a hearing, the ALJ will issue a recommended decision and order, which is submitted to the Assistant Secretary for Employment Standards along with the record. The parties may file exceptions with the Assistant Secretary. The Assistant Secretary will then issue a decision and order. 29 CFR 458.69–91. If the Assistant Secretary orders remedial action and finds that it has not been effected, the matter is referred for appropriate action to the Federal Labor Relations Authority, or in CAA cases, the Board of Directors of the Office of Compliance. 29 CFR 458.92.

A union member who has not been informed of his rights as a union member cannot be expected to be knowledgeable about the role of OLMS in administering the CSRA standards of conduct. The union member cannot, therefore, be reasonably expected to file a complaint with OLMS in order to remedy the violation. Under these circumstances, the authority of OLMS to seek redress for a union's failure to inform members about their rights should not be made contingent upon the receipt of a complaint. Therefore, under the proposal, an OLMS District Director, consistent with 29 CFR 458.50, is authorized to conduct an investigation whenever the District Director believes it necessary to determine whether any person has violated the duty imposed by this Proposed Rule. And consistent with 29 CFR 458.66(b) and (c), an OLMS District Director is authorized to institute and participate in enforcement proceedings where a violation of this duty has not been remedied.

IV. Regulatory Procedures

Executive Order 12866

The Proposed Rule has been drafted and reviewed in accordance with Executive Order 12866. The Department has determined that this Proposed Rule is not an ''economically significant'' regulatory action under section 3(f)(1) of Executive Order 12866. Because compliance with the rule can be achieved at low cost to covered labor organizations, the rule is not likely to: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues. As a result, the Department has concluded that a full economic impact and cost/benefit analysis is not required for the rule under section 6(a)(3) of the Order. Because of its importance to the public, however, the rule was treated as a significant regulatory action and was reviewed by the Office of Management and Budget.

The Proposed Rule would impose certain burdens associated with the requirement that labor organizations representing federal employees must inform their members of the CSRA standards of conduct provisions and the regulations promulgated to carry out the purposes of the CSRA, 29 CFR 458.1 to 458.38. According to the latest available Office of Personnel Management figures, as of January 1, 2001, there were 1,043,479 federal employees in bargaining units, and these units were represented by 2,199 local unions. Not all of these employees belong to a union, but that number can be used as the maximum theoretical number of members who must be informed of their rights. Since unions are free to add the rights notice to the mandatory election notice that locals by law must mail to their members every three years, the Department assumes that unions will take advantage of this cost-effective method of distributing the notice. Under such circumstances, the cost to unions would, at most, entail the cost of 1,043,479 photocopies of the notice, at $.15 per page, resulting in a $156,521 expenditure every three years, for annualized costs borne by all public sector unions of $52,174. It is conceivable that the required notice will increase the weight of each piece of mail to the next highest ounce, thus resulting in a $.23 fee for an extra ounce of first class postage for each envelope. This additional mailing cost would amount at most to $240,000 every three years, for an annualized cost of $80,000. Summing the maximum copying costs and the maximum additional postage

costs results in an additional $396,521 expenditure every three years, and a maximum total annualized costs for all unions of $132,174. Stated otherwise, the annualized cost to unions would be $.13 per member. Intermediate and national labor organizations would not have to provide separate notice as, pursuant to purposed section 458.4(b), they could rely on mailings made by their subordinate locals. The approximately 2,199 local unions would be subject to an annualized average maximum cost of $60.11. Finally, unions that maintain a Web site would be required to create a hyperlink to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or the union's own notice. The Department has no data on the number of unions that maintain a Web site. In addition to the 2,199 local unions, the Office of Personnel Management reports 80 national and international unions and associations that have, directly or through local units, exclusive recognition with departments and agencies of the Executive Branch. Thus it is theoretically possible that 2,279 unions would be required to create such a link. Assuming that the median annual salary of a webmaster is $80,000 and the creation of a link would take 15 minutes, the one-time labor cost of this requirement would be $22,790, or $10 per union.

Prior to issuing this proposal, the Department sought the involvement of those individuals and organizations that will be affected by the Proposed Rule, including officers and members of labor organizations that would be subject to the rule.

Small Business Regulatory Enforcement Fairness Act

The Department has concluded that this Proposed Rule is not a ''major'' rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801, *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Executive Order 13132: Federalism

The Department has reviewed this Proposed Rule in accordance with Executive Order 13132, regarding federalism, and has determined that the Rule does not have ''federalism implications.'' The economic effects of the rule are not substantial, and it has no ''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.''

Regulatory Flexibility Act

The Proposed Rule would not have a significant economic impact on a substantial number of small business entities. The Proposed Rule will have only an insignificant impact on any covered labor organization. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration that the rule has no substantial impact on any small business entity and, therefore, a regulatory flexibility analysis is not required.

Unfunded Mandates Reform

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include a Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

Paperwork Reduction Act

The Proposed Rule would impose certain minimal burdens associated with informing members of their rights. As noted in proposed section 458.4, a labor organization may satisfy its obligation by either using language supplied by the Department or devising its own language as long as the notice accurately states all of the CSRA standards of conduct provisions. Under the regulations implementing the Paperwork Reduction Act, ''[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public'' is not considered a ''collection of information'' under the Act. 5 CFR 1320.3(c)(2). Therefore, the notice is not subject to the Paperwork Reduction Act.

Executive Order 12988: Civil Justice Reform

This Proposed Rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The Proposed Rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities. The proposal specifies clearly the effect of the rule on existing rules and the provisions affected.

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

The Department certifies that this Proposed Rule does not impose substantial direct compliance costs on Indian tribal governments.

Executive Order 12630: Governmental Actions and Interference With Constitutionally Protected Property Rights

This Proposed Rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not interfere with private property rights protected under the Fifth Amendment of the Constitution.

Request for Comments

The Department invites comments about the NPRM from interested parties, including labor organizations, union members, public interest groups, and the public. In particular, the Department invites comments that address the following questions:

- Are all union member democratic rights stated with accuracy and clarity in the Department of Labor's publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act? If not, what specific changes to the language would improve its accuracy or clarity?
- In what manner and frequency are members now apprised of their rights as union members?
- To adequately apprise new members of their rights as union members is there an adequate alternative to requiring each union to provide a full written statement of rights to each individual at the time he or she joins the union?
- To adequately apprise existing members of their rights as union members is there an adequate alternative to requiring each union to provide a full written statement of rights to each member within a reasonable time after the rule, if promulgated, takes effect? What would constitute a reasonable amount of time to allow unions to accomplish such notification?
- To adequately apprise existing members of their rights as union members, is there an adequate alternative to requiring each union to provide a full written statement of rights to each member at periodic intervals?

• Would a union adequately apprise members of their rights as union members by providing such notice to members at three-year intervals, or should the intervals be of greater or lesser duration?

• Would the inclusion of a statement of members' rights in the union's required notice of nominations and election of officers be adequate alone to inform members about their rights?

• Where an intermediate or national labor organization holds its required elections every four or five years, would periodic notification at these intervals suffice?

• Would a posting, either permanent or periodic, at a union's offices and on agency bulletin boards to which the union has access by virtue of its status as bargaining representative adequately apprise members of their rights as union members?

