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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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Part 611

Soil Surveys

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service, United States Department of Agriculture, is amending soil survey regulations to reflect current law and contemporary conditions. The new rule clarifies soil survey operations and content of soil survey information; increases flexibility in disseminating soil surveys, including electronic dissemination; eliminates specific requirements to print and distribute soil survey reports; and corrects mailing addresses.

These amendments are non-controversial changes to an existing regulation and are required to bring the regulation in conformity with statue. Therefore, NRCS believes that public notice is not needed and hereby issuing a final rule.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Russell Kelsea, National Leader for Soil Survey Technical Services, National Soil Survey Center, Natural Resources Conservation Service, 100 Centennial Mall North, Lincoln, Nebraska 68508, telephone 402–437–5878, email *russ.kelsea@nssc.nrcs.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The office of Management and Budget has determined that this final rule is not a significant regulatory action as specified in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this final rule because the Natural Resources Conservation Service is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rule making with respect to the subject matter of this rule.

Paperwork Reduction Act and Government Paperwork Elimination Act (GPEA)

No recordkeeping or reporting burden is associated with this rule. NRCS is committed to compliance with GPEA, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. This rule furthers the purposes of GPEA by providing for the electronic dissemination of soil survey information.

Executive Order 12988

This final rule meets the applicable standards of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995, Public Law 104–4, NRCS assessed the effects of this rulemaking action on State, local, and Tribal governments, and the public. This action does not compel the expenditure of $100 million or more by any State, local, or Tribal governments, or anyone in the private sector and, therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

Discussion

Title 7, Code of Federal Regulations, part 611 implements authorities provided under several public laws. Public 74–46 (16 U.S.C. 590a–590f, 590q) authorizes USDA to conduct soil surveys and publish the results of such surveys. Public Law 89–560 (42 U.S.C. 3271–3274) directs USDA to make soil surveys available to meet the needs of States and other public agencies in connection with community planning or natural resource development.

Since 1968, Public Law 90–620 (at 44 U.S.C. 1342) specified that USDA would publish soil survey reports, printed by the Government Printing Office and bound in paper covers. However, that provision was repealed in 1996 by Section 384 of the Federal Agriculture Improvement and Reform Act of 1996, Public Law 104–127.

Given the repeal of 44 U.S.C. 1342, there is nothing in law that requires printing of soil survey information in the traditional, paper-bound, published soil survey format. Rather, 42 U.S.C. 3271 specifies that USDA should make soil survey information available to meet the needs of States and other public agencies. Many States and other agencies now require soil survey information in electronic format for use in geographic information systems or other database systems. Therefore, the existing rule in 7 CFR 611 is unnecessarily restrictive and is hereby being updated to reflect current technologies, user needs, and changes in law. The new rule does not prohibit USDA from printing soil surveys nor does it require that NRCS change operational procedures or practices. Instead, this final rule provides USDA with flexibility to reduce costs, improve services, and meet e-Government initiatives.

List of Subjects in 7 CFR Part 611

Soil conservation.

■ Accordingly, for the reasons stated in the preamble, 7 CFR part 611 is revised to read as follows:

PART 611—SOIL SURVEYS

Subpart A—General

Sec.
611.1 Purpose and scope.
611.2 Cooperative relationships.

Subpart B—Soil Survey Operations

611.10 Standards, guidelines, and plans.
611.11 Soil survey information.

Subpart C—Cartographic Operations

611.20 Function.
611.21 Availability of aerial photography.
611.22 Availability of satellite imagery.

Authority: 16 U.S.C. 590a–590f, 590q, 42 U.S.C. 3271–3274.

Subpart A—General

§ 611.1 Purpose and scope.

(a) This part sets forth policy on soil survey operations of the Natural Resources Conservation Service (NRCS).

(b) NRCS is responsible for soil survey activities of the U.S. Department of Agriculture (USDA). A soil survey provides:

(1) An orderly, on-the-ground, scientific inventory of soil resources according to their potentialities and problems of use; and

(2) Information about each kind of soil in sufficient detail to meet all reasonable needs of farmers, agricultural technicians, community planners, engineers, and scientists in planning and transferring the findings of research and experience to specific land areas.

§ 611.2 Cooperative relationships.

(a) Soil surveys on nonfederal lands are carried out cooperatively with State agricultural experiment stations and other State agencies. The cooperative effort is evidenced in a memorandum of understanding setting forth guidelines for actions to be taken by each cooperating party in the performance of soil surveys. Similar cooperative arrangements exist between NRCS and other Federal agencies for soil surveys on Federal lands.

(b) Arrangements for nonfederal financial participation in the cost of soil surveys may be made with States, counties, soil conservation districts, planning agencies,, and other local groups.

Subpart B—Soil Survey Operations

§ 611.10 Standards, guidelines, and plans.

(a) NRCS conducts soil surveys under national standards and guidelines for naming, classifying, and interpreting soils and for disseminating soil survey information.

(b) A soil survey Memorandum of Understanding (MOU) is prepared prior to the start of each soil survey project, or a work plan is prepared for soil survey maintenance activities. These documents provide specific details and technical specifications to support the interpretive and data needs of the area to be surveyed. The MOU is signed by representatives of NRCS, land grant universities, and in some States representatives of other State agencies. Federal land administering agencies also sign the MOU if federal lands are included in the survey.

§ 611.11 Soil survey information.

(a) *Availability.* NRCS disseminates soil survey information to the public by any of the means described in paragraph (d) of this section. NRCS makes soil survey information available as soon as is practicable following field work or other soil survey activity that provides new soil survey information.

(b) *Content.* Soil survey information conforms with standards and meets the needs identified in the soil survey MOU or work plan as described in § 611.10 of this part. Soil survey information includes: (1) Soil maps that delineate the location and extent of various soil areas;

(2) Soil characteristics for each of the soil areas shown on soil maps;

(3) Interpretations of the soil characteristics; and

(4) Information about the source, version, and applicability or limitations associated with the soil survey information.

(c) *Maintenance.* Soil survey information is reviewed on a periodic basis to ensure that the information continues to meet evolving needs.

(d) *Distribution.* Soil survey information is disseminated to the public through electronically accessible maps and reports, electronic access to data files, or printed documents. To the extent practicable, as limited by commonly accepted technology, soil survey information is disseminated in electronic form.

(e) *Resource conservation plan data.* Information prepared specifically for use in developing resource conservation plans for soil conservation district cooperators is considered confidential. Soil maps and interpretations prepared for this use will not be made available to others without the consent of the landowner as well as the district governing body. However, soil survey information from which the conservation plan was developed may be disseminated as described in paragraph (a) of this section.

Subpart C—Cartographic Operations

§ 611.20 Function.

The NRCS National Cartography and Geospatial Center provides cartographic services needed to carry out NRCS functions. Cartographic services include general cartography, photogrammetry, aerial photography, planimetric and topographic mapping, drafting, and specialized types of reproduction.

§ 611.21 Availability of aerial photography.

The National Cartography and Geospatial Center obtains necessary clearance for all aerial photography for NRCS. New aerial photography of designated areas in the United States is obtained yearly by NRCS through competitive contracting. This photography is obtained only after it is determined that imagery of these areas available from other sources does not meet NRCS scale and quality requirements. Orders for reproductions of NRCS aerial photography are subject to the fee schedule cited in § 1.2(b) of this title. Order reproductions from the National Cartography and Geospatial center: USDA—National Resources Conservation Service; P.O. Box 6567, FWFC–Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115.

§ 611.22 Availability of satellite imagery.

Cloud-free maps of the United States based on imagery received from a satellite are prepared and released to the pubic by NRCS. The maps offer the first image of the United States not obscured by clouds or distortions. Orders or requests for information should be directed to the National Cartography and Geospatial Center, USDA—Natural Resources Conservation Service; P.O. Box 6567, FWFC–Bldg. 23; 501 W. Felix Street; Forth Worth, Texas 76115. Orders are subject to the fee schedule cited in § 1.2(b) of this title.

Signed in Washington, DC on September 23, 2004.

Bruce I. Knight,

Chief, Natural Resources Conservation Service.

[FR Doc. 04–22723 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18819; Airspace Docket No. 04–ACE–45]

Modification of Class D Airspace; and Modification of Class E Airspace; Grand Island, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments, correction.

SUMMARY: This action corrects a direct final rule; request for comments that was published in the **Federal Register** on Wednesday, September 22, 2004, (69 FR 56690) [FR Doc. 04–21226]. It corrects an error in the legal description of the Class E airspace area extending upward from 700 feet above the surface at Grand Island, NE.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 04–21226, published on Wednesday, September

22, 2004, (69 FR 56690) modified the Class D airspace area, the Class E airspace area designated as a surface area, the Class E airspace area designated as an extension to the Class D airspace area and the Class E airspace area extending upward from 700 feet above the surface at Grand Island, NE. The modification corrected discrepancies in the Central Nebraska Regional Airport airport reference point used in the legal descriptions, redefined extensions to the airspace areas and brought the legal descriptions of the Grand Island, NE Class E airspace areas into compliance with FAA Orders 7400.2E, Procedures for Handling Airspace Matters, and 8260.19C, Flight Procedures and Airspace. However, the format of the legal description for the Class E airspace area extending upward from 700 feet above the surface was incorrect.

Accordingly, pursuant to authority delegated to me, the legal description of the Class E airspace area extending upward from 700 feet above the surface at Grand Island, NE, as published in the **Federal Register** on Wednesday, September 22, 2004, (69 FR 56690) [FR Doc. 04–21226] is corrected as follows:

§ 71.1 [Corrected]

■ On page 56692, Column 2, third paragraph, fifth and sixth lines, delete ''Grand Island VORTAC (lat. 40°59′03″ N., long. 98°18′53″ W.).'' In the last line of the same paragraph, change ''Central Nebraska Regional'' to read ''Central Nebraska Regional Airport''.

Issued in Kansas City, MO, on September 29, 2004

Paul J. Sheridan,

Manager, Air Traffic Division, Central Region.

[FR Doc. 04–22746 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–204–18825; Airspace Docket No. 04–ACE–51]

Modification of Class E Airspace; Harrisonville, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Harrisonville, MO. A review of controlled airspace for Harrisonville, MO revealed it does not reflect the current Lawrence Smith Memorial Airport airport reference point (ARP) and is not in compliance with established airspace criteria. The airspace area is modified and enlarged to conform to the criteria in FAA Orders.

DATES: This direct final rule effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 8, 2004.

ADDRESSES: Send comments on this 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–2004–18825/ Airspace Docket No. 04–ACE–51, 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.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Harrisonville, MO. An examination of controlled airspace for Harrisonville, MO revealed that the Lawrence Smith Memorial Airport ARP used in the legal description for this Class E airspace area is incorrect, the legal description is not in proper format and the area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL, taking into consideration rising terrain, is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. This action expands the Harrisonville, MO Class E airspace area extending upward from 700 feet above the surface from a 6.4-mile radius to a 6.9-mile radius of Lawrence Smith Memorial Airport, corrects the ARP in the legal description, corrects the legal description format by adding the city name to the airport line and brings the legal description of the Harrisonville, MO Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of 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 designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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–2004–18825/Airspace Docket No. 04–ACE–51.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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 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, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Harrisonville, MO

Harrisonville, Lawrence Smith Memorial Airport, MO
(Lat. 38°36′40″ N, long. 94°20′32″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Lawrence Smith Memorial Airport.

* * * * *

Issued in Kansas City, MO, on September 21, 2004.

Elizabeth S. Wallis,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 04–22610 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18609; Airspace Docket No. 03–AWP–15]

Establishment of Class E Airspace; California City, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of the direct final rule, which establishes Class E airspace at California City, CA.

DATES: 0901 UTC, November 25, 2004.

FOR FURTHER INFORMATION CONTACT: Debra Trindle, Air Traffic Division, Airspace Branch, AWP–520, DOT Regional Headquarters Building, Federal Aviation Administration, 1500 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6613.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on August 11, 2004, (69 FR 487666). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on November 25, 2004. No adverse comments were received, and thus this action confirms that this direct final rule will be effective on that date.

Issued in Los Angeles, California, September 23, 2004.

John Clancy

Area Director, Western Terminal Operations.

[FR Doc. 04–22611 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2004–18827; Airspace Docket No. 04–ACE–53]

Modification of Class E Airspace; Hannibal, MO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Hannibal, MO. A review of the Class E airspace area extending upward from 700 feet above the surface at Hannibal, MO revealed it does not reflect the current Hannibal Municipal Airport reference point (ARP) and is not in compliance with established airspace criteria. This airspace area is enlarged and modified to conform to FAA Orders.

DATES: This direct final rule is effective on 0901 UTC, January 20, 2005. Comments for inclusion in the Rules Docket must be received on or before November 15, 2004.

ADDRESSES: Send comments on this 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–2004–18827/Airspace Docket No. 04–ACE–53, 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.

FOR FURTHER INFORMATION CONTACT: Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal

Aviation Administration, 901 Locust Street, Kansas City, MO 64106; telephone: (816) 329–2524.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Hannibal, MO. An examination of controlled airspace for Hannibal, MO revealed that the Hannibal Municipal Airport ARP used in the legal description for this Class E airspace area is incorrect and that the airspace area does not comply with airspace requirements for diverse departures as set forth in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also identified that the description and dimensions of the extension to the Class E airspace area are not in compliance with FFA Order 8260.19C, Flight Procedures and Airspace.

This action expands the Hannibal, MO Class E airspace area extending upward from 700 feet above the surface from a 6-mile radius to a 6.5-mile radius of Hannibal Municipal Airport, corrects the ARP in the legal description, decreases the width of the extension from 2.6 to 2.5 miles each side of centerline, defines the extension in terms of the Hannibal nondirectional radio beacon (NDB), includes the Hannibal NDB in the legal description and brings the legal description of the airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of 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 designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Interested parties are invited to participate in this 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–2004–18827/Airspace Docket No. 04–ACE–53.'' The postcard will be date/time stamped and returned to the commenter.

Agency Findings

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

The FAA has determined that this regulation is noncontroversial and is unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 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 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, dated August 30, 2004, and effective September 16, 2004, is amended as follows:

* * * * *

Paragraph 6005 Class E airsapce areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE MO E5 Hannibal, MO

Hannibal Municipal Airport, MO
(Lat. 39°43′28″ N., long. 91°26′37″ W.)
Hannibal NDB
(Lat. 39°43′38″ N., long. 91°26′55″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Hannibal Municipal Airport and within 2.5 miles each side of the 159° bearing from the Hannibal NDB extending from the 6.5-mile radius of the airport to 7 miles southeast of the NDB.

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

Paul J. Sheridan,

Manager, Air Traffic Division, Central Region.

[FR Doc. 04–22747 Filed 10–8–04; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 232, 240, and 249

[Release No. 34–50486; File No. S7–18–04]

RIN 3235–AJ20

Proposed Rule Changes of Self-Regulatory Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting rule amendments that require self-regulatory organizations (''SROs'') to file proposed rule changes electronically with the Commission, rather than in paper form. In addition, the Commission is requiring SROs to post all proposed rule changes, as well as current and complete sets of their rules, on their Web sites. The Commission is also requiring all participants in National Market System Plans (''NMS Plans'') to arrange for posting on a designated Web site a current and complete version of the NMS Plan. Finally, the Commission is making certain technical amendments to the requirements for SRO rule changes. Together, the amendments are designed to modernize the SRO rule filing process by making it more efficient and cost effective. The amendments also should improve the transparency of the rule filing process and assure that all SRO members and other interested persons have ready access to an accurate, up-to-date version of SRO rules.

DATES: Effective November 8, 2004, except § 240.11Aa3–2(b)(8) and § 240.19b–4(m), shall be effective May 9, 2005.

FOR FURTHER INFORMATION CONTACT: Florence Harmon, Senior Special Counsel (202–942–0773); Elizabeth Badawy, Accountant (202–942–0740); Joseph Morra, Special Counsel (202–942–0781); Sonia Trocchio, Special Counsel (202–942–0753); Cyndi N. Rodriguez, Special Counsel (202–942–4163); Michael L. Milone, Special Counsel (202–942–0179) (clearance and settlement SROs); Timothy Fox, Attorney (202–942–0146); Molly Kim, Attorney (202–942–8987), Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

On March 30, 2004, the Commission proposed changes to the process by which SROs file proposed rule changes with the Commission that were designed to make the process more efficient and transparent, while reducing costs for the SROs and the public.[1] The Commission proposed amending Rule 19b–4 and Form 19b–4 to (1) require SROs to file proposed rule changes with the Commission electronically, rather than in paper format; (2) mandate that SROs promptly post on their Web sites a copy of all proposed rule changes filed with the Commission; (3) require SROs to maintain a current and complete version of their rules on their Web sites; and (4) make certain technical amendments to clarify Rule 19b–4 and to reflect current practice. The Commission also solicited comment on whether the participants in NMS Plans should be required to post on a public Web site to be designated by the Plan participants a current version of the applicable Plans, as well as amendments to such Plans, no later than the next business day after effectiveness of such Plan or amendment.

The Commission received 21 comment letters in response to its request for comments.[2] Commenters expressed general support for the proposal, commending the Commission's efforts to make the rule filing process more efficient and transparent and to reduce costs,[3] and suggested other ways to improve the process. The Commission has determined to adopt the amendments substantially as proposed, with some modifications to address some of the comments the Commission received. Twenty-seven SROs[4]— the 13 national securities exchanges, the 11 clearing agencies, and the two national securities associations and the Municipal Securities Rulemaking Board—are subject to these amendments. The Commission also is providing further clarification and guidance on the application of amended Rule 19b–4.

II. Amendments to Rule 19b–4

A. Electronic Filing

The Commission proposed to modernize the rule filing process by requiring SROs to file proposed rule changes electronically with the Commission through a Web-based system. To implement electronic filing of SRO proposed rule changes, the Commission proposed to amend Rule 19b–4 and Form 19b–4 to require SROs to file all proposed rule changes on Form 19b–4, and any amendments to Form 19b–4, electronically with the Commission in accordance with the procedures and in the format specified in Rule 19b–4 and Form 19b–4. Each SRO would be given access to a secure Web site, the Electronic Form 19b–4 Filing System (''EFFS''), which would enable authorized individuals at the SRO to file with the Commission an electronic Form 19b–4 on behalf of the SRO. Each SRO would determine which individual or individuals to supply with User IDs and passwords to allow access to the secure Web site. The current requirement in Form 19b–4 that SROs submit multiple paper copies of proposed rule changes to the Commission would be eliminated. Under the proposal, a proposed rule change would be deemed filed with the Commission on the business day that the SRO electronically submits the

[1] Securities Exchange Act Release No. 49505 (March 30, 2004), 69 FR 17864 (April 5, 2004).

[2] *See* letters and emails to Jonathan G. Katz, Secretary, Commission, from: James J. Angel, Ph.D., CFA, Associate Professor of Finance, McDonough School of Business, Georgetown University, dated May 14, 2004 (''Angel''); Barry S. Augenbraun, Senior Vice President, Raymond James Financial, Inc, dated April 22, 2004 (''Raymond James''); Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, America's Community Bankers, dated June 3, 2004 (''ACB''); R. Gerald Baker, Compliance and Regulatory Consultant, dated June 4, 2004 (''Baker''); Kim Bang, President, Bloomberg Tradebook LLC, dated June 8, 2004 (''BT''); Donald F. Donahue, President, National Securities Clearing Corporation, dated July 16, 2004 (''NSCC''); Dorothy M. Donohue, Associate Counsel, Investment Company Institute, dated June 4, 2004 (''ICI''); Edward S. Knight, Executive Vice President, The Nasdaq Stock Market, Inc., dated June 14, 2004 (''Nasdaq''); Michael L. Kosoff, dated June 16, 2004 (''Kosoff''); Joanne Moffic-Silver, General Counsel and Corporate Secretary, Chicago Board Options Exchange, Inc., dated June 16, 2004 (''CBOE''); William H. Navin, Executive Vice President, General Counsel and Secretary, The Options Clearing Corporation, dated May 27, 2004 (''OCC''); Ellen J. Neely, Senior Vice President and General Counsel, Chicago Stock Exchange, Inc., dated June 4, 2004 (''CHX''); Junius W. Peake, Monfort Distinguished Professor of Finance, Kenneth W. Monfort College of Business, University of Northern Colorado, dated May 4, 2004 (''Peake''); Edward L. Pittman, Esq., Thelen Reid & Priest LLP, dated May 28, 2004 (''Thelen''); John Polanin, Jr., Chairman, SIA Self-Regulation and Supervisory Practices Committee, Securities Industry Association, dated June 4, 2004 (''SIA''); Michael J. Ryan, Jr., Executive Vice President and General Counsel, American Stock Exchange LLC, dated June 15, 2004 (''Amex''); Thomas W. Sexton, Vice President and General Counsel, National Futures Association, dated June 4, 2004 (''NFA''); Michael J. Simon, Senior Vice President and Secretary, International Securities Exchange, Inc., dated June 4, 2004 (''ISE''); Joseph Smith, Feldman Weinstein LLP, dated April 13, 2004 (''Smith''); Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc., dated July 14, 2004 (''NYSE''); and Elisse B. Walter, Executive Vice President, Regulatory Policy and Programs, National Association of Securities Dealers, Inc., dated June 7, 2004 (''NASD'').

[3] CBOE at 1; BT at 1; Amex at 1; Nasdaq at 1; NASD at 1; CHX at 1; NFA at 1; ACB at 1; Thelen at 1; OCC at 1; NYSE at 1; SIA at 1–2; ISE at 1; Baker at 1; Angel at 1; Peake at 1; Raymond James at 1; Smith at 1; ICI at 1; Baker at 1.

[4] American Stock Exchange LLC, Boston Stock Clearing Corporation, Boston Stock Exchange, Inc., Chicago Board Options Exchange, Inc., Chicago Mercantile Exchange, Inc., Chicago Stock Exchange, Inc., The Depository Trust Co., Emerging Markets Clearing Corporation, Fixed Income Clearing Corporation, INET Futures Exchange, LLC, International Securities Exchange, Inc., Midwest Clearing Corporation, Midwest Securities Trust Co., Municipal Securities Rulemaking Board, National Association of Securities Dealers, Inc., National Futures Association, National Securities Clearing Corporation, The National Stock Exchange, Inc. (f/k/a Cincinnati Stock Exchange, Inc.), New York Stock Exchange, Inc., NQLX, LLC, One Chicago, LLC, The Options Clearing Corporation, Pacific Exchange, Inc., Pacific Clearing Corporation, Pacific Securities Depository Trust, Co., Philadelphia Stock Exchange, Inc., and Stock Clearing Corporation of Philadelphia.

proposed rule change to the Commission, as long as (1) the Commission receives the proposed rule change on or before 5:30 p.m., eastern standard time or eastern daylight saving time, whichever is currently in effect; and (2) the SRO files the proposed rule change in accordance with the requirements of Rule 19b–4 and Form 19b–4, as amended.

On the rare occasion where an SRO may be unable to file documents electronically, such as comment letters that the SRO received in advance of filing the proposed rule change with the Commission, exhibits, and proprietary information subject to a request for confidential treatment, the Commission's proposal retained the flexibility to allow SROs to file portions of a proposed rule change in paper format under limited circumstances.

Regarding signature requirements, the Commission proposed to amend Form 19b–4 so that a ''duly authorized officer'' of an SRO would be required to file proposed rule changes with an electronic signature. Additionally, the proposal would require each duly authorized signatory to obtain a digital ID to provide both the Commission and the SRO with further assurances about the authenticity and integrity of the electronically-submitted Form 19b–4. Each signatory also would be required to manually sign the Form 19b–4, authenticating, acknowledging, or otherwise adopting his or her electronic signature that is attached to or logically associated with the filing. In accordance with Rule 17a–1 under the Securities Exchange Act of 1934 (''Act''), the SRO would be required to retain that manual signature page of the rule filing, authenticating the signatory's electronic signature, for not less than five years after the Form 19b–4 is filed with the Commission, and, upon request, furnish a copy of it to the Commission or its staff.

Generally, commenters embraced the concept of electronic filing of proposed rule changes with the Commission.[5] Some commenters offered suggestions of ways they believe the Commission's proposal could be improved. For example, six commenters believe that SROs should retain the ability to file paper copies of proposed rule changes with the Commission in limited circumstances, such as instances where there are computer malfunctions or systems outages.[6] Three commenters suggested the Commission extend the requirement for electronic filing to include other types of proposed rule changes and filings with the Commission.[7] Four commenters offered suggested revisions to electronic Form 19b–4 as proposed.[8]

A number of commenters focused on the proposal's requirement that a paper signature page of the Form 19b–4 be manually signed by a duly authorized signatory and retained by an SRO.[9] While one commenter did not object to the record keeping requirements for the hard copy of a signature page,[10] other commenters objected to the requirement that a duly authorized signatory sign and an SRO retain a paper signature page, saying the requirements were unnecessary.[11]

The Commission is adopting the amendments regarding electronic filing of SRO proposed rule changes substantially as proposed. [12] The Commission believes that requiring SROs to file proposed rule changes electronically will have many benefits, including (1) a reduction in the amount of time and labor required to process SRO rule filings by eliminating paper delivery, photocopying, and distribution; (2) a reduction in costs for SROs; (3) more efficient use of Commission resources; and (4) more efficient and accurate monitoring by Commission staff of proposed rule changes due to the integration of SRO electronic filing with the SRTS, the internal Commission database that tracks these filings.

Therefore, as of 5:30 p.m. eastern standard time on November 5, 2004, the Commission will no longer accept SRO proposed rule changes in paper format. Beginning at 9 a.m. eastern standard time on November 8, 2004, SROs will be required to file all Forms 19b–4 and any amendments to Forms 19b–4 electronically, according to the procedures and in the format described in Rule 19b–4 and Form 19b–4, as amended. SROs will gain access to a secure Web site to enable authorized individuals to file proposed rule changes with the Commission electronically. Proposed rule changes will be deemed filed on the business day the Commission receives the proposed rule change electronically, provided the Commission receives the filing before 5:30 p.m. eastern standard time or eastern daylight saving time, whichever is in effect at the time of filing, and it is filed in accordance with Rule 19b–4 and Form 19b–4 as amended.[13] The Commission has eliminated the requirement that SROs submit multiple paper copies of proposed rule changes.

The Commission recognizes that in rare circumstances SROs may be unable to file certain documents electronically with the Commission. Therefore, under limited circumstances, the Commission

[5] CBOE at 1–2; ICI at 1–2; Amex at 1; CHX at 1; NASD at 2; ISE at 1; NFA at 2.

[6] CBOE at 2; NASD at 3; CHX at 1–2; NFA at 2; OCC at 1–2; NYSE at 1. Similarly, one commenter suggested that if technical difficulties prevent an SRO from filing a proposed rule change electronically, an SRO should be excluded from posting the proposed rule change on its Web site if the same technical issues involve its Web site. CHX at 2. Another commenter suggested the Commission include an explicit exemption for the posting of proprietary information on the SRO's Web site. NSCC at 2.

[7] NFA requests that the requirement for electronic filing be extended to include proposed rule changes filed pursuant to Form 19b–7. NFA at 1–2. ACB encourages the Commission to require the PCAOB to file proposed rule changes electronically. ACB at 2. One commenter suggested that all filings by SROs and alternative trading systems, including Forms 1 and periodic supplemental filings, should be electronic and available to the public on EDGAR. Angel at 1–3.

[8] CBOE at 4; Nasdaq 2; NFA at 2; NYSE at 3.

[9] *See generally*, CBOE at 2; NASD at 3; CHX at 2; OCC at 3; NYSE at 3.

[10] NFA at 4.

[11] *See, e.g.*, NASD at 3; CHX at 2; NYSE at 3.

[12] Section 3(a)(26) of the Act, 15 U.S.C. 78c(a)(26), defines the term ''self-regulatory organization'' to mean any national securities exchange, registered securities association, registered clearing agency, and, for purposes of section 19(b) and other limited purposes, the Municipal Securities Rulemaking Board (''MSRB''). Currently, there are 27 SROs that file proposed rule changes with the Commission. Section 107 of the Sarbanes-Oxley Act of 2002 provides that the Public Company Accounting Oversight Board (''PCAOB'') shall file proposed rule changes with the Commission ''as if the Board were a registered securities association for purposes of that section 19(b). * * *'' 15 U.S.C. 7217(b)(4). Because PCAOB rule filings are not tracked by the SRO Rule Tracking System (''SRTS''), the Division of Market Regulation's (''Division'') internal tracking database for rule filings, the Commission is not requiring, at this time, the PCAOB to file electronically its proposed rules. Further, as the proposal for web posting of proposed and final SRO rules is designed to make the SRO rule filings in the SRTS accessible to the public in a uniform manner, the Commission does not intend for these proposed amendments to apply to the PCAOB.

[13] The Commission believes that to be filed, a proposed rule change must be accurate, consistent, and complete in order to provide the public with an opportunity to meaningfully comment on the proposal. SROs must provide all of the information requested in Form 19b–4, including the exhibits, and must present the information in a clear and comprehensible manner. The Commission encourages SRO staff to review carefully proposed rule changes to ensure, among other things, that the filings: (1) Contain a properly completed Form 19b–4; (2) contain a clear and accurate statement of the authority for, and basis and purpose of, such proposed rule change, including the impact on competition; (3) contain a summary of any written comments received by the SRO; and (4) state that the proposal is not inconsistent with the existing rules of the SRO, including any other rules proposed to be amended. Currently, filings that do not comply with these conditions are deemed not filed and returned to the SRO. Consistent with the requirements of Rule 19b–4 and Form 19b–4, electronically filed proposed rule changes that do not comply with the foregoing will continue to be returned to the SRO, electronically, and consistent with current practice, will be deemed not filed with the Commission until all required information has been provided.

will allow SROs to file documents in paper format.[14] For example, the Commission will allow SROs to file materials for which confidential treatment is requested in paper format. In addition, the Commission will allow SROs to file, in paper format, comment letters that the SRO received from its members before the SRO filed the proposed rule change with the Commission, so long as the SRO has demonstrated it is unable to convert the comment letters to electronic format. However, the Commission notes that, given advances in technology, it is increasingly simple and economical for SROs to scan paper documents for conversion to electronic format, so the ongoing need for this exception should be limited and of relatively short duration.

The Commission has determined that an explicit exception from the electronic rule filing requirements for ''emergency'' situations is unnecessary. Proposed rule changes are usually not so time-sensitive that failure to file them with the Commission on a particular date will result in negative consequences to SROs, their members, or investors.[15] In the rare situation where an SRO can demonstrate to the Commission that its inability to file a proposed rule change electronically on that particular date will cause harm to the SRO, its members, or investors, the Commission would consider appropriate relief to enable the SRO to file the proposed rule change in paper format. In such emergency situations, the Commission could consider an SRO's exemption request from the electronic rule filing requirements of section 19(b) of the Act pursuant to Rule 0–12 of the Act[16] and section 36(a)(1) of the Act[17] ''to the extent that such exemption is necessary or appropriate in the public interest, and is consistent with the protection of investors.'' In making such findings, the Commission would consider important the existence of factors such as (1) an extended electronic outage at the SRO facility or at the Commission; (2) a pressing need for implementation of the proposed rule change; and (3) a failure of back-up facilities.[18] The Commission notes that SROs, in their business continuity planning, should ensure that they have appropriate back-up facilities to accommodate electronic filing of proposed rule changes.

Some commenters objected to the proposed provision that would require each duly authorized signatory to a proposed rule change to manually sign the Form 19b–4, authenticating, acknowledging, or otherwise adopting his or her electronic signature, and the requirement that the SRO retain that manual signature page of the rule filing for not less than five years after the Form 19b–4 is filed with the Commission pursuant to Rule 17a–1 under the Act. With the advent of electronic filing, the administrative burden on SROs should be significantly reduced. The Commission believes the authentication and related recordkeeping requirements are necessary to assure the integrity of the electronic rule filing process and does not believe they are unduly burdensome. Accordingly, the Commission has determined to adopt the provisions as proposed.

B. Posting of Proposed Rule Changes on SRO Web Sites

The Commission also proposed to amend Rule 19b–4 to require each SRO to post all proposed rule changes, and any amendments thereto, on its public Web site no later than the next business day after filing with the Commission. Under the proposal, a copy of the complete proposed rule change would continue to be made available in the Commission's Public Reference Room. The Commission stated that requiring SROs to post proposed rule changes and amendments on their public Web sites promptly after filing with the Commission would (1) provide interested persons with quick access to proposed rule changes; (2) facilitate the ability of interested persons to comment on proposed rule changes; (3) eliminate SRO expenses currently used to monitor the Commission's Public Reference Room for proposed rule changes filed by other SROs; and (4) enhance the transparency of the rule filing process by providing ready access to proposed rule changes and facilitating public comment on them. The Commission also solicited comment on whether the SRO should update its Web site to reflect proposed rule filings that are deemed not properly filed and returned to the SRO or withdrawn by the SRO.

In general, commenters supported the proposed requirement that SROs post their proposed rule changes and amendments to proposed rule changes on their Web sites, citing greater public access to information on a uniform basis,[19] improved ability to monitor and comment on proposed SRO rule changes,[20] and improved ability to inform SRO members, investors, regulators, and other interested parties about SRO rulemaking efforts.[21]

With regard to the proposed provision that SROs post on their public Web sites all proposed rule changes and amendments no later than the next business day after filing them with the Commission, the commenters' response was varied. Two commenters expressed general support for this requirement,[22] and one commenter stated a one-day grace period for proposals that are filed pursuant to section 19(b)(3)(A) of the Act is too long.[23] One commenter asked for clarification to determine whether a proposed rule change filed after 5:30 p.m. must be posted on its Web site the following business day or after two business days.[24]

Four commenters stated that the next business day posting requirement is too short a timeframe for SROs to reasonably comply.[25] Instead, these

[14] This exception from electronic filing does not apply to the Form 19b–4 and Exhibit 1 but will only be applicable to Exhibits 2 and 3 of the Form and any documents filed pursuant to a request for confidential treatment pursuant to the Freedom of Information Act, 5 U.S.C. 552.

[15] Most proposed rule changes filed pursuant to section 19(b)(2) of the Act are published for notice and comment and approved not sooner than the 30th day after notice of filing of the proposed rule change appeared in the **Federal Register**. With regard to proposed rule changes filed pursuant to section 19(b)(3)(A) of the Act, the Commission believes that the failure to file these proposed rule changes on a particular date will not result in harm to SROs, their members, or investors. If an SRO wishes to extend an existing pilot program by filing a proposed rule change pursuant to section 19(b)(3)(A) of the Act, and Rule 19b–4(f)(6) thereunder, the SRO should file the proposed rule change in advance of the last business day before the pilot's expiration, to ensure that the Commission receives the proposed extension in a timely fashion to prevent a lapse in the pilot's operation.

[16] 17 CFR 240.0–12.

[17] 15 U.S.C. 78mm(a)(1).

[18] Additionally, in emergency situations, where an SRO can demonstrate that implementation of a proposed rule change is necessary for the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities or funds, section 19(b)(3)(B) of the Act permits the Commission to put the proposed rule change into effect summarily. In such situations, the SRO will be required to file the proposed rule change promptly thereafter pursuant to section 19b(3)(B) of the Act. 15 U.S.C. 78s(b)(3)(B).

[19] ISE at 1.

[20] SIA at 2.

[21] NASD at 7.

[22] SIA at 2; ICI at 1–2.

[23] Thelen at 2. The commenter said that there are instances where ''SROs will begin assessing fees based on the new rules before any members of the industry affected by the filing have had a chance to review them.'' *Id.* According to the commenter, proposed rule changes should be given the same transparency as Commission rule proposals and the electronic filings of public companies. *Id.*

[24] CBOE at 2. The Commission notes that a proposed rule change filed after 5:30 p.m. would not be considered filed on that business day. Thus, determination of the time period for Web site posting of the proposed rule change would be calculated from the next business day.

[25] NASD at 7–8; CHX at 2; NFA at 2–3; OCC at 3.

commenters suggested alternatives ranging from two to five days.[26]

The Commission has decided to adopt an amendment requiring SROs to post proposed rule changes on their public Web sites within two business days, instead of within one business day as proposed. The Commission believes all market participants, investors, and other interested parties should have access to SRO proposed rule changes filed with the Commission, and any amendments, as soon as practicable and, given the concerns expressed by commenters, that a two-business-day timeframe strikes the appropriate balance. The Commission notes that an SRO controls the timing of filing proposed rule changes and amendments and can assure that its technology staff is prepared to post the proposed rule change on the SRO's public Web site within two business days of filing with the Commission.[27] The Commission is also adopting amendments requiring SROs to remove proposed rule filings that are deemed not properly filed and returned to SROs or withdrawn by SROs from their Web sites within two business days from Commission notification of improper filing or SRO withdrawal of the proposed rule.[28]

C. Posting of Current and Complete Rule Text on SRO Web Sites

The Commission proposed to amend Rule 19b–4 to require SROs to post and maintain a current and complete version of their rules on their public Web sites. Under the proposal, each SRO would be required to update its public Web site to reflect changes to its rules no later than the next business day after it has been notified by the Commission that the Commission has approved a proposed rule change, or in the case of proposed rule changes filed pursuant to section 19(b)(3)(A) of the Act, that the Commission has issued a release providing notice of filing and immediate effectiveness of a proposed rule change. The Commission proposal that one business day be the timeframe for posting changes to SRO rules was designed to ensure that interested persons would have prompt access to accurate and complete SRO rules, while allowing SROs sufficient time to comply with the posting requirement.[29]

The Commission believes that prompt posting of current and complete rule text on SRO Web sites will enhance compliance with SRO rules and provide interested parties with easy access to current, reliable, and complete versions of SRO rules.

Eleven commenters expressed general support for requiring SROs to post and maintain a current and complete version of their rules on their public Web sites.[30] Some commenters provided additional suggestions relating to the posting of SRO rules on SRO Web sites.[31]

While there was support for requiring SROs to update their Web sites to reflect changes to their rules within one business day after Commission notification of the Commission's approval of proposed rule changes,[32] several commenters believe that the requirement does not provide the SROs with enough time to comply.[33] The commenters offered many alternatives to the one-business-day posting requirement, ranging from three business days[34] to 15 business days.[35] Others suggested that the Commission allow SROs the flexibility to decide when to update their Web sites with approved rules or effective-upon-filing rule changes.[36]

The Commission has determined to adopt an amendment requiring SROs to post and maintain a current and complete version of their rules on their public Web sites within two business days after electronic notification by the Commission that the Commission has approved a proposed rule change, or in the case of proposed rule changes filed pursuant to section 19(b)(3)(A) of the Act, that the Commission has issued a release providing notice of filing and immediate effectiveness of a proposed rule change. The Commission believes it is critical to assure interested persons have prompt access to accurate and complete SRO rules and does not believe that a two-business-day timeframe is impractical or unduly burdensome on SROs. An SRO is well aware of rule language it has proposed in advance of Commission approval. During the notice and comment period, the SRO should take steps to ensure that its Web site will be updated to reflect the new rule language within two business days of electronic notification by the Commission that it has approved the proposed rule change.

Four commenters expressed concern about the manner in which the Commission will provide notice to an SRO that the Commission has approved a proposed rule change or issued notice of a proposed rule change filed pursuant to section 19(b)(3)(A) of the Act.[37] In this regard, the Commission has determined to and will develop an affirmative electronic notification to SROs via EFFS, the Web-based electronic rule filing system, that a proposed rule change has been approved or an effective-upon-filing rule change has been noticed by the Commission. The Commission expects to have an electronic notification to be made through a specific EFFS screen that provides multiple users at the SRO access to an electronic version of the Commission's approval order or notice of effective-upon-filing rule. To allow time for development of such electronic notification process, the Commission is delaying effectiveness of the requirement for SRO rules to be updated on the relevant Web site within two business days following notification of approval or notice by the Commission.[38] With such electronic notification in place, the Commission believes that the proposed amendments will provide an efficient and prompt procedure for it to notify SROs of approval of a proposed rule change or notice of an effective-upon-filing rule.

Accordingly, an SRO should have immediate notice of the event that triggers its duty to update its rules within two business days. The

[26] NASD at 7–8 (five days); CHX at 2 (three days); NFA at 2–3 (two or three days); OCC at 3 (suggests Commission rules provide SROs with additional time to post proposed rule changes when an SRO's Web site is unavailable for modifying content, such as during unexpected maintenance which could affect its ability to post a rule filing within the required timeframe).

[27] Once the Commission has approved a proposed rule change filed pursuant to section 19(b)(2) of the Act or the 60-day abrogation period has expired of a proposed rule change filed pursuant to section 19(b)(3)(A) of the Act, and the SRO has updated its rules posted on its Web site pursuant to Rule 19b–4(m), the Commission would not require SROs to continue posting the Form 19b–4 on their Web sites. An SRO, of course, may elect to archive such documents on the SRO's Web site.

[28] A screen within EFFS will indicate that a rule filing has not been properly filed and has been returned to the SRO.

[29] Under the proposal, if the Commission approved a proposed rule change, but an SRO does not intend to implement the change upon approval, an SRO would be required to indicate clearly the implementation date in the pertinent rule text.

[30] CBOE at 2; Amex at 1; NASD at 9; CHX at 3; ICI at 2; Thelen at 2; Raymond James at 1; NYSE at 2; SIA at 4; ISE at 1; NFA at 3.

[31] *See, e.g.* Kosoff at 1–2 (extend requirement to include access to an archive of past rules and regulations and provide a link to their rules from the SEC's Web site; also, require SRO Web sites to provide links to all relevant Securities Acts). *See also* NYSE at 3 (SEC may wish to post all of the SROs' rules on the Commission's Web site).

[32] ICI at 2.

[33] *See* Amex at 2; Nasdaq at 2; NASD at 9–10; CHX at 3–4; NFA at 3; OCC at 2–3; NYSE at 2.

[34] CHX at 3–4.

[35] NASD at 10.

[36] *See, e.g.,* Nasdaq at 2; NASD at 9–10, NYSE at 2.

[37] Amex at 1–2; NASD at 10–11; OCC at 2; NYSE at 2.

[38] Despite the delayed effective date for implementation of Web site posting of complete and current rule text, the Commission encourages SROs to seriously consider posting updated rule text on their Web sites as soon as possible to further transparency and the other goals described herein.

requirement to update Web site rule text will run from the business day that the SRO receives an electronic notification via EFFS from the Commission, not the date of the Commission order or notice of proposed rule change filed pursuant to section 19(b)(3)(A) of the Act. To accommodate the systems changes necessary to commence electronic notification to the SROs through EFFS, however, the Commission is delaying implementation of this requirement until May 9, 2005.

D. Electronic Posting of National Market System Plans

In the Proposing Release, the Commission requested comment on whether plan administrators for each of the seven NMS Plans [39] should post on their Web sites or on a separate Plan Web site a current version of the NMS Plans, as well as proposed amendments to these Plans within the one-business-day timeframe proposed for SROs.

The Commission received five comments on this issue.[40] All of the commenters supported the general idea of making the NMS Plans available on public Web sites,[41] whether it is through the Plan administrator,[42] the Commission's Web site,[43] or through hyperlinks from SRO Web sites to a central Web site where NMS Plan information will be maintained.[44] While supporting the concept of Web posting of NMS Plans, two commenters expressed concerns about the applicable timeframe for updating on-line NMS Plan information and the need for flexibility to accommodate unusual circumstances.[45]

The Commission has decided to adopt a rule that will require each participant in an effective NMS Plan to ensure that a current and complete version of the Plan is posted on a Plan Web site or on a Web site designated by Plan participants within two business days after notification by the Commission of effectiveness of such Plan. Each participant in any effective NMS Plan also will be required to ensure that the Web site is updated to reflect amendments to such Plan no later than two business days after the Plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to Rule 11Aa3–2(c) of the Act.[46] If the amendment is not effective for a certain period, the Plan participants will be required to clearly indicate the effective date in the relevant text of the Plan. The Plan participants will also be required to post any proposed amendments filed pursuant to Rule 11Aa3–2(b) of the Act [47] on a Plan Web site or a designated Web site within two business days after the filing of the proposed amendments with the Commission.[48] The Plan participants will be required to remove from the Web site within two business days any proposed amendment that they determine to withdraw. Each Plan participant will be required to provide a link to the Web site with the current version of the Plan. The Commission, however, is delaying implementation of these requirements until May 9, 2005, to allow Plan participants to make arrangements for proper compliance with these provisions.[49]

E. Amendments to Rule 19b–4

The Commission received no comments on the proposed amendment to Rule 19b–4(e) and is adopting it as proposed. Rule 19b–4(e) establishes the rule filing requirements for ''new derivative securities products.'' The amendment clarifies that the term ''new derivative securities product'' does not include a single equity option or a security futures product. Regarding the proposed amendment clarifying that fee changes applicable to non-members and non-participants must be filed under section 19(b)(2) of the Act and not section 19(b)(3)(A)(ii), the Commission received three comments.[50] One commenter expressed support for the amendment, stating the clarification is important because the rationale for automatically effective fees (that SRO members would already have had an opportunity to review and pass on fee changes before they were filed with the Commission) does not apply to fees assessed on non-members.[51] One commenter stated the proposed amendment is inconsistent with the plain meaning of the Act, which makes no distinction between members and non-members.[52] Another commenter said the Commission failed to provide any rationale for the proposed amendment and that there are certain fees for which there is no reason to require Commission approval.[53] The commenter cites (1) fees charged to non-participants for services available to participants at the same price; (2) fees charged to non-participants for compilations of information available from other sources; and (3) fees charged to non-participants for services not incidental to its business (*e.g.,* rent for unused space) as examples.[54]

The Commission is adopting as proposed these amendments to clarify Rule 19b–4 and reflect current practice. First, the Commission is amending Rule 19b–4(e), which addresses rule filing requirements applicable to ''new derivative securities products,'' to clarify that that term does not include a single equity option or a security futures product.[55] Second, in 1979, the Commission stated that it would require notice and comment before a proposed rule change becomes operative that establishes or charges a due, fee, or other charge applicable to non-members of, or non-participants in an SRO because ''[n]on-members or non-participants do not have a direct voice in the selection of the governing body of the self-regulatory organization proposing the rule change or the administration of the organization's affairs.'' [56] As the Commission explained, ''the first opportunity [of non-members and non-participants] to comment generally occurs only after the proposed rule change has become effective under section 19(b)(3)(A)(ii).'' [57] The Commission wants to assure that these persons have

[39] 69 FR 17864, 17868.

[40] NASD at 7; Thelen at 3; OCC at 2; BT at 2; NYSE at 2.

[41] NASD at 7; Thelen at 3; OCC at 2; BT at 2; NYSE at 2.

[42] *See, e.g.,* NASD at 7.

[43] *See, e.g.,* Thelen at 3.

[44] NYSE at 2.

[45] NYSE at 2; OCC at 2.

[46] 17 CFR 240.11Aa3–2(c). A Plan participant encountering difficulties in ensuring that a current and complete Plan is posted pursuant to the rule may apply to the Commission for appropriate relief.

[47] 17 CFR 240.11Aa3–2(b).

[48] Once the Commission has approved pursuant to Rule 11Aa3–2(c) an amendment to an NMS Plan filed pursuant to Rule 11Aa3–2(b), and the NMS Plan participants have updated the Plan posted on the Web site pursuant to Rule 11Aa3–2(b)(8), the Commission would not require NMS Plan participants to continue posting the amendment on the Web site. NMS Plan participants, of course, may elect to archive such documents on the Web site.

[49] The Options Linkage Authority currently posts an updated version of the Options Linkage Plan on the Options Clearing Corporation's Web site at *http://www.optionsclearing.com.* Despite the delayed effective date for implementation of the Web site posting requirements, the Commission would encourage NMS plan participants to seriously consider Web site posting of NMS Plans, and any amendments, as soon as possible to further transparency and the other goals described herein.

[50] BT; Nasdaq; NSCC.

[51] BT at 1.

[52] Nasdaq at 2.

[53] NSCC at 3.

[54] *Id.*

[55] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998). As the options markets already had listing standards for single equity options that addressed relevant regulatory concerns, the Commission did not intend for SROs to comply with Rule 19b–4(e) for single equity options. Similarly, the Commission did not intend to include traditional issuer warrants and traditional convertible securities in the definition of ''new derivative securities product.'' *Id.* at 70956.

[56] *See* Securities Exchange Act Release No. 15838 (May 18, 1979), 44 FR 30924 (May 29, 1979).

[57] *Id.*

a meaningful opportunity to comment before the effective date of the proposed rule change, even when member or participant fees are equivalent or are for items the SRO views as incidental or available from other sources. The changes to Rule 19b–4(f)(2) codify the Commission's previously stated position that a proposed fee change applicable to non-members and non-participants must be filed under section 19(b)(2) of the Act for full notice and comment.[58]

F. Technical Amendments to Regulation S–T

Regulation S–T [59] currently states that all Exchange Act filings, except for Form 25,[60] must be submitted in paper format. The Commission is adopting as proposed a technical amendment to Regulation S–T to reflect that the Form 19b–4 will be filed electronically.

III. Paperwork Reduction Act

Rule 19b–4 and Form 19b–4 contain ''collection of information requirements'' within the meaning of the Paperwork Reduction Act of 1995.[61] Accordingly, the Commission submitted the information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. OMB approved the new collection of information titled ''Rule 19b–4 Filings with Respect to Proposed Rule Changes by Self-Regulatory Organizations'' (OMB Control Nos. 3235–0045). OMB also approved the collection of information titled ''Rule 19b–4(e) under the Securities Exchange Act of 1934'' (OMB Control No. 3235–0504). Compliance with Rule 19b–4 and Form 19b–4 is mandatory.[62] An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Any information filed with the Commission will be made publicly available.

In the Proposing Release, the Commission solicited comments on the collection of information requirements.[63] NASD and CHX specifically addressed the Commission's burden estimates made in the PRA portion of the Proposing Release.[64] For example, NASD stated that the Commission underestimated the time it would take to complete an average rule filing.[65] Several commenters expressed concern that the implementation of the requirement to post proposed rule changes the next business day following filing the Form 19b–4 with the Commission and an updated version of their own rules on their Web site, updated the business day following Commission approval (or Commission notice of immediately effective filings) would be unduly burdensome.[66] Commenters stated similar concerns about the Web site posting of proposed amendments to NMS Plans and updated versions of NMS Plans. The Commission is making certain adjustments to its initial burden estimate, discussed below, taking into account these comments and concerns discussed by commenters.

A. Summary of Collection of Information

Rule 19b–4 currently requires an SRO seeking Commission approval for a proposed rule change to provide the information stipulated in Form 19b–4. Form 19b–4 currently calls for a description of: the terms of a proposed rule change; the proposed rule change's impact on various market segments; and the relationship between the proposed rule change and the SRO's existing rules. Form 19b–4 also currently calls for an accurate statement of the authority and statutory basis for, and purpose of, the proposed rule change; the proposal's impact on competition; and a summary of any written comments received by the SRO from SRO members or others. The amendments do not change the information currently required by Rule 19b–4 or Form 19b–4; the amendments only require that such information be submitted electronically.

The amendments to Rule 19b–4, however, require Web site posting of all proposed rule changes, and any amendments thereto. In addition, the amendments require SROs to post a current and complete set of their rules on their Web sites. Several SROs currently post a set of their own rules and selected proposed rule changes that they have submitted to the Commission. The amendments to Rule 11Aa3–2(b) similarly require Web site posting of proposed amendments and current and complete NMS Plans.

B. Use of Information

The information provided via External Account User Administration Form (''EAUF''), as required by the amendments to Form 19b–4, will be used by the Commission to verify the identity of the SRO individual and provide such individual access to the EFFS, the secure Commission Web site for filing of the Form 19b–4. The proposed rule change posted by SROs on their Web sites will be able to be viewed by the general public, SRO members, competing SROs, other market participants, and Commission staff. The information provided on the SRO Web sites will enable interested parties to more easily access SRO rules and rule filings, which will facilitate public comment on proposed SRO rules. Similarly, plan participants and other interested parties will be able to more easily access the text of NMS Plans and proposed amendments to such plans. In addition, the Commission believes that SRO staff, members, industry participants, and Commission staff will utilize the accurate and current version of SRO rules that are posted on the SRO Web site and current and accurate versions of NMS Plans that are posted on a public Web site to facilitate compliance with such rules and plans.

C. Respondents

There are currently 27 SROs and 7 NMS Plans subject to the collection of information. In fiscal year 2003, these SRO respondents filed 769 rule change proposals and 510 amendments to those proposed rule change proposals, for a total of 1,279 filings that are subject to the current collection of information. In 2003, 705 proposed rule changes ultimately became effective. In 2003, 12 amendments to NMS Plans were filed and became effective.

D. Total Annual Reporting and Recordkeeping Burden

(1) Background

The proposed amendments to Rule 19b–4 and Form 19b–4 are designed to modernize the SRO rule filing process and to make the process more efficient by conserving both SRO and Commission resources. As amended, Rule 19b–4 and Form 19b–4 require SROs to electronically file their proposed rule changes. Form 19b–4 is revised to accommodate electronic submission. The proposed amendments to Rule 19b–4 will also require the SROs

[58] *See* Securities Exchange Act Release No. 35123 (December 20, 1994), 59 FR 66692 (December 28, 1994). (''[A]s a matter of general policy, an SRO proposed rule change that establishes or changes a due, fee or other charge applicable to a non-member or non-participant must be filed under Section 19(b)(2) for full notice and comment.'' *Id.* at 66697; *see also* Securities Exchange Act Release No. 17258 (October 30, 1980), 45 FR 73906 (November 7, 1980) (footnote 40). The terms ''member'' and ''participant'' are defined in section 3(a)(3)(A) and section 3(a)(24), respectively, of the Act.

[59] 17 CFR 232.101.

[60] 17 CFR 249.25.

[61] 44 U.S.C. 3501 *et seq.*

[62] *See* 44 U.S.C. 3512(a).

[63] *See* Proposing Release, 69 FR 17864, 17870 (April 5, 2004).

[64] *See* NASD and CHX Letters.

[65] *See* NASD Letter, p. 9.

[66] *See* Amex, CBOE, CHX, ISE, NASD, Nasdaq, NFA, and OCC Letters.

to post on their Web sites any proposed rule changes, and amendments, submitted to the Commission within two business days of filing with the Commission. In addition, the amendments to Rule 19b–4 require SROs to post a current and complete set of their rules on their Web sites. The Commission is proposing similar Web site posting requirements for NMS Plans and proposed amendments thereto.

(2) Rule 19b–4 and Form 19b–4

The Commission does not expect that the amendments to Rule 19b–4 and Form 19b–4 relating to electronic filing of proposed rule changes and amendments will impose any material upfront costs on SROs. The technology for electronic filing will be web-based; therefore, the SROs should not have any material upfront technology expenditures for electronic filing because all SROs currently have access to the Internet.

However, each SRO will be required to obtain a digital ID from a certificating authority. The Commission staff estimates the upfront and annual cost of the ID to be $15 for each SRO.[67] One commenter observed that the Commission's estimate of two digital IDs per SRO underrepresented the actual number of such IDs that the commenter, an SRO, anticipates that it would have to purchase.[68] Instead, the commenter stated that it expects to obtain between five and ten digital IDs. The Commission notes that the commenter, the NASD, has historically filed more proposed rule changes pursuant to Rule 19b-4 than any other SRO. For example, the NASD filed 202 proposed rule changes in 2003, more than double the number of any other SRO. Although the Commission believes the NASD's expectations with respect to the number of authorized digital ID holders may be uniquely high, the Commission believes that it is appropriate to adjust the average number of IDs per SRO to five digital IDs per SRO. Accordingly, the annual cost of the ID for all SROs will be $2,025 (27 SROs × $15 × 5).

In addition, the Commission believes that SROs could incur some costs associated with training their personnel about the procedures for submitting proposed rule changes in electronic format and submission of the information via EFFS. However, the Commission believes that such costs will be one-time costs and relatively insubstantial since the SROs are already familiar with the information required in filing a proposed rule change with the Commission and will only be required to submit the same information electronically under this proposal. The Commission estimates that each SRO will spend approximately two hours training each staff member who will use the EFFS to submit the proposed rule changes electronically. Accordingly, the Commission estimates that the upfront cost of training SRO staff members to use EFFS will be 270 hours (27 SROs × 2 hours × 5 staff members).

An SRO proposed rule change is generally filed with the Commission after an SRO staff member has obtained approval by its Board. The time required to complete a filing varies significantly and is difficult to separate from the time an SRO spends in developing internally the proposed rule change. In the Proposing Release, the Commission stated that several SROs estimated 35 hours to be the amount of time required to complete an average rule filing using present Form 19b–4. This figure includes an estimated 25 hours of in-house legal work and ten hours of clerical work. The Commission also stated that the amount of time required to prepare amendments varies because some amendments are comprehensive, while other amendments are submitted in the form of a one-page letter. The Commission staff estimated that, under current rules, four hours is the amount of time required to prepare an amendment to a proposed rule change. This figure included an estimated two hours of in-house legal work and two hours of clerical work.

One commenter, NASD, noted that the Commission significantly underestimated the time it took NASD to complete an average filing or amendment.[69] The NASD subsequently stated that 20 of its 2003 proposed rule filings were complex and required 130 hours on the average to prepare.[70] Given this estimate, Commission staff also estimated that 13 of other SRO proposed rule filings in 2003 were similarly complex and required 130 hours on average to prepare. Commission staff also spoke with several other SROs subsequent to the Proposing Release. Although there was no consensus as to the typical amount of time expended in a proposed rule change, most of the other SROs, with which the Commission staff spoke, agreed that the Commission's 35 hour estimate provided in the Proposing Release was reasonable and accurately reflected their experiences. Accordingly, the Commission will use the same 35 hour estimate for preparation of all SRO proposed rule changes, except the Commission will use an estimate of 130 hours for the 33 complex proposed rules.

The Commission expects that an electronic form will reduce by one hour the amount of SRO clerical time required to prepare the average filing and amendment. Following the effectiveness of the proposed electronic filing, the Commission staff estimates that 34 hours is the amount of time that will be required to complete an average rule filing, 129 hours is the amount of time required to complete a complex rule filing, and three hours is the amount of time required to complete an average amendment. These figures reflect the one-hour in savings in clerical hours that will result from the use of an electronic form for both the rule filings and the amendments.[71] The Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the proposed amendments will be 30,811 hours (736 rule change proposals × 34 hours + 33 complex rule proposal x 129 hours + 510 amendments × 3 hours). Thus, on average, the reporting burden for filing proposed rule changes is 38 hours, while the reporting burden for filing amendments is 3 hours.

(3) Posting of SRO Rules and Proposed Rule Changes on SRO Web Sites.

(a) SRO Rule Text

The Commission noted in the Proposing Release that most of the SROs currently post some or all of the text of their rules on their Web sites. Some SROs currently rely on CCH, Incorporated (''CCH'') to maintain a current version of their rules; others maintain the rules themselves on their Web site; while the remaining SROs do not provide their rules on their Web site. One commenter that currently does not post its rules on its Web site observed that, after discussing the issue with CCH, CCH might offer web-hosting arrangements for an annual cost of approximately $45,000.[72] The commenter anticipated that doing the

[67] *See http://www.verisign.com/support/tlc/per/clientHelp/help/index.htm* for information on the digital ID that the Commission will employ.

[68] *See* NASD Letter at 6.

[69] *See* NASD Letter p. 6.

[70] Telephone conference between Stephanie Dumont, Vice President and Associate General Counsel, NASD, with Florence Harmon, Senior Special Counsel, Commission, on September 16, 2004.

[71] The SROs' one-hour time savings would result from the elimination of tasks such as making multiple copies of the Form 19b–4 and amendments, arranging for couriers, and making follow-up telephone calls to ensure Commission receipt.

[72] *See* CHX Letter, page 4.

work internally would be more cost-effective.

In the Proposing Release, the Commission staff estimated that an SRO, on average, would take two hours to update the rules published on the SRO's Web site when the SRO's proposed rule becomes effective. One commenter stated that it believed that the Commission's two-hour estimate did not accurately reflect the amount of time necessary for an SRO to incorporate recently approved or effective-upon-filing rule changes into its online manual, explaining that the process of reviewing the final rule text and communication with the publishing vendor can take ten or more business days.[73] Several other commenters implied that their Web site update of their SRO rules typically takes more than two hours by explaining that the process occurs over a series of days following Commission approval of a recent proposed rule change.[74]

The Commission notes that SROs need not use CCH to maintain a correct version of their rules on their Web sites. For example, ISE posts its rules on its Web site in the form of a PDF file, which the ISE can easily change when amending its rules. In response to the commenters' concerns regarding the Commission's two-hour estimate of the time required to update an SRO's Web site after the proposed rule change becomes effective, the Commission is raising its estimate from two hours to four hours as the amount of time necessary to update an SRO-maintained document containing the SRO's rules and post it on the SRO's Web site. Therefore, each time the Commission approves an SRO rule change or notices an effective-upon-filing rule change (total of 705 rules in fiscal year 2003), the Commission staff estimates that the reporting burden for updating the posted SRO rules on the SRO Web site will be 2,820 hours (705 SRO Commission approved or non-abrogated rules × 4 hours).

The Commission notes that only 6 of the 27 SROs do not currently post their rules on their Web site.[75] In addition, the Commission notes that SROs are required by sections 6(b)(1),[76] 15A(b)(2),[77] 15B,[78] and 17A[79] of the Act to enforce compliance with their rules. The Commission believes that an SRO must have a complete, updated version of its rules in order to enforce them. The Commission does not believe the SROs that currently do not post their rules on their Web sites will incur material costs in simply posting this information on their Web sites. The Commission staff estimates that four hours will be the amount of time required to post an SRO's current rules on its Web site. Accordingly, the Commission staff estimates that the total reporting burden for initially posting current rules on the SROs' Web sites will be 24 hours (6 SROs that do not already post their rules x 4 hours) because each SRO should have a current version of its rules available internally for posting on its Web site.

(b) *Proposed Rule Changes*

In the Proposing Release, the Commission stated that it believed that the SROs could incur nominal costs in being required to post on their Web site their proposed rules, and amendments thereto, no later than the next business day after filing with the Commission. In the Proposing Release, the Commission staff estimated that 30 minutes is the amount of time that will be required to post a proposed rule on an SRO's Web site and that 30 minutes is the amount of time that will be required to post an amendment on an SRO's Web site. The Commission received one comment on the subject of the Commission's 30-minute estimate.[80] The commenter, the NASD, suggested that the estimate was too low,[81] given the fact that the NASD's Communication Department must, each time they post a proposed rule change to their Web site, convert the file to PDF format, copy it to a development server to be processed, link it to the NASD's Rule Filing web page, return the PDF file to the department within the NASD that is responsible for the filing to ensure that no errors occurred in the conversion to the PDF format, and then wait for it to be returned so that the Department can activate the web link. Although the Commission believes that most of the procedures that the NASD describes are mechanical functions that should not take as long as the NASD estimates, the Commission has no other comments or data from which to draw to substantiate its belief. Accordingly, the Commission is raising its estimate to four hours for the amount of time it takes for an SRO to post rule change proposals and amendments on its Web site. The Commission estimates that the reporting burden for posting rule change proposals and amendments on the SRO Web sites will be 5,116 hours (769 rule change proposals[82] × 4 hours + 510 amendments × 4 hours).

(4) Web Site Posting of NMS Plans and Proposed Amendments

The Commission has decided to adopt a provision that will require the participants in any effective NMS Plan to post on a public Web site to be designated by the plan participants a current version of the plans, as well as proposed amendments to these plans, within two business days after effectiveness of such plan or filing of any proposed amendments. Each plan participant will be required to provide a link to the designated Web site with the current version of the plan. The Commission is delaying implementation of these requirements, to allow plan participants to make arrangements for compliance with these provisions.

Commission staff estimates that an SRO, on average, will take four hours to update its Web site postings of the SROs' rules. One of the participants of each of the seven NMS Plans would update a public Web site posting of their plans when the Commission approves plan amendments. In fiscal year 2003, the participants in the seven NMS Plans filed 12 amendments to the plans. Therefore, the Commission estimates that the reporting burden for updating NMS Plans on the designated NMS Plan Web site will be 48 hours (12 NMS Plan amendments per year × 4 hours).

The NMS Plan participants will also have to post proposed amendments to NMS Plans on a public Web site. Consistent with its estimate for SRO Web site posting of proposed rules, the Commission estimates four hours as the amount of time for NMS Plan participants to post proposed amendments on a designated Web site. Therefore, the Commission estimates that the reporting burden for posting proposed rules will be 48 hours (12 amendments × 4 hours).

The Commission notes that only one of the seven NMS Plans is currently

[73] NASD Letter, page 9.

[74] Amex Letter 1–2, CBOE 3–4, CHX 3–4, ISE 2, NFA 3, OCC 2–3, and Nasdaq 2.

[75] The National Stock Exchange, Inc. (f/k/a Cincinnati Stock Exchange, Inc.), Chicago Stock Exchange, Inc., Boston Stock Exchange Clearing Corporation, INET Futures Exchange, LLC, and Pacific Clearing Corporation do not appear to post their rules on their Web sites. The New York Stock Exchange does not have its rules on its Web site; however, the New York Stock Exchange does post its Listed Company Manual on its Web site.

[76] 15 U.S.C. 78f(b)(1).

[77] 15 U.S.C. 78*o*–3(b)(2).

[78] 15 U.S.C. 78*o*–4.

[79] 15 U.S.C. 78q–1.

[80] *See* NASD Letter, p. 8.

[81] The NASD suggested that the estimate should have been four hours instead of 0.5 hours.

[82] This number includes SRO proposed rule changes that the Commission notices pursuant to section 19(b)(3)(A) of the Act, which are effective-upon-filing, and SRO proposed rule changes that the Commission notices and accelerates approval in the same document pursuant to section 19(b)(2) of the Act, along with notices issued by the Commission pursuant to section 19(b)(2) of the Act.

posted on a public Web site.[83] As with the posting of SRO rules, the Commission's staff estimates that one hour will be the amount of time required to post the NMS Plan on the designated Web site. NMS Plan participants should know the current version of their effective NMS Plan because Rule 11Aa3–2(b)(1) requires filing of the plan and any amendments with the Commission. In addition, the Commission notes that SRO plan participants are required to enforce compliance with the terms of the plans by their members. Rule 11Aa3–2(d) states that each SRO shall comply with the terms of any effective NMS Plan of which it is a sponsor or a participant. Each SRO also shall, absent reasonable justification or excuse, enforce compliance with any such plan by its members and persons associated with its members. The Commission believes that NMS Plan participants must have a complete, updated version of their plans in order to enforce them. The Commission does not believe the SRO participants in NMS Plans will incur material costs in simply posting this information on a designated Web site. The Commission staff estimates that one hour will be the amount of time required to post the NMS Plan on a public Web site. Accordingly, the Commission staff estimates that the total reporting burden for initially posting current NMS Plans on public Web sites will be 24 hours (6 NMS Plans × 4 hours) because each participant in an NMS Plan should have a current version of the plan available for posting on a public Web site.

Thus, the Commission staff estimates that the total annual reporting burden under the proposed rule will be 38,891 hours (30,811 hours for filing proposed rule changes and amendments + 5,116 hours for posting proposed rule changes and amendments on the SROs' Web sites + 24 hours for initial posting of accurate SRO rule text on SRO Web sites + 2,820 hours for updating SRO final rules on SRO Web sites + 48 hours for updating NMS Plans on NMS Plan Web sites + 48 hours for posting proposed amendments on NMS Plan Web sites + 24 hours for initial Web site posting of current NMS Plans).

E. Retention Period of Recordkeeping Requirements

The SROs will be required to retain records of the collection of information (the manually signed signature page of the Form 19b–4) for a period of not less than five years, the first two years in an easily accessible place, according to the current recordkeeping requirements set forth in Rule 17a–1 of the Act.[84] The SRO is required to retain proposed rule changes, and any amendments, on its Web site until the proposal is either approved or disapproved. The SRO is also required at all times to maintain an accurate and up-to-date copy of all of its rules on its Web site. NMS Plan participants are subject to similar requirements for Web site posting of NMS Plans and proposed amendments to such plans.

Several commenters suggested that the proposed requirement for the SROs to maintain the manually signed signature page of the Form 19b–4 for at least five years, the first two of which in an easily accessible place, is unnecessary and inconsistent with administrative efficiency.[85] The Commission believes that maintaining the physical signature page will enable interested parties, including the Commission, to access a record of the authority under which a particular proposed rule change was filed. The Commission notes that the retention of the physical signature page is an existing maintenance requirement for SROs. The Commission further notes that a similar manual signature retention requirement exists for EDGAR filers.[86]

F. Collection of Information is Mandatory

Any collection of information pursuant to the proposed amendments to Rule 19b–4 and Form 19b–4 to require electronic filing with the Commission of SRO proposed rule changes is a mandatory collection of information. Any collection of information pursuant to the proposed amendments to require Web site posting by the SROs of their proposed and final rules, and by NMS Plan participants of the plans and proposed amendments, is also a mandatory collection of information.

G. Responses to Collection of Information Will Not Be Kept Confidential

Other than information for which an SRO requests confidential treatment and which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, the collection of information pursuant to the proposed amendments to Rule 19b–4 and Form 19b–4 and Rule 11Aa3–2(b) under the Act is not confidential and is publicly available.[87] The Commission notes that the posting of proposed and final rules on the SRO Web site (or the posting of NMS Plans and proposed amendments on a public Web site) is not information filed with the Commission but is information that is being made public by the SROs.

IV. Consideration of Costs and Benefits

In the Proposing Release, the Commission identified certain costs and benefits associated with the proposed amendments to Rule 19b–4 and Form 19b–4 and requested comments on the Commission's preliminary analysis, as well as any costs and benefits not previously identified. Specifically, the Commission requested commenters to address whether the proposed amendments requiring electronic filing of SRO proposed rule changes, posting proposed rule changes on SRO Web sites, and posting and maintaining current and complete sets of rules on SRO Web sites would generate the anticipated benefits or impose any unanticipated costs on SROs and the public. The Commission received nine comments relating to the costs and benefits of the proposed amendments.[88] The Commission also engaged in informal discussions with a number of SROs following the publication of the amendments in the **Federal Register**. After a careful consideration of the comments received and the discussions held with SROs, the Commission believes that the benefits of the amendments justify the costs that they will impose.

A. Benefits

The proposed amendments to Rule 19b–4 and Form 19b–4 are designed to modernize the filing, receipt, and processing of SRO proposed rule changes by making the SRO rule filing process more transparent, efficient, and cost effective. For instance, the Commission believes that electronic filings will expedite the submission of proposed rule changes by eliminating paper delivery and also reduce SROs' clerical costs. Specifically, the Commission staff estimates that it currently takes an SRO 10 hours of

[83] The Options Linkage Authority currently posts an updated version of the Options Linkage Plan on the Options Clearing Corporation's Web site at *http://www.optionsclearing.com.*

[84] SROs may also destroy or otherwise dispose of such records at the end of five years according to Rule 17a–6 of the Act. 17 CFR 240.17a–6.

[85] *See* NASD Letter, p. 3, CHX Letter, p. 2, and OCC Letter, p. 3.

[86] 17 CFR 232.302(b).

[87] However, consistent with applicable law, proposed SRO rule changes containing proprietary or otherwise sensitive information may be kept confidential and nonpublic, including requests submitted pursuant to the protection afforded for such information in the Freedom of Information Act. 5 U.S.C. 552.

[88] *See* NASD, CHX, OCC, Amex, CBOE, CHX, ISE, NFA, and Nasdaq Letters.

clerical time to prepare an average rule filing and 2 hours of clerical time to prepare an amendment to an average rule filing. The Commission staff expects that electronic filings will reduce by 1 hour the clerical time necessary for such rule filings and amendments, saving SROs 1,279 hours of clerical time, annually (1 hour × 769 proposed rule filings + 1 hour × 510 amendments). Furthermore, SROs currently pay the delivery cost of submitting multiple paper copies of proposed rule changes to the Commission. The Commission staff estimates that electronic filing will save SROs $19,185, annually, in delivery cost ($15 × 769 proposed rule filings + $15 × 510 amendments). The Commission believes that certain SROs will also save the expense of monitoring the Commission's Public Reference Room for competitors' proposed rule change, which one SRO estimated at $12,000 per year.[89] Accordingly, the Commission staff estimates that the equity and options exchanges incur such costs and will save approximately $108,000 annually (8 SROs × $96,000) as a result of obviating the need for such monitoring.

The Commission also expects that the amendments to Rule 19b–4 and Form 19b–4 will help conserve Commission resources. With electronic filings, the Commission staff will no longer manually process the internal receipt and distribution of SRO rule filings. The Commission staff estimates that electronic filings would save the Commission 1 hour of clerical time for each proposed rule change and amendment. Annually, this will be a saving of 1,279 hours of the Commission's clerical time (1 hour × 769 proposed rule filings + 1 hour × 510 amendments). Moreover, the Commission believes that the electronic filing system provides certainty to SROs that proposed rule changes have been received because SROs will be able to confirm on EFFS that rule filings have been received. Lastly, the Commission anticipates that integrating the electronic filing technology with SRTS will enhance the Commission's ability to monitor and process rule filings by automatically capturing pertinent information about the rule changes in SRTS.

The Commission believes that there are certain benefits to requiring SROs to post proposed rule changes on SRO Web sites no later than two business days after filing with the Commission. For example, online accessibility of proposed SRO rule changes will enhance the transparency of the rule filing process. Also, the posting requirement will facilitate interested parties' ability to comment on proposed rule changes. Further, the Commission anticipates that the posting requirement will reduce the burden placed on SROs and the Commission of having to provide information about rule filings to interested parties. The Commission also believes that posting proposed rule changes will save SRO resources currently being used to monitor the Commission's Public Reference Room for competitors' filings.[90]

The Commission believes that there are a number of benefits to requiring SROs to post and maintain a current and complete set of rules on their Web sites. The Commission believes that this requirement will facilitate prompt availability of SRO rule texts following the approval of proposed rule changes pursuant to Rule 19b–4. The Commission also believes that the requirement will enhance compliance with SRO rules by eliminating confusion among interested parties regarding the accuracy of SRO rule texts. Finally, the Commission anticipates that online availability of a current and complete set of SRO rule texts should promote competition among SROs by providing quick and cost-efficient access to competitors' rules.

The Commission also believes that there are a number of benefits to requiring the posting on a public Web site designated by the participants of the current and complete text of NMS Plans and any proposed amendments to such plans. The Commission believes that this requirement will facilitate prompt availability of NMS Plans, or any proposed amendment to the plans. The Commission also believes that the requirement will enhance compliance with NMS Plans by eliminating confusion among plan participants regarding the requirements of the plans.

B. Costs

The Commission staff estimates that there will be a total annual paperwork reporting burden of 38,891 hours under the amended Rule 19b–4 and Form 19b–4. As discussed in Section IV (A), supra, the Commission believes that the amendments will, on aggregate, reduce costs related to the submission of SRO proposed rule changes. Because all SROs currently have access to the Internet, the Commission anticipates that SROs will not have significant technology expenditures for electronic filings. Furthermore, costs associated with paper filings will not be incurred with electronic filings. Currently, most information submitted by SROs is currently submitted to the Commission in multiple paper copies. The Commission believes that the amendments to Rule 19b–4 and Form 19b–4, by requiring SROs to submit proposed rule changes electronically, will actually reduce SRO costs.

The Commission, however, anticipates that SROs will incur some cost in training their personnel to submit EAUF and proposed rule changes electronically. Specifically, the Commission staff estimates that the reporting burden for filing rule change proposals and amendments with the Commission under the proposed amendments will be 30,811 hours (736 rule change proposals × 34 hours + 33 complex rule proposals × 129 hours + 510 amendments × 3 hours). In addition, the Commission staff estimates that the upfront burden of training SRO staff members for these purposes will be 270 hours (27 SROs × 2 hours × 5 staff members).

The Commission also expects that SROs will incur some costs pursuant to the signature requirements of the amendments. For example, SROs will incur some minimal costs ($15 per ID per year) associated with purchasing a digital ID for each duly authorized electronic signatory. In the Proposing Release, the Commission staff estimated that each SRO will purchase 2 digital IDs. However, one commenter asserted that it would likely seek 5 to 10 digital IDs for its staff.[91] No other commenters sought to dispute the Commission's estimate on the digital IDs required by each SRO. Due in part to the large size of the commenter's staff and the number of its annual proposed rule changes and amendments, the Commission acknowledges this commenter's need for more than 2 digital IDs but believes that the commenter's estimate is nonetheless unusually high. Nevertheless, the Commission believes that it is appropriate to adjust the average number of IDs per SRO to 5 digital IDs. Accordingly, the annual cost of the ID for all SROs will be $2,025 (27 SROs × $15 × 5).

Under the amendments, SROs are required to print the Form 19b–4 signature block, sign proposed rule changes, and retain the manual signature for not less than five years.

[89] Telephone conference between Katherine Simmons, Vice President and Associate General Counsel, International Stock Exchange, with Florence Harmon, Senior Special Counsel, on September 22, 2004.

[90] One SRO estimated its savings from not having to monitor the Commission's Public Reference Room to be over $12,000 per year. *Id.*

[91] *See* NASD Letter, p. 6.

The Commission anticipates that there will be no additional cost associated with such recordkeeping, as SROs are already required to retain the Form 19b–4 for not less than five years. Accordingly, the Commission believes that this requirement would not impose any new burden on SROs.

The Commission believes that the requirement that SROs post proposed rule changes on public Web sites will impose some but not substantial costs on most SROs. In the Proposing Release, the Commission staff estimated that SROs will need 30 minutes to post a proposed rule or an amendment on their Web sites. The Commission, however, has received one comment asserting that accurately processing and posting a proposed rule on its Web site requires more time than estimated.[92] The Commission now believes that it takes an additional 3.5 hours to ensure that the proposed rule is accurately posted. Accordingly, the Commission estimates that the burden for posting rule change proposals and amendments on SRO Web sites would be 5,116 hours (4 hours × 769 proposed rule changes + 4 hours × 510 amendments).

The same commenter observed that staff resources are necessary to properly post proposed rule changes but did not quantify the cost. The commenter also noted, however, that the benefits of requiring SROs to post their rule filings on their public Web sites far outweigh the related costs.

The Commission observed in the Proposing Release that most SROs currently post some, if not all, of their rule text on their respective Web sites or rely on CCH to maintain such information. SROs may incur a cost in expediting prompt publication of rule changes on CCH or maintaining current versions on SRO Web sites. For those who do not currently maintain their rules online, as one commenter observed, the annual cost could be as high as $45,000.[93] The Commission, however, notes that SROs are required by sections 6(b)(1),[94] 15A(b)(2),[95] 15B,[96] and 17A,[97] of the Act to enforce compliance with their respective rules. Therefore, at all times, each SRO should maintain a current and complete set of its rules to facilitate compliance with this requirement. Accordingly, the Commission does not believe that SROs would incur substantial costs in simply posting this information on their Web sites.

In the Proposing Release, the Commission staff also estimated that an SRO will take an average of 2 hours to update its Web site to accurately reflect an approved or effective-upon-filing rule change. One commenter, however, has asserted that this estimate does not accurately reflect the amount of time necessary for an SRO to incorporate such change.[98] The commenter observed that ensuring the accuracy of the final rule text and communicating the changes to the publishing vendor could take more than ten business days.[99] Other commenters have also suggested that it takes more than 2 hours to process the proposed rule changes without specifying a more accurate estimate.[100] Accordingly, the Commission is raising its estimate from 2 hours to 4 hours, consistent with the estimate for Web site posting of proposed rule changes and their amendments. Therefore, the Commission staff estimates that the burden for updating the posted SRO rules on the SRO Web sites will be 2,820 hours (705 SRO Commission approved or non-abrogated rules × 4 hours).

The Commission is also adopting the amendments that require NMS Plan participants to post on a public Web site a current version of the plans, as well as proposed amendments to these plans, within the same time periods for SROs. Commenters generally supported making NMS Plans, as well as proposed amendments, available on a public Web site. Some commenters, however, were concerned with the next business day timeframe for updating on-line rules and posting amendments; which the Commission has revised to a two business day posting requirement for both SROs and NMS plan participants.

NMS Plan participants may incur a cost in prompt publication of NMS Plans. As with the posting of SRO rules, the Commissions staff estimates that four hours will be the amount of time required to post the NMS Plan on the designated Web site. NMS Plan participants should know the current version of their effective NMS Plan because Rule 11Aa3–2(b)(1) requires filing of the plan and any proposed amendments with the Commission. In addition, the Commission notes that SRO plan participants are required to enforce compliance with the terms of the plans by their members pursuant to Rule 11Aa3–2(d). The Commission believes that NMS Plan participants must have a complete, updated version of their plans in order to enforce them.[101] Accordingly, the Commission does not believe that NMS Plan participants would incur substantial costs in simply posting this information on a public Web site and estimates the burden hours for this requirement to be 24 hours (6 NMS Plans × 4 hour).

The participants in the seven NMS Plans will also be required to update NMS Plans within two business days after notification of Commission approval of proposed amendments. Consistent with the timeframe for SROs, the Commission estimates that it will take four hours for participants to update NMS Plans on the designated NMS Plan Web site and that the burden hours would be 48 hours (12 NMS Plans × 4 hours). NMS Plan participants will also have to post proposed amendments to NMS Plans on a public Web site. As with its estimate for SRO Web site posting of proposed rules, the Commission estimates four hours as the amount of time for NMS Plan participants to post proposed amendments on a designated Web site and estimates the burden hours to be 48 hours (12 amendments × 4 hours). The Commission does not believe that NMS Plan participants will incur material costs for posting this information on a public Web site.

V. Consideration of the Burden on Competition, Promotion of Efficiency, and Capital Formation

Section 3(f) of the Act[102] requires the Commission, whenever it engages in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. In addition, section 23(a)(2) of the Act[103] requires the Commission, when promulgating rules under the Act, to consider the impact any such rules would have on competition. Section 23(a)(2) further provides that the Commission may not adopt a rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

In the Proposing Release, the Commission considered how the proposed amendments would impact competition among SROs, and whether

[92] *See* NASD Letter, p. 8. The commenter suggested that the estimate should be 4 instead of 0.5 hours.

[93] *See* CHX Letter, p. 4.

[94] 15 U.S.C. 78f(b)(1).

[95] 15 U.S.C. 78*o*–3(b)(2).

[96] 15 U.S.C. 78*o*–4.

[97] 15 U.S.C. 78q–1.

[98] *See* NASD Letter, pp. 8–9.

[99] *Id.*

[100] *See* Amex Letter, pp. 1–2, CBOE Letter, pp. 3–4, CHX Letter, pp. 3–4, ISE Letter, p. 2, NFA Letter, p. 3, OCC Letter, pp. 2–3, and Nasdaq Letter, p. 2.

[101] The Options Linkage Authority currently posts an updated version of the Options Linkage Plan on the Options Clearing Corporation's Web site at *http://www.optionsclearing.com.*

[102] 15 U.S.C. 78c(f).

[103] 15 U.S.C. 78w(a)(2).

it would promote efficiency and capital formation. The Commission solicited comment on whether, if adopted, the proposed amendments would impose a burden on competition. The Commission also requested comment on whether, if adopted, the proposed amendments would promote efficiency, competition and capital formation. The Commission requested commenters to provide empirical data to support for their views.

The proposed amendments to Rule 19b–4 and Form 19b–4 are intended to modernize the receipt and review of SRO proposed rule changes and to make the SRO rule filing process more efficient by conserving both SRO and Commission resources. They also are intended to improve the transparency of the SRO rule filing process and facilitate access to current and complete sets of SRO rules. The amendments to Rule 11Aa3–2(b), regarding Web site posting of NMS Plans and proposed amendments thereto, seek to achieve similar goals for plan participants and Commission staff. The Commission believes that the electronic rule filing process will enhance the efficiency of the filing of proposed rule changes under Rule 19b–4. The Commission further believes that the Web site posting of SRO rule filings will promote competition among SROs because they will be able to determine the proposed rules of their competitors more easily. Because the proposal does not impact a significant number of businesses or investors, the Commission believes the proposal will have minimal impact on capital formation.

The Commission believes that the proposed amendments to Rule 19b–4 and Form 19b–4 will significantly increase the efficiency of the process of filing proposed rule changes pursuant to Rule 19b–4. As a result of the new requirement to filing proposed rule changes electronically, the Commission anticipates that SROs will save time and resources currently devoted to corresponding under a paper-based system. As discussed in further detailed in Section IV (''Consideration of Costs and Benefits''), the Commission anticipates that SROs will save staff time in the preparation and transmission of Form 19b–4 as well as associated preparation and delivery costs. Additionally, the proposed amendments to Rule 11Aa3–2 will increase efficiency by permitting NMS Plan participants to easily locate current plan text for compliance purposes.

The Commission received a number of comments on the issue of the effect of the proposal on the efficiency of the SROs' rule filing process. One commenter stated ''allowing pdf attachments would maximize the efficiency of the filing process for both the SRO and the Commission.'' [104] The Commission notes that the electronic Form 19b–4 permits that the majority of Exhibits be submitted as PDF attachments. Further, the Commission believes requiring the documents contained in Exhibits 1, 4, and 5 to be in Word format will facilitate the ability of the Commission to format 19b–4 public notices and approval orders for the **Federal Register**.

Another commenter stated that they believed that the requirement for the SROs to post their pending proposed rule changes could generate confusion because ''many times amendments to the submission are filed, before a rule change proposal is noticed in the **Federal Register** for public comment.'' [105] The commenter reasoned that a ''party would risk wasting resources commenting on a proposal that might be significantly changed before it is formally made available for public comment.'' [106] The Commission believes that the requirement to post proposed rule changes on SRO Web sites increases transparency and only minimally affects the efficiency of the commenting process. The Commission notes that the notice and comment process will continue to be triggered by publication in the **Federal Register**. If commenters do not want to waste resources commenting on a proposal that might be significantly changed before it is formally noticed for comment, then the Commission would urge commenters to wait until the Commission solicits public comment when the proposed rule change is noticed in the **Federal Register**. The proposed amendments will merely allow commenters to learn of the filing of a proposed rule change at an earlier point.

Finally, one commenter believes that informing ''SROs of its approval of rule changes or its notice of effective-upon-filing rules' on the Web site would be ''inefficient to administer'' because ''(t)his would require SROs to constantly monitor the electronic filing system to ascertain whether a filing had been approved.'' [107] The commenter requests the Commission to develop ''a more direct method (*e.g.*, e-mail or facsimile transmission) of advising SROs that a rule change has been approved in order to better achieve its goal of increasing the efficiency and transparency of the rule change process.'' [108]

The Commission agrees with this commenter and will develop an affirmative electronic notification to SROs that a proposed rule change has been approved or an effective-upon-filing rule change has been noticed by the Commission. As described in further detail in Section II(C), *supra,* the Commission is developing an electronic notification via an EFFS screen that multiple users at the SRO can view to determine such information. With such electronic notification in place, the Commission believes that the proposed amendments will provide an efficient and prompt procedure for it to notify SROs of approval of a proposed rule change or notice of an effective-upon-filing rule.

VI. Regulatory Flexibility Act

Pursuant to Section 605(b) of the Regulatory Flexibility Act,[109] the Commission certified that amending Rule 19b–4 and Form 19b–4 will not have a significant economic impact on a substantial number of small businesses. This certification, including the reasons supporting the certification, was set forth in the Proposing Release.[110] The Commission received no comments on this certification.

VII. Statutory Basis and Text of Proposed Amendments

The amendments to Regulation S–T under the Securities Act of 1933, Rule 19b–4 and Form 19b–4 under the Act are being proposed pursuant to 15 U.S.C. 78a *et seq.*, particularly sections 3, 6, 11A, 15A, 15B, 17A, 19(b), 23(a) and 36(a) of the Act.

List of Subjects in 17 CFR Parts 232, 240, and 249

Reporting and recordkeeping requirements, Securities.

■ In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77sss(a), 78c(b), 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79t(a), 80a–8, 80a–29, 80a–30 and 80a–37.

* * * * *

■ 2. Section 232.101 is amended by:

[104] *See* NFA Letter, p. 2.

[105] *See* CHX Letter, p. 2.

[106] *See* CHX Letter, p. 2.

[107] *See* CHX Letter, p. 2.

[108] *See* CHX Letter, p. 2.

[109] 5 U.S.C. 605(b).

[110] 69 FR 17864, 17871–72.

■ a. Removing the word ''and'' at the end of paragraph (a)(1)(vii);
■ b. Removing the period at the end of paragraph (a)(1)(viii) and in its place adding a semicolon;
■ c. Removing the period at the end of paragraph (a)(1)(ix) and in its place adding ''; and'';
■ d. Adding paragraph (a)(1)((x); and
■ e. Revising paragraph (c)(9).

The addition and revision read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(x) Form 19b–4 (§ 249.819 of this chapter).

* * * * *

(c) * * *

(9) Exchange Act filings submitted to the Division of Market Regulation, except for Form 19b–4 (§ 249.819 of this chapter);

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 3. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Section 240.11Aa3–2 is amended by removing the authority citation following § 240.11Aa3–2 and adding paragraph (b)(8) to read as follows:

§ 240.11Aa3–2 Filing and amendment of national market system plans.

* * * * *

(b) * * *

(8)(i) A participant in an effective national market system plan shall ensure that a current and complete version of the plan is posted on a plan Web site or on a Web site designated by plan participants within two business days after notification by the Commission of effectiveness of the plan. Each participant in an effective national market system plan shall ensure that such Web site is updated to reflect amendments to such plan within two business days after the plan participants have been notified by the Commission of its approval of a proposed amendment pursuant to paragraph (c) of this section. If the amendment is not effective for a certain period, the plan participants shall clearly indicate the effective date in the relevant text of the plan. Each plan participant also shall provide a link on its own Web site to the Web site with the current version of the plan.

(ii) The plan participants shall ensure that any proposed amendments filed pursuant to paragraph (b) of this section are posted on a plan Web site or a designated Web site no later than two business days after the filing of the proposed amendments with the Commission. The plan participants shall maintain any proposed amendment to the plan on a plan Web site or a designated Web site until the Commission approves the plan amendment and the plan participants update the Web site to reflect such amendment or the plan participants withdraw the proposed amendment. If the plan participants withdraw proposed amendments, the plan participants shall remove such amendments from the plan Web site or designated Web site within two business days of withdrawal. Each plan participant shall provide a link to the Web site with the current version of the plan.

* * * * *

■ 5. Section 240.19b–4 is amended by:
■ a. Adding a preliminary note;
■ b. Revising paragraph (a), the introductory text of paragraph (e), and paragraph (f)(2); and
■ c. Adding paragraphs (j), (k), (l), and (m).

The additions and revisions read as follows.

§ 240.19b–4 Filings with respect to proposed rule changes by self-regulatory organizations.

Preliminary Note: A self-regulatory organization also must refer to Form 19b–4 (17 CFR 249.819) for further requirements with respect to the filing of proposed rule changes.

(a) Filings with respect to proposed rule changes by a self-regulatory organization, except filings with respect to proposed rules changes by self-regulatory organizations submitted pursuant to section 19(b)(7) of the Act (15 U.S.C. 78s(b)(7)), shall be made electronically on Form 19b–4 (17 CFR 249.819).

* * * * *

(e) For the purposes of this paragraph, *new derivative securities product* means any type of option, warrant, hybrid securities product or any other security, other than a single equity option or a security futures product, whose value is based, in whole or in part, upon the performance of, or interest in, an underlying instrument.

* * * * *

(f) * * *

(2) Establishing or changing a due, fee, or other charge applicable only to a member;

* * * * *

(j) Filings with respect to proposed rule changes by a self-regulatory organization submitted on Form 19b–4 (17 CFR 249.819) electronically shall contain an electronic signature. For the purposes of this section, the term *electronic signature* means an electronic entry in the form of a magnetic impulse or other form of computer data compilation of any letter or series of letters or characters comprising a name, executed, adopted or authorized as a signature. The signatory to an electronically submitted rule filing shall manually sign a signature page or other document, in the manner prescribed by Form 19b–4, authenticating, acknowledging or otherwise adopting his or her signature that appears in typed form within the electronic filing. Such document shall be executed before or at the time the rule filing is electronically submitted and shall be retained by the filer in accordance with § 240.17a–1.