• Would the purposes of the proposed rule be served in whole or in part by requiring the inclusion of a statement of members' rights as an appendix to the union's constitution or bylaws?

• Should the inclusion of a statement of members' rights as an appendix to the union's constitution or bylaws and proof that each member has received a copy of the constitution and appendix fully satisfy a labor organization's obligations, *i.e.*, provide a ''safe harbor'' for labor organizations?

• How are copies of union constitutions now made available to members, *e.g.*, as a handout or mailing at the inception of membership, upon request, by publication in the union's newsletter or Web site?

• Should notification by e-mail be considered an acceptable means of apprising union members of their rights where a member has provided an e-mail address to receive communications from the union or the union is permitted to utilize agency e-mail systems for similar communications with members?

• How prevalent is the use of Web sites, e-mail, or both, for intra-union communication by local, intermediate, and national units of unions representing federal employees and their members?

• Should enforcement of violations of the Proposed Rule be vested in individual members or OLMS?

Clarity of this Regulation

Executive Order 12988 and the President's Memorandum of June 1, 1998, require each Federal agency to write all rules in plain language. The department invites comments on how to make this Proposed Rule easier to understand. For example:

—Have we organized the material to suit your needs?
—Are the requirements in the Rule clearly stated?
—Does the Rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the Rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the Rule easier to understand?

List of Subjects in 29 CFR Part 458

Administrative practice and procedure, Labor unions, Democratic rights of labor organization members, Reporting and Recordkeeping Requirements, Standards of conduct for labor organizations.

Text of Proposed Rule

Accordingly, the Department proposes to amend 29 CFR chapter IV by adding a new §458.4, as set forth below.

PART 458—STANDARDS OF CONDUCT

1. The authority citation of part 458 is revised to read as follows:

Authority: 5 U.S.C. 7105, 7111, 7120, 7134; 22 U.S.C. 4107, 4111, 4117; 2 U.S.C. 1351(a)(1); Secretary's Order No. 4–2001, 66 FR 29656, May 31, 2001.

2. A new § 458.4 is added directly following §458.3 to read as follows:

§ 458.4 Informing members of the standards of conduct provisions.

(a) Every labor organization subject to the requirements of the CSRA, the FSA, or the CAA shall inform its members concerning the standards of conduct provisions of the Acts and the regulations in this subchapter. Labor organizations shall provide such notice to members at the time they join and to all members at least once every three years. Such notice may be included with the required notice of local union elections or may be disseminated by other methods the organization may choose as long as it is reasonably calculated to reach all members.

(b) A labor organization may demonstrate compliance with the requirements of paragraph (a) of this section by showing that another labor organization provided an appropriate notice to all of its members during the necessary time frame.

(c) Labor organizations may use the language in the Department of Labor publication Union Member Rights and Officer Responsibilities under the Civil Service Reform Act (available on the OLMS Web site at *http://www.olms.dol.gov*) or may devise their own language as long as the notice accurately states all of the CSRA standards of conduct provisions.

(d) If a labor organization has a Web site, its site must contain a hyperlink to Union Member Rights and Officer Responsibilities under the Civil Service Reform Act or, alternatively, the labor organization's own notice as long as the notice accurately states all of the CSRA standards of conduct provisions.

Signed at Washington, DC, this 27th day of October, 2004.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

Note: The following attachment will not appear in the Code of Federal Regulations.

BILLING CODE 4510–CP–P

Union Member Rights and Officer Responsibilities under the Civil Service Reform Act

U.S. Department of Labor
Washington, DC 20210

Employment Standards Administration
Office of Labor-Management Standards

The standards of conduct provisions of the Civil Service Reform Act of 1978 (CSRA), among other statutes, guarantee certain rights to members of unions representing Federal employees and impose certain responsibilities on officers of these unions to ensure union democracy, financial integrity, and transparency. The Office of Labor-Management Standards (OLMS) is the Federal agency with primary authority to enforce many standards of conduct provisions. If you need additional information or suspect a violation of these rights or responsibilities, please contact OLMS at 1-866-4-USA-DOL. You should also refer to 29 CFR 457.1 – 459.5, and your union's constitution and bylaws for information on union procedures, timelines, and remedies.

Union Member Rights

Bill of Rights – Union members have:

- equal rights to participate in union activities
- freedom of speech and assembly
- voice in setting rates of dues, fees, and assessments
- protection of the right to sue
- safeguards against improper discipline

Collective Bargaining Agreements – Union members (and certain nonunion employees) have the right to receive or inspect copies of collective bargaining agreements.

Constitutions, Bylaws, and Reports – Unions are required to file an initial information report (Form LM-1), copies of constitutions and bylaws, and an annual financial report (Form LM-2/3/4) with OLMS. Unions must make these documents available to members and permit members to examine the records necessary to verify the financial reports for just cause. The documents are public information and copies of reports are available from OLMS and on the Internet at www.union-reports.dol.gov.

Officer Elections – Union members have the right to:

- nominate candidates for office
- run for office
- cast a secret ballot
- protest the conduct of an election

Officer Removal – Local union members have the right to an adequate procedure for the removal of an elected officer guilty of serious misconduct.

Trusteeships – A union may not be placed in trusteeship by a parent body except for those reasons specified in the standards of conduct regulations.

Protection for Exercising CSRA Rights – A union or any of its officials may not fine, expel, or otherwise discipline a member for exercising any CSRA right.

Prohibition Against Violence – No one may use or threaten to use force or violence to interfere with a union member in the exercise of his or her CSRA rights.

Union Officer Responsibilities

Financial Safeguards – Union officers have a duty to manage the funds and property of the union solely for the benefit of the union and its members in accordance with the union's constitution and bylaws. The union must provide accounting and financial controls necessary to assure fiscal integrity.

Prohibition of Conflicts of Interest – A union officer or employee may not (1) have any monetary or personal interest or (2) engage in any business or financial transaction that would conflict with his or her fiduciary obligation to the union.

Bonding – Union officers or employees who handle union funds or property must be bonded to provide protection against losses if their union has property and annual financial receipts that exceed $5,000.

Labor Organization Reports – Union officers must:

- file an initial information report (Form LM-1) and annual financial reports (Forms LM-2/3/4) with OLMS.
- retain the records necessary to verify the reports for at least five years.

Officer Elections – Unions must:

- hold elections of officers of local unions by secret ballot at least every three years.
- conduct regular elections in accordance with their constitution and bylaws and preserve all records for one year.
- mail a notice of election to every member at least 15 days prior to the election.
- comply with a candidate's request to distribute campaign material.
- not use union funds or resources to promote any candidate (nor may employer funds or resources be used).
- permit candidates to have election observers.

Restrictions on Holding Office – A person convicted of certain crimes may not serve as a union officer, employee, or other representative of a union for up to 13 years.

Loans – A union may not have outstanding loans to any one officer or employee that in total exceed $2,000 at any time.

http://www.olms.dol.gov **OLMS-Public@dol.gov** **1-866-4-USA-DOL**

[FR Doc. 04–24451 Filed 11–2–04; 8:45 am]
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Part IV

Department of Labor

Office of Labor-Management Standards

Union Organization and Voting Rights: Criteria for Characterizing a Labor Organization as a "Local," "Intermediate," or "National or International" Labor Organization; Notice

DEPARTMENT OF LABOR

Office of Labor-Management Standards

RIN 1215–AB50

Union Organization and Voting Rights: Criteria for Characterizing a Labor Organization as a ''Local,'' ''Intermediate,'' or ''National or International'' Labor Organization

AGENCY: Office of Labor-Management Standards, Employment Standards Administration, United States Department of Labor.

ACTION: Request for information from the public.

SUMMARY: This notice is a request for information from the public to assist the Department of Labor (''Department'') in evaluating its methods for determining when a labor organization constitutes a ''local,'' ''intermediate'' or ''national or international'' labor organization. Title IV of the Labor-Management Reporting and Disclosure Act of 1959 (''Act''), 29 U.S.C 481–484, gives the Secretary of Labor authority to enforce the union officer election provisions of the Act. The Act calls for different election intervals and methods, depending on the type of labor union holding the election. In cases in which the labor organization at issue has no subordinate labor organizations, the Department considers the labor organization to be a local union if it exercises functions traditionally associated with local labor organizations. In cases in which an intermediate body with subordinate local unions is claimed to be a local union, the Department considers the intermediate body to be a local union if the intermediate body performs so many of the functions of the local unions that the local unions no longer continue to play a meaningful role. *See Harrington* v. *Chao,* 372 F.3d 52 (1st Cir. 2004). This analysis has been informed by the Department's interpretative regulation, found at 29 CFR 452.11, which states: ''The characterization of a particular organizational unit as a 'local,' 'intermediate,' *etc.,* is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.'' The purpose of this Request for Information is to seek public comment on whether the Department's criteria for determining when a union is a local, intermediate or national or international union is appropriate, or whether there are alternatives that would better serve the purposes of the Act, and properly balance the interests of labor organizations and union members.

DATES: Comments must be received on or before December 3, 2004.

ADDRESSES: You may submit comments, identified by RIN 1215–AB50, by any of the following methods:

Federal eRulemaking Portal: *http://www.regulations.gov.* Please follow the instructions for submitting comments.

E-mail: *OLMS-REG-1215-AB50@dol.gov.*

FAX: (202) 693–1340. To assure access to the FAX equipment, only comments of five or fewer pages will be accepted via FAX transmittal, unless arrangements are made prior to faxing, by calling the number below and scheduling a time for FAX receipt by the Office of Labor-Management Standards (''OLMS'').

Mail: Mailed comments should be sent to Lary Yud, Deputy Director, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210. Because the Department continues to experience delays in U.S. mail delivery due to the ongoing concerns involving toxic contamination, commenters should take this into consideration when preparing to meet the deadline for submitting comments.

It is recommended that you confirm receipt of your comment by calling (202) 693–0123 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

Comments will be available for public inspection during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Kay H. Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, *olms-public@dol.gov,* (202) 693–1233 (this is not a toll-free number). Individuals with hearing impairments may call 1–800–877–8339 (TTY/TDD).

SUPPLEMENTARY INFORMATION:

I. Background

a. The Statutory, Regulatory and Administrative Framework

Under the Labor-Management Reporting and Disclosure Act, the frequency and method by which a labor organization must elect its officers depends on whether it is a local union, an intermediate union, or a national or international union. Specifically, section 401(b) of the Act requires that ''[e]very local labor organization shall elect its officers not less often than once every three years by secret ballot among the members in good standing.'' 29 U.S.C. 481(b). Section 401(d) of the Act requires that officers of ''intermediate bodies, such as general committees, system boards, joint boards, or joint councils, shall be elected not less often than once every four years by secret ballot among the members in good standing or by labor organization officers representative of such members who have been elected by secret ballot.'' 29 U.S.C. 481(d). Section 401(a) requires that ''[e]very national or international labor organization * * * shall elect its officers not less often than once every five years either by secret ballot among the members in good standing or at a convention of delegates chosen by secret ballot.'' 29 U.S.C. 481(a).

The Act does not define the terms ''local,'' ''intermediate,'' or ''national or international.'' The Department's regulations state: ''The characterization of a particular organizational unit as a 'local,' 'intermediate,' etc., is determined by its functions and purposes rather than the formal title by which it is known or how it classifies itself.'' 29 CFR 452.11. The same regulation provides examples of entities that are intermediate bodies, *i.e.*, ''general committees, conferences, system boards, joint boards, or joint councils, certain districts, district councils and similar organizations.'' *Id.* Various of these named intermediate bodies are described more fully elsewhere, *see* 29 CFR 451.4(f), but none of the regulations comprehensively define any of these critical terms, or provide a framework for distinguishing among local, intermediate or national and international labor organizations.

The definition of the term labor organization is also relevant to identifying the status—local, intermediate, or national or international—of a labor organization. Indeed, the first step in any such inquiry is to confirm that the entity in question is in fact a labor organization. The term labor organization is defined by statute:

> ''Labor organization'' means a labor organization engaged in an industry affecting commerce and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or joint council so engaged which is subordinate to a national or international labor organization, other than a State or local central body.

29 U.S.C. 402(i).

As a related part of this inquiry, it is often necessary to determine that the entity is a distinct labor organization rather than merely a part or component of a larger labor organization. To resolve this question, the Department has adopted a methodology, found in the LMRDA Interpretative Manual, to determine whether an entity is a discrete labor organization or merely an undifferentiated portion of an encompassing labor organization. The methodology follows:

030.603 Separate Existence

To be considered a labor organization under the Act an entity must be a separate organization having an organic existence or structure of its own, in addition to having the other characteristics of a labor organization as set forth in sections 3(i) and (j) [29 U.S.C. 402(i) (j)]. It may not be a mere administrative arm or an integral, undifferentiated part of another labor organization. Various factors are considered when determining whether an entity has a separate existence. It is not feasible to prescribe a precise formula. An analysis must be made of all the facts concerning the structure and function of a particular entity and a determination made on the evidence as a whole. Factors to be considered include: Whether the existence of the entity is recognized by means of a charter, reference in the parent body's constitution, or some other manner; whether it has a distinct and identifiable membership; whether it may accept or reject applications for membership; whether it has its own officers; whether it holds meetings as a unit with some regularity or frequency; whether it has assets of its own; whether it may expend funds allocated to it or raised by it; whether it may assess and collect dues, fees or assessments; whether it may discipline its members; whether it is represented as a unit at conventions or meetings of a parent or other body; and whether it engages in collective bargaining, grievance handling, or any business arrangements.

LMRDA Interpretative Manual, 030.603.