(k) If the conditions of this section and Form 19b–4 (17 CFR 249.819) are otherwise satisfied, all filings submitted electronically on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, on a business day, shall be deemed filed on that business day, and all filings submitted after 5:30 p.m. Eastern Standard Time or Eastern Daylight Saving Time, whichever is currently in effect, shall be deemed filed on the next business day.

(l) The self-regulatory organization shall post the proposed rule change, and any amendments thereto, on its Web site within two business days after the filing of the proposed rule change, and any amendments thereto, with the Commission. Such proposed rule change and amendments shall be maintained on the self-regulatory organization's Web site until:

(1) In the case of a proposed rule change filed under section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)), the Commission approves the proposed rule change or the self-regulatory organization withdraws the proposed rule change, or any amendments, or is notified that the proposed rule change is not properly filed; or

(2) In the case of a proposed rule change filed under section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)), or any

amendment thereto, 60 days after the date of filing, unless the self-regulatory organization withdraws the proposed rule change or is notified that the proposed rule change is not properly filed; and

(3) In the case of proposed rule changes approved by the Commission pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or noticed by the Commission pursuant to section 19(b)(3)(A) of the Act (15 U.S.C. 78s(b)(3)(A)), the self-regulatory organization updates its rule text as required by paragraph (m) of this section; and

(4) In the case of a proposed rule change, or any amendment thereto, that has been withdrawn or not properly filed, the self-regulatory organization shall remove the proposed rule change, or any amendment, from its Web site within two business days of notification of improper filing or withdrawal by the SRO of the proposed rule change.

(m) Each self-regulatory organization shall post and maintain a current and complete version of its rules on its Web site. The self-regulatory organization shall update its Web site to reflect rule changes within two business days after it has been notified of the Commission's approval of a proposed rule change filed pursuant to section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)) or of the Commission's notice of a proposed rule change filed pursuant to section 19(b)(3)(A) or section 19(b)(7) of the Act (15 U.S.C. 78s(b)(3)(A) or 15 U.S.C. 78s(b)(7)). If a rule change is not effective for a certain period, the self-regulatory organization shall clearly indicate the effective date in the relevant rule text.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 6. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 7. Section 249.819 and Form 19b–4 are revised to read as follows:

[**Note:** Form 19b–4 is attached as Appendix A to this document.]

§ 249.819 Form 19b–4, for electronic filing with respect to proposed rule changes by all self-regulatory organizations.

This form shall be used by all self-regulatory organizations, as defined in section 3(a)(26) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(26)), to file electronically proposed rule changes with the Commission pursuant to section 19(b) of the Act and § 240.19b–4 of this chapter.

Dated: October 4, 2004.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

(**Note:** Appendix A to the preamble will not appear in the Code of Federal Regulations.)

Appendix A—General Instructions for Form 19b–4

A. Use of the Form

All self-regulatory organization proposed rule changes, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) [1] of the Securities Exchange Act of 1934 (''Act''), shall be filed in an electronic format through the Electronic Form 19b–4 Filing System (''EFFS''), a secure Web site operated by the Commission. This form shall be used for filings of proposed rule changes by all self-regulatory organizations pursuant to Section 19(b) of the Act, except filings with respect to proposed rule changes by self-regulatory organizations submitted pursuant to Section 19(b)(7) of the Act. National securities exchanges, registered securities associations, registered clearing agencies, and the Municipal Securities Rulemaking Board are self-regulatory organizations for purposes of this form.

B. Need for Careful Preparation of the Completed Form, Including Exhibits

This form, including the exhibits, is intended to elicit information necessary for the public to provide meaningful comment on the proposed rule change and for the Commission to determine whether the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. The self-regulatory organization must provide all the information called for by the form, including the exhibits, and must present the information in a clear and comprehensible manner.

The proposed rule change shall be considered filed on the date on which the Commission receives the proposed rule change if the filing complies with all requirements of this form. Any filing that does not comply with the requirements of this form may be returned to the self-regulatory organization at any time before the issuance of the notice of filing. Any filing so returned shall for all purposes be deemed not to have been filed with the Commission. *See also* Rule 0–3 under the Act (17 CFR 240.0–3).

C. Documents Comprising the Completed Form

The completed form filed with the Commission shall consist of the Form 19b–4 Page 1, numbers and captions for all items, responses to all items, and exhibits required in Item 9. In responding to an item, the completed form may omit the text of the item as contained herein if the response is prepared to indicate to the reader the coverage of the item without the reader having to refer to the text of the item or its instructions. Each filing shall be marked on the Form 19b–4 with the initials of the self-regulatory organization, the four-digit year, and the number of the filing for the year (*i.e.*, SRO–YYYY–XX). If the SRO is filing Exhibit 2 and 3 via paper, the exhibits must be filed within 5 business days of the electronic submission of all other required documents.

D. Amendments

If information on this form is or becomes inaccurate before the Commission takes action on the proposed rule change, the self-regulatory organization shall file amendments correcting any such inaccuracy. Amendments shall be filed as specified in Instruction F.

Amendments to a filing shall include the Form 19b–4 Page 1 marked to number consecutively the amendments, numbers and captions for each amended item, amended response to the item, and required exhibits. The amended response to Item 3 shall explain the purpose of the amendment and, if the amendment changes the purpose of or basis for the proposed rule change, the amended response shall also provide a revised purpose and basis statement for the proposed rule change. Exhibit 1 shall be re-filed if there is a material change from the immediately preceding filing in the language of the proposed rule change or in the information provided.

If the amendment alters the text of an existing rule, the amendment shall include the text of the existing rule, marked in the manner described in Item 1(a) using brackets to indicate words to be deleted from the existing rule and underscoring to indicate words to be added. The purpose of this marking requirement is to maintain a current copy of how the text of the existing rule is being changed.

If the amendment alters the text of the proposed rule change as it appeared in the immediately preceding filing (even if the proposed rule change does not alter the text of an existing rule), the amendment shall include, as Exhibit 4, the entire text of the rule as altered. This full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.

If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (*i.e.*, partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

If, after the rule change is filed but before the Commission takes final action on it, the

[1] Because Section 19(b)(7)(C) of the Act states that filings abrogated pursuant to this Section should be re-filed pursuant to paragraph (b)(1) of Section 19 of the Act, SROs are required to file electronically such proposed rule changes in accordance with this form.

self-regulatory organization receives or prepares any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed as Exhibit 2. If information in the communication makes the rule change filing inaccurate, the filing shall be amended to correct the inaccuracy. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

E. Completion of Action by the Self-Regulatory Organization on the Proposed Rule Change

The Commission will not approve a proposed rule change before the self-regulatory organization has completed all action required to be taken under its constitution, articles of incorporation, bylaws, rules, or instruments corresponding thereto (excluding action specified in any such instrument with respect to (i) compliance with the procedures of the Act or (ii) the formal filing of amendments pursuant to state law). Nevertheless, proposed rule changes (other than proposed rule changes that are to take, or to be put into, effect pursuant to Section 19(b)(3) of the Act) may be initially filed before the completion of all such action if the self-regulatory organization consents, under Item 6 of this form, to an extension of the period of time specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until at least thirty-five days after the self-regulatory organization has filed an appropriate amendment setting forth the taking of all such action. If a proposed rule change to be filed for review under Section 19(b)(2) or Section 19(b)(7)(D) of the Act is in preliminary form, the self-regulatory organization may elect to file initially Exhibit 1 setting forth a description of the subjects and issues expected to be involved.

F. Signature and Filing of the Completed Form

All proposed rule changes, amendments, extensions, and withdrawals of proposed rule changes shall be filed through the EFFS. In order to file Form 19b–4 through EFFS, self-regulatory organizations must request access to the SEC's External Application Server by completing a request for an external account user ID and password. Initial requests will be received by contacting the Market Regulation Administrator located on our Web site (*http://www.sec.gov*). An e-mail will be sent to the requestor that will provide a link to a secure Web site where basic profile information will be requested.

A duly authorized officer of the self-regulatory organization shall electronically sign the completed Form 19b–4 as indicated on Page 1 of the Form. In addition, a duly authorized officer of the self-regulatory organization shall manually sign one copy of the completed Form 19b–4, and the manually signed signature page shall be maintained pursuant to Section 17 of the Act. A registered clearing agency for which the Commission is not the appropriate regulatory agency also shall file with its appropriate regulatory agency three copies of the form, one of which shall be manually signed, including exhibits. The Municipal Securities Rulemaking Board also shall file copies of the form, including exhibits, with the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation.

G. Procedures for Submission of Paper Documents for Exhibits 2 and 3

To the extent that Exhibits 2 and 3 cannot be filed electronically in accordance with Instruction F, four copies of Exhibits 2 and 3 shall be filed with the Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001. Page 1 of the electronic Form 19b–4 shall accompany paper submissions of Exhibits 2 and 3. If the SRO is filing Exhibit 2 and 3 via paper, they must be filed within five days of the electronic filing of all other required documents.

H. Withdrawals of Proposed Rule Changes

If a self-regulatory organization determines to withdraw a proposed rule change, it must complete Page 1 of the Form 19b–4 and indicate by selecting the appropriate check box to withdraw the filing.

I. Procedures for Granting an Extension of Time for Commission Final Action

After the Commission publishes notice of a proposed rule change, if a self-regulatory organization wishes to grant the Commission an extension of the time to take final action as specified in Section 19(b)(2), the self-regulatory organization shall indicate on the Form 19b–4 Page 1 the granting of said extension as well as the date the extension expires.

BILLING CODE 8010–01–P

OMB APPROVAL
OMB Number: 3235-0045 Expires: June 30, 2007 Estimated average burden hours per response.....38

Page 1 of ☐

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549
Form 19b-4

File No. SR - ☐ - ☐
Amendment No. ☐

Proposed Rule Change by Select SRO

Pursuant to Rule 19b-4 under the Securities Exchange Act of 1934

Initial	Amendment	Withdrawal	Section 19(b)(2)	Section 19(b)(3)(A)	Section 19(b)(3)(B)
☐	☐	☐	☐	☐	☐

Pilot	Extension of Time Period for Commission Action	Date Expires
☐	☐	

Rule

☐ 19b-4(f)(1) ☐ 19b-4(f)(4)
☐ 19b-4(f)(2) ☐ 19b-4(f)(5)
☐ 19b-4(f)(3) ☐ 19b-4(f)(6)

Exhibit 2 Sent As Paper Document ☐

Exhibit 3 Sent As Paper Document ☐

Description

Provide a brief description of the proposed rule change (limit 250 characters).

Contact Information

Provide the name, telephone number and e-mail address of the person on the staff of the self-regulatory organization prepared to respond to questions and comments on the proposed rule change.

First Name ☐ Last Name ☐
Title ☐
E-mail ☐
Telephone ☐ Fax ☐

Signature

Pursuant to the requirements of the Securities Exchange Act of 1934,

has duly caused this filing to be signed on its behalf by the undersigned thereunto duly authorized.

Date 09/27/2004
By ☐
(Name)
☐
(Title)

NOTE: Clicking the button at right will digitally sign and lock this form. A digital signature is as legally binding as a physical signature, and once signed, this form cannot be changed.

Digitally Sign and Lock Form

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

For complete Form 19b-4 instructions please refer to the EFFS website.

Form 19b-4 Information Add Remove View	The self-regulatory organization must provide all required information, presented in a clear and comprehensible manner, to enable the public to provide meaningful comment on the proposal and for the Commission to determine whether the proposal is consistent with the Act and applicable rules and regulations under the Act.
Exhibit 1 - Notice of Proposed Rule Change Add Remove View	The Notice section of this Form 19b-4 must comply with the guidelines for publication in the Federal Register as well as any requirements for electronic filing as published by the Commission (if applicable). The Office of the Federal Register (OFR) offers guidance on Federal Register publication requirements in the Federal Register Document Drafting Handbook, October 1998 Revision. For example, all references to the federal securities laws must include the corresponding cite to the United States Code in a footnote. All references to SEC rules must include the corresponding cite to the Code of Federal Regulations in a footnote. All references to Securities Exchange Act Releases must include the release number, release date, Federal Register cite, Federal Register date, and corresponding file number (e.g., SR-[SRO]-xx-xx). A material failure to comply with these guidelines will result in the proposed rule change being deemed not properly filed. See also Rule 0-3 under the Act (17 CFR 240.0-3)
Exhibit 2 - Notices, Written Comments, Transcripts, Other Communications Add Remove View Exhibit Sent As Paper Document ☐	Copies of notices, written comments, transcripts, other communications. If such documents cannot be filed electronically in accordance with Instruction F, they shall be filed in accordance with Instruction G.
Exhibit 3 - Form, Report, or Questionnaire Add Remove View Exhibit Sent As Paper Document ☐	Copies of any form, report, or questionnaire that the self-regulatory organization proposes to use to help implement or operate the proposed rule change, or that is referred to by the proposed rule change.
Exhibit 4 - Marked Copies Add Remove View	The full text shall be marked, in any convenient manner, to indicate additions to and deletions from the immediately preceding filing. The purpose of Exhibit 4 is to permit the staff to identify immediately the changes made from the text of the rule with which it has been working.
Exhibit 5 - Proposed Rule Text Add Remove View	The self-regulatory organization may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b-4. Exhibit 5 shall be considered part of the proposed rule change.
Partial Amendment Add Remove View	If the self-regulatory organization is amending only part of the text of a lengthy proposed rule change, it may, with the Commission's permission, file only those portions of the text of the proposed rule change in which changes are being made if the filing (i.e. partial amendment) is clearly understandable on its face. Such partial amendment shall be clearly identified and marked to show deletions and additions.

BILLING CODE 8010–01–C

Information To Be Included in the Completed Form ("Form 19b–4 Information")

1. Text of the Proposed Rule Change

(a) Include the text of the proposed rule change. Changes in, additions to, or deletions from, any existing rule shall be set forth with brackets used to indicate words to be deleted and underscoring used to indicate words to be added.

If any form, report, or questionnaire is

(i) proposed to be used in connection with the implementation or operation of the proposed rule change, or

(ii) prescribed or referred to in the proposed rule change, then the form, report, or questionnaire must be attached to and shall be considered as part of the proposed rule change. If completion of the form, report, or questionnaire is voluntary or is required pursuant to an existing rule of the self-regulatory organization, then the form, report, or questionnaire, together with a statement identifying any existing rule that requires completion of the form, report, or questionnaire, shall be attached as Exhibit 3. If the form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the documents shall be filed in accordance with Instruction G.

(b) If the self-regulatory organization reasonably expects that the proposed rule change will have any direct effect, or significant indirect effect, on the application of any other rule of the self-regulatory organization, set forth the designation or title of any such rule and describe the anticipated effect of the proposed rule change on the application of such other rule.

(c) Include the file numbers for prior filings with respect to any existing rule specified in response to Item 1(b).

2. Procedures of the Self-Regulatory Organization

Describe action on the proposed rule change taken by the members or board of directors or other governing body of the self-regulatory organization (by amendment if initial filing is prior to completion of final action). *See* Instruction E.

3. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Provide a statement of the purpose of the proposed rule change and its basis under the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act, except for proposed rule changes that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(2) of the Act that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. With respect to proposed rule changes filed pursuant to Section 19(b)(1) of the Act that have been abrogated pursuant to Section 19(b)(7)(C) of the Act, the statement should be sufficiently detailed and specific to support a finding under Section 19(b)(7)(D) of the Act that the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. At a minimum, the statement should:

(a) Describe the reasons for adopting the proposed rule change, any problems the proposed rule change is intended to address, the manner in which the proposed rule change will resolve those problems, the manner in which the proposed rule change will affect various persons (*e.g.*, brokers, dealers, issuers, and investors), and any significant problems known to the self-regulatory organization that persons affected are likely to have in complying with the proposed rule change; and

(b) With respect to the proposed rule changes filed pursuant to both Sections 19(b)(1) and 19(b)(2) of the Act, explain why the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the self-regulatory organization. A mere assertion that the proposed rule change is consistent with those requirements is not sufficient. With respect to a proposed rule change filed pursuant to Section 19(b)(1) of the Act that has been abrogated pursuant to Section 19(b)(7)(C) of the Act, explain why the proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest and the protection of investors, in accordance with Section 19(b)(7)(D) of the Act. A mere assertion that the proposed rule change satisfies these requirements is not sufficient. In the case of a registered clearing agency, also explain how the proposed rule change will be implemented consistently with the safeguarding of securities and funds in its custody or control or for which it is responsible. Certain limitations that the Act imposes on self-regulatory organizations are summarized in the notes that follow.

Note 1. *National Securities Exchanges and Registered Securities Associations.* Under Sections 6 and 15A of the Act, rules of a national securities exchange or registered securities association may not permit unfair discrimination between customers, issuers, brokers, or dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act or the administration of the self-regulatory organization. Rules of a registered securities association may not fix minimum profits or impose any schedule of or fix rates of commissions, allowances, discounts, or other fees to be charged by its members.

Under Section 11A(c)(5) of the Act, a national securities exchange or registered securities association may not limit or condition the participation of any member in any registered clearing agency.

Note 2. *Registered Clearing Agencies.* Under Section 17A of the Act, rules of a registered clearing agency may not permit unfair discrimination in the admission of participants or among participants in the use of the clearing agency, may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of Section 17A of the Act or the administration of the clearing agency, and may not impose any schedule of prices, or fix rates or other fees, for services rendered by its participants.

Note 3. *Municipal Securities Rulemaking Board.* Under Section 15B of the Act, rules of the Municipal Securities Rulemaking Board may not permit unfair discrimination between customers, issuers, municipal securities brokers, or municipal securities dealers, may not fix minimum profits, or impose any schedule or fix rates of commissions, allowances, discounts, or other fees to be charged by municipal securities brokers or municipal securities dealers, and may not regulate, by virtue of any authority conferred by the Act, matters not related to the purposes of the Act with respect to municipal securities or the administration of the Board.

4. Self-Regulatory Organization's Statement on Burden on Competition

State whether the proposed rule change will have an impact on competition and, if so, (i) state whether the proposed rule change will impose any burden on competition or whether it will relieve any burden on, or otherwise promote, competition and (ii) specify the particular categories of persons and kinds of businesses on which any burden will be imposed and the ways in which the proposed rule change will affect them. If the proposed rule change amends an existing rule, state whether that existing rule, as amended by the proposed rule change, will impose any burden on competition. If any impact on competition is not believed to be a significant burden on competition, explain why. Explain why any burden on competition is necessary or appropriate in furtherance of the purposes of the Act. In providing those explanations, set forth and respond in detail to written comments as to any significant impact or burden on competition perceived by any person who has made comments on the proposed rule change to the self-regulatory organization. The statement concerning burdens on competition should be sufficiently detailed and specific to support a Commission finding that the proposed rule change does not impose any unnecessary or inappropriate burden on competition.

5. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

If written comments were received (whether or not comments were solicited) from members of or participants in the self-regulatory organization or others, summarize the substance of all such comments received and respond in detail to any significant issues that those comments raised about the proposed rule change. If an issue is summarized and responded to in detail under Item 3 or Item 4, that response need not be duplicated if appropriate cross-reference is made to the place where the response can be found. If comments were not or are not to be solicited, so state.

6. Extension of Time Period for Commission Action

State whether the self-regulatory organization consents to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act and the duration of the extension, if any, to which the self-regulatory organization consents.

Note. The self-regulatory organization may elect to consent to an extension of the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act until it shall file an amendment which specifically states that the time period specified in Section 19(b)(2) or Section 19(b)(7)(D) of the Act shall begin to run on the date of filing such amendment.

7. Basis for Summary Effectiveness Pursuant to Section 19(b)(3) or for Accelerated Effectiveness Pursuant to Section 19(b)(2) or Section 19(b)(7)(D)

(a) If the proposed rule change is to take, or to be put into, effect, pursuant to Section 19(b)(3), state whether the filing is made pursuant to paragraph (A) or (B) thereof.

(b) In the case of paragraph (A) of Section 19(b)(3), designate that the proposed rule change:

(i) is a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule,

(ii) establishes or changes a due, fee, or other charge applicable only to a member,

(iii) is concerned solely with the administration of the self-regulatory organization,

(iv) effects a change in an existing service of a registered clearing agency that (A) does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (B) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service, and set forth the basis on which such designation is made,

(v) effects a change in an existing order-entry or trading system of a self-regulatory organization that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) does not

have the effect of limiting the access to or availability of the system, or

(vi) effects a change that (A) does not significantly affect the protection of investors or the public interest; (B) does not impose any significant burden on competition; and (C) by its terms, does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest; provided that the self-regulatory organization has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. If it is requested that the proposed rule change become operative in less than 30 days, provide a statement explaining why the Commission should shorten this time period.

(c) In the case of paragraph (B) of Section 19(b)(3), set forth the basis upon which the Commission should, in the view of the self-regulatory organization, determine that the protection of investors, the maintenance of fair and orderly markets, or the safeguarding of securities and funds requires that the proposed rule change should be put into effect summarily by the Commission.

Note. The Commission has the power under Section 19(b)(3)(C) of the Act to abrogate summarily within sixty days of its filing any proposed rule change which has taken effect upon filing pursuant to Section 19(b)(3)(A) of the Act or was put into effect summarily by the Commission pursuant to Section 19(b)(3)(B) of the Act. In exercising its summary power under Section 19(b)(3)(B), the Commission is required to make one of the findings described above but may not have a full opportunity to make a determination that the proposed rule change otherwise is consistent with the requirements of the Act and the rules and regulations thereunder. The Commission will generally exercise its summary power under Section 19(b)(3)(B) on condition that the proposed rule change to be declared effective summarily shall also be subject to the procedures of Section 19(b)(2) of the Act. Accordingly, in most cases, a summary order under Section 19(b)(3)(B) shall be effective only until such time as the Commission shall enter an order, pursuant to Section 19(b)(2)(A) of the Act, to approve such proposed rule change or, depending on the circumstances, until such time as the Commission shall institute proceedings to determine whether to disapprove such proposed rule change or, alternatively, such time as the Commission shall, at the conclusion of such proceedings, enter an order, pursuant to Section 19(b)(2)(B), approving or disapproving such proposed rule change.

(d) If accelerated effectiveness pursuant to Section 19(b)(2) or Section 19(b)(7)(D) of the Act is requested, provide a statement explaining why there is good cause for the Commission to accelerate effectiveness.

8. Proposed Rule Change Based on Rules of Another Self-Regulatory Organization or of the Commission

State whether the proposed rule change is based on a rule either of another self-regulatory organization or of the Commission, and, if so, identify the rule and explain any differences between the proposed rule change and that rule, as the filing self-regulatory organization understands it. In explaining any such differences, give particular attention to differences between the conduct required to comply with the proposed rule change and that required to comply with the other rule.

9. Exhibits

List of exhibits to be filed, as specified in Instructions C and D:

Exhibit 1. Completed Notice of Proposed Rule Change for publication in the **Federal Register.** Amendments to Exhibit 1 should be filed in accordance with Instructions D and F.

Exhibit 2. (a) Copies of notices issued by the self-regulatory organization soliciting comment on the proposed rule change and copies of all written comments on the proposed rule change received by the self-regulatory organization (whether or not comments were solicited), presented in alphabetical order, together with an alphabetical listing of such comments. If such notices and comments cannot be filed electronically in accordance with Instruction F, the notices and comments shall be filed in accordance with Instruction G.

(b) Copies of any transcript of comments on the proposed rule change made at any public meeting or, if a transcript is not available, a copy of the summary of comments on the proposed rule change made at such meeting. If such transcript of comments or summary of comments cannot be filed electronically in accordance with Instruction F, the transcript of comments or summary of comments shall be filed in accordance with Instruction G.

(c) If after the proposed rule change is filed but before the Commission takes final action on it, the self-regulatory organization prepares or receives any correspondence or other communications reduced to writing (including comment letters) to and from such self-regulatory organization concerning the proposed rule change, the communications shall be filed in accordance with Instruction F. If such communications cannot be filed electronically in accordance with Instruction F, the communications shall be filed in accordance with Instruction G.

Exhibit 3. Copies of any form, report, or questionnaire covered by Item 1(a). If such form, report, or questionnaire cannot be filed electronically in accordance with Instruction F, the form, report, or questionnaire shall be filed in accordance with Instruction G.

Exhibit 4. For amendments to a filing, marked copies, if required by Instruction D, of the text of the proposed rule change as amended.

Exhibit 5. The SRO may choose to attach as Exhibit 5 proposed changes to rule text in place of providing it in Item I and which may otherwise be more easily readable if provided separately from Form 19b–4. Exhibit 5 shall be considered part of the proposed rule change.

SPECIFIC INSTRUCTIONS FOR EXHIBIT 1—NOTICE OF PROPOSED RULE CHANGE

EXHIBIT 1

SECURITIES AND EXCHANGE COMMISSION
[Release No. 347– ; File No. SR]

SELF-REGULATORY ORGANIZATIONS
Proposed Rule Change by (Name of Self-Regulatory Organization)
Relating to (brief description of subject matter of proposed rule change)

General Instructions

A. Format Requirements

Leave a 1-inch margin at the top, bottom, and right hand side, and a 1½ inch margin at the left hand side. Number all pages consecutively. Double space all primary text and single space lists of items, quoted material when set apart from primary text, footnotes, and notes to tables.

B. Need for Careful Preparation of the Notice

The self-regulatory organization must provide all information required in the notice and present it in a clear and comprehensible manner. It is the responsibility of the self-regulatory organization to prepare Items I, II and III of the notice. The Commission cautions self-regulatory organizations to pay particular attention to assure that the notice accurately reflects the information provided in the Form 19b–4 it accompanies. Any filing that does not comply with the requirements of Form 19b–4, including the requirements applicable to the notice, may, at any time before the Commission issues a notice of filing, be returned to the self-regulatory organization. Any document so returned shall for all purposes be deemed not to have been filed with the Commission. *See* Instruction B to Form 19b–4.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on (date),* the (name of self-regulatory organization) filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Information To Be Included in the Completed Notice

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

(Supply a brief statement of the terms of substance of the proposed rule change. If the proposed rule change is relatively brief, a separate statement need not be prepared, and the text of the proposed rule change may be

* To be completed by the Commission. This date will be the date on which the Commission receives the proposed rule change filing if the filing complies with all requirements of this form. See Instruction B to Form 19b–4.

inserted in lieu of the statement of the terms of substance. If the proposed rule change amends an existing rule, indicate changes in the rule by brackets for words to be deleted and underlined for words to be added.)

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements. (Reproduce the headings, and summarize briefly the most significant aspects of the responses, to Items 3, 4, and 5 of Form 19b–4, redesignating them as A, B, and C, respectively.)

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(2) of the Act, the following paragraph should be used.)Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and paragraph (f)(6) of Rule 19b–4 thereunder, the following paragraph should be used.)

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to take, or to be put into, effect pursuant to Section 19(b)(3)(A) of the Act and subparagraphs (1)–(5) of paragraph (f) of Rule 19b–4 thereunder, the following paragraph should be used.)

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and paragraph (f) of Rule 19b-4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

(If the proposed rule change is to be considered by the Commission pursuant to Section 19(b)(7)(D) of the Act, the following paragraph should be used.)

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) After consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number XX 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 XX. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the [exchange]. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number XX and should be submitted on or before [insert date 21 days from publication in the **Federal Register**].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Secretary

[FR Doc. 04–22628 Filed 10–5–04; 9:06 am]

BILLING CODE 8010–01–P

[1] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 74

[Docket No. 1987C–0023]

Listing of Color Additives Subject to Certification; D&C Black No. 2; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of August 30, 2004, for the final rule that appeared in the **Federal Register** of July 28, 2004 (69 FR 44927). The final rule amended the color additive regulations to provide for the safe use of D&C Black No. 2 (a high purity furnace black, subject to FDA batch certification) as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel.

DATES: Effective date confirmed: August 30, 2004.

FOR FURTHER INFORMATION CONTACT: Celeste Johnston, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3423.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 28, 2004 (69 FR 44927), FDA amended the color additive regulations to add § 74.2052 *D&C Black No. 2* (21 CFR 74.2052) to provide for the safe use of D&C Black No. 2 as a color additive in the following cosmetics: Eyeliner, brush-on-brow, eye shadow, mascara, lipstick, blushers and rouge, makeup and foundation, and nail enamel.

FDA gave interested persons until August 27, 2004, to file objections or requests for a hearing. The agency received no objections or requests for a hearing on the final rule. Therefore,

FDA finds that the effective date of the final rule that published in the **Federal Register** of July 28, 2004, should be confirmed.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e) and under authority delegated to the Commissioner of Food and Drugs (1410.10 of the FDA Staff Manual Guide), notice is given that no objections or requests for a hearing were filed in response to the July 28, 2004, final rule. Accordingly, the amendments issued thereby became effective August 30, 2004.

Dated: September 30, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22605 Filed 10–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 522 and 556

New Animal Drugs; Flunixin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Schering-Plough Animal Health Corp. The supplemental NADA provides for the veterinary prescription use of flunixin meglumine solution by intravenous injection in lactating dairy cattle for control of pyrexia associated with bovine respiratory disease and endotoxemia, and for control of inflammation in endotoxemia. It also provides for the veterinary prescription use of flunixin meglumine solution by intravenous injection for control of pyrexia associated with acute bovine mastitis and for the establishment of a tolerance for residues of flunixin in milk.

DATES: This rule is effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Joan C. Gotthardt, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7571, e-mail: *joan.gotthardt@fda.gov*.

SUPPLEMENTARY INFORMATION: Schering-Plough Animal Health Corp., 1095 Morris Ave., Union, NJ 07083, filed a supplement to NADA 101–479 that provides for the veterinary prescription use of BANAMINE (flunixin meglumine) Injectable Solution by intravenous injection in lactating dairy cattle for control of pyrexia associated with bovine respiratory disease and endotoxemia, and for control of inflammation in endotoxemia. It also provides for the veterinary prescription use of flunixin meglumine solution by intravenous injection for control of pyrexia associated with acute bovine mastitis and for the establishment of a tolerance for residues of flunixin in milk. The supplemental NADA is approved as of August 19, 2004, and the regulations are amended in 21 CFR 522.970 and 556.286 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

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

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act the act (21 U.S.C. 360b(c)(2)(F)(iii)), this supplemental approval qualifies for 3 years of marketing exclusivity beginning August 19, 2004. The 3 years of marketing exclusivity applies only to the new indication of control of pyrexia associated with acute bovine mastitis.

The agency has determined under 21 CFR 25.33(d)(5) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

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

List of Subjects

21 CFR Part 522

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 522 and 556 are amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

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

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

■ 2. Section 522.970 is amended by revising the section heading; by revising paragraph (b)(1); by redesignating paragraph (b)(2) as paragraph (b)(3); by adding new paragraph (b)(2); and by revising paragraphs (e)(2) introductory text, (e)(2)(i), (e)(2)(ii), and (e)(2)(iii) to read as follows:

§ 522.970 Flunixin.

* * * * *

(b) * * *

(1) See No. 000061 for use as in paragraph (e) of this section.

(2) See Nos. 055529, 057561, and 059130 for use as in paragraphs (e)(1), (e)(2)(i)(A), (e)(2)(ii)(A), and (e)(2)(iii), of this section.

* * * * *

(e) * * *

* * * * *

(2) *Cattle*—(i) *Amount.* (A) 1.1 to 2.2 mg/kilogram (kg) (0.5 to 1.0 mg/lb) of body weight per day, as a single dose or divided into two doses administered at 12-hour intervals, intravenously, for up to 3 days.

(B) 2.2 mg/kg (1.0 mg/lb) of body weight given once by intravenous administration.

(ii) *Indications for use.* (A) For control of pyrexia associated with bovine respiratory disease and endotoxemia. Also indicated for control of inflammation in endotoxemia.

(B) For control of pyrexia associated with acute bovine mastitis.

(iii) *Limitations.* Do not slaughter for food use within 4 days of last treatment. A withdrawal period has not been established for use in preruminating calves. Do not use in calves to be processed for veal. For No. 000061: Do not use in dry dairy cows. Milk that has been taken during treatment and for 36 hours after the last treatment must not be used for food. For Nos. 055529, 057561, and 059130: Not for use in lactating or dry dairy cows.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 3. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 4. Section 556.286 is amended by revising the section heading; by revising paragraph (b); and by adding paragraph (c) to read as follows:

§ 556.286 Flunixin.

* * * * *

(b) *Tolerances*—(1) *Cattle*. The tolerance for flunixin free acid (the marker residue) is:

(i) *Liver (the target tissue)*. 125 parts per billion (ppb).

(ii) *Muscle*. 25 ppb.

(iii) *Milk*. 2 ppb.

(2) [Reserved]

(c) *Related conditions of use*. See § 522.970 of this chapter.

Dated: September 27, 2004.

Stephen D. Vaughn,

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

[FR Doc. 04–22606 Filed 10–7–04; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[USCG–2002–14273]

RIN 1625–AA52

Mandatory Ballast Water Management Program for U.S. Waters; Corrections

AGENCY: Coast Guard, DHS.

ACTION: Correcting amendments.

SUMMARY: The Coast Guard is correcting a final rule that appeared in the **Federal Register** of July 28, 2004 (69 FR 44952). The final rule requires mandatory ballast water management practices for all vessels equipped with ballast water tanks bound for ports or places within the U.S. or entering U.S. waters. These grammatical corrections clarify the final rule.

DATES: This correction is effective on July 28, 2004.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Mr. Bivan Patnaik, Project Manager, Environmental Standards Division, Coast Guard, telephone 202–267–1744, email: *bpatnaik@comdt.uscg.mil.* If you have questions on viewing the docket, call Ms. Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202–366–0271.

SUPPLEMENTARY INFORMATION:

Need for Correction

As published, the final rule contain errors which may prove to be misleading and therefore need to be clarified.

List of Subjects in 33 CFR Part 151

Administrative practice and procedure, Oil pollution, Penalties, Reporting and recordkeeping requirements, Water pollution control.

■ Accordingly, 33 CFR part 151 is corrected by making the following correcting amendments:

PART 151—VESSELS CARRYING OIL, NOXIOUS LIQUID SUBSTANCES, GARBAGE, MUNICIPAL OR COMMERCIAL WASTE, AND BALLAST WATER

Subpart D—Ballast Water Management for Control of Nonindigenous Species in Waters of the United States

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

Authority: 16 U.S.C. 4711; Department of Homeland Security Delegation No. 0170.1.

§ 151.2035 [Corrected]

■ 2. In § 151.2035(b)(2), add the word ''or'' after the semicolon. In paragraph (b)(3), replace the semi-colon with a period.

Dated: September 28, 2004.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security & Environmental Protection.

[FR Doc. 04–22721 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 64

[Docket No. FEMA–7849]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program(NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

DATES: The effective date of each community's suspension is the third date (''Susp.'') listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA RegionalOffice or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Mike Grimm, Mitigation Division, 500 C Street, SW.; Room 412, Washington, DC 20472, (202) 646–2878.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.;* unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of

the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Administrator finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act. This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act. The Administrator has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act. This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism. This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

■ Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

■ 1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

■ 2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/ cancellation of flood insurance in community	Current effective map date	Date Certain Federal assistance no longer available in special flood hazard areas
Region IV				
North Carolina:				
Camden County, Unincorporated Areas.	370042	May 14, 1974, Emerg. Dec. 4, 1985, Reg. Oct. 5, 2004, Susp.	Oct. 5, 2004	Oct. 5, 2004.
Hertford, Town of, Perquimans County	370188	Apr. 8, 1974, Emerg. July 3, 1985, Reg. Oct. 5, 2004, Susp.	.....do	Do.
Perquimans County, Unincorporated Areas.	370315	Oct. 21, 1981, Emerg. July 3, 1985, Reg. Oct. 5, 2004, Susp.	.....do	Do.
Winfall, Town of Perquimans County	370345	Nov. 5, 1992, Emerg. Nov. 5, 1992, Reg. Oct. 5, 2004, Susp.	.....do	Do.

* Do =Ditto.
Code for reading third column: Emerg;—Emergency; Reg;—Regular; Susp.—Suspension.

Dated: September 29, 2004.

David I. Maurstad,

Acting Mitigation Division Director, Emergency Preparedness and Response Directorate.

[FR Doc. 04–22679 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket Nos. 04–53 and 02–278; FCC 04–194]

Rules and Regulations Implementing the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003; Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: On September 16, 2004 (69 FR 55765), the Commission published final rules in the **Federal Register** to implement the Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN–SPAM Act). These rules apply to the sending of commercial messages to addresses referencing an Internet domain name associated with wireless subscriber messaging services. This document corrects the subpart heading and adds the authority citation for the Commission's rules.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ruth Yodaiken, of the Consumer & Governmental Affairs Bureau at (202) 418–2512 (voice), (202) 418–0416 (TTY), or e-mail *Ruth.Yodaiken@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document amending part 64 in the **Federal Register** on September 16, 2004, (69 FR 55765). This document corrects the ''Rule Changes'' section of the **Federal Register** summary as it appeared. In rule FR Doc. 04–20901 published on September 16, 2004 (69 FR 55765) make the following corrections:

PART 64—[CORRECTED]

■ 1. On page 55779, in the second column, amendatory instruction no. 2, Subpart heading BB is corrected to read as follows:

Subpart BB—Restrictions on Unwanted Mobile Service Commercial Messages

■ 2. On page 55779, in the second column the authority citation for Subpart BB is added to read as follows:

Authority: 15 U.S.C. 7701–7713, Public Law 108–187, 117 Stat. 2699.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22495 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket No. 02–278; FCC 04–204]

Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document amends the rules implementing the Telephone Consumer Protection Act (TCPA) to establish a limited safe harbor period from the prohibition on placing autodialed or prerecorded message calls to wireless numbers that have been recently ported from wireline to wireless service. This document also amends our existing safe harbor rules for the national do-not-call registry so that telemarketers are required to access the do-not-call list no more than 31 days prior to making a telemarketing call.

DATES: Effective November 8, 2004, except the amendment to 47 CFR 64.1200(c)(2)(i)(D) of the Commission's rules, which contains information collection requirements under the Paperwork Reduction Act (PRA) that are not effective until approved by the Office of Management and Budget. Written comments by the public on the new or modified information collections are due November 8, 2004. The Commission will publish a document in the **Federal Register** announcing the effective date for that section.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the Paperwork Reduction Act (PRA) information collection requirements contained herein should be submitted to Leslie Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554, or via the Internet to *Leslie.Smith@fcc.gov,* and to Kristy L. LaLonde, OMB Desk Officer, Room 10234 NEOB, 725 17th Street, NW., Washington, DC 20503 or via the Internet to *Kristy_L._LaLonde@omb.eop.gov* or by fax to 202–395–5167.

FOR FURTHER INFORMATION CONTACT: Erica McMahon or Richard Smith, Consumer Policy Division, Consumer & Governmental Affairs Bureau, (202) 418–2512. For additional information concerning the PRA information collection requirements contained in this document, contact Les Smith at 202–418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order,* CG Docket No. 02–278, FCC 04–204, adopted August 25, 2004, and released September 21, 2004. The *Order* contains new or modified information collection requirements subject to the PRA of 1995, Public Law 104–13. These will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. The *Order* addresses issues arising from *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991,* Further Notice of Proposed Rulemaking, (*2004 TCPA Further Notice*), CG Docket No. 02–278, FCC 04–52, 19 FCC Rcd 5056, March 19, 2004; published at 69 FR 16873, March 31, 2004. Copies of any subsequently filed documents in this matter will be available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, Room CY–A257, 445 12th Street, SW., Washington, DC 20054. The complete text of this decision may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. Customers may contact BCPI, Inc. at its Web site: *http://www.bcpiweb.com* or call 1–800–378–3160. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY). The *Order* can also be downloaded in Word and Portable Document Format (PDF) at *http://www.fcc.gov/cgb/policy.*

Paperwork Reduction Act

This *Order* contains new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection requirements contained in this *Order* as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. Public and agency comments are due November 8, 2004. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), in this document, we have assessed the effects of amending the safe harbor provisions for the national do-not-call registry to require telemarketers to access the registry every 31 days, and find that there may be an increased administrative burden on businesses with fewer than 25 employees. However, since this action is consistent with the Federal Trade Commission's recent rule change, we believe small businesses subject to the jurisdiction of both agencies will also benefit from consistent requirements. In addition, the national do-not-call registry allows telemarketers that have already downloaded the entire database to request only those changes to their previous list, which should substantially alleviate any burdens imposed on businesses with fewer than 25 employees to update their call lists on a more frequent basis.

Synopsis

The Commission establishes a limited safe harbor period in which persons will not be liable for placing autodialed or artificial or prerecorded message calls to numbers recently ported from wireline to wireless service. As discussed in greater detail below, we conclude that callers will not be considered in violation of 47 CFR 64.1200(a)(1)(iii) for autodialed or artificial or prerecorded message calls placed to a wireless number that has been ported from a wireline service within the previous 15 days, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list. The 15-day safe harbor period will run from the time the port has been completed and the number appears in Neustar's ''Intermodal Ported TN Identification Service'' as a wireless number. We believe this safe harbor will provide a reasonable opportunity for persons, including small businesses, to identify numbers that have been ported from wireline to wireless service and, therefore, allow callers to comply with our rules.

Given the limited duration of this safe harbor period and the fact that consumers may continue to avail themselves of the national and company-specific do-not-call lists, we do not believe that this action will unduly infringe consumer privacy interests, which is consistent with congressional intent. We emphasize that the safe harbor provision created herein in no way obviates the need for telemarketers to abide by any of the Commission's other telemarketing rules including honoring the requirements of the national and company-specific do-not-call lists. In addition, this safe harbor provision will not excuse any willful violation of the ban on using autodialers or prerecorded messages to call wireless numbers. Thus, even within the 15-day safe harbor period, persons will be considered in violation of this prohibition if they knowingly place an autodialed or prerecorded message call to a wireless number absent an emergency or the prior express consent of the called party. We also note that this safe harbor will extend only to voice calls, not to text messages which are sent specifically to numbers associated with wireless devices.

We note that one commenter contends that the Commission lacks the statutory authority to adopt a safe harbor. However, the record is clear that it is impossible for telemarketers to identify immediately those numbers that have been ported from a wireline service to a wireless service provider. Commenters maintain that, absent a limited safe harbor period, telemarketers simply cannot comply with the statute. The safe harbor is not an ''exemption'' from the requirements on calls to wireless numbers; it is instead a time period necessary to allow callers to come into compliance with the rules. Otherwise, the statute would ''demand the impossible.'' Even if telemarketers had immediate access to such information (which they do not), several commenters note that some period of time still is necessary to update marketing lists to suppress calls to recently ported wireless numbers. Therefore, we believe this limited safe harbor period is necessary to allow callers to comply with this statutory provision.

We decline to adopt a safe harbor period that extends beyond 15 days as suggested by several commenters. Although we acknowledge that a 30 or 31-day period would be consistent with the requirements to update additions to the national and company specific lists, and therefore create some administrative efficiencies, we believe such considerations are offset by the potential costs and privacy concerns to wireless subscribers that may be charged for receiving telephone solicitations during this extended period. We agree that the duration of any such safe harbor period should be limited to the extent that it is technologically reasonable for marketers to obtain the appropriate data to comply with our rules. The information provided in this proceeding indicates that a 15-day safe harbor period is a sufficient period of time to ensure that this information will be both available to the industry and can be disseminated to callers in order to comply with our rules. For example, Neustar recently made available a service that will provide data on numbers ported from wireline to wireless service on a daily basis. In addition, although not publicly available, Call Compliance describes a system that it contends will block telephone calls to wireless numbers, including those that have just been ported from wireline to wireless service.

We also decline to extend our safe harbor provision to any call made erroneously or inadvertently to a wireless number regardless of whether that number has been recently ported from wireline service as suggested by the Direct Marketing Association (DMA). We note that the Commission considered and declined to adopt a similar proposal in the *2003 TCPA Order*(68 FR 44144, July 25, 2003). We believe that adoption of this proposal is overly broad, unnecessary, and contrary to the intent of Congress. As explained, the safe harbor we adopt here is for a limited purpose. Conversely, the DMA's proposal would establish a safe harbor provision for autodialed or prerecorded calls to any wireless number in a manner equivalent to the safe harbor adopted in the context of the national do-not-call rules. As the Commission noted in the *2003 TCPA Order,* Congress found that automated or prerecorded telephone calls are a greater nuisance and invasion of privacy than live solicitation calls. In section 227(b)(1)(A), Congress enacted a strict prohibition on such calls to emergency numbers, health care facilities, and wireless numbers absent the prior express consent of the called party. Such calls were determined by Congress to threaten public safety and inappropriately shift marketing costs from sellers to consumers. The Commission has noted that wireless customers are often charged for incoming calls. Coupled with the fact that autodialers can dial thousands of numbers in a short period of time, such

calls can be particularly costly to wireless subscribers.

We believe the limited safe harbor provision that we have adopted herein will substantially alleviate the concerns expressed by the DMA andNewspaper Association of America (NAA) regarding calls made to wireless numbers. Those concerns derive largely from the recent implementation of intermodal Local Number Portability (LNP) and not from difficulties in otherwise complying with the TCPA's restrictions on autodialed or prerecorded message calls to wireless numbers. In the *2003 TCPA Order* released just a few months prior to the implementation of LNP, the record in that proceeding indicated that telemarketing to wireless phones was not a significant problem due to the successful efforts of industry to comply with our rules. For example, the DMA has created the ''Wireless TelephoneSuppression Service'' that provides a list of approximately 280 million numbers that are currently used or have been set aside for CMRS carriers. We have no reason to believe that the circumstances regarding calls to wireless numbers have otherwise changed since the Commission reviewed this issue in 2003. To the extent that intermodal LNP has been introduced, we believe the steps taken herein are sufficient to allow callers to comply with our rules while maintaining the privacy interests and cost protections afforded to wireless consumers by the TCPA. We therefore deny requests for a more expansive safe harbor from the prohibition on autodialed or prerecorded messages to wireless numbers than that adopted herein.

Finally, we decline to establish a sunset date for this safe harbor provision. We agree with several commenters that the issues associated with real-time access to numbers ported from wireline to wireless service will be ongoing for the foreseeable future. We anticipate, however, that technologies will continue to improve over time to make such information more readily available and, therefore we may revisit this issue at a later date.

National Do-Not-Call Registry

Consistent with the recent decision of the FTC, we amend our existing safe harbor rule for telemarketers that must comply with the national do-not-call registry to require such telemarketers to access the national do-not-call list and purge registered numbers from their call lists no more than 31 days prior to making a telemarketing call. We believe that this amendment will benefit consumer privacy interests by reducing from three months to 31 days the maximum period in which telemarketers must update their database of numbers registered on the national do-not-call list in order to qualify for the safe harbor protections. We also conclude that this action is consistent with the intent of Congress. As noted above, in the Appropriations Act, Congress directed the FTC to amend its corresponding safe harbor rule in a similar manner. Although the Appropriations Act does not specifically require this Commission to take action, the Do-Not-Call Implementation Act directs the Commission to consult and coordinate with the FTC to ''maximize consistency'' with the rules promulgated by the FTC. As the Commission noted in the *2004 Further Notice* (69 FR 16873, March 31, 2004), absent action to amend our safe harbor rule as it applies to the national database, many telemarketers will face inconsistent standards because the FTC's jurisdiction extends only to certain entities, while our jurisdiction extends to all telemarketers. This would result in substantial confusion for consumers and potentially hinder state and federal regulatory efforts to monitor and enforce the national do-not-call rules.

We decline to establish a ''grace period'' advocated by a few commenters that would require telemarketers to obtain the information from the national do-not-call list every 30 or 31 days, but would not require them to stop calling consumers for some additional period of time. In so concluding, we agree with the FTC's determination that there is no support for this suggested approach in the Appropriations Act. In fact, the legislative history suggests that the sole purpose of shortening the requirement to purge the do-not-call list is to reduce, to one month, the amount of time consumers must wait to see a reduction in unwanted telephone solicitations. Although the Appropriations Act does not specifically require action by this Commission, for all the reasons discussed above, we believe that our actions should be consistent with those of the FTC and the intent of Congress.

We recognize that more frequent updates of the national registry may impose some additional administrative burdens on businesses, including small businesses. We believe, however, that the enhanced consumer privacy protections created by this requirement, taken in conjunction with the regulatory benefits to state and federal governments in establishing consistent requirements on all telemarketers, outweigh any such administrative burdens. We also note that the national do-not-call registry includes a feature whereby businesses that have already downloaded the entire database may thereafter request only a list of changes to their previous list (newly added and removed numbers), rather than downloading the entire database of approximately 60 million numbers every 31 days. This option should substantially alleviate any burdens imposed on businesses that may result from more frequent update requirements. In addition, at the request of National Automobile Dealers Association (NADA), we clarify that small sellers or telemarketers that register and pay the annual fee to use the national do-not-call database are not required to either conduct an initial or subsequent download of the entire database if they use only the single number lookup feature to screen their outgoing telephone solicitations. The FTC reached a similar conclusion noting that this decision constitutes no change from the existing rule.

We agree with several commenters that it may take some time for telemarketers and small businesses to implement procedures to access the national registry on a more frequent basis than previously required under our rules. In addition, the FTC has indicated that some additional time is required to enable the FTC and the vendor that operates the national do-not-call registry to implement modifications to the registry systems anticipated by the increase in usage resulting from this rule amendment. Therefore, consistent with the FTC's determination, we establish January 1, 2005, as the effective date of this rule amendment. We emphasize that nothing we do herein otherwise effects the safe harbor requirements, as set forth in 47 CFR 64.1200(c)(2)(i), for violations of the national do-not-call rules. Thus, while sellers and telemarketers are not required to conduct a physical download of the entire registry to be in compliance with the rules, they must nevertheless maintain and record a list of telephone numbers obtained using the single number lookup feature that the seller may not contact and document the process, in order to benefit from the safe harbor provision.

Final Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking (2004 TCPA Further Notice)* (69 FR 16873, March 31, 2004) released by the Commission on March 19, 2004. The

Commission sought written public comments on the proposals contained in the *2004 TCPA Further Notice,* including comments on the IRFA. None of the comments filed in this proceeding were specifically identified as comments addressing the IRFA; however, comments that address the impact of the proposed rules and policies on small entities are discussed below. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Order

The TCPA was enacted to address certain telemarketing practices, including calls to wireless telephone numbers, which Congress found to be an invasion of consumer privacy and even a risk to public safety. The TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message ''to any telephone number assigned to a paging service, cellular telephone service, specialized mobile radio service, or other common carrier service, or any service for which the called party is charged.'' In addition, the TCPA required the Commission to ''initiate a rulemaking proceeding concerning the need to protect residential telephone subscribers' privacy rights'' and to consider several methods to accommodate telephone subscribers who do not wish to receive unsolicited advertisements.

In 2003, the Commission released a *Report and Order (2003 TCPA Order)* revising the TCPA rules to respond to changes in the marketplace for telemarketing. Specifically, we established in conjunction with the FTC a national do-not-call registry for consumers who wish to avoid unwanted telemarketing calls. The national do-not-call registry supplements long-standing company-specific rules which require companies to maintain lists of consumers who have directed the company not to contact them. In addition, we determined that the TCPA prohibits any call using an automatic telephone dialing system or an artificial or prerecorded message to any wireless telephone number. We concluded that this encompasses both voice calls and text calls to wireless numbers including, for example, Short Message Service calls. We acknowledged in the *2003 TCPA Order* that, beginning in November of 2003, numbers previously used for wireline service could be ported to wireless service providers and that telemarketers will need to take the steps necessary to identify these numbers. Intermodal local number portability (LNP) went into effect November, 2003. We now modify the Commission's rules to establish a limited safe harbor period in which persons will not be liable for placing autodialed or artificial or prerecorded message calls to numbers ported from wireline to wireless service within the previous 15 days.

The *2003 TCPA Order* also required that telemarketers use the national do-not-call registry maintained by the FTC to identify consumers who have requested not to receive telemarketing calls. In order to avail themselves of the safe harbor for telemarketers, a telemarketer was required to update or ''scrub'' its call list against the national do-not-call registry every 90 days. Recently the FTC amended its safe-harbor provision to require telemarketers to scrub their call lists every 31 days. We now modify the Commission's rules to parallel changes to the FTC's rules. With this amendment, all telemarketers are required to scrub their lists against the national do-not-call registry every 31 days in order to avail themselves of that safe harbor.

Summary of Significant Issues Raised by Public Comments in Response to the IRFA

There were no comments raised that specifically addressed the proposed rules and policies presented in the IRFA. Nonetheless, the agency considered the potential impact of the rules proposed in the IRFA on small entities and attempted, to the extent possible, to reduce the economic impact of the rules enacted herein on such entities. Comments to the *2004 Further Notice* fell into two categories. The first category includes those comments on the safe harbor provision for calls to wireless numbers; the second category includes comments regarding the safe harbor provision for the national do-not-call list.

Two comments were filed that specifically mentioned small businesses—Montalvan and the National Automobile Dealers Association (NADA). Montalvan commented on the unreasonableness of asking small businesses to scrub lists on a monthly basis. NADA filed comments urging the Commission not to adopt the proposed amendment requiring businesses to download the do-not-call list monthly instead of quarterly. NADA claims that any benefit to maintaining consistency between the FTC and the Commission is outweighed by the burden on small businesses caused by the scrubbing of call lists three times more often. In addition, NADA seeks clarification that the use of the single number lookup feature constitutes compliance with the requirement that businesses check the do-not-call list every 31 days. Lastly, NADA argues that small businesses need ''adequate time to comply with the monthly download requirement.'' And, NADA seeks an effective date no earlier than January 1, 2005 or six months after publication in the **Federal Register**, whichever is later.

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

The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. Under the Small Business Act, ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

The Commission's rules on telephone solicitation and the use of autodialers and artificial or prerecorded messages apply to a wide range of entities, including all entities that use the telephone to advertise. That is, our action affects any entity that uses an autodialer or prerecorded message to make telephone calls and the myriad of businesses throughout the nation that use telemarketing to advertise their goods or services. For instance, funeral homes, mortgage brokers, automobile dealers, newspapers, and telecommunications companies could all be affected. Thus, we expect that the rules adopted in this proceeding could have a significant economic impact on a substantial number of small entities.

Small Businesses. Nationwide, there are a total of 22.4 million small businesses, according to SBA data.

Small Organizations. As of 1992, nationwide there were approximately 275,801 small organizations [not-for-profit].

Telemarketers. Again, we note that our action affects an exhaustive list of business types. We will mention with particularity the intermediary groups that engage in this activity. SBA has determined that ''telemarketing bureaus'' with $6 million or less in annual receipts qualify as small businesses. For 1997, there were 1,727 firms in the ''telemarketing bureau'' category, total, which operated for the

entire year. Of this total, 1,536 reported annual receipts of less than $5 million, and an additional 77 reported receipts of $5 million to $9,999,999. Therefore, the majority of such firms can be considered to be small businesses.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

The revision to the safe harbor rules that require telemarketers to update their lists monthly instead of quarterly, carries no additional compliance costs for accessing the national do-not-call registry, because once a telemarketer has paid its fee to the FTC the telemarketer may access the list as often as it wants, up to once a day. There may, however, be an increase in costs associated with scrubbing the telemarketer's call list more frequently. Increased costs might be caused by a decrease in staff efficiency because staff will be required to scrub the call list monthly instead of quarterly or by increased payments to a third party for ''scrubbing'' services. We note in the *Order,* however, that the national do-not-call registry includes a feature whereby businesses that have already downloaded the entire database may thereafter request only a list of changes to their previous list (containing newly added and removed numbers), rather than downloading the entire database of approximately 60 million numbers every 31 days. This feature should substantially alleviate any burdens imposed on small businesses that may result from more frequent update requirements by minimizing for small businesses the cost of updating the list each time they must do so. In addition, at the request of NADA, we clarify that small sellers or telemarketers that register and pay the annual fee to use the national do-not-call database are not required to either conduct an initial or subsequent download of the entire database if they use only the single number lookup feature to screen their outgoing telephone solicitations. In conclusion, we believe that the enhanced consumer privacy protections derived from reducing from three months to 31 days the maximum period in which telemarketers must update their call lists using the do-not-call list, taken in conjunction with the regulatory benefits to state and federal governments and consumers in establishing consistent requirements for all telemarketers, outweigh the administrative burdens associated with this increase in compliance requirements.

Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in developing its approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.''

First, the TCPA specifically prohibits calls using an autodialer or artificial or prerecorded message to any wireless telephone number. With the advent of intermodal number portability it became important for companies engaged in telemarketing to track ported numbers in order to ensure continued compliance with the TCPA. The Commission is now adopting a limited safe harbor for autodialed and prerecorded message calls to wireless numbers that were ported within 15 days from a wireline service to a wireless service provider. It is our belief that this 15-day safe harbor period will provide a reasonable opportunity for small businesses to identify numbers that have been ported and to comply with the rules. In addition, we believe that the creation of this safe harbor will not have a significant economic impact on any small businesses, only a benefit.

One alternative we considered was not to adopt a safe harbor. That alternative could make compliance with the TCPA's prohibition almost impossible for small businesses using autodialers and prerecorded messages. The majority of commenters support the adoption of a safe harbor, although most request a minimum of 30 days. In our view, 30 days places too much of a burden on consumers, who may be subjected to calls to their wireless phones for which they must pay for up to a month's time. This is an inappropriate shifting of the costs of advertising from businesses, including small businesses, to wireless subscribers. We believe that the creation of a limited safe harbor period of 15 days balances the needs of small businesses against the needs of wireless customers. Furthermore, we do not believe that consumer privacy interests will be negatively impacted by our decision, in part because consumers may continue to avail themselves of the national and company-specific do-not-call lists.

Second, as indicated in Section D of the FRFA, the Commission has modified the TCPA safe-harbor provision. This modification requires that telemarketers scrub their lists on a monthly, rather than a quarterly basis. One alternative considered by the Commission was to leave the safe harbor unchanged. The advantage to such an alternative was that there would have been no increased burden on small businesses. Businesses would continue to download numbers from the national do-not-call registry and scrub their own call lists of those numbers every three months. The disadvantage in maintaining the status quo would have been that the FTC and Commission rules would be inconsistent, contrary to Congress' directive in the Do-Not-Call Implementation Act. Small businesses subject to the jurisdiction of both agencies would have been faced with this inconsistency. We believe that it is easier and less burdensome for small businesses if the two agencies have consistent requirements.

Several commenters stated that it may take some time for telemarketers and small businesses to implement procedures before they can access the national registry on a monthly basis. In addition, the FTC has indicated that some additional time is required to enable the FTC and the vendor that operates the national do-not-call registry to implement modifications to the registry systems anticipated by the increase in usage resulting from this rule amendment. For both these reasons, we establish January 1, 2005, as the effective date of this rule amendment. This additional period will provide telemarketers and small businesses more time to modify their procedures to accommodate these changes.

Report to Congress

The Commission will send a copy of the *Order,* including the Final Regulatory Flexibility Analysis (FRFA), in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Order,* including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Ordering Clauses

Accordingly, pursuant to the authority contained in Sections 1–4, 227, and 303(r) of the Communications Act of 1934, as amended; 47 U.S.C. 151–

154, 227 and 303(r); and 47 CFR 64.1200 of the Commission's rules, and the Do-Not-Call Implementation Act, Public Law Number 108–10, 117 Statute 557, the *Order* in CG Docket No. 02–278 IS ADOPTED, and Part 64 of the Commission's rules, 47 CFR 64.1200 is amended as set forth in the Final Rules. As discussed herein, the amended rule at 47 CFR 64.1200(c)(2)(i)(D) will become effective January 1, 2005.

The *Petition for Declaratory Ruling* filed by the Direct Marketing Association and Newspaper Association of America on January 29, 2004, *is denied* to the extent discussed herein. The Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 64

Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR Part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 154, 254 (k); secs. 403 (b)(2) (B), (C), Public Law 104–104, 110 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 225, 226, 228, and 254 (k) unless otherwise noted.

* * * * *

■ 2. Section 64.1200 is amended by adding paragraph (a)(1)(iv) and revising paragraph(c)(2)(i)(D) and adding a note to paragraph (c)(2)(i)(D) to read as follows:

§ 64.1200 Delivery restrictions.

(a) * * *

(1) * * *

(iv) A person will not be liable for violating the prohibition in paragraph (a)(1)(iii) when the call is placed to a wireless number that has been ported from wireline service and such call is a voice call; not knowingly made to a wireless number; and made within 15 days of the porting of the number from wireline to wireless service, provided the number is not already on the national do-not-call registry or caller's company-specific do-not-call list.

* * * * *

(c) * * *

(2) * * *

(i) * * *

(D) *Accessing the national do-not-call database.* It uses a process to prevent telephone solicitations to any telephone number on any list established pursuant to the do-not-call rules, employing a version of the national do-not-call registry obtained from the administrator of the registry no more than 31 days prior to the date any call is made, and maintains records documenting this process.

Note to paragraph (c)(2)(i)(D): The requirement in paragraph 64.1200(c)(2)(i)(D) for persons or entities to employ a version of the national do-not-call registry obtained from the administrator no more than 31 days prior to the date any call is made is effective January 1, 2005. Until January 1, 2005, persons or entities must continue to employ a version of the registry obtained from the administrator of the registry no more than three months prior to the date any call is made.

* * * * *

[FR Doc. 04–22755 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3057: MB Docket No. 03–190; RM–10738]

Radio Broadcasting Services; Athens and Doraville, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to petition for rule making filed by CXR Holdings, Inc. and Cox Radio, Inc. this document reallots Channel 238C1 from Athens to Doraville, Georgia, and modifies the Station WBTS license to specify Doraville as the community of license. *See* 68 FR 54879, September 19, 2003. The reference coordinates for the Channel 238C1 allotment at Doraville, Georgia, are 34–07–32 and 83–51–32. Station WBTS was granted a license to specify operation on Channel 238C1 in lieu of Channel 238C at Athens, Georgia. *See* BLH–20011016AAF. The FM Table of Allotments does not reflect this change. With this action, the proceeding is terminated.

DATES: Effective November 18, 2004.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Media Bureau (202) 418–2177.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Report and Order* in MB Docket No. 03–190 adopted September 23, 2004, and released September 27, 2004. The full text of this decision is available for inspection and copying during normal business hours in the FCC Reference Information Center at Portals ll, CY–A257, 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.* The Commission will send a copy of the *Report and Order* in this proceeding in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, *see* 5 U.S.C.801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 238C at Athens, and adding Doraville, Channel 238C1.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22751 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA–04–19284]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

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

ACTION: Denial of petition for reconsideration.

SUMMARY: The agency denies Porsche's petition for reconsideration of the agency's May 5, 2003 final rule expanding the limited line manufacturer

exemption from the advanced air bag phase-in requirements published on May 12, 2000, and amended January 6, 2003. In the petition for reconsideration, Porsche requested that NHTSA reconsider its position that advanced credits are not available to manufacturers taking advantage of the exemption. The agency is denying the petition because it does not believe manufacturers who can advance vehicle production sufficiently to use credits need the relief provided by the limited line manufacturer exception, and that further relief for limited line manufacturers is not merited.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Mr. Louis Molino, Office of Crashworthiness Standards, NVS–112, telephone (202) 366–2264, facsimile (202) 493–2739.

For legal issues, you may call Mr. Christopher M. Calamita of the NHTSA Office of the Chief Counsel, NCC–112, telephone (202) 366–2992, facsimile (202) 366–3820.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On May 12, 2000, we published in the **Federal Register** (65 FR 30680) a rule to require advanced air bags. (Docket No. NHTSA 00–7013; Notice 1.) The rule amended Standard No. 208, *Occupant Crash Protection,* to require that future air bags be designed so that, compared to air bags then installed in production vehicles, they create less risk of serious air bag-induced injuries and provide improved frontal crash protection for all occupants, by means that include advanced air bag technology. The rule is being phased in during two stages. During the first phase-in, from September 1, 2003, through August 31, 2006, increasing percentages of motor vehicles are required to meet requirements for minimizing air bag risks.

As initially adopted, the rule would have required that the majority of vehicle manufacturers meet the following phase-in requirements: 9/1/03 through 8/31/04—35 percent; 9/1/04 through 8/31/05—65 percent; 9/1/05 through 9/1/06—100 percent, with manufacturers allowed to use credits for early compliance. Effective September 1, 2006, all vehicles thereafter manufactured must comply with the advanced air bag technologies; credits for early compliance are not permitted. On January 31, 2003, NHTSA published a final rule that adjusted the first year of the phase-in to 20 percent (68 FR 4961).

On May 5, 2003 NHTSA published another final rule that expanded the limited line manufacturer exception to the first advanced air bag phase-in schedule (68 FR 23614). We decided to amend the definition of a limited line manufacturer for purposes of the first phase-in only, to a manufacturer that produces three or fewer carlines, as that term is defined in 49 CFR 583.4, for sale or distribution in the United States. We also decided to exclude a limited line manufacturer from the first two years of the first phase-in, with full compliance required in the third year. Without this relief, a limited line manufacturer, then defined as a manufacturer that produces two or fewer lines, would have been required to achieve 100% compliance by the second year of the phase-in, a point at which other manufacturers need only certify 65% of their fleet. NHTSA reiterated that no credits for early compliance were allowed. NHTSA stated its belief that such additional relief was not justified, since a limited line manufacturer that was able to take advantage of early credits could design its product plans to meet the relaxed phase-in requirements and should not be able to take advantage of one element of a compliance system it has opted not to pursue.

Porsche submitted a petition for reconsideration of the May 5, 2003 final rule, asking NHTSA to reconsider its position on early credits for limited line manufacturers opting out of the phase-in schedule. In its petition, Porsche stated that without advanced credits it would be prohibited from selling a small number of highly specialized ''niche'' vehicles in the United States from September 1, 2005, through August 31, 2006. It went on to claim that it could not simply advance production of those vehicles intended for the U.S. market to some time prior to September 1, 2005, in order to certify those vehicles to the older air bag requirements and then sell the vehicles after that date because the manufacturing process is so specialized as to preclude stockpiling of a portion of the fleet for future sales.

Porsche based its petition on four arguments, three of which were based on a mistaken belief that NHTSA had changed its position on advanced credits for limited line manufacturers in the May 5, 2003 final rule. First, Porsche stated that eliminating credits would remove its niche vehicles from the marketplace, while allowing larger manufacturers to continue production of their niche vehicles, without modification, until September 1, 2006. Second, it averred that NHTSA based it's decision to eliminate credits on an assumption, first articulated in the May 5, 2003 final rule (*i.e.,* that credits were not needed by limited line manufacturers because such manufacturers that were able to generate credits by producing compliant vehicles could likely meet the phase-in schedule), which is based on incorrect assumptions, *i.e.,* that a manufacturer of three or fewer carlines would be able to fully meet a 20–65–100% phase-in schedule if it was able to certify one or more of its carlines as advanced air bag compliant prior to September 1, 2005. Third, Porsche claimed that NHTSA had failed to provide notice before eliminating advanced credits. Finally, Porsche argued that not allowing advanced credits was directly contrary to the mandate in the Transportation Equity Act (TEA–21, 112 Stat. 466, June 9, 1998) that credits be allowed for those manufacturers exceeding the phase-in requirements of an advanced air bag final rule. For the reasons discussed below, NHTSA rejects each of Porsche's arguments.

As an initial matter, NHTSA believes it is beneficial to explain its position on limited line manufacturers, phase-ins, and advanced credits related to phase-ins. S14.1(a) and S14.3(a) of FMVSS No. 208 each specify a general phase-in schedule for vehicles certified to the standard's advanced air bag requirements: the first for vehicles manufactured prior to September 1, 2006, and the second for vehicles manufactured between September 1, 2007, and August 31, 2010. As noted in Porsche's petition for reconsideration, § 7103 of TEA–21 directed NHTSA to adopt a phase-in schedule that commenced no later than September 1, 2003, and that resulted in every vehicle subject to the advanced air bag requirements and manufactured on or after September 1, 2006 being certified to those requirements.

At its discretion, NHTSA decided to bifurcate the advanced air bag requirements and to establish a phase-in schedule for each of the two sets of requirements. NHTSA excluded three types of vehicle manufacturers from each of the two phase-ins because it recognized that these types of manufacturers faced certain hardships not faced by the larger manufacturers. Under the May 12, 2000 final rule, manufacturers of vehicles built in two or more stages and small volume manufacturers are not required to certify any of their vehicles to the advanced air bag requirements before the final effective date of those requirements, i.e., September 1, 2006 (S14.1 (c) and (d)) and September 1, 2010 (S14.3(c) and (d)). NHTSA recognized that these

manufacturers, because of their very small size, possess virtually no bargaining power with air bag suppliers, who the agency expected would be primarily engaged in satisfying the needs of larger manufacturers.

In addition, a manufacturer falling within the definition of a ''limited line manufacturer'' may decide to opt out of the general phase-in requirement as long as one hundred percent of the vehicles it makes for the U.S. market are certified as compliant with the applicable advanced air bag requirements by a specified date, i.e., September 1, 2005 (as amended by the May 5, 2003 final rule) and September 1, 2008 (S14.1(b) and S14.3(b), respectively). This provision was created because NHTSA believed it was unreasonable to expect limited line manufacturers to certify a greater percentage of their fleet to the advanced air bag requirements than was required of manufacturers of more carlines. NHTSA's analysis was based on the presumption that a limited line manufacturer would certify an entire vehicle line to the advanced air bag requirements, creating a compliance burden of half of their carlines in the first year of the phase-in. This would likely represent much more than 35% of their production. Larger manufacturers would have borne a first year compliance burden of 35% under the May 12, 2000 final rule.

No alternative phase-in schedule was adopted for any manufacturers falling within one of these three groups. Rather, each manufacturer type was exempted from the phase-in requirements adopted by NHTSA and mandated generally by TEA–21. As specified by the regulatory text of S14.1(a) and S14.3(a), only those manufacturers that comply with the phase-in requirements are entitled to advanced credits.[1]

Porsche's assertion that the agency has changed its position on advanced credits without notice and contrary to congressional intent is incorrect. The language in TEA–21 regarding advanced credits is directly linked to the phase-in also mandated by TEA–21. It does not specify that advanced credits must be provided for those manufacturers excluded from the phase-in requirements. Additionally, the explanation of the limited line manufacturer exception provided in the preamble of both the NPRM and the final rule never discussed the possibility of advanced credits and noted that under the exception, full compliance would be required for these manufacturers before it was required for those manufacturers meeting the more stringent phase-in requirements.

Although the regulatory text has always provided that advanced credits are only available to manufacturers meeting the advanced air bag phase-in requirements, the issue of the relationship between the limited line manufacturer and advanced credits was fully addressed for the first time in the May 5, 2003 final rule. In the original NPRM proposing the new advanced air bag requirements, NHTSA stated that the exemption from the phase-in schedule was limited to manufacturers of two or fewer carlines because larger manufacturers could theoretically exempt themselves from the entire first year of the phase-in. The agency then went on to note ''[h]owever, the agency doubts that any full-line vehicle manufacturers would want to take advantage of the alternative, given the need to achieve full compliance by September 1, 2003.'' (63 FR 49958, 49978; September 18, 1998). All portions of the industry were on notice, as early as 1998, that parties choosing to use the limited line manufacturer alternative would not be entitled to the panoply of discretion provided to larger manufacturers. Rather, in exchange for not having to produce any compliant vehicles during the first year of the phase-in, full compliance would be required effective the first day of the second year of the phase-in. In the May 12, 2000 final rule, NHTSA reiterated that the limited carline exception relieved those manufacturers choosing to take advantage of it from the first year of the phase-in, but that *full compliance* would be required as of September 1, 2004, one year after the commencement of the phase-in. Never did the agency discuss the possibility that advanced or carryover credits would be available for these manufacturers.

We have decided against expanding the advanced credit provisions because we continue to believe that such relief is unnecessary and would unduly favor limited line manufacturers. We note that limited line manufacturers have already been given substantial relief under both the May 12, 2000 final rule and the May 5, 2003 amendment to that rule. While manufacturers of more than three carlines are allowed to use advanced credits to reach 100% compliance in the third year of the phase-in, they must also meet the 20% and 65% phase-in requirements during the first two years, a burden from which limited line manufacturers have been relieved.

Advanced credits are not designed to allow manufacturers to manipulate the phase-in schedule and, ultimately, the number of compliant vehicles on the road prior to September 1, 2006. Rather, NHTSA acknowledges that there could be some problem vehicles for which early sensing or deployment technology is ill-suited. Rather than force a strict phase-in schedule where no recognition of these vehicles would be allowed anywhere in the phase-in, the final rule allows manufacturers to accommodate these vehicles as long as they meet the underlying phase-in requirements.

If NHTSA were to grant Porsche's petition and allow advanced credits for manufacturers using the limited line exception, it would provide these manufacturers with extended relief neither justified by their circumstances nor contemplated by the provision for advanced credits. For example, a limited line manufacturer could have chosen to certify one of its carlines as advanced air bag compliant as early as the first year of the phase-in. For a limited line manufacturer excluded from the phase-in, this compliant line would generate advanced credits each of the three years prior to the 100 percent compliance date, without any of the credits having to be used prior to that date. Assuming that carline represented slightly more than one-third of its total sales in the United States, the manufacturer could then delay all other vehicle changes necessary to certify the rest of its fleet to the advanced air bag requirements until September 1, 2006. Those manufacturers subject to the phase-in, however, could not adopt such an approach because they would have to rely on advanced credits each year of the phase-in. It is likely that manufacturers subject to the phase-in would have insufficient credits left over from the first year of the phase-in to meet the requirements established by NHTSA for the second year of the phase-in.

Alternatively, a limited line manufacturer could choose to produce no advanced air bag-compliant vehicles during the first year of the phase-in, but could choose to certify two (or even one and a half) of its carlines during the second year of the phase-in, and meet all of its certification responsibilities. As with the first option, this approach

[1] Section 7103(5) of TEA–21 states: ''To encourage early compliance, the Secretary is directed to include in the notice of proposed rulemaking required by paragraph (1) means by which manufacturers may earn credits fro future compliance. Credits, on a one-vehicle for one-vehicle basis, may be earned for vehicles certified as being in full compliance under section 30115 of title 29, United States Code, with the rule required by paragraph (2) which are either—

(A) So certified in advance of the phase-in period; or

(B) In excess of the percentage requirements during the phase-in period.

NHTSA does not believe this provision requires the agency to allow advance credits for manufacturers exempted from the mandated phase-in requirements.

would not be available to other manufacturers who must be able to certify a full 20% of their fleet in the first year of the phase-in and a full 65% in the second year. NHTSA finds these two alternatives unacceptable in that they provide a level of relief so at odds with the relief given to other manufacturers as to be patently unfair.

Finally, a limited line manufacturer could choose to certify none of its fleet to the advanced air bag requirements until a couple of months before September 1, 2005, an approach that would result in very small numbers of advanced air bag-compliant vehicles being introduced earlier than currently required under the limited line manufacturer exception. This alternative would not result in significant numbers of compliant vehicles being introduced onto U.S. roads ahead of schedule, the only rationale for granting the relief requested by Porsche. Any one of these three scenarios (and doubtless others as well) would be permissible were NHTSA to grant Porsche's petition.

As a practical matter, we believe granting Porsche's petition is unlikely to generate a sizeable number of vehicles that are certified to the advanced air bag requirements on U.S. roads in advance of FMVSS No. 208's requirements.[2] Given the criteria for determining whether a particular vehicle falls within a given carline, it is unlikely that many manufacturers of any size would be able to qualify for the exemption. Second, the manufacturer would need to manufacture more than 5,000 vehicles per year for the U.S. market. If its production numbers were lower than that, it could simply wait to certify any vehicles to the advanced air bag requirements until September 1, 2006. In its petition for reconsideration, Porsche indicated that it does not plan on introducing large numbers of advanced air bag-compliant vehicles into the U.S. prior to September 1, 2005. Rather, it appears that it would merely introduce production of such vehicles only to the extent necessary to receive an advanced credit for approximately 500, custom-made vehicles. As such, the total number of vehicles likely to be introduced in advance of September 1, 2005, is quite small, and appears to be no more than a few months of production.

As to Porsche's assertion that NHTSA's position on advanced credits will unfairly remove Porsche's niche vehicles from the U.S. market for one year while allowing larger manufacturers to use advanced credits for their niche vehicles, NHTSA notes that the limited line manufacturer exception already affords Porsche significantly more relief than is given to larger manufacturers. Additionally, the decision to use the limited line manufacturer exception, rather than the more stringent phase-in schedule with advanced credits, was a business decision left solely within Porsche's discretion. NHTSA finds that affording Porsche further relief is not merited.

Accordingly, the petition for reconsideration is denied.

Authority: 49 U.S.C. 30162; delegation of authority at 49 CFR 1.50 and 501.8.

Issued: October 4, 2004.

Stephen R. Kratzke,

Associate Administrator for Rulemaking.

[FR Doc. 04–22749 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

[2] The arguable need for such credits is very limited; it appears that only Porsche is likely to be affected by our decision not to expand the availability of advanced credits, and then only if it can show that it manufactures no more than three carlines for the U.S. market.

Proposed Rules

Federal Register

Vol. 69, No. 195

Friday, October 8, 2004

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

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

RIN 0563–AB80

Common Crop Insurance Regulations; Nursery Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) is extending the comment period for the proposed rule to amend the Nursery Crop Insurance Provisions. The proposed rule was published in the **Federal Register** on August 9, 2004, (69 FR 48166) and the comment period was scheduled to end on October 8, 2004. The comment period will be extended 45 days and will now end on November 22, 2004.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business November 22, 2004, and will be considered when the rule is to be made final.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Kansas City, MO 64133. Comments titled Nursery Crop Insurance Provisions may be sent via the Internet to *DirectorPDD@rm.fcic.usda.gov,* or the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. A copy of each response will be available for public inspection and copying from 7 a.m. to 4:30 p.m., CST, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Risk Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION: On August 9, 2004, FCIC published in the **Federal Register** (69 FR 48166) a proposed rule to amend the Nursery Crop Insurance Provisions and Nursery Peak Inventory Endorsement to improve coverage of nursery plants. FCIC also proposed to add a Rehabilitation Endorsement for Field grown plants that will recover from an insured cause of loss. FCIC provided a 60-day comment period that is scheduled to end October 8, 2004. Due to the hurricanes and subsequent inclement weather in the southeast and eastern United States, FCIC is extending the comment period an additional 45 days to ensure the public has an adequate opportunity to review and comment on the proposed rule. The comment period for the proposed rule is extended to November 22, 2004.

Signed in Washington, DC, on October 5, 2004.

Ross J. Davidson, Jr.,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 04–22740 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–08–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 23, 163, 177, 178, 179, and 180

[OPP–2003–0176; FRL–7308–2]

Updating Generic Pesticide Chemical Tolerance Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to update the generic provisions in 40 CFR parts 9, 23, 163, 177–180 pertaining to pesticide chemical tolerances and exemptions from the requirement of a tolerance under section 408 of the Federal Food, Drug, and Cosmetic Act. This update is necessary due to various changes made in the underlying statute by the Food Quality Protection Act of 1996. The proposed amendments are primarily procedural in nature.

DATES: Comments must be received on or before December 7, 2004.

ADDRESSES: Submit your comments, identified by docket ID number OPP–2003–0176, by one of the following methods:

- *Federal eRulemaking Portal*: *http://www.regulations.gov/*. Follow the on-line instructions for submitting comments.
- *Agency Website*: *http://www.epa.gov/edocket/*. EDOCKET, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Follow the on-line instructions for submitting comments.
- *E-mail*: Comments may be sent by e-mail to *opp-docket@epa.gov*, Attention: Docket ID Number OPP–2003–0176.
- *Mail*: 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–2003–0176.
- *Hand Delivery*: 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–2003–0176. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number OPP–2003–0176. 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://www.epa.gov/edocket/*, 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 EDOCKET, regulations.gov, or e-mail. The EPA EDOCKET and the regulations.gov websites 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 EDOCKET 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. For additional information about EPA's public docket visit EDOCKET on-line or see the **Federal Register** of May 31, 2002 (67 FR 38102) (FRL–7181–7).

Docket: 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:

Jonathan Fleuchaus, Office of General Counsel, Mail code 2333A, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–5628; fax number: (202) 564–5644; e-mail address: *fleuchaus.jonathan@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 manufacturer (NAICS 311)
- Pesticide manufacturer (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 is available at E-CFR Beta Site Two at *http://www.gpoaccess.gov/ecfr/*.

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

1. *Submitting CBI.* Do not submit this information to EPA through EDOCKET, regulations.gov, or e-mail. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

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

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

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

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

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

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

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

II. Background

A. What Action is the Agency Taking?

EPA is proposing to amend various sections of 40 CFR parts 9, 23, 163, and 177-180 to make them consistent with the changes to section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, contained in the Food Quality Protection Act of 1996 (FQPA).

EPA is proposing to revoke 40 CFR part 163 in its entirety. Part 163 addresses ''certifications of usefulness'' for pesticide chemicals. In amending section 408, the FQPA dropped all requirements pertaining to certifications of usefulness. EPA is proposing several general changes throughout parts 177–180. These changes are:

1. *Remove most references to FFDCA section 409.* The FQPA consolidated FFDCA regulation of pesticides, for the most part, under FFDCA section 408. See 21 U.S.C. 346a(a)(1). Previously, pesticide residues in processed food were regulated, in part, under FFDCA section 409. Most references in 40 CFR parts 177–180 to section 409 thus have become obsolete and are proposed to be removed. This includes 40 CFR part 177 in its entirety because it is devoted to providing procedures for establishing regulations under section 409.

2. *Remove most references to ''food additives.''* Because ''food additives'' are addressed by section 409 and not section 408, for similar reasons, most references to ''food additives'' are proposed to be removed. See 21 U.S.C. 348.

3. *Revise statutory cross-references where appropriate.* In some instances, the FQPA moved various provisions in section 408 to different subsections. For example, the procedures pertaining to filing objections are now located in section 408(g) not section 408(d) as they were previously. These cross-references are proposed to be corrected.

4. *Remove provisions addressing advisory committees.* Previously, section 408 had a provision permitting affected parties to request the formation of science advisory panels regarding tolerance actions. Because this provision was dropped by the FQPA, EPA is proposing to remove the implementing regulations.

5. *Remove provisions addressing the time requirements for acting on petitions*. Previously, section 408 required action on petitions in certain timeframes. Because this provision was dropped by the FQPA, EPA is proposing to remove implementing regulations concerning these timeframes.

6. *Revise changed statutory time periods*. In a few instances, the FQPA revised statutory time periods pertaining to actions concerning tolerances. For example, the period in which objections to final tolerance rules can be made was extended from 30 to 60 days. See 21 U.S.C. 346a(g)(2). EPA is proposing to change its regulations to be consistent with the statute.

7. *Remove obsolete references to the ''Registration Division.''* 40 CFR part 180 contains several references to the Registration Division of the Office of Pesticide Programs. Because tolerance activities are now divided among several divisions in the Office of Pesticide Programs, the references to the Registration Division may be confusing, and EPA is proposing to either replace these references with a reference to ''the Agency'' or simply delete them, as appropriate. Although this change is not directly responsive to the FQPA changes, the potential confusion that might be caused by the obsolete references was deemed important to correct at this time.

8. *Correct Agency addresses*. 40 CFR 178.25(a)(5) and 180.33(m) currently list obsolete addresses for mailings to the Agency. These addresses are proposed to be corrected.

Other changes involving individual sections include:

1. *40 CFR 178.35*. This provision addresses modification or revocation of a tolerance regulation on the basis of objections filed with the Agency. EPA is proposing to change the language in this section to track the language in new section 408(g)(2)(C). See 21 U.S.C. 346a(g)(2).

2. *40 CFR 180.1(f)*. The FQPA amended the provision addressing the manner in which pesticide chemical tolerances written for raw agricultural commodities apply to processed foods manufactured from those commodities. This provision is commonly referred to as the ''flow-through'' provision because it generally legalizes residues in processed food that are not higher than the residue levels permitted in the raw agricultural commodity. See 21 U.S.C. 346a(a)(2). EPA is proposing to amend 40 CFR 180.1(f) to track the language in new section 408(a)(2).

EPA calls attention to the fact that one of the changes in the flow-through provision, and thus in the revised 40 CFR 180.1(f), is that it no longer focuses on whether processed food is ''ready to eat.'' For many years prior to the passage of the FQPA, EPA determined the need for processed food tolerances without regard to whether the processed food was ''ready to eat'' or not, despite statutory language specifying that the flow-through provision applied to ''ready to eat'' processed food. This led to the establishment of several processed food tolerances that were unnecessary because the tolerances were established on not ''ready to eat'' commodities and when these commodities underwent further processing to reach the ''ready to eat'' stage, residues declined below the raw agricultural commodity tolerance. Shortly before passage of the FQPA, EPA revoked several tolerances on not ''ready to eat'' processed foods on the ground they were not necessary given the existing raw agricultural commodity tolerance level and the level of residues present in the ''ready to eat'' processed food. As part of the tolerance reassessment process required by the FQPA, EPA will determine if such tolerances need to be reestablished and, if so, take steps to reinstate such tolerances. In the meantime, because section 408(j)(3) preserves the effectiveness of raw agricultural commodity tolerances in existence at the time of passage of the FQPA, EPA believes that the raw agricultural commodity tolerances corresponding to the revoked not ''ready to eat'' processed food tolerances should be enforced under the pre-FQPA ''flow-through'' provision thus not subjecting not ''ready to eat'' processed food to a changed regulatory environment. Otherwise, the effect of these raw agricultural commodity tolerances will not be maintained as specified by section 408(j)(3).

3. *40 CFR 180.2*. New section 408(k) mandates that pesticide chemicals regarded by the Administrator as generally recognized as safe (GRAS) shall be regarded as exempt from the requirement for a tolerance. This section further directs EPA to indicate, by regulation, which substances have been converted from GRAS to being covered by a tolerance exemption. 40 CFR 180.2 now contains a listing of GRAS substances. Pursuant to section 408(k), EPA is proposing in this action to create tolerance exemptions in separate sections of 40 CFR part 180 for all but three of these substances (citric acid, fumaric acid, and sodium chloride). The remainder of 40 CFR 180.2, which contains procedures for obtaining GRAS status is proposed to be deleted. Citric acid, fumaric acid, and sodium chloride are the subject of a separate rulemaking intended to create tolerance exemptions for these substances in 40 CFR 180.950.

4. *40 CFR 180.7*. Three important, specific changes are proposed for 40 CFR 180.7. First, it is proposed that this section be expanded from addressing tolerances just for raw agricultural commodities to tolerances for raw agricultural commodities and processed foods. This is consistent with the changes in the FQPA which expanded section 408 to include pesticide chemical tolerances for processed foods. See 21 U.S.C. 346a(a)(1). Second, EPA is proposing to expand the requirements pertaining to petition contents consistent with the expanded statutory language in the FQPA, including the requirement that the petition contain a summary. See 21 U.S.C. 346a(d)(2).

Third, EPA is specifying that the full text of the petitioner's summary of its petition will be added to EPA's Electronic Public Docket (*http://www.epa.gov/edocket*) and requiring that a specific reference to the internet address for the summary be included in the Notice of Filing. To date, EPA has published the full text of the petitioner's summary in the **Federal Register** notice announcing the Notice of Filing. EPA is proposing to include the petitioner's summary in the Notice of Filing **Federal Register** notice through a reference and to publish the summary on its internet website because petition ''summaries'' have expanded, in many instances, well beyond the concept of a petition summary and could be better described as the petition itself. Rather than continue to add these lengthy documents to the **Federal Register** or attempt to influence how petitioners prepare such summaries, EPA believes that publication in the Electronic Public Docket on its internet website, with a reference to that internet site address in the **Federal Register**, conforms to the statute and provides the public with the greatest amount of information in a manner that is readily accessible.

Other changes to 40 CFR 180.7 include: (1) Amending paragraph (b) to be in the form of a list of requirements for a petition rather than a model letter to the Registration Division; (2) amending paragraph (d) to drop now meaningless provisions pertaining to the date a petition is deemed to be filed; and (3) amending paragraph (e) to update the language regarding publication of a petitioner-provided summary of the petition.

5. *40 CFR 180.29*. Previously, FFDCA section 408 contained different procedures for pesticide registrants and other parties. 40 CFR 180.29, in part,

implemented the procedures for establishing tolerances pertaining to non-registrants. The new FFDCA section 408(d) requires all parties to follow the same petition process. See 21 U.S.C. 346a(d). EPA is proposing to remove the old procedures in 40 CFR 180.29 that have been dropped from the statute. Similar changes are proposed for 40 CFR 180.32 addressing modification and revocation of tolerances.

6. *40 CFR 180.30*. The FQPA expanded and clarified the exclusive judicial review procedures under section 408. See 21 U.S.C. 346a(h). EPA is proposing to revise 40 CFR 180.30 to track the statutory changes regarding this topic.

7. *40 CFR 180.31*. The FQPA changed the procedures for establishing temporary tolerances for experimental use of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136 *et seq.* See 21 U.S.C. 346a(r). EPA is proposing to modify 40 CFR 180.31 to reflect these statutory changes. In brief, the FQPA requires that temporary tolerances be established under the same procedures pertaining to all except emergency tolerances.

8. *40 CFR 180.32*. The language in 40 CFR 180.32 of the regulations is proposed to be modified to make it consistent with the FQPA. Existing 40 CFR 180.32 speaks in terms of ''amendment'' and ''repeal'' of tolerances, whereas the FQPA describes such actions as ''modifications'' and ''revocations.''

9. *40 CFR 23.10*. The language in this section is proposed to be modified to conform the statutory citations to the new subsection in section 408 governing judicial review and to conform the language pertaining to reviewable actions to the language of section 408's revised judicial review provision.

10. *40 CFR 9.1*. Now obsolete 40 CFR parts 163 and 177 are proposed to be removed from the table in 40 CFR part 9.

The Agency is also considering minor adjustments to 40 CFR part 180 to accommodate recent legislation concerning pesticide registration and tolerance fees. See Pesticide Registration Improvement Act of 2003, Public Law 108–199 (HR 2673).

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

These changes are being proposed under EPA's authority in FFDCA section 408(e)(1)(C) to establish general procedures and requirements to implement section 408.

III. Regulatory Assessment Requirements

This proposed rule makes several changes in the EPA regulations governing pesticide tolerances and exemptions from tolerance. The amendments are procedural in nature and, for the most part, correct the CFR so that it is consistent with FFDCA section 408, as amended by the FQPA, and EPA's ongoing implementation of FFDCA. Other than making EPA regulations more accurate, these amendments are not expected to have any impact on regulated parties or the public. Accordingly, these amendments are not subject to review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), as a significant regulatory action. Because this proposed rule has been exempted from review under Executive Order 12866 due to its lack of significance, this proposed 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 proposed 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, as detailed above, these amendments will have no detrimental impact on regulated parties or the public, EPA certifies under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) that the amendments will not have a significant impact on a substantial number of small entities. 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 proposed rule is directed at pesticide manufacturers and others who seek to establish, modify, or revoke pesticide tolerances and exemptions, 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 proposed 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 proposed 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 proposed rule.

List of Subjects in 40 CFR Parts 9, 163, 177, 178, 179, 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: September 20, 2004.

Susan B. Hazen,

Acting Assistant Administrator, Office of Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I is amended as follows:

PART 9—[AMENDED]

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

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

§ 9.1 [Amended]

2. Section 9.1 is amended by removing the entries and center headings for parts 163 and 177 in the table.

PART 23—[AMENDED]

3. The authority citation for part 23 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1361(a), 1369(b); Clean Air Act, 42 U.S.C. 7601(a)(1), 7607(b); Resource, Conservation and Recovery Act, 42 U.S.C. 6912(a), 6976; Toxic Substances Control Act, 15 U.S.C. 2618; Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136n(b), 136w(a); Safe Drinking Water Act, 42 U.S.C. 300j–7(a)(2), 300j–9(a); Atomic Energy Act, 42 U.S.C. 2201, 2239; Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 371(a), 346a, 348; 28 U.S.C. 2112(a), 2343, 2344.