As will be discussed in greater detail below, the definition of ''labor organization'' and the methodology for determining separate existence are critical to determining whether an entity is a labor union, whether it constitutes one or more unions, and whether it has a parent or subordinate union or unions. Many larger labor unions conform to a three tier configuration, with local unions residing at the bottom tier, in a position subordinate to intermediate bodies, which are themselves subordinate to a national or international union. Application of the definition of ''labor organization'' and the separate existence factors reveals whether a union is placed within a larger union hierarchy, and, if so, where the union is so situated. The determination of the structure of the entity and the overall union hierarchy is the first step in analyzing whether the union is a local, intermediate, or national or international labor union.

b. Unions Without Subordinate Labor Organizations

In all cases, the Department begins the analysis of whether a union is a local, intermediate, or national or international union with an analysis of the union's structure. This structural analysis is used to determine whether the entity is a labor organization, to determine whether it constitutes one or more unions, and to determine where it is situated, if at all, within a larger hierarchy of affiliated unions. Two cases illustrate the analysis that the Department applies when such a structural review reveals that an entity that has no subordinate bodies claims to be an intermediate or national or international union. In *Schultz* v. *Employees' Fed'n of the Humble Oil & Refining Co. (''Humble Oil''),* 74 L.R.R.M (B.N.A.) 2140, 1970 U.S. Dist. LEXIS 12288, 1970 WL 5445, (S.D. Tex. Mar. 31, 1970), the defendant, Employees' Federation of the Humble Oil and Refining Company, Production Department, South Texas Division, contended that it could not be a local union because it contained 26 divisions that were separate locals. The Department disagreed, and filed a civil enforcement action against the defendant. As suggested by the LMRDA Interpretative Manual, discussed above, the court first determined whether the defendant's divisions were discrete labor organizations. *Humble Oil,* 74 L.R.R.M. at 2141–42. The court determined that the divisions had no autonomy separate from the defendant. *Id.* at 2143. The divisions did not maintain any bank accounts, lease any office space, or employ any persons. *Id.* They maintained no dues records, membership lists, admission procedures, and retained no authority to expel or discipline officers or members. *Id.* The divisions were thus, the court held, ''mere administrative arms or subunits'' of the defendant, and the defendant thus had ''the non-complex structure [that] is typical of a local labor organization,'' with no discrete labor organizations subordinate to it. *Id.*

Having determined that the defendant's structure was consistent with a local labor organization, the court reviewed the defendant's functions. The court wrote: ''The defendant performs the basic local union functions. It settles grievances; collects dues and establishes wages, benefits and working conditions by contract negotiations with the employer; and disciplines its members and officers.'' *Id.*

A second case also reflects the Department's method for determining whether a labor union is a local, under circumstances where a structural analysis has revealed that a union that claims not to be a local union is the entity closest to the union members. In *Donovan* v. *Nat'l Transient Div., Int'l Bhd. of Boilermakers, (''Boilermakers''),* 736 F.2d 618 (10th Cir. 1984), the defendant, National Transient Division (''NTD''), characterized itself as a division of an international labor organization. It represented craftsmen who traveled throughout the United States. *Id.* at 619. The court first held that the NTD was a labor organization itself, and not merely a division of the international labor organization. *Id.* at 621–22. Next, the court determined that the NTD was a local, rather than an international, labor organization. *Id.* at 622–23. The court observed that the NTD was ''subordinate to the International, and has no subordinate labor organizations.'' *Id.* at 623. Thus, the court held, the NTD ''has the relatively simple organizational structure characteristic of local labor organizations.'' *Id.*

The court also reviewed the functions of the union. ''Most important, NTD performs the functions of a local. NTD officials negotiate the basic terms of collective bargaining agreements, ensure that those agreements are enforced, handle grievances, collect dues from members, maintain out-of-work lists, hold meetings at which members express their views, and provide a number of other services directly to NTD members.''

In both *Boilermakers* and *Humble Oil,* the Department advanced the position that the structure of a union must be closely analyzed to determine whether the entity in question is part of another labor organization or whether it has subordinate labor organizations. In both cases, this analysis revealed that the labor organization in question was the labor organization closest to the members. At that point, the Department looked to whether the union exercised a variety of functions traditionally associated with local labor unions, and if so, took the position that the union was a local labor organization.

c. Intermediate Bodies With Subordinate Labor Organizations

In a recent case, the Department examined the methodology used to distinguish an intermediate union from a local union. *Harrington* v. *Chao,* 372 F.3d 52, 63 (1st Cir. 2004). In this case, the labor organization in question was

structurally intermediate, in that it was subordinate to a national union and oversaw local labor organizations, but it performed a number of important functions generally performed by local unions. The ''inquiry in determining whether an entity designated by the union as an intermediate body should instead be considered a local body,'' the Department explained, ''is whether the intermediate body has taken on so many of the traditional functions of a local union that it must in actuality be considered a local union.'' January 31, 2003, Supplemental Statement of Reasons for Dismissing the Complaint of Thomas Harrington, p 3. ''If the subordinate organizations in fact continue to perform functions and exist for purposes traditionally associated with local labor unions, the union's characterization of an entity placed structurally between such organizations and the international union as an 'intermediate body' will be upheld even though the intermediate body also performs some other functions traditionally associated with local unions.'' *Id.* at 4. This analysis was upheld by the U.S. Court of Appeals for the First Circuit. *Harrington,* 372 F.3d at 63.

The Department's extensive explanation of the method for distinguishing intermediate unions from local unions was the result of a union member's complaint, and subsequent litigation. In 1999, several union members filed an election protest with the Secretary pursuant to Title IV of the Act, 29 U.S.C. 482, arguing that the New England Regional Council of Carpenters (''NERCC'') was not an ''intermediate body,'' but a ''local labor organization'' required by section 401(b) of the Act to ''elect its officers not less often than once every three years by secret ballot among the members in good standing.'' 29 U.S.C. 481(b). The NERCC comprised 27 affiliated locals and was subordinate to the United Brotherhood of Carpenters and Joiners of America (''UBC''), a national labor organization. The NERCC was created in 1996, when the UBC combined state and district councils, as well as independent local unions, into larger regional councils. In New England, the NERCC, a single, regional council overseeing a number of pre-existing local unions, had over 25,000 members. The NERCC's subordinate bodies constituted separate labor organizations.

In April 2000, the Department issued a Statement of Reasons explaining why it had determined that the NERCC was an ''intermediate bod[y]'' within the meaning of section 401(d) of the Act, 29 U.S.C. 481(d), and could therefore elect its officers every four years either by secret ballot among the members in good standing or by a vote of delegates who had been elected by secret ballot by the members in good standing of NERCC's subordinate locals.

The complainants challenged this determination in United States District Court, which rejected the suit. *Harrington* v. *Herman,* 138 F. Supp. 2d 232 (D. Mass. 2001). The complainants appealed to the United States Court of Appeals for the First Circuit, which reversed the district court and vacated the Department's Statement of Reasons. *Harrington* v. *Chao,* 280 F.3d 50 (1st Cir. 2002). The statement was flawed, the court held, because it left two questions unanswered. *Id.* at 57. First, the statement suggested that the Department had rejected a ''functional'' analysis in determining whether a labor organization is a local or an intermediate labor organization, notwithstanding a regulation holding that the ''characterization of a particular organizational unit * * * is determined by its functions and purposes.'' *Id.*; *see* 29 CFR 425.11. Second, the statement failed to discuss two relevant cases, leaving it unclear whether the Department's approach was consistent with these precedents, and the positions that the Department had taken while litigating them. *Id.* at 57–58, citing *Donovan* v. *Nat'l Transient Div., Int'l Bhd. of Boilermakers, (''Boilermakers''),* 736 F.2d 618 (10th Cir. 1984), and *Schultz* v. *Employees' Fed'n of the Humble Oil & Refining Co. (''Humble Oil''),* 1970 U.S. Dist. LEXIS 12288, 1970 WL 5445, 74 LRRM 2140 (S.D. Tex. Mar. 31, 1970).