4. Section 23.10 is revised to read as follows:

§ 23.10 Timing of Administrator's action under the Federal Food, Drug, and Cosmetic Act.

Unless the Administrator otherwise explicitly provides in a particular order, the time and date of the entry of a regulation issued under section 21 U.S.C. 346a(e)(1)(C), or any order issued under 21 U.S.C. 346a(f)(1)(C) or 21 U.S.C. 346a(g)(2)(C), or any regulation that is the subject of such an order, shall, for purposes of 21 U.S.C. 346a(h), be at 1 p.m. eastern time (standard or daylight, as appropriate) on the date that is for a **Federal Register** document, 2 weeks after the date when the document is published in the **Federal Register**, or for any other document, 2 weeks after it is signed.

PART 163—[REMOVED]

5. Part 163 is removed.

PART 177—[REMOVED]

6. Part 177 is removed.

PART 178—[AMENDED]

7. The authority citation for part 178 continues to read as follows:

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

8. Section 178.20 is amended by revising paragraph (a) to read as follows:

§ 178.20 Right to submit objections and requests for a hearing.

(a) On or before the 60th day after the date of publication in the **Federal Register** of an order under part 180 of this chapter establishing, modifying, or revoking a regulation, or denying all or any portion of a petition, a person adversely affected by such order or petition denial may submit, in accordance with § 178.25, one or more written objections to the order (or to the action that is the subject of the order).

* * * * *

9. Section 178.25 is amended by revising paragraphs (a)(7) and (b)(2) to read as follows:

§ 178.25 Form and manner of submission of objections.

(a) * * *

(7) Be received by the Hearing Clerk not later than the close of business of the 60th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 60th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 60th day).

* * * * *

(b) * * *

(2) For personal delivery, the Office of the Hearing Clerk is located at: Room 104, Crystal Mall #2, 1801 S. Bell St., Arlington, VA.

10. Section 178.35 is amended as follows:

a. By revising paragraph (a).

b. By revising ''rule'' to read ''order'' in paragraph (b).

c. By revising the section heading.

§ 178.35 Modification or revocation of regulation or prior order.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation or prior order in question should be modified or revoked, the Administrator will publish an order setting forth any revision to the regulation or prior order that the Administrator has found to be warranted.

* * * * *

11. Section 178.37 is amended by revising the introductory text of paragraph (a) and paragraph (c) to read as follows:

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the **Federal Register** an order under FFDCA section 408(g)(2)(B) or section 408(g)(2)(C) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

* * * * *

(c) Each order published under paragraph (a) of this section must state its effective date.

12. Section 178.65 is revised to read as follows:

§ 178.65 Judicial review.

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(h), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(h) of the right to judicial review of the order and of any regulation promulgated by the order.

§ 178.70 [Amended]

13. Section 178.70 is amended by removing paragraphs (a)(2) and (a)(3) and redesignating existing paragraphs (a)(4) through (a)(8) as paragraphs (a)(2) through (a)(6), respectively.

PART 179—[AMENDED]

14. The authority citation for part 179 continues to read as follows:

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

§ 179.20 [Amended]

15. Section 179.20(a)(3) is amended by removing the phrase ''§ 177.81 or ''.

§ 179.24 [Amended]

16. Section 179.24 is amended by removing ''177,'' and removing the comma after ''1978'' in paragraph (a).

§ 179.83 [Amended]

17. Section 179.83 is amended by revising ''parts 177, or 180'' to read ''part 180'' in paragraph (a)(1).

18. Section 179.91 is amended by revising paragraph (b) to read as follows:

§ 179.91 Burden of going forward; burden of persuasion.

* * * * *

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 of the FFDCA has the burden of persuasion in the hearing on that issue, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or exemption from the requirement for a tolerance.

§ 179.125 [Amended]

19. Section 179.125 is amended by revising ''408(i) or 409(g)(1)'' wherever it appears to read ''408(h)'' in paragraph (a).

§ 179.130 [Amended]

20. Section 179.130 is amended by removing paragraphs (a)(2) and (a)(3) and redesignating existing paragraphs (a)(4) through (a)(12) as paragraphs (a)(2) through (a)(10), respectively.

PART 180—[AMENDED]

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

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

22. Section 180.1 is amended by removing paragraph (d), redesignating existing paragraphs (e) through (p) as paragraphs (d) through (o), respectively, and revising newly designated paragraph (e) to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(e) Where a raw agricultural commodity bearing a pesticide chemical residue that has been exempted from the requirement of a tolerance, or which is within a tolerance permitted under section 408, is used in preparing a processed food, the processed food will not be considered unsafe within the meaning of sections 402 and 408(a), despite the lack of a tolerance or exemption for the pesticide chemical residue in the processed food, if:

(1) The pesticide chemical has been used in or on the raw agricultural commodity in conformity with a tolerance under this section;

(2) The pesticide chemical residue has been removed to the extent possible in good manufacturing practice; and

(3) The concentration of the pesticide chemical residue in the processed food is not greater than the tolerance prescribed for the pesticide chemical residue on the raw agricultural commodity.

* * * * *

§ 180.2 [Removed]

23. Section 180.2 is removed.

24. The undesignated center heading that precedes § 180.7 and § 180.7 are revised to read as follows:

Procedure for Filing Petitions Seeking the Establishment, Modification, or Revocation of Tolerances or Exemptions

§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities or processed foods.

(a) Petitions to be filed with the Agency under the provisions of section 408(d) shall be submitted in duplicate. If any part of the material submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation. The petition shall be accompanied by an advance deposit for fees described in § 180.33. The petition shall state the petitioner's mail address to which notice of objection under section 408(g)(2) may be sent. The petition must be signed by the petitioner or by his attorney or agent, or (if a corporation) by an authorized official.

(b) Petitions shall include the following information:

(1) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition. Both a paper and electronic copy of the summary should be submitted. The electronic copy should be formatted according to the Office of Pesticide Programs' current standard for electronic data submission as specified at *http://www.epa.gov/oppfead1/eds/edsgoals.htm*.

(2) A statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice of filing of the petition to be published under section 408(d)(3) and as a part of a proposed or final regulation issued under section 408.

(3) The name, chemical identity, and composition of the pesticide chemical residue and of the pesticide chemical that produces the residue.

(4) Data showing the recommended amount, frequency, method, and time of application of the pesticide chemical.

(5) Full reports of tests and investigations made with respect to the safety of the pesticide chemical, including full information as to the methods and controls used in conducting those tests and investigations.

(6) Full reports of tests and investigations made with respect to the nature and amount of the pesticide chemical residue that is likely to remain in or on the food, including a description of the analytical methods used. (See § 180.34 for further information about residue tests.)

(7) Proposed tolerances for the pesticide chemical residue if tolerances are proposed.

(8) Practicable methods for removing any amount of the residue that would exceed any proposed tolerance.

(9) A practical method for detecting and measuring the levels of the pesticide chemical residue in or on the food, or for exemptions, a statement why such a method is not needed.

(10) If the petition relates to a tolerance for a processed food, reports of investigations conducted using the processing method(s) used to produce that food.

(11) Such information as the Administrator may require to make the determination under section 408(b)(2)(C).

(12) Such information as the Administrator may require on whether the pesticide chemical may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects.

(13) Information regarding exposure to the pesticide chemical residue due to any tolerance or exemption already granted for such residue.

(14) Information concerning any maximum residue level established by the Codex Alimentarius Commission for the pesticide chemical residue addressed in the petition. If a Codex maximum residue level has been established for the pesticide chemical residue and the petitioner does not propose that this level be adopted, a statement explaining the reasons for this departure from the Codex level.

(15) Such other data and information as the Administrator requires by regulation to support the petition.

(16) Reasonable grounds in support of the petition.

(c) The data specified under paragraphs (b)(1) through (b)(16) of this section should be on separate sheets or sets of sheets, suitably identified. If such data have already been submitted with an earlier application, the present petition may incorporate it by reference to the earlier one.

(d) Except as noted in paragraph (e) of this section, a petition shall not be

accepted for filing if any of the data prescribed by section 408(d) are lacking or are not set forth so as to be readily understood. The availability to the public of information provided to, or otherwise obtained by, the Agency under this part shall be governed by part 2 of this chapter. The Administrator shall make the full text of the summary referenced in paragraph (b)(1) of this section available to the public in the Environmental Protection Agency Electronic Docket at *http://www.epa.gov/edocket* no later than publication in the **Federal Register** of the notice of the petition filing.

(e) The Administrator shall notify the petitioner within 15 days after its receipt of acceptance or nonacceptance of a petition, and if not accepted the reasons therefor. If petitioner desires, the petitioner may supplement a deficient petition after notification as to deficiencies. If the petitioner does not wish to supplement or explain the petition and requests in writing that it be filed as submitted, the petition shall be filed and the petitioner so notified.

(f) A notice of the filing of a petition for a pesticide chemical residue tolerance that the Administrator determines has met the requirements of paragraph (b) of this section shall be published in the **Federal Register** by the Administrator within 30 days after such determination. The notice shall state the name of the pesticide chemical residue and the commodities for which a tolerance is sought and announce the availability of a description of the analytical methods available to the Administrator for the detection and measurement of the pesticide chemical residue with respect to which the petition is filed or shall set forth the petitioner's statement of why such a method is not needed. The notice shall explicitly reference the specific address in the Agency's Electronic Docket (*http://www.epa.gov/edocket*) where the full text of the summary required in paragraph (b) of this section and refer interested parties to this document for further information on the petition. The full text of the summary may be omitted from the notice.

(g) The Administrator may request a sample of the pesticide chemical at any time while a petition is under consideration. The Administrator shall specify in its request for a sample of the pesticide chemical, a quantity which it deems adequate to permit tests of analytical methods used to determine residues of the pesticide chemical and of methods proposed by the petitioner for removing any residues of the chemical that exceed the tolerance proposed.

(h) The Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in accord with the action proposed by the petitioner), or whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29. The Administrator shall publish in the **Federal Register** such order or proposed regulation. After receiving comments on any proposed regulation, the Administrator may issue an order that establishes, modifies, or revokes a tolerance regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under part 178 of this chapter. A regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

25. Section 180.8 is revised to read as follows:

§ 180.8 Withdrawal of petitions without prejudice.

In some cases the Administrator will notify the petitioner that the petition, while technically complete, is inadequate to justify the establishment of a tolerance or the tolerance requested by petitioner. This may be due to the fact that the data are not sufficiently clear or complete. In such cases, the petitioner may withdraw the petition pending its clarification or the obtaining of additional data. This withdrawal may be without prejudice to a future filing. A deposit for fees as specified in § 180.33 shall accompany the resubmission of the petition.

26. Section 180.9 is revised to read as follows:

§ 180.9 Substantive amendments to petitions.

After a petition has been filed, the petitioner may submit additional information or data in support thereof, but in such cases the petition will be given a new filing date.

§§ 180.10, 180.11 and 180.12 [Removed]

27. Sections 180.10, 180.11 and 180.12 are removed.

28. The undesignated center heading that precedes § 180.29, and § 180.29 are revised to read as follows:

Establishment, Modification, and Revocation of Tolerance on Initiative of Administrator; Judicial Review; Temporary Tolerances; Modification and Revocation of Tolerances; Fees

§ 180.29 Establishment, modification, and revocation of tolerance on initiative of Administrator.

(a) Upon the Administrator's own initiative, the Administrator may propose, under section 408(e) of the Federal Food, Drug, and Cosmetic Act, the issuance of a regulation establishing a tolerance for a pesticide chemical or exempting it from the necessity of a tolerance, or a regulation modifying or revoking an existing tolerance or exemption.

(b) The Administrator shall provide a period of not less than 60 days for persons to comment on the proposed regulation, except that a shorter period for comment may be provided if the Administrator for good cause finds that it would be in the public interest to do so and states the reasons for the finding in the notice of proposed rulemaking.

(c) After reviewing any timely comments received, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register**. An order published under this section shall state that persons may submit objections and requests for a hearing in the manner described in part 178 of this chapter.

(d) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register** unless otherwise provided in the regulation.

29. Section 180.30 is revised to read as follows:

§ 180.30 Judicial review.

(a) Under section 408(h) of the FFDCA, judicial review is available in the United States Courts of Appeal as to the following actions:

(1) Regulations establishing general procedures and requirements under FFDCA section 408(e)(1)(C).

(2) Orders issued under FFDCA section 408(f)(1)(C) requiring the submission of data.

(3) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to establishment, modification, or revocation of a tolerance or exemption under FFDCA section 408(d)(4), or any regulation that is the subject of such an order. The underlying action here is Agency disposition of a petition seeking the establishment, modification, or revocation of a tolerance or exemption.

(4) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections

to the denial of a petition under FFDCA section 408(d)(4).

(5) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the establishment, modification, suspension, or revocation of a tolerance or exemption under FFDCA section 408(e)(1)(A) or (e)(1)(B). The underlying action here is the establishment, modification, suspension, or revocation of a tolerance or exemption upon the initiative of EPA including EPA actions pursuant to FFDCA sections 408(b)(2)(B)(v), 408(b)(2)(E)(ii), 408(d)(4)(C)(ii), 408(l)(4), and 408(q)(1).

(6) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to the revocation or modification of a tolerance or exemption under FFDCA section 408(f)(2) for noncompliance with requirements for the submission of data.

(7) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to rules issued under FFDCA sections 408(n)(3) and 408(d) or (e) regarding determinations pertaining to State authority to establish regulatory limits on pesticide chemical residues.

(8) Orders issued under FFDCA section 408(g)(2)(C) ruling on objections to orders issued under FFDCA section 408(n)(5)(C) authorizing States to establish regulatory limits not identical to certain tolerances or exemptions.

(b) Any issue as to which review is or was obtainable under paragraph (a) of this section shall not be the subject of judicial review under any other provision of law. In part, this means that, for the Agency actions subject to the objection procedure in FFDCA section 408(g)(2), judicial review is not available unless an adversely affected party exhausts these objection procedures, and any petition procedures preliminary thereto.

30. Section 180.31 is revised to read as follows:

§ 180.31 Temporary tolerances.

(a) A temporary tolerance (or exemption from a tolerance) established under the authority of section 408(r) of the Act shall be deemed to be a tolerance (or exemption from the requirement of a tolerance) for the purposes of section 408(a)(1) or (a)(2) of the Act and for the purposes of § 180.30.

(b) A request for a temporary tolerance or a temporary exemption from a tolerance by a person who has obtained or is seeking an experimental permit for a pesticide chemical under the Federal Insecticide, Fungicide, and Rodenticide Act shall be accompanied by such data as are available on subjects outlined in § 180.7(b) and an advance deposit to cover fees as provided in § 180.33.

(c) To obtain a temporary tolerance, a requestor must comply with the petition procedures specified in FFDCA section 408(d) and § 180.7 except as provided in this section.

(d) A temporary tolerance or exemption from a tolerance may be issued for a period designed to allow the orderly marketing of the raw agricultural commodities produced while testing a pesticide chemical under an experimental permit issued under authority of the Federal Insecticide, Fungicide, and Rodenticide Act if the Administrator concludes that the safety standard in FFDCA section 408(b)(2) or (c), as applicable, is met. Subject to the requirements of section 408(e), a temporary tolerance or exemption from a tolerance may be revoked if the experimental permit is revoked, or may be revoked at any time if it develops that the application for a temporary tolerance contains a misstatement of a material fact or that new scientific data or experience with the pesticide chemical indicates that it does not meet the safety standard in FFDCA section 408(b)(2) or (c), as applicable.

(e) Conditions under which a temporary tolerance is established shall include:

(1) A limitation on the amount of the chemical to be used on the designated crops permitted under the experimental permit.

(2) A limitation for the use of the chemical on the designated crops to bona fide experimental use by qualified persons as indicated in the experimental permit.

(3) A requirement that the person or firm which obtains the experimental permit for which the temporary tolerance is established will immediately inform the Environmental Protection Agency of any reports on findings from the experimental use that have a bearing on safety.

(4) A requirement that the person or firm which obtained the experimental permit for which the temporary tolerance is established will keep records of production, distribution, and performance for a period of 2 years and, on request, at any reasonable time, make these records available to any authorized officer or employee of the Environmental Protection Agency.

31. Section 180.32 is revised to read as follows:

§ 180.32 Procedure for modifying and revoking tolerances or exemptions from tolerances.

(a) The Administrator on his/her own initiative may propose the issuance of a regulation modifying or revoking a tolerance for a pesticide chemical residue on raw agricultural commodities or processed foods or modifying or revoking an exemption from tolerance for such residue.

(b) Any person may file with the Administrator a petition proposing the issuance of a regulation modifying or revoking a tolerance or exemption from a tolerance for a pesticide chemical residue. The petition shall furnish reasonable grounds for the action sought. Reasonable grounds shall include an explanation showing wherein the person has a substantial interest in such tolerance or exemption from tolerance and an assertion of facts (supported by data if available) showing that new uses for the pesticide chemical have been developed or old uses abandoned, that new data are available as to toxicity of the chemical, or that experience with the application of the tolerance or exemption from tolerance may justify its modification or revocation. Evidence that a person has registered or has submitted an application for the registration of an pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act will be regarded as evidence that the person has a substantial interest in a tolerance or exemption from the requirement of a tolerance for a pesticide chemical that consists in whole or in part of the pesticide. New data should be furnished in the form specified in § 180.7(b) for submitting petitions, as applicable.

(c) The procedures for completing action on an Administrator-initiated proposal or a petition shall be those specified in §§ 180.29 and 180.7, as applicable.

32. Section 180.33 is amended as follows:

a. In paragraphs (a), (b), (c), and (h) remove the phrase ''or request''.

b. Remove paragraph (j) and redesignate existing paragraphs (k) through (p) as paragraphs (j) through (o), respectively.

c. In newly designated paragraph (j) revise ''408(d)(5) or (e)'' to read ''408(h)''.

d. In newly designated paragraph (l) remove the phrase ''Registration Division (7505C),''.

e. In newly designated paragraph (m) remove the phrase ''Registration Division, (7505C),''.

f. Revise paragraph (f) and the third sentence of newly designated paragraph (l) to read as follows:

§ 180.33 Fees.

* * * * *

(f) Each petition for revocation of a tolerance shall be accompanied by a fee

of $10,125. Such fee is not required when, in connection with the change sought under this paragraph, a petition is filed for the establishment of new tolerances to take the place of those sought to be revoked and a fee is paid as required by paragraph (a) of this section.

* * * * *

(l) * * * A fee of $2,025 shall accompany every request for a waiver or refund, as specified in paragraph (m) of this section, except that the fee under this paragraph shall not be imposed on any person who has no financial interest in any action requested by such person under paragraphs (a) through (j) of this section. * * *

* * * * *

33. Section 180.40 is amended by revising the last sentence in paragraph (f) to read as follows:

§ 180.40 Tolerances for crop groups.

* * * * *

(f) * * * Processing data will be required prior to establishment of a group tolerance, and tolerances will not be granted on a group basis as to processed foods prepared from crops covered by the group tolerance.

* * * * *

34. Section 180.1229 is added to subpart D to read as follows:

§ 180.1229 Benzaldehyde; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of benzaldehyde when used as a bee repellant in the harvesting of honey.

35. Section 180.1230 is added to subpart D to read as follows:

§ 180.1230 Ferrous sulfate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of ferrous sulfate.

36. Section 180.1231 is added to subpart D to read as follows:

§ 180.1231 Lime; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lime.

37. Section 180.1232 is added to subpart D to read as follows:

§ 180.1232 Lime-sulfur; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of lime-sulfur.

38. Section 180.1233 is added to subpart D to read as follows:

§ 180.1233 Potassium sorbate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of potassium sorbate.

39. Section 180.1234 is added to subpart D to read as follows:

§ 180.1234 Sodium carbonate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sodium carbonate.

40. Section 180.1235 is added to subpart D to read as follows:

§ 180.1235 Sodium hypochlorite; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sodium hypochlorite.

41. Section 180.1236 is added to subpart D to read as follows:

§ 180.1236 Sulfur; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sulfur.

42. Section 180.1237 is added to subpart D to read as follows:

§ 180.1237 Sodium metasilicate; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of sodium metasilicate when used as plant desiccants, so long as the metasilicate does not exceed 4% by weight in aqueous solution.

43. Section 180.1238 is added to subpart D to read as follows:

§ 180.1238 Oil of lemon; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of oil of lemon when used as a postharvest fungicide.

44. Section 180.1239 is added to subpart D to read as follows:

§ 180.1239 Oil of orange; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of oil of orange when used as a postharvest fungicide.

[FR Doc. 04–22584 Filed 10–7–04; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[AZ104–0069; FRL–7823–6]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Arizona

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Maricopa Association of Governments (MAG) serious area carbon monoxide (CO) state implementation plan (SIP) for the Maricopa County CO nonattainment area (the metropolitan Phoenix area, Arizona) as meeting the Clean Air Act (CAA) requirements for serious CO nonattainment areas. We are also proposing to approve the MAG CO redesignation request and maintenance plan for the Maricopa County CO nonattainment area as meeting CAA requirements for redesignation requests and maintenance plans. In addition, we are proposing to make a boundary change under Section 107 of the CAA to take the Gila River Indian Community (GRIC) out of the Maricopa County maintenance area. The portion of the Gila River Indian Community which is currently in the Maricopa County CO nonattainment area will be ''unclassifiable/attainment'' for CO, and will not be subject to the MAG CO Redesignation Request and Maintenance Plan.

DATES: Written comments must be received at the address below on or before November 8, 2004.

ADDRESSES: Formal written comments should be mailed or emailed to Wienke Tax, Office of Air Planning (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, *tax.wienke@epa.gov.* Comments may also be submitted through the **Federal Register** Web site at *http://www.regulations.gov.* We prefer electronic comments.

You can inspect copies of EPA's **Federal Register** document and technical support documents (TSD) at our Region 9 office during normal business hours (see address above). Due to increased security, we suggest that you call at least 24 hours prior to visiting the Regional Office so that we can make arrangements to have someone meet you. The **Federal Register** document and TSD are also available as electronic files on EPA's

Region 9 Web Page at *http://www.epa.gov/region09/air.*

You may inspect and copy the rulemaking docket for this notice at the following location during business hours.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the SIP materials are also available for inspection at the address listed below:

Arizona Department of Environmental Quality, 1110 W. Washington Street, First Floor, Phoenix, AZ 85007, Phone: (602) 771–4335.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, Office of Air Planning, U.S. Environmental Protection Agency, Region 9, (520) 622–1622, e-mail: *tax.wienke@epa.gov,* or *http://www.epa.gov/region09/air.*

SUPPLEMENTARY INFORMATION: Throughout this document, the terms ''we,'' ''us,'' and ''our'' mean U.S. EPA.

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I. Summary of Today's Proposed Action

We are proposing to approve the MAG serious area SIP for attainment of the CO air quality standard in the metropolitan Phoenix (Maricopa County), Arizona area. This action is based on our determination that this SIP complies with the CAA's requirements for attaining the CO standard in serious CO nonattainment areas such as the metropolitan Phoenix area.

We are also proposing to approve the MAG CO redesignation request and maintenance plan for the Maricopa County CO nonattainment area as meeting CAA requirements for redesignation requests and maintenance plans.

We are also proposing to make a boundary correction under Section 107 of the CAA for the Gila River Indian Community.

II. The Serious Area CO SIP for the Phoenix Area

We are proposing to approve the *Revised MAG 1999 Serious Area Carbon Monoxide Plan for the Maricopa County Nonattainment Area,* March 2001. The plan was developed by MAG, the lead air quality planning agency in Maricopa County. The Arizona Department of Environmental Quality (ADEQ) submitted this plan as a revision to the Arizona SIP on March 30, 2001 and EPA received it on April 2, 2001. We refer to this plan in this document as the Revised CO Plan or the Revised 1999 CO plan, or variations of these.

As submitted, the Revised 1999 CO plan consists of the main plan document, three volumes of technical appendices and three volumes of commitments from various agencies to implement CO controls. The plan contains 1993 and 1996 emission inventories, a reasonably available control measures (RACM) analysis, vehicle miles traveled (VMT) tracking procedures, annual VMT projections through 2000, and contingency measures. It uses the Urban Airshed Model (UAM) and CAL3QHC microscale model to model air quality in 1994 as a base year and in 2000 as the attainment year and demonstrates both reasonable further progress towards and attainment of the CO standard by December 31, 2000.

The MAG plan shows that the principal sources contributing to CO exceedances are gasoline on-road motor vehicles, gasoline non-road engines, and woodburning. MAG plan, p. ES–1.

In earlier actions, we have already approved revisions to Arizona's Cleaner Burning Gasoline (CBG) program and to Arizona's Vehicle Emissions Inspection (VEI) Program as well as the Maricopa County Woodburning curtailment program. 69 FR 10161 (March 4, 2004), 68 FR 2912 (January 22, 2003), 64 FR 60678 (November 8, 1999) and 67 FR 48718 (July 25, 2002). The revisions to these programs are the principal controls relied on in the revised MAG CO plan to demonstrate attainment. We have also previously approved the commitments by the Phoenix area cities and towns to adopt and/or implement CO control measures. We approved these commitments as part of the serious area PM–10 plan approval on July 25, 2002 at 67 FR 48718. *See* 40 CFR 52.120(c)(100). Many of these commitments by Phoenix area cites and towns commit to measures which address CO as well as PM–10 emissions reductions.

For a complete history of the CO planning efforts in the Phoenix area as well as the history of the development of the CO plan, please see Section 1 in EPA's TSD.

III. The CAA's Requirements for Serious CO Nonattainment Area Plans

The Phoenix area was reclassified from moderate to serious for CO on July 29, 1996 (61 FR 39343) because the area had not attained the CO standard by the moderate area deadline of December 31, 1995. As a result of this reclassification, Arizona was required to submit by February 28, 1998, a revision to its SIP for the Phoenix area that met the CAA requirements for serious CO nonattainment areas found in section 187(a) and section 172(c)(1). This SIP revision needed to show attainment of the CO standard by December 31, 2000. In summary, these requirements are:

(a) Implementation of all reasonably available control measures (RACM), including reasonably available control technology (RACT) for stationary sources (CAA section 172(c)(1));

(b) Provisions for attainment, and a demonstration that the plan will provide for attainment by no later than December 31, 2000 (CAA section 187(b)(7));

(c) Provisions for such specific annual emission reductions as are necessary to attain by December 31, 2000 (CAA sections 172(c)(2) and 187(b)(7));

(d) Forecasts of vehicle miles traveled (VMT) in the nonattainment area for each year before the year in which the plan projects attainment (CAA section 187(a)(2)(A));

(e) An enhanced vehicle inspection and maintenance program (CAA section 187(a)(6));

(f) An oxygenated gasoline program (CAA sections 187(b)(3) and 211(m));

(g) Transportation control strategies and measures to offset any growth in emissions from vehicle miles traveled or numbers of vehicle trips (CAA section 187(b)(2));

(h) Contingency measures that will be implemented if the area fails to attain by its applicable deadline, fails to make reasonable further progress, or vehicle mile traveled estimates exceed those forecasted (CAA sections 172(c)(9) and 187(a)(3));

(i) A comprehensive, accurate, current inventory of actual emissions from all sources of CO (CAA sections 172(c)(3) and 187(a)(5)); and

(j) A transportation conformity budget (CAA section 176(c)).

Serious area CO SIPs must also meet the general requirements applicable to all SIPs including reasonable notice and public hearing under section 110(a), necessary assurances that the implementing agencies have adequate personnel, funding and authority under section 110(a)(2)(E)(i) and 40 CFR 51.280; and the description of enforcement methods as required by 40 CFR 51.111.[1]

We have issued a General Preamble[2] describing our preliminary views on how the Agency intends to review SIPs submitted to meet the Clean Air Act's requirements for CO SIPs. We have also issued other guidance documents related to CO SIPs or provisions of those SIPs, including the ''Technical Support Document to Aid States with the Development of Carbon Monoxide State Implementation Plans,'' Office of Air Quality Planning and Standards (OAQPS), U.S. EPA, EPA–452/R–92–003 (July 1992).

On July 8, 1999, ADEQ submitted the *MAG 1999 Serious Area CO Plan* (''1999 CO Plan'') to EPA. We found the submittal complete on September 9, 1999. The 1999 CO Plan was revised because the Arizona legislature passed House Bill (HB) 2104 during the 2000 regular session, which repealed the remote sensing portion of the VEI program. We indicated that the 1999 CO Plan would need to be revised to reflect the change in the VEI program. MAG conducted new air quality modeling and revised the 1999 CO Plan. On April 2, 2001, ADEQ submitted the *Revised 1999 MAG Serious Area CO Plan* (''Revised 1999 CO Plan'') to EPA.

IV. The Revised 1999 CO Plan's Compliance With the CAA's Requirements for Serious CO Nonattainment Area Plans

The following sections present a summary of our evaluation of the Revised 1999 CO Plan's compliance with the applicable CAA requirements for serious area SIPs for CO. Our complete evaluation is found in the EPA TSD for this action.[3] A copy of the EPA TSD can be obtained by calling or writing the contact person listed above.

A. Completeness of the SIP Submittals and Adequacy of the Motor Vehicle Emissions Budget

The first step we take after receiving a SIP submittal is to determine if it is complete. CAA section 110(k)(1)(B) requires that we review all SIPs and SIP revisions for completeness within 60 days of receipt. The completeness review allows us to quickly determine if the submittal includes all the necessary items and information we need to take action on it. We make completeness determinations using criteria we have established in 40 CFR part 51, Appendix V.

We found ADEQ's March 30, 2001 submittal (received on April 2, 2001) of the Revised 1999 CO Plan complete and notified the State on October 9, 2001. See Letter, Jack P. Broadbent, EPA, to Jacqueline Schafer, ADEQ. Our completeness determination is documented in Section 2 of the EPA TSD.

Section 176(c) of the Clean Air Act requires that federally funded or approved transportation plans, programs, and projects in nonattainment areas ''conform'' to the area's air quality SIPs. Conformity ensures that federal transportation actions do not worsen an area's air quality or interfere with its meeting the air quality standards. We have issued a conformity rule that establishes the criteria and procedures for determining whether or not transportation plans, programs, and projects conform. See 40 CFR part 93, subpart A.

One of the primary tests for conformity is to show that transportation plans and improvement programs will not cause motor vehicle emissions to increase above levels needed to make progress toward and to meet the air quality standards. The motor vehicle emissions levels needed to make progress toward and to meet the air quality standards are set forth in the area's air quality SIPs as an ''emissions budget for motor vehicles.'' The conformity rule's requirements and EPA's policy on emissions budgets are found in the preamble to the November 24, 1993 transportation conformity rule (58 FR 62193–96), in the sections of the rule referenced above, and in subsequent revisions to the conformity rule (69 FR 40004, July 1, 2004).

Before an emissions budget in a submitted SIP revision may be used in a conformity determination, we must first determine that it is adequate. The criteria by which we determine adequacy of submitted emission budgets are outlined in conformity rules in 40 CFR 93.118(e)(4).

The Revised 1999 CO Plan, submitted on March 30, 2001, established a revised mobile source emissions budget of 412.2 metric tons per day (mtpd). Revised 1999 CO Plan, p. 9–11. We found this budget adequate for transportation conformity purposes on September 28, 2001. See letter, Jack Broadbent, EPA Region 9 to Jacqueline Schafer, ADEQ, and James Bourey, MAG. Our finding was published in the **Federal Register** on October 17, 2001 (66 FR 52761) and became effective 15 days later on November 1, 2001.

B. Emissions Inventory

CAA section 172(c)(3) requires all serious area CO SIP submittals to include a comprehensive, accurate, and current inventory of actual emissions from all sources in the base year inventory to forecast and backcast other years. Maricopa County chose the year 1993 as the base year for its serious area CO SIP since it was the most complete emission inventory available at the time MAG started its modeling for the 1999 CO Plan. MAG developed a 1994 modeling inventory based on the 1993 annual CO inventory. The base year and forecasted 1996 emission inventories described all the sources of CO for the nonattainment area. In 1998, Maricopa County completed the draft 1996 CO emissions inventory. In response to public comments on the Draft MAG 1998 CO Plan, a comparison of the 1993 and 1996 periodic inventories and an evaluation of the 1994 base case

[1] Serious area SIPs must also include new source review (NSR) permitting rules that meet the requirements of sections 172(c)(5) and 173. In practice, NSR rules are submitted and reviewed separately from the rest of the serious area CO plan. Maricopa County has submitted a complete NSR rule.

[2] ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992).

[3] See ''Technical Support Document for the Notice of Proposed Rulemaking on the Carbon Monoxide Serious Area Planning Requirements for the Maricopa County, Arizona Nonattainment Area,'' June 2004, Air Division, USEPA Region 9.

modeling inventory were conducted. MAG subsequently revised the nonroad equipment modeling assumptions to be more consistent with the 1996 CO inventory. The comparison concluded that the 1994 modeling inventory contained the most recent and valid assumptions.

The emission inventory is divided into source categories and subcategories. The main source categories are stationary sources (both point and aggregated), area sources, on-road mobile sources, and off-road mobile sources. Source categories provide a convenient way to organize the emission inventory and to determine the significance of particular sources. Seasonal inventories are provided to account for the differences in emissions occurring during the times of year when Maricopa County used to exceed the 8-hour CO standard. We are approving the emission inventories of the Maricopa County CO nonattainment area as meeting the requirements of section 172(c)(3) of the CAA.

On September 18, 1996, we proposed approval of the 1990 base year CO emissions inventory for Maricopa County (*see* 61 FR 49087). When we finalize today's proposed action, we will also finalize approval of the 1990 base year emissions inventory proposed on September 18, 1996.

C. Adequate Monitoring Network

The CAA requires states to establish and operate air monitoring networks to compile data on ambient air quality for all criteria pollutants. Section 110(a)(2)(B)(i). Our regulations in 40 CFR part 58 establish specific regulatory requirements for operating air quality surveillance networks to measure ambient concentrations of CO, including measurement method requirements, network design, quality assurance procedures, and in the case of large urban areas, the minimum number of monitoring sites designated as National Air Monitoring Stations (NAMS).

Ambient networks, however, do not need to meet all our regulations to be found adequate to support air quality modeling. A good spatial distribution of sites, correct siting, and quality-assured and quality-controlled data are the most important factors for air quality modeling. Nonattainment area plans developed under title I, part D of the Clean Air Act are not generally required to address how the area's air quality network meets our monitoring regulations. These plans are submitted too infrequently to serve as the vehicle for assuring that monitoring networks remain current.

For this action, we are discussing the adequacy of the Phoenix area monitoring network solely to support our finding that the Revised 1999 CO Plan appropriately evaluates the CO problem in the Phoenix area. Reliable ambient data is necessary to validate the base year air quality modeling which in turn is necessary to assure a sound attainment demonstration.

There are fourteen CO monitoring sites in the metropolitan Phoenix area; thirteen are operated by the Maricopa County Environmental Services Department and one by ADEQ. Figure 4–3 on page 4–7 in the Revised 1999 CO Plan lists the names of the sites and their locations in the Phoenix area. These sites all use EPA reference methods, are sited according to our regulations, meet the applicable monitoring objections in our regulations, and are operated according to our regulations. We therefore find that the monitoring network operated by the MCESD and ADEQ is adequate to support the technical evaluation of CO nonattainment problem in the Revised 1999 CO Plan. *See* also EPA TSD section ''Ambient Air Quality Surveillance''.

D. Implementation of Reasonably Available Control Measures

CAA section 172(c)(1) requires that nonattainment plans provide for the implementation of all reasonably available control measures (RACM) as expeditiously as practicable. We interpret this requirement to require a state to consider available measures for controlling CO and to adopt and implement those measures that are reasonably available for implementation in the area as components of the area's attainment demonstration. In general, we do not consider a measure to be reasonably available if it is economically or technologically infeasible for the area, would not advance attainment of the relevant standard in the area, or is absurd, unenforceable or impracticable. General Preamble at 13560.

As described above, the principal sources of CO in the metropolitan Phoenix area are (in order of importance) on-road motor vehicles, non-road engines, and residential woodburning, which collectively account for 99 percent of the 1996 seasonal inventory. Revised 1999 CO Plan, Figure ES–2. The Revised 1999 CO Plan evaluates a broad range of controls for each of these sources categories. *See* Revised 1999 CO Plan, Chapter 6.

For on-road motor vehicles, adopted controls include the State's enhanced vehicle emission inspection program, cleaner burning gasoline program including a 3.5 percent oxygen content and 9 psi volatility standard, requirements and incentives for the use of alternative fueled vehicles, and numerous transportation control measures (TCMs). *See* Revised 1999 CO Plan, Chapter 8. We find that these measures along with the federal motor vehicle tailpipe standards provide a comprehensive control strategy for attaining the CO standard and provide for the implementation of RACM in the on-road motor vehicle category as required by CAA section 172(c)(1). *See* EPA TSD section ''Implementation of RACM for On-Road Motor Vehicle Controls—Technology.''

CAA section 187(b)(2) requires a State with a serious CO nonattainment area to consider the TCMs in section 108(f) and choose to implement such measures as necessary to demonstrate attainment. The Phoenix area has a long history of adopting TCMs, including those in section 108(f), for controlling CO. The Revised 1999 CO Plan implements the section 108(f) TCMs and includes additional measures in support of the attainment demonstration. *See* Revised 1999 CO Plan, Table 7–2 and Chapter 8. We therefore find that the Revised 1999 CO Plan complies with CAA section 187(b)(2) and 172(c)(1). *See* EPA TSD section ''Implementation of RACM for On-Road Motor Vehicle Controls—Transportation Control Measures.''

The nonroad (mobile) engine category covers a diverse collection of engines, equipment and vehicles fueled by gasoline, diesel, and other fuels and includes outdoor power equipment, recreational equipment, farm equipment, construction equipment, lawn and garden equipment, aircraft, locomotives, and marine vessels. Although diesel engines dominate the market for nonroad engines, ninety percent of CO emissions from the nonroad category come from gasoline-powered nonroad engines.

Starting in the mid-1990s, EPA promulgated national emission standards for a broad range of nonroad engines. *See* EPA TSD section ''Implementation of RACM for Nonroad Engines.'' Nonroad engines sold in Arizona are required to comply with these national standards which constitutes a RACM-level program for controlling emissions from nonroad engines.

In addition, Arizona's CBG program regulates gasoline used in nonroad engines. The Revised 1999 CO Plan also includes a number of other nonroad engine measures. *See* EPA TSD section ''Implementation of RACM for Nonroad Engines.'' With the national emission standards and the additional State

measures, we find that the Revised 1999 CO Plan provides for the implementation of RACM for nonroad engines.

The residential wood combustion (RWC) category includes emissions from the burning of solid fuel in residential fireplaces and woodstoves as well as barbecues and fire pits. Measures to control CO from residential woodburning include a public education program, woodburning curtailment programs, retrofit requirements and restrictions or bans on the installation of woodburning stoves and/or fireplaces.

The Maricopa County Environmental Services Department's Rule 318, Approval of Residential Woodburning Devices, establishes standards for the approval of residential woodburning devices that can be used during restricted-burn periods. Maricopa County's Residential Woodburning Restriction Ordinance provides that restricted-burn periods are declared by the Control Officer when the Control Officer determines that air pollution levels could exceed the CO standard and/or the PM standard (150 $\mu g/m^3$). We approved Rule 318 and an earlier version of the ordinance (revised April 21, 1999) as providing for the implementation of RACM. *See* 64 FR 60678 (November 8, 1999).

The Revised 1999 CO Plan includes a number of other woodburning measures. We find that these measures along with Maricopa County's woodburning rules provide for the implementation of RACM for residential wood combustion. *See* EPA TSD section ''Implementation of RACM for Residential Wood Combustion.''

E. Demonstration of Attainment

CAA section 187(a)(7) requires serious area plans to provide for attainment of the CO NAAQS by December 31, 2000 and to contain a demonstration that the plan will provide for attainment. Under our guidance, an attainment demonstration may be made using EPA-approved air quality models and must include the control strategy. General Preamble at 13533.

There are two parts to reviewing a modeled attainment demonstration: (1) Evaluating the technical adequacy of the modeling itself, and (2) evaluating the control measures that are relied on to demonstrate attainment. We discuss each part below.

1. Air Quality Modeling

MAG used the Urban Airshed Model (UAM), the standard model for carbon monoxide attainment demonstrations, consistent with EPA guidance, to predict the effect of control measures in its attainment demonstration. UAM requires meteorological inputs, such as temperature and wind speeds, as well as initial and boundary conditions for CO concentrations, and CO emissions. These must be allocated in time and space; every hour of the simulation and every one square mile grid cell requires these inputs. Diagnostic testing is performed to ensure the model is performing well for a chosen CO episode, which in this case was December 17, 1994, which at 10.5 ppm had the highest CO peak and most widespread high CO readings observed during 1994. Once the model predicts observed CO concentrations for this chosen CO episode adequately, post-control measure emissions are input to the model to project future air quality. Separate predictions are also made ''hot spots'', intersections with high traffic and congested conditions, using the CAL3QHC model. This ''microscale'' component is then combined with the UAM results. The total prediction is then compared to the level of the NAAQS, 9.0 ppm, to demonstrate attainment.

As detailed in the TSD, MAG followed accepted procedures in developing the model inputs, performing diagnostic testing of the results, and showing adequate model performance. Model performance statistics met EPA-recommended goals. The observed spatial and temporal patterns of CO were replicated fairly well by the model. While there were some discrepancies, these were attributed to lack of observations at some locations, and by slight shifts in wind patterns. That is, if the wind field input to the model had been slightly different, some high CO locations in the model predictions would have better matched the monitor locations. But since the magnitude, spatial extent, and timing of elevated CO concentrations is very similar between the model and observations, EPA determines the model performed adequately for attainment demonstration purposes.

Overall, the modeling done by MAG meets EPA guidelines and performs well enough to be relied upon as the basis for the CO attainment demonstration. EPA therefore proposes to approve the CO attainment demonstration.

2. Control Measures Relied on for Attainment

For demonstrating attainment of the CO standard, the Revised 1999 CO Plan relies primarily on reductions from the VEI and CBG programs as well as much smaller reductions from three other measures, traffic synchronization, intelligent transportation systems, and deferring emissions associated with government activities. See Revised 1999 CO Plan, Figure 9–1. We have previously approved all of these measures. See 68 FR 2912, 69 FR 10161, 64 FR 60678, and 67 FR 48718.

As part of these approvals, we have evaluated each of these measures to ensure that they meet our SIP enforceability criteria. These criteria ensure that the measure's compliance requirements—applicability, performance standards, compliance schedule, and monitoring methods—are clear.

We have also evaluated the CO emissions reductions credited to each measure in the attainment demonstration to ensure they are reasonable. We found that the emission reduction estimates for each source category are consistent with research on the applicable control methods and are appropriately applied in the attainment demonstrations. Finally, we have determined that the measures relied on for attainment are being expeditiously implemented. See EPA TSD, section ''Attainment Demonstration''.

F. Reasonable Further Progress

CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP), which is defined in section 171(1) as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part [part D of title I] or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' For serious CO nonattainment areas, CAA section 187(a)(7) also requires the plans to provide for such specific annual emission reductions as are necessary to attain the standard by the applicable attainment date.

We find that the Revised 1999 CO Plan provides for RFP and for such specific annual emission reductions as are necessary to attain the standard by the December 31, 2000 as required by the Act.[4] The Revised 1999 CO Plan includes an RFP demonstration for the years 1994, 1999, and 2000. 1994 is the base year, 1999 is the year before the two largest measures in the Revised 1999 CO Plan (revisions to the VEI and CBG programs) were implemented, and 2000 is the attainment year. Total design day CO emissions drop from 687 mtpd

[4] This finding is further supported by our finding that the area attained the CO standard by December 31, 2000. (68 FR 55008, effective November 21, 2003).

in 1994 to 686 mtpd in 1999 to 640 mtpd in 2000. Revised 1999 CO Plan, Figure 9–4. Total CO emissions drop very little from 1994 to 1999 primarily because a large increase in emissions from non-road engines offsets the decreases in on-road emissions. See MAG TSD, Table II–4.

G. VMT Tracking and Reporting

CAA section 187(a)(2)(A) requires each State with a serious CO nonattainment area to forecast VMT in the nonattainment area for each year before the attainment year. These forecasts must be developed following guidance issued by EPA in consultation with the U.S. Department of Transportation. This section also requires the plan to provide for annual updates of the forecasts to be submitted along with a report containing estimates of actual VMT for the year. We provided detailed guidance to States regarding the VMT tracking and reporting requirement in ''Section 187 VMT Forecasting and Tracking Guidance,'' USEPA, January 1992.

We find that the Revised 1999 CO Plan fully complies with CAA section 187(a)(2)(A) and our guidance implementing that section. Specifically, the VMT forecasts in the Revised 1999 CO Plan were developed consistent with applicable EPA guidance including (1) forecasting VMT using a validated network-based travel demand model; (2) clearly identifying a VMT tracking area; (3) estimating actual VMT on Highway Performance Monitoring System (HPMS) traffic counts adjusted in a reasonable manner to cover the entire VMT tracking area; and (4) committing to submitting annual reports meeting EPA requirements.

MAG has submitted VMT tracking reports for the years 1999, 2000, and 2001. These reports follow EPA guidance regarding content and procedures for determining actual VMT. All three reports show that VMT levels in the metropolitan Phoenix CO nonattainment area remain within the levels projected in the Revised 1999 CO Plan. See ''1999 Vehicle Miles Travel Forecasting and Tracking Report,'' MAG, September 22, 1999 (submitted September 23, 1999); ''2000 Vehicle Miles Travel Forecasting and Tracking Report,'' MAG, September 11, 2000 (submitted September 21, 2000); and ''2001 Vehicle Miles Travel Forecasting and Tracking Report,'' MAG, October 23, 2001 (submitted November 14, 2001).

H. Transportation Control Measures To Offset Growth in Emissions

CAA section 187(b)(2) requires serious area CO plans to identify and adopt ''specific and enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT and numbers of trips'' and to achieve reductions in mobile source emissions as necessary in conjunction with other measures to comply with the applicable periodic emission reduction and attainment requirements.

We interpret this provision to require that sufficient measures be adopted so that projected motor vehicle CO emissions will never be higher during the CO season in one year than during the CO season in the year before. Where growth in VMT and trips would otherwise cause a motor vehicle emissions upturn, this upturn must be prevented. General Preamble at 13521.

The Revised 1999 CO Plan provides sufficient information for us to conclude that on-road mobile source emissions will decrease from the base year of 1994 until the attainment year of 2000 and this decrease will occur even before we take into account the additional controls in the Revised 1999 CO Plan. Moreover, the Revised 1999 CO Plan provides for expeditious attainment of the CO standard. Therefore, we propose to find that the Revised 1999 CO Plan meets CAA section 187(b)(2).

I. Contingency Measures

CAA section 172(c)(9) requires that nonattainment area SIPs provide for the implementation of specific measures to be undertaken if the area fails to make RFP or attain by its attainment deadline. CAA section 187(a)(7) requires that serious CO nonattainment area plans also contain contingency measures that would be implemented if the area exceeds its vehicle mile traveled (VMT) projections. Both sections require that these contingency measures are to take effect without further action by the State or the Administrator. The Act does not specify how many contingency measures are necessary nor does it specify the magnitude of the emission reductions (or VMT reductions) they must produce. In policy and in previous rulemaking we have suggested that one appropriate choice of contingency measures would be to provide for the implementation of sufficient VMT reductions or emissions reductions to counteract the effect of one year's growth in VMT in order to ensure continued progress while the plan was being revised to correct any deficiencies that resulted in a failure to attain, make RFP, or keep within VMT forecasts. General Preamble at 13532.

Under applicable Agency policy, states may use already adopted and implemented measures as contingency measures, provided that those measures' emission reductions are not needed to demonstrate expeditious attainment and/or RFP and are not included in either the attainment or RFP demonstrations. This approach effectively allows for the early implementation of contingency measures.[5]

The Revised 1999 CO Plan includes 9 contingency measures, all of which have already been adopted and implemented. See Table Con-1 in the EPA TSD. Collectively these measures result in approximately a 4.1 percent reduction in total CO emissions in 2001 and provide emission reductions from each of the largest categories of CO emissions in the Phoenix area: woodburning, gasoline on-road vehicles, and gasoline nonroad engines. See Revised 1999 CO Plan, p. 9–12.

The annualized VMT growth in the Phoenix area from 2000 to 2005 is projected to be 2.6 percent. On-road mobile source account for 67 percent of the 2000 base case (*e.g.*, prior to control) CO inventory of 714.9 mtpd. Revised 1999 CO Plan, p. 8–12. Therefore, one year's growth in VMT is equivalent to 0.67×2.6 percent or 1.7 percent (12.2 mptd) of the 2000 base case inventory.

One of the eight contingency measures listed in the Revised 1999 CO Plan is no longer applicable. Funding for the lawn mower reduction program ended in FY 2001. Prior to 2001, the program resulted in the retirement of a large number of gasoline-powered commercial and residential lawn mowers and other hand-held gasoline-powered equipment.[6] However, because these lawnmowers have been presumably replaced with cleaner units earlier then they would otherwise have been replaced, the program will have continuing effects for several years after 2000.

The use of an adopted and implemented federal program, the national LEV program, as a contingency measure is acceptable. The purpose of contingency measures is to assure continued progress towards attainment

[5] See memorandum, G. T. Helms, Chief, Ozone/Carbon Monoxide Programs Brand, OAQPS to Air Branch Chiefs, Regions I–X, ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas,'' August 13, 1993 (''Helms memo'').

[6] In 1998/99, the program retired 1780 old, polluting gas mowers and 563 other pieces of garden equipment. See ''Current Status of Carbon Monoxide,'' Maricopa County Environmental Services Department, (January 2000).

in an area while its SIP is being revised to correct for a failure to attain or to make RFP or to deal with higher than expected VMT growth. To the extent that federal programs provide for this continued progress and the State has not otherwise relied on the program to demonstrate attainment or RFP, the State may rely on that measure.[7]

We have approved the other seven contingency measures into the Arizona SIP in earlier rulemakings. See 67 FR 48718 (July 25, 2002) and 68 FR 2912 (January 22, 2003).

Because the contingency measures collectively provide for emission reductions consistent with EPA policy and meet the statutory requirement that they ''take effect without further action by the State or the Administrator,'' we propose to find that the Revised 1999 CO Plan meets the CAA sections 172(c)(9) and 187(a)(7) requirement for contingency measures. We also propose to find that the emissions reductions resulting from these contingency measures are not already accounted for in the Phoenix CO nonattainment area's RFP or attainment demonstrations.

J. Enhanced I/M Program

CAA section 187(b)(6) requires that all serious CO nonattainment areas implement an enhanced I/M program which complies with EPA guidance. We issued our initial rule containing the requirements for enhanced I/M programs in 1992 and have amended those rules several times since. For more information on the requirements for enhanced I/M programs, see 60 FR 22518 (May 8, 1995) (initial approval of Arizona's enhanced and basic I/M program) and 67 FR 52433 (August 12, 2002) (proposed approval of revisions to Arizona's enhanced and basic I/M program).

Arizona first submitted the legislation and regulations for the Maricopa County enhanced vehicle emission inspection program in 1994 as part of its moderate area plans for CO and ozone. Subsequently, Arizona made a number of modifications to its program including revising the testing protocol, requiring on-board diagnostic system testing, expanding the exemption to the latest five model years, changing the waiver provisions, and removing the remote sensing element of the program. The State resubmitted the program for approval in 2001. See 2001 I/M submittal.

In a separate action, we approved Arizona's vehicle emission inspection program for the Phoenix area as meeting the enhanced I/M program requirements of CAA section 187(b)(6) and our regulations. See 68 FR 2912 (January 22, 2003).

K. Wintertime Oxygenated Gasoline Program

CAA section 211(m) requires states with CO nonattainment areas with design values of 9.5 ppm or higher to implement a wintertime oxygenated gasoline program requiring that gasoline contain not less than 2.7 percent oxygen by weight. All serious CO nonattainment areas, which by definition have design values exceeding the 211(m) thresholds, must include an oxygenated gasoline program in their SIPs. See also CAA § 187(b)(3). Under both 211(m) and 187(b)(3), the program is to apply to all gasoline sold, supplied, offered for sale or supply, dispensed, transported or introduced into commerce in the consolidated metropolitan statistical area (CMSA) or, if no CMSA exists, the metropolitan statistical area (MSA).

1. History of State Program

Arizona first adopted a wintertime oxygenated gasoline program in 1988, before sections 187(b) and 211(m) were added to the Act as part of the 1990 Clean Air Act Amendments. The original State wintertime oxygenated gasoline program applied throughout Maricopa County and established a fairly complicated scheme of shifting averages and exemptions. In general, however, it required leaded gasoline to contain between 2.4 and 3.7 percent oxygen by weight and unleaded gasoline to contain between 1.9 and 3.7 percent oxygen by weight. The program applied from September 30 through March 31 of each year. EPA approved this program into the SIP finding the fuel control measure was not preempted under CAA section 211(c)(4) and would, in any event, provide necessary CO emission reductions. See 53 FR 30224 (Aug. 10, 1988).

The August 10, 1988 SIP approval, however, was vacated by the Ninth Circuit Court of Appeals in *Delaney* v. *EPA,* 898 F.2d 687 (9th Cir. 1990). In 1991, in response to an order from the court, EPA disapproved the Maricopa CO SIP including the State's wintertime oxygenated gasoline requirement. 56 FR 5458 (Feb. 11, 1991). In its place, EPA adopted a FIP with an oxygenated gasoline program. EPA modeled the FIP program on the then newly adopted requirements in 211(m). It required all gasoline sold in the Maricopa nonattainment area to contain a minimum oxygen content of 2.7 percent by weight from October 1 to March 31 of each year. In the FIP notice, we noted that section 211(m) added by the 1990 Clean Air Amendments would require Maricopa to adopt a similar state requirement beginning in 1992. As a result, we anticipated that the oxygenated gasoline requirement in the FIP would only be in effect for one year.

Arizona adopted new oxygenated gasoline requirements on June 11, 1991 in Arizona House Bill 2181. On March 9, 1992, EPA approved Arizona's revised wintertime oxygenated gasoline program into the SIP. 57 FR 8268. The revised program required that all gasoline in the Maricopa nonattainment area contain no less than 2.7 percent oxygen by weight from September 30 to March 31 of each year. In that approval, EPA noted that the area covered by the program did not include the entire MSA as required under section 211(m). Instead, the program applied only to the Maricopa CO nonattainment area, which was then defined as the MAG urban planning area. As a result, we found the State program could be approved into the SIP as an equivalent substitution for the FIP program but concluded that Arizona would need to modify the program further by November 1, 1992 in order to meet all the requirements of 211(m). *Id.*

Since our March 1992 approval, Arizona has made a number of changes to the wintertime oxygenated gasoline program. In 1998, EPA approved changes to the wintertime program as part of our approval of the State's new Cleaner Burning Gasoline (CBG) program. 63 FR 6653 (Feb. 10, 1998). The wintertime program approved at that time continued to require that gasoline supplied or sold in the Maricopa CO nonattainment area[8] contain a minimum 2.7 percent oxygen by weight, but changed the control period to November 1 through March 31. In our approval, we did not address compliance with 211(m), instead finding the revisions necessary for attainment of the ozone and PM–10 NAAQS.

On March 4, 2004, we approved into the SIP further revisions to the State CBG program, including changes to the wintertime oxygenated gasoline

[7] However, if the federal program is delayed or does not generate the expected emission reductions, the State would have to revise its contingency measures to assure adequate emission reductions or face a finding of SIP inadequacy.

[8] The revised rules established new defined ''areas'' for specifying the applicability of their requirements. The wintertime oxygenated gasoline requirements apply to ''Area A'', which was originally defined as the Maricopa County CO nonattainment area. As explained below, Arizona has made a number of changes to the definition of Area A to affect the applicability of the fuel requirements.

requirements. 69 FR 10161. The current SIP-approved wintertime program requires all gasoline sold in Maricopa County and in parts of Pinal and Yavapai Counties from November 1 to March 31 to contain a minimum of 3.5 percent oxygen by weight. Although Arizona's wintertime CBG program adopted by the State on July 18, 1988 covered the MSA, as required by 211(m), subsequent changes to the covered area that have been approved into the SIP (*i.e.*, the inclusion of portions of Yavapai and Pinal Counties) do not correspond to the entire MSA, which itself has been subsequently modified by the Census Bureau.[9]

2. Compliance With 211(m)

The State's wintertime oxygenated gasoline program approved in the SIP has provided significant CO emissions reductions in the Maricopa CO nonattainment area and has helped the area attain the CO NAAQS, as evidenced by the Phoenix area's lack of violations of the CO standard since 1997, when the program was initiated. As a result, we are proposing to find that further changes to the program to meet the specific requirements of 211(m), including the requirement that the program apply to the entire MSA, are not required under the Act.

Section 211(m)(6) provides:

> Nothing in this subsection shall be interpreted as requiring an oxygenated gasoline program in an area which is in attainment for carbon monoxide, except that in a carbon monoxide nonattainment area which is redesignated as attainment for carbon monoxide, the requirements of this subsection shall remain in effect to the extent such program is necessary to maintain such standard thereafter in the area.

See also CAA section 187(b)(3)(B) (providing that a wintertime oxygenated program is not required for an area if the State demonstrates that the revision is not necessary for attainment and maintenance of the CO NAAQS). We have interpreted this language to mean that once EPA determines that a CO nonattainment area is actually attaining the CO NAAQS and the area demonstrates it does not need a program meeting 211(m), section 211(m) no longer requires submittal of a SIP revision so long as the area continues to maintain the standard. See, *e.g.*, 60 FR 62741 (Dec. 7, 1995) (waiving 211(m) requirements for portions of the Camden, New Jersey area).

Today's finding that the State need not submit a program complying with section 211(m) does not mean the State can abandon its wintertime oxygenated gasoline program. The program remains approved in the SIP. Any revision to remove these requirements from the SP would be subject to the requirements of section 110(l).

L. General SIP Requirements

CAA section 110(a)(2)(C) requires SIPs to include a program to provide for the enforcement of SIP measures. Section 110(a)(2)(E)(i) requires that SIPs provide necessary assurances that the State (or the general purpose local government) will have adequate personnel, funding and authority under State law to implement the submitted SIP. Finally, section 110(a)(2)(E)(iii) requires SIPs to include necessary assurances that where a State has relied on a local or regional government, agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the plan provision.

The principal control measures in the Revised 1999 CO Plan are Arizona's VEI program, the wintertime CBG program, and Maricopa County's woodburning restrictions program. We approved these programs at 68 FR 2912 (January 12, 2003), 69 FR 10161 (March 4, 2004), 64 FR 60678, and 67 FR 48718 (July 25, 2002) respectively. As part of our approval actions, we found that Arizona had adequate personnel, funding and authority to implement these programs and had adequately provided for the enforcement of these programs.

We have previously found that Arizona law includes the necessary assurances that where a State has relied on a local or regional government agency or instrumentality for the implementation of any plan provision, the State has responsibility for ensuring adequate implementation of the plan provision. 60 FR 18010, 18019 (April 10, 1995).

V. The CAA's Requirements for Serious CO Maintenance Plans and Redesignation Requests

Under the Clean Air Act, we can change designations if acceptable data are available and if certain other requirements are met. See CAA Section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may promulgate a redesignation of a nonattainment area to attainment if the following five criteria are met:

(i) The Administrator determines that the area has attained the national ambient air quality standard;

(ii) The Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) The Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and the applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) The Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and

(v) The State containing the area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must determine that all applicable SIP elements have been fully approved. Approval of the applicable SIP elements may occur simultaneously with the final approval of the redesignation request.

VI. The MAG CO Redesignation Request and Maintenance Plan's Compliance With the CAA's Requirements for CO Redesignation Requests and Maintenance Plans

We are proposing to approve the *MAG Carbon Monoxide Redesignation Request and Maintenance Plan for the Maricopa County Nonattainment Area*, May 2003 (''MAG CO Redesignation Request and Maintenance Plan''). The MAG CO Redesignation Request and Maintenance Plan was developed by the Maricopa Association of Governments (MAG), the lead air quality planning agency in Maricopa County. The Arizona Department of Environmental Quality (ADEQ) submitted this plan as a revision to the Arizona SIP on June 16, 2003 and EPA received it on June 24, 2003. We refer to this plan in this document as the MAG CO redesignation request and maintenance plan, the MAG maintenance plan, or variations of these.

As submitted, the MAG CO Redesignation Request and Maintenance Plan consists of the main plan document and one volume of technical appendices. The MAG CO Redesignation Request and Maintenance Plan contains 1994 and 1999 emission inventories and projected inventories for 2006 and 2015, a modeling demonstration showing maintenance of the CO standard through 2015, a list of committed control measures, mobile source emissions budgets for 2006 and 2015, and contingency measures. It uses UAM and the CAL3QHC microscale model to model air quality in 1994 as a base year and in 2006 as an interim year and 2015 as the maintenance year

[9] All of Pinal County was added to the definition of the Phoenix-Mesa MSA by the 1990 census.

and demonstrates maintenance of the CO standard through 2015.

The MAG CO Redesignation Request and Maintenance Plan shows that the principal sources contributing to past CO exceedances are gasoline on-road motor vehicles, gasoline non-road engines, and woodburning. MAG CO Redesignation Request and Maintenance Plan, p. ES–5.

In earlier actions, we have already approved revisions to Arizona's CBG program and to Arizona's VEI program as well as the Maricopa County Woodburning curtailment program. 69 FR 10161 (March 4, 2004), 68 FR 2912 (January 22, 2003), 64 FR 60678 (November 8, 1999) and 67 FR 48718 (July 25, 2002). The revisions to these programs are the principal controls relied on in the MAG CO Redesignation Request and Maintenance Plan to demonstrate attainment. We have also previously approved the commitments by the Phoenix area cities and towns to adopt and/or implement CO control measures. We approved these commitments as part of the serious area PM–10 plan approval on July 25, 2002 at 67 FR 48718. See 40 CFR 52.120(c)(100).

We have reviewed the MAG CO Redesignation Request and Maintenance Plan and believe that proposing to approve the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following sections of this notice describe how the requirements of section 107(d)(3)(E) are addressed by the MAG submittal.

A. General SIP Requirements

Section 110(k) of the CAA addresses our actions on submissions of revisions to a SIP. The CAA requires States to observe certain procedural requirements in developing SIP revisions for submittal to us. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

MAG held a public hearing for the MAG CO Redesignation Request and Maintenance Plan on May 5, 2003. The MAG Regional Council adopted the MAG CO Redesignation Request and Maintenance Plan on May 28, 2003. These SIP revisions were adopted and submitted by ADEQ to us on June 16, 2003. We received the submittal on June 24, 2003.

We have evaluated MAG's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA. The MAG CO Redesignation Request and Maintenance Plan was deemed complete by operation of law six months after the submittal date.

B. Attainment of the CO NAAQS

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR part 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR part 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53. We consider an area to be in attainment if each of the CO ambient air quality monitors in the area does not have more than one exceedance of the CO standard over a one-year period. See 40 CFR part 50.8 and 40 CFR part 50, Appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS.

In addition, our interpretation of the CAA and EPA national policy has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must also continue to show attainment through the date that we promulgate the redesignation in the **Federal Register**.

December 31, 2000 was the attainment date for the Maricopa County serious CO nonattainment area. We published a finding of attainment of the CO standard for the Maricopa County nonattainment area on September 22, 2003 (see 68 FR 55008). In our finding, we noted that not only did Maricopa County have the required clean data for the two years preceding the attainment date, but also that the Maricopa County nonattainment area has been in attainment for the national standards for CO since 1997. Further information on CO monitoring is presented in Chapter 3, page 3–15 of the MAG CO Redesignation Request and Maintenance Plan, and in our finding of attainment (see 68 FR 55008, September 22, 2003).

Therefore, we believe the Maricopa County area has met the first component for redesignation: demonstration of attainment of the CO NAAQS. We note too that MAG has indicated in the MAG CO Redesignation Request and Maintenance Plan that ADEQ and MCESD will continue to operate an appropriate air quality monitoring network of National Ambient Monitoring Stations (NAMS) and State and Local Air Monitoring Stations (SLAMS) monitors in accordance with 40 CFR Part 58 to verify the continued attainment of the CO standard.

C. Meeting Applicable Requirements of Section 110 and Part D

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of submission of a complete redesignation request.

1. CAA Section 110 Requirements

The Maricopa County nonattainment area was initially classified as moderate for CO. MAG submitted the 1993 Carbon Monoxide Plan by November 15, 1993 in order to meet the moderate area requirements. An addendum to this plan was submitted in March 1994. On July 29, 1996, the nonattainment area was reclassified to serious effective August 28, 1996 due to failure to attain the CO standard by December 31, 1995. The new attainment date was December 31, 2000.

On July 8, 1999, ADEQ submitted the 1999 CO Plan to EPA. This submittal contained an attainment demonstration for December 2000. The submittal was found complete on September 9, 1999.

During the 2000 legislative session, the Arizona Legislature passed House Bill (HB) 2104, which repealed the Random Onroad Testing Requirements (Remote Sensing Program) from the Vehicle Emissions Inspection (VEI) program. EPA indicated that the 1999 CO Plan would have to be revised to reflect this legislative change. MAG conducted new air quality modeling and documented the impact of the repeal of the remote sensing program in the Revised 1999 CO Plan, dated March 2001.

On March 30, 2001, ADEQ submitted the Revised 1999 CO Plan to EPA. We found the submittal complete on October 9, 2001. We have analyzed the SIP elements in the Revised 1999 CO Plan that we are proposing for approval as part our action today, and have determined that they comply with the relevant requirements of section 110(a)(2).

On June 16, 2003, ADEQ submitted the *MAG Carbon Monoxide Redesignation Request and*

Maintenance Plan for the Maricopa County Nonattainment Area, May 2003. The submittal was deemed complete by operation of law six months after receipt by EPA.

2. Part D Requirements

Before the Maricopa County serious CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it was subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas. Subpart 3 of part D contains specific provisions for serious CO nonattainment areas.

The relevant subpart 1 requirements are contained in sections 172(c) and 176. Our General Preamble (see 57 FR 13529, 13533, April 16, 1992) provides EPA's interpretation of the CAA requirements for serious CO nonattainment areas.

The General Preamble provides that the applicable requirements of CAA section 172 are 172(c)(3) [emissions inventory], 172(c)(5) [the section 110(a)(2) air quality monitoring requirements], and 172(c)(9) [contingency measures]. It is also worth noting that we interpret the requirements of sections 172(c)(2) [reasonable further progress—RFP] and 172(c)(6) [other measures] as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard.[10] Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4) [identification of certain emissions increases] and 172(c)(8) [equivalent techniques]. Thus, these provisions are also not relevant to the redesignation request.

Regarding the requirements of sections 172(c)(3) [emissions inventory] and 172(c)(9) [contingency measures], please refer to our discussion below of sections 187(a)(1) and 187(a)(3), which are provisions of subpart 3 of part D of the CAA that address the same requirements as sections 172(c)(3) and 172(c)(9).

For the section 172(c)(5) New Source Review (NSR) requirements, the CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified major stationary sources and a general offset rule. We have determined that areas being redesignated from nonattainment to attainment do not need to comply with the requirement that an NSR program be approved prior to redesignation provided that the area demonstrates maintenance of the standard without part D nonattainment NSR in effect. The rationale for this decision is described in a memorandum from Mary Nichols dated October 12, 1994 (''Part D New Source Review (part D NSR) Requirements for Areas Requesting Redesignation to Attainment''). We have determined that the maintenance demonstration for Maricopa County does not rely on nonattainment NSR. Therefore, the State need not have a fully-approved nonattainment NSR program prior to approval of the redesignation request.

Prevention of Significant Deterioration (PSD) is the replacement for NSR, and part of the obligation under PSD is for a new source to review increment consumption and maintenance of the air quality standards. The PSD program requires stationary sources to undergo preconstruction review before facilities are constructed or modified, and to apply Best Available Control Technology (BACT). This program will apply to any major source wishing to locate in the Maricopa County area once the area is redesignated to attainment. Effective November 22, 1993, we delegated PSD authority to Maricopa County via a PSD Delegation Agreement (59 FR 1730, January 12, 1994).

For the CAA section 172(c)(7) provisions [compliance with the CAA section 110(a)(2) air quality monitoring requirements], our interpretations are presented in the General Preamble (57 FR 13535). CO nonattainment areas are to meet the applicable air quality monitoring requirements of section 110(a)(2) of the CAA.

Information concerning CO monitoring in the Maricopa County nonattainment area is included in the Monitoring Network Review (MNR) prepared by MCESD and submitted to EPA. In Chapter 3, page 3–15 of the MAG CO Redesignation Request and Maintenance Plan, MAG commits to the continued operation of the existing NAMS and SLAMS CO monitors run by ADEQ and MCESD, according to all applicable Federal regulations and guidelines, even after the Maricopa County area is redesignated to attainment for CO. Annual review of the NAMS/SLAMS air quality surveillance system will be conducted in accordance with 40 CFR 58.20(d) to determine whether the system continues to meet the monitoring objectives presented in Appendix D of 40 CFR Part 58.

Section 176 of the CAA contains requirements related to conformity. Although EPA's regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in EPA's 1996 approval of the Boston carbon monoxide redesignation (*See* 61 FR 2918, January 30, 1996).

The relevant subpart 3 provisions were created when the CAA was amended on November 15, 1990. The new CAA requirements for serious CO areas, such as Maricopa County, required that the SIP be revised to include a 1990 base year emissions inventory (CAA section 187(a)(1)), vehicle miles traveled tracking (CAA section 187(a)(2)(A)), contingency provisions (CAA section 187(a)(3)), corrections to existing motor vehicle inspection and maintenance (I/M) programs (CAA section 187(a)(4)), periodic emissions inventories (CAA section 187(a)(5)), enhanced motor vehicle I/M program (CAA section 187(a)(6)), a modeled attainment demonstration with specific annual emissions reductions (CAA section 187(a)(7)) and the implementation of an oxygenated fuels program (CAA section 211(m)). How the State met these requirements and our approvals are described earlier in this notice.

Regarding section 187(a)(1) of the CAA (base year emissions inventory), the State submitted a SIP revision for a 1990 base year inventory (annual and average daily emissions) as well as projected 1995 and 2005 inventories for the entire Maricopa County nonattainment area on November 15, 1993 as part of the MAG *1993 Carbon Monoxide Plan for the Maricopa County Area (''CO Plan'').* On April 4, 1994, ADEQ submitted updated and improved inventories as part of MAG's 1993 Carbon Monoxide Plan for the Maricopa County Area *Addendum* (''*Addendum*'').[11] These revised

[10] *See* EPA's September 4, 1992 John Calcagni memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'', and the General Preamble, 57 FR at 13564, dated April 16, 1992.

[11] On August 9, 1993, EPA had issued a SIP call under section 110(k)(5) of the CAA that required Arizona to submit a plan to EPA that demonstrated attainment of the CO NAAQS in the Phoenix area by December 31, 1995. As an area with a design value less than 12.7 ppm, the State would not otherwise have been required to submit an attainment plan for the Phoenix area. See section 187(a). CAA section 187(a)(1) requires the submittal of a comprehensive, accurate, current inventory of

Continued

inventories reflected adjustments to growth factors and the impact of measures in Arizona House Bill 2001. Both submittals became complete by operation of law under CAA section 110(k)(1)(B) on May 15, 1994 and October 8, 1994, respectively.

We proposed approval of the 1990 base year inventory on September 18, 1996 (61 FR 49087), and did not receive any comments on our proposed action. We will finalize that proposed action in our final rulemaking on today's proposed rule.

Regarding section 187(a)(5) of the CAA (periodic emissions inventories), see Section IV.B. ''Emission Inventory'' of this **Federal Register** notice for information on the 1993 and 1996 emissions inventories for Maricopa County for CO. We are proposing to approve these inventories in our action today.

D. Fully-Approved SIP Under Section 110(k) of the CAA

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

As noted above, in today's action EPA is approving the SIP revision demonstrating attainment for the Maricopa County serious CO nonattainment area that was required by the CAA. The bump-up of the Maricopa County CO nonattainment area from moderate to serious for CO superceded the remaining moderate CO nonattainment area requirements for the area. Thus, with a final rule to approve the Maricopa County attainment demonstration, redesignation request, and maintenance plan, we will have fully approved the Maricopa County CO element of the SIP under section 110(k) of the CAA.

E. Improvement in Air Quality Due to Permanent and Enforceable Measures

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan, implementation of applicable Federal air pollutant control regulations, and other permanent and enforceable reductions.

As part of our action today, we are approving the Revised 1999 CO Plan. This plan is primarily based on emissions reductions from the wintertime oxygenated fuels program, the VEI program, traffic synchronization, and intelligent transportation systems (ITS) measures. These programs are further described in Chapter Five of the Revised 1999 CO Plan.

As described in Chapter Two, pages 2–11 to 2–15 of the MAG CO Redesignation Request and Maintenance Plan, significant additional emissions reductions were realized from Maricopa County's basic inspection and maintenance program (applicable to vehicles 1966 and newer), and beginning in 2000, the enhanced I/M program (applicable to vehicles 1966 and newer, with an exemption for vehicles of the five most recent model years).

Oxygenated fuels are gasolines that are blended with additives that increase the level of oxygen in the fuel and consequently reduce CO tailpipe emissions. Arizona's Cleaner Burning Gasoline (CBG) rule contains the oxygenated fuels provisions for the Maricopa CO nonattainment area. As approved by EPA on March 4, 2004 (see 69 FR 10161), Arizona's CBG program requires all Maricopa County-area gas stations in Area A [12] to sell fuels containing a 3.5 percent minimum oxygen content (by weight) during the wintertime season, which runs from November 2 to March 31 of each year.

Maricopa County has also been implementing the requirements of its clean burning fireplace ordinances. The Arizona legislature passed SB 1427 in 1998 which required cities, towns, and counties in Area A to adopt, implement, and enforce an ordinance that complies with MAG's clean burning fireplace standards by December 31, 1998. The ordinance allows only the use of permanently-installed gas or electric log inserts, fireplaces, woodstoves, or other appliances that are certified by EPA, tested and listed by a nationally recognized testing agency to meet federal performance standards, or determined by the Maricopa County Control Officer to meet federal performance standards.

We have evaluated the various State and Federal control measures, the original 1990 base year emission inventory, and the 1993, and 1996 periodic emissions inventories, and believe that the improvement in air quality in the Maricopa County nonattainment area has resulted from emissions reductions that are permanent and enforceable.

F. Fully-Approved Maintenance Plan Under Section 175A

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the Administrator approves a redesignation to attainment. Eight years after the promulgation of the redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, we issued further maintenance plan interpretations in the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990'' (57 FR 13498, April 16, 1992), ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990: Supplemental'' (57 FR 18070, April 28, 1992), and the EPA guidance memorandum entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' from John Calcagni, Director, Air Quality Management Division, Office of Air Quality Planning and Standards, to Regional Air Division Directors, dated September 4, 1992 (hereafter referred to as the ''Calcagni memo''). In this **Federal Register** action, EPA is proposing approval of the maintenance plan for the Maricopa County CO nonattainment area because we believe, as detailed below, that MAG's CO Redesignation Request and Maintenance Plan submittal meets the requirements of section 175A and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to MAG's CO Redesignation Request and Maintenance Plan, is provided below.

actual emissions for all CO nonattainment areas whether or not they have a separate requirement to submit an attainment demonstration.

[12] Area A includes the urbanized portion of Maricopa County, a small portion of southern Yavapai County, and the western portions of Pinal County.

1. Emissions Inventories—Attainment Year and Projections

EPA's interpretation of the CAA section 175A maintenance plan requirements are generally provided in the General Preamble (see 57 FR 13498, April 16, 1992) and the Calcagni memo referenced above. Under our interpretations, areas seeking to redesignate to attainment for CO may demonstrate future maintenance of the CO NAAQS either by showing that future CO emissions will be equal to or less than the attainment year emissions or by providing a modeling demonstration. However, under the CAA, many areas (such as Maricopa County) were required to submit a modeled attainment demonstration to show that reductions in emissions would be sufficient to attain the applicable NAAQS. For these areas, the maintenance demonstration is to be based on the same level of modeling (see the ''Calcagni memo''). For the Maricopa County area, this involved the use of EPA's Urban Airshed Model (UAM) in conjunction with intersection hotspot modeling using the CAL3QHC model.

The MAG CO Redesignation Request and Maintenance Plan submitted by ADEQ on June 16, 2003 included comprehensive emissions inventories of CO emissions for the Maricopa County area. These inventories include emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. MAG used the 1994 base year inventory, from the Revised 1999 CO Plan received by EPA on April 2, 2001, and included an interim-year projection for 2006 along with the final maintenance year of 2015. More detailed descriptions of the 1994 base year inventory from the Revised 1999 CO Plan, the 2006 projected inventory, and the 2015 projected inventory are documented in the MAG redesignation request and maintenance plan on page 3–8, and in the State's TSD in Appendix A, Exhibit 1. The State's submittal contains detailed emission inventory information that was prepared in accordance with EPA guidance. Summary emissions figures from the 1994 base year, the 2015 maintenance year and the interim projected year 2006 are provided in Table 2 below.

TABLE 2.—SUMMARY OF CO EMISSIONS IN TONS PER DAY FOR MARICOPA COUNTY

[For a Friday in December]

	1994	2006	2015
Point sources	2.5	21.9	32.2
Area sources	21.0	29.7	36.2
Non-road mobile sources	155.1	161.0	169.9
On-road mobile sources	869.6	699.7	662.9
Total *	1048.2	912.3	901.2

* Total may not equal 100% due to rounding.

We note that based on the information in Table 2, minor increases are projected in years 2006 and 2015 for point sources and area sources. The most significant reductions in the emissions inventory come from the on-road mobile sources category. Since two of the MAG CO Redesignation Request and Maintenance Plan's most significant measures reduce on-road vehicle emissions, namely the cleaner burning gasoline and vehicle emissions inspection programs, these projected emissions reductions are reasonable. MAG's approach follows EPA guidance on projected emissions, and we believe it is acceptable. Further information on these projected inventories may also be found on page 3–9 of the MAG CO Redesignation Request and Maintenance Plan and in Appendix A, Exhibit 2, Section III–1 of the TSD.

2. Demonstration of Maintenance

The Calcagni memo states that where modeling was relied on to demonstrate maintenance, the plan is to contain a summary of the air quality concentrations expected to result from the application of the control strategies. Also, the plan is to identify and describe the dispersion model or other air quality model used to project ambient concentrations.

For the MAG CO maintenance demonstration, MAG used UAM, the standard model for 1-hour CO attainment demonstrations, consistent with EPA guidance in *Guideline for Regulatory Application of the Urban Airshed Model for Areawide Carbon Monoxide* (EPA–450/4–92–011a and b, June 1992; hereafter ''Guideline''). Most of the inputs for the modeling in the MAG CO Redesignation Request and Maintenance Plan were identical to those in the Revised 1999 CO Plan. The main differences were in mixing height and in the emissions inputs.

In the MAG CO Redesignation Request and Maintenance Plan, the UAM model's maximum model height was increased slightly to accommodate plume rise from growth in peaking power plants. This adjustment has a relatively small effect on ground-level CO concentrations. Diagnostic and sensitivity testing showed reasonable agreement with observations after adjustment of the DIFFBREAK parameter, which in UAM is similar to mixing height, the height above ground through which substantial mixing occurs. Adjustment of minimum mixing heights is not ideal, but may be unavoidable in the absence of specific measured data on mixing heights, and has been accepted in other CO plans. Since CO is chemically inert, it is not unreasonable to adjust the air volume available for CO dilution, and thereby adjust CO concentration. This assumes diagnostic testing for other model inputs has been done, as is the case here.

MAG's emission input development process used EPA's MOBILE6 model to estimate on-road mobile source emission factors instead of MOBILE5, per EPA guidance, and newer traffic data were used. Total estimated CO emissions are substantially larger due to the changes in MOBILE model and various traffic and other inputs. On-road emissions for the 1994 episode increased 73%; total emissions from all sources increased 52%. However, modeled peak CO concentrations increased only slightly. Several factors account for the apparent discrepancy between input emissions and output model peak.

First, per EPA guidance, MOBILE6 was used to estimate on-road emissions instead of the older MOBILE5a. One effect mitigating the higher MAG CO maintenance plan emissions is that while the base case (1994) on-road emissions are higher, they decline faster than in the Revised 1999 CO Plan because of the enhanced effects of vehicle fleet turnover incorporated in MOBILE6. So higher initial emissions in

the MAG CO Redesignation Request and Maintenance Plan are still consistent with maintenance of the CO NAAQS later.

Second, the higher emissions in the MAG CO Redesignation Request and Maintenance Plan do not translate into increased peak CO concentrations. Mainly, the higher emissions in the MAG CO Redesignation Request and Maintenance Plan are shifted in time, and spread over a large area and volume; these mitigate the peak-increasing effect of the increased emissions. Revised traffic counts show that more of the emissions occur during the morning commute than during the evening. As a result, the increased emissions occur earlier in the day, farther from the peak in the 8-hour average, which occurs at 3 a.m. The assumed spatial distribution of cold start emissions was also different than in the Revised 1999 CO Plan. In the MAG CO Redesignation Request and Maintenance Plan, cold start emissions were distributed to local and arterial roads, but not to freeways; in the Revised 1999 CO Plan, the emissions were distributed to all three facility types. The method used in the MAG CO Redesignation Request and Maintenance Plan is more realistic because cold start emissions occur relatively close to the beginning of trips, when commuting cars are more likely to be on local roads than on freeways. Another effect of this different spatial allocation of emissions is that they are more dispersed. Because of this and because of changes in various other model inputs, CO emissions are more widely distributed in the MAG CO Redesignation Request and Maintenance Plan.

Finally, as mentioned above, mixing height was increased to improve model performance. This provided a greater volume for dilution of CO emissions, and thus a lower ambient concentration.

A third factor in reconciling higher emissions with a relatively unchanged peak concentration is that, the MAG CO Redesignation Request and Maintenance Plan base case had less error and less negative bias than the Revised 1999 CO Plan's, *i.e.*, it underpredicted by a smaller amount. The highest CO at any monitor in the MAG CO Redesignation Request and Maintenance Plan was about 2% above the peak observation, whereas in the Revised 1999 CO Plan, it was 10% or more below. In summary, the increased emissions in the MAG CO Redesignation Request and Maintenance Plan did in fact show up in the modeling results, but the effect was not to increase the highest peak, but rather to increase concentrations more generally, distributed in time and space.

For microscale modeling with CAL3QHC, the same intersections as in the Revised 1999 CO Plan were used, 27th Ave./Grand/Thomas Rd. and 35th Ave./Grand/Indian School Road. For the attainment demonstration, the results of the CAL3QHC modeling were combined with that from UAM for the cell containing the intersection, per EPA guidance. CAL3QHC contributions to peak concentrations was generally lower than was modeled for the Revised 1999 CO Plan. As discussed below, the decrease is partly due to updated traffic data. A shift in peak traffic to the morning occurred, which is further from the late-night CO peak. But the main reason for decreased CAL3QHC predictions was the exclusion of cold start emissions from idling emissions at intersections, in accordance with EPA guidance. Most cold start emissions occur within a few minutes of trip starts, so they have little affect on intersection emissions. Despite generally higher UAM predictions in the MAG CO Redesignation Request and Maintenance Plan, at the hotspot intersection locations, overall hotspot predictions are slightly lower. Table 3 lists the maximum combined dispersion modeling (UAM) and intersection modeling (CAL3QHC) results for the maintenance demonstration modeling at the West Indian School Road and Grand Avenue intersections (from MAG CO Redesignation Request and Maintenance Plan, page 3–13).

TABLE 3.—MAXIMUM DISPERSION MODELING AND INTERSECTION MODELING RESULTS

[In parts per million]

Intersection	2006			2015		
	UAM	CAL3QHC	Total	UAM	CAL3QHC	Total
WISR[1]	7.17	1.08	8.25	6.23	1.81	8.04
Grand Ave	7.74	0.50	8.24	7.16	0.65	7.81

[1] West Indian School Road monitor.

The target CO concentration for the maintenance demonstration modeling is 9.0 ppm. MAG therefore needed to show that combined UAM and CAL3QHC concentrations remain below 9 ppm in 2006 and 2015, despite the metropolitan area's growth. The MAG modeling shows a maximum CO concentration of 8.92 ppm in 2006, and 8.06 ppm in 2015; these meet the maintenance goal of 9.0 ppm.

For episode selection, modeling domain, wind fields, initial and boundary conditions, sensitivity testing was essentially identical between the two episodes (see the EPA TSD for the Revised 1999 CO Plan). The tests done showed that the model was responding reasonably. MAG's modeling also meets EPA's performance goals on peak level, peak timing, and absolute error. Model predictions in the MAG CO Redesignation Request and Maintenance Plan are closer to observations than in the Revised 1999 CO Plan modeling.

Since the peak values and general spatial patterns match well and EPA's model performance goals were met, overall the model appears to be replicating the episode fairly well, and forms an acceptable basis for a demonstration of maintenance. Overall, the modeling done by MAG for the CO maintenance demonstration performed adequately and meets EPA guidelines. EPA proposes to find the maintenance demonstration approvable.

3. Monitoring Network and Verification of Continued Attainment

Continued attainment of the CO NAAQS in the Maricopa County area depends, in part, on the State's efforts to track indicators throughout the maintenance period. This requirement is met in two sections of the MAG CO Redesignation Request and Maintenance Plan. On page 3–15 of the MAG CO Redesignation Request and Maintenance Plan, MAG commits to continue the operation of the CO monitors in the Maricopa County area and to annually review this monitoring network and make changes as appropriate.

Also, on page 3–15 of the MAG CO Redesignation Request and Maintenance Plan, MAG commits to track mobile sources CO emissions (which are the

largest component of the inventories) through the ongoing submittal of periodic emissions inventories every three years in accordance with section 187(a)(5) of the CAA. MCESD will coordinate and compile the inventory with input and assistance from ADEQ, the Arizona Department of Transportation, and MAG, as described in the 1992 Air Quality Memorandum of Agreement. Changes in the inventory will be reviewed and evaluated through the regional air quality planning process to determine if additional measures should be considered.

Based on the information above, we are proposing approval of these commitments as satisfying the relevant requirements of the CAA for maintenance plans. We note that a final rulemaking approval will render the State's commitments federally enforceable.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures.

As stated on page 3–15 of the MAG CO Redesignation Request and Maintenance Plan, implementation of the contingency measures for the Maricopa County area will be triggered by two verified readings exceeding 9.0 ppm at one monitor during a single CO season (*i.e.*, October 1 through March 31st). Since a violation of the NAAQS for 8-hour CO occurs when the second highest reading at the same monitor over two consecutive years is greater than or equal to 9.5 ppm, this trigger is more stringent than the standard, and will serve to prevent the occurrence of future violations.

When the contingency measure trigger is activated, MAG will consider additional measures on the following schedule: (a) Verification of the monitoring data to be completed three months after activation of the trigger; (b) applicable measure to be considered for adoption six months after the date established in (a) above; and (c) the resultant measure to be implemented within six to twelve months, depending on the time needed to put the measure in place.

5. Commitment To Submit Subsequent Maintenance Plan Revisions

In accordance with section 175A(b) of the CAA, as the designated regional air quality planning agency for the Maricopa County area, MAG has committed to submit a revised maintenance plan eight years after redesignation. This provision for revising the maintenance plan is contained in Chapter 3, pages 3–16 to 3–17 of the Maricopa County CO maintenance plan.

VII. EPA's Evaluation of the Transportation Conformity Requirements in the MAG CO Redesignation Request and Maintenance Plan

One of the primary tests for conformity is to show that transportation plans and transportation improvement programs will not cause motor vehicle emissions to increase above levels needed to make progress towards and to meet air quality standards. The motor vehicle emissions levels needed to make progress toward and to meet the air quality standards are set in the area's air quality plans as ''emissions budgets for motor vehicles''. More details about conformity tests are described in section IV.A of this notice. EPA has been using a process and specific criteria for determining the adequacy of emissions budgets in control strategy SIPs since a 1999 court ruling. This process is now codified in a recent revision to the conformity rule (see 69 FR 40004, July 1, 2004).

The MAG CO Redesignation Request and Maintenance Plan defines the CO motor vehicle emissions budgets in the Maricopa County area as 699.7 tons per day for 2006 and 662.9 tons per day for 2015 and beyond. The budget for 2015 is equal to the maintenance year (2015) mobile source emissions inventory for CO for the attainment/maintenance area. The MAG CO Redesignation Request and Maintenance Plan and supporting documentation indicate that the 662.9 budget for 2015 is consistent with maintenance of the CO NAAQS throughout the maintenance period. Therefore, we are proposing to approve the 699.7 tons per day CO emissions budget for 2006 and the 662.9 tons per day CO emissions budget for 2015 for the Maricopa County nonattainment area.

EPA's adequacy determination on the MAG CO budgets for 2006 and 2015 was made in a letter to ADEQ and MAG on September 9, 2003 and was announced in the **Federal Register** on September 29, 2003 (68 FR 55950). As a result of this adequacy finding, the 699.7 ton per day budget for 2006 and the 662.9 budget for 2015 took effect for the conformity determinations in the Maricopa County nonattainment area on October 14, 2003. However, we are not bound by that determination in acting on the maintenance plan.

VIII. GRIC Boundary Change Under CAA Section 107

EPA is proposing to change the boundary of the Maricopa County CO nonattainment/maintenance area to exclude the Gila River Indian Reservation (''Reservation'').

A. Background

1. Current Area Boundary, Designation, and Classification

Areas of the country were originally designated as attainment, nonattainment or unclassifiable following enactment of the 1977 Amendments to the CAA. *See* 43 FR 8962 (March 3, 1978). These designations were generally based on monitored air quality values compared to the applicable NAAQS. The Maricopa County nonattainment area was designated a nonattainment area for CO in April 1977. The boundary for the Maricopa County CO nonattainment area was first established following the CAA Amendments of 1977. *See* 43 FR 8962 (March 3, 1978)

Under the 1990 Clean Air Act Amendments, the Maricopa County CO nonattainment area was again classified as a nonattainment area for CO. The nonattainment area boundary remained the same. 56 FR 6335 (November 6, 1991). On August 28, 1996, the Maricopa County CO nonattainment area was reclassified to serious due to a failure to attain the 8-hour CO standard by December 31, 1995. 61 FR 39345 (July 29, 1996)

Area boundaries and area classifications have been amended over the years under the applicable CAA provisions, either by request of a state, by operation of law, or by EPA initiative. For the State of Arizona, the current area designations and classifications are codified at 40 CFR 81.303.

2. GRIC's Request for a Boundary Change

On July 14, 2004, the Gila River Indian Community (''Community''), a federally-recognized tribal government,[15] submitted a formal request to EPA to revise the boundary of the Maricopa County CO nonattainment area to exclude the Reservation.[16] The Community's analysis of air quality data existing at the time of and subsequent to the designation in 1978 as well as the nature of the CO sources on the Reservation demonstrated that the Reservation has not had a monitored or

[15] 67 FR 46329 (July 12, 2002).

[16] The Maricopa County CO nonattainment area includes the portion of the Reservation that lies within Maricopa County, approximately the northern 25% of the Reservation.

predicted violation of the CO NAAQS since, and that no significant sources of CO exist on the Reservation.

B. EPA Review of the Community's Request

1. EPA's Authority to Change Boundaries

Under section 107(d)(3)(A), EPA has the authority to revise the boundary of a nonattainment area on the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate.

2. The Gila River Indian Reservation Airshed

The Gila River Indian Reservation consists of approximately 374,000 acres in south central Arizona, south of the Phoenix metropolitan area. Currently, the Maricopa County (Phoenix area) CO nonattainment area includes the northern 92,000 acres of the Reservation. The Reservation is physically separated from the Phoenix metropolitan area by the Sierra Estrella and South Mountain Ranges. The Sierra Estrella Mountain Range runs north and south along the western edge of the Reservation. The South Mountain Range runs diagonally in a northeasterly direction, between one and five miles beyond the northern Reservation boundary. The mountain ranges act as a physical barrier between the two airsheds.