On remand, the Department issued a lengthy Supplemental Statement of Reasons that explained why the NERCC was properly characterized as an intermediate body under the Act, the regulations, and the applicable precedent. First, the statement recognized that the Department's regulations, specifically 29 CFR 452.11, made it clear that whether an entity is a local or intermediate body is dependent upon its ''functions and purposes'' as opposed to ''the formal title by which it is known or how it classifies itself.'' In construing this language, the Department reasoned that an entity designated by the union as an intermediate body should instead be considered a local body if the intermediate body ''has taken on so many of the traditional functions of a local union that it must in actuality be considered a local union.'' Although the statement recognized that the Department has never found an organization at the middle tier of a union structure to be a local, the statement observed that Congress' requirement of direct elections for local unions demonstrated its view that local unions perform meaningful functions. Viewing the regulation in light of this history and Congressional intent, the Department concluded, ''If the subordinate organizations in fact continue to perform functions and exist for purposes traditionally associated with local labor unions, the union's characterization of an entity placed structurally between such organizations and the international union as an 'intermediate body' will be upheld even though the intermediate body also performs some other functions traditionally associated with local unions.'' Supplemental Statement of Reasons, p.4.

Second, the Department analyzed the legislative history of the Act and the actual practices of unions when the Act was passed to conclude that intermediate, national, and international labor organizations at that time engaged in important representational activity both in conjunction with, and in lieu of, subordinate local unions. Specifically, the Department noted that the Act's legislative history makes it clear that intermediate bodies may wield ''responsible governing power'' within a labor union without being considered local unions under the Act. S. Rep. No. 187, 86th Cong., 1st Sess. at 20, *reprinted in* 1959 U.S.C.C.A.N. 2318, 2336. National Labor Relations Board decisions issued prior to enactment of the Act, the Department noted, made plain the practice of superior labor organizations to bargain collectively on behalf of subordinate entities.

Third, the statement observed that the organization's placement within the structure of a union was ''highly relevant in determining whether it is a 'local' or 'intermediate' union.'' The statute itself identifies intermediate bodies by their structural placement within the hierarchy of affiliated unions, or by a name historically associated with a particular tier within the union. The term Congress used to denominate these entities—intermediate bodies—suggests the relevance of an organization's placement within the overall structure of the union. The language of the statute, the Department concluded, authorized the Department to take into account the entity's structural placement when considering whether it is an intermediate body or a local union.

The Department also reviewed the case law for consistency with its analysis of the regulation, statute, and legislative history. The statement

concluded that the positions that the Department took in *Boilermakers* and *Humble Oil,* and the dispositions in those cases, did not compel a different analysis. In both cases, there were no labor organizations subordinate to the union whose status was at issue, and categorization as a local union was thus consistent with both the union's structure and functions. The cases, the statement concluded, provided no controlling authority when a union's structure and functions were not aligned.

Applying the Department's analysis, which reviewed the NERCC's structural placement within the hierarchy of affiliated unions, the NERCC's functions, and the functions of the NERCC's locals, the Department determined that the NERCC was an intermediate union. Dissatisfied with the Supplemental Statement of Reasons, the complainants renewed the litigation in the United States District Court of Massachusetts, which granted judgment for the complainants. *Harrington* v. *Chao,* 286 F.Supp. 2d 80 (D. Mass. 2003). The Department appealed, bringing the issue once again before the Court of Appeals for the First Circuit.

In a split decision, the Court of Appeals ruled that the Department did not act arbitrarily and capriciously in declining to bring suit against the NERCC. *Harrington* v. *Chao*, 372 F.3d 52 (1st Cir. 2004). The court reversed the district court, upholding the Department's determination that the NERCC is an ''intermediate'' labor organization and therefore not required to elect its officers directly. *Id.*

The complainant's primary argument was that the Department did not focus upon the NERCC in conducting its analysis, in order to determine whether the NERCC exercised local rather than intermediate functions, but improperly focused on the locals themselves. *Id.* at 60. Circuit Judge Lynch, writing for the court, observed that the Department examined the functions of the NERCC, as well as those of the locals, and noted that some of those functions, such as collective bargaining and disciplining members, have historically been the province of both locals and intermediate bodies dating back prior to the passage of the Act. *Id.* at 60. Further, the court rejected the argument that because a local traditionally performed collective bargaining and grievance handling, any labor organization, regardless of its placement within the union's structure, would also be local if it performs these functions. The court reasoned that this assumption would contradict the Congressional observation that intermediate bodies exercise ''responsible governing powers,'' and nothing in the statute required the Department to draw up a list of functions that could be performed by one kind of entity but not any others. *Id.* at 62. The court concluded that although the Department's approach had shifted in emphasis, the Department was permitted some flexibility in interpreting the Act and the regulations provided it furnished some explanation, which it did here. *Id.* at 63.

In a concurring opinion, Circuit Judge Lipez expressed concern that Congress did not intend intermediate bodies to hold the degree of power held by the NERCC, but nonetheless upheld the Department's conclusion because of the ''highly deferential standard'' under which the courts review the Department's decision not to sue. *Id.* at 63–70. In a dissenting opinion, Circuit Judge Torruella faulted the Department's analysis for focusing on the powers retained by the subordinate bodies, and not on the NERCC's powers, and stated that this represented an impermissible departure from past administrative practice. *Id.* at 70–75.

d. Review of the Method of Determining the Status of Labor Organization

The judicial decision upholding the Department's method of determining whether a union is a local or an intermediate held that the Department's position was lawful, but did not address whether the position struck the most favorable balance between protecting union members' interests and preserving unions' ability to structure themselves in a manner they deem most advantageous.

In its initial opinion, the Court of Appeals indicated that if the Secretary should wish to change the governing regulation, 29 CFR 452.11, she must do so in accord with the general rulemaking provisions of the Administrative Procedure Act, 5 U.S.C. 553. *Harrington* v. *Chao*, 280 F.3d at 59. Congress has implicitly delegated the authority to the Secretary to interpret the union officer election provisions of the Act by charging her with a variety of substantial responsibilities under the statute, not the least of which is the Secretary's authority to investigate allegations of election violations. *See* 29 U.S.C. 481. The delegation of legal interpretive power is also evident in her exclusive authority to file a civil action in U.S. district court, seeking an order that a union election be declared void, and a new election be conducted under the supervision of the Department of Labor. *See* 29 U.S.C. 482.

The determination of the status of a labor organization is a complex matter. To better understand the effect of the Department's current regulatory and interpretive framework on unions, union members, and the public, the Department seeks additional information. This information will permit the Secretary to determine whether the Department's position adequately meets the needs of labor organizations and their members, and to determine whether additional rulemaking is necessary to fully realize the purposes of the Act.

II. Information Sought

The Secretary seeks public comment from interested parties regarding the Department's analyses for determining whether a labor organization constitutes a local, intermediate, or national or international labor organization. In particular, the Secretary is seeking written submissions on the following topics:

The terms ''local labor organization'' and ''intermediate bod[y]'' and ''national or international labor organization'' are not defined in the Act but they are crucial in the Title IV scheme for democratic union elections. Should the Secretary issue a regulation defining these terms? If so, what should these definitions be? What elements or factors should be considered when formulating definitions for these terms?

Are there certain functions that are so inextricably related to the fundamental purpose of unions and the daily work life of their members that labor organizations exercising these functions must be considered local unions?

If so, what are these functions? Are these functions limited to labor relations functions such as negotiating collective bargaining agreements, ratifying collective bargaining agreements, handling grievances, handling arbitration, controlling work referral systems, controlling business agents, controlling organizers, controlling stewards, calling strikes, etc.? Or should other functions such as disciplining members, raising rates of dues, or controlling a large part of the dues paid by members also be considered?

If a list of such functions could be compiled, how would the functions be applied to determine local union status? For example, should such a method require that an entity exercise a certain number of the functions to be considered a local or are one or two of the functions so critical that exercising them would be evidence of local status?

Are there any functions uniquely associated with national or international unions, suggesting that any entity with such characteristics would be considered a national or international

union? Similarly, are there functions that are uniquely associated with intermediate bodies?

The factors that the Department uses in determining whether an entity has a separate organic existence or structure of its own, as described in the LMRDA Interpretative Manual, are:

- Whether the existence of the entity is referenced through a charter, referenced in the parent body's constitution and bylaws, or some other manner
- Whether it has its own constitution and bylaws, or other governing rules
- Whether it has a distinct and identifiable membership
- Whether it may accept or reject applications for membership
- Whether it has its own officers
- Whether it holds meetings as a unit with some regularity or frequency
- Whether it has assets of its own sessments
- Whether it may discipline its members
- Whether it is represented as a unit at conventions or meetings of a parent or other body
- Whether it engages in collective bargaining
- Whether it engages in grievance handling
- Whether it engages in any business arrangements

LMRDA Interpretative Manual, 030.603.

Are all of these factors relevant to determining whether a labor organization has a separate existence? Are relevant factors missing from this list? At what point has an entity lost so many of these attributes that it becomes an administrative arm of another labor organization, rather than a separate labor organization?

How much significance should be attributed to an entity's placement above a local labor organization within a hierarchy of affiliated labor organizations in determining if it is a local or intermediate body? Would the application of a strictly functional test to determine the status of a labor union be consistent with the Act?

What concerns, if any, would arise from an intermediate body being reclassified as a local union? What effect, if any, would classification of an intermediate body as a local union have on the local status of its subordinate unions (assuming the subordinate unions retain sufficient functions and attributes distinct from the purported intermediate body to constitute discrete labor organizations)? Can a union supervise other local unions and still maintain status as a local union?

There appear to be cases in which an intermediate body, or a national or international union, has members that are not members of a local union. What elections do these members participate in? Should the existence of such members be a factor in determining the status of a labor organization as a local union? If so, what weight should this factor be given?

Have any unions changed their structure in reliance on the Department's existing positions? Have unions developed plans to devolve additional responsibility to intermediate or national or international labor organizations, based on the Department's articulated positions?

What is the proper analysis to distinguish a national or international union from a local? Should a different analysis apply if the entity at issue has constituent labor organizations? Should the method of distinguishing a national or international union from a local union be the same or different than that used to distinguish an intermediate body from a local?

In addition to these questions, the Department seeks information and evidence on the following topics:

- The functions performed by a typical local in 1959
- The functions performed by a typical intermediate body in 1959
- The difference in the functions of locals today as compared to 1959
- The difference in the functions of intermediate bodies today as compared to 1959
- Situations in which union bodies other than a local union perform functions such as negotiating collective bargaining agreements, ratifying collective bargaining agreements, handling first stage grievances, handling arbitration, controlling work referral systems, controlling business agents, controlling organizers, controlling stewards, calling strikes, etc.

Signed at Washington, DC, this 27th day of October, 2004.

Victoria A. Lipnic,

Assistant Secretary for Employment Standards.

Don Todd,

Deputy Assistant Secretary for Labor-Management Programs.

[FR Doc. 04–24452 Filed 11–2–04; 8:45 am]

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Federal Register

Wednesday,
November 3, 2004

Part V

Department of Education

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notice

DEPARTMENT OF EDUCATION

RIN 1820–ZA39

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities and definitions.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes priorities and definitions under the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program. The Assistant Secretary may use these priorities and definitions for competitions in fiscal year (FY) 2005 and later years. We take this action to focus on training and education as an identified area of national and regional need. We intend for the priorities to establish a National Interpreter Education Center and a Regional Interpreter Education Center or Centers that will work through Local Partner Networks to provide interpreter education to interpreters at all skill levels. The goal of these priorities is to improve the quality of interpreters in the field by providing quality educational opportunities with consumer involvement throughout the process and with a specific focus on interpreters working with consumers of Vocational Rehabilitation (VR) services. Distance technologies and distance education will be a critical component to the work of these centers.

DATES: We must receive your comments on or before January 3, 2005.

ADDRESSES: Address all comments about these proposed priorities and definitions to Annette Reichman, U.S. Department of Education, 400 Maryland Avenue, SW., room 5032, Potomac Center Plaza, Washington, DC 20202–2800. If you prefer to send your comments through the Internet, use the following address: *Annette.Reichman@ed.gov.*

You must include the term ''Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind'' in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Annette Reichman. Telephone: (202) 245–7489 (voice) or via Internet: *Annette.Reichman@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8352.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding these proposed priorities and definitions. To ensure that your comments have maximum effect in developing the notice of final priorities and definitions, we urge you to identify clearly the specific proposed priority or definition that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed priorities and definitions. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed priorities and definitions in room 5032, Potomac Center Plaza, 550 12th Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities and definitions. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Section 302(f) of the Rehabilitation Act of 1973, as amended (Act), and the regulations for this program in 34 CFR 396.1 state that the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is designed to establish interpreter training programs or to assist ongoing training programs to train a sufficient number of qualified interpreters in order to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program provides financial assistance to pay part of the costs to—

(1) Train manual, tactile, oral, and cued speech interpreters;

(2) Ensure the maintenance of the skills of interpreters; and

(3) Provide opportunities for interpreters to raise their level of competence.

We propose these priorities and definitions to increase the numbers of interpreters and the knowledge and skills of interpreters working with VR consumers. Access to the VR environment through the use of qualified interpreters will, in turn, increase empowerment and employment outcomes of deaf, hard of hearing, and deaf-blind VR consumers.

We will announce the final priorities and definitions in a notice in the **Federal Register**. We will determine the final priorities and definitions after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities or proposing additional definitions, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use these proposed priorities and definitions, we invite applications through a notice in the **Federal Register**. When inviting applications, we designate each priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities

Background

Currently, the need for interpreting services exceeds the available supply of qualified interpreters. Federal

legislation, such as the Rehabilitation Act of 1973, as amended, and the Education for All Handicapped Children Act of 1975 (Pub. L. 94–142) (now called the Individuals with Disabilities Education Act), established the legal requirements for communication and language access. These requirements led to an increased demand for qualified interpreters, outstripped the available pool, and created a serious national shortage. The passage of the Americans with Disabilities Act of 1990, as amended, further increased the demand for interpreters and worsened the national shortage of qualified interpreters. In addition, many States have passed, or are now proposing, licensure laws for interpreters, requiring interpreters working in these States to meet specific qualifications, such as specific levels of education or certification, or both. Therefore, due to the ongoing high demand on limited resources, the pool of qualified interpreters to provide services to VR consumers continues to be insufficient.