A segment of the northern border of the Reservation adjacent to Chandler does not have a topographical barrier to air pollution transport. However, the prevailing winds flow to the northeast, sending CO emissions from Chandler away from the Reservation. Along the northeastern border of the Reservation, the Santan Mountain Range separates the Reservation from Gilbert and Apache Junction.

The Reservation has a population of approximately 11,250 people, with a population density of approximately 20 people per square mile. There are no major population centers within the Reservation. By comparison, Maricopa County (including vast rural areas west of the urban area which are not part of the nonattainment area) has a population of 2,122,101, with a population density of over 230 people per square mile.

3. CO and the Reservation

In general, ambient CO concentrations are caused by onroad and nonroad mobile emissions sources. The level of mobile source emissions can be directly correlated to population density and land use patterns. The Community population density of 20 people per square mile is minor compared to all of Maricopa County, which has a density of over 230 people per square mile. Commuting patterns on the Reservation are virtually nonexistent. Approximately 2200 cars, trucks and vans commute to work within the Reservation, compared to 1,250,000 in Maricopa County. There is little economic integration with commercial development in metropolitan Phoenix, and the Reservation remains largely rural and agricultural. The Community plans to expand its agricultural base by investing millions of dollars in agricultural infrastructure.

Total annual emissions of CO on the Reservation are less than one percent of those in the MAG serious CO nonattainment area. High CO concentrations in the MAG nonattainment area are associated almost exclusively with areas of high traffic congestion, which do not exist on the Reservation. Therefore, there is substantial basis for concluding that the Reservation is an insignificant generator of CO emissions.

4. CO Planning Issues

Attainment of the CO NAAQS in the Phoenix metropolitan area was achieved by Arizona through the SIP planning process. It is important to note that, under the Clean Air Act, the state and local air pollution control authorities are not administering EPA-approved air regulatory programs over the Reservation; consequently, the SIP rules that were applied to the metropolitan area and resulted in attainment of the NAAQS did not apply to the Reservation. Furthermore, due to the Reservation's lack of CO sources, it was never considered necessary to apply CO limits to sources in the Reservation.[17]

Just as it was clear that it was not necessary for an attainment plan to be applicable to the Reservation for the Phoenix area to attain the CO NAAQS, it is clear to EPA that it will not be necessary for a maintenance plan to be applicable to the Reservation for the Phoenix area to maintain attainment of the NAAQS.

C. Redesignation of the Northern Portion of the Reservation

In view of the above considerations, and because no CO air quality data exists for the Reservation, EPA believes ''nonclassifiable/attainment'' is the appropriate designation for the entire Reservation, including that portion heretofore included in the nonattainment area. Therefore, EPA proposes to redesignate to ''nonclassifiable/attainment'' the portion of the Reservation that is now within the nonattainment area, and make it part of the surrounding nonclassifiable/attainment area.

IX. Proposed Action

We are soliciting public comment on all aspects of this proposed SIP rulemaking action. We will consider your comments in deciding our final action if your comments are received by November 8, 2004.

We propose to approve the following elements of the Revised 1999 CO Plan for the metropolitan Phoenix area and the MAG CO Redesignation Request and Maintenance Plan:

1. 1990 base year and 1993 and 1996 periodic emission inventories as required by sections 172(c)(3) and 187(a)(5).
2. Demonstration that the plan provides for the implementation of reasonably available control measures including transportation control measures under sections 172(c)(1) and 187(b)(2);
3. Demonstration of attainment by December 31, 2000 under section 187(a)(7);
4. Demonstration of reasonable further progress under sections 172(c)(2) and 187(a)(7);
5. Contingency measures under sections 172(c)(9) and 187(a)(3);
6. Forecasts of vehicle miles traveled and provisions for annual tracking and reporting under section 187(a)(2)(A);
7. Transportation control measures as necessary to offset growth in emissions under section 187(b)(2);
8. Attainment year and projected emissions inventories under section 175A;
9. Air quality monitoring requirements under section 110(a)(2) and section 172(c)(7);
10. CO motor vehicle emissions budgets for transportation conformity under section 176(c) for the attainment demonstration and the maintenance plan for the years 2000, 2006 and 2015 under the transportation conformity rule, 40 CFR Part 93, subpart A;
11. Demonstration of maintenance under section 175A(a) and a fully-approved maintenance plan under section 175A;
12. Maintenance plan contingency measures under section 175A(d);
13. Commitment for subsequent maintenance plan revisions under section 175A(b);

[17] EPA could have applied CO limits to sources on the Reservation, as it has authority under CAA 301(d) to promulgate regulations for Indian country as necessary or appropriate ''to achieve the appropriate purpose'' of the Act.

14. Redesignation of that portion of the Gila River Indian Reservation that is now within the nonattainment area to ''nonclassifiable/attainment'; and

15. A determination that the improvement in air quality in the Maricopa County nonattainment area is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable implementation plan, implementation of applicable Federal air pollution control regulations, and other permanent and enforceable reductions.

We have previously approved all control measures relied on for attainment and contingency measures in the Revised 1999 CO Plan, including the area's enhanced inspection and maintenance program (required by section 187(a)(6)), oxygenated gasoline program (required by sections 187(b)(3) and 211(m)), and woodburning curtailment regulations. See 68 FR 2912, 69 FR 10161, 64 FR 60678 and 67 FR 52416.

As stated above, we are proposing approval of MAG's June 16, 2003 request to redesignate the Maricopa County CO nonattainment area to attainment and proposing approval of the maintenance plan for the Maricopa County CO nonattainment area.

We are also proposing to change the designation of the portion of the Gila River Indian Community which is in the Maricopa County CO nonattainment area to ''unclassifiable/attainment'' for CO.

X. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed 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 proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed 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 proposes to approve 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 (Public Law 104–4).

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), 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.''

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of Executive Order 13175, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

EPA has concluded that this proposed rule may have tribal implications. EPA's action will remove the Gila River Indian Community from the Phoenix CO maintenance area. However, it will neither impose substantial direct compliance costs on tribal governments, nor preempt State law. Thus, the requirements of sections 5(b) and 5(c) of the Executive Order do not apply to this rule.

Consistent with EPA policy, EPA nonetheless consulted with representatives of tribal governments early in the process of developing this regulation to permit them to have meaningful and timely input into its development. Representatives of tribal governments approached EPA two years ago and requested that EPA make this boundary change. We agree with the technical and policy rationale the tribe provided, and believe that all tribal concerns have been met.

In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

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 proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Carbon monoxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: September 21, 2004.

Laura Yoshii,

Acting Regional Administrator, Region 9.

[FR Doc. 04–22485 Filed 10–7–04; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3009; MB Docket No. 04–368, RM–11067; MB Docket No. 04–369, RM–11068]

Radio Broadcasting Services; Alamogordo, NM; and Grayville, IL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document proposes two new allotments in Grayville, Illinois and Alamogordo, New Mexico. The Audio Division requests comment on a petition filed by Linda A. Davidson proposing the allotment of Channel 229A at Grayville, as the community's first local service. Channel 229A can be allotted to Grayville in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.0 kilometers (8.1 miles) northwest of the community. The reference coordinates for Channel 229A at Grayville, Illinois are 38–21–56 North Latitude and 88–03–38 West Longitude.

The Audio Division also requests comments on a petition filed by Daniel R. Feely proposing the allotment of Channel 240C2 at Alamogordo, New Mexico, as the community's fifth FM commercial aural transmission service. Channel 240C2 can be allotted to Alamogordo in compliance with the Commission's minimum distance separation requirements with a site restriction of 10.4 kilometers (6.5 miles) southeast of the community. The reference coordinates for Channel 240C2 at Alamogordo are 32–49–04 North Latitude and 105–54–19 West Longitude. Because the proposed site is within 320 kilometers (200 miles) of the Mexican border, concurrence of the Mexican government has been requested for the allotment.

DATES: Comments must be filed on or before November 15, 2004, and reply comments on or before November 30, 2004.

ADDRESSES: Secretary, Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, as follows: Linda A. Davidson, 2134 Oak Street, Unit C, Santa Monica, California, 90405 regarding the proposal to allot Channel 229A Grayville, Illinois, RM–11067 and Daniel R. Feely, 682 Palisade Street, Pasadena, California, 91103 regarding the proposal to allot Channel 240C2 Alamogordo, New Mexico, RM–11068.

FOR FURTHER INFORMATION CONTACT: Helen McLean, Media Bureau, (202) 418–2738.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket Nos. 04–368, 04–369, adopted September 22, 2004 and released September 24, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours at the FCC's Reference Information Center at Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 1–800–378–3160, or *www.BCPIWEB.com.*

Provisions of the Regulatory Flexibility Act of l980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR Part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Grayville, Channel 229A.

3. Section 73.202(b), the Table of FM Allotments under New Mexico, is amended by adding Channel 240C2 at Alamogordo.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22754 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3056; MB Docket No. 04–375, RM–11038; MB Docket No. 04–376, RM–11039; MB Docket No. 04–377, RM–11077; MB Docket No. 04–378; RM–11079; MB Docket No. 04–379, RM 11086]

Radio Broadcasting Services; Dover, Ohio, Eatonton, GA, Haven, KS, Hillsborough, NC, Hutchinson, KS; Lake Charles, LA, Lexington, GA, Louisburg, NC, North Canton; OH and West Orange, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The document proposes five change of community reallotments for Louisburg and Hillsborough, North Carolina; Hutchinson and Haven, Kansas; Dover and North Canton, Ohio; Lake Charles, Louisiana and West Orange, Texas; and Eatonton and Lexington, Georgia. *See* **SUPPLEMENTARY INFORMATION,** *infra.*

DATES: Comments must be filed on or before November 18, 2004, reply comments on or before December 3, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Kushner, Esq. Brooks Pierce, McClendon, Humphrey & Leonard, L.L.P., First Union Capitol Center, Suite 1600, 150 Fayetteville Street Mall, Raleigh, North Carolina 27602 (Counsel for New Century Media Group, LLC); Joseph P. Benkert, Esq., P.C. P.O. Box 620308, Littleton, Colorado 80162–0308 (Counsel for Ad Astra per Aspera Broadcasting, Inc.); Mark N. Lipp, Esq., Vinson & Elkins, L.L.P., 1455 Pennsylvania Ave., NW., Suite 600, Washington, DC 20004–1008 (Counsel for Clear Channel Broadcasting Licenses, Inc. and Apex Broadcasting, Inc.); and Lauren A. Colby, Esq., 10 E. Fourth Street, P.O. Box 113, Frederick, Maryland 21705–0113 (Counsel for Middleton Georgia Communications, Inc.).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Notice of Proposed Rule Making,* MB Docket No. 04–375, MB Docket No. 04–376, MB Docket No. 04–377, MB Docket No. 04–378 and MB Docket No. 04–379,

adopted September 23, 2004, and released September 27, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. This document may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20054, telephone 1–800–378–3160 or *http://www.BCPIWEB.com.*

The Audio Division requests comments on a petition filed by New Century Media Group, LLC, proposing the reallotment of Channel 273A from Louisburg to Hillsborough, North Carolina, and the modification of Station WHLQ(FM)'s license accordingly. Channel 273A can be reallotted to Hillsborough in compliance with the Commission's minimum distance separation requirements with a site restriction of 9.51 kilometers (5.91 mile) northeast to avoid short-spacings to the licensed sites of Station WJMH(FM), Channel 271C, Reidsville, North Carolina, and Station WIOZ–FM, Channel 273A, Southern Pines, North Carolina. The reference coordinates for Channel 273A at Hillsborough are 36–06–49 NL and 79–00–20 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 273A at Hillsborough, North Carolina, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

The Audio Division requests comments on a petition filed by Ad Astra per Aspera Broadcasting, Inc., proposing the reallotment of Channel 246C2 from Hutchinson to Haven, Kansas, and the modification of Station KSKU(FM)'s construction permit accordingly. Channel 246C2 can be reallotted to Haven in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.9 kilometers (15.5 miles) southeast to avoid a short-spacing the proposed site for Channel 247C3, Howard, Kansas. The reference coordinates for Channel 246C2 at Haven are 37–47–47 NL and 97–31–59 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 246C2 at Haven, Kansas, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties. In addition, Station KSKU–FM was granted a construction permit to specify operation on Channel 246C2 in lieu of Channel 246C3 at Hutchinson. *See* BPH–20000424ABH. This change is not reflected in the FM Table of Allotments.

The Audio Division requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc., proposing the reallotment of Channel 269A from Dover to North Canton, Ohio, and the modification of Station WJER–FM's license accordingly. Channel 269A can be reallotted to North Canton in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.5 kilometers (4.7 miles) south to avoid short-spacings to the licensed sites of Station WHOT–FM, Channel 266B, Youngstown, Ohio, and Station WDOK(FM), Channel 271B, Cleveland, Ohio. The reference coordinates for Channel 269A at North Canton are 40–48–30 NL and 81–23–31 WL. Since North Canton is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 269A at North Canton, Ohio, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

The Audio Division requests comments on a petition filed by Apex Broadcasting, Inc., LLC, proposing the reallotment of Channel 258C0 from Lake Charles, Louisiana to West Orange, Texas, and the modification of Station KBXG(FM)'s construction permit accordingly. Channel 258C0 can be reallotted to West Orange in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.4 kilometers (9.5 miles) east to avoid a short-spacing to the licensed site of Station KSHN(FM), Channel 260C2, Liberty, Texas. The reference coordinates for Channel 258C0 at West Orange are 30–07–21 NL and 93–36–21 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 258C0 at West Orange, Texas, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

The Audio Division requests comments on a petition filed by Middle Georgia Communications, Inc., proposing the substitution of Channel 249C2 for Channel 249C3 at Eatonton, the reallotment of Channel 249C2 from Eatonton to Lexington, Georgia, and the modification of Station WMGZ(FM)'s license accordingly. Channel 249C2 can be reallotted to Lexington in compliance with the Commission's minimum distance separation requirements with a site restriction of 30.5 kilometers (19.0 miles) southeast to avoid short-spacings to the licensed sites of Station WFOX(FM), Channel 246C, Gainesville, Georgia and Station WHZT(FM), Channel 251C, Seneca, South Carolina The reference coordinates for Channel 249C2 at Lexington are 33–45–03 NL and 82–48–53 WL. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 249C2 at Lexington, Georgia, or require petitioner to demonstrate the existence of an equivalent class channel for the use of other interested parties.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

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

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Georgia, is amended by removing Channel 249C3 at Eatonton; and by adding Lexington, Channel 249C2.

3. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by removing Channel 246C3 at Hutchinson; and by adding Haven, Channel 246C2.

4. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing 258C0 at Lake Charles.

5. Section 73.202(b), the Table of FM Allotments under Ohio, is amended by removing Channel 269A at Dover; and by adding North Canton, Channel 269A.

6. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 273A at Louisburg; and by adding Hillsborough, Channel 273A.

7. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding West Orange, Channel 258C0.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22752 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 04–3011; MB Docket No. 04–340, RM–11081; MB Docket No. 04–371, RM–11082]

Radio Broadcasting Services; Crystal Fall, MI, and Laona, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document sets forth two proposals to amend the FM Table of Allotments, Section 73.202(b) of the Commission's rules, 47 CFR 73.202(b). The Commission requests comment on a petition filed by Results Broadcasting of Iron Mountain, Inc. Petitioner proposes the allotment of Channel 280C2 at Crystal Falls, Michigan, as a third local FM allotment. Channel 280C2 can be allotted at Crystal Falls in compliance with the Commission's minimum distance separation requirements with a site restriction of 24.3 kilometers (15.1 miles) southwest of Crystal Falls. The proposed coordinates for Channel 280C2 at Crystal Falls are 45–57–22 North Latitude and 88–33–46 West Longitude. The proposed allotment is located within 320 kilometers (199 miles) of the United States-Canada border, so it will be necessary to obtain concurrence in the allotment from the Government of Canada. *See* **SUPPLEMENTARY INFORMATION** *infra.*

DATES: Comments must be filed on or before November 15, 2004, and reply comments on or before November 30, 2004.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve counsel for the petitioner as follows: David G. O'Neil, Rini Coran, PC, 1501 M Street, NW., Suite 1150, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Deborah A. Dupont, Media Bureau (202) 418–7072.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–370 and 04–371, adopted September 22, 2004, and released September 24, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *http://www.bcpiweb.com.*

The Commission further requests comment on a petition filed by Results Broadcasting of Iron Mountain, Inc. Petitioner proposes the allotment of Channel 272C3 at Laona, Wisconsin, as a first local allotment. Channel 272C3 can be allotted at Laona in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.1 kilometers (6.9 miles) north of Laona. The proposed coordinates for Channel 272C3 at Laona are 45–39–30 North Latitude and 88–43–20 West Longitude. The proposed allotment is located within 320 kilometers (199 miles) of the United States-Canada border, so it will be necessary to obtain concurrence in the allotment from the Government of Canada.

The Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Michigan, is amended by adding Channel 280C2 at Crystal Falls.

3. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel Laona, Channel 272C3.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 04–22753 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 69, No. 195

Friday, October 8, 2004

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

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–048–2]

Notice of Request for Emergency Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; reopening of comment period.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Animal and Plant Health Inspection Service announced in the **Federal Register** that it had submitted to the Office of Management and Budget a request for emergency review and approval of an information collection associated with a national animal identification system. That notice was published on September 23, 2004 (69 FR 56990–56991), and comments were due by October 4, 2004. This notice announces our intention to reopen that comment period for an additional 20 days beyond the date of this notice.

DATES: We will consider all comments that we receive on or before October 28, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–048–1 Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–048–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–048–1'' on the subject line.

Agency Web site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information on the national animal identification system, contact Mr. Neil Hammerschmidt, Animal Identification Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737; (301) 734–5571, or Dr. John Wiemers, National Animal Identification Coordinator, Eradication and Surveillance Team, National Center for Animal Health Programs, VS, APHIS, 2100 S. Lake Storey Road, Galesburg, IL 61401; (309) 344–1942. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS'' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Animal Identification System.

OMB Number: 0579–XXXX.

Type of Request: Emergency approval of a new information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation and interstate movement of animals and animal products and conducts various other activities to protect the health of our Nation's livestock and poultry.

Animal disease outbreaks around the globe over the past decade, and the detection of an imported cow infected with bovine spongiform encephalopathy in Washington State in December 2003, have intensified the public interest in developing a national animal identification program for the purpose of protecting animal health.

Fundamental to controlling any disease threat, foreign or domestic, to the Nation's animal resources is to have a system that can identify individual animals or groups, the premises where they are located, and the date of entry to each premises. Further, in order to achieve optimal success in controlling or eradicating an animal health threat, the timely retrieval of this information and implementation of intervention strategies after confirmation of a disease outbreak is necessary.

While there is currently no nationwide animal identification system in the United States for all animals of a given species, some segments of certain species are required to be identified as part of current program disease eradication activities. In addition, some significant regional voluntary identification programs are in place, and others are currently being developed and tested.

As a first stage of implementing a national animal identification system (NAIS), USDA has funded 29 State and tribal projects that will be conducted under cooperative agreements. States and tribes can use the funds to register premises, establish data transfer procedures, and conduct field trials or research in order to test and fine-tune identification technologies and collect animal movement data. Additional nonfederally funded projects may also be conducted. The pilot projects will help inform USDA's decisions about how to proceed with the animal identification initiative. USDA has also solicited public comment on this initiative through an advance notice of proposed rulemaking published in the **Federal Register** on July 14, 2004 (69 FR 42288–42300) and has conducted a series of listening sessions across the country to discuss the development, structure, and implementation of the NAIS with livestock producers and other interested persons.

USDA's ultimate goal for the NAIS is to gain the ability to identify all animals and premises that have had direct contact with a foreign animal disease or disease of concern within 48 hours of discovery. A functioning system will

also be crucial as USDA works to complete disease eradication programs in which States, industry, and the Federal Government have invested many years and millions of dollars. USDA is committed to developing a program that is tested both on the farm and in the livestock markets to ensure it is both practical and effective. USDA's technology-neutral position will allow industry to determine which animal identification method or methods are the most practical and effective for each species.

APHIS has submitted a request to the Office of Management and Budget (OMB) for emergency approval of the information collection and recordkeeping activities that will be conducted under the State and tribal pilot projects discussed above. We have amended the estimate of burden shown in our initial notice to reflect only the time period that will be covered by the emergency approval.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.,* permitting electronic submission of responses.

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.1404691 hours per response.

Respondents: State animal health authorities; federally recognized tribal governments; owner/operators of feedlots, markets, buying stations, and slaughter plants; producers; and nonproducer participants, such as accredited veterinarians, animal identification (ID) number managers (individuals or firms responsible for assigning animal ID numbers to producers), animal identification ID companies (companies that manufacture animal identification tags, microchips, or other animal ID devices), third party service providers (companies that provide herd management, dairy herd improvement, genetic evaluation, and other services to producers), and diagnostic laboratories and livestock buyers/dealers who submit data to the national database.

Estimated annual number of respondents: 189,963.

Estimated annual number of responses per respondent: 1.2055189.

Estimated annual number of responses: 229,004.

Estimated total annual burden on respondents: 32,168 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

APHIS will provide the Office of Management and Budget with a copy of all comments received on this notice. All comments will become a matter of public record.

Done in Washington, DC, this 6th day of October 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 04–22788 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–099–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with nursery stock regulations that govern the importation of nursery stock (plants and plant parts and products for propagation) into the United States to prevent the introduction of plant pests.

DATES: We will consider all comments that we receive on or before December 7, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–099–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–099–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–099–1'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

FOR FURTHER INFORMATION CONTACT: For information regarding the nursery stock regulations, contact Ms. Jane Levy, Senior Staff Officer, Quarantine, Policy Analysis and Support, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737; (301) 734–8295. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Update of Nursery Stock Regulations.

OMB Number: 0579–0190.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (7 U.S.C. 7701–7772) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate

movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States.

The regulations in ''Subpart-Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products'' (7 CFR 319.37–319.37–14) prohibit or restrict the importation of living plants, plant parts, and seeds for propagation.

Under the regulations, individuals who are involved in growing, exporting, and importing nursery stock must provide information to APHIS about the commodities they wish to bring into the United States. This information is vital to help ensure that plant pests are not introduced into the United States.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Importers of nursery stock; foreign government officials.

Estimated annual number of respondents: 20.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 20.

Estimated total annual burden on respondents: 10 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of October, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2552 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 04–096–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the Foreign Animal Disease Surveillance Program.

DATES: We will consider all comments that we receive on or before December 7, 2004.

ADDRESSES: You may submit comments by any of the following methods:

- EDOCKET: Go to *http://www.epa.gov/feddocket* 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 you have entered EDOCKET, click on the ''View Open APHIS Dockets'' link to locate this document.
- Postal Mail/Commercial Delivery: Please send four copies of your comment (an original and three copies) to Docket No. 04–096–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 04–096–1.
- E-mail: Address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 04–096–1'' on the subject line.
- Agency Web Site: Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the Foreign Animal Disease Surveillance Program, contact Dr. Aida Boghossian, Senior Staff Veterinarian, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737; (301) 734–5776. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Foreign Animal Disease/Emerging Disease Investigation (FAD/EDI) Database.

OMB Number: 0579–0071.

Type of Request: Extension of approval of an information collection.

Abstract: The Animal and Plant Health Inspection Service (APHIS), among other things, administers regulations intended to prevent foreign diseases of livestock or poultry from being introduced into the United States, conducts surveillance for the early detection of such foreign animal diseases, and conducts eradication programs if such foreign diseases are detected.

Through our Foreign Animal Disease Surveillance Program, APHIS compiles essential epidemiological and diagnostic data that are used to define foreign animal diseases and their risk factors. When a potential foreign animal disease incident is reported, APHIS dispatches a foreign animal disease veterinary diagnostician to the site to conduct an investigation.

The diagnostician obtains vital epidemiologic data by conducting field investigations, including sample collection, and by interviewing the owner or manager of the premises being investigated.

These important data include such items as the number of sick or dead animals on the premises, the results of necropsy examinations, vaccination information on the animals in the flock or herd, biosecurity practices at the site, whether any animals were recently moved out of the herd or flock, whether any new animals were recently introduced into the herd or flock, and detailed geographic data concerning premises location.

Government diagnosticians record this information on Veterinary Services (VS) Form 12–27, which is available electronically, allowing epidemiological and diagnostic information to be collected and transmitted more easily and quickly. The owner/manager of the premises being investigated assists in this process by verbally providing information to the diagnostician.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the 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 our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(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, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.978947368 hours per response.

Respondents: Government diagnosticians; owners/managers of premises.

Estimated annual number of respondents: 635.

Estimated annual number of responses per respondent: 3.889763779.

Estimated annual number of responses: 2,470.

Estimated total annual burden on respondents: 2,418 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 4th day of October, 2004.

Elizabeth E. Gaston,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E4–2553 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), re-certified the trade adjustment assistance (TAA) petition that was filed by the United Fishermen of Alaska on behalf of Alaska salmon fishermen and initially certified on November 6, 2003. Salmon fishermen holding permits and licenses in the State of Alaska will be eligible to apply for fiscal year 2005 benefits during a 90-day period beginning on October 15, 2004. The application period closes on January 13, 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that continued increases in imports of farmed salmon contributed importantly to a decline in the average landed price of salmon in Alaska by 35.2 percent during the 2003 marketing period (January-December 2003), compared to the 1997–2001 base period. Eligible producers may request technical assistance from the Extension Service at no cost and receive an adjustment assistance payment, if certain program criteria are satisfied.

Producers of raw agricultural commodities wishing to learn more about TAA and how they may apply should contact the Department of Agriculture at the addresses provided below for General Information.

Producers Certified as Eligible for TAA, Contact: Farm Service Agency service centers.

For General Information About TAA, Contact: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, email: trade.adjustment@fas.usda.gov.

Dated: September 23, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–22649 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Trade Adjustment Assistance for Farmers

AGENCY: Foreign Agricultural Service, USDA.

ACTION: Notice.

The Administrator, Foreign Agricultural Service (FAS), today terminated a petition for trade adjustment assistance (TAA) that was filed by the Wild Blueberry Commission of Maine and initially certified on November 6, 2003. Wild blueberry producers will not be eligible for TAA benefits in fiscal year 2005.

SUPPLEMENTARY INFORMATION: Upon investigation, the Administrator determined that domestic producer prices did not decline at least 20 percent during the July 2003–June 2004 marketing year, when compared to average prices during the 5-year base period ending June 2002, a condition required for re-certifying the petition for TAA.

FOR FURTHER INFORMATION CONTACT: Jean-Louis Pajot, Coordinator, Trade Adjustment Assistance for Farmers, FAS, USDA, (202) 720–2916, e-mail: *trade.adjustment@fas.usda.gov.*

Dated: September 23, 2004.

A. Ellen Terpstra,

Administrator, Foreign Agricultural Service.

[FR Doc. 04–22650 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Resource advisory Committee Meeting

AGENCY: Modoc Resource Advisory Committee, Alturas, California, USDA Forest Service.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Modoc National Forest's Modoc Resource Advisory Committee will meet Monday, November 1st, 2004, in

Alturas, California for business meetings. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting November 1st begins at 6 p.m., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas. Agenda topics will include the final roll-call vote for a majority of the projects submitted for funding in fiscal year 2005. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION CONTACT: Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Public Affairs Officer Nancy Gardner at (530) 233–8713.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. 04–22344 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Siskiyou County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Siskiyou County Resource Advisory Committee (RAC) will meet in Yreka, California, October 18, 2004. The meeting will include routine business, a discussion of large scale projects, and the review and recommendation for implementation of submitted project proposals. In addition, a pre-meeting introductory training session for newly appointed RAC members will be held beginning at 3:30 p.m. at the same location. Members of the public interested in the RAC and its authorizing law are welcome to attend.

DATES: The meeting will be held October 18, 2004, from 4:30 p.m. until 8 p.m.

ADDRESSES: The meeting will be held at the Yreka High School Library, Preece Way, Yreka, California.

FOR FURTHER INFORMATION CONTACT: Don Hall, RAC Coordinator, Klamath National Forest, (530) 841–4468 or electronically at *donaldhall@fs.fed.us.*

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Public comment opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: October 1, 2004.

Margaret J. Boland,

Designated Federal Official.

[FR Doc. 04–22708 Filed 10–7–04; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

Comments Must be Received on or Before: November 7, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions. If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each product or service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, Fort Eustis, Virginia.
NPA: Virginia Industries for the Blind, Charlottesville, Virginia.
Contract Activity: Army Contracting Agency/NRCC Installation Division, Fort Eustis, Virginia.

Service Type/Location: Custodial Services, Building #6107, Camp Bullis, Texas.
NPA: Professional Contract Services, Inc., Austin, Texas.
Contract Activity: Army Contracting Agency, Fort Sam Houston, Fort Sam Houston, Texas.

Service Type/Location: Document Destruction, Internal Revenue Service, 675 W. Moana Lane, Reno, Nevada.
NPA: Washoe ARC, Reno, Nevada, Internal Revenue Service, Tucson, Arizona.
NPA: Beacon Group SW, Inc., Tucson, Arizona.
Contract Activity: IRS-Western Area Procurement Branch-APFW, San Francisco, California.

Patrick Rowe,

Deputy Executive Director.

[FR Doc. 04–22726 Filed 10–7–04; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: November 7, 2004.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 13, 2004, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (69 FR

50162/63) of proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Paper, Tabulating; 7530–00–144–9600 (Multi-Part Computer Paper); 7530–00–144–9601 (Multi-Part Computer Paper); 7530–00–144–9602 (Multi-Part Computer Paper); 7530–00–144–9604 (Multi-Part Computer Paper); 7530–00–185–6751 (Multi-Part Computer Paper); 7530–00–185–6754 (Multi-Part Computer Paper).

NPA: Association for Vision Rehabilitation and Employment, Inc., Binghamton, New York.

Contract Activity: Office Supplies & Paper Products Acquisition Center, New York, New York.

Services

Service Type/Location: Custodial & Grounds Maintenance, Federal Building, U.S. Post Office and Courthouse, 600 East First Street, Rome, Georgia.

NPA: Bobby Dodd Institute, Inc., Atlanta, Georgia.

Contract Activity: GSA, Property Management Center (4PMB), Atlanta, Georgia.

Service Type/Location: Custodial Services, U.S. Border Patrol Station and U.S. Customs House, I–29 at Canadian Border, Pembina, North Dakota.

NPA: The Home Place Corporation, Grand Forks, North Dakota.

Contract Activity: GSA, Public Buildings Service, Region 8, Denver, Colorado.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 04–22727 Filed 10–7–04; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Sensors and Instrumentation Technical Advisory Committee (SITAC) will meet on October 26, 2004, 9:30 a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

Public Session

1. Opening remarks and introductions.
2. Review of SITAC Annual Report.
3. Update on Bureau of Industry and Security initiatives.
4. Discussion on potential Wassenaar Export Group proposals on semiconductor lasers (6A005) and cameras (6A003).
5. Election of SITAC chairman.
6. Discussion of goals for Fiscal Year 2005.
7. Presentation of papers and comments by the public.

Closed Session

8. Discussion of matters determined to be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3).

A limited number of seats will be available during the public session of the meeting. Reservations are not accepted. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that the materials be forwarded before the meeting to Ms. Lee Ann Carpenter at *Lcarpent@bis.doc.gov.*

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 13, 2004, pursuant to Section 10(d) of the Federal Advisory Committee ACt, as amended (5 U.S.C. app. 2 section 10(d)), that the portion of this meeting dealing with pre-decisional changes to the Commerce Control List and U.S. export control policies shall be exempt from the provisions relating to public meetings found in 5 U.S.C. app. 2 sections 10(a)(1) and 10(a)(3). The remaining portions of the meeting will be open to the public.

For more information contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 5, 2004.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 04–22692 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–898, A–469–814]

Notice of Postponement of Preliminary Antidumping Duty Determinations: Chlorinated Isocyanurates From the People's Republic of China and Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Postponement of Preliminary Antidumping Duty Determinations.

EFFECTIVE DATE: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam (PRC) or Michele Mire (Spain), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–5222 or (202) 482–4711, respectively.

SUMMARY: The Department of Commerce (the Department) is postponing the preliminary determinations in the antidumping duty investigations of

chlorinated isocyanurates (isos) from the People's Republic of China (PRC) and Spain. The deadline for issuing the preliminary determinations in these investigations is currently October 21, 2004.

SUPPLEMENTARY INFORMATION:

Background

On June 10, 2004, the Department published the initiation of antidumping duty investigations of chlorinated isos from the PRC and Spain. *See* Initiation of Antidumping Duty Investigations: Chlorinated Isocyanurates From the People's Republic of China and Spain, 69 FR 32,488 (June 10, 2004). This notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation, which is October 21, 2004.

Postponement of Preliminary Determinations

Pursuant to section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), the petitioner may request a postponement from 140 days to not later than 190 days after the initiation of an investigation. A written request, including reasons for the postponement, may be submitted to the Department at least 25 days prior to the preliminary determination.

On September 16, 2004, Clearon Corporation and Occidental Chemical Corporation, the petitioners to these proceedings, made timely requests pursuant to section 733(c)(1)(A) of the Act and 19 C.F.R. 351.205(e) for postponement of the preliminary determinations in both investigations for 50 days or until December 10, 2004. The petitioners requested postponement of the preliminary determinations so that the petitioners and the Department can analyze more fully the information that has been submitted in these investigations, as well as analyze information that is due to be filed in early October. There are no compelling reasons for the Department to deny these requests.

Therefore, for the reasons identified by the petitioners, and pursuant to section 733(c)(1)(A) of the Act, and 19 CFR 351.205(e), the Department is postponing the deadline for issuing the preliminary determinations until December 10, 2004. The deadline for the final determinations will continue to be 75 days after the date of the preliminary determinations, unless extended.

This notice of postponement is in accordance with section 733(c)(2) of the Act, and 19 CFR 351.205(f)(1).

Dated: October 1, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2555 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–897]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Circular Welded Carbon Quality Line Pipe From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has preliminarily determined that imports of certain circular welded carbon quality line pipe from the People's Republic of China (''PRC'') are being, or are likely to be, sold in the United States at less than fair value (''LTFV''). The estimated margin of sales at LTFV is shown in the ''Suspension of Liquidation'' section of this notice.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Brian Smith at 202–482–1766, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2004, the Department received an antidumping duty petition filed in proper form by American Steel Pipe Division of American Cast Iron Pipe Company, IPSCO Tubulars Inc., Lone Star Steel Company, Maverick Tube Corporation, Northwest Pipe Company, and Stupp Corporation (collectively ''the petitioners''). On March 30, 2004, this investigation was initiated. *See Notice of Initiation of Antidumping Duty Investigation: Certain Circular Welded Carbon Quality Line Pipe from Mexico, the Republic of Korea, and the People's Republic of China,* 69 FR 16521 (March 30, 2004).

On April 6, 2004, the Department requested from the Embassy of the People's Republic of China, Baoji Oil Country Tubular Goods Plant, Fanyu Zhujiang Steel Pipe Co Ltd., Jiling Jiyuan Steel Pipe Co., Ltd., Shanghai Alison Steel Pipe Co., Ltd. (''Shanghai Alison''), and Shengli Petroleum Administrative Bureau Steel Pipe Plant, the quantity and value (''Q&V'') of subject merchandise exported to the United States during the period July 1, 2003, through December 31, 2003.[1] The Department received a response sent by regular (non-express) delivery on May 10, 2004, from Shanghai Alison, dated April 23, 2004. Due to several filing format or service deficiencies, and because the questionnaire response was submitted past the April 21 deadline, the submission from Shanghai Alison was rejected in accordance with § 351.302(d) of the Department's regulations. *See Letter to Shanghai Alison from Edward Yang Re: Quantity and Value (Q&V) Questionnaire,* dated June 4, 2004. The Department received no other responses to the Q&V questionnaire.

On April 19, 2004, the Department received comments related to the scope of the proceeding from the petitioners and Central Plastics Company (''CPC''), an interested party. CPC requested that line pipe of nominal pipe size outer diameters of 1¼ inch and less be excluded from the scope of the investigation. According to CPC, line pipe of 1¼ inch nominal pipe size outer diameter and less has different physical characteristics and can be used in very unique and specific applications. CPC uses this line pipe to distribute natural gas for household and business uses. CPC states that its ability to use pipe greater than 2 inches nominal pipe size outer diameter is not feasible given the specialized production processes used. Since this line pipe is more specialized, it is differentiated from the more common industrialized types of line pipe the investigation seeks to cover.

In support of the exclusion, CPC also contends that the quantities of line pipe it imports are 0.1 percent of the market. CPC also notes that it uses domestic line pipe when possible, but there are certain quality and quantity constraints. Therefore, CPC must rely to some extent on imports. Finally, CPC states that a loss of jobs would most likely result from any coverage of line pipe in question by an antidumping duty finding.

On April 21, 2004, petitioners submitted comments confirming that they do not oppose this request. Therefore, we have amended the scope

[1] The Department identified these companies through Internet research and Customs information as being large producers of subject merchandise.

of this investigation to exclude line pipe in nominal pipe size outer diameter of 1¼ inch and less.

On April 27, 2004, the International Trade Commission (''ITC'') issued its determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of circular welded carbon quality line pipe from the PRC. *See Certain Welded Carbon Quality Line Pipe from China, Korea, and Mexico: Investigations Nos. 731–TA–1073–1075 (Preliminary).*

On April 30, 2004, the Department issued its Section A antidumping questionnaire [2] to the Government of the PRC and provided courtesy copies to the four exporters/producers identified in the petition and one exporter/producer identified through the Department's research. The Department received no responses to this antidumping questionnaire from any of the respondents.

On August 5, 2004, the petitioners requested an extension of the preliminary determination with respect to line pipe from the PRC. *See* Letter from Petitioners Requesting an Extension of the Preliminary Determination on Certain Circular Welded Carbon Quality Line Pipe from China, dated August 5, 2004 (''Extension Request''). Accordingly, on August 6, 2004, the Department postponed the preliminary determination under section 733(c)(1)(A) of the Act by 50 days, to no later than September 29, 2004. *See Postponement of Preliminary Determination of Antidumping Duty Investigation: Certain Circular Welded Carbon Quality Line Pipe from the People's Republic of China,* 69 FR 49862 (August 12, 2004) (''Notice of Postponement'').

On September 16, 2004, the petitioners requested an extension of the final determination. Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by the petitioners. Because we have made an affirmative preliminary determination and have not received a request for postponement by exporters who account for a significant proportion of exports of the subject merchandise, we have not postponed the final determination.

Scope of Investigation

This investigation covers circular welded carbon quality steel pipe of a kind used for oil and gas pipelines, not more that 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. Excluded from this proceeding are line pipe in nominal pipe size outer diameter of 1¼ inch and less.

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, 7306.10.1013, 7306.10.1014, 7306.10.1015, 7306.10.1019, 7306.10.1050, 7306.10.1053, 7306.10.1054, 7306.10.1055, 7306.10.1059, 7306.10.5010, 7306.10.5013, 7306.10.5014, 7306.10.5015, 7306.10.5019, 7306.10.5050, 7306.10.5053, 7306.10.5054, 7306.10.5055, and 7306.10.5059. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of the investigation is dispositive.

Period of Investigation

The period of investigation (''POI'') corresponds to the two most recent fiscal quarters prior to the filing of the petition, *i.e.*, July 1, 2003, through December 31, 2003.

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy (''NME'') country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China,* 65 FR 33805 (May 25, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China,* 65 FR 19873 (April 13, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China,* 66 FR 49632 (September 28, 2001) (''Hot-Rolled Steel from the PRC''). This NME designation remains in effect until it is revoked by the Department. *See* section 771(18)(C) of the Act. No party has sought revocation of the NME status in this investigation. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as an NME country.

When the Department is investigating imports from an NME, section 773(c)(1) of the Act directs us to base the normal value (''NV'') on the NME producer's factors of production (''FOPs''), valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the ''Normal Value'' section, below. Furthermore, no interested party has requested that we treat the circular welded carbon quality line pipe industry in the PRC as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, we preliminarily have continued to treat the PRC as an NME.

Selection of Surrogate Country

In accordance with section 773(c)(4) of the Act, the Department, in valuing the FOPs, shall utilize, to the extent possible, the prices or costs of FOPs in one or more market-economy countries that are at a level of economic development comparable to that of the NME country and are significant producers of comparable merchandise. The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to that of the PRC in terms of economic development. *See* Memorandum from Ron Lorentzen to Edward Yang Re: Request for a List of Surrogate Countries, dated July 2, 2004. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. *See* Memorandum to File from Salim Bhabhrawala Re: Selection of Surrogate Country, dated September 29, 2004. We used India as the primary surrogate country and, accordingly, we have corroborated petitioner's calculations of NV using Indian prices to value the PRC producer's FOPs, when available and appropriate. We have

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under this investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section C requests a complete listing of U.S. sales. Section D requests information on the factors of production of the merchandise under investigation. Section E requests information on further manufacturing.

obtained and relied upon publicly available information wherever possible.

In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in this antidumping investigation, interested parties may submit publicly available information to value the FOPs within 40 days after the date of the publication of the preliminary determination.

The PRC-Wide Rate

In NME cases, it is the Department's policy to assume that all exporters located in the NME comprise a single exporter under common control, the ''NME entity.'' This presumption can be rebutted. The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate.[3] All exporters were given the opportunity to respond to the Department's questionnaires. As explained above, we did not receive timely responses from any PRC respondent. For this reason, we preliminarily determine that the PRC exporters of circular welded carbon quality line pipe from the PRC failed to respond to our questionnaire. Consequently, we are applying adverse facts available (*see* below) to determine the single antidumping duty rate—the PRC—wide rate—applicable to exporters in the PRC based on the fact that no respondent demonstrated entitlement to a separate rate; thus, all exporters of circular welded carbon quality line pipe are treated as a single enterprise under common control by the PRC government. *See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China,* 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that if an interested party or any other person: (A) Withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested under the antidumping statute; (C) significantly impedes an antidumping investigation; or (D) provides such information, but the information cannot be verified, the Department shall use the facts otherwise available in reaching the applicable determination as provided in section 782(d) of the Act. *See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part,* 64 FR 30481 (June 8, 1999); *Silicon Metal From The People's Republic of China: Final Results of Antidumping Duty Administrative Review,* 63 FR 37850 (July 14, 1998). Apart from an untimely and improperly filed Q&V response from Shanghai Alison, no party responded to our questionnaires. Therefore, they have impeded the Department's best efforts to conduct this investigation. For these reasons, the Department finds that use of facts otherwise available is appropriate for this preliminary determination.

Use of Adverse Facts Available

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Doc. 316, Vol. 1, 103d Cong. (1994) (''SAA''), establishes that the Department may employ an adverse inference ''* * * to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* SAA at 870. It also instructs the Department, in employing adverse inferences, to consider ''* * * the extent to which a party may benefit from its own lack of cooperation.'' *See id.*

In this particular case, the PRC entity failed to respond to several of the Department's requests for information. Moreover, the PRC entity did not provide an explanation or documentation for its failure to respond to the questionnaire. *See* Memorandum to the File, from Steve Williams, Case Analyst, through Jim Nunno, Team Leader, Re: Responses to the Quantity and Value and Section A Questionnaires, dated June 10, 2004. Therefore, the Department finds that, by not providing the necessary responses to the questionnaires issued by the Department, the PRC entity has failed to cooperate to the best of its ability and therefore the use of adverse facts available is appropriate.

Corroboration

Section 776(c) of the Act provides that, when the Department relies on secondary information rather than on information obtained in the course of a review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. In corroborating the petition margin, the Department must rely on surrogate values. Prior to using surrogate values, the Department must select a primary surrogate country. As explained above, we selected India as a primary surrogate country. *See* Memorandum to the File from Salim Bhabhrawala, Case Analyst, Re: Selection of Surrogate Country, dated September 29, 2004.

The Department attempted to find surrogate values contemporaneous with the POI from a comparable market economy to corroborate properly the secondary information to be used as the basis of the margin for the PRC entity. The Department conducted a search of the surrogate company's (Surya Roshni) financial statements by using web search engines, but could not identify detailed financial statements that would be contemporaneous with the POI and therefore appropriate for updating the surrogate values provided in the petition. Therefore, the Department has continued using the surrogate values provided in the petition, adjusted by the Department by a factor for estimated inflation within the POI, and subsequently corroborated through the Department's review. Based on information contained in the petition and our corroboration, the Department calculated a dumping margin of 73.17 percent. *See* Memorandum to File from Steve Williams, Case Analyst, through Jim Doyle, Office Director, Total Adverse Facts Available Corroboration Memorandum, dated September 29, 2004.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, the Department will direct U.S. Customs and Border Protection (CBP) to suspend liquidation of all imports of subject merchandise, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register.** We will instruct CBP to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice.

We preliminarily determine that the following margin exists for the POI:

[3] Because no entity, including the PRC entity, provided a response to the questionnaire, no party qualifies for a separate rate.

CIRCULAR WELDED CARBON QUALITY LINE PIPE FROM THE PRC

Producer/manufacturer/exporter	Weighted-average margin
PRC-wide rate	73.17%

The PRC-wide rate applies to all entries of the subject merchandise.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of circular welded carbon quality line pipe from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than 30 days after the date of publication of this notice, and rebuttal briefs no later than 35 days after the date of publication of this notice. Rebuttal briefs must be limited to the issues raised in the case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). We will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: September 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2566 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–805]

Certain Pasta From Turkey: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: In response to a request by the petitioners, New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company (the Petitioners), the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on certain pasta (pasta) from Turkey for the period July 1, 2003, through June 30, 2004. For the reason discussed below, we are rescinding this administrative review.

EFFECTIVE DATE: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: James Terpstra or Dennis McClure, Office 3, AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3965, or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Scope of Review

Imports covered by this review are shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastases, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this review are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white.

The merchandise subject to review is currently classifiable under item 1902.19.20 of the *Harmonized Tariff Schedule of the United States (HTSUS*). Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Background

On July 1, 2004, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on certain pasta from Turkey. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 69 FR 39903 (July 1, 2004). On August 30, 2004, pursuant to a request made by the Petitioners, the Department initiated an administrative review of Tat Konserve, A.S. and Filiz Gida Sanayi ve Ticaret, A.S. under the antidumping duty order on certain pasta from Turkey. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 69 FR 52857 (August 30, 2004). On September 21, 2004, the Petitioners timely withdrew their request for an administrative review of certain pasta from Turkey.

Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, the Petitioners withdrew their request for an administrative review within 90 days from the date of initiation. No other interested party requested a review and we have received no comments regarding the Petitioner's withdrawal of their request for a review. Therefore, we are rescinding this review of the antidumping duty order on certain pasta from Turkey.

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (CBP) within 15 days of the publication of this notice. The Department will direct CBP to assess antidumping duties for each company at the cash deposit rate in effect on the date of entry for entries during the period July 1, 2003, through June 30, 2004.

Notification to Importers

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 and countervailing 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 and countervailing duties occurred and the subsequent increase in antidumping duties by the amount of antidumping and countervailing duties reimbursed.

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 19 CFR 351.305(a)(3). 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 notice is in accordance with section 777(i)(1) of the Act and 19 CFR 251.213(d)(4).

Dated: October 4, 2004.

Jeffrey A. May,

Deputy Assistant Secretary for Import Administration.

[FR Doc. E4–2557 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Stainless Steel Sheet and Strip in Coils from France; Final Results of the Expedited Sunset Review of the Antidumping Duty Order

[A–427–814]

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Expedited Sunset Review of the Antidumping Duty Order on Stainless Steel Sheet and Strip in Coils from France.

SUMMARY: On June 1, 2004, the Department of Commerce (''the Department'') initiated a sunset review of the antidumping duty order on stainless steel sheet and strip in coils (''SSSSC'') from France pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). On the basis of a notice of intent to participate and an adequate substantive response filed on behalf of domestic interested parties and inadequate responses from respondent interested parties, the Department conducted an expedited (120–day) sunset review. As a result of this sunset review, the Department finds that revocation of the antidumping duty order would be likely to lead to continuation or recurrence of dumping. The dumping margins are identified in the *Final Results of Review* section of this notice.

EFFECTIVE DATE: October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Hilary E. Sadler, Esq., Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4340.

SUPPLEMENTARY INFORMATION:

Background:

On June 1, 2004, the Department published the notice of initiation of the sunset review of the antidumping duty order on SSSSC from France.[1] On June 16, 2004, the Department received a Notice of Intent to Participate from Nucor Corporation; Allegheny Ludlum Corporation; North American Stainless; the United Steelworkers of America, AFL–CIO; the local 3303 United Auto Workers; and Zanesville Armco Independent Organization, Inc. (collectively ''domestic interested parties'') within the deadline specified in section 351.218(d)(1)(i) of the Department's regulations. The domestic interested parties claimed interested party status under section 771(9)(C) and (D) of the Act, as domestic manufacturers of SSSSC or certified unions whose workers are engaged in the production of SSSSC in the United States. On July 1, 2004, the Department received a complete substantive response collectively from the domestic interested parties within the deadline specified in section 351.218(d)(3)(i) of the Department's regulations. We received a waiver of participation from Ugine & ALZ France. As a result, pursuant to section 751(c)(3)(B) of the Act and section 351.218(e)(1)(ii)(C)(2) of the Department's regulations, the Department determined to conduct an expedited review of this order.

Scope of the Order

For purposes of this review, the products covered are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat–rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (e.g., cold–rolled, polished, aluminized, coated, etc.) provided that it maintains the specific dimensions of sheet and strip following such processing. The merchandise subject to this order is currently classifiable in the Harmonized Tariff Schedule of the United States (''HTS'') at subheadings: 7219.13.0031, 7219.13.0051, 7219.13.0071, 7219.1300.81[2], 7219.14.0030, 7219.14.0065, 7219.14.0090, 7219.32.0005, 7219.32.0020, 7219.32.0025, 7219.32.0035, 7219.32.0036, 7219.32.0038, 7219.32.0042, 7219.32.0044, 7219.33.0005, 7219.33.0020, 7219.33.0025, 7219.33.0035, 7219.33.0036, 7219.33.0038, 7219.33.0042, 7219.33.0044, 7219.34.0005, 7219.34.0020, 7219.34.0025, 7219.34.0030, 7219.34.0035, 7219.35.0005, 7219.35.0015, 7219.35.0030, 7219.35.0035, 7219.90.0010, 7219.90.0020, 7219.90.0025, 7219.90.0060, 7219.90.0080, 7220.12.1000, 7220.12.5000, 7220.20.1010, 7220.20.1015, 7220.20.1060, 7220.20.1080, 7220.20.6005, 7220.20.6010, 7220.20.6015, 7220.20.6060, 7220.20.6080, 7220.20.7005, 7220.20.7010, 7220.20.7015, 7220.20.7060, 7220.20.7080, 7220.20.8000, 7220.20.9030, 7220.20.9060, 7220.90.0010, 7220.90.0015, 7220.90.0060, and 7220.90.0080. Although the HTS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under review is dispositive.

Excluded from the review of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled, (2) sheet and strip that is cut to length, (3) plate (i.e., flat–rolled stainless steel products of a thickness of 4.75 mm or more), (4) flat wire (i.e., cold–rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm), and (5) razor blade steel. Razor blade steel is a flat–rolled product of stainless steel, not

[1] *See Initiation of Five-Year (''Sunset'') Reviews, 69 FR 30874 (June 1, 2004)(''Initiation Notice'').*

[2] Due to changes to the HTS numbers in 2001, 7219.13.0030, 7219.13.0050, 7219.13.0070, and 7219.13.0080 are now 7219.13.0031, 7219.13.0051, 7219.13.0071, and 7219.13.0081, respectively.

further worked than cold–rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. See chapter 72 of the HTS, ''Additional U.S. Note'' 1(d). Flapper valve steel is also excluded from the scope of the order. This product is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors. Also excluded is a product referred to as suspension foil, a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus–or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm, and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection, and flatness of 1.6 mm over 685 mm length. Certain stainless steel foil for automotive catalytic converters is also excluded from the scope of this order. This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron. Permanent magnet iron–chromium-cobalt alloy stainless strip is also excluded from the scope of this order. This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium, and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as ''Arnokrome III.''[3] Certain electrical resistance alloy steel is also excluded from the scope of this order. This product is defined as a non–magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as ''Gilphy 36.''[4] Certain martensitic precipitation–hardenable stainless steel is also excluded from the scope of this order. This high–strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium, and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent [[Page 69381]] or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging, and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as ''Durphynox 17.''[5] Finally, three specialty stainless steels typically used in certain industrial blades and surgical and medical instruments are also excluded from the scope of this order. These include stainless steel strip in coils used in the production of textile cutting tools (e.g., carpet knives).[6] This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as ''GIN4 Mo.'' The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is ''GIN5'' steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, ''GIN6''[7].

Analysis of Comments Received

All issues raised in these reviews are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated September 29, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margins likely to prevail if the order were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding

[3] ''Arnokrome III'' is a trademark of the Arnold Engineering Company.

[4] ''Gilphy 36'' is a trademark of Imphy, S.A.

[5] ''Durphynox 17'' is a trademark of Imphy, S.A.

[6] This list of uses is illustrative and provided for descriptive purposes only.

[7] ''GIN4 Mo,'' ''GIN5,'' and ''GIN6'' are the proprietary grades of Hitachi Metals America, Ltd.

recommendations in this public memorandum which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/frn, under the heading ''October 2004.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

Final Results of Reviews

We determine that revocation of the antidumping duty order on SSSSC from France would be likely to lead to continuation or recurrence of dumping at the following weighted–average percentage margins:

Manufacturers/Exporters/Producers	Weighted Average Margin (percent)
Ugine & ALZ France, S.A.	9.38 percent
All Others	9.38 percent

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: September 29, 2004.

James J. Jochum,

Assistant Secretary for Import Administration.

[FR Doc. E4–2556 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application for Duty-Free Entry of Scientific Instrument

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether an instrument of equivalent scientific value, for the purposes for which the instrument shown below is intended to be used, is being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

Docket Number: 04–017. *Applicant:* University of Pennsylvania. *Instrument:* Electron Microscope, Model Tecnai G^2 TWIN BioTWIN. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* The instrument is intended to be used to observe a wide variety of biological specimens to detect structural changes within viruses, cells, cellular components, or tissues as related to changes of genes or a variety of treatments in order to identify specific correlations between the molecular change of genes and proteins and the structural changes or abnormalities in the cells and tissues. Application accepted by Commissioner of Customs: September 13, 2004.

Gerald A. Zerdy,

Program Manager, Statutory Import Programs Staff.

[FR Doc. E4–2558 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of rescheduling of partially closed meeting.

SUMMARY: The National Institute of Standards and Technology (NIST) is announcing the rescheduling of the National Construction Safety Team (NCST) Advisory Committee (Committee) meeting planned for Tuesday, October 5, 2004, and Wednesday, October 6, 2004 (69 FR 55585). NIST is rescheduling the meeting in response to public requests for additional time to make public comments and to have more of the meeting sessions open to the public. The meeting will be rescheduled to be held at NIST on Tuesday, October 19, 2004, from 8 a.m. to 5 p.m. and Wednesday, October 20, 2004, from 8 a.m. to 3 p.m.

DATES: The meeting will be rescheduled to be held on October 19, 2004, at 8 a.m. and will adjourn at 3 p.m. on October 20, 2004. The closed portion of the meeting is scheduled to begin at 11 a.m. and end at 3 p.m. on October 20.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephen Cauffman, National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the National Construction Safety Team Act (15 U.S.C. 7310 *et seq.*). The Committee is composed of nine members appointed by the Director of NIST who were selected for their technical expertise and experience, established records of distinguished professional service, and their knowledge of issues affecting teams established under the NCST Act. The Committee will advise the Director of NIST on carrying out investigations of building failures conducted under the authorities of the NCST Act that became law in October 2002 and will review the procedures developed to implement the NCST Act and reports issued under section 8 of the NCST Act. Background information on the NCST Act and information on the NCST Advisory Committee is available at *www.nist.gov/ncst*.

Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Construction Safety Team (NCST) Advisory Committee (Committee), National Institute of Standards and Technology (NIST), will meet Tuesday, October 19, 2004, from 8 a.m. to 5 p.m. and Wednesday, October 20, 2004, from 8 a.m. to 3 p.m. at NIST headquarters in Gaithersburg, Maryland.

The primary purpose of this meeting is to provide an update on the progress of the federal building and fire safety investigation of the World Trade Center Disaster (WTC Investigation). The agenda will also include a discussion on the progress of the Rhode Island Nightclub Investigation. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST Web site at *www.nist.gov/ncst*.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on August 2, 2004, that portions of the meeting of the National Construction Safety Team Advisory Committee that involve discussions regarding the proprietary information and trade secrets of third parties, data and documents that may also be used in criminal cases or lawsuits, matters the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency

action, and data collection status and the issuance of subpoenas may be closed in accordance with 5 U.S.C. 552b(c)(4), (5), (9)(B), and (10) respectively. The closed portion of the meeting is scheduled to begin at 11 a.m. and end at 3 p.m. on October 20. All other portions of the meeting will be open to the public.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs, the WTC Investigation, or the Rhode Island Investigation are invited to request a place on the agenda. On October 19, 2004, approximately one-hour will be reserved for public comments, and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be 5 minutes each. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend in person are invited to submit written statements to the National Construction Safety Team Advisory Committee, National Institute of Standards and Technology, 100 Bureau Drive, MS 8611, Gaithersburg, Maryland 20899–8611, via fax at (301) 975–6122, or electronically by e-mail to *ncstac@nist.gov*.

All visitors to the NIST site are required to pre-register to be admitted. Anyone wishing to attend this meeting must register by close of business on Friday, October 15, 2004, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Stephen Cauffman and he will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mr. Cauffman's e-mail address is *stephen.cauffman@nist.gov* and his phone number is (301) 975–6051.

Dated: September 29, 2004.

Hratch G. Semerjian,

Acting Director.

[FR Doc. 04–22607 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100404G]

Gulf of Mexico Fishery Management Council; Public Meetings

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

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene its Ad Hoc Red Snapper Advisory Panel (AP) to review public comments on the Individual Fishing Quota (IFQ) profile.

DATES: The Council's Ad Hoc Red Snapper AP will convene from 8 a.m. on October 26, 2004, and conclude no later that 5 p.m. on October 27, 2004.

ADDRESSES: The meeting will be held at the New Orleans Airport Plaza Hotel and Conference Center, 2150 Veterans Boulevard, Kenner, LA 70062; telephone: (504) 467–3111.

Council address: Gulf of Mexico Fishery Management Council, 3018 North U.S. Highway 301, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION: The Council's AP will convene to review public comment on an individual fishing quota (IFQ) scoping document, and to develop their recommendations to the Council on the alternatives that should become rules regulating the IFQ process. The AP consists of persons in the commercial red snapper fishery that are dealers or fishermen holding either Class 1 or Class 2 commercial red snapper vessel licenses. The AP also has four non-voting members representing law enforcement, academia, red snapper biological assessment, and the environmental community. An IFQ program would be used to allocate shares of the commercial red snapper quota to all fishermen with records of landings. Each fisherman's share would be based on his landing records from the trip tickets filed with NMFS. The IFQ shares will be transferrable to other fishermen. The IFQ profile includes alternatives for regulating the IFQ program that were reviewed by the public at scoping hearings held in August 2004.

Although other non-emergency issues not on the agendas may be discussed by the AP, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Dawn Aring at the Council office (see **ADDRESSES**) by October 18, 2004.

Dated: October 5, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2559 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100404F]

Pacific Fishery Management Council; Public Meeting/Workshop

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

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Pacific Fishery Management Council will hold a workshop to examine and discuss stock assessment models to be used in the 2005 stock assessments of West Coast groundfish.

DATES: The workshop will be held in October 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The workshop will be held at the NMFS Northwest Fisheries Science Center (NWFSC), 2725 Montlake Boulevard East, Seattle, WA 98112.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Stacey Miller, NMFS NWFSC; telephone: 206–860–3480; or John DeVore, Pacific Fishery Management Council; telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The workshop will be held on Monday, October 25, 2004, from 1 p.m. to 5 p.m.; Tuesday October 26, 2004, through Thursday, October 28, 2004, from 8:30 a.m. to 5 p.m., and Friday, October 29, 2004, from 8:30 a.m. to 12 p.m.

The purpose of the workshop is for authors to announce and discuss the models they will use in the 2005 West Coast groundfish stock assessments. Specifically, the workshop will be convened to examine the performance of stock assessment models as well as discuss authors' progress using these models. Additional topics to be discussed during the workshop include analytical methods for preparing data for model input, calculating and reporting uncertainty in stock assessments, and species-specific modeling issues.

Although non-emergency issues not contained in the meeting agenda may come before the workshop participants for discussion, those issues may not be the subject of formal workshop action during this meeting. Workshop action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the workshop participants' intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Entry to the NWFSC requires visitors to show a valid picture ID and register with security. A visitor's badge, which must be worn while at the NWFSC facility, will be issued to non-Federal employees participating in the meeting.

Dated: October 5, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2562 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100404C]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Groundfish Trawl Individual Quota Committee (TIQC) will hold a working meeting which is open to the public.

DATES: The TIQC working meeting will begin Monday, October 25, 2004, at 8 a.m. and may go into the evening until business for the day is completed. The meeting will reconvene from 8 a.m. and continue until business for the day is complete on Tuesday, October 26, 2004.

ADDRESSES: The meeting location will be announced at a later date in the **Federal Register**.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Jim Seger, Staff Officer (Economist); telephone: 503–820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the TIQC working meeting is to review results from public scoping, and some preliminary analysis, and refine recommendations to the Council on an individual quota program to cover limited entry trawl landings in the West Coast groundfish fishery.

Although non-emergency issues not contained in the TIQC meeting agenda may come before the TIQC for discussion, those issues may not be the subject of formal TIQC action during these meetings. TIQC action will be restricted to those issues specifically listed in this notice and to any issues arising after publication of this notice requiring emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the TIQC's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at 503–820–2280 at least five days prior to the meeting date.

Dated: October 5, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2563 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100404D]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of rescheduled public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold meetings of its Scientific and Statistical Committee (SSC), the SSC's Socioeconomic and Biological Assessment Subcommittees, and a joint meeting of the SSC and the SSC Selection Committee. The Council will also hold a joint meeting of its Shrimp Advisory Panel and Committee, Snapper Grouper Committee, and Standard Operation, Policy, and Procedure (SOPPs) Committee, and a joint Executive/Finance Committee meeting. Meetings will also be held by the full Council and the Shrimp Committee.

DATES: The meetings will be held October 24–28, 2004. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held at Pawley's Plantation, 70 Tanglewood Drive, Pawley's Island, SC 29585; telephone: 1–800–367–9959 or (843) 237–6100, fax: (843)237–6069.

Copies of documents are available from Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer; telephone: 843–571–4366 or toll free at 866–SAFMC–10; fax: 843–769–4520; email: *kim.iverson@safmc.net*.

SUPPLEMENTARY INFORMATION:

Meeting Dates

1. SSC Socioeconomic Subcommittee and SSC Biological Assessment Subcommittee: October 24, 2004 (Concurrent Sessions)

Socioeconomic Subcommittee Meeting: 1 p.m. — 5 p.m.

The SSC Socioeconomic Subcommittee will meet to discuss the Deepwater (Snowy Grouper and Golden tilefish) Assessment, review and comment on the Southeast Data, Assessment, and Review (SEDAR) stock assessment process, and review and comment on data for ecosystem-based management.

Biological Assessment Subcommittee: 1 p.m. — 5 p.m.

The SSC Biological Assessment Subcommittee will meet to discuss the Deepwater (Snowy Grouper and Golden tilefish) Assessment, review and comment on the SEDAR stock assessment process, and discuss the results of the Gulf of Mexico Fishery Management Council's SSC review of the Mackerel Assessment.

2. Scientific and Statistical Committee Meeting: October 25, 2004, 8:30 a.m. — 3 p.m.

The SSC will meet to review the Subcommittee reports and develop recommendations on the Deepwater Assessment, SEDAR stock assessment process and data for ecosystem-based management. The SSC will also provide input regarding the Ecosystem-Based Management for the Fishery Ecosystem Plan, and Amendment 13B to the Snapper Grouper Fishery Management Plan (FMP), and Amendment 15 to the Coastal Migratory Pelagics (mackerel) FMP.

3. Joint SSC Selection Committee and SSC Meeting: October 25, 2004, 3 p.m. — 5 p.m.

The Committees will develop recommendations for expanding the role of the SSC.

4. Snapper Grouper Committee Meeting: October 26, 2004, 8:30 a.m. — 3 p.m.

The Snapper Grouper Committee will meet to discuss the structure and timing of Amendment 13B to the Snapper Grouper FMP and stock status determination criteria contained in the draft document. The Committee will also review preliminary analysis of management regarding size limits, bag limits, and other management measures.

5. SOPPs Committee Meeting: October 26, 2004, 3 p.m. — 4 p.m.

The SOPPs Committee will review the Council's Standard Operating, Policy and Procedures and modify as appropriate.

6. Joint Executive Committee and Finance Committee Meeting: October 26, 2004, 4 p.m. — 5:30 p.m.

The Committees will meet jointly to review the current Calendar Year (CY) 2004 budget, the status of the Fiscal Year (FY) 2005 budget, and receive a briefing on the national councils/NOAA Fisheries budget planning for FY 2007–11. The Committees will develop timeline recommendations for CY 2005–09 FMP/Amendment/Framework development and approve the grant budget for that time period. The Committees will also review a discussion paper on Issues Affecting the South Atlantic Council's Fishery Management Plan/Amendment document.

7. Joint Shrimp Advisory Panel and Committee Meeting: October 27, 2004, 8:30 a.m. — 12 noon

The Shrimp Advisory Panel (AP) will meet jointly with the Committee to review public comments received for Amendment 6 to the Shrimp FMP and the AP will develop recommendations for the Committee to consider. The AP will also provide input on ecosystem considerations in the Shrimp FMP and receive a presentation on the NOAA Fisheries Shrimp Business Plan.

8. Council Session: October 27, 2004, 1:30 p.m. — 6 p.m.

From 1:30 p.m. — 1:45 p.m., the Council will call the meeting order, make introductions and roll call, and adopt the meeting agenda.

From 1:45 p.m. — 2 p.m., the Council will elect its Chairman and Vice-Chairman.

From 2 p.m. — 2:15 p.m., the Council will hear a report from the Snapper Grouper Committee and take action as appropriate.

From 2:15 p.m. — 2:30 p.m., the Council will hear a joint Executive/Finance Committee report and approve the CY 2005 FMP/Amendment/Framework timelines and CY 2005–2009 Grant Budget.

From 2:30 p.m. — 2:45 p.m., the Council will hear a SOPPs Committee report and approve the SOPPs for submission to the Secretary of Commerce.

From 2:45 p.m. — 3 p.m., the Council will hear a report from the SSC Selection Committee.

From 3 p.m. — 3:15 p.m., the Council will hear a report from the Information and Education Committee.

From 3:15 p.m. — 4:15 p.m., the Council will hear a Mackerel Status Report and review public comments on Amendment 15 to the Coastal Migratory Pelagics FMP.

From 4:15 p.m. — 4:30 p.m., the Council will hear status reports from NOAA Fisheries' Southeast Regional Office.

From 4:30 p.m. — 5 p.m., the Council will hear status reports from NOAA Fisheries' Southeast Fisheries Science Center.

From 5 p.m. — 6 p.m., the Council will hear agency and liaison reports.

9. Council Session: October 28, 2004, 8:30 a.m. — 12 noon

From 8:30 a.m. - 11:30 a.m., Shrimp Committee of the Whole Council

There will be a public comment period on Amendment 6 to the Shrimp FMP beginning at 8:30 a.m.

The Council will approve Amendment 6 to the Shrimp Fishery Management Plan.

From 11:30 a.m. — 12 noon, the Council will discuss other business and upcoming meetings.

Documents regarding these issues are available from the Council office (see **ADDRESSES**).

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subjects of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Except for advertised (scheduled) public hearings and public comment, the times and sequence specified on this agenda are subject to change.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 22, 2004.

Dated: October 5, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2560 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 100404E]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of a joint public meeting.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a joint meeting of its Habitat Advisory Panel (AP) and Coral AP to further the Council's integrated process to update Essential Fish Habitat (EFH) information and consider ecosytem-based management through the development of a Fishery Ecosystem Plan for the South Atlantic Region.

DATES: The joint meeting will take place October 25–29, 2004. On October 25, 2004, sessions will begin at 1 p.m. and conclude at 5 p.m. Sessions will be held from 8:30 a.m. until 5 p.m. on October 26–28, 2004, and from 8:30 a.m. until 1 p.m. on October 29, 2004.

ADDRESSES: The meeting will be held at the Francis Marion Hotel, 387 King Street, Charleston, SC, 29401; telephone: (877) 756–2121 or (843) 722–0600.

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407; telephone: (843) 571–4366 or (866) SAFMC–10; fax: (843) 769–4520.

SUPPLEMENTARY INFORMATION: Items for discussion at the joint meeting include: (1) review and approval of the Draft Research and Monitoring Plan for the Oculina Closed Area; (2) discussion of preliminary Draft Research and Monitoring Plan for Deepwater Coral Ecosystems in the South Atlantic; (3) discussion of potential deepwater coral sites for Coral-Habitat Areas of Particular Concern C-HAPC designation; (4) review and update of policies protecting EFH from the impacts of non-fishing activities in the South Atlantic region, and (5) discussion of Council's Action Plan to adopt an ecosystem-based approach to management including timeframe of development for the Council's Fishery Ecosystem Plan.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) by October 22, 2004.

Dated: October 5, 2004.

Alan D. Risenhoover,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. E4–2561 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 092004E]

Endangered Species; File No. 1501 and File No. 1506

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

ACTION: Receipt of applications for permits.

SUMMARY: Notice is hereby given that the followingindividuals have applied in due form for permits to conduct scientificresearch on endangered and threatened sea turtles: Dr. Allen M. Foley,Florida Fish and Wildlife Conservation Commission, Fish and WildlifeResearch Institute, Jacksonville Field Laboratory, 6134 Authority Avenue,Building 200, Jacksonville, Florida 32221 (File No. 1501); and Dr. Blair E.Witherington, Florida Fish and Wildlife Conservation Commission, Fish andWildlife Research Institute, Melbourne Beach Field Laboratory, 9700 SouthA1A, Melbourne Beach, Florida 32951 (File No. 1506).

DATES: Written or telefaxed comments must be receivedon or before November 8, 2004.

ADDRESSES: The applications and related documents areavailable for review upon written request or by appointment in thefollowing office(s):

Permits, Conservation and Education Division, Office of ProtectedResources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD20910; phone (301)713–2289; fax (301)713–0376; and

Southeast Region, NMFS, 9721 Executive Center Drive North, St.Petersburg, FL 33702–2432; phone (727)570–5301; fax(727)570–5320.

Written comments or requests for a public hearing on these applicationsshould be mailed to the Chief, Permits, Conservation and EducationDivision, F/PR1, Office of Protected Resources, NMFS, 1315 East-WestHighway, Room 13705, Silver Spring, MD 20910. Those individuals requestinga hearing should set forth the specific reasons why a hearing on theparticular request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376,provided the facsimile is confirmed by hard copy submitted by mail andpostmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address forproviding email comments is *NMFS.Pr1Comments@noaa.gov*.Include in the subject line of the e-mail comment the following documentidentifier: either File No. 1501 or File No. 1506.

FOR FURTHER INFORMATION CONTACT: Jennifer Jefferiesor Patrick Opay, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject permits arerequested under the authority of the Endangered Species Act of 1973, asamended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulationsgoverning the taking, importing, and exporting of endangered and threatenedspecies (50 CFR 222–226).

File No. 1501: Dr. Foley seeks authorization to capture and trackloggerhead (*Caretta caretta*), green (*Cheloniamydas*), Kemp's ridley (*Lepidochelys kempii*), andhawksbill (*Eretmochelys imbricata*) sea turtles for twoseparate projects in Florida Bay. The first project would continue anon-going long-term study of all four species in which, annually, up to 175adult and juvenile loggerheads, 20 adult and juvenile greens, 20 adult andjuvenile Kemp's ridley, and 10 adult and juvenile hawksbill sea turtleswould be captured by hand, measured, weighed, examined for tumors,photographed, Passive Integrated Transponder (PIT) and flipper tagged,blood sampled, marked on the carapace with a white laminating gel andsubsequently released. The loggerhead sea turtles would also have a skinsample taken. This work would be conducted for five years from permitissuance during the

months of June and July. A second study would beconducted on loggerhead sea turtles in Florida Bay and in a nearbylaboratory: annually, up to 50 adult loggerhead sea turtles would becaptured by hand, measured, weighed, examined for tumors, photographed, PITand flipper tagged, skin and blood sampled, and marked on the carapace witha white laminating gel in the field. The turtles would then be transportedby boat to the Keys Marine Lab and held for a maximum of 24 hours. Duringthis time, the researchers would perform ultrasounds, testicular biopsies,and laparoscopy. The turtles would then be transported back to the capturesite and released. A subset of 15 sea turtles would also be tagged with acombination of a satellite, sonic and temperature-depth recorder. Thisresearch would be conducted for five years from issuance of the permitduring the months of February and March.

File No. 1506: Dr. Witherington seeks authorization to study neonateand juvenile sea turtles in the waters of the Gulf of Mexico and theAtlantic Ocean off the coast of Florida. Annually, up to 250 neonate andjuvenile loggerheads, 10 neonate and juvenile greens, five neonate andjuvenile hawksbill, two neonate and juvenile Kemp's ridley, and two neonateand juvenile leatherback (*Dermochelys coriacea*) sea turtleswould be captured via long-handled dip nets, handled, measured, andreleased. A subset of up to 50 neonate and juvenile loggerhead sea turtleswould be transported less than five hours to a nearby port, held for 12hours, and then transported less than four hours to an imaging center wherethey would be held for no more than four days and examined for plastic andtar loads with either a veterinary high-resolution magnetic resonanceinterferometry instrument or a computerized tomography. The turtles wouldthen be returned to the point of capture and released. Feces samples wouldalso be collected during the holding period. These activities would beauthorized for five years from permit issuance.

Dated: October 1, 2004.

Carrie W. Hubard,

Acting Chief, Permits, Conservation and EducationDivision, Office of Protected Resources, National Marine FisheriesService.

[FR Doc. 04–22730 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 2004–P–047]

Grant of Interim Extension of the Term of U.S. Patent No. 4,567,264; Ranolazine

AGENCY: United States Patent and Trademark Office.

ACTION: Notice of interim patent term extension.

SUMMARY: The United States Patent and Trademark Office has issued a certificate under 35 U.S.C. 156(d)(5) for a second one-year interim extension of the term of U.S. Patent No. 4,567,264.

FOR FURTHER INFORMATION CONTACT: Karin Ferriter by telephone at (571) 272–7744; by mail marked to her attention and addressed to Mail Stop Patent Ext., Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450; by fax marked to her attention at (571) 273–7744, or by e-mail to *Karin.Ferriter@uspto.gov.*

SUPPLEMENTARY INFORMATION: Section 156 of Title 35, United States Code, generally provides that the term of a patent may be extended for a period of up to five years if the patent claims a product, or a method of making or using a product, that has been subject to certain defined regulatory review, and that the patent may be extended for interim periods of up to a year if the regulatory review is anticipated to extend beyond the expiration date of the patent.

On March 29, 2004, patent owner Roche Palo Alto LLC, timely filed an application under 35 U.S.C. 156(d)(5) for a second interim extension of the term of U.S. Patent No. 4,567,264. The patent claims the active ingredient ranolazine (Ranexa™). The application indicates, and the Food and Drug Administration (FDA) has confirmed, that a New Drug Application for the human drug product ranolazine has been filed and is currently undergoing regulatory review before the FDA for permission to market or use the product commercially.

Review of the application indicates that, except for permission to market or use the product commercially, the subject patent would be eligible for an extension of the patent term under 35 U.S.C. 156. Since it is apparent that the regulatory review period will continue beyond the extended expiration date of the patent (May 18, 2004), the term of the patent will be extended under 35 U.S.C. 156(d)(5) for an additional year.

An interim extension under 35 U.S.C. 156(d)(5) of the term of U.S. Patent No. 4,567,264 is granted for an additional period of one year from the extended expiration date of the patent, *i.e.,* until May 18, 2005.

Dated: September 17, 2004.

Jon W. Dudas,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 04–22705 Filed 10–7–04; 8:45 am]

BILLING CODE 3510–16–P

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 05–C0001]

Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc., a Corporation, 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 Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc., containing a civil penalty of $500,00.

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 October 25, 2004.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 05–C0001, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Michelle F. Gillice, Trial Attorney, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–7667.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: October 4, 2004.

Todd A. Stevenson,

Secretary.

In the Matter of Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc.; Settlement Agreement and Order

[CPSC Docket No. 05–C001]

1. Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc. and (hereinafter,

''Johnson'', ''Horizon'' or collectively ''Respondents'') enter into this Settlement Agreement and Order (hereinafter ''Settlement Agreement'' or ''Agreement'') with the staff of the Consumer Product Safety Commission (hereinafter ''Commission''), and agree to the entry of the attached Order incorporated by reference herein. The Settlement Agreement resolves the Commission staff's allegations set forth regarding reporting violations of the Respondents with respect to all Johnson treadmills manufactured with the Asia Star motor control board.

I. The Parties

2. The Commission is an independent Federal regulatory commission responsible for the enforcement of the Consumer Product Safety Commission Act (''CPSA''), 15 U.S.C. 2051–2084.

3. Johnson is the manufacturer of treadmills and other fitness equipment with its principal office located at 26, Ching Chuan Road, Taya Hsiang, Taichung Hsien, 42844, Taiwan, R.O.C.

4. Horizon was incorporated on August 1, 1999. It is organized and existing under the laws of Wisconsin with its principal office located at 800 Burton Boulevard, DeForest, Wisconsin 53532. Horizon imports and sells treadmills and other fitness equipment manufactured by Johnson. Horizon is 87% owned by Johnson International Holding Corp., Ltd. which is a subsidiary of Johnson.

II. Staff Allegations

5. Section 15(b) of the CPSA, 15 U.S.C. 2064(b) requires that every manufacturer, importer, distributor and retailer who obtains information that reasonably supports the conclusion that a consumer product (1) contains a defect which could create a substantial product hazard, or (2) creates an unreasonable risk of serious injury or death, immediately inform the Commission of the defect or risk.

6. Between August 2000 and June 2001, Johnson manufactured treadmills with a motor control board (''MCB'') manufactured by subcontractor, Asia Star.

7. Between September 2000 and December 2001, Horizon imported and distributed nationwide approximately 10,644 Johnson Treadmills with the Asia Star MCB under the model names, ''Paragon'', ''Quantum'' and ''Omega'' (hereinafter ''treadmills'').

8. The treadmills are ''consumer products'' which were ''distributed in commerce'' as those terms are defined in section 3(a)(1), (11) and (12) of the CPSA, 15 U.S.C. 2052(a)(1), (11) and (12).

9. Johnson and Horizon are ''manufacturers'' of the treadmills as that term is defined in section 3(a)(4) of the CPSA, 15 U.S.C. 2052(4).

10. The treadmills are defective because a component in the MCB can overheat causing (1) a sudden acceleration of the walking belt between 12.9 and 16.5 miles per hour (also known as a ''runaway'' situation) and (2) the safety stop key to fail. These defects could cause consumers to suffer serious injury.

11. Between January 2001 and January 14, 2002 (date of Respondents' full report), Respondents learned of 180 incidents of ''runaway'' treadmills and safety stop key failures. Fifteen of these reports alleged injury including sprains, strains, a torn rotator cuff, bruises and serious friction burns.

12. In response to consumer complaints, between January 2001 and January 14, 2002, Respondents made three modifications to the treadmill, first in February 2001, then in March 2001, and finally in May 2001, in an attempt to correct the defects. At none of these points, did Respondents provide the Commission with a full report.

13. On January 11, 2002, the Commission staff contacted Horizon to schedule an establishment inspection. Three days later, on January 14, 2002, Respondents submitted a full report.

14. Although Respondents had obtained sufficient information to reasonably support the conclusion that these treadmills (1) contained defects which could create a substantial product hazard or (2) created an unreasonable risk of serious injury or death, they failed to timely report such information to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b).

15. By failing to timely report to the Commission pursuant to section 15(b) of the CPSA, Respondents violated section 19(a)(4) of the CPSA, 2068(a)(4).

16. Respondents committed this failure to report to the Commission ''knowingly'' as that term is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus subjecting Respondents to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Response of Johnson and Horizon

17. Respondents deny the staff allegations in paragraphs 5 through 16.

18. Respondents deny that the treadmills contained defects which could create a substantial product hazard within the meaning of sections 15(a) and 15(b) of the CPSA, 15 U.S.C. 2064(a) and 2064(b).

19. Respondents deny that they treadmills created an unreasonable risk of serious injury or death pursuant to section 15(b) of the CPSC, 15 U.S.C. 2064(b) and deny the allegations of injury in paragraph 10 above.

20. Respondents deny that they knowingly violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b). They deny that the information available to them reasonably supported the conclusion that the treadmills contained a defect which could create a substantial product hazard or that the treadmills created an unreasonable risk of serious injury or death. They deny that a report was required under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

21. Although Respondents do not believe the treadmills had a reportable defect or risk, they diligently investigated and addressed the circumstances relating to the consumer complaints about the treadmills and fully responded to all consumer complaints and, by May of 2001, they had designed a corrective measure that fully addressed any of the alleged defects.

22. The Respondents had already decided to file a full report with the CPSC and to implement a recall of the treadmills prior to being contacted by the CPSC on January 11, 2002. Respondents' full report to the CPSC and voluntary recall did not result from the CPSC investigation, but instead was part of their ongoing effort to fully address and respond to customer complaints regarding the treadmills.

23. Respondents agree to this Settlement Agreement and Order solely to avoid incurring additional legal costs and expenses. They do not admit to any fault, any liability, any violation of any law or any wrongdoing with respect to the treadmills. Their willingness to enter into this Settlement Agreement and Order does not constitute, nor is it evidence of, an admission by them of any fault, any liability, any violation of any law or any wrongdoing.

IV. Agreement of the Parties

24. The Commission has jurisdiction over Respondents and the subject matter of this Settlement Agreement and Order under the CPSA, 15 U.S.C. 2051–2084.

25. Respondents agree to be bound by, and comply with, this Settlement Agreement and Order.

26. This Agreement is entered into for settlement purposes only and does not constitute an admission by Respondents, or a determination by the Commission, that Respondents knowingly violated the CPSA's reporting requirement.

27. In settlement of the staff's allegations, Respondents agree to pay a civil penalty of five hundred thousand 00/100 dollars ($500,000) in full settlement of this matter. The penalty shall be paid in four installments. The first payment of $125,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of $125,000.00 shall be paid within 110 days of such service. The third payment of $125,000.00 shall be paid within 200 days of such service. The fourth and final payment of $125,000.00 shall be paid within 290 days of such service.

28. Upon provisional acceptance of this Agreement by the Commission, this Agreement shall be placed on the public 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**.

29. Upon final acceptance of this Agreement by the Commission, and issuance of the Final Order, Respondents knowingly, voluntarily, and completely waive any rights they may have in this matter (1) to an administrative hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondents failed to comply with CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

30. The Commission may publicize the terms of the Settlement Agreement and Order.

31. The Commission's Order in this matter is issued under the provisions of CPSA, 15

U.S.C. 2051–2084. Violation of this Order may subject Respondents to appropriate legal action.

32. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

33. If, after the effective date hereof, any provision of this Settlement Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Settlement Agreement and Order, such provision shall be fully severable. The rest of the Settlement Agreement and Order shall remain in full effect, unless the Commission and Respondents determine that severing the provision materially affects the purpose of the Settlement Agreement and Order.

34. This Settlement Agreement and Order shall not be waived, changed, amended, modified, or otherwise altered, except in writing executed by the party against whom such amendment, modification, alteration, or waiver is sought to be enforced and approved by the Commission.

35. The provisions of this Settlement Agreement and Order shall apply to Respondents and each of their successors and assigns.

Dated: September 6, 2004.
Johnson Health Tech Co., Ltd.
Jason Lo,
Chief Executive Officer.

Dated: August 25, 2004.

Horizon Fitness, Inc.
Robert Whip,
President.

Thomas L. Skalmoski, Esquire,
Attorney for Respondents Horizon and Johnson.

The U.S. Consumer Product Safety Commission.
Alan H. Schoem,
Director Office of Compliance.

Eric L. Stone,
Director, Legal Division, Office of Compliance.

Dated: September 10, 2004.

By: Michelle Faust Gillice,
Trial Attorney

Belinda V. Bell,
Trial Attorney. Legal Division, Office of Compliance.

In the Matter of Johnson Health Tech Co., Ltd. and Horizon Fitness, Inc.; Order. [CPSC Docket No. 05–C0001]

Upon consideration of the Settlement Agreement between Respondents Johnson Health Tech Co., Ltd (''Johnson'') and Horizon Fitness, Inc. (''Horizon'') and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Johnson and Horizon, 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 Johnson and Horizon shall pay the United States Treasury a civil penalty of five hundred thousand 00/100 dollars ($500,000) in four installments. The first payment of $125,000.00 shall be paid within twenty (20) calendar days of service of the final Settlement Agreement and Order. The second payment of $125,000.00 shall be paid within 110 days of such service. The third payment of $125,000.00 shall be paid within 200 days of such service. The fourth and final payment of $125,000.00 shall be paid within 290 days of such service. Upon failure of Respondents Johnson and Horizon to make a payment or upon the making of a late payment by Respondents Johnson and Horizon (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 4th day of October, 2004.

By Order of the Commission:

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 04–22719 Filed 10–7–04; 8:45 am]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 05–C0002]

Sears, Roebuck and Company, a Corporation, 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 Sears, Roebuck and Co., a corporation, containing a civil penalty of $500,000.

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 (October 25, 2004.).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 05–C00002, 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 4, 2004.

Todd A. Stevenson,
Secretary.

In the Matter of Sears, Roebuck and Co., a corporation; 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 Sears, Roebuck and Co. (''Sears'' 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 settles 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. Sears is a corporation organized and existing under the laws of the State of New York with its principal corporate offices located at 3333 Beverly Road, Hoffman Estates, IL 60179.

II. Allegations of the Staff

4. Between January 1995 and January 2002, Murray, Inc., 219 Franklin Road, Brentwood, TN 37027, manufactured for Sears approximately 36,000 rear-engine riding lawnmowers, model numbers, 502.270210, 502.270211, 502.256210, 502.256220, 502.251250, 536.270211, and 536.270212 (''the subject rear-engine riding lawnmowers'' or ''the lawnmowers''). Sears sold the lawnmowers under the Craftsman label.

5. The subject rear-engine riding lawnmowers were sold to consumers for use in or around a permanent or temporary household or residence and are, therefore, ''consumer products'' as defined in section 3(a)(1)(i) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2052(a)(1)(i). Respondent is a ''retailer'' and a ''private labeler'' of the subject rear-engine riding lawnmowers, which were ''distributed in commerce''

as those terms are defined in sections 3(a)(6), (7), (11), and (12) of the CPSA, 15 U.S.C. 2052(a)(6), (7), (11), and (12).

6. The subject rear-engine riding lawnmowers' fuel tanks can crack and leak fuel and the leaking fuel can ignite, posing a burn or fire hazard to consumers.

7. From 1999 through 2001, Sears received approximately 1,600 reports of fuel leakage and fuel tank cracking associated with the subject rear-engine riding lawnmowers. Sears replaced the fuel tanks on the lawnmowers.

8. On four occasions between July 1999 and September 2001, Sears forwarded to Murray reports of consumers alleging fuel tank leaks on the subject rear-engine riding lawnmowers. During this period, Sears and Murray communicated about the fuel tanks leaking.

9. On or about July 15, 2000 and on or about August 31, 2000 the Commission's National Injury Information Clearinghouse (''Clearinghouse'') forwarded to Sears two reports of consumers alleging fuel tank leaks on the subject near-engine riding lawnmovers. In both instances, the Clearinghouse advised Sears that the forwarded reports, either alone or with other information Sears had or may later obtain on the lawnmowers, may reasonably support the conclusion that the product contained a defect which could create a substantial product hazard, or create an unreasonable risk of serious injury or death. If this were the case, the Clearinghouse instructed Sears to report under section 15(b) of the CPSA, 15 U.S.C. 2064(b).

10. Despite being aware of the information set forth in paragraphs 4 through 9 above, Sears never reported to the Commission.

11. Sears obtained information which reasonably supported the conclusion that the subject rear-engine riding lawnmower as 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 to the Commission as required by sections 15(b)(2) and (3) of the CPSA, 15 U.S.C. 2064(b)(2) and (3).

12. By failing to immediately inform the Commission as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), Sears violated section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4).

13. Sears committed this failure to report ''knowingly'' as the term ''knowingly'' is defined in section 20(d) of the CPSA, 15 U.S.C. 2069(d), thus, subjecting Sears to civil penalties under section 20 of the CPSA, 15 U.S.C. 2069.

III. Sears' Response

14. Sears contests and denies the staff's allegations set forth above in this Settlement Agreement. Sears enters into this Settlement Agreement and Order to resolve this claim without the expense and distraction of litigation. By agreeing to this settlement, Sears does not admit any of the allegations set forth above in this Settlement Agreement, or any fault, liability or statutory or regulatory violation.

15. Sears provided all of the reported incidents to Murray-the company that had designed and manufactured the subject rear-engine riding lawnmowers-and Sears reasonably expected Murray to assess whether, based upon all of the information available to Murray, CPSC should be notified and/or a corrective action should be undertaken.

16. Sears cooperated in the voluntary recall of the subject rear-engine riding lawnmowers.

IV. Agreement of the Parties

17. The Consumer Product Safety Commission has jurisdiction over this matter and over Sears under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*

18. This Agreement is entered into for settlement purposes only and does not constitute an admission by Sears that it has violated the law or a determination by the Commission of any disputed issue of law or fact.

19. In settlement of the staff's allegations, Sears agrees to pay a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) as set forth in the incorporated Order.

20. 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 (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the CPSA and the underlying regulations, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access of Justice Act.

21. 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 request not to accept the Agreement within 15 days, the Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

22. The Commission may publicize the terms of the Settlement Agreement and Order.

23. Sears' full and timely payment to the United States treasury of a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) resolves the allegations in paragraphs 4–13 above with respect to (a) Sears; (b) any Sears parent, subsidiary, affiliate, division, or related entity; (c) any shareholder, director, officer, employee, agent or attorney of any entity referenced in (a) or (b) above; and (d) any successor, heir, or assign of any entity referenced in (a), (b), or (c) above.

24. The Commission's Order in this matter is issued under the provisions of the CPSA, 15 U.S.C. 2051 *et seq.*, and a violation of this Order shall subject Sears to appropriate legal action.

25. This Settlement Agreement may be used in interpreting the Order. Agreements, understandings, representations, or interpretations apart from those contained in this Settlement Agreement and Order may not be used to vary or contradict its terms.

26. The provisions of this Settlement Agreement and Order shall apply to Sears and each of its successors and assigns.

Respondent Sears, Roebuck and CO.

Dated: September 8, 2004.

Pamela R. Schneider, Vice President, Deputy General Counsel, Sears, Roebuck and Co., 3333 Beverly Road, Hoffman Estates, IL 60179.

Dated: September 13, 2004.

Eric A. Rubel, Esquire,
Arnold & Porter, Attorneys for Respondent Sears, Roebuck and Co., 555 Twelfth Street, NW., Washington, DC 20004–1206.

Commission Staff

Nicholas Marchica,
Acting Assistant Executive Director, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207–0001.

Eric L. Stone, Director
Legal Division, Office of Compliance.

Dated: September 14, 2004.

Dennis C. Kacovanis,
Trial Attorney, Legal Division, Office of Compliance.

In the Matter of Sears, Roebuck, and Co., a corporation; Order

Upon consideration of the Settlement Agreement entered into between Respondent Sears, Roebuck and Co., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Respondent Sears, Roebuck and Co.; 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, Sears, Roebuck and Co. shall pay to the Commission a civil penalty in the amount of FIVE HUNDRED THOUSAND DOLLARS ($5000,000.00) within twenty (20) days after service upon Respondent of the Final Order of the Commission accepting the attached Settlement Agreement. Upon the failure of Respondent Sears, Roebuck and Co. to pay or to make untimely pay the civil penalty, interest 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 4th date of October, 2004.

By Order of The Commission.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

[FR Doc. 04–22718 Filed 10–7–04; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed collection; comment request

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Defense Security Services (DSS) announces the proposed reinstatement of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 7, 2004.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Defense Security Service, Program Integration Branch, ATTN: Mr. Richard L. Lawhorn, 1340 Braddock Place, Alexandria, VA 22314–1650.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Defense Security Service, Program Integration Branch (703) 325–5327.

Title: Associated Form; and OMB Number: Personnel Security Investigation Projection for Industry Survey; DSS Form 232; OMB Number 0704–0417.

Needs and Uses: Executive Order (EO) 12829, ''National Industrial Security Program (NISP),'' stipulates that the Secretary of Defense shall serve as the Executive Agent for inspecting and monitoring the contractors, licensees, and grantees who require or will require access to classified information; and for determining the eligibility for access to classified information of contractors, licensees, and grantees and their respective employees. EO 1282 also authorizes the Executive Agent to issue, after consultation with affected agencies, standard forms that will promote the implementation of the NISP.

Under the NISP, the Defense Security Service is responsible for conducting personnel security investigations of employees of those cleared contractor entities under its security cognizance. In the past, DSS has relied on historical data for agency budget projections regarding the numbers of personnel security investigations required by cleared contractor entities; however, historical data did not provide a particularly accurate or credible estimate of such workload. In this proposed collection of information, DSS requests the voluntary assistance of the Facility Security Officers of cleared contractor entities to provide projections of the numbers and types of personnel security investigations required. The data will be incorporated into DDS' budget submissions.

The Assistant Secretary of Defense assigned DSS responsibility for the following types of investigations within industry:

a. A Single Scope Background Investigation (SSBI).

b. National Agency Check with Local Agency Check and Credit Check (NACLC).

c. SSBI Periodic Reinvestigation (SSBI–PR or TS–PR).

In accordance with 5200.2–R, DSS is also responsible for conducting TS–PRs every 5 years, SECRET–PRs every 10 years and CONFIDENTIAL–PRs every 15 years. In addition, under specified circumstances, DSS is required to conduct SSBIs, NACLCs and National Agency Checks (NACs) for sensitive positions that do not require personnel security clearances.

Representative of various industry associations, the National Industrial Security Program Policy Advisory Committee (NISPPAC), the Military Services, various elements of the Department of Defense and other Federal Government Agencies are aware of the annual survey.

Affected Public: Business or other for profit; Not-for-profit institutions.

Annual Burden Hours: 15,146.

Number of Respondents: 12,117.

Responses per Respondent: 1.

Average Burden per Response: 75 minutes.

Frequency: Annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The executive of the DSS Form 232 is an essential factor in projecting the needs of cleared contractor entities for PSIs. This collection of information requests the voluntary assistance of the Facility Security Officer to provide projections of the numbers and types of PSIs. The data will be incorporated into DSS' budget submissions. The form is authorized for local reproduction and will be available electronically on the World Wide Web. The form will display OMB approval number 0704–0417.

Dated: September 27, 2004.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–22685 Filed 10–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–18]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–18 with attached transmittal and policy justification.

Dated: October 4, 2004.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

In reply refer to:
I-04/007274

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-18, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Afghanistan for construction services estimated to cost $ 1 Billion. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

JEFFREY B. KOHLER
LIEUTENANT GENERAL, USAF
DIRECTOR

Enclosures:
1. **Transmittal No. 04-18**
2. **Policy Justification**

Same ltr to: **House Committee on International Relations**
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-18

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Afghanistan

(ii) **Total Estimated Value:**

Major Defense Equipment*	$0 billion
Other	$1 billion
TOTAL	$1 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** technical assistance to ensure provision of adequate facilities and infrastructure in support of the recruitment, garrison, training, and operational facilities and infrastructure for the Afghan National Army (ANA). The United States Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the training, bed-down, and operational requirements of the ANA. The scope of the program includes facilities and infrastructure in support of the ANA Central Corps in Kabul as well as simultaneously building four regional commands currently planned in Gardez, Kandahar, Herat and Mazar-e Sharif. The facilities and infrastructure planned for Central Corps include new temporary vehicle storage facilities, medical clinics, hospital steam plant, security walls, training barracks/facilities, dining facilities, recruit training facilities, training, maintenance and supply buildings, and utilities systems (including heating, water, sewer, and electricity). The facilities to be provided at each of the four regional brigade locations include barracks, training, maintenance, and storage facilities, medical clinic, communications center, and required utilities (electricity including generation, heat, water, sewer, sewage treatment). Services include supply support, personnel training and training equipment, acquisition of engineer construction equipment, technical assistance to Afghan military engineers, and other technical assistance contractor engineering services and other related elements of logistics support.

(iv) **Military Department:** Army (HAD)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** none

(viii) **Date Report Delivered to Congress:** 28 SEP 2004

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Afghanistan – Infrastructure and Construction Services

The Government of Afghanistan has requested a possible sale of technical assistance to ensure provision of adequate facilities and infrastructure in support of the recruitment, garrison, training, and operational facilities and infrastructure for the Afghan National Army (ANA). The United States Army Corps of Engineers (USACE) will provide engineering, planning, design, acquisition, contract administration, construction management and other technical services for construction of facilities and infrastructure (repair, rehabilitation, and new construction) in support of the training, bed-down, and operational requirements of the ANA. The scope of the program includes facilities and infrastructure in support of the ANA Central Corps in Kabul as well as simultaneously building four regional commands currently planned in Gardez, Kandahar, Herat and Mazar-e Sharif. The facilities and infrastructure planned for Central Corps include new temporary vehicle storage facilities, medical clinics, hospital steam plant, security walls, training barracks/facilities, dining facilities, recruit training facilities, training, maintenance and supply buildings, and utilities systems (including heating, water, sewer, and electricity). The facilities to be provided at each of the four regional brigade locations include barracks, training, maintenance, and storage facilities, medical clinic, communications center, and required utilities (electricity including generation, heat, water, sewer, sewage treatment). Services include supply support, personnel training and training equipment, acquisition of engineer construction equipment, technical assistance to Afghan military engineers, and other technical assistance contractor engineering services and other related elements of logistics support. The estimated cost is $1 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which we hope to help become an important force for political stability and economic progress in South Asia.

The Government of Afghanistan needs these services to support the recruitment, training, bed-down, and operational effectiveness of a military capability to establish security and stability throughout Afghanistan, and to promote the stability and development of a friendly, democratic central government.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The USACE is the principal organization that will direct the implementation of the provisions of this program. The USACE will provide services through both in-house personnel and contract services. Contracts will be procured in accordance with Federal Government contracting law and regulations. There are no known offset agreements proposed in connection with this potential sale.

The estimated number of U.S. Government and contractor representatives to be assigned to Afghanistan to implement the provisions of this proposed sale will vary between 15 and 100 representatives. The ultimate number will be determined during the program execution.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 04–22689 Filed 10–7–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–38]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–38 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

28 SEP 2004
In reply refer to:
I-04/011859

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-38, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Netherlands for defense articles and services estimated to cost $71 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal No. 04-38
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: House Committee on International Relations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-38

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Netherlands

(ii) Total Estimated Value:

Major Defense Equipment*	$35 million
Other	$36 million
TOTAL	$71 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: seven Secure Mobile Anti-Jam Reliable Tactical Terminals (SMART-T), seven M998A1 High Mobility Multi-purpose Wheeled Vehicles (HMMWV), installation, modification kits, support equipment, spare parts, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support.

(iv) Military Department: Army (WCG)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 28 SEP 2004

*** as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Netherlands – Secure Mobile Anti-Jam Reliable Tactical Terminals

The Government of the Netherlands has requested a possible sale of seven Secure Mobile Anti-Jam Reliable Tactical Terminals (SMART-T), seven M998A1 High Mobility Multi-purpose Wheeled Vehicles (HMMWV), installation, modification kits, support equipment, spare parts, supply support, personnel training and training equipment, publications and technical data, U.S. Government and contractor technical assistance and other related elements of logistics support. The estimated cost is $71 million.

The proposed sale is associated with an ongoing cooperative effort in the area of Advanced Extremely High Frequency MILSATCOM and will contribute to the foreign policy and national security objectives of the United States by helping to improve the military capabilities of the Netherlands, a NATO ally.

The terminals are transportable as well as portable, so they can be installed on a vehicle or used in stand-alone operation. The Netherlands Ministry of Defense has not made a final decision regarding the vehicle on which the SMART-Ts will be mounted. Candidates include the HMMWVs, a Mercedes built Light Support Wheeled Vehicles (LSWV), and a tailor made trailer. The LSWVs or trailers will require some modification in order to mount the SMART-Ts.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The principle contractors will be: Raytheon Incorporated in Marlborough, Massachusetts and AM General in Detroit, Michigan. Although generally the purchaser requires offsets, at this time, there are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will require travel of U.S. Government and contractor personnel to the Netherlands for program reviews, site surveys, equipment installation and training. The specific requirements for the support in country will be established during program definition between representatives of the United States Government and the Netherlands.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-38

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The Secure Mobile Anti-Jam Reliable Tactical Terminal (SMART-T) is a low-cost High Mobility Multipurpose Wheeled Vehicle (HMMWV) mounted Enhanced High Frequency (EHF) satellite terminal which provides unattended, robust, worldwide, low probability of detection, jam resistant, multi-channel communications in support of the field commander. A typical application of the SMART-T is to provide range extension beyond line-of-sight, thus allowing communications support extension of the Mobile Subscriber Equipment (MSE) to units of widely dispersed forces. The satellite terminal is also capable of stand-alone operation once removed from the HMMWV.

2. The SMART-T is a Controlled Cryptographic Item (CCI) when it is unkeyed. It is classified Secret when keyed. There will be no transfer of classified data. The data, publications, and manuals are considered Unclassified.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop a system of similar or advanced capabilities.

[FR Doc. 04–22690 Filed 10–7–04; 8:45 am]
BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 04–39]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/OPS–ADMIN, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 04–39 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: October 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–06–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

30 SEP 2004
In reply refer to:
I-04/011947

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 04-39, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Canada for defense articles and services estimated to cost $136 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

Richard J. Millies
Deputy Director

Enclosures:
1. Transmittal No. 04-39
2. Policy Justification
3. Sensitivity of Technology

Same ltr to: **House Committee on International Relations**
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations
Senate Committee on Appropriations

Transmittal No. 04-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) **Prospective Purchaser:** Canada

(ii) **Total Estimated Value:**

Major Defense Equipment*	$135 million
Other	$ 1 million
TOTAL	$136 million

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:** 2,000 Radio Frequency (RF) TOW-2A and 600 RF TOW-2B Anti-Armor Guided Missiles, 400 RF Bunker Buster Missiles, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support.

(iv) **Military Department:** Army (ZUP)

(v) **Prior Related Cases, if any:** none

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached

(viii) **Date Report Delivered to Congress:** 30 SEP 2004

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Canada - TOW-2A/B Anti-Armor Guided and Bunker Buster Missiles

The Government of Canada has requested a possible sale of 2,000 Radio Frequency (RF) TOW-2A and 600 RF TOW-2B Anti-Armor Guided Missiles, 400 RF Bunker Buster Missiles, spare and repair parts, technical support, support equipment, personnel training and training equipment, technical data and publications, U.S. Government and contractor engineering and logistics support services, and other related elements of logistics support. The estimated cost is $136 million.

This proposed sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Canada and further weapon system standardization and interoperability with U.S. forces.

Canada will use these missiles to increase its military defensive posture and will have no difficulty absorbing these additional missiles into its armed forces.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government or contractor representatives to Canada.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 04-39

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. The TOW-2 Weapon System hardware and documentation provided with this proposed sale are Unclassified, however, sensitive technology is contained within the system itself. This sensitivity is primarily in the software programs, which instruct the system how to operate in the presence of countermeasures. Programs are contained in the system in the form of microprocessors with only Read out Memory maps being available, which do not provide the software program itself. The overall hardware is also considered sensitive in that the modulation frequency and infrared wavelengths could be useful in attempted countermeasure development.

2. The Radio Frequency (RF) TOW-2A configuration is the direct attack version of the TOW family of missiles capable of defeating modern threat targets. It consists of a single main warhead and a standoff probe. The probe contains a precursor charge that detonates upon contact with the target for pre-emptive removal of reactive armor. The main charge is detonated by a subsequent timed interval or by contact with the target.

3. The RF TOW-2B configuration is the top attack version of the TOW family of missiles capable of defeating modern threat targets. The TOW-2B warhead consists of dual Explosively Formed Penetrators (EFP) designed to fire downward over the top of the target thus penetrating the target with catastrophic results.

4. The RF TOW Bunker Buster configuration is a wireless, RF command link-controlled, direct attack version of the TOW family of missiles that incorporates a blast fragmentation warhead to defeat bunkers and breach masonry walls. TOW Bunker Buster missiles provide the infantry with an optimized precision assault capability for effective urban operations.

5. The benefits to be derived from this proposed sale outweigh the potential damage that could result if sensitive technology were revealed to unauthorized persons.

[FR Doc. 04–22691 Filed 10–7–04; 8:45 am]

BILLING CODE 5001–06–C

DEPARTMENT OF DEFENSE

Office of the Secretary

President's Information Technology Advisory Committee (PITAC)

AGENCY: Department of Defense.

ACTION: Cancellation notice.

SUMMARY: On October 4, 2004 (69 FR 59214), the Department of Defense published a notice of meeting on subject area. This notice is to inform all persons that the meeting has been canceled.

Dated: October 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–22688 Filed 10–7–04; 8:45 am]

BILLING CODE 5001–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Global Positioning System will meet in closed session on October 25, 2004, and November 22, 2004, at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review a range of issues dealing with Galileo (or some other future radio navigation satellite system) and provide recommendations to address these issues.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will address: Provision of capabilities and services within GPS to ensure its viability in commercial markets; the impact on frequency spectrum use, signal waveforms and power management; access and denial issues throughout the spectrum of conflict; possible alternatives to a global radio navigation system including the development of small compact timing devices and/or navigation units; and vulnerabilities and upgrade strategies for all global radio navigation satellite systems (GRNSS). In addition, the Task Force will assess areas in which DoD should seek strong partnership relationships outside DoD, both within government and industry. It will recommend research and development areas that are uniquely in DoD interest and might not be accomplished by the private sector.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–22686 Filed 10–7–04; 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.

SUMMARY: The Defense Science Board Task Force on Munitions System Reliability will meet in closed session on October 28–29, 2004, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. This Task Force will review the efforts thus far to improve the reliability of munitions systems and identify additional steps to be taken to reduce the amount of unexploded ordnance resulting from munitions failures. The Task Force will: conduct a methodologically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will: Conduct a methodoligically sound assessment of the failure rates of U.S. munitions in actual combat use; review ongoing efforts to reduce the amount of unexploded ordnance resulting from munitions systems failures, and evaluate whether there are ways to improve or accelerate these efforts; and identify other feasible measures the U.S. can take to reduce the threat that failed munitions pose to friendly forces and noncombatants.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. 2), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: October 4, 2004.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 04–22687 Filed 10–7–04; 8:45 am]

BILLING CODE 5001–06–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Final Environmental Impact Statement (FEIS) for Activities Associated With Future Programs at the U.S. Army Dugway Proving Ground, UT

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the FEIS for Activities Associated with Future Programs at the U.S. Army Dugway Proving Ground (DPG). The FEIS provides information on potential effects to the human and physical environment resulting from present and reasonably foreseeable future activities that have been or may be undertaken by the various proponent units and organizations at DPG. Mitigation of these potential effects is also considered in the FEIS.

DATES: The waiting period for the FEIS will end 30 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Written comments on the FEIS should be forwarded to: Commander, U.S. Army Dugway Proving Ground, ATTN: CSTE–DTC–DP–PA (Final EIS), Dugway, UT 84022–5000.

FOR FURTHER INFORMATION CONTACT: Ms. Paula Nicholson at (435) 831–3409 or by e-mail at *nicholsn@dpg.army.mil*.

SUPPLEMENTARY INFORMATION: The Proposed Action (preferred alternative) for the FEIS included continuation of existing DPG activities (including but not limited to chemical and biological defensive testing, other testing programs, training, real property management, and environmental management) with future increases in most testing and training operating areas. Additionally, the Proposed Action included diversification of DPG operations and implementation of a Summary Development Plan identifying real property planning recommendations for DPG.

The FEIS considered two action alternatives to the Proposed Action and a No Action alternative. The two action alternatives were: (1) Decreased mission with a major reduction in operations at DPG and (2) a maximum expanded mission with major increases in most operating areas compared to current DPG operations.

The No Action alternative represents the status quo and assumes that existing DPG operations would continue at approximately their current rates into the foreseeable future. All existing actions, associated mitigation measures and mitigative planning strategies would continue to be implemented under the No Action alternative.

Anyone wishing to receive a copy of the FEIS or the Executive Summary may write to U.S. Army Dugway Proving Ground, ATTN: CSTE–DTC–DP–PA (Paula Nicholson), Dugway, UT 84022–5000 or through the Web site at *www.dugway.army.mil*.

The full FEIS and Executive Summary will be available at the following locations for review purposes only (no extra copies of the documents will be available at these locations): Whitmore Library, 2197 East 7000 South (Ft. Union Blvd.), Salt Lake City; University of Utah, J. Willard Marriott Library, 15th East and South Campus Drive, Salt Lake City; Dugway Public Library, 5124 Kister Avenue, Dugway; Tooele City Public Library, 128 W. Vine Street, Tooele.

Dated: October 1, 2004.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I&E).

[FR Doc. 04–22709 Filed 10–7–04; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DoD.

ACTION: Notice of closed meeting.

SUMMARY: The CNO Executive Panel is to report the findings and recommendations of the Shaping the Force Study Group to the Chief of Naval Operations. The meeting will consist of discussions of policy considerations to advance efforts to shape the Navy's workforce and develop a systematic Navy Human Resources strategy.

DATES: The meeting will be held on Wednesday, October 27, 2004, from 12 p.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Chief of Naval Operations office, Room 4E540, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mr. Mark R. Miller, CNO Executive Panel, 4825 Mark Center Drive, Alexandria, VA 22311, (703) 681–4924.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters relate solely to the internal personnel rules and practices of the Navy. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(2) of title 5, United States Code.

Dated: October 4, 2004.

J.H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–22710 Filed 10–7–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Secretarial Authorization for a Member of the Department of the Navy To Serve on the Board of Directors, Navy-Marine Corps Relief Society

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: In accordance with 10 U.S.C. 1033, the Secretary of the Navy has authorized a member of the Navy to serve, without compensation on the Board of Directors for the Navy-Marine Corps Relief Society. The official so authorized, along with the name of the current incumbent to this position, is as follows: Chief of Naval Operations (N4), Vice Admiral J. D. McCarthy, SC, USN.

Authorization to serve on the Board of Directors has been made for the purpose of providing oversight and advice to, and coordination with, the Navy-Marine Corps Relief Society. Participation of the above official in the activities of the Society will not extend to participation in day-to-day operations.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Meredith Robinson, Office of the Judge Advocate General, Administrative Law Division, 703–604-8280.

(Authority: 10 U.S.C. 1033(c))

Dated: October 4, 2004.

J. H. Wagshul,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 04–22711 Filed 10–7–04; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On September 29, 2004, the Department of Education published a notice in the **Federal Register** (Page 58153, Column 2) for the information collection, ''Targeted Teacher Deferments (Teacher Shortage Area)''. The Responses and Burden Hours are corrected to 57 Responses and 4,560 Burden Hours. The Leader, Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer, hereby issues a correction notice as required by the Paperwork Reduction Act of 1995.

Angela C. Arrington,

Information Management Case Services Team, Regulatory Information Management Services, Office of the Chief Information Officer.

[FR Doc. E4–2537 Filed 10–7–04; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 7387–019—New York]

Erie Boulevard Hydropower, L.P., Piercefield Hydroelectric Project; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligibile for Inclusion in the National Register of Historic Places

October 1, 2004.

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding.[1] The restricted service list contains the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission's staff is consulting with the New York State Historic Preservation Officer (New York SHPO) and the Advisory Council on Historic Preservation (Council) pursuant to the Council's regulations, 36 CFR Part 800, implementing section 106 of the National Historic Preservation Act, as amended, (16 U.S.C. Section 470f), to prepare and execute a programmatic agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at Project No. 7387–019.

The programmatic agreement, when executed by the Commission, and the New York SHPO would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires or is terminated (36 CFR 800.13[e]). The Commission's responsibilities pursuant to section 106 for the Piercefield Hydroelectric Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with the parties identified in the restricted service list notice issued September 10, 2004 and the parties listed below. The executed programmatic agreement would be incorporated into any Order issuing a license.

For purposes of commenting on the programmatic agreement, we propose to add the following persons to the restricted service list for the aforementioned project to represent the interests of the Department of the Interior:

Dr. James Kardatzke, U.S. Department of the Interior, Bureau of Indian Affairs, 711 Stewarts Ferry Pike, Nashville, TN 37214.

Kimberly A. Owens, U.S. Department of the Interior, Office of Solicitor, 1849 C St. NW., M.S. 6456, Washington DC 20240.

Any person on the official service list for the above-captioned proceeding may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. In a request for inclusion, please identify the reason(s) why there is an interest to be included. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on any motion or motions filed within the 15 day period.

An original and 8 copies of any such motion must be filed with Magalie Salas, the Secretary of the Commission (888 First Street, NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. The first page of the motion should clearly show the project number, P–7387–019. Your response may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the ''e-Filing'' link. The Commission strongly encourages electronic filings. Register online at *http://www.ferc.gov/esubscribenow.htm* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2540 Filed 10–7–04; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 385.2010.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP04–421–000]

National Fuel Gas Supply Corporation; Notice of Application; Notice of Application

October 1, 2004.

Take notice that on September 29, 2004, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in Docket No. CP04–421–000 an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations, for authorization to abandon one (1) 225 horsepower (hp) compressor unit, with appurtenances, at the Nashville Compressor Station located in Chautauqua County, New York, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be also viewed on the Web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERCOnline Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

National Fuel's application states that compressor Unit #2 at its Nashville Compressor Station has not been in use for several years and is no longer needed because its system has undergone changes in its operating configuration since the unit was initially installed in 1957. National Fuel asserts that the abandonment of facilities will not result in the abandonment of service to any of its existing shippers nor will the proposed abandonment adversely affect capacity, since the compression is no longer needed to meet current firm service obligations.[1] National Fuel also asserts minimal environmental impact.

Any questions regarding this application should be directed to David W. Reitz, Deputy General Counsel for National Fuel, 6363 Main Street, Williamsville, New York 14221 at (716) 857–7949.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party

[1] The remaining units at Nashville provide the necessary compression (Nashville compressors: Unit #1–660 hp, Unit #3–660 hp and Unit #4–2,000 hp, totaling 3,320 hp).

to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link.

Comment Date: October 22, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2541 Filed 10–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP04–616–000]

Northern Natural Gas Company v. ANR Pipeline Company; Notice of Complaint for Fast Track Processing

October 1, 2004.

Take notice that on September 30, 2004, Northern Natural Gas Company (Northern) filed a complaint against ANR Pipeline Company, pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206 (2003). Northern requests that the Commission grant relief in a dispute regarding the Janesville Interconnect between Northern and ANR Pipeline Company.

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. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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. *Comment Date:* 5 p.m. Eastern Time on October 20, 2004.

Magalie R. Salas,

Secretary.

[FR Doc. E4–2539 Filed 10–7–04; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC04–92–000, et al.]

Sulphur Springs Valley Electric Cooperative, Inc., et al.; Electric Rate and Corporate Filings

September 30, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Sulphur Springs Valley Electric Cooperative, Inc.

[Docket No. AC04–92–000]

On August 20, 2004, Sulphur Springs Valley Electric Cooperative, Inc. (SSVEC), filed a request for waiver from the requirements of Order No. 646. 106 FERC ¶ 61,113 (2003). Interested parties may file a petition to intervene.

Comment Date: 5 p.m. Eastern Time on October 14, 2004.

2. MGE Energy, Inc., MGE Power LLC, MGE Power Elm Road LLC

[Docket No. EL04–136–000]

Take notice that on September 23, 2004, MGE Power LLC and MGE Power Elm Road LLC (Petitioners) filed a Petition Declaratory Order requesting the Commission to find that Petitioners are not public utilities under section 201(e) of the Federal Power Act.

Comment Date: 5 p.m. Eastern Time on October 22, 2004.

3. California Electricity Oversight Board, Complainant v. California Independent System Operator Corporation, Respondent

[Docket No. EL04–139–000]

Take notice that on September 29, 2004, the California Electricity Oversight Board (CEOB) filed a complaint requesting relief against California Independent System Operator Corporation (CAISO) pursuant to Rule 206 of the Commission's Rules of Practice and Procedure, 18 CFR, 385.206. CEOB requests (1) the Commission direct the CAISO to run

Automatic Mitigation Procedures (AMP) in all hours of the Ex Post Price exceeds $91.87/MWh.; and (2) CEOB urges the Commission to direct the CAISO Department of Market Analysis to investigate and report to the Commission on whether a different financial break point for AMP should be more rationally set.

Comment Date: 5 p.m. Eastern Time on October 19, 2004.

4. Northeast Utilities Service Company; Select Energy, Inc.; Select Energy New York, Inc.; Northeast Generation Company

[Docket Nos. ER96–496–011, ER99–14–008, ER02–556–003 and ER99–4463–002]

Take notice that on September 27, 2004, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company, Holyoke Water Power Company, Holyoke Power and Electric Company, and Public Service of New Hampshire (the NU Operating Companies), Select Energy, Inc. (Select), Select Energy New York, Inc. (SENY), and Northeast Generation Company (NGC) (collectively, Applicants) jointly filed with the Commission an updated market power analysis. NUSCO also states that the NU Operating Companies, Select, and NGC submit revised tariff sheets to amend their market-based rate schedules to add the market behavior rules adopted by the Commission in Docket Nos. EL01–118–000 and 001.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

5. Idaho Power Company

[Docket No. ER97–1481–004]

Take notice that, on September 27, 2004, Idaho Power Company submitted a revised market-based rate tariff three-year update filing, in compliance with the Commission's Order issued on May 13, 2004, in Docket No. ER97–1481–003.

Idaho Power states that copies of the filing were served on parties on the official service list in Docket No. ER97–1481–003.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

6. Wisconsin Electric Power Company

[Docket No. ER98–855–004]

Take notice that, on September 27, 2004, Wisconsin Electric Power Company (Wisconsin Electric) submitted a compliance filing pursuant to the Commission's Order Implementing New Generation Market Power Analysis and Mitigation Procedures, issued on May 13, 2004, in Docket No. ER02–1406–001, *et al.*

Wisconsin Electric states that copies of the filing were served on parties on the official service list in Docket Nos. ER98–855–002 and 003.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

7. Avista Corporation; Avista Energy, Inc.; Spokane Energy, LLC; Avista Turbine Power, Inc.

[Docket Nos. ER99–1435–006, ER96–2408–019, ER98–4336–008, and ER00–1814–002]

Take notice that on September 27, 2004 and September 28, 2004, Avista Corporation d/b/a Avista Utilities (Avista Utilities) submitted a revised generation market power study submitted on behalf of three affiliates of Avista Utilities, Avista Energy, Inc., Spokane Energy, LLC and Avista Turbine Power, Inc., pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al.*

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

8. The Empire District Electric Company

[Docket No. ER99–1757–005]

Take notice that, on September 27, 2004 and September 28, 2004, The Empire District Electric Company (Empire District) submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). Empire also submitted an amended market-based tariff to incorporate the Market Behavior Rules.

Empire District 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 18, 2004.

9. AG-Energy, L.P.; Power City Partners, L.P.; Seneca Power Partners, L.P.; Sterling Power Partners, L.P.; Sithe/Independence Power Partners, L.P.; Sithe Energy Marketing, L.P.

[Docket Nos. ER98–2782–007, ER03–42–007, and ER02–2202–006]

Take notice that on September 27, 2004, AG-Energy, L.P., Power City Partners, L.P., Seneca Power Partners, L.P., Sterling Power Partners, L.P., Sithe/Independence Power Partners, L.P., and Sithe Energy Marketing, L.P. (collectively, the Sithe Entities) submitted a revised triennial market power update in compliance with the Commission's May 13, 2004 Order, *Acadia Power Partners, LLC, et al.*, Docket Nos. ER02–1406–001, *et al.*, 107 FERC ¶ 61,168 (2004).

Sithe Entities state that copies of the filing were served on parties on the official service list in the above-captioned proceedings.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

10. Puget Sound Energy, Inc.

[Docket No. ER99–845–005]

Take notice that on September 24, 2004, Puget Sound Energy, Inc. (Puget) tender for filing a supplement to its August 11, 2004 filing of a generation market power analysis in accordance with *AEP Power Marketing, Inc., et al.*, 107 FERC ¶ 61,018, order on reh'g, 108 FERC ¶ 61,026 (2004) and *Acadia Power Partners, LLC, et al.*, 107 FERC ¶ 61,168 (2004) (May 13 Order).

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

11. Mountain View Power Partners, Inc.

[Docket No. ER01–751–006]

Take notice that, on September 27, 2004, Mountain View Power Partners, Inc. (MVPP) submitted an amendment to it updated market power analysis in compliance with the Commission's order issued May 13, 2004 Implementing New Generation Market Power Analysis and Mitigation Procedures, 107 FERC ¶ 61,168 (2004).

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

12. Westar Energy, Inc.; Kansas Gas and Electric Company

[Docket No. ER03–9–002]

Take notice that, on September 27, 2004, Westar Energy, Inc. and Kansas Gas and Electric Company (together, Westar) submitted a compliance filing pursuant to the Commission's order issued May 13, 2004 in Docket No. ER02–1406–001, *et al., Acadia Power Partners, LLC,* 107 FERC ¶ 61,168 (2004). Westar also submitted for filing a revised market-based rate to incorporate the market behavior rules.

Westar states that copies of the filing were served on parties on the official service list in Docket No. ER99–1757–000.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

13. Delmarva Power & Light Company

[Docket Nos. ER04–509–001 and ER04–1250–000]

Take notice that on September 24, 2004, Delmarva Power & Light Company (Delmarva) tendered for filing (1) seven executed Mutual Operating Agreements (MOA) with, respectively: the City of Seaford, Delaware; the City of Milford, Delaware; the City of Newark, Delaware; the City of New Castle, Delaware; the

Town of Middletown, Delaware; the Town of Clayton, Delaware; and the Town of Smyrna, Delaware (collectively, the Municipalities), and (2) amendments to Attachment H of the PJM Interconnection, LLC Open Access Transmission Tariff (Tariff Amendments).

Delmarva requests an effective date of July 1, 2004.

Delmarva states that copies of the filing were served upon the Municipalities, DEMEC and the Delaware Public Service Commission.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

14 . Mystic L, LLC, Mystic Development, LLC, Fore River Development, LLC

[Docket Nos. ER04–657–002, ER04–660–002, and ER04–659–002]

Take notice that, on September 24, 2004, Boston Generating, LLC, (Boston Generating) on behalf of its three project companies Mystic I, LLC, Mystic Development, LLC and Fore River Development, LLC (collectively the Project Companies) submitted for filing an updated triennial market analysis, and revised tariffs to change the names of the Project Companies and incorporate the Commission's Market Behavior Rules.

Boston Generating states that copies of the filing were served on parties on the official service list in Docket Nos. ER98–1943–000, ER01–42–000 and ER01–41–000.

Comment Date: 5 p.m. Eastern Time on October 15, 2004.

15. Conectiv Energy Supply, Inc.

[Docket No. ER04–1125–000]

Take notice that, on September 27, 2004, Conectiv Energy Supply, Inc. (CESI) filed a request for withdrawal of its filing in the above captioned proceeding.

CESI states that this filing was served on the Maryland Public Service Commission.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

16. Virginia Electric and Power Company

[Docket No. ER04–1241–000]

Take notice that on September 27, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an amendment to the Contract for the Purchase of Electricity for Resale by Rural Electric Cooperatives dated March 20, 1967, by and between Dominion Virginia Power and Central Virginia Electric Cooperative, designated as First Revised Rate Schedule FERC No. 94. Dominion Virginia Power requests an effective date of November 26, 2004.

Dominion Virginia Power states that copies of the filing were served upon Central Virginia Electric Cooperative, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

17. Public Service Company of New Mexico

[Docket No. ER04–1242–000]

Take notice that on September 27, 2004, Public Service Company of New Mexico (PNM) submitted the following agreements for filing (1) Six separate Economic Benefit Contracts between PNM and the following entities, filed as Non-Conforming Network Integration Transmission Service Agreements under PNM's Open Access Transmission Tariff: (a) PNM's Wholesale Power Marketing Department (PNM Merchant), Western Area Power Administration (Western), and Pueblo de Cochiti; (b)PNM Merchant, Western, and Pueblo of San Felipe; (c) PNM Merchant, Western, and Pueblo of Sandia; (d) PNM Merchant, Western, and Pueblo of Santa Ana; (e) PNM Merchant, Western, and Pueblo of Santo Domingo; and (f)PNM Merchant, Western, and Pueblo of Tesuque; and (2) an Amended and Restated Contract No. 8–07–40–P0695 between PNM and Western. PNM states that the purpose of the agreements is to facilitate Western's allocation of Federal power to certain pueblos located within PNM's service territory.

PNM states that copies of the filing were served upon Western, the Pueblos, and informational copies were served upon the New Mexico Public Regulation Commission and the New Mexico Attorney General.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

18. The Cincinnati Gas & Electric Company

[Docket No. ER04–1247–000]

Take notice that on September 27, 2004, The Cincinnati Gas & Electric Company (CG&E) tendered for filing a Notice of Cancellation, pursuant to 18 CFR 35.15, to reflect the termination of the Long Term Power Sales Agreement between CG&E and The Union Light, Heat & Power Company (ULH&P), Rate Schedule FERC No. 56.

CG&E states that copies of the filing were served upon ULH&P.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

19. The Union Light, Heat and Power Company; The Cincinnati Gas & Electric Company

[Docket No. ER04–1248–000]

Take notice that on September 27, 2004, The Union Light, Heat and Power Company (ULH&P) and The Cincinnati Gas & Electric Company (CG&E) (collectively, the Applicants) each tendered for filing a Purchase, Sale and Operation Agreement between CG&E and ULH&P.

Applicants state that copies of the filing were served upon the Kentucky Public Service Commission.

Comment Date: 5 p.m. Eastern Time on October 18, 2004.

20. The Cincinnati Gas & Electric Company

[Docket No. ER04–1249–000]

Take notice that on September 27, 2004, The Cincinnati Gas & Electric Company (CG&E) tendered for filing a Facilities Operation Agreement between CG&E and The Union Light, Heat and Power Company (ULH&P). CG&E states that the Facilities Operation Agreement sets forth the rates, terms, and conditions under which CG&E will transform the voltage of electric power originating at generating plants to be owned by ULH&P.

CG&E states that copies of the filing were served upon the Kentucky Public Service Commission.

Comment Date: 5 p.m. Eastern Time on October 18, 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. E4–2538 Filed 10–7–04; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6656–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act, as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 2, 2004 (69 FR 17403).

Draft EISs

ERP No. D–AFS–K65273–CA Rating EC2, Cottonwood Fire Vegetation Management Project, Control Vegetation that is Competing with Conifer Seedlings, Sierraville Ranger District, Tahoe National Forest, Sierra County, CA.

Summary: EPA expressed concerns due to impacts to water quality and sensitive resources, related to potential use of the herbicide triclopyr and cumulative impacts.

ERP No. D–NPS–E65070–AL Rating LO, Selma to Montgomery National Historic Trail Comprehensive Management Plan, Implementation, Dallas, Lowndes and Montgomery Counties, AL.

Summary: EPA has no objection to the preferred alternative for managing this historic trail.

ERP No. D–NPS–L61227–OR Rating LO, Crater Lake National Park General Management Plans, Implementation, Klamath, Jackson and Douglas Counties, OR.

Summary: EPA supports the selection on the environmentally preferred alternative which includes increased non-motorized recreational opportunities in the Park.

Final EISs

ERP No. F–DOE–L09817–WA BP Cherry Point Cogeneration Project, To Build a 720-megawatt Gas-Fired Combined Cycle Cogeneration Facility, Energy Facility Site Evaluation Council (EFSEC), Whatcom County, WA.

Summary: No comment letter was sent to the preparing agency.

ERP No. F–SFW–L64048–WA Nisqually National Wildlife Refuge (NWR) Comprehensive Conservation Plan, Habitat Restoration, Refuge Boundary Expansion and Related Environmental and Recreational Opportunities, Approval and Implementation, Puget Sound, Nisqually River Delta, Thurston and Pierce Counties, WA.

Summary: No comment letter was sent to the preparing agency.

Dated: October 5, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–22667 Filed 10–7–04; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6656–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements.

Filed September 27, 2004, through October 1, 2004,

Pursuant to 40 CFR 1506.9.

EIS No. 040460, Draft EIS, COE, AZ, Santa Cruz River Paseco de las Iglesias Feasibility Study, To Identify, Define and Solve Environmental Degradation, Flooding and Water Resource Problem, City of Tucson, Pima county, AZ, Comment Period Ends: November 22, 2004, Contact: Michael J. Fink (602) 640–2001.

EIS No. 040461, Final EIS, FHW, NC, US–17 Interstate Corridor Improvements, south of NC–1127 (Possum Track Road) to north of NC–1418 (Roberson Road) Funding and Permit Issuance, City of Washington and Town of Chocowinity Vicinity, Beaufort and Pitt Counties, NC, Wait Period Ends: November 8, 2004, Contact: John F. Sullivan (919) 856–4346.

EIS No. 040462, Draft EIS, AFS, WY, Cottonwood II Vegetation Management Project, Proposal to Implement Vegetation Management in the North and South Cottonwood Creek Drainages, Bridger-Teton National Forest, Big Piney Ranger District, Sublette County, WY, Comment Period Ends: November 22, 2004, Contact: Greg Clark (307) 276–3375.

EIS No. 040463, Final EIS, COE, MS, IA, MO, IL, MN, WI, PROGRAMMATIC EIS—Upper Mississippi River and Illinois Waterway System Navigation Feasibility Study (UMR-IWW), Addressing Navigation Improvement Planning and Ecological Restoration Needs, MS, IL, IA, MN, MO, WI, Wait Period Ends: November 8, 2004, Contact: Denny Lunderberg (309) 794–5632.

EIS No. 040464, Final EIS, FHW, PA, City of Lebanon Bridge Over Norfolk Southern Railroad Tracks Construction Project, 12th Street to Lincoln Avenue, Funding, Lebanon County, PA, Wait Period Ends: November 8, 2004, Contact: James A. Cheatham (717) 221–3461.

EIS No. 040465, Draft EIS, NPS, AZ, Colorado River Management Plan, To Provide a Wilderness-Type River Experience for Visitors, General Management Plan, Grand Canyon National Park, Colorado River, Coconino County, AZ, Comment Period Ends: January 6, 2004, Contact: Rick Ernenwein (928) 779–6279. This document is available on the Internet at: *http://www.nps.gov/grca/crmp/.*

EIS No. 040466, Draft Supplement, AFS, UT, Table Top Exploratory Oil and Gas Wells, New Information from the Approval 1994 Final EIS, Wasatch-Cache National Forest, Evanston Ranger District, Summit County, UT, Comment Period Ends: November 22, 2004, Contact: Roger Kesterson (307) 782–6555.

EIS No. 040467, Draft EIS, COE, NB, Cornhusker Army Ammunition Plant (CHAAP) Land Disposal Industrial Tracts, Proposed Disposal and Reuse of Tracts 32, 33, 34, 35, 36, 47, 61, 62, Hall County, NE, Comment Period Ends: November 22, 2004, Contact: Randal P. Sellers (402) 221–3054.

EIS No. 040468, Draft EIS, AFS, ID, Meadows Slope Wildland Fire Protection Project, Proposes to Create and Maintains Fuelbreak of Reduced Crown Fire Hazard, Payette National Forest, New Meadows Rangers

District, Adams and Valley Counties, ID, Comment Period Ends: November 22, 2004, Contact: Kimberly Branded (208) 347–0300.

EIS No. 040469, Final EIS, COE, ID, Emerald Creek Garnet Project, Proposal to Mine Garnet Reserves within the St. Maries River Floodplain near Fernwood, Walla Walla District, Issuance of Several Permits, Benewah and Shoshone Counties, ID, Wait Period Ends: November 8, 2004, Contact: Barbara Benge (509) 527–7153.

EIS No. 040470, Draft EIS, FRC, CA, Stanislaus Rivers Projects, Relicensing of Hydroelectric Projects: Spring Gap-Stanislaus FERC No. 2130; Beardsley/Donnells FERC No. 2005; Tulloch FERC No. 2067; and Donnells-Curtis Transmission Line FERC No. 2118, Ptolemy and Cadaver Counties, CA, Comment Period Ends: December 7, 2004, Contact: Susan O'Brien (202) 502–8449.

EIS No. 040471, Final EIS, DO, UT, Utah Lake Drainage Basin Water Delivery System (US), Construction and Operation, Bonneville Unit of the Central Utah Project (CUP), Utah, Salt Lake, Wasatch and Jab Counties, UT, Wait Period Ends: November 8, 2004, Contact: Reed R. Murray (801) 379–1237.

EIS No. 040472, Draft EIS, AFS, CO, Village at Wolf Creek Project, Application for Transportation and Utility Systems and Facilities, Proposed Development and Use of Roads and Utility Corridors Crossing, National Forest System Lands to Access 287.5 Acres of Private Property Land, Mineral County, CO, Comment Period Ends: November 22, 2004, Contact: Robert Dalrymple (719) 852–5941.

EIS No. 040473, Draft EIS, UAF, TX, Relocation of the C–5 Formal Training Unit from Altus Air Force Base, Oklahoma to Lackland Air Force Base, Bexar County, TX, Comment Period Ends: November 22, 2004, Contact: Lt. Col Dee Anderson (210) 671–2909.

EIS No. 040474, Final EIS, AFS, OR, 18 Fire Recovery Project, Salvaging Dead Trees, Reforesting 1,936 Acres with Ponderosa Pine Seedling and Closing/Decommissioning Roads, Deschutes National Forest, Bend/Fort Rock Ranger District, Deschutes County, OR, Wait Period Ends: November 8, 2004, Contact: Jim Schlaich Ext 4769 (541) 383–4725.

EIS No. 040475, Final EIS, FTA, NY, Fulton Street Transit Center, Construction and Operation, To Improve Access to and from Lower Manhattan to Serve 12 NYCT Subway Lines, Metropolitan Transportation Authority (MIA), MTA New York City Transit (NYCT), New York, NY, Wait Period Ends: November 8, 2004, Contact: Bernard Cohen (212) 668–1770.

EIS No. 40476, Final EIS, FHW, MT, US–2 Highway Corridor Improvement Project, Reconstruction between Havre to Fort Belknap to Replace the Aging US–2 Facility, U.S. Army COE Section 404 Permit, Hill and Blaine Counties, MT, Wait Period Ends: November 8, 2004, Contact: Dale Paulson Ext 239 (406) 449–5302.

Amended Notices

EIS No. 040377, Draft EIS, AFS, WY, Yates Petroleum Federal #1 Oil and Gas Lease, Application for Permit to Drill (APD), Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Duck Creek, Campbell County, WY, Comment Period Ends: October 15, 2004, Contact: Liz Moncrief (307) 745–2456. Published FR–08–13–04—Review Period Reopened, From 09–27–2004 to 10–15–2004.

Dated: October 5, 2004.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 04–22668 Filed 10–7–04; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Notice; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on October 14, 2004, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

- September 9, 2004 (Open and Closed)

B. Reports

- International Volunteer Results

C. New Business—Regulations

- Proposed Rule—Investments, Liquidity, and Divestiture
- Proposed Rule—Borrower Rights

Dated: October 5, 2004.

James M. Morris,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 04–22816 Filed 10–6–04; 11:40 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Approved by Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Federal Communications Commission has received approval from the Office of Management and Budget (OMB) for the public information collection(s): OMB Control Numbers: 3060–0027, Application for Construction Permit for Commercial Broadcast Station, FCC Form 301; OMB 3060–0031, Application for Consent to Transfer Control of Entity Holding Broadcast Station Construction Permit or License, FCC Form 314; and OMB 3060–0032, Application for Consent to Assignment of Broadcast Station Construction Permit or License, FCC Form 315.

DATES: Effective date for these public information collections is October 8, 2004.

FOR FURTHER INFORMATION CONTACT: Nina Shafran, Media Bureau, (202) 418–2700.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission has received OMB approval for OMB Control Numbers: 3060–0027, 3060–0031, and 3060–0032. The effective date for these public information collections is October 8, 2004. The expiration date is March 31, 2005.

Pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104–13, an agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Notwithstanding any other provisions of

law, no person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Questions concerning these revised information collections should be directed to Leslie F. Smith, Federal Communications Commission, (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22883 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CCB/CPD File Nos. 97–39, 97–41; DA 04–3156]

Petitions for Waiver of 6.5 Percent Price Cap Local Exchange Carrier X-Factor

AGENCY: Federal Communications Commission.

ACTION: Notice; termination of proceedings.

SUMMARY: This document is a notification of final termination of the petitions for waiver of the 6.5 percent productivity-based ''X-factor'' for price cap local exchange carriers adopted by the Commission in a 1997 order. The petitions for waiver have been withdrawn by the petitioners. No oppositions to the prior notice of terminations were received; therefore, interested parties are hereby notified that these proceedings have been terminated.

DATES: These proceedings were terminated effective September 16, 2004.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: On August 5, 2004, the Wireline Competition Bureau's Pricing Policy Division issued a Public Notice that the proceedings addressing the Citizens and SNET petitions for waiver of the 6.5 percent X-factor would be terminated effective 30 days after publication of the Public Notice in the **Federal Register**, unless the Bureau received oppositions to the terminations before that date. The notice was published in the **Federal Register** on August 17, 2004. *See* 69 FR 51079, August 17, 2004. The Bureau did not receive any oppositions to the terminations of these proceedings within 30 days of Federal Register publication of the notice; therefore, these proceedings were terminated as of September 16, 2004.

Authority: 47 U.S.C. 152, 153, 154, 155; 44 FR 18501, 67 FR 13223, 47 CFR 0.291, 1.749.

Federal Communications Commission.

Michelle M. Carey,

Acting Chief, Wireline Competition Bureau.

[FR Doc. 04–22756 Filed 10–7–04; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2673]

Application for Review of Action in Rulemaking Proceeding

September 30, 2004.

Application for Review has been filed in the Commission's Rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–B402, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., (BCPI) (1–800–378–3160). Oppositions to this petition must be filed by October 25, 2004. *See* § 1.4(b)(1) of the Commission's rules (47 CFR 1.4 (b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions have expired.

Subject: Amendment of the TV Table of Allotments, TV Broadcast Stations, Table of Allotments, Digital Television Broadcast Stations (Campbellsville and Bardstown, Kentucky) (MM Docket No. 01–148, RM–10141).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 04–22750 Filed 10–8–04; 8:45 am]

BILLING CODE 6712–01–M

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 1, 2004.

A. Federal Reserve Bank of Chicago (Patrick Wilder, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Cornerstone Financial Services Group, Inc., Ottumwa, Iowa; to acquire 100 percent of the voting shares of West Liberty Holding Co., West Liberty, Iowa, and thereby indirectly acquire voting shares of West Liberty State Bank, West Liberty, Iowa.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Bank Corp, Fort Smith, Arkansas; to acquire 100 percent of the voting shares of BOR Bancshares, Inc., Rogers, Arkansas, and thereby indirectly acquire voting shares of Bank of Rogers, Rogers, Arkansas.

Board of Governors of the Federal Reserve System, October 4, 2004.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 04–22632 Filed 10–7–04; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 041 0162]

Buckeye Partners, L.P., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 26, 2004.

ADDRESSES: Comments should refer to ''Buckeye Partners, L.P., *et al.*, File No. 041 0162,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following email box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Lesli Esposito, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–3450.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 27, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before October 26, 2004. Comments should refer to ''Buckeye Partners, L.P., *et al.*, File No. 041 0162,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Order (''Proposed Order'') with Buckeye Partners, L.P. (''Buckeye'') and Shell Oil Company (''Shell''), which is designed to guard against possible anticompetitive effects that could result from the transaction, as originally proposed.

On June 30, 2004, Buckeye and Shell entered into a Purchase and Sale Agreement in which Buckeye proposed to acquire a package of refined petroleum pipeline and terminal assets from Shell for approximately $530 million. Included in the assets to be acquired was a Shell refined petroleum terminal in Niles, Michigan. In response to competitive concerns raised by staff, the parties subsequently proposed a modified transaction that excludes the Niles, Michigan terminal from the assets to be acquired. The Proposed Order, if accepted by the Commission, would settle charges that the acquisition, as originally proposed, may have substantially lessened competition in the market for the terminaling of gasoline, diesel fuel, and other light petroleum products in the area within fifty miles of Niles, Michigan.

The Proposed Order has been placed on the public record for thirty days for interested persons to comment. Comments received during this thirty day period will become part of the public record. After thirty days, the Commission will again review the Proposed Order and the comments received and will decide wether it should withdraw the Proposed Order or make the Proposed Order final.

The Proposed Complaint

Buckeye is a partnership engaged in the storage, terminaling, and pipeline transportation of refined petroleum products, including gasoline, diesel fuel, and other light petroleum products. Shell is a diversified energy company engaged directly and through its subsidiaries in the business of manufacturing, refining, distributing, transporting, terminaling, and marketing a range of petroleum products, including gasoline, diesel fuel, jet fuel, base oil, motor oil, lubricants, petrochemicals, and other petroleum products.

The proposed complaint alleges that a relevant line of commerce in which to evaluate the effects of Buckeye's proposed acquisition is the market for

terminaling of gasoline, diesel fuel, and other light petroleum products, and a relevant geographic market may be as small as the area within a fifty-mile radius of Niles, Michigan (''Niles Area''). The proposed complaint further alleges that market for terminaling services in the Niles Area is highly concentrated and that, had the original proposed acquisition been consummated, concentration in that market would have increased by 800 points, as measured by the Herfindahl-Hirschman Index. The acquisition as modified would not change market concentration in the Niles Area because it does not involve the acquisition of Shell's Niles terminal. The proposed complaint also alleges that entry into the terminaling services market in the Niles Area is difficult and would not be timely, likely, or sufficient to deter or counteract the anticompetitive effects of the original proposed acquisition.

The proposed complaint alleges that the acquisition, if consummated as originally proposed, may have led to a substantial lessening of competition in the supply of terminaling services for gasoline, diesel, and other light petroleum products in the Niles Area. The acquisition as originally proposed may have substantially increased concentration in a market that is already highly concentrated. The complaint further alleges competitive harm could result from the elimination of direct competition between Buckeye and Shell in the supply of terminaling services in the Niles Area, and from the increased likelihood of collusion or coordinated interaction between the remaining competitors in the relevant market.

Terms of the Proposed Consent Order

The Proposed Order requires Buckeye to provide prior notification to the Commission of an acquisition of any interest in the Niles terminal, for a period of ten years. The Proposed Order requires Shell to provide prior notification to the Commission of a sale or transfer of any interest in the Niles terminal, for a period of ten years. These provisions require Buckeye and Shell to comply with premerger notification and waiting periods similar to those found in the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a. (''HSR'').

Consistent with the Commission's Statement of Policy Concerning Prior

Approval and Prior Notice Provisions, 60 FR 39745 (Aug. 3, 1995), the Proposed Order ensures that the Commission will have the appropriate mechanism to review a proposed sale of the Niles terminal by Shell, or a proposed acquisition of the Niles terminal by Buckeye, that may raise antitrust concerns but would not be reportable under HSR. The Proposed Order affords the Commission the opportunity to guard against such potentially anticompetitive transactions.

By accepting the Proposed Order, subject to final approval, the Commission anticipates that the competitive problem alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment concerning the Proposed Order to aid the Commission in its determination of whether it should make final the Proposed Order contained in the agreement. This analysis is not intended to constitute an official interpretation of the Proposed Order or to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22696 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0039]

Enterprise Products Partners L.P., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 29, 2004.

ADDRESSES: Comments should refer to ''Enterprise Products Partners L.P., *et al.,* File No. 041 0039,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the Supplementary Information section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Frank Lipson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2617.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 30, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before October 29, 2004. Comments should refer to ''Enterprise Products Partners L.P., *et al.,* File No. 041 0039,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will

FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an Agreement Containing Consent Orders (''Consent Agreement'') from Enterprise Products Partners L.P. (''Enterprise'') and Dan L. Duncan (''Duncan''), the ultimate parent entity of Enterprise. (Enterprise and Duncan are hereinafter referred to collectively as ''Respondents.'') The Consent Agreement contains a Decision and Order (''Consent Order'') that is designed to remedy the anticompetitive effects of the proposed merger between Enterprise and GulfTerra Energy Partners L.P. (''GulfTerra''). Under the terms of the Consent Agreement, Respondents must divest (1) their interest in one of two competing pipelines that transport natural gas from the deepwater regions of the Gulf of Mexico and (2) their interest in one of two competing underground propane storage and terminaling facilities serving the Dixie Pipeline in Hattiesburg, Mississippi. The Consent Agreement also contains an Order to Hold Separate and to Maintain Assets (''Hold Separate Order'') which, among other things, is designed to preserve the viability, marketability and competitiveness of the assets to be divested under the proposed Consent Order.

The proposed Consent Agreement has been placed on the public record for thirty days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the Consent Agreement and any comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed Consent Order.

I. The Complaint

Pursuant to certain agreements dated December 15, 2003 (as amended), Enterprise, a publicly traded limited partnership that provides midstream energy services to customers throughout the Southeastern and Midwestern United States, proposes to merge with GulfTerra in a transaction that will create a midstream energy partnership with an estimated enterprise value of approximately $13 billion. The Commission's complaint (''Complaint'') alleges that the proposed merger would violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, in the markets for (1) pipeline transportation of natural gas from the West Central Deepwater region of the Gulf of Mexico (''West Central Deepwater'' market) and (2) propane storage and terminaling services in Hattiesburg, Mississippi. The West Central Deepwater region of the Gulf of Mexico encompasses the East Breaks, Garden Banks, Keithley Canyon and Alaminos Canyon areas in the Gulf of Mexico, areas defined by the United States Department of Interior Minerals Management Service. These areas are in the ''deepwater'' part of the Gulf of Mexico farther from shore, in which water depths exceed 1000 feet. The proposed Consent Agreement would remedy the alleged violations by restoring the lost competition that would result from the merger in each of these markets.

II. The Consent Agreement

A. Pipeline Transportation of Natural Gas

The Gulf of Mexico accounts for nearly one quarter of the natural gas supplies in the United States. Natural gas producers ship their production out of the Gulf of Mexico to the Gulf Coast via pipelines. Enterprise and GulfTerra are direct and substantial competitors in the market for pipeline transportation of natural gas from the West Central Deepwater.

Enterprise owns a 50 percent ownership interest in the Starfish Pipeline Company, LLC (''Starfish''), which owns the Stingray/Triton pipeline system in the West Central Deepwater market. Shell Gas Transmission (''Shell'') owns the remaining 50 percent interest in Starfish and exercises operational and management control over the Starfish assets. However, because the operating agreement provides that Enterprise must approve any commercial gas transportation agreements proposed by Shell with respect to Starfish, Enterprise effectively controls the competitive decisions of Starfish and the Stingray/Triton pipeline system. GulfTerra owns the High Island Offshore System (''HIOS'') and its accompanying East Breaks lateral, which compete directly for pipeline transportation business in the West Central Deepwater market with Starfish's Stingray/Triton pipeline system.

The West Central Deepwater market is highly concentrated. The assets controlled wholly or in part by GulfTerra and Enterprise account for two of the three pipelines providing natural gas pipeline transportation services to the market. Combined, these two pipeline systems would control 60 percent of the natural gas pipeline capacity in the West Central Deepwater market. The proposed merger would substantially increase industry concentration in this already highly concentrated market. Moreover, new entry into the pipeline transportation of natural gas from the West Central Deepwater market entails substantial sunk costs and is highly unlikely to constrain any post-merger exercise of market power by Respondents in the relevant market. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in this market, the proposed merger would be substantially likely to cause significant competitive harm to producers of natural gas who must purchase pipeline transportation services in the West Central Deepwater market.

The proposed Consent Order remedies the merger's alleged anticompetitive effects in the West Central Deepwater market by requiring that Respondents divest either (1) their 50 percent interest in Starfish, (the ''Starfish Interest'') or (2) the HIOS/East Breaks pipeline system, (the ''HIOS/East Breaks Assets.''). If Respondents fail to divest either of these competing pipeline assets on or before March 31, 2005, the Commission may appoint a Divestiture Trustee to divest either of the above referenced pipeline assets.

be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

B. Propane Storage and Terminaling Services

Propane is used as a heating fuel during the winter months in much of the Southeastern United States. Propane marketers generally purchase propane from the major supply sources in Texas and Louisiana and ship that propane eastward over the Dixie Pipeline System (''Dixie''), the only common carrier propane pipeline in the Southeast. Because of certain physical and capacity constraints on Dixie west of Baton Rouge, Louisiana, the segments of Dixie west of Baton Rouge are often full (capacity constrained) during the winter months. Therefore, propane shippers along Dixie often must purchase propane during the spring and summer (non-peak) seasons, ship it eastward on Dixie and store the propane at locations east of Baton Rouge, such as Hattiesburg, Mississippi (''Hattiesburg''). This enables these propane marketers to access Dixie's unconstrained capacity during the winter months to meet the peak demand of their customers for heating fuel.

Hattiesburg is the site of massive, naturally occurring underground salt domes, which when leached out, provide economic storage capacity for propane. The salt domes and associated terminaling facilities located at Hattiesburg receive propane from Dixie during the non-peak months and then re-inject propane into Dixie during the winter heating season. Dixie shippers and other propane marketers pay significant fees to the owners of propane storage facilities for the right to store propane at Hattiesburg and inject it into Dixie. Enterprise and GulfTerra are direct and substantial competitors in providing propane storage and terminaling services in Hattiesburg. Enterprise currently owns a 50 percent undivided interest in a propane storage and terminaling facility located in Hattiesburg (with Dynegy Midstream Services, L.P. owning the other 50 percent interest). Enterprise also owns a 100 percent interest in a second propane storage facility located in nearby Petal, Mississippi. GulfTerra currently owns and operates a wholly owned propane storage and terminaling facility in Hattiesburg.

The market for propane storage and terminaling services in Hattiesburg is highly concentrated, with Enterprise and GulfTerra currently controlling approximately 53 percent of propane storage capacity in that market. The proposed merger would leave Respondents with an ownership interest in three of the four propane storage and terminaling facilities located in Hattiesburg and substantially increase concentration in an already highly concentrated market. Entry into the market for propane storage and terminaling services requires substantial sunk costs and such entry is highly unlikely in response to a post-merger increase in propane storage and terminaling fees at Hattiesburg. By eliminating the actual, direct, and substantial competition that exists between Enterprise and GulfTerra in the relevant market, the proposed merger would be substantially likely to cause significant competitive harm to propane marketers who would likely incur increased prices and fees for propane storage and terminaling services in Hattiesburg. These increased costs would likely be passed on to propane customers supplied from Hattiesburg.

The proposed Consent Order remedies the alleged anticompetitive effect of this merger in the propane storage and terminaling services market in Hattiesburg by requiring that Respondents divest either (1) their undivided 50 percent interest in the facility Enterprise co-owns with Dynegy, (the ''Enterprise Propane Storage Interest,'') or (2) their wholly owned Hattiesburg propane storage facility (the ''Enterprise Petal LPG Storage Facility''). If Respondents fail to divest either of these competing propane storage and terminaling assets on or before December 31, 2004, the Commission may appoint a Divestiture Trustee to divest either of the above referenced assets. The December 31, 2004 deadline for the divestiture of the specified propane storage and terminaling assets of Respondents at Hattiesburg is designed to assure that a new owner of the divested assets will be in place prior to the 2005–06 propane storage contract season, which begins in April 2005.

The Commission believes that divestiture by Respondents of their partially owned assets in each market to a Commission-approved purchaser would restore competition in each of the two markets potentially affected by the merger. However, as certain third parties have contractual rights that may impact on Respondents' ability to transfer such partially owned assets, or that may affect or delay the timing of any such transfer, the proposed Consent Order gives Respondents the option of divesting either their partially owned assets or their wholly owned assets in each relevant market by the dates specified in the proposed Consent Order.

III. The Hold Separate Order

Because the Consent Agreement would allow the merger to proceed prior to the completion of each of the required divestitures, the Consent Agreement contains a Hold Separate Order covering the Starfish Interest and the Enterprise Propane Storage Interest. The purpose of the Hold Separate Order is to ensure that the Starfish Interest and the Enterprise Storage Propane Interest operate independently from Enterprise and GulfTerra pending the divestitures required under the proposed Consent Order. The Hold Separate Order is also intended to ensure the continuing viability, marketability, and competitiveness of these partially owned assets until they are divested.

The Commission has appointed Richard J. Black as a monitor to oversee the management and operations of the Starfish Interest and the Enterprise Propane Storage Interest until the divestitures required by the Consent Order are complete. Mr. Black has more than 15 years of relevant experience in the midstream energy services business, including experience in pipeline transportation of natural gas in the deepwater regions of the Gulf of Mexico and in the marketing and sale of natural gas liquids.

To assure that the Commission remains informed about the status of the required divestitures, the proposed Consent Order requires Respondents to file reports with the Commission periodically until the divestitures required under the Consent Order are accomplished. The Hold Separate Order will remain in effect until the Respondents or the Divestiture Trustee successfully divests the assets required to be divested under the Consent Order.

The purpose of this analysis is to facilitate public comment on the Consent Agreement. This analysis is not intended to constitute an official interpretation of the Consent Agreement, nor is it intended to modify its terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22697 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 041 0164]

Magellan Midstream Partners, L.P., et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before November 1, 2004.

ADDRESSES: Comments should refer to ''Magellan Midstream Partners, L.P., *et al.*, File No. 0410164,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Dennis Johnson, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2712.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 29, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before November 1, 2004. Comments should refer to ''Magellan Midstream Partners, L.P., *et al.*, File No. 041 0164,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

Analysis of Proposed Agreement Containing Consent Orders to Aid Public Comment

The Federal Trade Commission, subject to its final approval, has accepted for public comment an Agreement Containing Consent Orders (''Agreement'') with Magellan Midstream Partners, L.P. (''Magellan'') and Shell Oil Company (''Shell'') to resolve the anticompetitive effects alleged in the Complaint issued by the Commission concerning Magellan's acquisition of certain pipeline and terminal assets from Shell.

By purchase and sale agreement dated June 23, 2004, Magellan plans to acquire a package of Midwest pipelines and terminals from Shell. Included in the assets being acquired is a refined petroleum products terminal in Oklahoma City, Oklahoma, that supplies light petroleum products, including gasoline and diesel fuel. Magellan already owns and operates another refined petroleum products terminal in Oklahoma City, and the proposed acquisition would substantially increase concentration in the terminaling of light petroleum products in the Oklahoma City Metropolitan Area. The Agreement requires that Magellan divest the terminal acquired from Shell to a Commission-approved buyer.

The Agreement has been placed on the public record for 30 days for interested persons to comment. Comments received during this 30 day period will become part of the public record. After 30 days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw the Agreement or make the Agreement final.

I. The Parties

Magellan is a publicly traded limited partnership that is owned 64% by public shareholders, and 36% by Magellan Midstream Holdings, L.P. (which in turn is owned 50% by Madison Dearborn Partners and 50% by Carlyle Group/Riverstone Holdings). Magellan is primarily engaged in the storage, transportation, and distribution of refined petroleum products and ammonia. Its assets include a petroleum products pipeline and terminal system that serves the Mid-continent region of the United States, marine terminals along the Gulf Coast and near the New York Harbor, inland petroleum products terminals located principally in the southeastern United States, and a pipeline system for ammonia in the Mid-continent region. For the year ending December 31, 2003, Magellan had total annual revenues of

approximately $485 million and total assets of nearly $1.2 billion.

Shell Oil Company is the United States operating entity for the Royal Dutch/Shell Group of companies, which ultimately is owned 60% by Royal Dutch Petroleum Company of the Netherlands and 40% by The Shell Transport and Trading Company, p.l.c. of the United Kingdom (collectively referred to as ''Shell''). Shell is one of the largest integrated petroleum companies in the world, and is engaged in virtually all aspects of the energy business, including exploration, production, refining, transportation, distribution, and marketing. For the year ending December 31, 2003, Shell reported total gross revenues of more than $268 billion and total assets of approximately $124 billion.

II. The Commission's Complaint

The Commission's Complaint charges that Magellan's agreement to acquire the Oklahoma City refined products terminal from Shell violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and would, if consummated, violate Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

The Complaint alleges that a relevant line of commerce in which to evaluate the effects of this acquisition is the terminaling of gasoline, diesel fuel, and other light petroleum products. Refined petroleum product terminals are specialized facilities that provide temporary storage for gasoline, diesel fuel, and other light petroleum products. Depending on their location, terminals receive deliveries from pipelines or marine vessels, store the products in large tanks, and redeliver them into tank trucks for ultimate delivery to retail gasoline stations or other buyers. There are no substitutes for petroleum terminals for providing such terminaling services.

The Complaint alleges that a relevant section of the country in which to evaluate the effects of this acquisition is the Oklahoma City Metropolitan Area. Buyers of gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area, such as gasoline marketers and others, have no effective alternative to terminals located within the Oklahoma City Metropolitan Area. Because of costs and delivery logistics, terminals located outside the Oklahoma City Metropolitan Area are too far away to supply buyers in that area.

The Complaint charges that Magellan and Shell are actual and potential competitors in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Magellan and Shell have two of only a very limited number of terminals that can serve the Oklahoma City area. According to the Complaint, the market for terminaling services in the Oklahoma City Metropolitan Area is highly concentrated and would become significantly more highly concentrated as a result of this acquisition. Even if a terminal located 40 miles outside of Oklahoma City is included, the pre-merger Herfindahl-Hirschman Index is more than 3,100, and would increase by more than 1,200 points to a level exceeding 4,300. The Complaint further maintains that entry into the relevant market is not likely and if entry did occur, it would be neither timely nor sufficient to prevent or mitigate the anticompetitive effects of the acquisition.

The Complaint further charges that the proposed acquisition, if consummated, may substantially lessen competition in the supply of terminaling services for gasoline, diesel fuel, and other light petroleum products in the Oklahoma City Metropolitan Area. Specifically, the acquisition would (1) eliminate direct competition between Magellan and Shell in the supply of terminaling services in the Oklahoma City Metropolitan Area, and (2) increase the likelihood of, or facilitate, collusion or coordinated interaction in the relevant market, each of which increases the likelihood that the prices of gasoline, diesel fuel, and other light petroleum products will increase in the relevant market.

III. Terms of the Decision and Order and Order to Hold Separate and Maintain Assets

The Decision and Order (''Proposed Order'') effectively remedies the acquisition's alleged anticompetitive effects by requiring Magellan to divest the overlapping Shell terminal assets. The Shell Oklahoma City terminal is to be divested to a Commission-approved buyer and in a manner approved by the Commission.

The Proposed Order requires that Magellan divest the Shell terminal, at no minimum price, within six months after Magellan signs the Agreement, to a buyer approved by the Commission. The Proposed Order includes several additional provisions to ensure the interim viability of the subject terminal, to ensure that the acquirer has an opportunity to enter into an agreement with Shell for the Shell volumes at the terminal, and to remedy the lessening of competition resulting from the proposed acquisition. In particular, the Proposed Order requires Shell to utilize the subject terminal for all of its branded and unbranded refined petroleum product requirements in the Oklahoma City Metropolitan Area until three months after divestiture of the terminal. It further prohibits Shell and Magellan until three months after divestiture from entering into or maintaining, or attempting to enter into or maintain, any agreement or understanding relating to the movement or transfer of Shell's refined petroleum products volume from the subject terminal to any other terminaling facility owned, leased, or operated by Magellan. The order further prohibits Shell and Magellan from discussing or negotiating with each other any potential agreement or understanding relating to such movement or transfer.

The Proposed Order also provides that should Magellan be unable to satisfy all conditions necessary to divest any intangible asset, Magellan will: (1) with respect to permits, licenses or other rights granted by governmental authorities (other than patents), provide such assistance as the acquirer may reasonably request in the acquirer's efforts to obtain comparable permits, licenses or rights, and (2) with respect to other intangible assets (including patents and contractual rights), substitute equivalent assets or arrangements, subject to the prior approval of the Commission. A substituted asset or arrangement will not be deemed to be equivalent unless it enables the terminal to perform the same function at the same or less cost.

The Proposed Order further provides that if the subject terminal has not been divested within the allotted time, a trustee may be appointed to sell the terminal to a buyer approved by the Commission.

Other paragraphs of the Proposed Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Order to Hold Separate and Maintain Assets (''Hold Separate Order'') contains provisions designed to ensure that the Oklahoma City terminal at issue will be maintained separately and apart from Magellan pending divestiture.

The Hold Separate Order provides that Magellan will hold the terminal assets separate from its other businesses and continue to maintain the terminal assets during the period prior to divestiture. Paragraph II also provides that pending divestiture Magellan will

contract with Shell for Shell to manage the terminal independently from Magellan's other operations. Shell will report directly and exclusively to a hold separate trustee with respect to the operation of the terminal. Shell is required to keep confidential business information related to the terminal from Magellan employees, except as permitted by the Hold Separate Order.

Other paragraphs of the Hold Separate Order contain provisions regarding compliance reports, notification of changes that may affect compliance, and access to materials that may be necessary to monitor compliance.

The Hold Separate Order terminates on the earlier of two dates, either (1) three business days after the Commission withdraws its acceptance of the consent agreement, or (2) the day after the divestiture of the Oklahoma City terminal, as described in and required by the Proposed Order, is completed.

IV. Opportunity for Public Comment

By accepting the Agreement, subject to final approval, the Commission anticipates that the competitive problems alleged in the Complaint will be resolved. The purpose of this analysis is to invite public comment on the Agreement, including the proposed divestiture, to aid the Commission in its determination of whether it should make the Agreement final. This analysis is not intended to constitute an official interpretation of the Agreement or modify the terms of the Agreement in any way.

By direction of the Commission, Chairman Majoras recused.

Donald S. Clark,

Secretary.

[FR Doc. 04–22698 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 031 0135]

White Sands Health Care System, L.L.C., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before October 28, 2004.

ADDRESSES: Comments should refer to ''White Sands Health Care System, L.L.C., et al., File No. 031 0135,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments containing confidential material must be filed in paper form, as explained in the **SUPPLEMENTARY INFORMATION** section. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

Comments filed in electronic form (except comments containing any confidential material) should be sent to the following e-mail box: *consentagreement@ftc.gov.*

FOR FURTHER INFORMATION CONTACT: Steve Vieux, FTC, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2306.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for September 28, 2004), on the World Wide Web, at *http://www.ftc.gov/os/2004/09/index.htm.* A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Written comments must be submitted on or before October 28, 2004. Comments should refer to ''White Sands Health Care System, L.L.C., et al., File No. 031 0135,'' to facilitate the organization of comments. A comment filed in paper form should include this reference both in the text and on the envelope, and should be mailed or delivered to the following address: Federal Trade Commission/Office of the Secretary, Room H–159, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If the comment contains any material for which confidential treatment is requested, it must be filed in paper (rather than electronic) form, and the first page of the document must be clearly labeled ''Confidential.'' [1] The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions. Comments filed in electronic form should be sent to the following e-mail box: *consentagreement@ftc.gov.*

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. All timely and responsive public comments, whether filed in paper or electronic form, will be considered by the Commission, and will be available to the public on the FTC Web site, to the extent practicable, at *http://www.ftc.gov.* As a matter of discretion, the FTC makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Web site. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Agreement Containing Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement containing a proposed Consent Order with the White Sands Health Care System, L.L.C., Alamogordo Physicians' Cooperative, Inc., Dacite, Inc., and James R. Laurenza. The agreement settles charges that these

[1] Commission Rule 4.2(d), 16 CFR 4.2(d). The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* Commission Rule 4.9(c), 16 CFR 4.9(c).

parties violated Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, by orchestrating and implementing agreements among the physician and certified registered nurse anesthetist (nurse anesthetist) members of White Sands to fix prices and other terms on which they would deal with health plans, and to refuse to deal with such purchasers except on collectively-determined terms. The proposed Consent Order has been placed on the public record for 30 days to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make the proposed Order final.

The purpose of this analysis is to facilitate public comment on the proposed Order. The analysis is not intended to constitute an official interpretation of the agreement and proposed Order or to modify their terms in any way. Further, the proposed Consent Order has been entered into for settlement purposes only and does not constitute an admission by any respondent that said respondent violated the law or that the facts alleged in the Complaint (other than jurisdictional facts) are true.

The Complaint

The allegations of the Complaint are summarized below.

White Sands is a physician-hospital organization (PHO), consisting of Alamogordo Physicians, an independent practice association (IPA); Gerald Champion Regional Medical Center (Gerald Champion), the sole hospital in the Alamogordo area, which is located in south-central New Mexico; and 31 non-physician health care providers, including all five nurse anesthetists in the Alamogordo area. White Sands was organized in 1996 to ''develop pricing policies and * * * negotiate and enter into Managed Care Contracts'' on behalf of its members.

Alamogordo Physicians is composed of 45 physicians, representing 84% percent of all physicians independently practicing (that is, those not employed by area hospitals) in and around the Alamogordo area. Dacite provides consulting and payor contracting services to White Sands. Mr. Laurenza is the founder and President of Dacite, and the General Manager and principal contract negotiator for White Sands.

White Sands' members refuse to deal with health plans on an individual basis. Instead, Mr. Laurenza negotiates price and other contract terms with health plans that desire to contract with White Sands' members. Contract terms for physician services that Mr. Laurenza negotiates for White Sands are presented to the White Sands' Board of Managers for approval after acceptance by the Alamogordo Physicians' Board of Directors. Mr. Laurenza also negotiates contract provisions, including fees, on behalf of independently practicing non-physician health care providers, namely nurse anesthetists. Respondents have orchestrated collective agreements on fees and other terms of dealing with health plans, carried out collective negotiations with health plans, and orchestrated refusals to deal and threats to refuse to deal with health plans that resisted respondents' desired terms. Although White Sands purported to operate as a ''messenger model,''—that is, an arrangement that does not facilitate horizontal agreements on price—it engaged in various actions that demonstrated or orchestrated such agreements.[2]

Respondents have repeatedly succeeded in forcing numerous health plans to raise fees paid to White Sands' members, and thereby raised the cost of medical care in the Alamogordo area. They have been successful in ''leverag[ing] the collective power of the members in obtaining more favorable reimbursement rates than could be negotiated * * * individually.''

White Sands engaged in no efficiency-enhancing integration sufficient to justify respondents' joint negotiation of fees. By orchestrating agreements among White Sands members to deal only on collectively-determined terms, and actual or threatened refusals to deal with health plans that would not meet those terms, respondents have violated Section 5 of the FTC Act.

The Proposed Consent Order

The proposed Order is designed to remedy the illegal conduct charged in the Complaint and prevent its recurrence. It is similar to recent consent orders that the Commission has issued to settle charges that physician groups engaged in unlawful agreements to raise fees they receive from health plans. Unlike recent consent orders, however, this Order also settles charges that non-physician health care providers engaged in unlawful price agreements as well. The Order also includes temporary ''fencing-in'' relief to ensure that the alleged unlawful conduct by respondents does not continue.

The proposed Order's specific provisions are as follows:

Paragraph II.A prohibits respondents from entering into or facilitating any agreement between or among any health care providers: (1) To negotiate with payors on any health care provider's behalf; (2) to deal, not to deal, or threaten not to deal with payors; (3) on what terms to deal with any payor; or (4) not to deal individually with any payor, or to deal with any payor only through an arrangement involving the respondents.

Other parts of Paragraph II reinforce these general prohibitions. Paragraph II.B prohibits the respondents from facilitating exchanges of information between health care providers concerning whether, or on what terms, to contract with a payor. Paragraph II.C bars attempts to engage in any action prohibited by Paragraph II.A or II.B, and Paragraph II.D proscribes inducing anyone to engage in any action prohibited by Paragraphs II.A through II.C.

As in other Commission orders addressing health care providers' collective bargaining with health care purchasers, certain kinds of agreements are excluded from the general bar on joint negotiations. First, respondents would not be precluded from engaging in conduct that is reasonably necessary to form or participate in legitimate joint contracting arrangements among competing health care providers, whether a ''qualified risk-sharing joint arrangement'' or a ''qualified clinically-integrated joint arrangement.'' The arrangement, however, must not facilitate the refusal of, or restrict, participants from contracting with payors outside of the arrangement.

As defined in the proposed Order, a ''qualified risk-sharing joint arrangement'' possesses two key characteristics. First, all participants must share substantial financial risk through the arrangement, such that the arrangement creates incentives for the participants jointly to control costs and improve quality by managing the provision of services. Second, any agreement concerning reimbursement or other terms or conditions of dealing must be reasonably necessary to obtain significant efficiencies through the joint arrangement.

A ''qualified clinically-integrated joint arrangement,'' on the other hand, need not involve any sharing of financial risk. Instead, as defined in the proposed Order, participants must participate in

[2] Some arrangements can facilitate contracting between health care providers and payors without fostering an illegal agreement among competing physicians on fees or fee-related terms. One such approach, sometimes referred to as a ''messenger model'' arrangement, is described in the 1996 Statements of Antitrust Enforcement Policy in Health Care jointly issued by the Federal Trade Commission and U.S. Department of Justice, at 125. *See http://www.ftc.gov/reports/hlth3s.htm#8.*

active and ongoing programs to evaluate and modify their clinical practice patterns in order to control costs and ensure the quality of services provided, and the arrangement must create a high degree of interdependence and cooperation among participants. As with qualified risk-sharing arrangements, any agreement concerning price or other terms of dealing must be reasonably necessary to achieve the efficiency goals of the joint arrangement.

Also, because the Order is intended to reach agreements among horizontal competitors, Paragraph II would not bar agreements that only involve health care providers who are part of the same medical group practice (defined in Paragraph I.E).

Paragraph III, for a period of three years, bars Dacite and Mr. Laurenza from negotiating with any payor on behalf of White Sands, Alamogordo Physicians, or any White Sands or Alamogordo Physicians member; and from advising any White Sands or Alamogordo Physicians member to accept or reject any term, condition, or requirement of dealing with any payor. This temporary ''fencing-in'' relief is included to ensure that the alleged unlawful conduct by these respondents does not continue.

Paragraph IV, for a period of three years, requires respondents to notify the Commission before entering into any arrangement to act as a messenger, or as an agent on behalf of any health care providers, with payors regarding contracts. Paragraph IV sets out the information necessary to make the notification complete.

Paragraph V, which applies only to White Sands, requires White Sands to distribute the Complaint and Order to all health care providers who have participated in White Sands, and to payors that negotiated contracts with White Sands or indicated an interest in contracting with White Sands. Paragraph V.B requires White Sands, at any payor's request and without penalty, or within one year after the Order is made final, to terminate its current contracts. Paragraph V.C requires White Sands to distribute payor requests for contract termination to all health care providers who participate in White Sands, and, in the event that White Sands fails to comply with the requirements of Paragraph V due to dissolution or cessation of business, Alamogordo Physicians is required to do so.

Paragraph VI requires Alamogordo Physicians to notify the Commission of any change in Alamogordo Physicians that may affect its compliance with the Order, such as dissolution. In the event that White Sands or Alamagordo Physicians fails to comply with the requirements of Paragraph V, or Alamogordo Physicians fails to comply with Paragraph VI, Paragraph VII would require Mr. Laurenza to do so.

Paragraph VIII generally requires Dacite to distribute the Complaint and Order to health care providers who have participated in any group that has been represented by Dacite since January 1, 2003, and to each payor with which Dactite has dealt since January 1, 2003, for the purpose of contracting. In the event that Dacite fails to comply with the requirements of Paragraph VIII, Paragraph IX would require Mr. Laurenza to do so.

Paragraphs V.E, V.F, VIII.C, VIII.D, X, and XI of the proposed Order impose various obligations on respondents to report or provide access to information to the Commission to facilitate monitoring respondents' compliance with the Order.

The proposed Order will expire in 20 years.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 04–22699 Filed 10–7–04; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Presidential Advisory Council on HIV/AIDS

AGENCY: Department of Health and Human Services, Office of the Secretary.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health. and Human Services (DHHS) is hereby giving notice that the Presidential Advisory Council on HIV/AIDS (PACHA) will hold a meeting. This meeting is open to the public. A description of the Council's functions is included also with this notice.

Date and Time: November 9, 2004, 8:30 a.m. to 5 p.m., and November 10, 2004, 8:30 a.m. to 4 p.m.

ADDRESSES: Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. Conference Room 800.

FOR FURTHER INFORMATION, CONTACT: Joseph Grogan, Esq., Executive Director, Presidential Advisory Council on HIV/AIDS, Department of Health and Human Services, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Room 736E, Washington, DC 20201; or visit the Council's Web site at *http://www.pacha.gov.*

SUPPLEMENTARY INFORMATION: PACHA was established by Executive Order 12963, dated June 14, 1995, as amended by Executive Order 13009, dated June 14, 1996. PACHA was established to provide advice, information, and recommendations to the President regarding programs and policies intended to (a) promote effective prevention of HIV disease, (b) advance research on HIV and AIDS, and (c) promote quality services to persons living with HIV disease and AIDS. PACHA was established to serve solely as an advisory body to the President and the Secretary of Health and Human Services. PACHA is composed of not more than 35 members. PACHA membership is determined by the Secretary from individuals who are considered authorities with particular expertise in, or knowledge of, matters concerning HIV/AIDS.

The agenda for this meeting includes the following topics: HIV/AIDS prevention, care and treatment, and global HIV/AIDS issues. Time will be allotted during the meeting for public comment.

Public attendance is limited to space available and pre-registration is required for both attendance and public comment. Any individual who wishes to attend and/or comment must call (202) 690–5560 to register. Individuals must provide a government issued photo ID for entry into the meeting. Individuals who need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the registrar.

Members of the public will have the opportunity to provide comments at the meeting. Public comment will be limited to three (3) minutes per speaker and to time available. Written testimony, not exceed five (5) pages, will be accepted by mail or facsimile at (202) 690–7560. Written testimony will not be accepted after 5 p.m., Wednesday, November 3, 2004.

Dated: September 27, 2004.

Joseph Grogan,

Executive Director, Presidential Advisory Council on HIV/AIDS.

[FR Doc. 04–22626 Filed 10–7–04; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day–04–0493]

Proposed Data Collections Submitted for Public Comment and Recommendations

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 498–1210 or send an email to *omb@cdc.gov.* Send written comments to CDC Desk Officer, Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

The National School-based Youth Risk Behavior Survey, OMB No. 0920–0493—Reinstatement with change—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

The purpose of this request is to renew OMB clearance to continue an ongoing biennial survey among high school students attending regular public, private, and Catholic schools in grades 9–12. Data will be collected in the Spring of 2005 and the Spring of 2007 to assess priority health risk behaviors related to the major preventable causes of mortality, morbidity, and social problems among both youth and adults in the U.S. OMB clearance for the 2003 Youth Risk Behavior Survey (OMB No. 0920–0493) expired November 2003.

Data on the health risk behaviors of adolescents is the focus of approximately 40 national health objectives in Healthy People 2010. The Youth Risk Behavior Survey provides data to measure at least 10 of these health objectives and 3 of the 10 Leading Health Indicators. In addition, the Youth Risk Behavior Survey can identify racial and ethnic disparities in health risk behaviors. No other national source of data measures as many of the 2010 objectives that address behaviors of adolescents. The data will also have significant implications for policy and program development for school health programs nationwide. There are no costs to respondents. The estimated annualized burden over the three-year period is 6,115 hours.

Respondents	Number of respondents (05–07)	Number of responses per respondent	Average burden per response (in hrs)
High School Students	8,000	1	45/60
School Administrators	230	1	30/60

Dated: October 4, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22713 Filed 10–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Competitive Funds for National Programs To Improve the Health, Education, and Well-Being of Young People, Program Announcement Number 04010

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting:

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Competitive Funds for National Programs to Improve the Health, Education, and Well-Being of Young People, Program Announcement Number 04010.

Times and Dates: 10 a.m.–10:30 a.m., October 26, 2004 (Open). 10:30 a.m.–12:30 p.m., October 26, 2004 (Closed).

Place: Teleconference Number: 1.888.576.9873 pass code 13503 for the open portion of the meeting.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement Number 04010.

Contact Person for More Information: Nosrat Irannejad, MPH, Lead Education Program Specialist, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway, MS–K31, Atlanta, GA 30341, Telephone 770.488.6124.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: October 1, 2004.

Alvin Hall,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 04–22712 Filed 10–7–04; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 69 FR 48247–48249, dated August 9, 2004, is amended to reflect the consolidation of the Centers for Disease Control and Prevention budget execution functions within the Financial Management Office, Office of the Chief Operating Officer.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the functional statement for the *Financial Management Office (CAJ2), Office of the Chief Operating Officer (CAJ)* as follows:

Delete in their entirety the title and functional statement for the *Financial Policy and Internal Quality Assurance Activity (CAJ212).*

Delete the functional statement for the *Budget Branch (CAJ23)* and insert the following:

Budget Execution Branch (CAJ23). (1) Promotes structured, ongoing partnerships between the CIOs, FMO leadership, Lead Budget Analysis, and Budget Execution staff; (2) provides leadership, consultation, guidance, and advice on budgetary matters for the CDC through senior advisory leadership roles in partnership with FMO and CIO Directors; (3) provides submission and execution of the CDC budget within the framework of HHS, OMB, Congressional regulations, and policies of the CDC Office of the Director; (4) supports the functions provided by the Budget Oversight and Analysis Activity and Budget Execution Services Activity; (5) provides leadership, consultation, guidance and advice on financial policy and internal quality assurance matters for CDC; (6) develops, analyzes, and evaluates financial management policies, guidelines, and services which have CDC-wide impact; (7) works with personnel from all disciplines within CEC to identify the areas in which financial policy needs to be strengthened; (8) reviews, assesses, and recommends financial policy that is consistent with internal controls and the hierarchy of Federal and Department of Health and Human Services policies and procedures; (9) ensures that resources are safeguarded against fraud, waste, and abuse; managed economically and efficiently; and desired results are achieved; (10) reviews and independently assesses the soundness, adequacy, and application of budgetary and accounting controls; (11) reviews the reliability and integrity of financial and budget information and the means used to identify, measure, classify, and report such information; (12) reviews the adequacy and effectiveness of systems and procedures having an impact on expenditures of funds and use of resources; and (13) assesses the reliability and accuracy of accounting and budgetary data and reports.

Budget Oversight and Analysis Activity (CAJ232). (1) Supports the formulation of CDC's annual budget and provides agency-level and departmental budget execution functions and reporting; (2) oversees budget execution services provided to terrorism and stockpile, global health, and OC/OCOO functions; (3) develops standard operating procedures for budget processes, collaborates with the Chief Learning Officer and Corporate University to develop appropriate training, and provides technical assistance in the interpretation of rules and regulations.

Budget Execution Services Activity (CAJ233). (1) Provides budget execution services to CIOs; (2) coordinates budget services through formalized and integrated communication with CIO programs throughout its service offering to ensure effective and efficiently delivery of services to its customers; (3) supports the formulation of CIO annual budgets, develops spending plans, and manages budget execution activities ensuring funds are expended in accordance with Congressional intent.

Delete item (4) of the functional statement for the *Administrative Services Branch (Spokane) (CC114), Office of Administrative and Management Services (CC11), Office of the Director (CC1), National Institute for Occupational Safety and Health (CC),* and renumber the remaining items accordingly.

Delete item (3) of the functional statement for the *Office of Program Management and Operations (CE13), Office of the Director (CE1), National Center for Injury Prevention and Control (CE),* and insert the following: (3) prepares annual budget formulation and budget justifications.

Delete item (4) of the functional statement for the *Office of the Director (CJ1), National Immunization Program (CJ),* and insert the following: (4) prepares, reviews, and coordinates informational and programmatic documents.

Delete item (4) of the functional statement for the *Planning and Evaluation Office (CK15), Office of the Director (CKI), National Center for HIV, STD, and TB Prevention (CK)*, and renumber the remaining items accordingly.

Delete item (3) of the functional statement for the *Office of the Director (CK61), Global AIDS Program (CK6)*, and insert the following: (3) provides GAP-wide administrative and management services including personnel, contracts, grants and cooperative agreements, and interagency/reimbursable agreements, travel, facility management, and equipment inventory and coordinates or ensures coordination with the appropriate NCHSTP or CDC staff offices.

Delete item (6) of the functional statement for the *Office of the Director (CK61), Global AIDS Program (CK6)*, and renumber the remaining items accordingly.

Delete item (4) of the functional statement for the *Country Program Support (CK63)*, and insert the following: (4) coordinates with BEB/FMO in the development, disbursement, and oversight of country budgets.

Delete item (6) of the functional statement for the *Country Program Support (CK63)* in its entirety.

Delete items (2) and (11) of the functional statement for the *Program Services Branch (CL17), Office of the Director (CL1), National Center for Chronic Disease Prevention and Health Promotion (CL)*, and insert the following: (2) provides leadership, planning, coordination, advice, and guidance in the execution and maintenance of the Center's administrative functions;* * *(11) provides overall programmatic direction for planning and management oversight of allocated resources.

Delete item (5) of the functional statement for the *Office of the Director (CN1), National Center for Environmental Health (CN)*, and insert the following: (5) provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support.

Delete item (5) of the functional statement for the *Office of Financial and Administrative Services (CN14)*, and insert the following: (5) formulates and provides overall programmatic direction for planning and management oversight of allocated resources, human resource management and administrative support.

Delete item (7) of the functional statement for the *Office of the Director (CR21), Division of Global Migration and Quarantine (CR2), National Center for Infectious Diseases (CR)*, and renumber the remaining items accordingly.

Delete item (6) of the functional statement for the *Office of the Director (CRJ1), Artic Investigations Program (CRJ)*, and insert the following: (6) responsible for budget formulation.

Delete items (1), (6) and (8) of the functional statement for the *Office of Planning, Budget and Legislation (CS17), Office of the Director (CS1), National Center for Health Statistical (CS)*, and insert the following: (1) Provides a focus for short and long range statistic programs, policy development, and program analysis; . . . (6) serves as principal advisor in areas of resource development and budget formulation; * * * (provides overall programmatic oversight of allocated resources.

Dated: September 29, 2004.

William H. Gimson,

Chief Operating Officer, Centers for Disease Control and Prevention (CDC).

[FR Doc. 04–22603 Filed 10–7–04; 8:45 am]

BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 2004N–0441]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for FDA Approval to Market a New Drug

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 (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 requirements governing applications for FDA approval to market a new drug.

DATES: Submit written or electronic comments on the collection of information by December 7, 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: Karen L. Nelson, Office of Management Programs (HFA 250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301 827 1482.

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 requests 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 listed below.

With respect to the following collection of information, FDA invites comments on: (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.