Simultaneously, deaf consumers of interpreting services have become more informed and are demanding higher quality interpreting services that meet their individual needs. Consumers and consumer organizations have expressed interest in being substantively involved in the identification, development, and delivery of the educational opportunities provided through these proposed priorities.

In order to train qualified interpreters to better meet the demand from consumers and consumer organizations, interpreter educators must be sufficient in number and be knowledgeable of current best practices. There are, however, very few programs that prepare interpreter educators to teach the interpreting process and the skill of interpreting. Consequently, many educators teaching at approximately 137 interpreter training programs throughout the country have had little or no opportunity to study how to teach interpretation. One of the national projects funded from 2000 to 2004 developed some course material to prepare interpreter educators, but this is not yet available. The Rehabilitation Services Administration (RSA) will disseminate these materials through these projects once they become available.

To address these issues and to contribute toward the education and training of a sufficient number of qualified interpreters to meet the communications needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind, the Assistant Secretary proposes to establish priorities for a National Interpreter Education Center and a coordinated Regional Interpreter Education Center or Centers working with and through Local Partner Networks.

Proposed Definitions

For the purposes of these priorities, we use the following definitions:

Deaf means individuals who are deaf, hard of hearing, late deafened, or deaf-blind. The term makes no reference or judgment of preferred mode of communication or language preference.

Interpreter means individuals, both hearing and deaf, who provide interpreting or transliterating, or both, for deaf, hard of hearing, and deaf-blind individuals using a variety of languages and modes of communication including, but not limited to, American Sign Language, Conceptually Accurate Signed English, other forms of signed English, oral communication, tactile communication, and cued speech.

Local Partner Network means a formal network of individuals, organizations, and agencies including consumers, consumer organizations, community resources, service providers (especially VR agencies), VR State coordinators for the deaf, rehabilitation counselors for the deaf, and other appropriate entities with whom the Regional Interpreter Education Center will have Memoranda of Understanding or other recognized mechanisms for the provision of educational activities for interpreters.

National Interpreter Education Center means a project supported by RSA to—(1) coordinate the activities of the Regional Interpreter Education Centers; (2) ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Centers; (3) ensure the effectiveness of the program as a whole by evaluating and reporting outcomes; (4) provide technical assistance to the field on effective practices in interpreter education; and (5) provide educational opportunities for interpreter educators.

Novice interpreter means an interpreter who has graduated from an interpreter training program and demonstrates language fluency in American Sign Language and in English, but lacks experience working as an interpreter.

Qualified interpreter means an interpreter who is able to interpret effectively, accurately, and impartially both receptively and expressively, using any necessary specialized vocabulary. This definition, which is mentioned in the Senate Report for the Rehabilitation Act Amendments of 1998, Senate Report 105–166 (Second Session 1998), is one way for States to determine if interpreters are sufficiently qualified and is based on the standard specified in the regulations implementing titles II and III of the Americans with Disabilities Act of 1990.

Regional Interpreter Education Center means a coordinated regional center to provide quality educational opportunities for interpreters at all skill levels.

Training and *education* will be used interchangeably.

Proposed Priority 1—National Interpreter Education Center

The purpose of this priority is to support a National Interpreter Education Center (National Center) to coordinate the activities of the Regional Interpreter Education Centers, to ensure the effectiveness of the educational opportunities offered by the Regional Interpreter Education Centers, to ensure the effectiveness of the program as a whole by evaluating and reporting outcomes, to provide technical assistance to the field on effective practices in interpreter education, and to provide educational opportunities for interpreter educators. In conducting its activities, the National Center must ensure the provision of quality educational opportunities with substantial consumer involvement throughout the process and with a specific focus on interpreting for consumers of VR services.

The National Center funded under this priority must do the following:

(a) Identify and promote effective practices in interpreter education and provide technical assistance to the Regional Interpreter Education Centers and the field on effective practices in interpreter education.

(b) Provide educational opportunities to working interpreter educators who need to obtain, enhance, or update their training on effective practices in interpreter education and to new interpreter educators.

(c) Promote improved education of interpreters and coordinate the interpreter education activities of the Regional Interpreter Education Centers by—

(1) Developing ''Program Quality Indicators'' for this program, including the Regional Interpreter Education Centers, and measuring performance against these indicators;

(2) Conducting education needs assessments and, based on the results, developing educational activities for delivery through the Regional Interpreter Education Centers;

(3) Collecting, analyzing, and reporting to RSA the pre- and post-

assessment data of the educational activities conducted through the Regional Interpreter Education Centers;

(4) Ensuring that educational opportunities are available to individuals from a variety of cultural and linguistic backgrounds and are sensitive to the needs of those audiences; and

(5) Ensuring that deaf consumers are involved in every aspect of the project.

(d) Develop effective products for use by the Regional Interpreter Education Centers in support of their educational activities for interpreters (e.g., CDs, DVDs, Web-based materials, etc.).

(e) Promote the educational activities of the Regional Interpreter Education Centers and disseminate information to the field through activities such as—developing and maintaining a program Web site; providing materials to the RSA-sponsored National Clearinghouse on Rehabilitation Training Materials; developing and using Web-based activities such as e-newsletters, interpreter forums, consumer forums, events calendars, etc.; making presentations on results of project activities at national conferences related to interpreting and interpreter education; and making presentations on results of project activities at consumer conferences.

(f) Collect, evaluate, and report to RSA on qualitative and quantitative data on the educational activities of the Regional Interpreter Education Centers. Data must be based on clear, measurable goals that are clearly linked to results.

(g) Use the data about the individual educational activities to demonstrate overall program effectiveness. Data must be based on clear, measurable goals that are clearly linked to results.

(h) Coordinate all activities conducted under this program, including the activities of the National Center and the Regional Interpreter Education Centers, to ensure effective use of resources and consistency of quality interpreter educational opportunities to individuals in all geographic areas of the country.

Fourth and Fifth Years of Project

In deciding whether to continue this project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC, during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the award have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practices and improved the quality of interpreters.

Proposed Priority 2—Regional Interpreter Education Center or Centers

The purpose of this priority is to support a coordinated Regional Interpreter Education Center or Centers to provide quality educational opportunities for interpreters at all skill levels. The educational opportunities provided by a Regional Interpreter Education Center, through collaboration with Local Partner Networks and with substantial involvement from deaf consumers, must be of sufficient scope and sequence to demonstrate an increased skill and knowledge base of the participants through the use of pre- and post-assessments. The pre- and post-assessments will measure the knowledge and skill base of the participants, both when first entering the training program and when exiting the training program, to demonstrate their enhanced knowledge and skills as interpreters as a result of the training opportunity. In addition, the primary focus of the educational opportunities must be on interpreting for consumers of VR services. Consequently, this means educating hearing and deaf interpreters to work with consumers from diverse cultural and linguistic backgrounds in diverse environments (*i.e.*, urban, rural, low socioeconomic, territories, etc.) and within a variety of contexts (*i.e.*, employment, job training, technical, medical, etc.).