Applications for FDA Approval to Market a New Drug— 21 CFR Part 314—(OMB Control Number 0910 0001)—Extension

Under Section 505(a) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 355(a)), a new drug may not be commercially marketed in the United States, imported, or exported from the United States, unless an approval of an application filed with FDA under section 505(b) or 505(j) of the act is effective with respect to such drug. Section 505(b) and 505(j) of the act requires a sponsor to submit to FDA a new drug application (NDA) containing, among other things, full reports of investigations that show whether or not the drug is safe and effective for use, a full list of articles used as components in the drug, a full description of manufacturing methods, samples of the drugs required, specimens of the labeling proposed to be used, and certain patent information as applicable. Under the act, it is the sponsor's responsibility to provide the information needed by FDA to make a scientific and technical determination that the product is safe and effective.

This information collection approval request is for all information requirements imposed on sponsors by the regulations under part 314 (21 CFR 314), who apply for approval of a new drug application in order to market or to continue to market a drug.

Section 314.50(a) requires that an application form (Form FDA 356h) be submitted that includes introductory information about the drug as well as a checklist of enclosures.

Section 314.50(b) requires that an index be submitted with the archival copy of the application and that it reference certain sections of the application.

Section 314.50(c) requires that a summary of the application be submitted that presents a good general synopsis of all the technical sections and other information in the application.

Section 314.50(d) requires that the NDA contain the following technical sections about the new drug: Chemistry, manufacturing, and controls; nonclinical pharmacology and toxicology; human pharmacokinetics and bioavailability; microbiology; clinical data; and statistical section.

Section 314.50(e) requires the applicant to submit samples of the drug if requested by FDA. In addition, the archival copy of the application must include copies of the label and all labeling for the drug.

Section 314.50(f) requires that case report forms and tabulations be submitted with the archival copy.

Section 314.50(h) requires that patent information, as described under § 314.53, be submitted with the application.

Section 314.50(i) requires that patent certification information be submitted in 505(b)(2) applications for patents claiming the drug, drug product, method of use, or method of manufacturing.

Section 314.50(j) requires that applicants that request a period of marketing exclusivity submit certain information with the application.

Section 314.50(k) requires that an archival, review, and field copy of the application be submitted.

Section 314.52 requires that notice of certification of invalidity or noninfringement of a patent to patent holders and NDA holders be sent by 505(b)(2) applicants.

Section 314.54 sets forth the content requirements for applications filed under section 505(b)(2) of the act.

Section 314.60 sets forth reporting requirements for sponsors who amend an unapproved application.

Section 314.65 states that the sponsor must notify FDA when withdrawing an unapproved application.

Sections 314.70 and 314.71 require that supplements be submitted to FDA

for certain changes to an approved application.

Section 314.72 requires sponsors to report to FDA any transfer of ownership of an application.

Section 314.80(c)(1) and (c)(2) sets forth requirements for expedited adverse drug experience postmarketing reports and followup reports, as well as for periodic adverse drug experience postmarketing reports (Form FDA 3500A). (The burden hours for § 314.80(c)(1) and (c)(2) are already approved by OMB under 0910–0230 and 0910–0291 and are not included in the hour burden estimates in table 1 of this document).

Section 314.80(i) establishes recordkeeping requirements for reports of postmarketing adverse drug experiences. (The burden hours for § 314.80(i) are already approved by OMB under 0910–0230 and 0910–0291 and are not included in the hour burden estimates in table 1 of this document).

Section 314.81(b)(1) requires that field alert reports be submitted to FDA (Form FDA 3331).

Section 314.81(b)(2) requires that annual reports be submitted to FDA (Form FDA 2252). This form has been revised as a result of the requirements in the final rule ''Postmarketing Studies for Approved Human Drug and Licensed Biological Products; Status Reports,'' published in the **Federal Register** of October 30, 2000 (65 FR 64607). The rule describes the types of postmarketing studies covered by the status reports, the information to be included in the reports, and the type of information that FDA would consider appropriate for public disclosure. The rule implemented section 130(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA). The changes to the form include adding new spaces for the new status reports, reporting for biological products, and editorial changes. A copy of the revised form is available at *http://www.fda.gov/dockets/ecomments*, using the docket number of this proposed collection of information.

Section 314.81(b)(3)(i) requires that drug advertisements and promotional labeling be submitted to FDA (Form FDA 2253).

Section 314.81(b)(3)(iii) sets forth reporting requirements for sponsors who withdraw an approved drug product from sale. (The burden hours for § 314.81(b)(3)(iii) are already approved by OMB under 0910–0045 and are not included in the hour burden estimates in table 1 of this document).

Section 314.90 sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.50 through 314.81. (The information collection hour burden estimate for NDA waiver requests is included in table 1 of this document under estimates for §§ 314.50, 314.60, 314.70 and 314.71).

Section 314.93 sets forth requirements for submitting a suitability petition in accordance with 21 CFR 10.20 and 10.30. (The burden hours for § 314.93 are already approved by OMB under 0910–0183 and are not included in the hour burden estimates in table 1 of this document).

Section 314.94(a) and (d) requires that an abbreviated new drug application (ANDA) contain the following information: Application form; table of contents; basis for ANDA submission; conditions of use; active ingredients; route of administration, dosage form, and strength; bioequivalence; labeling; chemistry, manufacturing, and controls; samples; patent certification.

Section 314.95 requires that notice of certification of invalidity or noninfringement of a patent to patent holders and NDA holders be sent by ANDA applicants.

Section 314.96 sets forth requirements for amendments to an unapproved ANDA.

Section 314.97 sets forth requirements for submitting supplements to an approved ANDA for changes that require FDA approval.

Section 314.98(a) sets forth postmarketing adverse drug experience reporting and recordkeeping requirements for ANDAs. (The burden hours for § 314.98(a) are already approved by OMB under 0910–0230 and 0910–0291 and are not included in the hour burden estimates in table 1 of this document).

Section 314.98(c) requires other postmarketing reports for ANDAs: Field alert reports (Form FDA 3331), annual reports (Form FDA 2252), and advertisements and promotional labeling (Form FDA 2253). (The information collection hour burden estimate for field alert reports is included in table 1 of this document under § 314.81(b)(1); the estimate for annual reports is included under § 314.81(b)(2); the estimate for advertisements and promotional labeling is included under § 314.81(b)(3)(i)).

Section 314.99(a) requires that sponsors comply with certain reporting requirements for withdrawing an unapproved ANDA and for a change in ownership of an ANDA.

Section 314.99(b) sets forth requirements for sponsors who request waivers from FDA for compliance with §§ 314.92 through 314.99. (The information collection hour burden estimate for ANDA waiver requests is included in table 1 of this document under estimates for §§ 314.94(a) and (d), 314.96, and 314.97).

Section 314.101(a) states that if FDA refuses to file an application, the applicant may request an informal conference with FDA and request that the application befiled over protest.

Section 314.107(c)(4) requires notice to FDA by ANDA or 505(b)(2) application holders of any legal action concerning patent infringement.

Section 314.107(e)(2)(iv) requires that an applicant submit a copy of the entry of the order or judgment to FDA within 10 working days of a final judgment.

Section 314.107(f) requires that ANDA or 505(b)(2) applicants notify FDA of the filing of any legal action filed within 45 days of receipt of the notice of certification. A patent owner may also notify FDA of the filing of any legal action for patent infringement. The patent owner or approved application holder who is an exclusive patent licensee must submit to FDA a waiver that waives the opportunity to file a legal action for patent infringement.

Section 314.110(a)(3) and (a)(4) states that, after receipt of an FDA approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(a)(3) and (a)(4) are included under the parts 10 through 16 (21 CFR parts 10 through 16) hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.110(a)(5) states that, after receipt of an approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.110(b) states that, after receipt of an approvable letter, an ANDA applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.110(b) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.120(a)(3) states that, after receipt of a not approvable letter, an applicant may request an opportunity for a hearing on the question of whether there are grounds for denying approval of the application. (The burden hours for § 314.120(a)(3) are included under the parts 10 through 16 hearing

regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.120(a)(5) states that, after receipt of a not approvable letter, an applicant may notify FDA that it agrees to an extension of the review period so that it can determine whether to respond further.

Section 314.122(a) requires that an ANDA or a suitability petition that relies on a listed drug that has been voluntarily withdrawn from sale must be accompanied by a petition seeking a determination whether the drug was withdrawn for safety or effectiveness reasons. (The burden hours for § 314.122(a) are already approved by OMB under 0910–0183 and are not included in the hour burden estimates in table 1 of this document).

Section 314.122(d) sets forth requirements for relisting petitions for unlisted discontinued products. (The burden hours for § 314.122(d) are already approved by OMB under 0910–0183 and are not included in the hour burden estimates in table 1 of this document).

Section 314.126(c) sets forth requirements for a petition to waive criteria for adequate and well-controlled studies. (The burden hours for § 314.126(c) are already approved by OMB under 0910–0183 and are not included in the hour burden estimates in table 1 of this document).

Section 314.151(a) and (b) set forth requirements for the withdrawal of approval of an ANDA and the applicant's opportunity for a hearing and submission of comments. (The burden hours for § 314.151(a) and (b) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.151(c) sets forth the requirements for withdrawal of approval of an ANDA and the applicant's opportunity to submit written objections and participate in a limited oral hearing. (The burden hours for § 314.151(c) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.152(b) sets forth the requirements for suspension of an ANDA when the listed drug is voluntarily withdrawn for safety and effectiveness reasons, and the applicant's opportunity to present comments and participate in a limited oral hearing. (The burden hours for § 314.152(b) is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in table 1 of this document).

Section 314.161(b) and (e) sets forth the requirements for submitting a petition to determine whether a listed drug was voluntarily withdrawn from sale for safety or effectiveness reasons. (The burden hours for § 314.161(b) and (e) are already approved by OMB under 0910–0183 and are not included in the hour burden estimates in table 1 of this document).

Section 314.200(c), (d), and (e) requires that applicants or others subject to a notice of opportunity for a hearing who wish to participate in a hearing file a written notice of participation and request for a hearing as well as the studies, data, and so forth, relied on. Other interested persons may also submit comments on the notice. This section also sets forth the content and format requirements for the applicants' submission in response to notice of opportunity for hearing. (The burden hours for § 314.200(c), (d), and (e) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.200(f) states that participants in a hearing may make a motion to the presiding officer for the inclusion of certain issues in the hearing. (The burden hours for § 314.200(f) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.200(g) states that a person who responds to a proposed order from FDA denying a request for a hearing provide sufficient data, information, and analysis to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing. (The burden hours for § 314.200(g) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in table 1 of this document.)

Section 314.420 states that an applicant may submit to FDA a drug master file in support of an application, in accordance with certain content and format requirements.

Section 21 CFR 314.430 states that data and information in an application are disclosable under certain conditions, unless the applicant shows that extraordinary circumstances exist. (The burden hours for § 314.430 is included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and is not included in the hour burden estimates in table 1 of this document).

Section 314.530(c) and (e) states that, if FDA withdraws approval of a drug approved under the accelerated approval procedures, the applicant has the opportunity to request a hearing and submit data and information. (The burden hours for § 314.530(c) and (e) are included under the parts 10 through 16 hearing regulations, in accordance with § 314.201, and are not included in the hour burden estimates in table 1 of this document).

Section 314.530(f) requires that an applicant first submit a petition for stay of action before requesting an order from a court for a stay of action pending review. (The burden hours for § 314.530(f) are already approved by OMB under 0910–0194 and are not included in the hour burden estimates in table 1 of this document).

Respondents to this collection of information are all persons who submit an application or abbreviated application or an amendment or supplement to FDA under part 314 to obtain approval of a new drug, and any person who owns an approved application or abbreviated application.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section; [Form Number]	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
314.50 (a), (b), (c), (d), (e), (f), (h), and (k)	72	1.44	104	1,642	170,768
314.50(i) and 314.94(a)(12)	194	2.34	454	2	908
314.50(j)	70	3.71	260	2	520

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section; [Form Number]	No. of Respondents	No. of Responses per Respondent	Total Annual Responses	Hours Per Response	Total Hours
314.52 and 314.95	24	2.25	54	16	864
314.54	16	1	16	300	4,800
314.60	275	19.06	5,242	80	419,320
314.65	10	1	10	2	20
314.70 and 314.71	234	10.99	2,572	150	385,800
314.72	61	4.52	276	2	552
314.81(b)(1) [3331]	115	3.88	447	8	3,576
314.81(b)(2) [2252]	612	12.47	7,632	40	305,280
314.81(b)(3)(i) [2253]	332	44.09	14,638	2	29,276
314.94(a) and (d)	100	4.59	459	480	220,320
314.96	275	23.63	6,500	80	520,000
314.97	200	16.75	3,350	80	268,000
314.99(a)	44	2.02	89	2	178
314.101(a)	2	1	2	.50	1
314.107(c)(4), 314.107(e)(2)(iv), and 314.107(f)	3	2	6	1	6
314.110(a)(5)	41	1.26	52	.50	26
314.120(a)(5)	12	1.16	14	.50	7
314.420	403	1.72	694	61	42,334
Total					2,372,556

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: October 5, 2004.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 04–22815 Filed 10–6–04; 11:56 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 2—Basic Sciences.

Date: November 15–16, 2004.

Time: November 15, 2004, 7 p.m. to 9 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles IV, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Time: November 16, 2004, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, Building 31, Conference Room 6, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Florence E. Farber, PhD, Health Scientific Administrator, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2115, Bethesda, MD 20892, (301) 496–7628, *ff6p@nih.gov*.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22657 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Cancer Institute. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee 1—Clinical Sciences and Epidemiology.

Date: November 15, 2004.

Time: 9 a.m. to 3:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, National Cancer Institute, Building 31, Conference Room 10, 9000 Rockville Pike, Bethesda, MD 20892.

Time: 7 p.m. to 9 p.m

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Holiday Inn Bethesda, Versailles IV, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Abby B. Sandler, PhD, Scientific Review Administrator, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 2114, Rockville, MD 20852, (301) 496–7628.

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22658 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: October 25, 2004.

Time: 1 p.m. to adjournment

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, Room 1068, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0815, *browne@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Biomedical Technology.

Date: October 29, 2004.

Time: 1 p.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, Room 1068, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0815, *browneri@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Clinical Research.

Date: November 5, 2004.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Room 1068, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric H. Brown, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd, Room 1068, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0815, *browneri@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.036, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22652 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.

Date: October 28, 2004.
Time: 8 a.m. to adjournment.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Bethesda, MD 20852.
Contact Person: Eva Petrakova, PhD, MPH, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1066, MSC 4874, Bethesda, MD 20817–4874, (301) 435–0965, *petrakoe@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Scientific and Technical Review Board on Biomedical and Behavioral Research Facilities.
Date: November 8, 2004.
Time: 1:30 p.m. to adjournment.
Agenda: To review and evaluate grant applications.
Place: Office and Review, One Democracy Plaza, 6701 Democracy Blvd., Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Carol Lambert, PhD, Scientific Review Administrator, Office of Review, National Institutes of Health, NCRR, 6701 Democracy Blvd., 1 Democracy Plaza, Room 1076, MSC 4874, Bethesda, MD 20892, (301) 435–0814, *lambert@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22653 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meetings

Pursuant to section 109d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Mouse-BIRN Biomedical Technology.
Date: November 8, 2004.
Time: 10 a.m. to adjournment.
Agenda: To review and evaluate grant applications.
Place: Bethesda Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20817.
Contact Person: Linda C. Duffy, PhD, Scientific Review Administrator, Office of Review, National Center for Research Resources, National Institutes of Health, 6701 Democracy Blvd., Room 1082, Bethesda, MD 20892, (301) 435–0810, *duffyl@mail.nih.gov.*

Name of Committee: National Center for Research Resources Special Emphasis Panel, Conference Grants.
Date: December 7, 2004.
Time: 10 p.m. to adjournment.
Agenda: To review and evaluate grant applications.
Place: Office of Review, One Democracy Plaza, 6701 Democracy Blvd., Room 1070, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Harold L. Watson, BS, PhD, Scientific Review Administrator, Office of Review, NCRR, National Institutes of Health, 6701 Democracy Boulevard, 1 Democracy Plaza, Room 1070, MSC 4874, Bethesda, MD 20892–4874, (301) 435–0813, *watsonh@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.371, Biomedical Technology; 93.389, Research Infrastructure, 93.306, 93.333, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22654 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Biomedical Imaging and Bioengineering; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Biomedical Imaging and Bioengineering Special Emphasis Panel.
Date: November 10, 2004.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Prabha L. Atreya, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of Biomedical Imaging, and Bioengineering, Bethesda, MD 20892, (301) 496–8633, *atreyapr@mail.nih.gov.*

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22651 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, ''Center for AIDS Research'' (CFAR).
Date: October 28–29, 2004.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Lucy A. Ward, DVM, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramual Activities, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7616, (301) 496–2550, *lward@niaid.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology,

and Transplanation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22655 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Institute of Mental Health. The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Mental Health, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Institute of Mental Health.

Date: November 7–9, 2004.

Time: 7 p.m. to 5 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Susan Koester, PhD, Executive Secretary, Associate Director for Science, Intramural Research Program, National Institute of Mental Health, NIH, Building 10, Room 4N222, MSC 1381, Bethesda, MD 20892–1381, (301) 496–3501.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22656 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Adult and Adolescent Interventions.

Date: October 29, 2004.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Four Points by Sheraton Bethesda, 8400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6140, MSC 9608, Bethesda, MD 20892–9608, (301) 443–1225, *aschulte@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health research Grants; 93281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22659 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, October 13, 2004, 9 a.m. to October 13, 2004, 5 p.m., Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814 which was published in the **Federal Register** on September 27, 2004, 69 FR 57709.

The meeting will now be held on October 19, 2004, from 9 a.m. to 5 p.m. at the Holiday Inn Select Bethesda. The meeting is closed to the public.

Dated: October 4, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22660 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institutes of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Clinical Trial Type 2 Diabetes.

Date: November 4, 2004.

Time: 3:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6707 Democracy Blvd., Bethesda, MD 20814 (Telephone Conference Call).

Contact Person: Maxine A. Lesniak, MPH, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Room 756, 6707 Democracy Boulevard, Bethesda, MD 20892–5452, (301) 594–7792, *lesniakm@extra.niddk.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 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: September 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22661 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The 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: Arthritis and Musculoskeletal and Skin Diseases Special Grants Review Committee Review of Research Scientist Development Award—Research & Training (KO1), Research Scientist Development Award—Research (K02), Clinical Investigator Award—CIA (K08), Conference (R13), & Institutional National Research Service Award (T32).

Date: October 14–15, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Yan Z. Wang, BA, PhD., Scientific Review Administrator, National Institute of Arthritis and Musculoskeletal and Skin Diseases, 6701 Democracy Blvd., Suite 820, Bethesda, MD 20892, (301) 594–4957, *wangy1@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: September 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22662 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders C.

Date: October 7–8, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave., NW., Washington, DC 20037.

Contact Person: Andrea Sawczuk, DDS, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, 6001 Executive Boulevard, Room #3208, Bethesda, MD 20892 (301) 496–0660. *sawczuka@ninds.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: Training Grant and Career Development Review Committee.

Date: October 13–15, 2004.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Washington, 515 15th Street, NW., Washington, DC 20004.

Contact Person: Joann McConnell, PhD, Scientific Review Administrator, Scientific Review Branch, NIH/NINDS/Neuroscience Center, 6001 Executive Boulevard, Suite 3208, Msc 9529, Bethesda, MD 20892–9529, (301) 496–5324. *mcconnej@ninds.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: November 4–5, 2004.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Fairmont Washington, DC, 2401 M Street, NW., Washington, DC 20037.

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Boulevard, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, (301) 496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: September 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22663 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel, T32 NIA Training Grants.

Date: October 6–8, 2004.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20851.

Contact Person: Jon Rolf, PhD, Health Scientist Administrator, Scientific Review Office, National Institutes of Health, National Institute on Aging, 7201 Wisconsin Avenue, Room 2C212, Bethesda, MD 20814, (301) 402–7703, *rolfj@nia.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22666 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 8, 2004, 2:30 p.m. to October 8, 2004, 5 p.m., Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015, which was published in the **Federal Register** on September 24, 2004, 69 FR 57334–57335.

The meeting will be held November 8, 2004. The time and location remain the same. The meeting is closed to the public.

Dated: September 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22664 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, October 8, 2004, 8:30 am to October 8, 2004, 2 pm, Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015 which was published in the **Federal Register** on September 24, 2004, 69 FR 57334–57335.

The meeting will be held November 8, 2004. The time and location remain the same. The meeting is closed to the public.

Dated: September 30, 2004.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 04–22665 Filed 10–7–04; 8:45 am]

BILLING CODE 4140–01–M

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: Site Visit Protocol for the Comprehensive Community Mental Health Services Program for Children and Their Families—NEW

SAMHSA's Center for Mental Health Services will conduct site visits during the second and fourth years of grants and cooperative agreements funded through the Comprehensive Community Mental Health Services Program for Children and Their Families. Sixth year site visits are optional and are held at the discretion of the System of Care Community. The site visits will provide opportunities for the System of Care Community to highlight policies and practices that are most impacted by their implementation activities, and to demonstrate the full breadth and scope of their work in developing a community-based system of care for children and adolescents with serious emotional disturbance and their families. A site visit protocol will be used to help ensure consistent discussion of key development issues relevant to strengthening systems of care in tribes, states and local communities.

The protocol will be used to help facilitate discussions on the following ten domains: strategic & sustainability planning; target population of children and adolescents with a serious emotional disturbance; child, adolescent and family services and supports, system level coordination, infrastructure and management structure; fiscal management; cultural and linguistic competence; family and youth partnerships; public education and social marketing; evaluation; and service records.

This information collection supports The President's New Freedom Initiative, one of SAMHSA's current priorities. As part of this effort, the President launched the New Freedom Commission on Mental Health to address the problems in the current mental health system. This protocol is aimed at providing a framework for obtaining information on the developmental progress of systems of care that is consistent with the direction described in The President's New Freedom Commission Report.

Using the protocol as a guide, the funded project will develop an agenda for its site visit that will provide the opportunity for discussion in each of the ten domains of the protocol. Group discussions with project staff and community partners will be conducted for each domain area of the protocol. Finally, the protocol will be used by the federal project officer as a guide for the development of a site visit report.

ESTIMATES OF ANNUALIZED HOUR BURDEN

Number of respondents	Responses per respondents	Hours per responses	Total hour burden
2,000	1	1.5	3,000

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 December 7, 2004.

Dated: October 1, 2004.

Anna Marsh,

Executive Officer, SAMHSA.

[FR Doc. 04–22714 Filed 10–7–04; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Approval; Application for Status as Temporary Resident under Section 245A of the Immigration and Nationality Act (Form I–687).

The Department of Homeland Security, Bureau of Citizenship and Immigration Services (CIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on March 24, 2004 at 69 FR 13865, allowing for a 60-day public comment period. No comments were received by CIS on this information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 8, 2004. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice should be directed to the Office of Management and Budget, Attn: Desk Officer for Homeland Security, Office of Management and Budget Room 10235, Washington, DC 20503; telephone (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

(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, including the validity of the methodology and assumptions used;

(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, 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 Status as Temporary Resident under Section 245A of the Immigration and Nationality Act.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–687. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and Households. The collection of information on Form I\687 is required to verify the applicant's eligibility for temporary status, and if the applicant is deemed eligible, to grant him or her the benefit sought.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 1 hour and 10 minutes (1.16 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 116,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Solan (202) 616–7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: October 5, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigrant Services.

[FR Doc. 04–22670 Filed 10–7–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection under Review: Application for Benefits Under the Family Unity Program.

The Department Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 7, 2004.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, 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 Benefits Under the Family Unity Program.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–817. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The Information collected will be used to determine whether the applicant meets the eligibility requirements for benefits under 8 CFR 245A, Subpart C.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 40,000 responses at 2 hours and 30 minutes (2.5) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: October 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigrant Services.

[FR Doc. 04–22671 Filed 10–7–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Request OMB approval: 1615–0001, Petition for Alien Fiance(e).

The Department Homeland Security, Bureau of Citizenship and Immigration Services has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 7, 2004.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, 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 information collection.

(2) *Title of the Form/Collection:* Petition for Alien Fiance(e).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–129F. Adjudications Division, Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is used by a U.S. citizen to facilitate the entry of his/her fiancé(e) into the United States so that a marriage may be concluded within 90 days of entry between the U.S. citizen and the beneficiary of the petition. This form also allows the spouse or child of a U.S. citizen to enter the U.S. as a nonimmigrant, in accordance with provisions of section 1103 of the Legal Immigration Family Equity Act of 2000.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 200,000 responses at 30 minutes (.50 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: October 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigrant Services.

[FR Doc. 04–22672 Filed 10–7–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Bureau of Citizenship and Immigration Services

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; 1615–0004 Supplement A Form I–539 (Filing Instructions for V Nonimmigrant Status).

The Department Homeland Security, Bureau of Citizenship and Immigration Services (CIS) has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This notice is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until December 7, 2004.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(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, 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 currently approved information collection.

(2) *Title of the Form/Collection:* Supplement A to Form I–539 (Filing Instructions for V Nonimmigrant Status Applicants).

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I–539 Supplement A. Bureau of Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used by nonimmigrants to apply for extension of stay or change of nonimmigrant status for obtaining V nonimmigrant classification. The CIS will use the data on this form to determine eligibility for the requested benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 427,000 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 213,500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–616–7600, Director, Regulatory Management Division, Department of Homeland Security, 111 Massachusetts Avenue, NW., Washington, DC 20529. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

Dated: October 4, 2004.

Richard A. Sloan,

Department Clearance Officer, Department of Homeland Security, Bureau of Citizenship and Immigrant Services.

[FR Doc. 04–22673 Filed 10–7–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1561–DR]

Florida; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Florida (FEMA–1561-DR), dated September 26, 2004, and related determinations.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Florida is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 26, 2004:

Alachua, Baker, Bradford, Charlotte, Clay, Columbia, Dixie, Duval, Flagler, Gilchrist, Hamilton, Jefferson, Lafayette, Madison, Nassau, Putnam, Sarasota, St. Johns, Suwannee, Taylor, and Union Counties for Individual Assistance.

Citrus, DeSoto, Glades, Hendry, Levy, and Manatee Counties for Individual Assistance (already designated for Public Assistance Categories A and B, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedeness and Response, Department of Homeland Security.

[FR Doc. 04–22678 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1554–DR]

Georgia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Georgia (FEMA–1554–DR), dated September 18, 2004, and related determinations.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 18, 2004:

Heard and Wilkes Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22674 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1556–DR]

Ohio; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Ohio (FEMA–1556–DR), dated September 19, 2004, and related determinations.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 19, 2004:

Athens, Gallia, Mahoning, Meigs, and Vinton Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22675 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1552–DR]

Puerto Rico; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Puerto Rico (FEMA–1552–DR), dated September 17, 2004, and related determinations.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Puerto Rico is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 17, 2004:

Adjuntas, Culebra, Hormigueros, Jayuya, Las Marias, Luquillo, Maricao, and Trujillo Alto Municipalities for Public Assistance [Categories C–G] (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

Aguada, Aguadilla, Aguas Buenas, Aibonito, Arecibo, Arroyo, Barceloneta, Caguas, Camuy, Cayey, Cidra, Comerio, Corozal, Guayama, Hatillo, Humacao, Las Piedras, Manati, Maunabo, Morovis, Naguabo, Orocovis, Patillas, Quebradillas, Rincon, Santa Isabel, Utuado, Vieques, Villalba, and Yabucoa Municipalities for Public Assistance [Categories C–G] (already designated for Individual Assistance and for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

Fajardo Municipality for Individual Assistance (already designated for debris removal and emergency protective measures (Categories A & B) under the Public Assistance program, including direct Federal assistance, at 100 percent Federal funding of the total eligible costs for a period of up to 72 hours.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22700 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

EFFECTIVE DATE: September 29, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2004:

Mingo County for Individual Assistance.

Wayne County for Individual Assistance and for debris removal and emergency protective measures (Categories A and B) under the Public Assistance program.

Brooke, Hancock, Jackson, Lincoln, Marshall, Mason, Ohio, Pleasants, Tyler, and Wetzel Counties for Categories C-G under the Public Assistance program (already designated for Categories A and B under the Public Assistance program and Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers CFDA) are to be used for

reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22676 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1558–DR]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Emergency Preparedness and Response Directorate, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of West Virginia (FEMA–1558–DR), dated September 20, 2004, and related determinations.

EFFECTIVE DATE: September 30, 2004.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of September 20, 2004:

Clay, Logan, and Putnam Counties for Public Assistance.

Mingo County for Public Assistance (already designated for Individual Assistance.)

(The following Catalog of Federal Domestic Assistance Numbers CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050 Individuals and Households Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program)

Michael D. Brown,

Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.

[FR Doc. 04–22677 Filed 10–7–04; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

National Communications System

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS), Department of Homeland Security.

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Tuesday, November 9, 2004, from 9 a.m. to 12 noon. The meeting will be held at 701 South Courthouse Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP Program Update
—TSP Revalidation Update
—PSWG Update

Anyone interested in attending or presenting additional information to the Committee, please contact Susan Flint, Office of Priority Telecommunications, (703) 607–4932. Media or Press must contact Mr. Steve Barrett (703) 607–6211.

Peter M. Fonash,

Certifying Officer.

[FR Doc. 04–22631 Filed 10–7–04; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4901–N–41]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Kathy Burruss, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Heather Ranson, Division of Property Management, Program Support Center, HHS, room 5B–17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of

interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: Coast Guard: Commandant, United States Coast Guard, ATTN: Teresa Sheinberg, 2100 Second St., SW., Rm 6109, Washington, DC 20593–0001; (202) 267–6142; Energy: Mr. Andy Duran, Department of Energy, Office of Engineering & Construction Management, ME–90, 1000 Independence Ave., SW., Washington, DC 20585: (202) 586–4548; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW., Washington, DC 20405; (202) 501–0084; Interior: Ms. Linda Tribby, Acquisition & Property Management, Department of the Interior, 1849 C, NW., MS5512, Washington, DC 20240; (202) 219–0728; Navy: Mr. Charles C. Cocks, Department of the Navy, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: September 30, 2004.

Mark R. Johnston,

Director, Office of Special Needs Assistance Programs.

Suitable/Available Properties

Title V, Federal Surplus Property Program Federal Register Report for 10/8/2004

Buildings (by State)

California

Agriculture Rsch Service
2021 South Peach Avenue
Fresno Co: CA 93727–
Landholding Agency: GSA
Property Number: 54200430023
Status: Excess
Comment: 17 buildings, 480 sq. ft. to 8726 sq. ft., need rehab, possible asbestos/lead paint/use restrictions, most recent use–office, labs, greenhouses, machine shop
GSA Number: 9–A–CA–1578

Nevada

Quarters 53
Great Basin Natl Park
Baker Co: White Pine NV 89311–
Landholding Agency: Interior
Property Number: 61200430042
Status: Unutilized
Comment: 750 sq. ft. mobile home, off-site use only

Quarters 84
Great Basin Natl Park
Baker Co: White Pine NV 89311–
Landholding Agency: Interior
Property Number: 61200430043
Status: Unutilized
Comment: 750 sq. ft. mobile home, off-site use only

Quarters 85
Great Basin Natl Park
Baker Co: White Pine NV 89311–
Landholding Agency: Interior
Property Number: 61200430044
Status: Unutilized
Comment: 750 sq. ft. mobile home, off-site use only

New York

SSA Building
190 Stone Street
Watertown Co: Jefferson NY 13601–3251
Landholding Agency: GSA
Property Number: 54200430025
Status: Excess
Comment: 6452 sq. ft., needs rehab, most recent use—office, will be vacant Feb. 2005
GSA Number: 1–G–NY–916

Land (by State)

Arizona

1.49 acres
Hurley Ranch
Avondale Co: Maricopa AZ 85353–
Landholding Agency: Interior
Property Number: 61200430046
Status: Excess
Comment: 20 ft. wide irrigation ditch

Idaho

19.5 acres
Teton Dam Site
Newdale Co: Madison ID 83436–
Landholding Agency: Interior
Property Number: 61200430047
Status: Excess
Comment: narrow strip of land, center of irrigated agriculture fields

19.47 acres
Tract C/Section 11
Paul Co: Minidoka ID 83347–
Landholding Agency: Interior
Property Number: 61200430048
Status: Excess
Comment: agriculture/sagebrush

20.07 acres
Section 15; Lots 9–10
Paul Co: Minidoka ID 83347–
Landholding Agency: Interior
Property Number: 61200430049
Status: Excess
Comment: agriculture production/irrigation sprinkler system

California

Bldg. 2
Naval Base
Point Loma Co: CA
Landholding Agency: Navy
Property Number: 77200430054
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

4 Bldgs.
Naval Base
Port Hueneme Co: Ventura CA 93043–
Location: PH-1413, PH-1254, PH-1323, PH-1162
Landholding Agency: Navy
Property Number: 77200430055
Status: Unutilized
Reason: Secured Area

Bldg. 03890
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77200430056
Status: Excess
Reason: Extensive deterioration

8 Bldgs.
Marine Corps Recruit Depot
San Diego Co: CA
Location: 428, 5US1, 5US2, 5US3, 5UT1, 5UT2, 5UT3, 5UX1
Landholding Agency: Navy
Property Number: 77200430083
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1657
Marine Corps Base
Camp Pendleton Co: CA
Landholding Agency: Navy
Property Number: 77200430084
Status: Excess
Reason: Extensive deterioration

Florida

Bldg. 44
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200430057
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldgs. 328, 337

Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200430058
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1754
Naval Air Station
Jacksonville Co: Duval FL 32212–
Landholding Agency: Navy
Property Number: 77200430059
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1815
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200430060
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1816
Naval Air Station
Penscola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200430061
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 1946
Naval Air Station
Penscola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200430062
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bldg. 3300
Naval Air Station
Penscola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200430063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 3662
Naval Air Station
Penscola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200430064
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Idaho

Bldgs. CPP1604–CPP1608
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430071
Status: Excess
Reasons: Secured Area

Bldgs. CPP1617–CPP1619
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430072
Status: Excess
Reasons: Secured Area

6 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1631, CPP1634, CPP1635, CPP1636, CPP1637, CPP1638
Landholding Agency: Energy
Property Number: 41200430073
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1642, CPP1643, CPP1644, CPP1646, CPP1649
Landholding Agency: Energy
Property Number: 41200430074
Status: Excess
Reason: Secured Area

3 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1650, CPP1651, CPP1656
Landholding Agency: Energy
Property Number: 41200430075
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1662, CPP1663, CPP1671, CPP1673, CPP1674
Landholding Agency: Energy
Property Number: 41200430076
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1678, CPP1682, CPP1683, CPP1684, CPP1686
Landholding Agency: Energy
Property Number: 41200430077
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1713, CPP1749, CPP1750, CPP1767, CPP1769
Landholding Agency: Energy
Property Number: 41200430078
Status: Excess
Reason: Secured Area

5 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1770, CPP1771, CPP1772, CPP1774, CPP1776
Landholding Agency: Energy
Property Number: 41200430079
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1778, CPP1779, CPP1780, CPP1784
Landholding Agency: Energy
Property Number: 41200430080
Status: Excess
Reason: Secured Area

4 Bldgs.
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Location: CPP1789, CPP1790, CPP1792, CPP1794
Landholding Agency: Energy
Property Number: 41200430081
Status: Excess
Reason: Secured Area

Bldgs. CPP2701, CPP2706
Idaho National Eng & Env Lab
Scoville Co: Butte ID 83415–
Landholding Agency: Energy
Property Number: 41200430082
Status: Excess
Reason: Secured Area

New Jersey

Trailer D–33
Plasma Physics Lab
Princeton Co: Merer NJ 08540–
Landholding Agency: Energy
Property Number: 41200430083
Status: Excess
Reason: Extensive deterioration

Oregon

Industrial Warehouse
Yeon Avenue
Portland Co: OR 97210–
Landholding Agency: GSA
Property Number: 54200430024
Status: Surplus
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–G–OR–741

Pennsylvania

Tract 105–17
Dry Run Road
Duncansville Co: Blair PA 16635–
Landholding Agency: Interior
Property Number: 61200430045
Status: Excess
Reason: Extensive deterioration

Bldg. 904
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–
Landholding Agency: Navy
Property Number: 77200430066
Status: Excess
Reason: Extensive deterioration

Bldg. 952
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–
Landholding Agency: Navy
Property Number: 77200430067
Status: Excess
Reason: Extensive deterioration

Bldg. 953
Naval Support Activity
Mechanicsburg Co: Cumberland PA 17055–
Landholding Agency: Navy
Property Number: 77200430068
Status: Excess
Reason: Extensive deterioration

South Carolina

Bldg. 701–000M
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430084
Status: Unutilized
Reason: Secured Area

Bldg. 701–002A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430085
Status: Unutilized
Reason: Secured Area

Bldg. 701–003A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430086
Status: Unutilized
Reason: Secured Area

Bldg. 721–002A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430087
Status: Unutilized
Reason: Secured Area

Bldg. 726–000A
Savannah River Site
Aiken Co: SC 29802–
Landholding Agency: Energy
Property Number: 41200430088
Status: Unutilized
Reason: Secured Area

Tennessee

16 Bldgs.
Naval Support Activity
Millington Co: TN 38054–
Location: 2029, 2031, 2033–2034, 2046–2047, 2083, 2091, 2093, 2097–2098, 2101, 277–278, 1679, 1708
Landholding Agency: Navy
Property Number: 772200430069
Status: Excess
Reason: Secured Area

Texas

Bldgs. 1340, 1341
Naval Air Station
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77200430070
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration

Virginia

Bunker 1
CAMSLANT
Virginia Beach Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200430001
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Virginia

Bunker 2
CAMSLANT
Virginia Beach Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200430002
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bunker 3
CAMSLANT
Virginia Beach Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200430003
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bunker 4
CAMSLANT
Virginia Beach Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200430004
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Bunker 5
CAMSLANT
Virginia Beach Co: Princess Anne VA
Landholding Agency: Coast Guard
Property Number: 88200430005
Status: Unutilized
Reasons: Secured Area; Extensive deterioration

Washington

Bld. 9
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430071
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bld. 183
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430072
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 498
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430073
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 884
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430074
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 1070
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430075
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 5730
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430076
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 5733
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430077
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldg. 5912
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77200430078
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Bldgs. 1005, 1006, 1009
Naval Base
Silverdale Co: Kitsap WA 98315–
Landholding Agency: Navy
Property Number: 77200430079
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area

Land (by State)

Arizona

2.56 acres
Chauncy Ranch
Phoenix Co: Maricopa AZ 85054–
Landholding Agency: Interior
Property Number: 61200430050
Status: Excess
Reason: Floodway

California

0.05 acre
Contra Costa Canal
Mile Post 40.26
Pleasant Hill Co: Contra Costa CA 94523–
Landholding Agency: Interior
Property Number: 61200430041
Status: Unutilized
Reason: Landlocked

North Carolina

Portion/Training Area
Marine Corps Base
Camp Lejeune Co: NC
Landholding Agency: Navy
Property Number: 77200430065
Status: Underutilized
Reason: Secured Area

[FR Doc. 04–22371 Filed 10–07–04; 8:45 am]
BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

[UT080–1310–00]

Notice of Availability of the Draft Environmental Impact Statement on Inland Resources Inc., Castle Peak and Eight Mile Flat Oil & Gas Expansion Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Under the National Environmental Policy Act of 1969 (NEPA) and implementing regulations, the Bureau of Land Management (BLM) announces the availability of The Draft Environmental Impact Statement (DEIS) for the proposed Inland Resources Inc., Castle Peak and Eight Mile Flat Oil & Gas Expansion Project. The DEIS analyzes and discloses to the public direct, indirect and cumulative environmental impacts of proposed expansion of existing waterflood oil recovery operations in the Monument Butte production region. The proponent proposes to drill up to 900 additional

wells by the year 2015. Two additional alternatives to the proposed action are also analyzed.

DATES: Written comments on the Inland Resources Inc., Castle Peak and Eight Mile Flat Oil & Gas Expansion Project DEIS will be accepted for 45 days following the date the Environmental Protection Agency (EPA) publishes this Notice of Availability in the **Federal Register**. Future public meetings and any other public involvement activities will be announced at least 15 days in advance through public notices, media news releases, the BLM Vernal Field Office Web site at *http://www.blm.gov/utah/vernal* and/or mailings.

The BLM asks that those submitting comments on the DEIS make them as specific as possible with references to page numbers and chapters of the document. Comments that contain only opinions or preferences will not receive a formal response, but will be considered and included as part of the BLM decision-making process.

ADDRESSES: Please address questions, comments or concerns to the Vernal Field Office, Bureau of Land Management, Attn: Jean Nitschke-Sinclear, 170 South 500 East, Vernal, UT 84078, fax them to (435) 781–4410, or send e-mail comments to the attention of Jean Nitschke-Sinclear at *jean_nitschke-sinclear@blm.gov*. A copy of the DEIS has been sent to affected Federal, State, and local government agencies; and persons and entities who indicated to the BLM that they wished to receive a copy of the DEIS.

Written comments, including names and addresses of respondents, will be available for public review at the BLM, Vernal Field Office during normal business hours (7:45 a.m. to 4:30 p.m.). Responses to the comments will be published as part of the Final Environmental Impact Statement (FEIS). Individuals may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses will be made available for public inspection in their entirety.

Copies of the Inland Resources Inc., Castle Peak and Eight Mile Flat Oil & Gas Expansion Project DEIS are available at the BLM Vernal Field Office at the address above. The DEIS may also be viewed and downloaded in PDF format at the BLM Vernal Field Office Web site at *http://www.blm.gov/utah/vernal*.

FOR FURTHER INFORMATION CONTACT: Jean Nitschke-Sinclear, or Veronica Herkshan, Planning Specialist, at BLM's Vernal Field Office listed above or telephone (435–781–4400).

SUPPLEMENTARY INFORMATION: The DEIS analyzes proposed expanded waterflood oil recovery on about 65,500 total acres in the Monument Butte region, approximately 25 miles southwest of Roosevelt, in Township 8 South, Ranges 17–19 East, SLBM; and, Township 9 South, Ranges 16–19 East, SLBM. The proposed project is located primarily on BLM-administered lands (59,757 acres, or 91% of the project area) and includes 5,777 acres (or about 9%) of State of Utah administered lands; and, 41 acres (less than 1%) of private lands. The proponent anticipates drilling up to 900 additional wells at a rate of 70 to 130 a year or until the resource base is fully developed. The total number of wells drilled would depend largely on factors out of the Company's control such as geology, economic factors, and lease restrictions. The wells would be drilled on a 40-acre spacing pattern to recovery oil and gas reserves from the Green River Formation (involving depths of 4,500 to 6,500 feet). Inland would drill approximately 50 percent of the wells as producing wells, and 50 percent as water injection wells. The water injection wells would allow reservoir pressure to be managed and oil recovery to be maximized. Water would be supplied from existing Water District contracts and from various oil and water bearing reservoirs within the Green River Formation underlying the oil field. At its peak water usage, the project would require about 1,400 acre feet per year. Other project-related activities would include the construction and operation of roads, gas pipelines, well pads (with pumping units and oil storage tanks), and water pipelines. Inland Resources, Inc., also proposes to construct a new water filtration/injection plant with injection capacities of 2,500 to 4,000 barrels of water per day as well as a pump house. Produced oil from new wells would be transported from 400-barrel well site storage tanks by tanker truck to refineries near Salt Lake City, Utah. Gas would be transported via pipeline to one of Inland's existing compression facilities. Produced water would be trucked to one of several existing Inland water injection plants where it would be filtered and mixed with culinary fresh water before being re-injected into the oil reservoir via a water-pipeline and injection well system. No new compressor stations are anticipated.

Existing producing wells within the project area were drilled between 1980 and 1996. By the late 1980's, most of these wells were reaching the end of their economically useful life using conventional recovery methods. In 1995 Inland received approval from BLM to drill 296 over a 5-year period as part of a research effort to try commercial use of waterflood technology for oil recovery. In 1997 BLM approved an additional 300 wells for Inland to drill 300 wells using the waterflood technology.

The Notice of Intent for preparation of the Draft Environmental Impact Statement on the Inland Resources Inc., Castle Peak and Eight Mile Flat Oil & Gas Expansion Project was published in the **Federal Register** on May 8, 2002. Public participation was sought through scoping, public meetings and ''stakeholder'' meetings conducted with interested agencies and organizations. Specifically, BLM conducted a public scoping and information open house in Roosevelt and Vernal, Utah on June 11 and 12, 2002, respectively; and a stakeholders meeting on May 23, 2002. Through the scoping process several issues have been identified including potential impacts on socio-economics; cultural resources; paleontological resources; wildlife and listed and special status wildlife and plant species habitats; soils and water resources; Pariette Wetlands Complex Area of Critical Environmental Concern; and cumulative impacts.

The BLM has developed two alternatives in addition to the proposed action for analysis in the DEIS. Alternative A discusses the effects of the Proposed Action as modified by the application of stipulations identified in the Diamond Mountain Resource Management Plan and mitigation measures recommended to reduce environmental effects. At this time Alternative A is the BLM's preferred alternative. The No Action Alternative considers the operation of existing wells and drilling of additional wells authorized and granted with conditions of approval developed from previous NEPA documents, the 1994 Diamond Mountain Resource Management Plan and existing lease rights. The proposed action and alternative being considered in the DEIS are in conformance with the 1994 Diamond Mountain Resource Management Plan.

Dated: September 9, 2004.

William Stringer,

Vernal Field Manager.

[FR Doc. 04–22738 Filed 10–7–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–060–1320–EL; WYW150318]

Notice of Availability of the Record of Decision for the Final Environmental Impact Statement, West Hay Creek Coal Lease by Application Tract, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Final Environmental Impact Statement (FEIS); West Hay Creek Coal Lease By Application (LBA) Tract.

ADDRESSES: The document will be available electronically on the following Web site: *http://www.wy.blm.gov/.* Copies of the ROD are available for public inspection at the following BLM office locations:

- Bureau of Land Management, Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.
- Bureau of Land Management, Casper Field Office, 2987 Prospector Drive, Casper, Wyoming 82604.

FOR FURTHER INFORMATION CONTACT: Julie Weaver, Land Law Examiner, at 307–775–6260 or Bob Janssen, Wyoming Coal Coordinator, at 307–775–6206. Both Ms. Weaver's and Mr. Janssen's offices are located at the BLM Wyoming State Office, 5353 Yellowstone Road, Cheyenne, Wyoming 82009.

SUPPLEMENTARY INFORMATION: As stated in the FEIS, a ROD will be issued for the Federal coal tract considered for leasing in the FEIS. The ROD covered by this NOA is for coal tract West Hay Creek (WYW151634) and addresses leasing an estimated 160 million tons of in-place Federal coal underlying approximately 921.1575 acres in Campbell County, Wyoming, administered by the BLM Casper Field Office. The ROD approves Alternative 2 as the selected alternative. A competitive lease sale will be announced in the **Federal Register** at a later date.

Because the Assistant Secretary of the Interior, Lands and Minerals Management, has concurred in this decision it is not subject to appeal to the Interior Board of Land Appeals, as provided in 43 CFR Part 4. This decision is the final action of the Department of the Interior.

Dated: September 28, 2004.

Robert A. Bennett,

State Director.

[FR Doc. 04–22287 Filed 10–7–04; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–1120–PG–241A]

Notice of Meeting, Southwest Resource Advisory Council (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972, the U.S. Department of the Interior, Bureau of Land Management (BLM) Southwest Resource Advisory Council (RAC), will meet as indicated below.

DATES: The meeting will be held on Friday, November 19, 2004 at the Durango Recreation Center, Eolus Meeting Room, 2700 North Main Avenue in Durango, Colorado, and will begin at 9 a.m. The public comment period will begin at approximately 10:30 a.m. and will end at 12 noon.

SUPPLEMENTARY INFORMATION: The 15-member RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Southwest, Colorado. Planned agenda topics include:

Discussion of old business

Summary of the Northern Basin Environmental Impact Statement process, public input received to date, and RAC subgroup perceptions and recommendations for further RAC involvement, and

Public comment

All meetings are open to the public. The public can make oral statements to the Council beginning at 10:30 a.m., or written statements may be submitted for the Council's consideration. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for this Council Meeting will be maintained in the Western Slope Office (BLM), 2815 H Road, Grand Junction, Colorado, 81506 and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting. Minutes for this particular meeting will also be made part of the official comment record for the Northern San Juan Basin Coal Bed Methane Draft EIS.

FOR FURTHER INFORMATION CONTACT: Ann Bond, San Juan Public Lands Center, 15 Burnett Court, Durango, Colorado 81301. Phone (970) 385–1219.

Dated: October 1, 2004.

Mark W. Stiles,

San Juan Public Lands Center Manager.

[FR Doc. 04–22627 Filed 10–4–04; 4:05 pm]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–04–1040–PH–24–1A]

Notice of Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah Resource Advisory Council (RAC) meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Council will meet October 20, 2004, at the Provo Marriott Hotel, 10 West 100 North, Provo, Utah, beginning at 8 a.m. and concluding at 5 p.m. A public comment period will begin at 4 p.m. and conclude at 4:30 p.m. Written comments may be sent to the Bureau of Land Management address listed below.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; phone (801) 539–4195.

SUPPLEMENTARY INFORMATION: Welcome and introductions of the new Council members and election of officers will take place along with a presentation on the wild horse and burro program, briefings on the St. George OHV Route Designation RMP amendment, Sagebrush Restoration Initiative, Price's RMP Route Designation Plan, as well as, an overview of BLM issues in Utah.

All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: September 30, 2004.

Sally Wisely,

State Director.

[FR Doc. 04–22737 Filed 10–7–04; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[60% to CO–956–1420–BJ–0000–241A; 13⅓% to CO–956–1910–BJ–4667–241A; 26⅔% to CO–956–9820–BJ–C001–241A]

Colorado: Filing of Plats of Survey

September 30, 2004.

SUMMARY: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., September 30, 2004. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the dependent resurvey and surveys in Township 51 North, Range 1 West, New Mexico Principal Meridian, Group 1359, Colorado, was accepted July 20, 2004.

The plat representing the dependent resurvey and surveys in Township 50 North, Range 1 West, New Mexico Principal Meridian, Group 1359, Colorado, was accepted July 20, 2004.

The plat representing the dependent resurvey and survey, in section 7, Township 7 North, Range 101 West, Sixth Principal Meridian, Group 1379, Colorado, was accepted July 29, 2004.

The plat representing the dependent resurvey and survey in Township 3 South, Range 85 West, Sixth Principal Meridian, Group 1382, Colorado, was accepted August 3, 2004.

The plat, (in 16 sheets), representing the dependent resurveys and surveys in Section 7, of Township 4 South, Range 73 West, Sixth Principal Meridian, Group 690, Colorado, was accepted August 5, 2004.

The plat representing the dependent resurveys and surveys in Township 3 North, Range 84 West, Sixth Principal Meridian, Group 1398, Colorado, was accepted September 16, 2004.

The plat representing the dependent resurveys and surveys in Township 44 North, Range 4 East, New Mexico Principal Meridian, Group 1324, Colorado, was accepted September 21, 2004.

The plat representing the dependent resurveys and surveys in Township 45 North, Range 4 East, New Mexico Principal Meridian, Group 1324, Colorado, was accepted September 21, 2004.

The supplemental plat, creating new lots 28 and 29, in section 18, Township 8 South, Range 83 West, Sixth Principal Meridian, Colorado, was accepted September 24, 2004.

These surveys and plats were requested by the Bureau of Land Management for administrative and management purposes.

The plat representing the dependent resurvey and survey in Township 49 North, Range 7 East, New Mexico Principal Meridian, Group 1242, Colorado, was accepted September 9, 2004.

The plat representing the dependent resurvey and survey in Township 49 North, Range 8 East, New Mexico Principal Meridian, Group 1242, Colorado, was accepted September 9, 2004.

The plat representing the dependent resurvey and surveys in Township 48 North, Range 8 East, New Mexico Principal Meridian, Group 1245, Colorado, was accepted September 27, 2004.

These surveys, and plats were requested by the Forester, Salida Ranger District, Pike and San Isabel National Forests, to identify forest boundaries for administrative and management purposes.

The plat representing the dependent resurvey and survey in Township 7 North, Range 82 West, Sixth Principal Meridian, Group 1322, Colorado, was accepted September 16, 2004.

This survey and plat was requested by the Forest Supervisor, Medicine Bow-Routt National Forests, to identify the forest boundaries for administrative and management purposes.

The plat representing the dependent resurveys in Township 32 North, Range 2 West, New Mexico Principal Meridian, Group 1303, Colorado, was accepted August 27, 2004.

The plat representing the dependent resurveys in Township 32 North, Range 11 West, New Mexico Principal Meridian, Group 1354, Colorado, was accepted August 30, 2004.

These surveys and plats were requested by the Southern Ute Indian Tribe, through the Bureau of Indian Affairs, Albuquerque, New Mexico, to identify the reservation boundaries for administrative and management purposes.

Randall M. Zanon,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 04–22630 Filed 10–7–04; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–952–05–1420–BJ]

Filing of Plats of Survey; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: David D. Morlan, Chief, Branch of Geographic Sciences, Bureau of Land Management (BLM), Nevada State Office, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520, 775–861–6541.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on August 13, 2004:

The plat, in seven (7) sheets, representing the dependent resurvey of portions of the California-Nevada State Line from Mile Post 168 to Mile Post 171, and from Mile Post 173 to Mile Post 175, portions of the old California-Nevada State Line, portions of the south, east and north boundaries, a portion of the subdivisional lines, the subdivision of sections 6, 7,10, 14, 22, 23, 24, 29, 30, 31, and 32, and metes-and-bounds surveys in certain sections, Township 19 North, Range 18 East, Mount Diablo Meridian, Nevada and California, under Group No. 768, Nevada, and Group No. 1280, California, was accepted August 5, 2004.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

2. The Supplemental Plat of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on August 13, 2004:

The supplemental plat, showing a subdivision of lot 16, sec. 1, T. 19 S., R. 59 E., Mount Diablo Meridian, Nevada, was accepted August 12, 2004.

This supplemental plat was prepared to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on August 26, 2004:

The plat representing the dependent resurvey of a portion of the west boundary, a portion of the subdivisional lines and portions of the subdivision of

section 6, the corrective resurvey of portions of the subdivision of section 6, the further subdivision of section 6, and the metes-and-bounds survey of Lot 22 in section 6, Township 21 South, Range 59 East, Mount Diablo Meridian, Nevada, under Group No. 750, was accepted August 25, 2004.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 2, 2004:

The plat, in four (4) sheets, representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of sections 10, 11 and 15, the survey of portions of the avulsed channel of the Truckee River in sections 10 and 11, and the meanders of the Truckee River in section 10, 11 and 15, and certain metes-and-bounds-surveys in sections 10, 11 and 15, Township 19 North, Range 21 East, Mount Diablo Meridian, Nevada, under Group No. 811, was accepted September 1, 2004.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of the following described lands was officially filed at the Nevada State Office, Reno, Nevada, on September 30, 2004:

The plat, in four (4) sheets, representing the dependent resurvey of the Third Standard Parallel South, through portions of Range 63 East, a portion of the south boundary, the east boundary, and a portion of the subdivisional lines, and metes-and-bounds surveys of portions of U.S. Highway No. 93 and Nevada State Route No. 168, and a metes-and-bounds survey in section 1, Township 13 South, Range 63 East, Mount Diablo Meridian, Nevada, under Group No. 814, was accepted September 29, 2004.

This survey was executed to meet certain administrative needs of the Bureau of Land Management and Coyote Springs Investments, Inc.

6. The Plat of Survey of the following described lands will be officially filed at the Nevada State Office, Reno, Nevada on the first business day after thirty (30) days from the publication of this notice:

The plat, in three (3) sheets, representing the survey of the Third Standard Parallel South, through a portion of Range 64 East, and portions of the south boundary and subdivisional lines, and a metes-and-bounds survey of a portion of Nevada State Route No. 168, and a metes-and-bounds survey through sections 6, 7, 18, 19, and 30, Township 13 South, Range 64 East, Mount Diablo Meridian, Nevada, under Group No. 814, was accepted September 29, 2004.

This survey was executed to meet certain administrative needs of the Bureau of Land Management and Coyote Springs Investments, Inc.

7. Subject to valid existing rights, the provisions of existing withdrawals and classifications, the requirements of applicable laws, and other segregations of record, these lands are open to application, petition, and disposal, including application under the mineral leasing laws. All such valid applications received on or before the official filing of the Plat of Survey described in paragraph 6, shall be considered as simultaneously filed at that time. Applications received thereafter shall be considered in order of filing.

8. The above-listed surveys are now the basic record for describing the lands for all authorized purposes. These surveys have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: October 1, 2004.

David J. Clark,

Acting Chief Cadastral Surveyor, Nevada.

[FR Doc. 04–22725 Filed 10–7–04; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–463]

Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments

AGENCY: International Trade Commission.

ACTION: Change of hearing date.

SUMMARY: The date of the public hearing in this investigation has been changed to 9:30 a.m. on November 19, 2004, from the previously announced date of November 18. All deadlines for filing briefs and other submissions, including requests to appear at the hearing, remain the same as in the original notice of investigation and public hearing that was published in the **Federal Register** of September 2, 2004 (69 FR 53735).

Issued: October 4, 2004.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22695 Filed 10–7–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–517]

In the Matter of Certain Shirts with Pucker-Free Seams and Methods of Producing Same; Notice of Decision Not to Review an Initial Determination Amending the Complaint and Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) in the above-captioned investigation amending the complaint and notice of investigation to correctly identify the asserted claims of the patents at issue and to add allegations concerning an additional related patent.

FOR FURTHER INFORMATION CONTACT: Andrea Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3104. Copies of all nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on August 3, 2004, based on a complaint filed by TAL Apparel Limited, TALTECH Limited, and The Apparel Group Limited (collectively ''TAL.'') 69 FR 47857 (August 6, 2004.) The complaint alleges violations of section 337 in the importation into the United States, sale for importation, and/or sale within the United States after importation of certain shirts with pucker-free seams that infringe claims 1, 4, 20 and 22 of U.S. Patent No. 5,568,779 (the '779 patent); claims 1, 11, 19 and 26 of U.S. Patent No. 5,590,615 (the '615 patent); claims 1, 3, 13 and 16

of U.S. Patent No. 5,713,292 (the '292 patent); and claims 16, 19, 35 and 38 of U.S. Patent No. 6,0079,343 (the '343 patent). The complaint names as respondents Esquel Apparel, Inc. and Esquel Enterprises Limited (collectively ''Esquel.'')

On September 1, 2004, TAL filed a motion to amend the complaint and notice of institution to correct the list of asserted claims as follows: (1) For the '779 patent, claims 1, 4, 20 and 23 are being asserted, while claim 22 is not being asserted; (2) for the '615 patent, claims 1, 11, 19 and 27 are being asserted, while claim 26 is not being asserted; (3) for the '292 patent, claims 1, 3, 13 and 15 are being asserted, while claim 16 is not being asserted; and (4) for the '343 patent, claims 16, 19, 35 and 37 are being asserted, while claim 38 is not being asserted. TAL also moved to amend the complaint to assert claims 39, 41, 49 and 51 of an additional related patent, U.S. Patent No. 5,775,394 (the '394 patent.)

The Commission investigative attorney supported the motion to amend the complaint in all respects. Esquel did not oppose the amendment of the complaint to clarify the asserted claims of the originally named patents, but it did oppose the amendment to add the allegations concerning the '394 patent, unless the target date for completion of the investigation were extended.

On September 15, 2004, the presiding administrative law judge issued an ID (Order No. 4) granting TAL's motion to amend the complaint. He found that an extension of the target date is not warranted at this time. No petitions for review of the ID were filed.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and § 210.42(h) of the Commission Rules of Practice and Procedure, 19 CFR 210.42(h).

By order of the Commission.

Issued: October 4, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22693 Filed 10–7–04; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1070 (Final)]

Certain Tissue Paper Products and Crepe Paper Products From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of the final phase of an antidumping investigation.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation No. 731–TA–1070 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether industries in the United States are materially injured or threatened with material injury, or the establishment of industries in the United States are materially retarded, by reason of less-than-fair-value imports from China of certain tissue paper products and certain crepe paper products, provided for in subheadings 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; and 9505.90.40 (tissue paper products) and subheadings 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.39; 4806.40; 4808.30; 4808.90; 4811.90; 4818.90; 4823.90; and 9505.90.40 (crepe paper products) of the Harmonized Tariff Schedule of the United States.[1]

[1] For purposes of this investigation, the Department of Commerce has defined the subject merchandise, tissue paper products and crepe paper products, as follows: ''The *tissue paper products* subject to investigation are cut-to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this investigation may or may not be bleached, dye-colored, surface-colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this investigation is in the form of cut-to-length sheets of tissue paper with a width equal to or greater than one-half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this investigation may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles. Excluded from the scope of this investigation are the following tissue paper products: (1) Tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die-cut to the shape of a toilet seat, *i.e.,* disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers.''

''*Crepe paper products* subject to investigation have a basis weight not exceeding 29 grams per square meter prior to being creped and, if appropriate, flame-proofed. Crepe paper has a finely wrinkled surface texture and typically but not exclusively is treated to be flame-retardant. Crepe paper is typically but not exclusively produced as streamers in roll form and packaged in plastic bags. Crepe paper may or may not be bleached, dye-colored, surface-colored, surface decorated or printed, glazed, sequined, embossed, die-cut, and/or flame-retardant. Subject crepe paper may be rolled, flat or folded, and may be packaged by banding or wrapping with paper, by placing in plastic bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of crepe paper subject to this investigation may consist solely of crepe paper of one color and/or style, or may contain multiple colors and/or styles.''

For further information concerning the conduct of this phase of the investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: September 21, 2004.

FOR FURTHER INFORMATION CONTACT: Fred Forstall ((202) 205–3443), Office of Industries, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. The final phase of this investigation is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that imports of certain tissue paper products and certain crepe paper products from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on February 17, 2004, by Seaman Paper Company of Massachusetts, Inc.; American Crepe Corp.; Eagle Tissue LLC; Flower City Tissue Mills Co.; Garlock Printing & Converting, Inc.; Paper Service Ltd.; Putney Paper Co., Ltd.; and the Paper, Allied-Industrial, Chemical and Energy Workers International Union AFL–CIO, CLC.

Participation in the investigation and public service list. Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigation need not file an additional notice of appearance during this final phase. The Secretary will maintain a

public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigation. A party granted access to BPI in the preliminary phase of the investigation need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report. The prehearing staff report in the final phase of this investigation will be placed in the nonpublic record on November 24, 2004, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing. The Commission will hold a hearing in connection with the final phase of this investigation beginning at 9:30 a.m. on December 9, 2004, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before December 2, 2004. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on December 6, 2004, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions. Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commission's rules; the deadline for filing is December 2, 2004. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadlines for filing posthearing briefs are December 16, 2004 (for certain crepe paper products), and January 5, 2005 (for certain tissue paper products); witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation, including statements of support or opposition to the petition, on or before December 16, 2004 (for certain crepe paper products), or January 5, 2005 (for certain tissue paper products). On January 3, 2005 (for certain crepe paper products), and March 1, 2005 (for certain tissue paper products), the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before January 5, 2005 (for certain crepe paper products), and March 3, 2005 (for certain tissue paper products), but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: October 4, 2004.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. 04–22694 Filed 10–7–04; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA-W–55,582]

American Falcon Corporation, Auburn, ME; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 10, 2004 in response to a petition filed by a company official on behalf of workers at American Falcon Corporation, Auburn, ME.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC this 23rd day of September, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2543 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,585]

Blue Ridge Paper Products, Morristown, NJ; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 10, 2004 in response to a petition filed by a state agency representative on behalf of workers at Blue Ridge Paper Products, Morristown, New Jersey.

All workers were separated from the subject facility more than one year before the date of the petition. Section 223 (b) of the Act specifies that no certification may apply to any worker whose last separation occurred more than one year before the date of the petition. Consequently, further

investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 20th day of September 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2546 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55, 634]

Carrier Corporation Morrison, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on September 20, 2004 in response to a worker petition filed by Sheet Metal Workers Local 483 on behalf of workers at Carrier Corporation, Morrison, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 23rd day of September, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2542 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,082]

Chieftain Products, Inc., Owosso, MI; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 22, 2004, applicable to workers of Chieftain Products, Inc., Owosso, Michigan. The notice was published in the **Federal Register** on August 10, 2004 (69 FR 48530).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of (cutting and sewing) automotive interior trim.

Information shows that the Michigan Department of Labor requested Alternative Trade Adjustment Assistance (ATAA) on behalf of the workers of the subject firm but that request was not addressed in the decision document.

Information obtained from the company states that a significant number of workers of the subject firm are age 50 or over, workers have skills that are not easily transferable, and conditions in the industry are adverse. Review of this information shows that all eligibility criteria under Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended have been met. Accordingly, the Department is amending the certification to reflect its finding.

The amended notice applicable to TA–W–55,082 is hereby issued as follows:

''All workers of Chieftain Products, Inc., Owosso, Michigan (TA–W–55,082), who became totally or partially separated from employment on or after June 14, 2003, through July 22, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for Alternative Trade Adjustment Assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 21st day of September, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2550 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, as amended, (19 U.S.C. 2273), the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the periods of August and September 2004.

In order for an affirmative determination to be made and a certification of eligibility to apply for directly-impacted (primary) worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance as an adversely affected secondary group to be issued, each of the group eligibility requirements of section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a

certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

Negative Determinations for Worker Adjustment Assistance

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B) (No shift in production to a foreign country) have not been met.

TA–W–55,514; Elliott Power Systems, Inc., a subsidiary of Elliot Company, Lexington, TN

TA–W–55,487; Custom Sewing Company, Inc., Lawrenceburg, TN

TA–W–55,412; Gordon Aluminum Industries, Inc., Schofield Div., Schofield, WI

TA–W–55,390; ICG/Holliston, Church Hill, TN

TA–W–55,506; Groupe Lacasse LLC, a subsidiary of Haworth, Inc., Henderson Plant, including leased workers of Manpower Temporary Services, Henderson, TX

TA–W–55,537; Great Lakes Casting Corp., a subsidiary of Brittany Corp., Ludington, MI

TA–W–55,450; Jeld-Wen Millwork Manufacturing, Door Components Div., a subsidiary of Jeldwen, Inc., including on-site leased workers from Northwest Staffing, Everett, WA

TA–W–55,428; Alandale Industries, Troy, North Carolina

TA–W–55,147K &L; BASF Corp., TDI, Geismar, LA and Carboxy, Geismar, LA

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–55,439; Sun Microsystems, Inc., Scalable Systems Products (SSG), Design Tools, Performance and Quality Assurance Group (DTPQAG), (formerly known as Sun Microsystems, Inc., Enterprise Systems Product, Quality Assurance), San Diego, CA

TA–W–55,470; Thomas & Betts, Formerly L.E. Mason, Dedham, MA

TA–W–55,531; Electronic Data Systems, Hargrove Road Facility, Raleigh, NC

TA–W–55,530; AT&T Corp., Information Services, Augusta, GA

TA–W–55,527; Thomson/Biosis, a subsidiary of Thomson Scientific, Inc., Philadelphia, PA

TA–W–55,568; Arch Wireless, Charlotte, NC

TA–W–54,541; Glencore Ltd, Stamford, CT

TA–W–55,453; Prudential Financial, Inc., Individual Life-Customer Service Div., Dresher, PA

TA–W–55,413; International Bearings, LLC, Clinton, TN

TA–W–55,436; Element K Online LLC, a division of Element K LLC, Rochester, NY

TA–W–55,386; MCI, Inc., Telemarketing Center, Albuquerque, NM

TA–W–55,492; Marte-Hanks Market Intelligence, a division of Harte-Hanks Direct Marketing, Sterling Heights, MI

TA–W–55,494; The Raylon Corp., New York, NY

The investigation revealed that criterion (a)(2)(A)(I.A) and (a)(2)(B)(II.A) (no employment decline) has not been met.

TA–W–55,449; Ancor Information Management, Woodslee Partners, LLC, Troy, MI

TA–W–55,361; The Boeing Company, Long Beach Division, Long Beach, CA.

TA–W–55,503; Gear Research, Grand Rapids, MI.

TA–W–55,318; Allegheny Ludlum, Research/Technical Center, Natrona Heights, PA.

TA–W–55,147F; BASF Corp., Acetylene, Geismar, LA.

The investigation revealed that criterion (a)(2)(A)(I.B) (Sales or production, or both, did not decline) and (a) (2)(B)(II.B) (has shifted production to a county not under the free trade agreement with U.S.) have not been met.

TA–W–55,443; Vitec CC, Inc., d/b/a Clear-Com, Inc., a subsidiary of The Vitec Group, PLC, Emeryville, CA.

TA–W–55,416; Cerro Flow Products, Inc., Sauget, IL.

TA–W–55,147G; BASF Corp., MDI, Geismar, LA, H; Aniline, Geismar, LA, I; Polyol/CCU, Geismar, LA, J; Amines, Geismar, LA.

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

TA–W–55,415; Brook Industries, Inc., Fond du Lac, WI.

The investigation revealed that criteria (a)(2)(A) (I.B) The sales or production, or both, of such firm or subdivision have decreased absolutely and (I.C) (increased imports) have not been met.

TA–W–55,521; Micro Craft, Inc., A Niles Company, Novi, MI.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of (a)(2)(A) (increased imports) of Section 222 have been met.

TA–W–55,344; R&W Fashion, Inc., San Francisco, CA: July 22, 2003.

TA–W–55,438; Culp, Inc., Rossville/Chromatex Div., W. Hazleton, PA: August 12, 2003.

TA–W–55,481; Durite Manufacturing, Inc., Green Bay, WI: August 17, 2003.

TA–W–55,545; Hooker Furniture Corp., Maiden, NC: August 26, 2003.

TA–W–55,368; Bomax, Inc., Watertown, NY: July 28, 2003.

TA–W–55,491; Tubbs Snowshoes, a subsidiary of K2 Snowshoes LLC, Stowe, VT: August 10, 2003.

TA–W–55,469; Stork Prints America, Inc., Charlotte, NC: August 13, 2003.

TA–W–55,446; Shakespeare, division of K2, Inc., Newberry, SC: August 10, 2003.

TA–W–55,405; Specialty Shearing and Dyeing, Inc., Greenville, SC: August 2, 2003.

TA–W–55,401; Mount Vernon Mills, Inc., Cleveland Div., Cleveland, GA: August 5, 2003.

TA–W–55,367; Lexcraft, Inc., Fall River, MA: July 27, 2003.

TA–W–55,367; Lexcraft, Inc., Fall River, MA: July 27, 2003.

TA–W–55,345; Fenton Art Glass Co., Inc., Williamstown, WV: July 29, 2003.

TA–W–55,457; World Kitchen, Inc., Massillon, OH: August 12, 2003.

TA–W–55,425; Lesportsac, Inc., Hot Springs, NC: August 10, 2003.

TA–W–55,410; J. Royale Furniture, Inc., Conover, NC: August 4, 2003.

TA–W–55,396; Baker Furniture, Holland, MI: July 27, 2003.

TA–W–55,389; Gerber Coburn, including leased workers of Quality Staffing,

Robert Half Technology and Kelly Services, Muskogee, OK: August 4, 2003.

TA–W–55,328; Pacific Prime Wood Products, Inc., Redmond, OR: July 26, 2003.

TA–W–55,488; SASI Corp., d/b/a Bridal Originals, Collinsville, IL: August 19, 2003.

TA–W–55,430; Associated Hygienic Products, Inc., a subsidiary of Disposable Soft Goods International, Oconto Falls, WI: July 19, 2003.

TA–W–55,497; Imlay City Plastics, Imlay City, MI: August 20, 2003.

TA–W–55,504; PPC Insulators, Knoxville, TN: August 20, 2003.

TA–W–55,369; California Concepts, Gardena, CA: July 27, 2003.

TA–W–55,373; Broyhill Furniture Industries, Inc., Rutherford Upholstery Plant #68, a wholly owned subsidiary of Furniture Brands International, Inc., Rutherfordton, NC, A; Lenoir, NC and B; Lenoir Chair #3, Lenoir, NC: July 15, 2003.

TA–W–55,395 & A; Dana Undies, Blakely, GA and Arlington, GA: August 5, 2003.

TA–W–55,395B; Dana Undies, Colquitt, GA—An investigation initiated in response to a worker petition was terminated due to all workers were separated from the subject firm more than one year before the date of the petition.

TA–W–55,147; BAST Corp., Surfactants, Geismar, LA, A; EO/EG, Geismar, LA, B; Analytical Services Dept, Geismar, LA, C; ISO Shipping, Geismar, LA, D; Diols, Geismar, LA, E;THF/PTHF/SMOIPA, Geismar, LA: June 18, 2003.

The following certifications have been issued. The requirements of (a) (2) (B) (shift in production) of Section 222 have been met.

TA–W–55,392; Upright International Manufacturing Limited, WRC Property Company, a subsidiary of WRC Holdings, Inc., Madera, CA: July 23, 2003.

TA–W–55,498; American Xtal Technology, Inc. (AXT, Inc.), Freemont, CA: September 17, 2004.

TA–W–55,462; International Textile Group, Burlington Apparel Fabric, including leased workers of Staffing Alliance, Raeford, NC: August 16, 2003.

TA–W–55,409; Elder Manufacturing Co., Inc., Dexter, MO: August 6, 2003.

TA–W–55,370; Permacel, North Brunswick, NJ: July 23, 2003.

TA–W–55,400 & A Rohr Lingerie, Inc., Pennsylvania, Old Forge, PA and Honesdale, PA: August 1, 2003.

TA–W–55,426; New World Pasta Company, Omaha, NE: August 10, 2003.

TA–W–55,352; BIC Corp., BIC Consumer Products Manufacturing Co., Inc., Milford, CT: August 2, 2003.

TA–W–55,437; AMOT Controls Corp., a div. of Roper Industries, Richmond, CA: August 1, 2003.

TA–W–55,429; Medline Industries, Medcrest Div., Monroeville, AL: August 10, 2003.

TA–W–55,393; Kaz, Inc., Home Environment Products, including on-site leased workers from Manpower, Newbern, TN: August 4, 2003.

TA–W–55,557; TSI of Florida/Cable SPEC LLC, Emerson Network Power, including on-site leased workers from Pro-Staff, Grand Prairie, TX: August 31, 2003.

TA–W–55,476; Toro Irrigation and Consumer Products, El Paso, TX: August 17, 2003.

TA–W–55,440; Elo Touchsystems, a subsidiary of Tyco Electronics, including on-site leased workers from Manpower, Benchmark and Barrett, Fremont, CA: July 22, 2003.

TA–W–55,459; Plastic Engineer Components, Inc., DBA Titan Plastics Group, Inc., El Paso, TX: August 12, 2003.

TA–W–55,517; U.S. Fuji Electric, Inc., Ashland, VA: August 24, 2003.

TA–W–55,357; Sanmina-SCI Corp., Printed Circuit Board Division, Wilmington, MA: June 30, 2003.

The following certifications have been issued. The requirement of upstream supplier to a trade certified primary firm has been met.

TA–W–55,365; National Textiles, LLC, Forest City, NC: July 27, 2003.

TA–W–55,515; Burkart Carolina, LLC, Henderson, NC August 25, 2003.

Negative Determinations for Alternative Trade Adjustment Assistance

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of section 246(a)(3)(A)(ii) of the Trade Act must be met.

In the following cases, it has been determined that the requirements of Section 246(a)3)ii) have not been met for the reasons specified.

The Department as determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

TA–W–55,430; Associated Hygienic Products, Inc., a subsidiary of Disposable Soft Goods International, Oconto Falls, WI.

TA–W–55,497; Imlay City Plastics, Imlay City, MI TA-W–55,504; PPC Insulators, Knoxville, TN: August 20, 2003.

TA–W–55,369; California Concepts, Gardena, CA.

TA–W–55,557; TSI of Florida/Cable SPEC LLC, Emerson Network Power, including on-site leased workers from Pro-Staff, Grand Prairie, TX.

TA–W–55,476; Toro Irrigation and Consumer Products, El Paso, TX.

TA–W–55,440; Elo Touchsystems, a subsidiary of Tyco Electronics, including on-site leased workers from Manpower, Benchmark and Barrett, Fremont, CA.

TA–W–55,459; Plastic Engineer Components, Inc., DBA Titan Plastics Group, Inc., El Paso, TX.

TA–W–55,517; U.S. Fuji Electric, Inc., Ashland, VA.

TA–W–55,357; Sanmina-SCI Corp., Printed Circuit Board Div., Wilmington, MA.

Since the workers are denied eligibility to apply for TAA, the workers cannot be certified eligible for ATAA.

TA–W–55,487; Custom Sewing Co., Inc., Lawrenceburg, TN.

TA–W–55,412; Gordon Aluminum Industries, Inc, Schofield Div., Schofield, WI.

TA–W–55,390; ICG/Holliston, Church Hill, TN.

TA–W–55,506; Groupe Lacasse LLC, a subsidiary of Haworth, Inc., Henderson Plant, including leased workers of Manpower Temporary Services, Henderson, TX.

TA–W–55,537; Great Lakes Casting Corp., a subsidiary of Brittany Corp., Ludington, MI.

TA–W–55,450; Jeld-Wen Millwork Manufacturing, Door Components Div., a subsidiary of Jeldwen, Inc., including on-site leased workers from Northwest Staffing, Everett, WA.

TA–W–55,428; Alandale Industries, Troy, NC.

TA–W–55,439; Sun Microsystems, Inc., Scalable Systems Products (SSG), Design Tools, Performance and Quality Assurance Group (DTPQAG), (Formerly known as Sun Microsystems, Inc., Enterprise Systems Products, Quality Assurance), San Diego, CA.

TA–W–55,470; Thomas & Betts, Formerly L.E. Mason, Bedham, MA.

TA–W–55,531; Electronic Data Systems, Hargrove Road Facility, Raleigh, NC.

TA–W–55,530; AT &T Corp., Information Services, Augusta, GA.

TA–W–55,527; Thomson/Biosis, a subsidiary of Thomson Scientific, Inc., Philadelphia, PA.
TA–W–55,568; Arch Wireless, Charlotte, NC.
TA–W–55,541; Glencore Ltd, Stamford, CT.
TA–W–55,453; Prudential Financial, Inc., Individual Life-Customer Service Div., Dresher, PA.
TA–W–55,413; International Bearings, LLC, Clinton, TN.
TA–W–55,503; Gear Research, Grand Rapids, MI.
TA–W–55,318; Allegheny Ludlum, Research/Technical Center, Natrona Heights, PA.
TA–W–55,443; Vitec CC, Inc., d/b/a Clear-Com, Inc., a subsidiary of The Vitec Group, PLC, Emeryville, CA.
TA–W–55,416; Cerro Flow Products, Inc., Sauget, IL.
TA–W–55,415; Brooke Industries, Inc., Fond du Lac, WI.
TA–W–55,521; Micro Craft, Inc., A Niles Company, Novi, MI.
TA–W–55,147F; BASF Corp., Acetylene, Geismar, LA, G; MDI, Geismar, LA, H; Aniline, Geismar, LA, I; Polyol/CCU, Geismar, LA, J; Amines, Geismar, LA, K; TDI, Geismar, LA, L; Carboxy, Geismar, LA.

Affirmative Determinations for Alternative Trade Ajdustment Assistance

In order for the Division of Trade Adjustment Assistance to issued a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determinations.

In the following cases, it has been determined that the requirements of Section 246(a)(3)(ii) have been met.

I. Whether a significant number of workers in the workers' firm are 50 years of age or older.

II. Whether the workers in the workers' firm possess skills that are not easily transferable.

III. The competitive conditions within the workers' industry (*i.e.*, conditions within the industry are adverse).

TA–W–55,498; American Xtal Technology, Inc, (AXT, Inc), Freemont, CA: September 17, 2004.
TA–W–55,462; International Textile Group, Burlington Apparel Fabric, including leased workers of Staffing Alliance, Raeford, NC: August 16, 2003.
TA–W–55,409; Elder Manufacturing Company, Inc., Dexter, MO: August 6, 2003.
TA–W–55,370; Permacel, North Brunswick, NJ: July 23, 2003.
TA–W–55,400 & A; Rohr Lingerie, Inc. of Pennsylvania, Old Forge, PA and Honesdale, PA: August 1, 2003.
TA–W–55,426; New World Pasta Company, Omaha, NE: August 10, 2003.
TA–W–55,352; BIC Corp., BIC Consumer Products Manufacturing Co., Inc., Milford, CT: August 2, 2003.
TA–W–55,437; AMOT Controls Corp., division of Roper Industries, Richmond, CA: August 1, 2003.
TA–W–55,429; Medline Industries, Medcrest Division, Monroeville, AL: August 10, 2003.
TA–W–55,515; Burkart Carolina, LLC, Henderson, NC: August 25, 2003.
TA–W–55,481; Durite Manufacturing, Inc., Green Bay, WI: August 17, 2003.
TA–W–55,545; Hooker Furniture Corp., Maiden, NC: August 26, 2003.
TA–W–55,368; Bomax, Inc., Watertown, NY: July 28, 2003,
TA–W–55,491; Tubbs Snowshoes, a subsidiary of K2 Snowshoes LLC, Stowe, VT: August 10,2003.
TA–W–55,469; Stork Prints America, Inc., Charlotte, NC: August 13, 2003.
TA–W–55,446; Shakespeare, division of K2, Inc., Newberry, SC: August 10, 2003.
TA–W–55,405; Specialty Shearing and Dyeing, Inc., Greenville, SC: August 2, 2003.
TA–W–55,373; Broyhill Furniture Industries, Rutherford Upholstery Plant #68, a wholly owned subsidiary of Furniture Brands International, Inc., Rutherfordton, NC: July 15, 2003.
TA–W–55,401; Mount Vernon Mills, Inc., Cleveland Division, Cleveland, GA: August 5, 2003.
TA–W–55,367; Lexcraft, Inc., Fall River, MA: July 27, 2003.
TA–W–55,345; Fenton Art Glass Co., Inc., Williamstown, WV: July 29, 2003.
TA–W–55,457; World Kitchen, Inc., Massillon, OH: August 12, 2003.
TA–W–55,425; Lesportsac, Inc., Hot Springs, NC: August 10, 2003.
TA–W–55,410; J. Royale Furniture, Inc., Conover, NC: August 4, 2003.
TA–W–55,396; Baker Furniture, Holland, MI: July 27, 2003.
TA–W–55,389; Gerber Coburn, including leased workers of Quality Staffing, Robert Half Technology and Kelly Services, Muskogee, OK: August 4, 2003.
TA–W–55,328; Pacific Prime Wood Products, Inc., Redmond, OR: July 26, 2003.
TA–W–55,393; Kaz, Inc., Home Environment Products, including on-site leased workers from Manpower, Newbern, TN: August 4, 2003.
TA–W–55,488; SASI Corp., d/b/a Bridal Originals, Collinsville, IL: August 19, 2003.
TA–W–55,395 & A; Dana Undies, Blakely GA and Arlington, GA: August 5, 2003.
TA–W–55,147; BASF Corp., Surfactants, Geismer, LA, A; EO/EG, Geismar, LA, B; Analytical Service Dept., Geismar, LA, C; ISO Shipping, Geismar, LA, D; Diols, Geismar, LA, E;THF/PTHF/SMOIPA, Geismar, LA: June 18, 2003.

I hereby certify that the aforementioned determinations were issued during the months of September 2004. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: September 28, 2004.

Timothy Sullivan,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E4–2551 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply For Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2004.

Interested persons are invited to submit written comments regarding the subject matter or the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than October 18, 2004.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

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

Timothy Sullivan

Director, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted Between 09/13/2004 and 09/24/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,589	Island Aquaculture (Comp)	Machiasport, ME	09/13/2004	09/08/2004
55,590	New DHC (Comp)	Machiasport, ME	09/13/2004	09/08/2004
55,591	Oquossoc Hatchery (Comp)	Machiasport, ME	09/13/2004	09/08/2004
55,592	Advantek, Inc. (MN)	Minnetonka, MN	09/13/2004	09/13/2004
55,593	Kongsberg Automotive, Inc. (Comp)	Farmington Hill, MI	09/13/2004	09/13/2004
55,594	Bosch-Rexroth Corp. (Wkrs)	Wooster, OH	09/13/2004	09/03/2004
55,595	Towne Square 2000, Inc. (Comp)	Hillsboro, TX	09/13/2004	09/07/2004
55,596	Interdynamics, Inc. (Comp)	Brooklyn, NY	09/13/2004	08/19/2004
55,597A	VF Jeanswear Limited Partnership (Comp)	Fabens, TX	09/13/2004	09/10/2004
55,597B	VF Jeanswear Limited Partnership (Comp)	El Paso, TX	09/13/2004	09/10/2004
55,597C	VF Jeanswear Limited Partnership (Comp)	El Paso, TX	09/13/2004	09/10/2004
55,597	VF Jeanswear Limited Partnership (Comp)	El Paso, TX	09/13/2004	09/10/2004
55,598	Stillman Seals (Comp)	Carlsbad, CA	09/13/2004	08/31/2004
55,599	Olympia Limited, Inc. (Comp)	Hoboken, NJ	09/13/2004	09/03/2004
55,600	Xerox Corp. (Wkrs)	El Segunda, CA	09/13/2004	08/20/2004
55,601	California Cedar Products Co. (Comp)	Stockton, CA	09/13/2004	08/31/2004
55,602	Flexfab, LLC (Comp)	Albion, IN	09/14/2004	09/13/2004
55,603	United States Can (Wkrs)	New Castle, PA	09/14/2004	09/13/2004
55,604	Leybold Vacuum USA (Wkrs)	Morgan Hill, CA	09/14/2004	08/18/2004
55,605	Metromont Materials (Wkrs)	Morganton, NC	09/14/2004	08/27/2004
55,606	Siskiyou Gifts (Comp)	Medford, OR	09/14/2004	09/03/2004
55,607	Creo Americas, Inc. (Comp)	Billerica, MA	09/15/2004	09/07/2004
55,608	Loring Coat, Inc. (Wkrs)	Newburgh, NY	09/15/2004	08/25/2004
55,609	Chicago Miniature Opto Electronic Tech. (NJ)	Newton, NJ	09/15/2004	09/14/2004
55,610	Broyhill Harper Furniture (Wkrs)	Lenoir, NC	09/15/2004	09/14/2004
55,611	KM Company (Wkrs)	San Francisco, CA	09/15/2004	09/01/2004
55,612	Tally Genicom, LP (Comp)	Waynesboro, VA	09/15/2004	09/13/2004
55,613	Kerry, Inc. (Wkrs)	Clinton Twp., MI	09/16/2004	09/10/2004
55,614	Technical Fabricators, Inc. (Comp)	Spartanburg, SC	09/16/2004	09/09/2004
55,615	Innovative Leather Tech., LLC (Wkrs)	Livonia, MI	09/16/2004	09/13/2004
55,616	Northwest Company (The) (Comp)	Ronda, NC	09/16/2004	08/17/2004
55,617	Levi Strauss and Co. (Comp)	San Francisco, CA	09/16/2004	09/14/2004
55,618	Skip's Cutting, Inc. (Comp)	New Holland, PA	09/16/2004	09/14/2004
55,619	Carolina Candle Lites, Inc. (Comp)	Thurmond, NC	09/16/2004	09/07/2004
55,620	Holt Sublimation Printing and Products (Wkrs)	Burlington, NC	09/16/2004	09/09/2004
55,621	Southern Mills, Inc. (Comp)	Newnan, GA	09/16/2004	08/30/2004
55,622	Kamco Plastics, Inc. (Comp)	Galesburg, IL	09/16/2004	08/30/2003
55,623	Superior Printing (GCIU)	Warren, OH	09/16/2004	09/14/2004
55,624	Irwin Manufacturing Corp. (Comp)	Ocilla, GA	09/20/2004	09/10/2004
55,625	Gateway Country, Stores, LLC (Wkrs)	Whitehall, PA	09/20/2004	09/07/2004
55,626	CPS Color (Wkrs)	Philadelphia, PA	09/20/2004	09/03/2004
55,627	Allied Healthcare Products (UFCW)	Stuyvesant Fall, NY	09/20/2004	09/07/2004
55,628	Anaheim Manufacturing Co., (Comp)	Anaheim, CA	09/20/2004	08/23/2004
55,629	Alcoa—Badin Works (Comp)	Badin, NC	09/20/2004	09/14/2004
55,630	Microx/Bz Boyz (CA)	Signal Hill, CA	09/20/2004	09/07/2004
55,631	Custom Finishers, Inc. (Comp)	High Point, NC	09/20/2004	09/16/2004
55,632	Turck, Inc. (MN)	Plymouth, MN	09/20/2004	09/14/2004
55,633	Beverly Creations (NJ)	Passaic, NJ	09/20/2004	09/15/2004
55,634	Carrier Corp. (IBB)	Morrison, TN	09/20/2004	09/15/2004
55,635	S.R.C. Devices, Inc. (MO)	Earth City, MO	09/21/2004	09/14/2004
55,636	Fleetguard, Inc. (UAW)	Cookeville, TN	09/21/2004	09/15/2004
55,637	Eldred Wheeler (Comp)	West Bethel, ME	09/21/2004	09/13/2004
55,638	DB Textiles (Comp)	Madison, NC	09/21/2004	09/15/2004
55,639	Maxine Swim Group, Inc. (CA)	Vernon, CA	09/21/2004	09/15/2004
55,640	Owens Corning, OE, (Soltech) (Wkrs)	W. Hazleton, PA	09/21/2004	09/16/2004
55,641	Reeves Rubber (Comp)	Albertville, AL	09/21/2004	09/02/2004
55,642	Hamby Textile Research (Comp)	Garner, NC	09/21/2004	09/14/2004
55,643	A.O. Smith Electrical Products Co. (Comp)	Owosso, MI	09/21/2004	09/13/2004

APPENDIX—Continued

[Petitions Instituted Between 09/13/2004 and 09/24/2004]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
55,644	Modine Mfg. (Comp)	Emporia, KS	09/21/2004	09/16/2004
55,645	Montrose/CDT (Comp)	Auburn, MA	09/21/2004	09/15/2004
55,646	Dallco Industries (Wkrs)	Everett, PA	09/21/2004	09/17/2004
55,647	Freudenberg Nonwovens (Comp)	Madison, TN	09/21/2004	09/08/2004
55,648	Kimberly-Clark Corp. (State)	New Milford, CT	09/22/2004	09/21/2004
55,649	Remington Industries (Wkrs)	Benton, TN	09/22/2004	09/10/2004
55,650	Nokia Mobile Phone, Inc. (Wkrs)	Ft. Worth, TX	09/22/2004	09/11/2004
55,651	Cooper Tools (UAW)	Dayton, OH	09/22/2004	09/13/2004
55,652	Eljer Plumbingware, Inc. (Comp)	Ford City, PA	09/22/2004	09/15/2004
55,653	Providian Financial Corp. (Wkrs)	Arlington, TX	09/22/2004	08/27/2004
55,654	Elca Fashion, Inc. (State)	El Monte, CA	09/22/2004	09/20/2004
55,655	Leggett and Platt Inc., Schukra N.A. (State)	Plymouth, MI	09/23/2004	08/24/2004
55,656	Bombardier Transportation (Comp)	Pittsburgh, PA	09/23/2004	09/08/2004
55,657	Crescent Enterprises, Inc. (Comp)	Gallatin, TN	09/23/2004	09/16/2004
55,658	General Dynamics Land Systems, (GDLS) (Wkrs)	Goleta, CA	09/23/2004	09/10/2004
55,659	GL and V USA, Inc. (Comp)	Watertown, NY	09/23/2004	09/13/2004
55,660	Toledo Commutator (Wkrs)	Owosso, MI	09/23/2004	09/13/2004
55,661	Tyco Electronics (State)	Somerville, NJ	09/23/2004	09/15/2004
55,662	JDS Uniphase (State)	Ewing, NJ	09/23/2004	09/21/2004
55,663	Hewlett Packard (State)	Garden City, ID	09/23/2004	09/22/2004
55,664	Weavexx Corp. (Wkrs)	Greenville, TN	09/23/2004	09/15/2004
55,665	Waltonen Engineering (Wkrs)	Warren, MI	09/23/2004	09/20/2004
55,666	Smurfit-Stone (Comp)	E. Longmeadow, MA	09/23/2004	09/13/2004
55,667	Dynamic Maching and Plastics (Comp)	Henry, TN	09/23/2004	08/30/2004
55,668	Wentworth Mold, Inc. (Comp)	Grain Valley, MO	09/23/2004	09/20/2004
55,669	Client Logic (Wkrs)	Asheville, NC	09/23/2004	09/17/2004
55,670	Hartford Technologies Comp. (State)	Rocky Hill, CT	09/23/2004	09/22/2004
55,671	Henredon Furniture Ind., Inc. (Comp)	Spruce Pine, NC	09/23/2004	09/22/2004
55,672	American Umbrella (UNITE)	Ridgewood, NY	09/23/2004	08/27/2004
55,673	Magi, Inc (State)	Okanogan, WA	09/23/2004	09/21/2004
55,674	Winchester Electronics (State)	Wallingford, CT	09/23/2004	09/22/2004
55,675	Stimson Lumber Co. (Comp)	Forest Grove, OR	09/23/2004	09/21/2004
55,676	Longaberger Co. (The) (Wkrs)	Hartville, OH	09/23/2004	09/22/2004
55,677	Columbia Products, Inc. (Comp)	Dallastown, PA	09/23/2004	09/17/2004
55,678	Celestica (Comp)	Milwaukie, OR	09/24/2004	09/22/2004
55,679	Thor-Tex, Inc. (Comp)	Albemarle, NC	09/24/2004	09/23/2004
55,680	Seneca Foods, Corp. (Comp)	Dayton, WA	09/24/2004	09/15/2004
55,681	Jennifer Kay, Inc./California Waves (State)	Los Angeles, CA	09/24/2004	09/20/2004
55,682	Mercury Marine (Wkrs)	Fond du Lac, WI	09/24/2004	09/23/2004
55,683	Parker Hannifin Corp. (Comp)	Spartanburg, SC	09/24/2004	09/14/2004
55,684	Madison Square Furniture, Inc. (Comp)	Hanover, PA	09/24/2004	09/23/2004
55,685	Sodetal USA, Inc. (Wkrs)	Fountain Inn, SC	09/24/2004	09/14/2004

[FR Doc. 04–22680 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,175]

Levi Strauss and Company, Knoxville Area Office, Knoxville, TN; Notice of Negative Determination Regarding Application for Reconsideration

By application dated August 27, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The denial notice applicable to workers of Levi Strauss and Company, Knoxville Area Office, Knoxville, Tennessee was signed on July 27, 2004, and published in the **Federal Register** on August 10, 2004 (69 FR 48530).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA/ATAA petition was denied because the petitioning workers did not produce an article within the meaning of Section 222 of the Act. The Department determined that the subject worker group process sales orders.

In the request for reconsideration, the petitioners contend that the Department erred in its interpretation of the work performed at the subject facility. The petitioners state that the subject worker group does not process sales orders, but instead work in the subject company's Product Integrity Raw Material Quality Division and the Technical Services portion of the Customer Fulfillment Division.

The petitioners also describe several functions performed by the subject worker group: processing and resolving

all production fabric rejections; processing color standards; ensuring that the various color expectations of customers are met; establishing perimeters for all fabrics and finished garments produced in the United States, Latin America and Asia; developing pressing specifications and procedures; executing seasonal training; testing new fabrics and products; and ensuring fabric quality.

The petitioners contend that the subject worker group does in fact support a qualifying production facility, specifically Levi Strauss and Company, Powell, Tennessee, and their separations were the result of that closure. A certification regarding eligibility to apply worker adjustment assistance, applicable to workers of the Powell, Tennessee location of Levi Strauss and Company was issued on July 10, 2002 and expired on July 10, 2004, petition number TA–W–41,377B.

While the Department may have erred in identifying the subject worker group, the petitioning worker group does not meet the criteria set forth in the Trade Act because the workers do not produce an article and did not support a domestic production facility during the relevant time period.

Non-production workers may be certified if the work they perform support a firm or an appropriate subdivision of a firm that produced an article domestically during the twelve-month period preceding the date of the petition. In the case at hand, the petition date is April 15, 2004. Therefore, because no production occurred at Levi Strauss and Company, Powell, Tennessee, between April 15, 2003 and April 15, 2004, the workers of Levi Strauss and Company, Knoxville Area Office, Knoxville, Tennessee did not support a qualifying production facility.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 17th day of September, 2004.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2547 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment And Training Administration

[TA–W–55,573]

Libbey Glass, Inc., Walnut, CA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on July 22, 2004 in response to a worker petition which was filed by the United Steelworkers of America on behalf of workers at Libbey Glass, Inc., Walnut, California.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

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

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2545 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,454 and TA–W–55,454A]

Pennsylvania House, White Deer Facility, White Deer, PA; and Pennsylvania House, Milton Warehouse, Milton, PA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on August 16, 2004 in response to a petition filed by a representative of the United Steel Workers of America Local 1928–193U on behalf of workers at Pennsylvania House, White Deer Facility, White Deer, Pennsylvania (TA–W–55,454) and Pennsylvania House, Milton Warehouse, Milton, Pennsylvania (TA–W–55,454A).

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 21st day of September, 2004.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2544 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–54,128]

Precision Disc Corporation, Knoxville, TN; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated September 10, 2004, a union representative of the Tennessee AFL–CIO, Technical Assistance requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA). The negative determination was signed on August 12, 2004 and published in the **Federal Register** on August 20, 2004 (69 FR 51713).

The workers of Precision Disc Corporation, Knoxville, Tennessee were certified eligible to apply for Trade Adjustment Assistance (TAA) on August 12, 2004.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

The petitioner alleges in the request for reconsideration that the skills of the workers at the subject firm are not easily transferable.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

''All workers of Precision Disc Corporation, Knoxville, Tennessee, who became totally or partially separated from employment on or after January 27, 2003 through August 12, 2006, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

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

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2549 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–55,340]

Ripplewood Phosporous U.S., LLC, Formerly Akzo Nobel Functional Chemical LLC, Gallipolis Ferry, WV; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 2, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA). The negative determination applicable to workers of Ripplewood Phosphorous U.S., LLC, Formerly Akzo Nobel Functional Chemical LLC, Gallipolis Ferry, West Virginia was issued on August 6, 2004. The Notice of determination was published in the **Federal Register** on August 20, 2004 (69 FR 51715).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The subject company produces flame-retardant chemicals, including Fyrol PCF, Fyrol FR–2, Fyroflex RDP, Fyroflex BDP, Phosphorus Trichloride, Phosphorous Oxychloride, Phosflex 4, Phosflex TBEP and Fyrol CEF. The workers are not separately identifiable by product line.

The TAA/ATAA petition was denied because during the relevant time period, subject company sales and production increased and the subject company did not shift production abroad.

In the request for reconsideration, the petitioner agrees that subject company sales and production increased during the relevant time period but contends that the increased sales were due to increased imports and infers that the increased imports were the cause of worker separations. Further, the petitioner contends that the Department should investigate imports of phosphorous, a raw material for phosphorus trichloride.

According to the petitioner, phosphorus trichloride ''was the base product for the facility; which was used in 80% of all the manufacturing products.'' The company confirmed that phosphorous was imported to make phosphorus trichloride and that phosphorus trichloride was, in turn, used to make the other flame-retardant chemicals. The company also stated that although some phosphorus trichloride was sold to customers, the company did not sell any phosphorus.

Increased company imports of article(s) produced at the subject facility could be a basis for TAA certification when there are decreased company sales and/or production and worker separations during the relevant period. However, increased imports of raw material used in production of articles produced at the subject facility cannot be the basis for TAA certification, since the workers do not produce that article. Thus, alleged import increases of a raw material (phosphorous) cannot be a basis for TAA certification for the subject worker group.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 21st day of September, 2004.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E4–2548 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act; Native American Employment and Training Allotments

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This Notice announces the Workforce Investment Act (WIA) section 166 final allotments for both the Supplemental Youth Services (SYS) and the Comprehensive Services (CS) programs for Program Year (PY) 2004. These individual grantee allotments are based on formulas defined in the section 166 program regulations at 20 CFR 668.296(b) for the Comprehensive Services program and 20 CFR 668.440(a) for the Supplemental Youth Services program. The rationale for the formulas is the same as described in the Interim Final Rule and the Final Rule published in the **Federal Register** on April 15, 1999 at 64 FR 18683 and on August 11, 2000 at 65 FR 49373–49375, respectively, and has been in effect for prior years of section 166 funding under WIA. Barring any changes which may arise as the result of WIA reauthorization legislation, the criteria used in these funding formulas will remain in effect for the foreseeable future.

ADDRESSES: Submit any written comments on the formulas used to allot these funds to the Employment and Training Administration, Office of Financial and Administrative Management, Room N–4702, 200 Constitution Avenue, NW., Washington, DC 20210, Attention: Ms. Sherryl Bailey, (202) 693–2813 (voice), (202) 693–2859 (fax), e-mail: *bailey.sherryl@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Greg Gross, Division of Indian and Native American Programs, Office of National Programs, (202) 693–3752 (voice) (this is not a toll-free number) or 1–800–877–8339 (TTY) or speech-to-speech at 1–877–877–8982 (these are toll-free numbers), (202) 693–3818 (fax), e-mail: *gross.gregory@dol.gov.*

SUPPLEMENTARY INFORMATION: The Department of Labor (DOL or Department) is announcing final WIA section 166 formula allotments for PY 2004 (July 1, 2004—June 30, 2005) for both the Supplemental Youth Services and Comprehensive Services programs. This document provides information on the amount of funds available during PY 2004 to section 166 grantees with a two-year Comprehensive Services plan as approved by the Grant Officer, Mr. Eric Luetkenhaus. These allotments are based on the funds appropriated in the Department of Labor Appropriations Act, 2004 (Division E, title I of the Consolidated Appropriations Act, 2004, Pub. L. 108–199). The attached table displays both the PY 2004 Supplemental Youth Services allotments and the PY 2004 Comprehensive Services allotments.

Supplemental Youth Services Allotments. Pursuant to WIA section 127(b)(1)(C)(i)(I), PY 2004 SYS funds are $14,925,890, which represents 1.5 percent of the total PY 2004 WIA youth activities funding level of $995,059,306. These funds are available and only

allotted to those section 166 grantees (usually federally-recognized tribes or consortia thereof) serving certain areas in which Native American youth reside. These are areas on or near reservations, Native areas in the State of Alaska, tribal jurisdictional areas in Oklahoma, and Native Hawaiian youth in Hawaii. There are no set-asides or other deductions from the total amount listed above, nor are any funds held in reserve. The entire amount of $14,925,890 has been or will be awarded to the grantees listed in the accompanying table, of which $4,037,342 has been transferred to the Department of the Interior for those grantees participating in the demonstration under Pub. L. 102–477 (*see* explanation below).

Comprehensive Services Allotments. WIA section 174(a)(2)(A) authorizes not less than $55,000,000 to fund the section 166 Comprehensive Services program each program year. However, the rescissions contained in Pub. L. 108–199 reduced the total available amount for PY 2004 to $54,675,500. Of this amount, $540,000 was reserved for technical assistance and training purposes pursuant to the regulations at 20 CFR 668.296(e); $54,135,500 was to be allotted to the section 166 grantees. Of this amount, $7,936,653 was transferred to the Department of the Interior, Office of Self-Governance and Self-Determination, for grantees participating in the demonstration under Pub. L. 102–477, the Indian Employment, Training, and Related Services Demonstration Act of 1992, as amended. The tribes participating in the ''477 program'' are identified with an asterisk (*) in the following allotment table.

Use of 2000 Decennial Census Data. The 1990 Decennial Census data were used to calculate the PY 2004 funding formulas. The decision to postpone the implementation of 2000 Decennial Census data for a year (until PY 2005) was recommended by the Census Work Group of the Native American Employment and Training Council and approved as a formal recommendation to the Department by the entire Council in official session. This decision was based in part on the fact that respondents to the 2000 Census had the capability to indicate multiple races/ethnic groups on their forms, requiring that the Department make decisions concerning which data set to use to calculate future section 166 funding formulas. The Department invites comments from the public on this decision, as well as recommendations or suggestions on how to utilize the 2000 Census data in the WIA section 166 program.

Signed at Washington, DC, this 1st day of October, 2004.

Emily Stover DeRocco,

Assistant Secretary, Employment and Training Administration.

U.S. DEPARTMENT OF LABOR, EMPLOYMENT & TRAINING ADMINISTRATION, WIA TITLE I SECTION 166 GRANTEES, PY 2004 FUNDING LEVELS

State			Grantee	SYS Total $14,925,890	CS Total $54,135,500
1	1	AL	Inter-Tribal Council of Alabama	0	231,198
2	1	AL	Poarch Band of Creek Indians	4,815	91,507
3	2	AK	Aleutian/Pribilof Islands Association*	28,085	25,336
4	2	AK	Ilisagvik College	53,877	72,663
5	2	AK	Association of Village Council Presidents*	222,615	430,101
6	2	AK	Bristol Bay Native Association*	59,035	104,983
7	2	AK	Central Council of Tlingit and Haida*	171,490	188,717
8	2	AK	Chugachmiut*	18,685	17,863
9	2	AK	Copper River Native Association*	6,649	20,959
10	2	AK	Cook Inlet Tribal Council*	289,446	385,804
11	2	AK	Kawerak Incorporated*	91,476	161,890
12	2	AK	Kenaitze Indian Tribe	25,104	20,484
13	2	AK	Kodiak Area Native Association*	33,358	27,509
14	2	AK	Maniilaq Association	78,064	113,302
15	2	AK	Metlakatla Indian Community*	16,048	19,483
16	2	AK	Orutsararmuit Native Council*	42,070	45,649
17	2	AK	Tanana Chiefs Conference, Inc	170,802	311,252
18	4	AZ	Affiliation of Arizona Indian Centers	0	251,067
19	4	AZ	American Indian Association of Tucson	0	264,367
20	4	AZ	Colorado River Indian Tribes	36,912	66,594
21	4	AZ	Gila River Indian Community	162,663	593,224
22	4	AZ	Hualapai Reservation and Trust lands	10,202	38,338
23	4	AZ	Hopi Tribal Council	113,944	281,584
24	4	AZ	Inter Tribal Council of Arizona, Inc	39,204	97,894
25	4	AZ	Native Americans for Community Action	0	178,654
26	4	AZ	Navajo Nation	2,474,561	6,489,199
27	4	AZ	Pasqua Yaqui Tribe	41,611	110,972
28	4	AZ	Phoenix Indian Center, Inc	0	809,445
29	4	AZ	Salt River Pima-Maricopa Indian Community	58,577	138,079
30	4	AZ	San Carlos Apache Tribe	111,422	340,269
31	4	AZ	Tohono O'Odham Nation	148,792	463,532
32	4	AZ	White Mountain Apache Tribe	149,022	447,733
33	5	AR	American Indian Center of Arkansas, Inc	0	545,118
34	6	CA	California Indian Manpower Consortium, Inc	161,746	2,706,192
35	6	CA	Candelaria American Indian Council	0	240,227
36	6	CA	Indian Human Resources Center, Inc	0	310,181
37	6	CA	Northern CA Indian Development Council	7,222	221,558
38	6	CA	Quechan Indian Tribe	20,175	42,797
39	6	CA	Southern California Indian Center, Inc	0	947,097
40	6	CA	Tule River Tribal Council	13,641	93,388
41	6	CA	United Indian Nations, Inc	0	501,822
42	6	CA	Ya-Ka-Ama Indian Education & Development	0	82,109

U.S. DEPARTMENT OF LABOR, EMPLOYMENT & TRAINING ADMINISTRATION, WIA TITLE I SECTION 166 GRANTEES, PY 2004 FUNDING LEVELS—Continued

State			Grantee	SYS Total $14,925,890	CS Total $54,135,500
43	8	CO	Denver Indian Center	0	578,298
44	8	CO	Southern Ute Indian Tribe	19,029	46,168
45	8	CO	Ute Mountain Ute Indian Tribe	23,156	91,591
46	10	DE	Nanticoke Indian Association, Inc	0	26,105
47	12	FL	Florida Governor's Council on Indian Affairs	0	867,223
48	12	FL	Miccosukee Corporation	4,815	69,664
49	12	FL	Seminole Tribe of Florida*	24,646	78,431
50	15	HI	Alu Like, Inc	2,153,706	1,680,225
51	16	ID	Nez Perce Tribe*	33,587	72,650
52	16	ID	Shoshone-Bannock Tribes*	44,363	224,642
53	18	IN	Indiana American Indian Manpower Council	0	245,706
54	20	KS	Mid American All Indian Center, Inc	0	151,460
55	20	KS	United Tribes of Kansas and S.E. Nebraska	14,558	233,616
56	22	LA	Inter-Tribal Council of Louisiana, Inc	3,439	605,578
57	23	ME	Penobscot Nation	23,385	134,546
58	25	MA	Mashpee-Wampanoag Indian Tribal Council	0	61,993
59	25	MA	North American Indian Center of Boston, Inc	0	209,211
60	26	MI	Grand Traverse Band of Ottawa & Chippewa	4,012	47,942
61	26	MI	Inter-Tribal Council of Michigan, Inc	45,624	60,714
62	26	MI	MI Indian Employment & Training Services	0	664,143
63	26	MI	North American Indian Association of Detroit	0	247,494
64	26	MI	Potawatomi Indian Nation	0	98,052
65	26	MI	Sault Ste. Marie Tribe of Chippewa Indians	61,099	210,089
66	26	MI	Southeastern Michigan Indians Inc	0	122,617
67	27	MN	American Indian OIC	0	541,525
68	27	MN	Bois Forte R.B.C	6,075	24,028
69	27	MN	Fond Du Lac R.B.C	23,958	212,115
70	27	MN	Leech Lake R.B.C	49,865	193,216
71	27	MN	Mille Lacs Band of Chippewa Indians*	5,846	43,185
72	27	MN	Minneapolis American Indian Center	0	399,650
73	27	MN	Red Lake Tribal Council*	60,296	205,688
74	27	MN	White Earth R.B.C.*	39,433	144,399
75	28	MS	Mississippi Band of Choctaw Indians	65,455	259,376
76	29	MO	American Indian Council, Inc	9,858	591,343
77	30	MT	Assiniboine & Sioux Tribes	86,318	241,607
78	30	MT	Blackfeet Tribal Business Council	98,125	318,592
79	30	MT	Chippewa Cree Tribe	32,785	126,097
80	30	MT	Confederated Salish & Kootenai Tribes*	92,279	251,527
81	30	MT	Crow Indian Tribe	80,128	222,363
82	30	MT	Fort Belknap Indian Community*	34,160	116,654
83	30	MT	Montana United Indian Association	0	371,063
84	30	MT	Northern Cheyenne Tribe	67,633	199,896
85	31	NE	Indian Center, Inc	0	302,881
86	31	NE	Omaha Tribe of Nebraska	28,085	91,682
87	31	NE	Winnebago Tribe*	17,195	40,695
88	32	NV	Inter-Tribal Council of Nevada	74,282	311,476
89	32	NV	Las Vegas Indian Center, Inc	0	123,074
90	32	NV	Reno Sparks Indian Colony*	8,827	11,514
91	32	NV	Shoshone-Paiute Tribes*	13,527	112,046
92	34	NJ	Powhatan Renape Nation	0	265,543
93	35	NM	Alamo Navajo School Board	26,824	57,851
94	35	NM	Pueblo of Isleta	38,516	62,296
95	35	NM	Eight Northern Indian Pueblo Council	33,243	59,457
96	35	NM	Five Sandoval Indian Pueblos, Inc	98,469	158,422
97	35	NM	Jicarilla Apache Tribe	42,987	62,985
98	35	NM	Mescalero Apache Tribe	39,204	112,428
99	35	NM	National Indian Youth Council	0	1,173,839
100	35	NM	Pueblo of Acoma	42,185	147,940
101	35	NM	Pueblo of Laguna*	50,553	100,219
102	35	NM	Pueblo of Taos	16,507	48,161
103	35	NM	Pueblo of Zuni*	122,886	281,697
104	35	NM	Ramah Navajo School Board, Inc	33,358	113,212
105	35	NM	Santa Clara Indian Pueblo	19,029	31,023
106	35	NM	Santo Domingo Tribe	52,043	70,414
107	36	NY	American Indian Community House, Inc	8,368	569,061
108	36	NY	Native American Cultural Center, Inc	13,068	188,741
109	36	NY	Nat. ;Am. Comm. Svcs of Erie & Niagara Ctys	0	164,815
110	36	NY	St Regis Mohawk Tribe	28,199	135,876
111	36	NY	Seneca Nation of Indians*	51,126	200,626
112	37	NC	Cumberland County Assoc. for Indian People	0	88,106

U.S. DEPARTMENT OF LABOR, EMPLOYMENT & TRAINING ADMINISTRATION, WIA TITLE I SECTION 166 GRANTEES, PY 2004 FUNDING LEVELS—Continued

State			Grantee	SYS Total $14,925,890	CS Total $54,135,500
113	37	NC	Eastern Band of Cherokee Indians	94,457	224,829
114	37	NC	Guilford Native American Association	0	53,326
115	37	NC	Haliwa-Saponi Tribe, Inc	0	70,909
116	37	NC	Lumbee Regional Development Association	0	931,531
117	37	NC	Metrolina Native American Association	0	56,566
118	37	NC	North Carolina Commission of Indian Affairs	0	213,173
119	38	ND	Spirit Lake Sioux Tribe*	46,541	136,473
120	38	ND	Standing Rock Sioux Tribe	93,310	232,086
121	38	ND	Three Affiliated Tribes o/t Fort Berthold Res*	50,209	179,020
122	38	ND	Turtle Mountain Band of Chippewa Indians	112,683	368,811
123	38	ND	United Tribes Technical College	0	179,388
124	39	OH	North America Indian Cultural Center	0	483,988
125	40	OK	Absentee Shawnee Tribe of Oklahoma	19,258	26,350
126	40	OK	*Grantee to be determined*	12,495	29,551
127	40	OK	Cherokee Nation of Oklahoma*	1,074,102	1,385,789
128	40	OK	Cheyenne-Arapaho Tribes	111,995	223,399
129	40	OK	Chickasaw Nation of Oklahoma*	376,452	502,889
130	40	OK	Choctaw Nation of Oklahoma	500,713	729,332
131	40	OK	Citizen Band of Potawatomi Indians of OK*	381,954	398,229
132	40	OK	Comanche Tribe of Oklahoma	102,940	158,564
133	40	OK	Creek Nation of Oklahoma	488,332	658,529
134	40	OK	Delaware Tribe of Oklahoma*	14,788	22,692
135	40	OK	Four Tribes Consortium of Oklahoma	36,568	102,241
136	40	OK	Inter-Tribal Council of N.E. Oklahoma	58,921	83,113
137	40	OK	Kiowa Tribe of Oklahoma	96,749	207,497
138	40	OK	Native American Resource Center	265,717	340,132
139	40	OK	Osage Tribal Council*	77,491	122,529
140	40	OK	Otoe-Missouria Tribe of Oklahoma	23,843	41,657
141	40	OK	Pawnee Tribe of Oklahoma*	29,575	44,123
142	40	OK	Ponca Tribe of Oklahoma	54,450	101,605
143	40	OK	Seminole Nation of Oklahoma	71,874	128,813
144	40	OK	Tonkawa Tribe of Oklahoma	42,070	73,865
145	40	OK	United Urban Indian Council, Inc	363,384	522,035
146	40	OK	Wyandotte Tribe of Oklahoma	0	102,747
147	41	OR	Confed. Tribes of Siletz Indians of OR*	21,895	519,747
148	41	OR	Confed. Tribes of the Umatilla Indian Res	16,736	37,376
149	41	OR	Confederated Tribes of Warm Springs	50,438	100,804
150	41	OR	Organization of Forgotten Americans	0	359,808
151	42	PA	Council of Three Rivers	0	852,588
152	44	RI	Rhode Island Indian Council	0	212,032
153	45	SC	South Carolina Indian Development Council	1,719	155,177
154	46	SD	Cheyenne River Sioux Tribe	86,203	239,955
155	46	SD	*Grantee to be determined*	17,539	44,898
156	46	SD	Oglala Sioux Tribe	187,653	606,638
157	46	SD	Rosebud Sioux Tribe*	186,162	469,982
158	46	SD	Sisseton-Wahpeton Sioux Tribe*	47,572	156,436
159	46	SD	United Sioux Tribes Development Corp	13,068	462,333
160	46	SD	Yankton Sioux Tribe	40,924	97,637
161	48	TX	Alabama-Coushatta Indian Tribal Council	9,514	595,856
162	48	TX	Dallas Inter-Tribal Center	0	306,285
163	48	TX	Ysleta del Sur Pueblo	5,044	363,313
164	49	UT	Indian Training & Education Center	4,356	444,857
165	49	UT	Ute Indian Tribe	40,350	110,786
166	50	VT	Abenaki Self-Help Assoc./NH Indian Council	0	109,166
167	51	VA	Mattaponi Pamunkey Monacan Consortium	0	210,400
168	53	WA	American Indian Community Center	38,402	422,308
169	53	WA	Colville Confederated Tribes*	59,953	162,829
170	53	WA	Confed. Tribes & Bands o/t Yakama Nation	107,639	225,743
171	53	WA	Lummi Indian Business Council	28,429	96,013
172	53	WA	Makah Tribal Council	13,068	28,013
173	53	WA	Puyallup Tribe of Indians	14,558	138,555
174	53	WA	Seattle Indian Center	0	341,642
175	53	WA	The Tulalip Tribes	14,558	26,808
176	53	WA	Western WA Indian Empl. & Trng. Program	104,888	715,209
177	55	WI	Ho-Chunk Nation*	11,578	183,759
178	55	WI	Lac Courte Oreilles Tribal Governing Board	37,599	136,477
179	55	WI	Lac Du Flambeau Band of Chippewa	23,500	74,014
180	55	WI	Menominee Indian Tribe of Wisconsin*	49,063	141,839
181	55	WI	Spotted Eagle, Inc. (Milwaukee AAIMC)	0	208,551
182	55	WI	Oneida Tribe of Indians of Wisconsin	36,682	184,124

U.S. DEPARTMENT OF LABOR, EMPLOYMENT & TRAINING ADMINISTRATION, WIA TITLE I SECTION 166 GRANTEES, PY 2004 FUNDING LEVELS—Continued

State			Grantee	SYS Total $14,925,890	CS Total $54,135,500
183	55	WI	Stockbridge-Munsee Indian Community*	6,075	66,783
184	55	WI	Wisconsin Indian Consortium	29,804	129,848
185	56	WY	Eastern Shoshone Tribe*	26,251	131,267
186	56	WY	Northern Arapaho Business Council	63,735	223,161

[FR Doc. 04–22681 Filed 10–7–04; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

Florida
FL030017 (Jun. 13, 2003)

Volume IV

Illinois
IL030002 (Jun. 13, 2003)
IL030008 (Jun. 13, 2003)
Minnesota
MN030013 (Jun. 13, 2003)

Volume V

Kansas
KS030008 (Jun. 13, 2003)
KS030016 (Jun. 13, 2003)
Oklahoma
OK030013 (Jun. 13, 2003)
OK030014 (Jun. 13, 2003)
OK030017 (Jun. 13, 2003)
OK030030 (Jun. 13, 2003)
Texas
TX030001 (Jun. 13, 2003)
TX030003 (Jun. 13, 2003)
TX030007 (Jun. 13, 2003)
TX030009 (Jun. 13, 2003)
TX030018 (Jun. 13, 2003)
TX030033 (Jun. 13, 2003)
TX030034 (Jun. 13, 2003)
TX030035 (Jun. 13, 2003)
TX030037 (Jun. 13, 2003)
TX030051 (Jun. 13, 2003)
TX030064 (Jun. 13, 2003)
TX030069 (Jun. 13, 2003)
TX030081 (Jun. 13, 2003)
TX030100 (Jun. 13, 2003)
TX030114 (Jun. 13, 2003)

Volume VI

Montana
MT030001 (Jun. 13, 2003)
MT030004 (Jun. 13, 2003)

Volume VII

California
CA030001 (Jun. 13, 2003)
CA030002 (Jun. 13, 2003)
CA030019 (Jun. 13, 2003)
CA030023 (Jun. 13, 2003)
CA030025 (Jun. 13, 2003)
CA030028 (Jun. 13, 2003)
CA030031 (Jun. 13, 2003)
CA030033 (Jun. 13, 2003)
CA030035 (Jun. 13, 2003)
CA030036 (Jun. 13, 2003)

CA030037 (Jun. 13, 2003)
Hawaii
HI030001 (Jun. 13, 2003)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon.* They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 30th day of September, 2004.

Terry Sullivan,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 04–22368 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Business Research Advisory Council and its committees will be held on October 20 and 21, 2004. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's program. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

Wednesday—October 20 (Conference rooms 1 & 2)

10–11:30 a.m.—Committee on Employment and Unemployment Statistics

1. Report on the first American Time Use Survey (ATUS) release (issued on September 14).
2. Business Employment Dynamics (BED) data by employer size: discussion of alternative methods for assigning employers to size categories.
3. Discussion of proposed macroeconomic assumptions for the 2014 round of BLS employment projections.
4. Discussion of major changes to the modeling methods used to develop Local Area Unemployment Statistics data.
5. Discussion of agenda items for the Spring 2005 meeting.

1–2:30 p.m.—Committee on Compensation and Working Conditions

1. New Statistics for Health Insurance from the National Compensation Survey.
2. Presentation and discussion of the National Compensation Survey's Internet Collection Vehicle.
3. Electronic collection of compensation data in the National Compensation Survey (e-mail and import functions).
4. Other topics and new business identified by the members.
5. Discussion of agenda items for the Spring 2005 meeting.

3–4:30 p.m.—Committee on Occupational Safety and Health

1. Results of 2003 Census of Fatal Occupational Injuries, including latest data on foreign-born workers.
2. Progress on 2003 Survey of Occupational Injuries and Illnesses.
3. Time of event data from the 2002 Survey of Occupational Injuries and Illnesses.
4. Status of special survey on employer workplace violence prevention policies.
5. Budget update.
6. New business.
7. Discussion of agenda items for the Spring 2005 meeting.

Thursday—October 21 (Conference rooms 1 & 2)

8:30–10 a.m.—Committee on Prices Indexes

1. Non-response rates in establishment surveys—the PPI and IPP.
2. Update on the Conference on Price Index Concepts and Measurement.
3. Discussion of agenda items for the Spring 2005 meeting.

10:30 a.m.–12 p.m.—Council Meeting

1. Commissioner's address.
2. Discussion of agenda items for the Spring 2005 meeting.

1:30–3 p.m.—Committee on Productivity and Foreign Labor Statistics

1. The effects of IT investments on productivity growth.
2. Research on preliminary estimates of multifactor productivity growth for the business sector.
3. Country expansion for comparative productivity data.
4. Discussion of agenda items for the Spring 2005 meeting.

The meetings are open to the public. Persons wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at (202) 691–5869.

Signed at Washington, DC the 4th day of October 2004.

Kathleen P. Utgoff,

Commissioner.

[FR Doc. 04–22683 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Rock Burst Control Plan

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation

program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps ensure that requested data is provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before December 7, 2004.

ADDRESSES: Send comments to Melissa Stoehr, Acting Chief, Records Management Branch, 1100 Wilson Boulevard, Room 2134, Arlington, VA 22209–3939. Commenters are encouraged to send their comments on computer disk, or via e-mail to *stoehr.melissa@dol.gov.* Ms. Stoehr can be reached at (202) 693–9837 (voice), or (202) 693–9801 (facsimile).

FOR FURTHER INFORMATION CONTACT: Contact the employee listed in the **ADDRESSES** section of this notice.

SUPPLEMENTARY INFORMATION:

I. Background

When rock bursts occur in an underground mine, they pose a serious threat to the safety of miners in the area affected by the burst. These bursts may reasonably be expected to result in the entrapment, serious physical harm, or death, of miners. Recently developed mining technology now permits mine operators to monitor rock stresses, which helps predict an impending burst. These predictions can be used by a mine operator to move miners to safer locations and to establish areas that need relief drilling. Title 30, Section 57.3461 requires operators of underground metal and nonmetal mines to develop a rock burst control plan within 90 days after a rock burst has occurred.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection requirement related to the Rock Burst Control Plans. MSHA is particularly interested in comments that:

* Evaluate whether the proposed collection of information is necessary for the proper performance of MSHA's functions, including whether the information has practical utility;

* Evaluate the accuracy of MSHA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Suggest methods to enhance the quality, utility, and clarity of the information to be collected; and

* Address the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, (*e.g.,* permitting electronic submissions of responses)to minimize the burden of the collection of information on those who are to respond.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice or viewed on the Internet by accessing the MSHA home page (*http://www.msha.gov*) and then choosing ''Statutory and Regulatory Information'' and ''**Federal Register** Documents.''

III. Current Actions

This information collection needs to be extended to protect miners from entrapment, serious physical harm, or death, in metal and nonmetal underground mines with a history of rock bursts.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Rock Burst Control Plans.

OMB Number: 1219–0097.

Recordkeeping: The control plan must be maintained at all times and updated as conditions warrant.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Cite/Reference/Form/etc: 30 CFR 57.3461.

Total Respondents: 2.

Total Responses: 2.

Average Time per Response: 12 hours.

Estimated Total Burden Hours: 24 hours.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance Costs: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this first day of October, 2004.

David L. Meyer,

Director, Office of Administration and Management.

[FR Doc. 04–22682 Filed 10–7–04; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Education and Human Resources (#1119).

Date/Time: November 3, 2004: 8:30 a.m. to 5 p.m., November 4, 2004: 8:30 a.m. to 1:30 p.m.

Place: November 3, 2004: National Science Foundation Headquarters, 4201 Wilson Boulevard—Room 375, Arlington, VA 22230; *November 4, 2004:* Prince George's County Community College, 301 Largo Road—Kent Hall, Largo, Maryland 20774.

Type of Meeting: Open.

Contact Person: James Colby, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292–5331. If you are attending the meeting and need access to the NSF, please contact the individual listed above so your name may be added to the building access list.

Purpose of Meeting: To provide advice with respect to the Foundation's education and human resources programming.

Agenda: November 3, 2004

- Welcome by the Chair
- NSF Assistant Director's Report
- Update on the Experimental Program to Stimulate Competitive Research
- Discussion of Broadening Participation
- Visit with NSF Acting Director, Arden L. Bement
- Discussion and approval of Committee of Visitor Reports for five programs (Urban Systemic Initiative, Rural Systemic Initiative, Tribal Colleges and Universities, NATO PostDoc Fellowships, and Centers for Learning and Teaching)
- Joint Meeting with NSF Advisory Committee for Mathematical and Physical Sciences

November 4, 2004

- Site Visit to Prince George's County Community College

Dated: October 5, 2004.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 04–22724 Filed 10–7–04; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY: Nuclear Regulatory Commission.

DATE: Week of October 4, 2004.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

Schedule Changes

Week of October 4, 2004

Wednesday, October 6, 2004

1:30 p.m.: Discussion of Security Issues (Closed—Ex. 1). (This meeting was originally scheduled for October 7, 2004, at 2:30 p.m.)

Thursday, October 7, 2004

2:35 p.m.: Affirmation Session (Public Meeting) (Tentative). (This affirmation session was originally scheduled for 9:25 a.m. on October 7, 2004.)

a. State of Alaska Department of Transportation and Public Facilities (Confirmatory Order Modifying License); appeals of LBP–04–16 by NRS Staff and Licensee (Tentative).
b. Private Fuel Storage (Independent Spent Fuel Storage Installation) Docket No. 72–22–SFSI (Tentative).
c. USEC, Inc. (Tentative).
d. Citizen's Awareness Network's (CAN) Motion to dismiss the Yankee Rowe license termination proceeding or to re-notice It (Tentative).
e. Duke Energy Corp. (Catawba Nuclear Station, Units 1 and 2); Licensing Board's certification of its ruling on ''need to know''during discovery (Tentative).
f. Final Rulemaking to Add New Section 10 CFR 50.69, ''Risk-Informed Categorization and Treatment of Structures, Systems and Components for Nuclear Power Reactors'' (Tentative).

10:30 a.m.: Discussion of Security Issues (Closed—Ex. 1).

1 p.m.: Discussion of Security Issues (Closed—Ex. 1).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415-1292. Contact person for more information: Dave Gamberoni, (301) 415-1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.*, braille, large print), please notify the NRC's Disability Program Coordinator, August Spector, at (301) 415-7080, TDD: (301) 415-2100, or by e-mail at *aks@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555, (301) 415-1969. In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: October 5, 2004.

Dave Gamberoni,

Office of the Secretary.

[FR Doc. 04–22783 Filed 10–6–04; 9:41 am]

BILLING CODE 7590—01—M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application of Internacional de Ceramica, S.A. de C.V. To Withdraw its American Depositary Shares (Each American Depositary Share Representing Five Limited Voting Units), Limited Voting Units (Which Consist of One Series D and One Series L Share), Series D Shares, No Par Value, and Series L Shares, No Par Value from Listing and Registration on the New York Stock Exchange, Inc. File No. 333–12776

October 4, 2004

On September 14, 2004, Internacional de Ceramica, S.A. de C.V., a Mexican corporation (''Issuer''), has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its American Depositary Shares (Each American Depositary Share Representing Five Limited Voting Units), Limited Voting Units (which consist of one Series D and one Series L Shares), Series D Shares, no par value, and Series L Shares, no par value) (''Securities''), from listing and registration on the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'').

The Board of Directors (''Board'') of the Issuer approved a resolution on September 8, 2004 to withdraw the Issuer's Securities from listing on the NYSE. The Board stated that following reasons factored into its decision to withdraw the Issuer's Securities from the Exchange: (i) The dramatically increasing costs associated with the preparation and filing of the Issuer's periodic reports with the Commission and other expenses related to listing the Securities on the NYSE; (ii) the limited number of registered holders resident in the United States; (iii) the lack of analyst coverage and minimal liquidity in trading of the Securities; (iv) the infrequent trading of the Securities on the NYSE and the likelihood that such trading volume would not increase materially in the foreseeable future; (v) the costs associated with the continued listing of Securities are disproportionately high, given the limited trading volume; (vi) the limited voting units underlying the Securities will continue to be listed and traded on the Bolsa Mexicana de Valores, S.A. de C.V. (''Bolsa''); (vii) the belief of the Issuer that concentration of its Securities on the Bolsa alone rather than on two different trading markets will improve liquidity in and trading of its Securities; and (viii) the benefits associated with maintaining listing and registration in the United States are outweighed by the costs of maintaining the listing and registration.

The Issuer stated in its application that it has complied with all the applicable laws in effect in Mexico, in which it is incorporated, and with the NYSE's rules governing an issuer's voluntary withdrawal of a security from listing and registration. The Issuer stated in its application that it has met the requirements of the NYSE rules governing an issuer's voluntary withdrawal of a security from listing and registration.

The Issuer's application relates solely to the Securities' withdrawal from listing on the NYSE and from registration under section 12(b) of the Act,[3] and shall not affect its obligation to be registered under section 12(g) of the Act.[4]

Any interested person may, on or before October 27, 2004, comment on the facts bearing upon whether the application has been made in accordance with the rules of the NYSE, and what terms, if any, should be imposed by the Commission for the protection of investors. All comment letters may be submitted by either of the following methods:

Electronic Comments

- Send an e-mail to *rule-comments@sec.gov*. Please include the File Number 333–12776 or;

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary,

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number 1–11863. This file number should be included on the subject line if e-mail is used. To help us 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/delist.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [5]

Jonathan G. Katz,

Secretary.

[FR Doc. E4–2554 Filed 10–7–04; 8:45 am]

BILLING CODE 8010–01–P

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of October 11, 2004:

An open meeting will be held on Wednesday, October 13, 2004 at 10 a.m., in Room 1C30, the William O. Douglas Meeting Room, and a closed meeting will be held on Thursday, October 14, 2004 at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (4), (5), (7), (8), (9)(B), and (10) and 17 CFR 200.402(a)(3), (4), (5), (7), (8), 9(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Campos, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the open meeting scheduled for Wednesday, October 13, 2004 will be:

The Commission will consider whether to propose amendments to Regulation M (the anti-manipulation rule concerning securities offerings) under the Securities Exchange Act of 1934.

For further information, please contact Denise Landers, Joan Collopy, Elizabeth Sandoe or Elizabeth Marino at (202) 942–0772.

The subject matter of the closed meeting scheduled for Thursday, October 14, 2004 will be:

Formal orders of investigations;

Institution and settlement of injunctive actions;

Institution and settlement of administrative proceedings of an enforcement nature; Adjudicatory matters;

Regulatory matters regarding financial institutions; and

Amicus consideration.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 6, 2004.

Jonathan G. Katz,

Secretary.

[FR Doc. 04–22814 Filed 10–6–04; 11:14 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50484; File No. SR–CBOE–2003–33]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc., and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2, 3 and 4 Relating to Non-Member Market Maker Transaction Fees

October 1, 2004.

I. Introduction

On July 30, 2003, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the transaction fee for non-member market fees by $0.02 per contract. On November 13, 2003, CBOE filed Amendment No. 1 to the proposed rule change via facsimile.[3] The proposed rule change, as amended, was published in the **Federal Register** for notice and comment on November 28, 2003.[4] The Commission received one comment on the proposal.[5] On March 5, 2004, CBOE filed Amendment No. 2 to the proposed rule change.[6] On April 22, 2004, CBOE filed Amendment No. 3 to the proposed rule change.[7] On August 20, 2004, CBOE filed Amendment No. 4 to the proposed rule change.[8]

This order approves the proposed rule change as modified by Amendment No. 1. In addition, the Commission is approving on an accelerated basis, and is soliciting comments on, Amendments No. 2, 3 and 4 to the proposed rule change.

II. Description

The Exchange is proposing to change its Fee Schedule to increase transaction fees for orders originating from non-member market makers by $0.02 per contract. In its proposed rule change, CBOE explained that currently the Exchange charges transaction fees for orders executed on behalf of non-member market makers that are equal to member market maker and member firm rates for equity and QQQ options and

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Department, CBOE, to Leah Mesfin, Special Counsel, Division of Market Regulation (''Division''), Commission, dated November 13, 2003 (''Amendment No. 1''). In Amendment No. 1, CBOE revised its statement of the purpose of the proposed rule change to modify its argument in support of the proposal.

[4] *See* Securities Exchange Act Release No. 48815 (November 20, 2003), 68 FR 66908.

[5] *See* letter from Michael J. Simon, Senior Vice President and Secretary, International Stock Exchange, Inc. (''ISE''), to Jonathan G. Katz, Secretary, Commission, dated December 19, 2003.

[6] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated March 5, 2004 (''Amendment No. 2''). In Amendment No. 2, CBOE replaced the rule text to more clearly indicate the changes to be made to the Exchange's Fee Schedule.

[7] *See* letter from Christopher R. Hill, Attorney II, Office of Enforcement, Legal Department, CBOE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 21, 2004 (''Amendment No. 3''). In Amendment No. 3, CBOE revised the rule text to clarify that the proposed fee increase would not apply to Linkage orders.

[8] *See* letter from Jaime Galvin, Attorney, Legal Division, CBOE, to Jennifer Colihan, Special Counsel, Division, Commission, dated August 19, 2004 (''Amendment No. 4''). In Amendment No. 4, CBOE replaced the rule text to reflect recent changes made to the Exchange's Fee Schedule.

equal to customer rates for index products. CBOE represented that its members have complained that such equivalence of fees is unfair to Exchange members who pay a variety of additional fees through their membership in the Exchange to help offset the Exchange's expenses. Therefore, CBOE explained that it is proposing to increase transaction fees charged to non-member market makers in order to more fairly assess Exchange costs among the individuals and organizations who avail themselves of the Exchange's trading facilities.

In addition, CBOE has represented that because it does not permit non-members to enter orders on the Exchange, it would not assess directly any such fees upon non-members and that the $0.02 increase would not apply to Linkage orders.

III. Summary of Comments and CBOE's Response

The Commission received one comment letter on the proposal rule change in opposition to the proposal.[9] The ISE opposed the proposed rule change on several grounds.

First, the ISE argued that the CBOE failed to explain sufficiently how the proposed rule change is consistent with Sections 6(b)(4)[10] and 6(b)(5)[11] of the Act. The ISE rejected the Exchange's rationale that CBOE members' complaints that uniform fees for all non-customer executions is unfair to Exchange members, who pay a variety of additional fees through their membership to help offset CBOE's systems expenses, as sufficient justification for the proposal. The ISE also argued that even if the issue of fairness in sharing the costs for use of CBOE's systems justified a fee increase, such a fee increase should be imposed on all non-members (including non-member broker-dealers), and not just on non-member market makers. According to the ISE, the Exchange's failure to justify why the fee would be levied on only one subset of non-members, instead of on all non-members, undermines CBOE's argument that it is simply responding to member complaints about the fairness of fees.

In response to these comments, the CBOE emphasized that Section 6(b)(4) the Act only requires an exchange to provide for an ''equitable allocation'' of fees among its members and issuers and other persons using its facilities.[12] The CBOE stated that the Act's use of the term ''equitable'' does not necessarily mean ''equal,'' but rather ''fair.'' This understanding is confirmed, the CBOE argued, by the fact that Section 6(b)(5) of the Act prohibits only ''unfair'' discrimination, not all discrimination. The CBOE argued that the proposed $0.02 per contract fee for non-member market makers to help offset Exchange expenses is an equitable allocation of fees because its members already pay a variety of other fees as members of the Exchange to help meet the Exchange's expenses.

The ISE also asserted that the proposed rule change is anti-competitive because it could act as a disincentive for non-member market makers to send order flow to the CBOE and thus could hinder the price-discovery process. The ISE noted that, while the proposal exempts Linkage transactions from the $0.02 increase, the Linkage Plan states that market makers ''should send Principal Orders through Linkage on a limited basis and not as a primary aspect of their business.'' Further, the ISE stated that the Linkage Plan imposes a strict mathematical limit on the number of Principal Orders that a market maker can send through the Linkage. Thus, the ISE argued, Linkage would not offer an adequate routing alternative for non-member market makers to send Principal Orders to CBOE.

In response to this argument, the CBOE noted that, like other self-regulatory organizations, it needs the ability to spread its operating costs fairly among the parties using its facilities and stated that the ISE overlooks this fact. The CBOE noted that this concern requires it to strike a balance in setting fees on member and non-member market maker transactions. The Exchange stated that the proposed differential between member and non-member market maker fees could not be so small as to incent current CBOE market-makers to abandon their memberships and simply send in their orders as non-members to avoid member dues and fees, as well as market making and regulatory requirements that apply to members. Simultaneously, CBOE conceded that the differential in fees could not be so great as to give non-member market makers a disincentive to routing their orders to CBOE. Thus, CBOE contended that the $0.02 fee differential strikes a fair and reasonable balance between these two competing concerns.

The CBOE also rejected the ISE's contention that the fee increase would impede inter-market price discovery because, in the CBOE's view, the proposal would expressly exempt Linkage orders from the fee change and because the proposed differential in member and non-member fees is small. CBOE stated that any effect that a fee increase would impose on price discovery is a function of the degree of any proposed price differential. CBOE argued that it has proposed a reasonably small differential in order to achieve its objective of more equitably assessing its costs without negating inter-market price discovery.

Finally, the ISE objected to the proposed rule change because it believed that its approval by the Commission would prompt other exchanges to file similar proposals with the Commission. As a result, the ISE argued, market makers would increasingly have disincentives to send order flow to other exchanges, which could lead to decreasing market efficiency and harming price discovery.

In response to this concern, CBOE suggested that the current highly competitive market for order flow among the various options exchanges would discipline exchanges to keep their transaction fee proposals within reasonable limits.

IV. Discussion and Commission Findings

Under Section 19(b)(2) of the Act,[13] the Commission must approve the CBOE's proposed rule change if it finds that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to a national securities exchange. If the Commission is unable to make that finding, it must institute proceedings to consider whether to disapprove the proposed rule change.

The statutory requirements relevant to such a determination generally are found in Section 6(b) of the Act.[14] That statutory section sets forth the purposes or objectives that the rules of a national securities exchange should be designed to achieve. Those purposes or objectives, which take the form of positive goals, such as to protect investors and the public interest, or prohibitions, such as to not permit unfair discrimination among customers, issuers, brokers or dealers or to not

[9] *See supra* footnote 5.

[10] Section 6(b)(4) of the Act requires that ''the rules of the exchange provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.'' 15 U.S.C. 78f(b)(4).

[11] Section 6(b)(5) of the Act prohibits ''unfair discrimination between customers, issuers, brokers, or dealers.'' 15 U.S.C. 78f(b)(5).

[12] *See* letter from Joanne Moffic-Silver, General Counsel, CBOE, to Jonathan G. Katz, Secretary, Commission, dated February 27, 2004 (''CBOE Letter'').

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b).

permit any unnecessary or inappropriate burden on competition, are stated as broad and elastic concepts. They afford the Commission considerable discretion to use its judgment and knowledge in determining whether a proposed rule change complies with the requirements of the Act.[15] Furthermore, the subsections of Section 6(b) of the Act must be read with reference to one another and to other applicable provisions of the Act and the rules thereunder.[16] Within this framework, the Commission must weigh and balance the proposed rule change, assess the views and arguments of commenters, and make predictive judgments about the consequences of approving the proposed rule.[17]

After careful consideration of the proposed rule change, the comment letter received, and the Exchange's response to the comment letter, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(4) of the Act,[18] which states that the rules of the exchange must provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities, and with the requirements of Section 6(b)(5) of the Act,[19] which, among other things, states that the rules of the exchange must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In addition, the Commission finds that the proposal is consistent with the requirements of Section 6(b)(8) of the Act,[20] which states that the rules of an exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

The Commission notes that whether a proposed fee can be considered an equitable allocation of a reasonable fee among members and issuers and others using its facilities would depend on the facts and circumstances of the proposal. In evaluating such a proposal, the Commission necessarily would consider and weigh all of the relevant factors. These factors may include, among others, the amount of the fee and whether the fee is an increase or decrease, the classes of persons subject to the fee, the basis for any distinctions in classes of persons subject to the fee, the potential impact on competition, and the impact of any disparate treatment on the goals of the Act.

Taking into account these factors, the Commission believes that the proposed fee satisfies the requirements of Section 6(b)(4) of the Act because, while the fee distinguishes between member and non-member market makers, as well as non-member broker-dealers and non-member market makers, it does not do so in a manner that imposes a significant cost burden on the non-member market makers who send their orders to CBOE. The ISE claims that the Exchange's proposal does not provide for an equitable allocation of reasonable fees among members and, further, does not provide sufficient justification for charging member and non-member market makers disparate fees. The Commission agrees with the position stated in the CBOE Letter, namely, that the Act does not require that members, issuers, and others to pay the same fees for use of an exchange's facilities, but that the fees assessed these categories of users must be equitably allocated, *i.e.*, that they be allocated in a fair manner. Accordingly, the Commission finds that the $0.02 per contract differential for non-member market makers is consistent with Section 6(b)(4) of the Act.

In addition, the ISE takes issue with the fact that the fee differential would be applied to a subset of non-member users of the CBOE's facilities and not to all non-member broker-dealers. Under Section 6(b)(5) of the Act, the rules of the Exchange must not be designed to permit unfair discrimination between brokers, dealers and customers. The Commission notes that the Act does not require that the Exchange's rules be designed to prohibit all discrimination, but rather they must not permit unfair discrimination. In the Commission's view, the $0.02 per contract fee differential for non-member market makers is reasonable under the circumstances and it is not unfairly discriminatory for the Exchange to charge non-member market makers a nominally higher fee than other non-members who submit orders to the Exchange. Accordingly, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act.

The ISE further argues that the proposed rule change is anti-competitive because it would act as a disincentive for non-member market makers to send order flow to the Exchange in an attempt to further the price discovery process. Thus, the ISE raises the issue whether the fee differential satisfies the requirement of Section 6(b)(8) of the Act that it not impose any burden on competition that is not necessary or appropriate in furtherance of the Act's purposes. The Commission does not believe that the proposed fee imposes an unnecessary or inappropriate burden on competition. Fair competition among the options markets must take into account all of the relevant facts and circumstances, including the fact that they are organizations composed of members. It is important to note that membership carries with it certain duties, responsibilities, and costs not applicable to non-members. Thus, in the circumstances of this filing, it is not inconsistent with fair competition for the CBOE to charge non-member market makers a reasonable fee when utilizing systems whose development has been financed by CBOE members.

Moreover, because access to CBOE's facilities would not be more restrictive under the proposed rule change and because non-member market makers can submit orders via the Linkage system, the Commission does not believe that the proposal would harm the depth and liquidity of the options market.[21] The Commission notes that the depth and liquidity of any particular option is dependent on numerous variables, including the degree of buying and selling activity in the underlying security. In addition, the degree to which an options exchange captures order flow in a particular option is dependent on various factors, such as the narrowness of spreads and the speed of execution. The Commission, however, does not dispute that if such a fee were too large it possibly could deter some non-member market makers from sending order flow to the Exchange, which, in turn, ultimately could have an adverse effect on competition. As the CBOE Letter pointed out, however, the Exchange has an incentive to assure that any differential in fees not be so large as to discourage non-member market makers from sending orders to the Exchange.

[15] *See Bradford National Clearing Corp.* v. *Securities and Exchange Commission,* 590 F.2d 1085 (D.C. Cir. 1978).

[16] *See* Securities Exchange Act Release No. 37273 (June 4, 1996), 61 FR 29438 (June 10, 1996).

[17] *Id.*

[18] 15 U.S.C. 78f(b)(4).

[19] 15 U.S.C. 78f(b)(5).

[20] 15 U.S.C. 78f(b)(8).

[21] The Commission does not intend the approval of this proposal to establish a precedent that would permit the Exchange to make distinctions in the treatment of orders on its floor or through its electronic facilities as a means to discriminate unfairly against its competitors. Orders for the account of non-member market makers must continue to be treated in the same way as other orders. For example, the proposal would not affect the way non-member market maker orders are routed or the priority they are given.

The Commission believes that, in this case, the fee differential is consistent with Section 6(b)(8) of the Act.

Finally, the ISE posits that approval of the proposed rule changed would have ''cascading negative effects,'' because other exchanges likely would submit proposed rule changes that impose higher fees on non-member market makers and because, in the ISE's view, differential treatment of non-member market makers across exchanges ultimately could decrease market efficiency and harm the price discovery process. The Commission agrees that the current system whereby each exchange charges the same transaction fees for member and non-member market makers is easy and practical to administer both for the Commission, when it determines whether those fees are consistent with the Act, and for the exchanges, when they assess those fees on users of their facilities. As noted above, however, the Commission believes that the Act does not require identical treatment for each class or subclass of users of an exchange's facilities, but rather mandates fair treatment, assuming that a proposed fee differential does not raise other issues under the Act. If any other exchange files a similar fee proposal with the Commission, it would have to be analyzed based on its own set of facts and circumstances. Nevertheless, the Commission intends to monitor whether the CBOE's proposed fee differential for non-member market makers has any adverse consequences for the options markets.

V. Amendments No. 2, 3 and 4

The Commission finds good cause for approving Amendments No. 2, 3 and 4 prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendments No. 2, 3 and 4, the Exchange, respectively, set forth the rule text of the complete Fee Schedule relating to transaction costs, clarified the treatment of Linkage orders in the rule text of the Fee Schedule, and updated the rule text of the Fee Schedule to reflect recent revisions.[22] In the Commission's view, these amendments were not significant and did not affect the substance of the proposed rule change. Therefore, the Commission finds that granting accelerated approval to Amendments No. 2, 3 and 4 is appropriate and consistent with Section 19(b)(2) of the Act.[23]

VI. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendments No. 2, 3 and 4, including whether it is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2003–33 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2003–33. 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 CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2003–33 and should be submitted on or before October 29, 2004.

VII. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–CBOE–2003–33), as amended by Amendment No. 1, be, and it hereby is, approved, and that Amendments No. 2, 3 and 4 to the proposed rule change be, and hereby are, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

Exhibit A

New text is *italicized*; deleted text is in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEE SCHEDULE—AUGUST 1, 2004

	Per Contract
1. *OPTION TRANSACTION FEES (1)(3)(4)(7)*	
EQUITY OPTIONS (13):	
I. CUSTOMER	$.00
MARKET-MAKER (MM) (standard rate)(10)	.22
II. MEMBER FIRM PROPRIETARY: (11).	
• FACILITATION OF CUSTOMER ORDER	.20
• NON-FACILITATION ORDER	.24
IV. BROKER-DEALER	.25
V. NON-MEMBER MARKET MAKER [(8)]	.[24]*26*
VI. DESIGNATED PRIMARY MARKET-MAKER (DPM) (10)	.12
VII. ELECTRONIC DPM (e-DPM) (14)	.25
VIII. LINKAGE ORDERS (8)	.24
QQQ OPTIONS:	
I. CUSTOMER $.00.	
II. MARKET-MAKER (MM) AND DPM (standard rate)(10)	.24

[22] *See* Securities Exchange Act Release No. 50175 (August 10, 2004), 69 FR 51129 (August 17, 2004).

[23] 15 U.S.C. 78s(b)(2).

[24] *Id.*

[25] 17 CFR 200.30–3(a)(12).

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEE SCHEDULE—AUGUST 1, 2004—Continued

III. MEMBER FIRM PROPRIETARY: (11).	
• FACILITATION OF CUSTOMER ORDER	.20
• NON-FACILITATION ORDER	.24
IV. BROKER-DEALER	.25
V. NON-MEMBER MARKET MAKER [(8)]	.[24]*26*
VI. LINKAGE ORDERS (8)	.24
INDEX OPTIONS (includes Dow Jones DIAMONDS, OEF and other ETF index options):	
I. CUSTOMER (2):	
• S&P 100, PREMIUM > or = $1	.35
• S&P 100, PREMIUM <$1	.20
• MNX (MINI-NASDAQ 100)	.20
• OTHER INDEXES, PREMIUM > OR = $1	.45
• OTHER INDEXES, PREMIUM <$1	.25
II. MARKET-MAKER AND DPM—EXCLUDING DOW JONES PRODUCTS (10)	.24
MARKET-MAKER—DOW JONES PRODUCTS (10)	.34
III. MEMBER FIRM PROPRIETARY: (11)	
• FACILITATION OF CUSTOMER ORDER	.20
• NON-FACILITATION ORDER	.24
IV. BROKER-DEALER, EXCLUDING MINI-NASDAQ 100 (MNX)	Index Customer Rates
• BROKER-DEALER—MNX, PREMIUM > or = $1	.45
• BROKER-DEALER—MNX, PREMIUM <$1	.25
V. NON-MEMBER MARKET MAKER [(8)]:	
• S&P 100 (including OEF), PREMIUM > or = $1	.[35]*37*
• S&P 100 (including OEF), PREMIUM <$1	.[20]*22*
• OTHER INDEXES, PREMIUM > or = $1	.[45]*47*
• OTHER INDEXES, PREMIUM <$1	.[25]*27*
VI. MNX DPM SUPPLEMENTAL TRANSACTION FEE	.25
VII. RUT DPM and MARKET MAKER LICENSE FEE (Russell 2000 cash settled index) (12)	.40
VIII. LINKAGE ORDERS (8):	
• *S&P 100 (OEF), PREMIUM > or = $1*	*.35*
• *S&P 100 (OEF), PREMIUM <$1*	*.20*
• *OTHER INDEXES, PREMIUM > or = $1*	*.45*
• *OTHER INDEXES, PREMIUM <$1*	*.25*
2. *MARKET-MAKER, e-DPM & DPM MARKETING FEE* (in option classes in which a DPM has been appointed)(6)	.40
3. *FLOOR BROKERAGE FEE (1)(5):*	
• EQUITY & QQQ CUSTOMER ORDER	.00
• ALL OTHER EQUITY, QQQ AND INDEX OPTIONS (8)	.04
• CROSSED ORDERS	.02
4. *RAES ACCESS FEE (RETAIL AUTOMATIC EXECUTION SYSTEM) (1)(4):*	
INDEX CUSTOMER TRANSACTIONS	.25
• DOW JONES, ASSESSED ON THE FIRST 25 CONTRACTS ONLY	
NON-CUSTOMER TRANSACTIONS (ORIGIN CODE OTHER THAN "C")(8)(9)	.30

Notes:

(1) Per contract side, including FLEX options. Transaction Fees are also applicable to orders processed via CBOEdirect.

(2) Please see item 18 for details of the Customer Large Trade Discounts for the period 7/1/03–12/31/04.

(3) Member transaction fee policies and rebate programs are described in the last section.

(4) Transaction and RAES fees are charged to the CBOE executing firm on the input record.

(5) Charged to executing broker. DPMs are assessed for agency and "book" executions (non-cust. orders). Market-Maker and DPM floor brokerage fees are eligible for the Prospective Fee Reduction Program, as described in Section 19. To be eligible for the discounted "crossed" rate, the executing broker acronym, executing firm number and order ID data must be the same on both the buy and sell side of an order.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, e-DPMs and DPMs resulting from customer orders from payment accepting firms with which the DPM has agreed to pay for that firm's order flow, and with respect to orders from customers that are for 200 contracts or less.

(7) Cabinet trades are not assessed transaction fees. Only index options are assessed a cabinet fee of $.10 per contract side.

(8) [Includes,] *Linkage order fees in effect* on a pilot basis until July 31, 2005, [orders from members of other exchanges executing Linkage transactions,] except for Satisfaction Orders, which are not assessed Exchanges fees per Linkage rules. *The floor brokerage fee for "all other equity, QQQ and index options" and the RAES access fee for non-customer transactions also apply to linkage orders.*

(9) Effective 10/1/03, non-customer equity options RAES orders entered from the trading floor will not be assessed the RAES access fee.

(10) Eligible for the Prospective Fee Reduction Program as described in Section 19.

(11) Please see Section 20 for details of the Member Firm Proprietary and Firm Facilitation Fees Cap.

(12) The RUT License Transaction Fee applies to all RUT contracts traded by the DPM and other Market-Makers. The RUT DPM shall be assessed for any shortfall between the proceeds of the RUT License Fee and the Exchange's license obligation to Russell.

(13) Market-Maker, firm and broker-dealer transaction fees are capped at 2,000 per dividend spread transaction, defined as any trade done to achieve a dividend arbitrage between any two deep-in-the-money options. To qualify a transaction for the cap, a rebate request with supporting documentation must be submitted to the Exchange.

(14) Effective October 1, 2004, DPMs and e-DPMs may elect to pay a fixed annual fee of $1.75 million instead of being assessed transaction fees on a per contract basis for their DPM and e-DPM transactions only in all equity option classes. The fixed fee does not cover any floor brokerage fees. DPMs electing to pay the fixed fee will neither be charged CBOE transaction fees for CBOE transactions related to such outgoing P/A orders, nor will they receive the credit back for such fees as set forth in Section 21 of this Fee Schedule. However, pursuant to the second phase of linkage fee set forth in Section 21 of this Fee Schedule, all CBOE DPMs, including those electing the fixed annual fee, who pay transaction fees at other exchanges to execute P/A orders there, will receive a credit of up to 50% of CBOE DPM transaction charges for each such order (currently up to $.06 per contract, with the total of such credits not to exceed the total amount of inbound linkage transaction fees received by CBOE) to help offset the transaction fees of other exchanges that CBOE DPMs incur in filling P/A orders at those exchanges.

Remainder of Fee Schedule: Unchanged.

[FR Doc. E4–2536 Filed 10–7–04; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50485; File No. SR–NASD–2003–201]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval of Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 1 to the Proposed Rule Change, To Amend Schedule A of the NASD By-Laws To Adjust the Trading Activity Fee Rate, and To Add TRACE-Eligible and Municipal Securities as Covered Securities

October 1, 2004.

I. Introduction

On December 30, 2003, the National Association of Securities Dealers, Inc. (''NASD'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Schedule A of the NASD By-Laws to adjust the Trading Activity Fee (''TAF'') rate for covered equity securities, and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine (''TRACE'') rules, are defined as ''TRACE-eligible securities'' and municipal securities subject to the Municipal Securities Rulemaking Board (''MSRB'') reporting requirements. The proposed rule change was published for notice and comment in the **Federal Register** on January 28, 2004.[3] The Commission received 15 comment letters on the proposal.[4] On May 20, 2004, NASD filed a response to comments, and simultaneously amended the proposal.[5] The NASD provided additional information in a letter dated September 30, 2004 to clarify its response to comments on certain issues.[6] This order approves the proposed rule change, and provides notice of filing and grants accelerated approval of Amendment No. 1.

II. Summary of Comments

The Commission received 15 comment letters on the proposed rule change.[7] Two commenters support the reduction in TAF rates; the other commenters oppose the proposed rule change for varying reasons.[8] The following is a summary of the major concerns that the commenters raised.

• *Imposition of the TAF is Inappropriate Because NASD Has not Provided Evidence to Justify the TAF, and NASD Already Imposes Fees Pursuant to its TRACE Fee Structure on the Same Transactions*

Several commenters believe the imposition of the TAF is unfair because NASD already imposes and collects fees under its TRACE fee structure on the same transactions.[9] These commenters believe the NASD should not be allowed to impose additional fees on these transactions, and express disapproval that NASD has not provided justification for charging a second fee.[10] They want NASD to provide justification for the TAF, and they specifically question what services the original fees have been used to support, the costs associated with those programs, the amount of overall revenue the NASD expects to collect from the TAF, and the additional costs to be supported by the TAF.[11] Similarly, several commenters believe NASD has not provided evidence to justify the imposition of a new fee.[12]

• *NASD Should Create an Exception for Intermediaries To Avoid Duplication of Fees and ''Double Taxation''*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 49114 (January 22, 2004), 69 FR 4194.

[4] *See* letters from Paige W. Pierce, Chief Operating Officer, RW Smith & Associates, Inc. (''Smith'') dated February 11, 2004; Richard F. Chapdelaine, Chairman of the Board, Chapdelaine Corporate Securities, & Co. (''CCS'') dated February 12, 2004; Michael Rafferty, Rafferty Capital Markets, LLC (''Rafferty'') dated February 17, 2004; Robert Beck, Principal, Municipal Securities, Edward D. Jones & Co., LP (''Edward Jones'') dated February 17, 2004; Thomas S. Vales, Chief Executive Officer, TheMuniCenter (''TMC'') dated February 18, 2004; Samuel C. Doyle, Executive Vice President, Kirkpatrick, Pettis, Smith, Polian, Inc. (''Kirkpatrick'') dated February 17, 2004; Craig M. Overlander, Senior Managing Director, Bear, Stearns & Co. (''Bear Stearns'') dated February 17, 2004; Richard F. Chapdelaine, Chairman, and August J. Hoerrner, President, Chapdelaine & Co. (''Chapdelaine'') dated February 16, 2004; Mary McDermott-Holland, Chairman of the Board, and John C. Giesea, President and CEO, Security Traders Association (''STA''), dated February 19, 2004; Pamela M. Miller, Senior Vice President, Associated Bond Brokers, Inc. (''ABBI'') dated February 17, 2004; Robert Wolf, Managing Director, Global Head of Fixed Income, and Ray Ormerod, Executive Director, UBS Securities LLC (''UBS'') dated February 18, 2004; O. Gene Hurst, Esq., Counsel for Wolfe & Hurst Bond Brokers, Inc. (''Hurst'') dated February 20, 2004; Lynnette K. Hotchkiss, Senior Vice President and Associate General Counsel, and Michele C. David, Vice President and Assistant General Counsel, The Bond Market Association (''BMA'') dated February 17, 2004; Kimberly Unger, Executive director, The Security Traders Association of New York, Inc. (''STANY'') dated February 18, 2004; all of which were addressed to Jonathan G. Katz, Secretary, Commission. On June 16, 2004, George Miller and Lynnette Hotchkiss of The Bond Market Association submitted a memorandum to Annette Nazareth, Director, Division of Market Regulation, SEC. The Commission considers this memorandum to be a comment letter.

The Smith letter appears to be a template created by The Board Market Association. To the extent that the letter raised issues in an affirmative manner, the Commission considered the issues.

[5] *See* May 19, 2004 letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, SEC, and attachments (''Amendment No. 1'' or ''NASD Response Letter''). In Amendment No. 1, NASD responded to the comments, and modified the proposal to clarify that the TAF will be assessed only on ''TRACE-eligible securities'' where the transaction also is a ''reportable TRACE transaction,'' as those terms are defined in NASD Rule 6210. Additionally, because debt securities that are issued pursuant to Section 4(2) of the Securities Act of 1933 and re-sold pursuant to Rule 144A in secondary market transactions are ''reportable TRACE transactions,'' NASD clarified that these debt transactions are subject to the TAF.

[6] *See* letter from Kathleen O'Mara, Associate General Counsel, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated September 30, 2004 (''NASD Response Letter 2'').

[7] *See* footnote, 4, *supra*.

[8] One commenter expresed support for the proposed reduction in TAF rates, stating that the reduction ''makes progress toward rebalancing the burden of the TAF currently placed on lower priced securities.'' STANY at 2. Another commenter expressed support for the NASD's proposal to revise the TAF rates, but expressed no opinion about the portion of the proposal that would assess the TAF on TRACE-eligible securities and municipal securities. STA at 2.

[9] *See, e.g.,* CCS at 2; Rafferty at 2; Bear Stearns at 1; UBS at 1; BMA at 4. Additionally, some commenters expressed disapproval of the proposal because they believe there is ''no necessity for any additional fees to be imposed upon the municipal securities industry'' and because fees assessed by self-regulatory organizations (''SROs'') should be coordinated across all such organizations with overlapping jurisdictions. *See e.g.,* Hurst at 1, BMA at 5, Bear Stearns at 1.

[10] *See* CCS at 2.

[11] *See e.g.,* Rafferty at 2.

[12] *See* CCS at 2 (''* * * the industry has not received any evidence from the NASD that this fee is warranted.''); Bear Stearns at 1 (''NASD's proposing release does not provide enough information regarding its regulatory costs and overall fees to evaluate the proposal to ensure that it complies with the legal requirements for imposing fees and other charges.'') Chapdelaine at 2 (''* * * where is the NASD's justification for charging members dealing in municipal securities a TAF at the same rate it proposes to charge dealers in other fixed income markets?''); UBS at 1 (the NASD does not provide adequate information ''to support a determination that the Debt TAF would result in an 'equitable allocation of reasonable dues' and otherwise satisfy the requirements of the Securities Exchange Act of 1934 * * *''); BMA at 2, 3 (''* * * the NASD has not provided the industry information that would establish a reasonable nexus between the regulatory costs it seeks to fund and the Debt TAF''); STANY at 2 (''We are unaware of any accounting done by the NASD, which shows revenue generated by transactions or the relationship between the 'taxed' transaction and the cost of regulation associated with those transactions.'').

Some commenters express disapproval of the proposal because they believe it will result in duplication of fees, also referred to as ''double taxation.'' [13] For example, one commenter explains that it ''acts as an intermediary, brokering transactions on an undisclosed basis for corporate and government products.'' As a result, each of this commenter's trades results in two reportable events, resulting in two fees. Under the NASD's proposal, the TAF would be collected twice on what, according to the commenter, is the same transaction. The commenter notes that in addition to having such transaction ''taxed'' twice (once as a TRACE security and once by the TAF), two different parties are paying the same fees on the same transactions.[14] To prevent this from occurring, the commenter suggests that the NASD create an exemption for those members acting as intermediary to ensure there is no duplication of fees.[15]

• *The TAF Is Improper Because MSRB Fees Adequately Allocate Costs to Municipal Finance Activity*

Similarly, several commenters believe the TAF is inappropriate because existing fees imposed by the MSRB already allocate costs to municipal finance activity.[16] The commenters object to the NASD imposing additional fees on municipal securities because the MSRB currently ''assesses transaction and other fees on municipal securities'' and one commenter believes ''a portion of such fees are remitted to the NASD to help defray the NASD's costs in enforcing MSRB rules.'' [17] Another commenter states that ''rulemaking and policymaking are regulatory functions delegated to the MSRB'' and therefore the NASD cannot properly impose a fee on members dealing in municipal securities ''at the same rate it proposes to charge dealers in other fixed income markets'' when it has less regulatory responsibility with respect to municipal securities.[18]

• *TAF May Have a Disparate Impact on Certain Firms and Investors, and Dealer-Banks Will Have an Unfair Competitive Advantage Because the TAF Will Not Be Imposed On Those Entities*

Several commenters claim the proposal will negatively affect retail-oriented firms and investors because the proposed cap reduces the effective fee per bond for larger transactions.[19] Claiming the fee structure imposes a greater burden on retail firms and targets small transactions, the commenters argue that NASD has not adequately explained how the proposed structure for the TAF does not impose an unfair burden on competition or discriminate between market participants.[20] Additionally, commenters note that dealer-banks that deal in municipal securities are subject to MSRB rules but are not NASD members and therefore are not subject to NASD jurisdiction. As such, the TAF cannot be imposed on those entities. The commenters claim this would give those entities an unfair competitive advantage over NASD members dealing in municipal securities.[21]

• *The NASD's Proposal Lacks Clarity in How the TAF Will Be Implemented*

Some commenters believe the proposal has not adequately addressed certain practical issues regarding how the TAF will be implemented. For example, one commenter believes the proposal is unclear ''whether and to what extent current NASD guidance regarding the TAF for equity securities would or should apply to Covered Debt Securities.'' [22] Additionally, the commenter believes the proposal is ambiguous as to whether compliance will require member firms to track transactions in covered debt securities differently than what is used for transaction reporting purposes.[23]

III. NASD's Response to Comments

In response to the commenters' contention that (i) the proposed rule change does not contain sufficient financial information for the Commission to determine if the proposal meets the statutory standard delineated in Section 15A(b)(5),[24] which requires that the rules of an association provide for the equitable allocation of reasonable dues, fees, and other charges,'' and (ii) that there is no nexus between the TAF and the regulatory costs it seeks to fund, the NASD states the proposal extends NASD's pricing structure to TRACE-eligible securities and municipal securities, areas ''over which NASD exercises primary examination and enforcement authority and responsibility.'' [25] NASD maintains that such authority provides a direct nexus to the areas to which NASD proposes to extend the TAF.[26]

Regarding the commenters' concerns that (i) the proposed rule change would result in duplicative fees, and that it fails to consider existing regulatory fees and coordinate fees across all SROs that have overlapping jurisdiction; (ii) the MSRB provides rulemaking and policy functions for municipal securities, and the fees that the MSRB already assesses should be used to fund all regulation; and (iii) TRACE transaction fees currently include charges intended to recover costs incurred in the oversight of the corporate debt market, making the extension of the TAF to include TRACE-eligible securities unnecessary, NASD asserts that such concerns are misguided. NASD notes that it is responsible for enforcing MSRB rules with respect to its members,[27] which responsibility includes the supervision and regulation of member activities in municipal securities through examinations, financial monitoring, and disciplinary actions.[28] Given these responsibilities, NASD argues it must

[13] *See* CCS at 3; Rafferty at 2–3; TMC at 1 (stating that TheMuniCenter, an alternative trading system, ''will endure double transaction costs versus traditional players.''); Chapdelaine at 3; ABBI at 1 (''Presumably, the NASD would treat this agency function for debt securities in the same manner as equity transactions and exempt broker's brokers from the proposed rule; however this subject is not addressed in the proposal.''; BMA at 4 (''* * * NASD should be required to establish that adding the Debt TAF on top of these existing fees does not result, in effect, in the 'double taxation' of Covered Debt Securities.''; Edward Jones at 2–3 (''* * * NASD's proposal does not preclude the imposition of two charges on a transaction involving a sale by a customer to the Firm followed by the sale to another customer from the Firm's inventory.'').

[14] CCS at 3.

[15] *Id.*

[16] *See e.g.,* Edward Jones at 2; Kirkpatrick at 1; Chapdelaine at 2; BMA at 4.

[17] Kirkpatrick at 1.

[18] Chapdelaine at 2. *See also,* generally, BMA at 4.

[19] BMA at 5; Edward Jones at 2 (* * * a cap of $0.75 per trade would be applied uniformly to a firm effecting 1,000 trades of 10,000 bonds each and to a firm effecting 100 trades of 100,000 bonds each, thus resulting in fees to the firm doing the 'smaller' business that are 10 times larger than those charged to a firm doing the same amount of overall activity but with institutional clients.''); ABBI at 2 (''The rule, as proposed, would seem to unfairly target smaller * * * transactions as the maximum fee is $.75 per trade * * *. We do not understand the rationale for this rate'').

[20] BMA at 5.

[21] Chapdelaine at 2; BMA at 5. Once commenter also believes the proposal would not apply equally to similar types of securities, noting that corporate debt securities that have a maturity of one year or less at issuance are not 'TRACE-eligible' and would not be subject to the TAF. *Id.* The proposal contains no comparable exclusion for short-term municipal securities, even though municipal securities with a stated maturity of nine months or less are excluded from MSRB transaction assessments. *Id.*

[22] UBS at 1–2.

[23] *Id. See also* BMA at 2, 6–9.

[24] 15 U.S.C. 78o–3(b)(5).

[25] NASD Response Letter at 3.

[26] *Id.* NASD further states it ''need not specify costs and revenues on a product-by-product basis to demonstrate that the fee is consistent with Section 15A(b)(5) of the Act. *Id.*

[27] MSRB rules govern transactions in municipal securities. Municipal securities dealers are regulated by either the Commission and the NASD or the bank regulators. *See* Sections 3(a)(34) and 15B of the Act. 15 U.S.C. 78c(a)(34) and 15 U.S.C. 78o–4.

[28] NASD Response Letter at 4.

directly fund its regulatory costs, for it receives no portion of the fees that the MSRB collects from the entities subject to its rules.[29] Additionally, NASD states that ''regulatory costs currently funded by the TRACE fee structure are not funded by any other fees or assessments of NASD.''[30] NASD represents that extending the TAF to corporate and municipal debt will not change this scenario, and consequently, ''NASD will not charge duplicative member regulatory fees on TRACE-eligible securities.''[31]

NASD notes that several commenters express concern that the TAF (i) will be assessed on multiple parties to a single transaction, (i) does not address competitive issues, and (i) will have a disparate impact on retail-oriented firms.[32] In response, NASD readily acknowledges that two TAF fees will be assessed under certain circumstances. NASD states that this approach is consistent with how NASD assesses fees on covered equity securities, and states ''interactions with customers are a primary driver of member regulatory costs.''[33] Because NASD devised the TAF to focus on a member firm's individual trading activity, with the TAF being one component in NASD's program to recover its regulatory costs, NASD acknowledges that member firms that engage regularly in transactions with customers will be assessed in accordance with trading activity and ''in conformity with NASD's member regulatory costs.''[34] Additionally, the NASD acknowledges that the proposed rule change may result in assessing higher aggregate fees on certain retail activity that occurs in numerous smaller trades, rather than if the same volume of activity occurred in a lesser number of larger trades. However, the NASD states that retail trades ''drive member regulatory costs as much as, if not more than, institutional trades,'' resulting in higher member regulatory costs due to the higher number of transactions.[35] As a result, the NASD believes it has proposed fees that are fairly allocated among its membership and are ''reflective of NASD's regulatory functions, efforts, and costs.''[36] Regarding the commenters' assertion that the TAF will result in disparities between fees imposed on bank municipal securities dealers that are not NASD members, NASD states it cannot ''comment on the manner in which banking regulators assess their regulated institutions for the costs of oversight'' and that ''the TAF serves to recover NASD's costs of member regulatory services in conformity with NASD's statutory obligations.''[37]

Finally, in response to commenters' concerns that the TAF should be assessed only on TRACE-eligible securities subject to TRACE reporting requirements, NASD amended the proposed rule change to clarify that the TAF will apply to ''TRACE-eligible securities'' where the transaction also is a ''reportable TRACE transaction,'' as those terms are defined in NASD Rule 6210.[38] Also, because debt securities issued pursuant to Section 4(2) of the Securities Act of 1933 and re-sold pursuant to Rule 144A in secondary market transactions are ''reportable TRACE transactions,'' NASD further amended the proposed rule change to clarify that such debt transactions are subject to the TAF.[39]

IV. Discussion and Commission Findings

The Commission has reviewed carefully the proposed rule change, the comment letters, and the NASD Response Letters, and finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association[40] and, in particular, the requirements of Section 15A(b)(5) of the Act.[41] Section 15A(b)(5) requires, among other things, that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission finds that the proposal to adjust the rate for covered equity securities, reduce the maximum per-trade charge on covered equity securities, and assess the TAF on certain corporate debt and municipal securities is consistent with Section 15A(b)(5) of the Act, in that the proposal is reasonably designed to recover NASD costs related to regulation and oversight of its members.

On May 30, 2003, the Commission approved SR–NASD–2002–148, a proposed rule change that eliminated the NASD's Regulatory Fee and instituted a TAF, which proposal was part of the NASD's plan to redesign its regulatory pricing structure to better align its fees with NASD's functions, efforts, and costs.[42] At that time, the Commission found that the TAF was consistent with Section 15A(b)(5) of the Act, and also indicated that, although the NASD then excluded debt, mutual funds, and variable annuities from the scope of the TAF, the NASD should consider ways to better allocate regulatory costs to encompass activity in all of the areas over which the NASD exercises oversight.[43] The Commission need not revisit the issue of whether the imposition of a TAF is consistent with the Act. The issue before the Commission is whether it is proper for the NASD to extend the TAF to include the types of securities described in the instant proposed rule change. For the reasons described herein, the Commission finds that such extension is consistent with the Act in general, and consistent with Section 15A(b)(5) in particular.

The Commission is satisfied that NASD has established a sufficient nexus between the proposed TAF extension to corporate debt securities that, under TRACE rules, are defined as ''TRACE-eligible securities'' and on municipal securities subject to MSRB reporting requirements, and the regulatory costs NASD seeks to fund with TAF-generated revenue. NASD, in its capacity as a national securities association, exercises primary

[29] NASD Response Letter at 4. NASD Response Letter 2 at 1–2 (''NASD is simply seeking to incorporate into its member regulatory pricing structure, a new transaction-based TAF to recover its member regulatory costs for, among other things, enforcing MSRB rules (including supervising and regulating its members' activities in municipal securities through examinations, financial monitoring, and, as appropriate, disciplinary actions).'').

[30] NAS Response Letter at 4.

[31] *Id. See also* NASD Response Letter 2 at 2 (''TRACE fees are used to fund the operation of the reporting system, development costs for the system, market operations, and market regulations * * *. TAF fees, however, are used to fund general member regulatory costs such as rulemaking (other than MSRM rulemaking), policy, examinations, processing membership applications, financial monitoring, and enforcement activity.''). The NASD considers these latter functions member regulation, which is distinct from its market regulation function.

[32] NASD Response Letter at 5–7.

[33] NASD Response Letter at 5; NASD Response Letter 2 at 2.

[34] NASD Response Letter at 5.

[35] *Id.* at 7; NASD Response Letter 2 at 2 (''For example, the member regulatory costs related to 10,000 small retail bond trades is much greater than the member regulatory costs associated with one large bond trade.'')

[36] NASD Response Letter at 5.

[37] *Id.* at 5.

[38] *Id.* at 8.

[39] *Id.*

[40] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[41] 15 U.S.C.78o–3(b)(5).

[42] *See* Securities Exchange Act Release No. 47946 (May 30, 2003, 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148) (approval order); *see also* NASD Response Letter at 2. NASD represents that the new pricing structure is revenue neutral to NASD.

[43] *See* Securities Exchange Act Release No. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR–NASD–2002–148) (approval order).

examination and enforcement authority and responsibility. Additionally, NASD is charged with enforcing compliance with MSRB rules by its members, which responsibility includes review of NASD member activities in municipal securities through examinations and disciplinary actions. Because NASD does not receive any portion of fees that the MSRB collects from its members, NASD must fund its own regulatory costs. Furthermore, extension of the TAF to include corporate and municipal debt will not alter the fact that regulatory costs funded by the TRACE fee structure are not funded by any other NASD-imposed fees. Therefore, the Commission believes it is reasonable for NASD to extend the TAF to encompass corporate and municipal debt as described in the proposal. The Commission recognizes that the proposed rule change will, under certain circumstances, require payment of two TAFs. The Commission believes this is reasonable, however, because the transactions described by the commenters are two separate transactions and interactions with customers are the primary driver of the NASD's regulatory costs.[44]

With regard to the commenters' assertions that the proposal will adversely affect retail-oriented firms, and that the TAF will penalize firms that engage in small transactions as opposed to those that engage in large, institutional transactions, the Commission believes that NASD has devised a cap that is reasonable, given that NASD represents that retail trades typically drive NASD's member regulatory costs, and that such costs do not increase exponentially as the number of shares and bonds increase. The Commission is satisfied that the cap is consistent with the standards delineated in Section 15A(b)(5) of the Act.[45] The Commission expects that the NASD will continue to monitor this aspect of the proposal to ensure that the imposition of the cap results in a TAF that remains consistent with the Act.

Regarding the commenters' assertion that the proposal lacks information on how the TAF will be implemented, the Commission believes NASD has adequately addressed this concern by stating that it expects to apply the TAF to equity and debt securities as consistently as possible, and offering to consider any information relevant to this issue before issuing a Notice to Members with respect to debt.

The Commission finds good cause to approve Amendment No. 1 before the 30th day after the date of publication of notice of filing thereof in the **Federal Register**. The NASD filed Amendment No. 1 in response to comments it received after the publication of the notice of filing of the proposed rule change.[46] Because Amendment No. 1 is responsive to the commenters' concerns and because it does not present any novel issues, the Commission finds good cause for accelerating approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASD–2003–201 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File No. SR–NASD–2003–201. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing also will be available for inspection and copying at the principal office of NASD. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to file number SR–NASD–2003–201 and should be submitted on or before October 29, 2004.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[47] that the proposed rule change (SR–NASD–2003–201) be, and it hereby is, approved, and that Amendment No. 1 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[48]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2533 Filed 10–7–04; 8:45 am]

BILLING CODE 8010–01–P

[44] NASD Response Letter at 5.

[45] 15 U.S.C. 78o–3(b)(5).

[46] *See* footnote 5, *supra.*

[47] 15 U.S.C. 78s(b)(2).

[48] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–50483; File No. SR–NASD–2004–118]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. To Introduce an Extranet Access Fee for Extranet Providers To Provide Direct Access Services for Nasdaq Market Data Feeds

October 1, 2004.

I. Introduction

On August 4, 2004, the National Association of Securities Dealers, Inc. (''NASD''), through its subsidiary, The Nasdaq Stock Market, Inc. (''Nasdaq''), filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to introduce an access fee to be charged to extranet providers to furnish direct access services for Nasdaq market data feeds. The proposed rule change was published for notice and comment in the **Federal Register** on September 1, 2004.[3] The Commission received two comment letters on the proposed rule change, both supporting the proposal.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 50262 (August 25, 2004), 69 FR 53480.

[4] *See* letter from Scott Feier, Vice President, Fidelity Investments, to Jonathan G. Katz, Secretary, Commission, dated September 1, 2004; and letter from P. Howard Edelstein, President and CEO, Radianz Americas Inc., to Jonathan G. Katz, Secretary, Commission, dated September 22, 2004.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association,[5] and, in particular, the requirements of Section 15A(b)(5) of the Act.[6] The Commission believes that the proposed rule change will result in the equitable allocation of a reasonable fee among extranet service providers furnishing direct access services for Nasdaq market data feeds. The Commission notes that Nasdaq plans to use the proposed fee to support Nasdaq's costs associated with establishing and maintaining multiple extranet connections, the costs for republishing, increased network monitoring and maintenance costs, and new administrative and operational costs.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NASD–2004–118) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2535 Filed 10–7–04; 8:45 am]

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[5] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78*o*–3(b)(5).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50465; File No. SR–OCC–2003–09]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 Relating to Minimum Net Capital Requirements for Appointed Clearing Members

September 29, 2004.

I. Introduction

On August 22, 2003, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–OCC–2003–09 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on April 1, 2004.[2] No comment letters were received. On September 28, 2004, OCC filed Amendment No. 1 to the proposed rule change. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

II. Description

The proposed rule change specifies minimum net capital requirements for Appointed Clearing Members, which are OCC clearing members that facilitate stock settlement for other clearing members. OCC's by-laws define an ''underlying security'' with respect to physically settled stock options and stock futures to mean the security or other asset that OCC is obligated to sell or purchase upon exercise or maturity of the contract. Normally, underlying securities are delivered and paid for through the facilities of the National Securities Clearing Corporation (''NSCC''), and clearing members that are eligible to clear and carry stock options and stock futures contracts must be NSCC participants except as otherwise provided in OCC's rules. OCC's by-laws and rules permit a clearing member (''Appointing Clearing Member'') that is not an NSCC member to appoint another clearing member (''Appointed Clearing Member'') that is an NSCC member to deliver and to receive underlying securities and to effect payment on their behalf through the facilities of NSCC.

In connection with providing stock settlement services, an Appointed Clearing Member may be subject to increased risk. As a result, OCC has determined that Appointed Clearing Members should be required to maintain a specified minimum amount of net capital in order to perform such services. Therefore, OCC is implementing new Rule 309A that will apply to Appointed Clearing Members the minimum net capital standards that currently are applied to Managing Clearing Members in facilities management arrangements in Rule 309. This minimum net capital standard will require every Appointed Clearing Member to maintain net capital of not less than the greater of (i) the minimum net capital required under the provisions of OCC Rule 302 or (ii) the sum of (A) $4,000,000 plus (B) $200,000 times the number of Appointing Clearing Members in excess of four on whose behalf the Appointed Clearing Member effects settlements.[3]

III. Discussion

Section 17A(b)(3)(F) of the Act requires, among other things, that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.[4] The Commission agrees with OCC that Appointed Clearing Members take on additional financial risk when they provide settlement services for Appointing Clearing Members. By increasing the minimum net capital requirement for Appointed Clearing Members, the proposed rule change is designed to provide OCC with additional assurances of Appointed Clearing Members' financial responsibility which should help OCC to better protect itself and its members from any additional risk posed by Appointed Clearing Members. Accordingly, the proposed rule change is designed to assure the safeguarding of securities and funds which are in OCC's custody or control or for which it is responsible.

OCC has requested that the Commission approve this proposed rule change prior to the thirtieth day after publication of notice of the filing. Because OCC's amendment (1) changed only the dollar amount of required capital and not the substance of the proposed rule change, (2) followed up on what OCC had stated it was going to do in its filing increasing the net capital requirement for Managing Clearing Members,[5] (3) made the calculation of the net capital requirements for Appointed Clearing Members and Managing Clearing Members consistent, and (4) will help OCC to protect itself and its members from any additional risk posed by Appointing Clearing Members, the Commission finds good cause for approving the proposed rule change prior to the thirtieth day after publication of notice.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether Amendment No. 1 is consistent with the Act. Comments may be submitted by any of the following methods:

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 49478, (March 25, 2004), 69 FR 17258.

[3] As originally filed the dollar amounts in (A) and (B) were $2,000,000 and $100,000. This was the subject of the amendment filed on September 28, 2004.

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] Securities Exchange Act Release No. 49843 (June 9, 2004), 69 FR 13744 (June 18, 2004) [File No. SR–OCC–2003–11].

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–OCC–2004–11 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–OCC–2004–09. 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 OCC and on OCC's Web site at *http://www.optionsclearing.com.* 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–OCC–2004–09 and should be submitted on or before October 29, 2004.

V. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–2003–09) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–2534 Filed 10–7–04; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 4856]

Bureau of Nonproliferation; Determination on Export-Import Bank Support for U.S. Exports to Libya

AGENCY: Bureau of Nonproliferation, Department of State.

ACTION: Notice.