Further, the educational opportunities must encompass both skill-based and knowledge-based topics, provide for both hearing interpreters and deaf interpreters, and focus on interpreting for a variety of individuals who have communication skills along the full spectrum of language from those with limited language skills to those with high-level, professional language skills. Educational opportunities must be provided for interpreters from all skill levels from novice to advanced, and the skill level of the training must be clearly identified. All training activities must involve cooperative efforts with consumers, consumer organizations, community resources, and service providers, especially VR agencies, VR State coordinators for the deaf, and rehabilitation counselors for the deaf. Delivery of educational opportunities may not be limited to traditional methods. Distance technologies and delivery, use of teams of deaf and hearing presenters, assignment of mentors, immersion experiences, intensive institutes, and other innovative practices must be used.

A Regional Interpreter Education Center funded under this priority must do the following:

(a) Develop formal relationships with Local Partner Networks as defined in this notice.

(b) In collaboration with the National Center, Local Partner Networks, and consumers, implement effective practices in interpreter education.

(c) In collaboration with the National Center, Local Partner Networks, and consumers, implement the ''Program Quality Indicators'' for this program.

(d) Coordinate with existing interpreter training programs to identify and conduct outreach activities with recent and new graduates in order to provide training, including mentoring, to make them work-ready.

(e) In collaboration with the National Center, Local Partner Networks, and consumers, provide skill-based, context-based, and knowledge-based interpreter education activities of significant scope and sequence to interpreters in the identified region. Products developed by the National Center must be incorporated into the educational activities to the greatest extent appropriate. Educational opportunities must include, but not be limited to—

(1) Educating deaf individuals and practicing deaf and hearing interpreters to serve as mentors and provide mentoring to novice and working interpreters who need additional feedback and experience to become qualified;

(2) Addressing the various linguistic and cultural preferences within the deaf, hard of hearing, and deaf-blind communities through strands of specialized interpreter education;

(3) Focusing on interpreting in specialized environments such as rehabilitation, legal, medical, mental health, or multicultural environments, working with specific populations such as deaf-blind, oral, tri-lingual, or cued speech users, and improving specific skill sets such as sign-to-voice interpreting, team interpreting, sight translation, or ethical decisionmaking and professionalism;

(4) Developing interpretation and transliteration competencies for interpreters working with deaf, hard of hearing, and deaf-blind individuals with differing modes of communication, including, but not limited to, the use of language immersion experiences in

American Sign Language, Conceptually Accurate Signed English, oral communication, tactile communication, and cued speech;

(5) Using state-of-the-art technologies for training on how to deliver interpreter services from remote locations and in handling various technologies during interpreter assignments (e.g., microphones, assistive listening devices, cameras, lights, etc.); and

(6) Educating consumers on skills related to self-advocacy and working effectively with interpreters.

(f) In collaboration with the National Center, Local Partner Networks, and consumers, implement and deliver the specific educational activities identified in the education needs assessments.

(g) Provide information to the National Center for the purpose of promoting the educational activities of the National Center.

(h) Provide qualitative and quantitative data on the educational activities conducted, pre- and post-assessments, portfolios produced, participant demographics, and other pertinent information to the National Center for the purpose of evaluating program effectiveness.

(i) Coordinate and collaborate with the other Regional Interpreter Education Centers funded by RSA and funded through this priority.

Fourth and Fifth Years of Project

In deciding whether to continue a project for the fourth and fifth years, the Secretary will consider the requirements of 34 CFR 75.253(a) for continuation awards.

The Secretary will also consider the following:

(a) The recommendation of a review team consisting of experts selected by the Secretary. The team will conduct its review in Washington, DC, during the last half of the project's second year. A project must budget for the travel associated with this one-day intensive review.

(b) The timeliness and effectiveness with which all requirements of the award have been or are being met by the project.

(c) Evidence of the degree to which the project's activities have contributed to changed practices and improved quality of interpreters.

(d) Evidence of the degree to which the project's activities have served each State within its designated geographic region.

Executive Order 12866

This notice of proposed priorities and definitions has been reviewed in accordance with Executive Order 12866. Under the terms of the order, we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of proposed priorities and definitions are those resulting from statutory requirements (section 302(f) of the Act) and those we have determined as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of proposed priorities and definitions, we have determined that the benefits of the proposed priorities and definitions justify the costs.

Summary of Potential Costs and Benefits

The potential costs associated with these proposed priorities and definitions are minimal, while the benefits are significant. Grantees may anticipate costs associated with completing the application process in terms of staff time, copying, and mailing or delivery. The use of e-Application technology reduces mailing and copying costs significantly.

The benefits of the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program have been well established over the years in that similar projects have been completed successfully. These proposed priorities will generate new knowledge through training, technical assistance, and dissemination of new information to improve participation in the community for individuals who are deaf or hard of hearing or deaf-blind.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Applicable Program Regulations: 34 CFR parts 385 and 396.

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(Catalog of Federal Domestic Assistance Number 84.160 Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind)

Program Authority: 29 U.S.C. 772(f).

Dated: October 29, 2004.

Troy R. Justesen,

Acting Deputy Assistant Secretary for Special Education and Rehabilitative Services.

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Business entities classification; definitions clarification; cross reference; comments due by 11-10-04; published 8-12-04 [FR 04-18481]

VETERANS AFFAIRS DEPARTMENT

Adjudication; pensions, compensation, dependency, etc.:

Presumptions of service connection for diseases associated with detention or prisoner of war internment; comments due by 11-8-04; published 10-7-04 [FR 04-22543]

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.

H.R. 1533/P.L. 108–359

To amend the securities laws to permit church pension plans to be invested in collective trusts. (Oct. 25, 2004; 118 Stat. 1666)

H.R. 2608/P.L. 108–360

To reauthorize the National Earthquake Hazards Reduction Program, and for other purposes. (Oct. 25, 2004; 118 Stat. 1668)

H.R. 2828/P.L. 108–361

Water Supply, Reliability, and Environmental Improvement Act (Oct. 25, 2004; 118 Stat. 1681)

H.R. 3858/P.L. 108–362

Pancreatic Islet Cell Transplantation Act of 2004 (Oct. 25, 2004; 118 Stat. 1703)

H.R. 4175/P.L. 108–363

Veterans' Compensation Cost-of-Living Adjustment Act of 2004 (Oct. 25, 2004; 118 Stat. 1705)

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H.R. 4555/P.L. 108–365

Mammography Quality Standards Reauthorization Act of 2004 (Oct. 25, 2004; 118 Stat. 1738)

H.R. 5185/P.L. 108–366

Higher Education Extension Act of 2004 (Oct. 25, 2004; 118 Stat. 1741)

S. 524/P.L. 108–367

Fort Donelson National Battlefield Expansion Act of 2004 (Oct. 25, 2004; 118 Stat. 1743)

S. 1368/P.L. 108–368

To authorize the President to award a gold medal on behalf of the Congress to Reverend Doctor Martin Luther King, Jr. (posthumously) and his widow Coretta Scott King in recognition of their contributions to the Nation on behalf of the civil rights movement. (Oct. 25, 2004; 118 Stat. 1746)

S. 2864/P.L. 108–369

Family Farmer Bankruptcy Relief Act of 2004 (Oct. 25, 2004; 118 Stat. 1749)

S. 2883/P.L. 108–370

Prevention of Child Abduction Partnership Act (Oct. 25, 2004; 118 Stat. 1750)

S. 2896/P.L. 108–371

To modify and extend certain privatization requirements of the Communications Satellite Act of 1962. (Oct. 25, 2004; 118 Stat. 1752)

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