SUMMARY: Pursuant to section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the President has determined and certified to Congress that it is in the national interest for the Export-Import Bank to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports to Libya.

EFFECTIVE DATE: November 13, 2004.

FOR FURTHER INFORMATION CONTACT: Caroline R. Russell, Office of Regional Affairs, Bureau of Nonproliferation, Department of State ((202) 647–9786).

SUPPLEMENTARY INFORMATION: In accordance with section 2(b)(4) of the Export-Import Bank Act of 1945, as amended, the Department of State determined that Libya has materially violated a safeguards agreement with the International Atomic Energy Agency (IAEA). This determination is based on the extensive Libyan nuclear activities conducted outside safeguards detailed in the IAEA Director General's February 20, 2004 report to the IAEA Board of Governors. It is also supported by the decision of the IAEA Board that Libya's failure to meet the requirements of its safeguards agreement ''constituted noncompliance'' pursuant to Article XII.C. of the IAEA statute. As a result of this determination, under section 2(b)(4) of the Export Import Bank Act of 1945, the Board of Directors of the Export Import Bank is prohibited from giving ''approval to guarantee, insure, or extend credit, or participate in the extension of credit in support of United States exports'' to Libya.

The President has determined and certified to Congress pursuant to section 2(b)(4) that ''it is in the national interest'' to waive the restrictions in the law and allow the Export-Import Bank to support United States exports to Libya. This Presidential determination removes this impediment to Export-Import Bank support for United States exports to Libya beginning November 13, 2004 (45 days after the date the President's determination and certification was submitted to Congress). The Export-Import Bank should be consulted about other legal provisions that may continue to restrict Export-Import Bank support for United States exports to Libya.

Dated: September 29, 2004.

Susan F. Burk,

Acting Assistant Secretary of State for Nonproliferation, Department of State.

[FR Doc. 04–22736 Filed 10–7–04; 8:45 am]

BILLING CODE 4710–27–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS315]

WTO Dispute Settlement Proceeding Regarding European Communities—Selected Customs Matters

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (''USTR'') is providing notice that on September 21, 2004, in accordance with the Marrakesh Agreement Establishing the World Trade Organization (''WTO Agreement''), the United States requested consultations with the European Communities regarding (a) the non-uniform administration by the European Communities of laws, regulations, judicial decisions, and administrative rulings pertaining to the classification and valuation of products for customs purposes, and to requirements, restrictions or prohibitions on imports, and (b) the failure of the European Communities to institute judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia,* of the prompt review and correction of administrative action relating to customs matters. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before November 8, 2004, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically, to *FR0448@ustr.gov,* Attn: ''European Communities—Selected Customs

[6] 17 CFR 200.30–3(a)(12).

Matters (DS315)'' in the subject line, or (ii) by fax to Sandy McKinzy, at (202) 395–3640, with a confirmation copy sent electronically to the e-mail address above.

FOR FURTHER INFORMATION CONTACT: Theodore R. Posner, Associate General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (''URAA'') (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''). That request may found at *http://www.wto.org* contained in a document designated as WT/DS315/1. If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

On September 21, 2004, the United States requested consultations with the European Communities pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (''DSU''), and Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* (''GATT 1994'') regarding:

(a) The non-uniform administration by the European Communities of laws, regulations, judicial decisions and administrative rulings pertaining to the classification and valuation of products for customs purposes, and to requirements, restrictions or prohibitions on imports, and

(b) The failure of the European Communities to institute judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia,* of the prompt review and correction of administrative action relating to customs matters.

The principal law-making organs of the European Communities, the Council and the Commission, over time have adopted certain measures pertaining to the classification and valuation of imported goods for customs purposes, as well as procedures for the entry and release of goods into the European Communities. These measures include:

- Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended;
- Commission Regulation (EEC) No. 2454/93 of 2 July 1993 laying down provisions for the implementation of Council Regulation (EEC) No. 2913/92 of 12 October 1992 establishing the Community Customs Code, including all annexes thereto, as amended;
- Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended;
- The Integrated Tariff of the European Communities established by virtue of Article 2 of Council Regulation (EEC) No. 2658/87 of 23 July 1987 on the tariff and statistical nomenclature and on the Common Customs Tariff, including all annexes thereto, as amended; and
- For each of the above laws and regulations, all amendments, implementing measures and other related measures.

Administration of the foregoing measures generally is a matter for the national customs authorities in each EC member State. This has led to disparate administration in a number of important areas, including but not limited to:

- Differences in the classification and valuation of goods;
- Differences in procedures for the classification and valuation of goods, including the provision of binding classification and valuation information to importers;
- Differences in procedures for the entry and release of goods, including use of automation in some member States but not others, different certificate of origin requirements, different criteria among member States for the physical inspection of goods, different licensing requirements for importation of food products, and different procedures for processing express delivery shipments;
- Differences in procedures for auditing entry statements after goods are released into the stream of commerce in the European Communities;
- Differences in penalties and differences in procedures regarding the imposition of penalties for violation of customs rules; and
- Differences in record-keeping requirements.

USTR believes the lack of uniformity in administration of EC customs measures to be inconsistent with the obligations of the European Communities, as a member of the World Trade Organization, under Article X:3(a) of the GATT 1994. Article X:3(a) requires a WTO Member to ''administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in [Article X:1].'' Disparate administration from member State to member State appears to be inconsistent with the requirement of uniformity.

Furthermore, the Community Customs Code expressly provides that EC member States are responsible for appeals from administrative decisions on customs matters. Thus, an importer or other interested party seeking to challenge a decision by national customs authorities must bring its appeal to a national administrative tribunal or court. USTR understands that only after proceeding through administrative and/or judicial review is the interested party able to have the matter considered by the European Court of Justice.

The lack of procedures for prompt review by a tribunal with EC-wide jurisdiction appears to be inconsistent with the European Communities' obligation under Article X:3(b) of the GATT 1994, which provides, in relevant part, ''Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia,* of the prompt review and correction of administrative action relating to customs matters.''

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Persons may submit their comments either (i) electronically, to *FR0448@ustr.gov,* Attn: ''European Communities—Selected Customs Matters (DS315)'' in the subject line, or (ii) by fax to Sandy McKinzy, at (202) 395–3640. For documents sent by fax, USTR requests that the submitter provide a confirmation copy to the electronic mail address listed above.

USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail. Interested persons who make submissions by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself, and not as separate files.

Comments must be in English. A person requesting that information

contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly designated as such and ''BUSINESS CONFIDENTIAL'' must be marked at the top and bottom of the cover page and each succeeding page.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must clearly so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' at the top and bottom of the cover page and each succeeding page; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room, which is located at 1724 F Street, NW., Washington, DC 20508. The public file will include non-confidential comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS315, European Communities—Selected Customs Matters Dispute) may be made by calling the USTR Reading Room at (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday.

Daniel E. Brinza,

Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 04–22739 Filed 10–7–04; 8:45 am]

BILLING CODE 3190–W4–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 23–xx–22, Guidance for Approved Model List (AML) Supplemental Type Certificate (STC) Approval of Part 23 Airplane Avionics Installations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC) that sets forth acceptable methods of compliance with 14 CFR, part 23 concerning Approved Model List STC approval. This notice is necessary to give all interested persons an opportunity to present their views on the proposed AC.

DATES: Comments must be received on or before November 8, 2004.

ADDRESSES: Send all comments on the proposed AC to: Federal Aviation Administration, Small Airplane Directorate, Aircraft Certification Service, Programs and Procedures (ACE–114), 901 Locust Street, Kansas City, Missouri 64106. Electronic comments may be sent to the individual named under **FOR FURTHER INFORMATION CONTACT**.

FOR FURTHER INFORMATION CONTACT: Mr. Wes Ryan *(wes.ryan@faa.gov),* Standards Office, Small Airplane Directorate, Aircraft Certification Service, Kansas City, Missouri 64106, telephone (816) 329–4125, fax (816) 329–4090.

SUPPLEMENTARY INFORMATION: Any person may obtain a copy of this proposed AC by contacting the person named above under **FOR FURTHER INFORMATION CONTACT**. A copy of the AC will also be available on the internet at *http://www.airweb.faa.gov/AC* within a few days.

Comments Invited: We invite interested parties to submit comments on the proposed AC. Commenters must identify AC 23–xx–22 and submit comments to the address specified above. The FAA will consider all communications received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), 901 Locust, Room 301, Kansas City, Missouri, between the hours of 8:30 a.m. and 4 p.m. weekdays, except Federal holidays, by making an appointment in advance with the person listed under **FOR FURTHER INFORMATION CONTACT**.

Background: The advisory circular sets forth guidelines for using the Approved Model List (AML) Supplemental Type Certificate (STC) process for the installation approval of avionics for 14 CFR, part 23 airplanes, including airplanes certified under prior certification bases, such as CAR 3 or bulletin 7–A. This AC provides guidance to FAA personnel, equipment manufacturers, and avionics equipment installers.

Issued in Kansas City, Missouri, on September 28, 2004.

Dorenda D. Baker,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 04–22608 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Memphis International Airport, Memphis, Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47153(c), notice is being given that the FAA is considering a request from the Memphis-Shelby County Airport Authority to waive the requirement that a 2.72-acre parcel of surplus property, located at the Memphis International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before November 8, 2004.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Richard V. White, A.A.E., Director of Properties, Memphis-Shelby County Airport Authority at the following address: 2491 Winchester Rd.; Suite 113, Memphis, TN 38116–3856.

FOR FURTHER INFORMATION CONTACT: Tommy L. Dupree, Program Manager, Memphis Airports District Office, 2862 Business Park Drive, Building G, Memphis, TN 38118–1555, (901) 322–8185. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Memphis-Shelby County Airport Authority to release 2.72 acres of surplus property at the Memphis International Airport. The property will be purchased by Mr. Woody Welch, Fleet Equipment, LLC, 2505 Farrisview, Memphis, TN, and used for the expansion of existing fleet equipment business. The irregular shaped parcel of 2.72 acres is located south of Interstate 240 and Farrisview Road and north of Nonconnah Creek. The 2.72 acre tract is isolated from any remaining tracts owned by the Memphis-Shelby County Airport Authority south of Nonconnah Creek. The 2.72 acre tract has no access from Farrisview Road. Approximately 1.05 acres is located in the floodplain, approximately one foot below floodplain elevation. The net proceeds from the non-aeronautical use or the sale of this property will be used for airport purposes.

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 request, notice and other documents germane to the request in person at the Memphis-Shelby County Airport Authority.

Issued in Memphis, Tennessee, on September 29, 2004.

Peggy S. Kelly,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 04–22619 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance 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 extension of the currently approved collection. The ICR describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on July 13, 2004, page 42078.

DATES: Comments must be submitted on or before November 8, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aviation Maintenance Technical Schools.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0040.

Forms(s): FAA Forms 8310–6.

Affected Public: A total of 174 aviation maintenance school representatives.

Abstract: Section 44707 (49 U.S.C.) authorizes certification of civil aviation mechanic schools; 14 CFR part 147 prescribes requirements for certification and operation of aviation mechanic schools. The information collected is needed to determine applicant eligibility and compliance.

Estimated Annual Burden Hours: An estimated 66,134 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA 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 estimates 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.

Issued in Washington, DC, on September 24, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–22615 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance 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 extension of the currently approved collection. The IRC describes the nature of the information collection and the expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published in April 21, 2004, page 21595.

DATES: Comments must be submitted on or before November 8, 2004. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: NAS Data Release Request.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0668.

Forms(s): FAA Form 1200–5

Affected Public: A total of 9 reporting regions.

Abstract: This information must be collected to enable the FAA to evaluate the validity of the user's request for National Airspace Data (NAS) from FAA systems and equipment. This data collection is the genesis for granting approval to release filtered, NAS data to vendors. The information provided sets the criteria for the FAA Data Release Request Committee (DRRC) to approve or disapprove individual requests for NAS data. FAA Order 1200.22C, Data and Interface Equipment Used By Outside Interests, paragraph 7, Policy, a–j, states the FAA policy for releasing filtered NAS data to requestors.

Estimated Annual Burden Hours: An estimated 27 hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention FAA 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 estimates 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.

Issued in Washington, DC on September 24, 2004.

Judith D. Street,

FAA Information Collection Clearance Officer, Standards and Information Division, APF–100.

[FR Doc. 04–22616 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Federal Aviation Administration policy for the Certification of Restricted Category Aircraft

AGENCY: Federal Aviation Administration (DOT).

ACTION: Notice of availability and request for public comment.

SUMMARY: This notice announces the availability of and request for comments on the proposed policy for the certification of restricted category aircraft. The proposed policy will be in the form of an Order prescribing how to certify a restricted category aircraft. The proposed Order will apply to Aircraft Certification Service personnel, Flight Standards Service personnel, persons designated by the Administrator, and organizations associated with the certification processes required by Title 14 of the Code of Federal Regulations (14 CFR).

DATES: Comments must be received on or before November 30, 2004.

ADDRESSES: Submit comments on the proposed policy to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, AIR–100, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, or electronically to: Graham Long, Federal Aviation Administration, Aircraft Certification Service, at *9-awa-air110-gn12@faa.gov*.

FOR FURTHER INFORMATION CONTACT: Mr. Graham Long, AIR–110, Room 815, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–3715, Fax: (202) 237–5340, or e-mail: *9-awa-air110-gn12@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed policy listed in this notice by submitting such written data, views, or arguments as they desire to the above address. Comments received on the proposed policy may be examined, before and after the comment closing date, in Room 815, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 3:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before issuing the final policy.

Background

This order prescribes how the Federal Aviation Administration (FAA) certifies restricted category aircraft under Title 14 of the Code of Federal Regulations (14 CFR) §§ 21.25 (type certificates), and 21.185 (airworthiness certificates). This order details the responsibilities and procedures for the certification of restricted category aircraft and supplements FAA Orders 8110.4, Type Certification; 8120.2, Production Approvals and Certificate Management Procedures; and 8130.2, Airworthiness Certification of Aircraft and Related Products.

How To Obtain Copies

You may get a copy of the proposed policy from the Internet at: *http://www.faa.gov/Certification/Aircraft/DraftDoc/Comments.htm, under Draft Orders.* You may also request a copy from Mr. Graham Long. See the section entitled **Further Information Contact** for the complete address.

Dated: Issued in Washington, DC, on September 30, 2004.

Nancy C. Lane,

Acting Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 04–22617 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2004–76]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 28, 2004.

ADDRESSES: You may submit comments identified by DOT DMS Docket Number FAA–2004–18967 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.

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.

FOR FURTHER INFORMATION CONTACT: John Linsenmeyer (202) 267–5174 or Susan Lender (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on October 1, 2004.

Anthony F. Fazio,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2004–18967.

Petitioner: Gulfstream Aerospace Corporation.

Sections of 14 CFR Affected: 14 CFR 21.463(b).

Description of Relief Sought: To allow Gulfstream Aerospace Corporation, which holds a Designated Alteration Station authorization from the FAA, to store certain Supplemental Type Certificate files at their facilities instead of submitting them to the FAA.

[FR Doc. 04–22609 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Government/Industry Air Traffic Management Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA/Industry Air Traffic Management Advisory Committee.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Government/Industry Air Traffic Management Advisory Committee.

DATES: The meeting will be held October 7, 2004, 12–5 p.m.

ADDRESSES: The meeting will be held at the Federal Aviation Administration, 800 Independence Ave., SW., Round Conference Room (10th Floor) Washington, DC, 20591.

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.*

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 the Air Traffic Management Advisory Committee meeting.

Note: *Non-Government attendees to the meeting must go through security and be escorted to and from the conference room.*

Issued in Washington, DC, on September 28, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–22614 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Change Notice for RTCA Program Management Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Program Management Committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the RTCA Program Management Committee.

DATES: The meeting will be held October 19, 2004 starting at 9 a.m.

ADDRESSES: The meeting will be held at RTCA, IN c., 1828 L Street, NW., Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 850 Washington, DC 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 Program Management Committee meeting. The revised agenda will include:

- *October 19:*
- Opening session (welcome and introductory remarks, review/approve summary of previous meeting).
- *Publication Consideration/ Approval:*
- Final draft, *Civil Operators' Training Guidelines for Integrated Night Vision Imaging System Equipment,* RTCA Paper No. 156–04/PMC–334, prepared by SC–196.
- Final draft, *Guidance on Allowing Transmitting Portable Electronic Devices (T–PEDs) on Aircraft,* RTCA Paper No. 157–04/PMC–345, prepared by SC–202.
- Final draft, *Safety Requirements for AOC Datalink Messages,* RTCA Paper No. 158–04/PMC–364, prepared by SC–201.
- *Discussion:*
- Special Committee 203, Unmanned Aircraft.
  —Review/status.
- Special Committee 186, Automatic Dependent Surveillance-Broadcast.
  —Discuss/approve terms of reference.
- Software Considerations in Aviation Systems-Discussion new Committee Request.
  —Review/approve terms of reference/ leadership.
- Special Committee Chairman's Report.
- *Action Item Review:*
- Possible new SC–189 activity-interperability requirements for mixed date communications.
  —Review/status.
- Requirements Focus Group (RFG).
- Review/approve revised SC–186 terms of reference.
- 406 MHz Emergency Locator Transmitters (ELTs).
- Review/status.
- Flight Information Services (FIS)/ Aeronautical Information Services (AIS) Data Link.
- Review/status.
- Closing session (other business, document production, date and place of next meeting, adjourn).

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 September 22, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–22613 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 202: Portable Electronic Devices

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 202 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 202: Portable Electronic Devices.

DATES: The meeting will be held on October 12–15, 2004 from 9 a.m. to 4:30 p.m.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW., Suite 805, Washington, DC 20036–5133.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, NW., Suite 805, Washington, DC 20036–5133; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org.*

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 202 meeting. The agenda will include:

October 12 and 15:

• Working Groups 1 through 4 meet all day.

October 14:

• Opening plenary session (welcome and introductory remarks, review agenda, review approve previous common plenary summary, review open action items).

• Update from EUROCAE Working Group WG–58.

• Report from Consumer Electronic Association (CEA) Discovery Group.

• Update from Regulatory Agencies (FAA, UK–CAA, Canadian TSB, or other members present).

• Update on completion of Phase I final draft document.

• *Working Groups report out/reach working group will cover the following recommendations:*

• Phase 2 work statement.

• Revisions to Terms of Reference (TOR).

• Revisions to committee structure.

• Work plan for Phase 2.

• Schedule for work plan.

• Working Group 1 (PEDs characterization, test, and evaluation).

• Working Group 2 (aircraft test and analysis).

• Working Group 3 (aircraft systems susceptibility).

• Working Group 4 (risk assessment, practical application, and final documentation).

• Human Factors sub-group.

• Committee consensus on Phase 2 work statement, committee structure, work plan, and schedule.

• Committee consensus on revisions to Terms of Reference (TOR).

• Preview of paper: ''UWB EMI to Aircraft Radios: Field Evaluation on Operational Commercial Transport Airplanes'' (Jay Ely et al).

October 14:

• Chairmen's Day 2 opening remarks and process check.

• Update on testing done by industry collaborative airplane testing group.

• Implanted Transmitting Medical Devices for Phase 2 work—technical parameters, typical usage and operational aspects.

• QUALCOMM/American Airlines CDMA proof of concept demonstration overview.

• Review open actions on document draft preparation for FRAC.

• Working Group breakout sessions as required.

• Closing session (other business, date and place of next meeting, closing remarks, adjourn).

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 September 16, 2004.

Robert Zoldos,

FAA System Engineer, RTCA Advisory Committee.

[FR Doc. 04–22612 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 04–02–C–00–OAJ To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Albert J. Ellis Airport, Jacksonville, North Carolina

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Albert J. Ellis Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jerry Vickers, Director of Aviation of the Albert J. Ellis Airport at the following address: 264 A. J. Ellis Airport Road, Jacksonville, NC 28574.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Albert J. Ellis Airport under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Tracie D. Kleine, Program Manager, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337, (404) 305–7148. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Albert J. Ellis Airport under the provisions of the 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 30, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Albert J. Ellis Airport was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than December 30, 2004.

The following is a brief overview of the application.

Proposed charge effective date: February 1, 2005.

Proposed charge expiration date: March 1, 2006.

Level of the proposed PFC: $3.00.

Total estimated PFC revenue: $678,542.

Brief description of proposed project(s):

ARFF SCBA's
Access Road Signage
Terminal Renovations
ARFF Turnout Gear
Master Plan Update
ARFF Vehicle
Rescue Equipment (with vehicle)
Runway 5/23 Rehabilitation (Design)
DBE Program
Runway 5/23 Rehabilitation
Access & Emergency Roads
ARFF Design
Beacon Rehabilitation
Terminal Renovation Design
Communication Equipment
Signage
Runway Rehabilitation
Wind-cone Relocation
Security Gates
ARFF Multipurpose Complex
Terminal Renovations
General Aviation Rehabilitation
Ramp Patrol Vehicle
ARFF Equipment
Snow Removal Equipment
Rescue Utility Vehicle (ATV)
Security System Improvements
Airfield Electric & Vault Improvements
Commute-A-Walk Rehabilitation
Obstruction Removal
Communications Upgrade (repeater)
Terminal Generator
Apron Lighting
Airfield Drainage Improvements
General Aviation Apron Expansion
T-hanger Taxi-lane
T-hangar/Corporate Taxi-lane & Apron
T-hangar/Corporate Hangar Access
Economic Impact Study
Terminal Security System

ARFF Vehicle
Remove Existing Maintenance Building
ADA Lift Device
General Aviation Terminal Construction
General Aviation Terminal Access Road & Parking
Emergency Response Vehicle
Air Carrier Apron Expansion
PFC Amendment/Application Development
PFC Program Administration

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Albert J. Ellis Airport.

Issued in College Park, Georgia, on September 30, 2004.

Scott L. Seritt,

Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. 04–22618 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at T. F. Green State Airport, Warwick, Rhode Island, for Projects at T. F. Green State Airport, Warwick, Rhode Island; North Central State Airport, Smithfield, Rhode Island; Quonset State Airport, North Kingstown, Rhode Island; and Westerly State Airport, Westerly, Rhode Islande

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at T. F. Green State Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before November 8, 2004.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Brian C. Schattle, at the following address: Vice President Finance/CFO, Rhode Island Aviation Corporation, T. F. Green State Airport, 2000 Post Road, Warwick, Rhode Island, 02886.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Rhode Island Airport Corporation under section 158.23 of part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at T. F. Green State Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990)(Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On August 20, 2004, the FAA determined that the application to use the revenue from a PFC submitted by Rhode Island Airport Corporation was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 18, 2004.

The following is a brief overview of the application.

PFC Project #: 04–04–U–00–PVD.

Level of the proposed PFC: $3.00.

Charge effective date: April 1, 2008.

Estimated charge expiration date: August 1, 2012.

Total estimated PFC revenue: $19,855,000.

Brief description of proposed use projects: T.F. Green State Airport, New Airfield Maintenance Facility, Ticket Counter Expansion; North Central State Airport, Rehabilitation of Apron; Quonset State Airport, Rehabilitation of Apron; and Westerly State Airport, Rehabilitation of Apron and Taxiways *B* and *C*.

Class or classes of air carriers, which the public agency has requested to be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTRACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Rhode Island Airport Corporation.

Issued in Burlington, Massachusetts on September 21, 2004.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 04–22748 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice of OMB approvals.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.5(b), this notice announces that new information collections requirements (ICRs) listed below have been approved by the Office of Management and Budget (OMB). These new ICRs pertain to 49 CFR parts 219 and 222. Additionally, FRA hereby announces that other ICRs listed below have been re-approved by the Office of Management and Budget (OMB). These ICRs pertain to parts 213, 215, 216, 223, 229, and 239. The OMB approval numbers, titles, and expiration dates are included herein under supplementary information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 17, Washington, DC 20590 (telephone: (202) 493–6292), or Debra Steward, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR part 1320, require Federal agencies to display OMB control numbers and inform respondents of their legal significance once OMB approval is obtained. The following new FRA information collections were approved:

(1) OMB No. 2130–0560, Use of Locomotive Horns at Highway-Rail Grade Crossings (49 CFR part 222) (Interim Final Rule). The expiration date for this information collection is April 30, 2007. (2) OMB No. 2130–0561, Work Schedules and Sleep Patterns of Maintenance of Way Employees (Forms FRA F 6180.114/115). The expiration date for this information collection is May 31, 2007. (3) OMB No.2130–0555, Foreign-Railroad Foreign-Based (FRFB) Employees Who Perform Train or Dispatching Service in the United States (49 CFR 219) (Final Rule). The expiration date for this information collection is July 31, 2007.

The following information collections were re-approved: (1) OMB No. 2130–0010, Track Safety Standards (Gage Restraint Measurement Systems) (49 CFR 213). The new expiration date for this information collection is June 30, 2007. (2) OMB No. 2130–0504, Special Notice for Repairs (49 CFR 216). The new expiration date for this information collection is July 31, 2007. (3) OMB No. 2130–0511, Designation of Qualified Persons (49 CFR 215). The new expiration date for this information collection is June 30, 2007. (4) OMB No. 2130–0545, Passenger Train Emergency Preparedness (49 CFR parts 223 and 239). The new expiration date for this information collection is May 31, 2007. (5) OMB No. 2130–0004, Locomotive Safety Standards and Event Recorders (49 CFR part 229). The new expiration date for this information collection is September 30, 2007.

Persons affected by the above referenced information collections are not required to respond to any collection of information unless it displays a currently valid OMB control number. These approvals by the Office of Management and Budget (OMB) certify that FRA has complied with the provisions of the Paperwork Reduction Act of 1995 (Pub. L.104–13) and with 5 CFR 1320.5(b) by informing the public about OMB's approval of the information collection requirements of the above cited forms and regulations.

Authority: 44 U.S.C. 3501–3520.

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

Kathy A. Weiner,

Director, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 04–22620 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19217; Notice 1]

Mitsubishi Motor Sales Caribbean, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

Mitsubishi Motor Sales Caribbean, Inc. (MMSC) has determined that certain vehicles that it imported and distributed in 1997 through 2005 do not comply with S4.5.1(b)(2)(ii), (c)(1) and (e)(1)(ii) of 49 CFR 571.208, Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant Crash Protection.'' MMSC has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), MMSC has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of MMSC's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 85,065 model year 1998 to 2005 Mitsubishi vehicles are affected. Approximately 70,592 Monteros, Nativas, Diamantes, Mirages, Lancers, and Outlanders covering model years from 1998 to 2005 do not comply with S4.5.1(b)(2)(ii), ''Sun visor air bag warning label.'' Approximately 10,761 Nativas covering model years 2000—2004 do not comply with S4.5.1(c)(1), ''Air bag alert label.'' Approximately 85,065 Monteros, Nativas, Diamantes, Mirages, Lancers, 3000 GTs, Outlanders, Galants, Eclipses, Eclipse Spyders, and Endeavors covering model years 1998—2005 do not comply with S4.5.1(e)(1)(ii), ''Label on the dashboard.''

The relevant requirements of FMVSS No. 208, S4.5.1, ''Labeling and owner's manual information,'' are as follows: ''(b)(2)(ii) The message area [of the permanent sun visor air bag warning label] * * * shall be no less than 30 cm^2. * * * (c)(1) The message area [of the permanent sun visor air bag alert label] * * * shall be no less than 20 square cm. * * * (e)(1)(ii) The message area [of the temporary label on the dashboard] * * * shall be no less than 30 cm^2.''

On the affected vehicles, the actual measurement of the English message area for the sun visor air bag warning label is 27 cm^2 rather than the required minimum of 30 cm^2, for the sun visor alert label is 12 cm^2 rather than the required minimum of 20 cm^2, and for the dash label is 19 cm^2 rather than the required minimum of 30 cm^2. MMSC explains that these noncompliances resulted from reducing the English message areas when the respective Spanish translations were added.

MMSC believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. In support of its petition, MMSC states the following:

> The likelihood consumers will perceive the presence of the labels is enhanced since the overall sizes of the bilingual labels are larger than the English only labels while the understandability performance of the warnings is enhanced since the message reaches a wider audience than an English only version.
>
> The legibility of the labels at the required distance (*i.e.*, from all front seating positions) is not degraded since the font size, font color, and letter spacing remain the same as our English only versions that meet the message area requirements.
>
> The labels meet all other requirements in every respect including heading content, heading color, message content, message area color, message text color, alert symbol content, and alert symbol color. * * *
>
> Mitsubishi believes the percentage of vehicles actually fitted today with the non-compliant temporary dash labels is for all intents and purposes zero, considering in all likelihood they have already been removed by customers after purchase.

MMSC has received no customer complaints related to the bilingual labels.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov*. Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal

eRulemaking Portal: go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8

Issued on: September 30, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–22621 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19103; Notice 1]

The Goodyear Tire and Rubber Company, Receipt of Petition for Decision of Inconsequential Noncompliance

The Goodyear Tire and Rubber Company (Goodyear) has determined that certain tires it produced in 2004 do not comply with S4.3(e) of 49 CFR 571.109, Federal Motor Vehicle Safety Standard (FMVSS) No. 109, ''New pneumatic tires.'' Goodyear has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Goodyear has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Goodyear's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 3,793 tires are involved. These include approximately 1,075 Kelly Charger HPT 235/45R18 tires manufactured from May 18, 2004 to May 27, 2004 and approximately 2,718 Essenza 210 Type R 235/45R18 tires manufactured from July 15, 2004 to August 15, 2004. Paragraph S4.3 of FMVSS No. 109 requires ''each tire shall have permanently molded into or onto both sidewalls * * * (e) Actual number of plies in the sidewall, and the actual number of plies in the tread area if different.'' The affected tires are incorrectly labeled to state that there is one nylon ply in the tread area when the actual number of nylon plies is two.

Goodyear believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted, because the mislabeling of these tires creates no unsafe condition. Goodyear states that the tires meet or exceed all applicable FMVSS performance requirements. In addition, Goodyear says that all markings related to tire service, including load capacity and corresponding inflation pressure, are correct. Goodyear has corrected the problem.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202–493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 2004.

Authority: 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8

Issued on: September 29, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–22622 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2004–18714; Notice 2]

Volkswagen of America, Inc., Grant of Petition for Decision of Inconsequential Noncompliance

Volkswagen of America, Inc. (Volkswagen) has determined that label information on certain vehicles that it produced in 2003 and 2004 does not comply with S5.3 of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 120, ''Tire selection and rims for motor vehicles other than passenger cars.'' Pursuant to 49 U.S.C. 30118(d) and 30120(h), Volkswagen has petitioned for a determination that this noncompliance is inconsequential to motor vehicle safety and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Notice of receipt of a petition was published, with a 30-day comment period, on August 11, 2004, in the **Federal Register** (69 FR 48907). NHTSA received no comments.

A total of approximately 23,017 Volkswagen Touareg MPV vehicles produced between November 3, 2003 and July 2, 2004 are affected. S5.3 of FMVSS No. 120, ''Label information,'' requires that the certification label or a separate tire information label shall show certain information about the tires and rims, as specified in S5.3.1 and S5.3.2. S5.3.1, ''Tires,'' refers to ''The size designation * * * and the recommended cold inflation pressure for those tires * * * .'' S5.3.2, ''Rims,'' refers to ''The size designation * * * of Rims * * * appropriate for those tires.'' Volkswagen chose to use a separate label on the affected vehicles that does not contain the rim size markings required by S5.3.2.

Volkswagen believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Volkswagen stated the following:

Volkswagen believes that the lack of rim size information on any of the labels does not create a risk to motor vehicle safety because any replacement tires of equivalent size to the factory installed tires or to any factory

option tire would be compatible with the factory installed wheel rims. If an owner purchases wheel rims to replace those installed by Volkswagen, the selling dealer would be responsible for advising the owner on the compatible tire and wheel rim combination.

NHTSA agrees with Volkswagen that this noncompliance will not have an adverse effect on vehicle safety. Since the rim size and type are marked on the wheels of the vehicle, the information needed to ensure that the vehicles are equipped with the proper rims is readily available to potential users. Volkswagen has not received any owner or field complaints regarding the lack of wheel rim size information on the tire pressure information label. Volkswagen has fixed the problem.

In consideration of the foregoing, NHTSA has decided that the petitioner has met its burden of persuasion that the noncompliance described is inconsequential to motor vehicle safety. Accordingly, Volkswagen's petition is granted and the petitioner is exempted from the obligation of providing notification of, and a remedy for, the noncompliance.

Authority: 49 U.S.C. 30118, 30120; delegations of authority at CFR 1.50 and 501.8

Issued on: September 28, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–22720 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2004–19257; Notice 1]

The Spares Company, Receipt of Petition for Decision of Inconsequential Noncompliance

The Spares Company (Spares) has determined that air brake hose assemblies it manufactured from 2000 to 2004 do not comply with S7.2.3 of 49 CFR 571.120, Federal Motor Vehicle Safety Standard (FMVSS) No. 106, ''Brake Hoses.'' Spares has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.''

Pursuant to 49 U.S.C. 30118(d) and 30120(h), Spares has petitioned for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Spares' petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

A total of approximately 17,000 aftermarket air brake hose assemblies produced between November 2000 and June 2004 are affected. S7.2.3 of FMVSS No. 106 requires that ''each air brake hose assembly made with end fittings that are attached by crimping or swaging * * * shall be labeled by means of a band around the brake hose assembly * * * [with the DOT symbol and the name of the manufacturer] or, at the option of the manufacturer, by means of labeling [of at least one end fitting which is etched, stamped or embossed with a designation that identifies the manufacturer].'' The affected brake hoses do not have the manufacturer's label or a designation of the manufacturer as required by S7.2.3.

Spares manufactured these brake hose assemblies from its incorporation date in November 2000 until June 2004, when production was stopped because Spares discovered the noncompliance.

Spares believes that the noncompliance is inconsequential to motor vehicle safety and that no corrective action is warranted. Spares explains that the units are assembled by Spares using Goodyear-labeled hoses and RB Royal-labeled fittings. Spares states that the ''brake hose assemblies meet all functional performance requirements of the standard for the hose, the fittings, and the assembly and therefore will perform exactly as intended.''

Spares further states that there have been no complaints from any distributor or consumer concerning the functioning of the brake hose assemblies. Spares has begun notifying all of its distributors of the labeling defect and will provide a band for each noncomplying hose currently remaining in the distributors' possession.

Interested persons are invited to submit written data, views, and arguments on the petition described above. Comments must refer to the docket and notice number cited at the beginning of this notice and be submitted by any of the following methods. Mail: Docket Management Facility, U.S. Department of Transportation, Nassif Building, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC. It is requested, but not required, that two copies of the comments be provided. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays. Comments may be submitted electronically by logging onto the Docket Management System Web site at *http://dms.dot.gov.* Click on ''Help'' to obtain instructions for filing the document electronically. Comments may be faxed to 1–202-493–2251, or may be submitted to the Federal eRulemaking Portal: go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: November 8, 2004.

(Authority 49 U.S.C. 30118, 30120: delegations of authority at CFR 1.50 and 501.8)

Issued on: October 5, 2004.

Kenneth N. Weinstein,

Associate Administrator for Enforcement.

[FR Doc. 04–22722 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2003–14395]

NHTSA's Activities Under the United Nations Economic Commission for Europe 1998 Global Agreement

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

ACTION: Notice of activities under the 1998 Global Agreement and request for comments.

SUMMARY: NHTSA is publishing this notice to inform the public of the schedule of meetings of the World Forum for Harmonization of Vehicle Regulations (WP.29) and its working parties of experts for the period of October 2004 through December 2005. In addition, this notice informs the public about the status of activities under the Program of Work of the 1998 Global Agreement and requests comments on various aspects of these activities, including a proposal from the United States for the development of a global technical regulation (GTR) on head restraints. Publication of this information is in accordance with NHTSA's Statement of Policy regarding

Agency Policy Goals and Public Participation in the Implementation of the 1998 Global Agreement on Global Technical Regulations.

DATES: Written comments may be submitted to this agency and must be received by November 8, 2004.

ADDRESSES: You may submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh St., SW., Washington, DC, 20590. Alternatively, you may submit your comments electronically by logging onto the Dockets Management System Web site at *http://dms.dot.gov.* Click on ''Help & Information'' or ''Help/Info'' to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the docket number of this document. Note that all comments received will be posted without change to *http://dms.dot.gov,* including any personal information provided. Please see the Privacy Act heading under Request for Comments.

FOR FURTHER INFORMATION CONTACT: Ms. Julie Abraham, Director, Office of International Policy, Fuel Economy, and Consumer Programs, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; phone number (202) 366–2114, fax number (202) 493–2280.

SUPPLEMENTARY INFORMATION:

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IV. Request for Comments
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I. Introduction

On August 23, 2000, NHTSA published in the **Federal Register** (65 FR 51236) a statement of policy regarding the agency's policy goals and public participation in the implementation of the 1998 Global Agreement, indicating that each calendar year the agency would provide a list of scheduled meetings of WP.29 and the working parties of experts, as well as meetings of the Executive Committee of the 1998 Global Agreement. Further, in that policy statement, the agency stated that it would keep the public informed about a program of work under the Agreement (*i.e.,* agreed subjects for which GTRs should be developed) as well as a list of candidate GTRs that have been formally proposed by a contracting party and referred to a working party of experts and those draft GTRs that have been developed and referred by a working party of experts to the Executive Committee for establishment under the Agreement.

Through a series of **Federal Register** notices published between July 2000 and February 2003 ((65 FR 44565), (66 FR 4893), (68 FR 5333)), the agency notified the public about status of activities under the 1998 Global Agreement and sought comments on various issues and proposals. In the most recent notice (68 FR 5333), the agency discussed the establishment of a Program of Work for the 1998 Global Agreement, which was formally adopted by WP.29 at its March 2002 Session, and announced and made available formal proposals for GTRs submitted by contracting parties. The notice also requested comments on the U.S. draft proposal for the development of a GTR on door locks and door retention components.

II. List of Tentative Meetings of WP.29 and Its Working Parties of Experts

The following list contains meetings tentatively scheduled for the period of October 2004 through December 2005. The meeting dates are subject to confirmation by the Inland Transport Committee of the United Nations Economic Commission for Europe [1] during its February 2005 session. However, the agency does not anticipate any changes to the schedule. In addition, working parties of experts may schedule, if necessary, informal meetings in addition to their regularly scheduled ones in order to address specific GTRs under consideration.

Schedule of Meetings of WP.29 and Its Working Parties of Experts

2004

October

4–8: Working Party on Lighting and Light-Signaling (GRE) (53rd session).

12–15: Working Party on General Safety Provisions (GRSG) (87th session).

November

15: Administrative Committee for the Coordination of Work (WP.29/AC.2) (86th session).

16–19: World Forum for Harmonization of Vehicle Regulations (WP.29) (134th session) and Administrative Committee of the 1958 Agreement (AC.1) (28th session) and Executive Committee of the 1998 Global Agreement (AC.3)(12th session).

December

7–10: Working Party on Passive Safety (GRSP) (36th session).

2005

January

11–4: Working Party on Pollution and Energy (GRPE) (49th session).

31–Feb 4: Working Party on Brakes and Running Gear (GRRF) (57th session).

March

7: Administrative Committee for the Coordination of Work (WP.29/AC.2) (87th session).

8–11: World Forum for Harmonization of Vehicle Regulations (WP.29) (135th session) and Administrative Committee of the 1958 Agreement (AC.1) (29th session) and Executive Committee of the 1998 Global Agreement (AC.3) (13th session).

April

5–8: Working Party on Lighting and Light Signaling (GRE) (54th session).

18–22: Working Party on General Safety Provisions (GRSG) (88th session).

May

23–27: Working Party on Passive Safety (GRSP) (37th session).

31–June 3: Working Party on Pollution and Energy (GRPE) (50th session).

June

20: Administrative Committee for the Coordination of Work (WP.29/AC.2) (88th session).

21–24: World Forum for Harmonization of Vehicle Regulations (WP.29) (136th session) and Administrative Committee of the 1958 Agreement (AC.1) (30th session) and Executive Committee of the 1998 Global Agreement (AC.3) (14th session).

September

20–23: Working Party on Brakes and Running Gear (GRRF) (58th session).

[1] The Inland Transport Committee provides a forum for its member Governments for (i) cooperation and consultation based on the exchange of information and experiences, (ii) the analysis of transport trends and economics and transport policy trends, and (iii) coordinated action designed to achieve an efficient, coherent, balanced and flexible transport system in the ECE region which is based on principles of market economy, pursues the objectives of safety, environmental protection and energy efficiency in transport and takes into account transport developments and policy of member Governments; WP.29 Reports to this Committee.

October

3–7: Working Party on Lighting and Light Signaling (GRE) (58th session).

11–14: Working Party on General Safety Provisions (GRSG) (89th session).

November

14: Administrative Committee for the Coordination of Work (WP.2/AC.2) (89th session).

15–18: World Forum for Harmonization of Vehicle Regulations (WP.29) (137th session) and Administrative Committee of the 1958 Agreement (AC.1) (31st session) and Executive Committee of the 1998 Global Agreement (AC.3) (15th session).

December

6–9: Working Party on Passive Safety (GRSP) (38th session).

III. Status of Activities Under the Program of Work of the 1998 Global Agreement

In March 2001, NHTSA submitted to WP.29 and the Executive Committee of the 1998 Global Agreement its final recommendations for the first motor vehicle safety GTRs to be considered for establishment under that Agreement. The Administrative Committee for the Coordination of Work of WP.29 (AC.2) reviewed the recommendations made by various contracting parties, including the United States, Canada, the European Union, Japan, and Russia, as well as those made by other interested parties and reached agreement on a Program of Work, taking into account the workload of the working parties of experts under WP.29. AC.2 then submitted the Program of Work to the Executive Committee of the 1998 Global Agreement (AC.3). The AC.3 approved the Program of Work and requested that contracting parties volunteer to sponsor each listed regulation by submitting a formal proposal as required by Article 6 of the 1998 Global Agreement. WP.29 formally adopted the Program of Work at its session in March 2002. Since that session, several contracting parties stepped forward as sponsors for the individual work items and have formalized their sponsorship by submitting proposals for the development of GTRs on these items. While progress has been made in several areas, the Program of Work has remained for the most part unchanged since its approval in 2002, with minor exceptions. The status of hydrogen fuel cell vehicles as well as tire performance has been upgraded from an area for an exchange of information to an area for active discussion regarding the feasibility of establishing a GTR. In addition, there has also been discussion regarding whether to add Event Data Recorders, an agreed item of work under the 1958 Agreement, to the Program of Work for the 1998 Global Agreement.

The following table updates the subjects and lists the sponsoring contracting party. In addition to the list below, the contracting parties will continue to exchange information in the following areas: field of vision (GRSG); side-impact dummy and compatibility (GRSP); worldwide light duty vehicle test procedures (GRPE); and intelligent vehicle systems (WP.29).

PROGRAM OF WORK OF THE 1998 GLOBAL AGREEMENT

Working party of experts	Subject	Sponsoring contracting party
GRE	Installation of Lighting and Light-Signalling Devices	Canada.
GRRF	Motorcycle Brakes	Canada.
	Passenger Vehicle Brakes	U.K. and Japan.
	Tire Performance	France.
GRSG	Safety Glazing	Germany.
	Controls and Displays	Canada.
	Vehicle Classification, Masses and Dimensions	Japan.
GRSP	Pedestrian Safety	European Union.
	Lower Anchorages and Tethers for Child Safety Seats	TBD.
	Door Locks and Door Retention Components	U.S.A.
	Head Restraints	U.S.A.
GRPE	Worldwide Heavy-Duty Certification Procedure	European Union.
	Worldwide Motorcycle Emission Test Cycle	Germany.
	Heavy-Duty On-Board Diagnostics	U.S.A.
	Off-Cycle Emissions	U.S.A.
	Non-Road Mobile Machinery	European Union.
	Hydrogen Fuel Cell Vehicles	Germany.

a. Formal Proposals for the Development of GTRs Submitted by Contracting Parties Based on Program of Work

As of the publication of the February 3, 2003 **Federal Register** notice (68 FR 14395), and pursuant to Article 6 of the 1998 Global Agreement, which sets forth the process and conditions under which a contracting party may make proposals for the establishment of GTRs, the following proposals have been made by contracting parties and referred to the proper working party of experts. These proposals and supporting documentations can be found in the docket for this notice. They can also be found on the UN/ECE Web site *http://www.unece.org/trans/main/wp29/wp29wgs/wp29gen/wp29glob.html* or under the respective working party of expert link (*http://www.unece.org/trans/main/welcwp29.htm*).

- Safety glazing materials for motor vehicles and motor vehicle equipment (Sponsored by Germany), GTR to be prepared by GRSG. (UN/ECE document TRANS/WP.29/AC.3/9).
- Heavy-duty vehicle exhaust-emissions type/approval/certification procedure (Sponsored by European Union), GTR to be prepared by GRPE. (UN/ECE document TRANS/WP.29/AC.3/8).
- Protection of pedestrians and other vulnerable road users in collision with vehicles (Sponsored by European Union), GTR to be prepared by GRSP.

(UN/ECE document TRANS/WP.29/AC.3/7).

- World-wide motorcycle emissions tests (Sponsored by Germany), GTR to be prepared by GRPE. (UN/ECE document TRANS/WP.29/AC.3/6).
- Installation of lighting and light signaling devices (Sponsored by Canada), GTR to be prepared by GRE. (UN/ECE document TRANS/WP.29/AC.3/4).
- Motorcycle brake systems (Sponsored by Canada); GTR to be prepared by GRRF. (UN/ECE document TRANS/WP.29/AC.3/3).

b. U.S. Draft Proposal for the Development of a GTR on Head Restraints

During the upcoming meeting of WP.29 and the Executive Committee of the 1998 Global Agreement in November 2004, NHTSA will formalize its sponsorship of the regulation on Head Restraints as identified in the Program of Work of the 1998 Global Agreement. The draft proposal, as set forth in the appendix, describes the objective of the global technical regulation and identifies in general terms issues to be considered during the development of the regulation.

c. Recommendations by Working Parties of Experts for the Establishment of GTRs Under the 1998 Global Agreement

In the February 3, 2003 notice, NHTSA sought comments on a proposal that formalizes the U.S. sponsorship of a GTR on door locks and door components. In response to the agency's request for comment on the proposal, NHTSA received comments from the Insurance Institute for Highway Safety (IIHS) and Advocates for Highway and Auto Safety (Advocates). Both organizations supported the pursuit of work in this area, which is intended to lead to an upgrade to the current U.S. standard. Specifically, IIHS supported efforts to test door latch systems as they are mounted in the vehicle and requested that the requirements apply to all doors in light passenger vehicles. Advocates supported a regulation that ensures that side and rear doors stay closed during a severe crash and that some doors can be opened after a crash, without tools, to allow the egress of passengers. The proposal was formally presented by the U.S. at the March 2003 WP.29 meeting, and adopted by the Executive Committee and referred to the Working Party of Experts (GRSP) at the June 2003 Session of WP.29.

In September 2003, the GRSP formed an informal working group to develop a GTR. The informal group considered the comments from the IIHS and Advocates as well as those from other contracting parties during the GTR development process. At its May 2003 session, GRSP concluded its work and agreed to recommend a draft GTR on door locks and door retention components to the Executive Committee for establishment under the 1998 Global Agreement. This GTR as well as supporting documentation developed by GRSP, including a final report, can be found in the docket for this notice. Among other things, the report discusses the Working Party's consideration of issues raised in the comments submitted in response to our February 2003 notice.

The U.S. intends to vote at the November 2004 WP.29 session to establish this draft GTR as the first GTR under the 1998 Global Agreement. Closely following this November vote, the U.S. will publish a notice of proposed rulemaking (NPRM) based on this GTR.[2] If public comments on the NPRM lead the agency to adopt a final rule that differs in any significant way from the GTR, the U.S. will consider submitting a proposal to make conforming amendments to the GTR.

In addition to the GTR on door lock and door retention components, progress has been made on two other GTRs. The GRE is discussing a Canadian proposal for a draft GTR on Lighting and Light-Signaling Devices for Road Vehicles. The GRSG is discussing a German proposal for a draft GTR on Safety Glazing. Both of these draft GTRs can be found in the docket.

IV. Request for Comments

The agency invites public comments on the formal proposals for the development of GTRs submitted by contracting parties based on the Program of Work. In particular, the agency seeks public comments on the U.S. proposal for the development of a GTR in the area of head of restraints. The proposal is set forth in the appendix of this notice. The agency also welcomes comments on the GRSP recommended GTR on door locks and door lock retention components, which is expected to be established through a vote of the 1998 Global Agreement Executive Committee at the upcoming November 2004 WP.29 meeting. However, given the fact that the agency plans to issue an NPRM based on this GTR in the near future, the agency will consider detailed comments as part of the regular rulemaking process. In the event that commenters provide new information and data that lead the agency to adopt a final rule that significantly differs from the GTR, the agency would consider proposing to amend the GTR.

V. Privacy Act

Please note that 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.*

VI. Appendix—Proposal for the Development of a GTR on Head Restraints, To Be Submitted to the Executive Committee of the 1998 Global Agreement (AC.3), November 2004

A. Objective of the Proposal

In the United States, between 1988 and 1996, 805,581 whiplash injuries (non-contact Abbreviated Injury Scale (AIS 1) (neck) occurred annually in all crashes of passenger cars and LTVs (light trucks, multipurpose passenger vehicles and vans). 272,464 of these whiplash injuries occurred as a result of rear impacts. For rear impact crashes, the average cost of whiplash injuries in 2002 dollars is $9,994 (which includes $6,843 in economic costs and $3,151 in quality of life impacts, but not property damage), resulting in a total annual cost of approximately $2.7 billion. Although the front outboard seat occupants sustain most of these injuries, whiplash is an issue for rear seat passengers as well. During the same time frame, an estimated 5,440 whiplash injuries were reported annually for occupants of rear outboard seating positions.

The objective of this proposal is to develop an improved and harmonized head restraint global technical regulation (GTR) under the 1998 Global Agreement. The work on the GTR will provide an opportunity to consider, most, if not all, international safety concerns as well as available technological developments.

The United States is currently in the process of upgrading its head restraint standard to provide more stringent requirements. In 1982, the U.S. assessed the performance of head restraints installed pursuant to the current standard and reported that integral head restraints are 17 percent effective at reducing neck injuries in rear impacts and adjustable head restraints are only 10 percent effective. The ECE regulations on head restraints are considerably more stringent than the current U.S. regulation, and were used as a baseline in developing the new U.S. standard.

In light of the U.S. regulatory upgrade effort, we believe that this would be an

[2] The establishment of a GTR under the Agreement obligates those contracting parties voting for the GTR to initiate their domestic process for adopting the GTR as a national or regional standard, but leaves the final decision on adoption to the discretion of each party. (See Article 7). The issuance of an NPRM is one way of fulfilling that obligation.

excellent opportunity for the international community to develop and establish a GTR in this area. Everyone could benefit from harmonization and new technology based improvements of the head restraint regulation. The benefits to the governments would be the improved safety of the head restraints, leveraging of resources, and the harmonization of requirements. Manufacturers would benefit from reduction of the cost of development, testing, and fabrication process of new models. Finally, the consumer would benefit by having a choice of vehicles built to higher, globally recognized standards, providing a better level of safety at a lower price.

B. Description of the Proposed Regulation

The scope of the GTR will specify requirements for head restraints to reduce the frequency and severity of neck injury in rear-end and other collisions. The proposed GTR will combine elements from ECE 17, ECE 25, and newly upgraded U.S. Federal Motor Vehicle Safety Standard (FMVSS) 202. Two of the newly proposed FMVSS 202 requirements are significant and not included in any other published regulation. The first proposes to require that the space between the head restraint and the occupant's head (backset) be limited. The second proposes a new dynamic test, as an optional means of compliance. The U.S. will prepare a table to facilitate comparison of the present standards and submit it as a formal document to the GRSP. The results of additional research and testing conducted by any contracting parties since the existing regulations were promulgated will also be factored into the requirements of the draft GTR and may result in the proposal of new requirements.

Elements of the GTR that cannot be resolved by the Working Party will be identified and dealt with in accordance with protocol established by AC.3 and WP.29. The proposed GTR will be drafted in the format adopted by WP.29 (TRANS/WP.29/882).

C. Existing Regulations and Directives

The following regulations and standards will be taken into account during development of the new GTR regarding head restraints.

- UN/ECE Regulation 17—Uniform Provisions Concerning the Approval of Vehicles With Regard to the Seats, Their Anchorages, and any Head Restraints.
- UN/ECE Regulation 25—Uniform Provisions Concerning the Approval of Head Restraints (Head Rests), Whether or not Incorporated in Vehicle Seats.
- EU Directive 74/408, Concerning Interior Fittings of Motor Vehicles.
- EU Directive 96/037, Adapting to Technical Progress Council Directive 74/408/EEC Relating to the Interior Fittings of Motor Vehicles (strength of seats and of their anchorages).
- EU Directive 78/932/EEC, Concerning Head Restraints of Seats of Motor Vehicles.
- U.S. Code of Federal Regulations (CFR) Title 49: Transportation; Part 571.202: Head Restraints.
- Australian Design Rule 3/00, Seats and Seat Anchorages.
- Australian Design Rule 22/00, Head Restraints.
- Japan Safety Regulation for Road Vehicles Article 22—Seat.
- Japan Safety Regulation for Road Vehicles Article 22–4—Head Restraints, etc.
- Canada Motor Vehicle Safety Regulation No. 202—Head Restraints.
- International Voluntary Standards—SAE J211/1 revised March 1995—Instrumentation for Impact Test—Part 1—Electronic.

Issued on October 5, 2004.

Julie Abraham,

Director, Office of International Policy, Fuel Economy and Consumer Programs.

[FR Doc. 04–22701 Filed 10–5–04; 1:25 pm]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 03–15651]

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of interpretation.

SUMMARY: This document provides an interpretation concerning how our standard for lamps, reflective devices, and associated equipment applies to replacement equipment. Our interpretation reflects consideration of the public comments on an earlier draft interpretation.

FOR FURTHER INFORMATION CONTACT: Eric Stas, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992. Fax: (202) 366–3820.

SUPPLEMENTARY INFORMATION:

Role of the Chief Counsel

One of the functions performed by NHTSA's Chief Counsel is to issue interpretations of the statutes administered by the agency and regulations issued by the agency under those statutes. *See* 49 CFR 501.8(d)(5). These interpretations are typically issued in the form of a letter responding to a request for interpretation from a manufacturer or other interested person. Our interpretations have always been placed in public viewing files and, more recently, have been available to the public via the Internet.

We believe that, in certain cases involving important, novel issues with potentially broad impacts, it is beneficial to publish draft interpretations in the **Federal Register** to provide an opportunity for public comment. This helps ensure that the agency has considered all relevant issues prior to publishing a final interpretation.

Requests for Interpretation by Calcoast-ITL

On March 6, 2003, NHTSA received two requests for interpretation submitted by Calcoast-ITL (Calcoast), a testing company.[1] Those letters asked a number of questions regarding how Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment,* applies to replacement equipment.

The first Calcoast letter asked whether replacement lamps are required to have all the functions of original lamps. The letter also asked whether replacement lamps for the rear of a vehicle may have the rear reflex reflectors in a location that is inboard from that in the original lamps.

The second Calcoast letter asked a series of questions regarding the permissibility of using light sources in aftermarket lamps that are different from those specified by the original equipment (OE) manufacturer.

NHTSA's Notice of Draft Interpretation; Request for Comments

Because the questions raised in the Calcoast letters raised significant issues concerning how FMVSS No. 108 applies to replacement lighting equipment, the agency decided to seek public comment regarding the agency's proposed response to Calcoast's interpretation requests. Accordingly, we published a notice of draft interpretation in the **Federal Register** on July 17, 2003.[2]

By way of background, FMVSS No. 108 specifies requirements for original and replacement lamps, reflective devices, and associated equipment (*see* S1). The standard applies to passenger cars, multipurpose passenger vehicles, trucks, buses, trailers, and motorcycles (*see* S3(a)). Under the standard, vehicle manufacturers are required to certify that a new vehicle meets, among other things, FMVSS No. 108's requirements with respect to lamps, reflective devices, and associated equipment. In addition, FMVSS No. 108 also applies to lamps, reflective devices, and associated equipment for replacement of like equipment on vehicles to which this standard applies (*see* S3(c)). Thus,

[1] Docket No. NHTSA–2003–15651–1.

[2] 68 FR 42454. Initially, the comment period was scheduled to end on September 2, 2003, but that period was twice extended, ultimately to October 31, 2003 (*see* notices extending comment period at 68 FR 51635 (August 27, 2003); 68 FR 56041 (September 29, 2003)).

FMVSS No. 108 is both a vehicle standard and an equipment standard.

Paragraph S5.8.1 of the standard provides, ''Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard.'' Interpretation of this provision is at the heart of all the questions raised by Calcoast.

In preparing our draft response to Calcoast, two relatively recent interpretation letters provided relevant precedent in construing paragraph S5.8.1 of FMVSS No. 108.

In a February 4, 2002 letter to Daniel Watt,[3] NHTSA responded to a question regarding the permissibility of replacing an original, incandescent bulb in a truck's tail lamp with a red light emitting diode (LED). In that interpretation, we cited the requirements of S5.8.1 and stated that a replacement item must be designed to conform to the standard in the same manner as the original equipment installed on the vehicle. Our letter concluded that in the case presented, a replacement lamp equipped with LEDs would not be designed to conform to the standard in the same manner as the original equipment, and, therefore, would not comply with S5.8.1.

In a March 13, 2003 letter to Galen Chen,[4] we were asked whether a replacement lamp (the ''Maxzone headlamp'') could be sold for model year (MY)1998–2001 Honda Accord passenger cars that incorporates a different headlamp light source than that originally installed on the vehicle. (Honda Accords of that range of model years were equipped with headlamps meeting the requirements of S7.5, *Replaceable bulb headlamp systems.*) In that interpretation, we interpreted S5.8.1 and S7.5(b) of the standard to require each replacement headlamp to conform to the standard's specified photometry requirements when using the type of replaceable light sources specified by the vehicle manufacturer.

In discussing the other features incorporated in the Maxzone headlamp, our letter to Mr. Chen further provided that we interpret S5.8.1 as requiring replacement lighting equipment designed for specific motor vehicles to incorporate, at a minimum, the same required functionality as included on the OE lamp it is intended to replace.

With this background in mind, we turn to our draft interpretations responding to Calcoast. In our draft interpretations, we stated, as a general principle, that under S5.8.1, whenever a manufacturer designs a lamp to replace a lamp on a vehicle to which the standard applies, the manufacturer must design that lamp to ensure that the vehicle will continue to comply with FMVSS No. 108 when the replacement lamp is installed. This statement is a logical corollary to the language of S5.8.1, in that if an item of lighting equipment is certified under the standard, when incorporated in a vehicle, it must permit the entire vehicle to continue to comply with all relevant Federal motor vehicle safety standards.

The draft interpretations stated that the specific requirements of FMVSS No. 108 that apply to an item of replacement equipment are determined by reference to the original equipment being replaced and the vehicle for which it was designed. The letters to Mr. Watt and Mr. Chen were cited in support of the proposition that replacement items must conform to the standard in the same manner as the original equipment for which the vehicle manufacturer certified compliance.

We now turn to our response to the specific questions raised by Calcoast. The first draft interpretation letter responded to Calcoast's questions about replacement lamps that are modifications of rear OE lamps for various Honda Civics. Those lamps were paired lamps with a fender mount and deck lid mount, but in each case, the replacement lamp manufacturer moved the location of the reflex reflector from the fender mount replacement lamp to the deck lid mount replacement lamp (a change from the OE lighting system). Calcoast asked whether an individual replacement lamp must have all the functions of the original lamp and noted that a consumer could purchase or install only the outboard lamps, thereby losing the reflex reflector function. Calcoast also questioned whether moving the reflex reflector inboard violated the requirement in Table IV of FMVSS No. 108 that the reflex reflectors be ''as far apart as practicable.''

Our draft interpretation letter stated that the replacement lamp in question would not conform to FMVSS No. 108 because it does not include all of the functions provided in the original lamp. The draft letter stated that it is immaterial that the aftermarket manufacturer provides a reflex reflector in another lamp. We stated that under S5.8.1, ''each lamp'' manufactured to replace any lamp on any vehicle to which the standard applies must be designed to conform to the standard. As Calcoast had noted, a consumer might replace only a single lamp, and the reflex reflector function could be lost.

Regarding the placement of the reflex reflector closer inboard than the reflectors on the OE lighting system, the draft interpretation concluded that this was impermissible under the standard. Specifically, because FMVSS No. 108 requires rear reflex reflectors to be ''as far apart as practicable,'' an aftermarket product that moves the reflex reflectors closer together would not conform to the requirements of the standard, since the OE equipment's placement was clearly practicable to achieve.

The second draft interpretation responded to Calcoast's questions about allowable light source modifications of aftermarket lamps. The lamps in question included both front and rear combination lamps. In some cases, these replacement lamps utilized the OE wiring harness and sockets, and in other cases, the aftermarket manufacturer supplied a modified wiring harness and sockets along with the replacement lamp. Specifically, Calcoast asked whether it is permissible for an aftermarket manufacturer to design a lamp to use a different wattage bulb than the OE lamp contained. It also asked whether a replacement lamp could use a different color bulb from the OE system (*e.g.*, switch from a clear bulb behind a red lens to a red bulb behind a clear lens). Calcoast stated that some lamp manufacturers are completely changing the bulbs used (including wattage, color, and base type) by providing a replacement wiring harness and sockets. Calcoast also asked whether it is permissible for an aftermarket manufacturer to change a replacement lamp's light source from incandescent to sealed LED. Finally, to the extent these changes are allowed, Calcoast asked how consumers should be informed of the changes.

Our draft interpretation stated that replacement lamps must comply with FMVSS No. 108 using the same light sources as the original equipment. It further stated that each vehicle is certified to FMVSS No. 108 using a particular light source for a particular lamp, and the lamp's ability to meet the standard's requirements with that light source is an inherent part of the vehicle's certification. Thus, in order a conform to the standard, a replacement lamp must meet the standard's requirements using the same light source as in the original equipment.

We stated that the lighting systems and overall electrical systems of

[3] *See http://www.nhtsa.dot.gov/cars/rules/interps/files/23532.ztv.html.*

[4] *See http://www.nhtsa.dot.gov/cars/rules/interps/files/maxzonenew.html.*

vehicles are designed with specific light sources in mind, to ensure proper beam patterns, levels of brightness and electrical performance, and to avoid overloads and risk of fire. In the owner's manual, vehicle manufacturers advise owners what replacement bulbs to use. We stated that if a replacement lamp were designed to use a different light source from that used in the original equipment lamp, it might not work properly, or at all, with the original equipment bulb or with the replacement bulbs specified by the vehicle manufacturer. Moreover, use of a different light source might adversely affect the performance of the vehicle's overall lighting and electrical systems, and possibly cause overloads and risk of fire.

Public Comments

Comments on the draft interpretations were submitted by 25 interested parties, representing automobile manufacturers, trailer manufacturers, motorcycle manufacturers, lighting manufacturers (both OE and aftermarket), manufacturers of other motor vehicle equipment, the trucking industry, associations of vehicle owners, and individuals.[5]

In overview, there was general consensus among the commenters that replacement lighting equipment must meet the requirements of FMVSS No. 108 and that all required functions of the OE lamp(s) must be retained. Clearly, the installation of replacement equipment should not take a vehicle out of compliance with the standard.

However, none of the commenters supported the aspects of NHTSA's proposed interpretations that would require the replacement equipment to conform to the standard in the same manner as the original equipment. Instead, commenters argued that aftermarket manufacturers should be allowed to certify replacement lighting equipment under FMVSS No. 108 in any manner that would have been available to an OE manufacturer.

Osram Sylvania, for example, cited the language of paragraph S5.8.1 requiring replacement lighting equipment to be designed to conform to FMVSS No. 108 and argued that a customer may put an entirely different lamp system on a vehicle as long as it is designed to conform to that standard. It also argued that equipment manufacturers should have the same design freedom as vehicle manufacturers and should be held to the same safety performance standards. Valeo Sylvania stated that it believes that aftermarket replacement kits that change the style or appearance of the OE lamp are permitted according to FMVSS No. 108 as long as these lamps comply with FMVSS No. 108 and the vehicle continues to comply with FMVSS No. 108 after installation of the lamps.

The Alliance cited the language of S5.8.1 requiring replacement lighting equipment to be designed to conform to FMVSS No. 108 and stated that the provision says nothing about also conforming to the design, materials or styling choices made by the original vehicle manufacturer and should not be interpreted to add those requirements.

TSEI stated that in responding to questions such as whether lamp manufacturers may design replacement lamps that use different wattage bulbs, different color bulbs, different light sources, and modified wiring harnesses, the agency's response should be that these things are allowed only if the vehicle complies with FMVSS No. 108 after the replacement item is installed.

Specific comments and issues are discussed below.

1. Retention of Required Functions

The overwhelming majority of commenters agreed with NHTSA's position, as expressed in the proposed interpretation letters, that replacement lighting should be required to provide all of the same required functions that are present in the OE lighting equipment that it replaces. This view was expressed by Maxzone, Douglas Dynamics, Valeo Lighting Systems, the Motor Vehicle Lighting Council, Truck-Lite, Grote Industries, Hella, Candlepower, Peterson, Harley-Davidson, APC, and the Alliance.

2. Flexibility in Replacement Lamp Configuration

The Alliance, Harley-Davidson, and APC suggested that manufacturers should be permitted flexibility to vary the configuration of functions in a given lamp set (*i.e.*, through relocation, regrouping, separation, or reconfiguration) and should not be tied to the placement decision of the OE manufacturer. In contrast to the proposed interpretations that focus on an individual lamp, the Alliance and APC encouraged the agency to evaluate a set of lamps for compliance with FMVSS No. 108, provided that such lamps are sold to consumers in sets.

To the extent that the draft interpretations called for replacement equipment to comply with the standard ''in the same manner'' as the original equipment being replaced, APC objected, if such interpretation means that the exact location of the reflex reflector must be maintained on the replacement lamp or the reflex reflector must remain in a combination lamp, rather than providing a separate reflex reflector. APC stated that requiring aftermarket manufacturers to ''clone'' the design of OE manufacturers not only imposes unnecessary design restrictions for replacement lamps but also prevents vehicle owners from ever upgrading to new, improved lighting technology.

Harley-Davidson stated that styling is an extremely important consideration, and aftermarket lighting helps the vehicle owner express that person's unique individuality. It argues that such benefits can be achieved without sacrificing legitimate safety concerns, provided that the manufacturer ''stays within certain, fairly reasonable parameters (such as minimum and maximum lamp height and lens area).'' Harley-Davidson urged NHTSA to leave the decision of actual design and placement of equipment to the manufacturer, provided it meets certain performance requirements, rather than requiring exact duplication of the original equipment.

The Alliance stated that a replacement lamp set should not be required to distribute and locate all required functions in the same manner as in the OE lamp. The Alliance argued, ''If manufacturers could not separate functions in replacement lamp sets and configure those sets differently for different world markets, manufacturers would be required to develop a 'U.S.-only' replacement lamp, increasing consumer costs and depriving manufacturers of the benefits of a 'performance' standard.''

A number of commenters addressed the issue raised by Calcoast related to the specific requirements for placement of rear reflex reflectors, and whether such required functions can be moved inboard of their position on the original equipment. Specifically, Table IV of FMVSS No. 108 requires that such

[5] Commenters included: (1) the Alliance of Automobile Manufacturers (Alliance), (2) the Truck Trailer Manufacturers Association (TTMA), (3) the Harley-Davidson Motor Company (Harley-Davidson), (4) Automotive Lighting, (5) Maxzone, (6) Osram Sylvania Products, Inc., (7) the Motor Vehicle Lighting Council, (8) Truck-Lite Co., Inc., (9) American Products Company (APC), (10) Grote Industries, LLC, (11) Hella KG Hueck & Co. (Hella), (12) Valeo Sylvania, (13) Candlepower, Inc., (14) Valeo Lighting Systems, (15) Douglas Dynamics, L.L.C., (16) the Transportation Safety Equipment Institute (TSEI), (17) Sound Off, Inc., (18) Sierra Products, Inc., (19) the National Truck Equipment Association (NTEA), (20) the Automotive Aftermarket Industry Association (AAIA), (21) Peterson Manufacturing Company (Peterson), (22) Trainum, Snowdon, & Deane, P.C., (Trainum), (23) the Specialty Equipment Market Association (SEMA), (24) the American Trucking Associations (ATA), and (25) the Sport Utility Vehicle Owners of America (SUVOA). There were also two anonymous comments from individuals.

reflectors be spaced ''as far apart as practicable.'' The comments submitted by the Alliance are illustrative. The Alliance argues that the standard permits such design flexibility and that the agency has never enforced such requirement literally. In support of its point, the Alliance quotes from our May 6, 1997 letter of interpretation to Marcin A. Gorzkowski, which states, ''all front and rear lighting equipment required to be provided in pairs must be located 'as far apart as practicable.' Literal compliance with this requirement could mean that lamps and reflectors would have to be stacked vertically at the extreme edges of a vehicle. But we have never sought to enforce the location requirements of Standard 108 in that manner.'' The Alliance stated that NHTSA should continue to provide vehicle and lighting manufacturers discretion regarding the placement of required functions, or alternatively, the Alliance stated that the agency should undertake rulemaking if there is a need to more objectively specify the location of reflex reflectors or any other paired lighting equipment.

Candlepower recommended ''adopting dimensionally-explicit specifications for the allowable mounting locations of devices and functions'' in order to resolve the issue of relocation/regrouping of functions. Specifically, Candlepower referenced the draft United Nations Economic Commission for Europe (ECE) Proposed Draft Amendment for a Global Technical Regulation (GTR) for the installation of lighting and light-signaling devices (ECE–R48H).

3. Discouragement of New Technologies

Several commenters stated that by interpreting S5.8.1 as requiring replacement lighting to comply with the standard in the same manner as the original equipment, NHTSA would retard or prevent the emergence of new technologies that may be both more economical and have better performance (*e.g.*, improve vehicle conspicuity and driver night vision). Such arguments were raised by Automotive Lighting, SUVOA, TTMA, Grote Industries, Candlepower, Sound Off, Inc., AAIA, Peterson, and the Alliance.

The Alliance argued that aftermarket manufacturers should be permitted to offer replacement headlamps for a vehicle that use a different type of light source than that used by the OE manufacturer. For example, the Alliance argued that it should be possible to replace a vehicle's original high intensity discharge (HID) head lamps with less expensive halogen lamps, as long as the vehicle continues to meet the photometric and other requirements of FMVSS No. 108 for those replacement lamps.

In contrast to such situations where the entire lamp is replaced, the Alliance acknowledged that it would be impermissible to sell and install light sources or light source/socket combinations different from those designed for the original lamp. More specifically, the Alliance stated that it does not support modification kits that would override designs intended to ensure noninterchangeability of incompatible bulbs (per 49 CFR part 564, *Replaceable Light Source Information*); however, it suggested that NHTSA should deal with such cases through enforcement actions or a narrowly focused interpretation.

Hella sought to make a distinction in the requirements for ''replacement lamps'' which are designed solely for repair purposes (for which Hella would support the proposed interpretations) and ''aftermarket lamps'' which are designed to improve lighting performance (for which Hella would oppose the proposed interpretations).

4. Discontinued Parts

Harley-Davidson commented that sometimes OE parts used on vehicles are discontinued by the parts manufacturer. When this occurs, consumers must find an equivalent and compliant substitute. Harley-Davidson argues that under NHTSA's proposed interpretation, vehicle owners may be faced with a choice of replacing a lighting component with a non-compliant part or prematurely removing the vehicle from service.

5. Recommended Exclusion for Heavy Vehicles

The ATA requested that heavy vehicles be excluded from the requirement that replacement lighting be certified in the same manner as the original equipment, because commercial vehicles are designed with a high degree of commonality and standardization. According to ATA, such vehicles have electrical and lighting systems that follow proven industry guidelines, standards, and recommended practices established by the Society of Automotive Engineers [6] (SAE), The Maintenance Council (TMC), and the Commercial Vehicle Safety Alliance (CVSA). As a result, ATA stated that commercial vehicles are designed to accept replacement lighting designed for a variety of vehicles.

TTMA, making the same arguments about trailers, recommended excluding vehicles with a gross axle weight rating (GAWR) of more than 10,000 pounds or with an overall width of 80 inches or wider. Truck-Lite and Peterson also stated that heavy vehicles are distinguishable from passenger vehicles, in that heavy vehicles are compatible with a various types of replacement lighting.

NTEA expressed concern about trucks that are converted to snow plows, which because of their purpose, require vehicle lighting to be relocated using aftermarket equipment.

SEMA, by contrast, argued that treatment of light and heavy vehicles under FMVSS No. 108 should remain unified. SEMA recommended that replacement lighting for all weight classes be required to conform to the standard, but without a requirement for that equipment to be certified in the same manner as the OE lighting.

6. Other Issues

Several commenters (Osram Sylvania, APC, Peterson, TSEI, Trainum, Harley-Davidson, and the Alliance) argued that the proposed interpretations are inconsistent with the current regulatory requirements, and that the agency would need to conduct rulemaking under the Administrative Procedure Act [7] (APA) in order to impose such requirements, rather than rely on the interpretive process. Trainum stated that adoption of the proposed interpretation letters, which tie the design of aftermarket lighting equipment to that of the original equipment, would result in an unconstitutional delegation of agency authority to vehicle manufacturers; according to Trainum, even if such delegation were permissible, the manner in which NHTSA proceeded (*i.e.*, through the interpretive process) denies affected parties due process under the APA.

Trainum and SEMA suggested that, presuming NHTSA's intent is to limit the proliferation of replacement lighting equipment that does not comply with FMVSS No. 108, the agency should pursue that objective through vigorous enforcement (*e.g.*, use of recalls), rather than a restrictive interpretation of S5.8.1. The Alliance also argued that enforcement action is the appropriate mechanism for the agency to deal with

[6] ATA referenced the following SAE standards related to lighting: J163 (Low Tension Wiring and Cable Terminals and Splice Clips); J2202 (Heavy-Duty Wiring Systems for On-Highway Trucks); J2174 (Heavy-Duty Wiring Systems for Trailers); J1128 (Low Tension Primary Cable); J2030 (Heavy-Duty Electrical Connector Performance Standard), and J2139 (Tests for Signal and Marking Devices Use on Vehicles 2032 mm or More in Overall Width).

[7] 5 U.S.C. 551 *et seq.*

noncompliant lighting equipment, and, furthermore, the Alliance stated that it does not know of any safety need to prevent new technologies from entering the replacement lighting marketplace. SEMA stated that a design-based system would require local and State law enforcement officials to know the details of approved designs.

The Alliance commented that the risk of overloading the vehicle's electrical system or causing a fire ''is not inherent to whether the light source matches the one selected by the vehicle manufacturer but rather is a function of proper circuit design and protection and robust lamp design.'' It did caution, however, that light sources that impose a larger electrical load than the original, or that modify the original electrical architecture may present a risk of overloading the vehicle electrical system. It also indicated that a smaller electrical load than the OE light sources could render inoperative the vehicle's compliance to S5.5.6 of the standard regarding turn signal lamp outage indication. The Alliance stated that any such compatibility problems should be treated as a safety defect.

Several commenters (*e.g.*, Osram Sylvania, APC, the Alliance) argued that the proposed interpretations would impose unnecessary design restrictions on aftermarket lighting manufacturers in contravention of the Safety Act's requirement that NHTSA promulgate performance standards. Some of these commenters stated that NHTSA lacks authority to impose such restrictions. SEMA stated that a design-based standard requirement could discriminate against certain technologies and companies, particularly those with fewer resources. Others argued that the approach taken in the proposed interpretations would stifle innovation in the lighting industry and reduce competition.

The Alliance and Trainum argued that NHTSA's recent interpretations to Mr. Watt and Mr. Chen and its proposed interpretations to Calcoast are inconsistent with prior agency interpretations stating that replacement lighting is permissible so long as it meets the requirements of FMVSS No. 108 (*see* letters of interpretation to Shlomo Zadok [8] (August 20, 1996), Eric Williamson [9] (April 8, 1998), and the Department of California Highway Patrol [10] (February 2, 1977)).

The Alliance also stated that the proposed interpretations responding to Calcoast are ambiguous in requiring replacement lighting to comply with the standard ''in the same manner'' as the original equipment. The Alliance stated, ''Even if a replacement lamp was designed with the same light source, the same styling and the same materials as the original lamp, it is likely to comply 'in a different manner' than the original lamp, due to variations in bulbs, lenses and other components. If the proposed interpretations would require the replacement lamps to have identical photometric output as the original lamps, that is an impossible compliance burden.''

According to numerous commenters (Valeo Lighting Systems, APC, Sound Off, Inc., AAIA, Peterson, TSEI, Trainum, SEMA, Harley-Davidson, and the Alliance), implementation of the proposed interpretation letters would cause severe economic harm to manufacturers of aftermarket lighting equipment and could drive many such manufacturers out of business. In addition, it was argued that a requirement that replacement lighting equipment be certified in the same manner as the original equipment would allow vehicle manufacturers to monopolize the design of light sources. In addition, TSEI stated that the proposed interpretations may cause aftermarket lighting manufacturers to encounter patent infringement problems vis-á-vis the OE manufacturers. Commenters further stated that the above could result in decreased competition and increased prices for consumers.

Some commenters (SUVOA, APC, Valeo Sylvania, and the Alliance) stated that consumer choice would be diminished as a result of the draft interpretations, as car enthusiasts would have fewer options for customizing their vehicles with replacement lighting.

The Alliance also commented that the draft interpretations, if adopted, would set an unfavorable precedent for other types of replacement equipment (*e.g.*, replacement tires, glazing, brake hoses, and brake fluid), which are currently required to simply meet the requirements of the relevant FMVSS.

In lieu of the approach presented in the proposed interpretations, TSEI suggested that NHTSA should consider: (1) requiring that lamps be marked to indicate all of their included functions, and (2) requiring lamps using replaceable bulbs to be marked with the bulb type designation. TSEI stated that such marking requirements would enable installers (and State inspectors) to identify which functions are included as part of the original and replacement equipment.

Our Interpretation

After consideration of the public comments, we have decided to make some modifications in our interpretation of S5.8.1, dealing with replacement lighting equipment, as articulated in the draft interpretations to Calcoast.

We note that in stating in our draft interpretation that replacement equipment must comply with FMVSS No. 108 ''in the same manner'' as OE equipment, we were not intending to imply that replacement equipment must be exactly the same in every aspect of design as the OE equipment. We used that language as part of explaining our tentative view that S5.8.1 requires replacement lamps to use the same type of light source, meet the same applicable photometry requirements, be of the same color, and have all the same required functions as the original lamp. We agree with the commenters that the language ''in the same manner'' could be considered ambiguous and will not use that phrase further.

As indicated earlier, paragraph S5.8.1 of FMVSS No. 108 provides that, ''Except as provided below, each lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard.''

Given S5.8.1's language applying its requirements to ''*each* lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment,'' under the existing language this requirement applies to each individual replacement lamp or other item of replacement equipment and not to sets of equipment. However, as explained below, we believe that it would be appropriate to consider the compliance of pairs of replacement lamps in certain circumstances and plan to conduct rulemaking during 2005 that will propose to amend FMVSS No. 108 to that effect.

Discussion

1. Retention of Required Functions

In designing an item of replacement lighting equipment to conform to FMVSS No. 108, one important consideration is that the item of equipment must incorporate all required functions of the original equipment it is designed to replace. Otherwise, installation of the item of equipment, as designed, would take the vehicle out of compliance with the standard.

[8] *See http://www.nhtsa.dot.gov/cars/rules/interps/files/12247.ztv.html.*

[9] *See http://www.nhtsa.dot.gov/cars/rules/interps/files/17258.ztv.html.*

[10] *See http://www.nhtsa.dot.gov/cars/rules/interps/gm/77/77–1.15.html.*

Moreover, we do not believe it can reasonably be argued that a lamp or other item of replacement lighting equipment that takes a vehicle out of compliance with FMVSS No. 108 can be said to have been ''designed to conform to'' the standard.

If the item of equipment being replaced also includes other non-required features, it would be left to the discretion of the lighting manufacturer as to whether to include these additional functions in the item of replacement equipment. The same reasoning would apply to an aftermarket manufacturer that wishes to provide additional optional functions in an item of replacement equipment that were not present in the OE equipment.

2. Location of Required Functions

Another issue raised by Calcoast's letter is how compliance of replacement equipment with FMVSS No. 108 is assessed with respect to location requirements. In our draft interpretation, we stated that because FMVSS No. 108 requires rear reflex reflectors to be ''as far apart as practicable,'' an aftermarket product that moves the reflex reflectors closer together would not conform to the requirements of the standard, since the OE equipment's placement was clearly practicable to achieve.

We have considered the argument made by some commenters, including the Alliance, that replacement lamp manufacturers should have flexibility in this area. However, given the language of the standard, we do not believe it would be appropriate to change our interpretation in this area.

In particular, while there may be questions of fact in some situations as to what constitutes ''as far apart as practicable'' in the context of OE lighting, such questions are narrower for aftermarket lighting manufacturers. This is because the placement of the OE lighting sets a baseline for what is practicable. Again, an aftermarket product that moves the reflex reflectors closer together would not conform to the requirements of the standard, since the OE equipment's placement was clearly practicable to achieve.[11]

3. Use of Alternative Light Sources

Under our revised interpretation, replacement lighting (other than headlamps) may utilize a different type of light source than that of the original equipment lighting, provided that the replacement lighting equipment meets the requirements of the standard and does not take the vehicle out of compliance. This interpretation supersedes our February 4, 2002 interpretation to Mr. Daniel Watt. With respect to replacement headlamps, however, we adhere to our March 13, 2003 interpretation to Mr. Galen Chen, *i.e.*, headlamps manufactured to replace OE headlamps must comply with all applicable photometry requirements using the replaceable light sources intended for use in the headlighting system on the vehicle for which the replacement headlamp is intended. Unlike other lamps, FMVSS No. 108 specifically regulates headlamp systems including their light sources.[12]

We note that we had been concerned that certain different light sources could be incompatible with a vehicle's electrical system, and could lead to fires or other safety problems. Information provided by the commenters, especially the Alliance, leads us to believe that vehicles' electrical systems may not always safely accommodate different types of light sources in replacement signal lamps that meet the performance requirements of FMVSS No. 108. We expect, of course, that replacement lighting manufacturers would keep in mind the potential limitations of a recipient vehicle's electrical system when designing replacement lighting to be used on that vehicle.

We also recognize that there is a possibility of consumer confusion related to replacement bulbs for replacement lamps that differ from those originally installed on the vehicle. We note, in this regard, that Calcoast asked how consumers should be informed of such changes. We anticipate that manufacturers of replacement equipment would provide all necessary adapters, light sources, and instructions that would enable consumers to properly use the equipment. To the extent that they did not do so, we would evaluate compliance with the light source(s) that were provided with the OE lamps that the replacement lamps are designed to replace.

4. Determination of Compliance for Replacement Lamp Sets

Calcoast raised the issue of how compliance with FMVSS No. 108 is assessed when a required function is moved from one lamp to another lamp and the lamps are sold in sets. In the Calcoast example, a required reflex reflector migrated from the fender mount lamp (the location in the OE lamp) to the decklid mount lamp. If compliance is determined based on individual lamps, this type of change is obviously not permitted, since replacement of the fender mount lamp alone would result in the loss of a required function.

The issue of whether compliance is determined based on individual lamps versus sets of lamps has implications well beyond situations where a required function is moved from one lamp to another. FMVSS No. 108 requires most front and rear mounted lighting equipment to be ''at the same height'' when more than one item is required, and to be of the same color. If compliance is determined based on individual lamps, this has the practical effect of preventing manufacturers of replacement equipment from making any changes in the height or color[13] of these items, even if the OE manufacturer could have done so.

We note that the agency adopted S5.8.1 at a time when replacement lighting equipment was very similar to OE equipment and expected to remain so, *i.e.*, the purpose of replacement equipment was to replace broken or worn-out equipment. Now, however, a market has developed where manufacturers produce ''restyled'' lamps to enable consumers to customize the appearance of their vehicles.

As indicated above, we have concluded that S5.8.1's language that ''*each* lamp, reflective device, or item of associated equipment manufactured to replace any lamp, reflective device, or item of associated equipment on any vehicle to which this standard applies shall be designed to conform to this standard'' requires compliance to be determined based solely on the properties and characteristics of the individual lamp or combination lamp and not of sets of lamps. Moreover, it is possible that a consumer might replace only a single lamp, even if the lamps are only sold in pairs.[14]

However, after careful consideration of this issue, we have decided to initiate rulemaking to amend FMVSS No. 108 to address issues related to restyled replacement equipment. In particular, we plan to propose to amend the

[11] Since each lamp must comply, moving a required function inboard would also cause the spacing to be different if only one replacement lamp were installed.

[12] See S7.1, S7.5, and S7.7.

[13] We note that OE manufacturers can choose amber or white color for parking lamps, and red or amber color for rear turn signals.

[14] We note that the agency has never sought to enforce the location and color requirements for restyled lamps sold in pairs where each lamp contains all of the functions of the lamp it replaces and a vehicle would meet the location and color requirements with the pair of lamps installed. We have also never enforced the ''as far apart as practicable'' requirement literally against vehicle manufacturers and would not be inclined to do so against manufacturers of replacement equipment as long as the result was one that we would have permitted the vehicle manufacturer to utilize.

standard so that for lamps (other than headlamps) sold in pairs where each lamp contains all of the functions it replaces, compliance with location and color requirements would be determined based on the pair of lamps rather than the individual lamp, as long as the instructions to the purchaser make it clear that both lamps must be installed together.

We believe that a complete prohibition of any change in location or color is unnecessarily design-restrictive. We also recognize that, in the case of restyled lamps sold in pairs, consumers generally purchase the lamps to customize their vehicles. Consumers are unlikely to replace only one of a pair of lamps in this situation, since it would give their vehicles an odd, unbalanced appearance.

Pending completion of this rulemaking action, we will not enforce the location and color requirements for replacement lamps sold in pairs where each lamp or combination lamp contains all of the functions of the lamp it replaces and a vehicle would meet the location and color requirements with the pair of lamps installed.

We do not intend to propose to permit required functions to be moved from one lamp to another lamp, as in the Calcoast example, even if the lamps are sold in sets. Therefore, we may take enforcement action, as appropriate, with respect to such equipment.

This situation is not comparable to the one discussed earlier. There is a greater chance that a consumer may not use all of the lamps in such a replacement set, since the use of only some of the lamps would not necessarily give the vehicle an odd, unbalanced appearance. For example, if a replacement lamp set consisted of four lamps across the rear of a vehicle, a consumer might replace only the outer lamps.

In addition, the safety consequences of a consumer not using all of the lamps would be much greater. In the case for which we intend to initiate rulemaking, the failure of a consumer to install both lamps could result in required functions being at different heights or having different colors on opposite sides of the vehicle. In this other case, however, a required safety function would be lost altogether.

5. Large Vehicles

Our interpretation of S5.8.1 applies to all covered vehicles, regardless of vehicle size. Because that section does not make a distinction based upon vehicle size, we believe it would be inappropriate to have different interpretations of that provision based upon vehicle size.

We recognize, however, that the part of our interpretation about replacement lighting equipment not taking a vehicle out of compliance with FMVSS No. 108 is likely to have a more limited application to aftermarket lighting equipment for large vehicles (those whose width is 2032 mm (80 inches) or more) than to small vehicles. The specific context of the questions asked by Calcoast was aftermarket combination lamps for small vehicles, such as passenger cars. These lamps are typically designed for specific models and can only be installed on those models in the same location as the lamps they replace. In this type of situation, the issue of whether installation of the lamp will take a vehicle out of compliance with FMVSS No. 108 (*e.g.*, by not including a required function that was present on the lamp being replaced) is relatively straightforward.

However, for large vehicles, lighting equipment is often generic and not designed for specific models. Truck-Lite, for example, commented that it sells many kinds of lighting devices through catalog sales to hundreds of vehicle manufacturers whose equipment it has no way of knowing about. Our interpretation was not intended to suggest that the manufacturer of generic lighting equipment has the responsibility for ensuring correct selection and installation of its equipment. On the other hand, under our interpretation, a manufacturer of aftermarket lighting equipment could not design or recommend lighting equipment for a specific vehicle if installation of the equipment (assuming it was done correctly) took a vehicle out of compliance with FMVSS No. 108.

Issued on October 1, 2004.

Jacqueline Glassman,

Chief Counsel.

[FR Doc. 04–22623 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. MC–F–21007]

CUSA RAZ, LLC d/b/a Raz Transportation Company—Acquisition of Assets and Business Operations—Raz Transportation Company

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice tentatively approving finance transaction.

SUMMARY: CUSA RAZ, LLC d/b/a Raz Transportation Company (CUSA RAZ or Applicant), a noncarrier, has filed an application under 49 U.S.C. 14303 to acquire the assets and business operations of Raz Transportation Company (MC–153581) (Raz or Seller). Persons wishing to oppose this application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transaction, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by November 22, 2004. Applicant may file a reply by December 7, 2004. If no comments are filed by November 22, 2004, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–21007 to: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, send one copy of any comments to applicant's representative: Stephen Flott, Flott & Co. PC, P.O. Box 17655, Arlington, VA 22216–7655.

FOR FURTHER INFORMATION CONTACT: Eric S. Davis, (202) 565–1600. (Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.)

SUPPLEMENTARY INFORMATION: CUSA RAZ is a new company wholly owned and created by CUSA, LLC (CUSA) to undertake this transaction. CUSA is a noncarrier which controls over 20 Federal Motor Carrier Safety Administration (FMCSA) registered motor passenger carriers, and, in turn, is wholly owned by KBUS Holdings, LLC (KBUS), a noncarrier. KBUS acquired control of over 30 motor passenger carriers formerly owned by Coach USA, Inc., and then consolidated those entities into the motor passenger carriers now controlled by CUSA.[1] These carriers operate more than 1,000 coaches and 600 other revenue vehicles in 35 states. Annual revenues for the companies controlled by CUSA for 2004 are forecast to be $220 million.

Applicant has entered into an agreement with Raz to buy Raz's assets, including vehicles, and its business operations. CUSA RAZ has an application pending with FMCSA to obtain contract and common carrier operating rights. Once this transaction is consummated, the Federal operating authority currently held by Seller will be surrendered.

[1] *See KBUS Holdings, LLC—Acquisition of Assets and Business Operations—All West Coachlines, Inc.,* et al., STB Docket No. MC–F–21000 (STB served July 23, 2003).

Under 49 U.S.C. 14303(b), the Board must approve and authorize a transaction found to be consistent with the public interest, taking into consideration at least: (1) The effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicant has submitted information, as required by 49 CFR 1182.2, including information to demonstrate that the proposed transaction is consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicant states that the public will be unaffected by the proposed transaction because the new company will be operated by the same managers and in the same manner as Raz. Also, CUSA RAZ states that the proposed transaction will have no effect on fixed charges or employees. Applicant states that all qualified Raz employees who desire employment will be offered employment with CUSA RAZ. CUSA RAZ asserts that the proposed transaction will allow CUSA to extend its advantages of volume purchasing power in areas such as equipment and fuel to this new acquisition. Additional information, including a copy of the application, may be obtained from Applicant's representative.

On the basis of the application, the Board finds that the proposed transaction is consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed finance transaction is approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed vacated.

3. This decision will be effective on November 22, 2004, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) The U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 400 7th Street, SW., Room 8214, Washington, DC 20590; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, SW., Washington, DC 20590.

Decided: October 4, 2004.

By the Board, Chairman Nober, Vice Chairman Mulvey, and Commissioner Buttrey.

Vernon A. Williams,

Secretary.

[FR Doc. 04–22704 Filed 10–7–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34551]

Standard Terminal Railroad of New Jersey, Inc.—Acquisition Exemption—Rail Line of Joseph C. Horner

Standard Terminal Railroad of New Jersey, Inc. (STRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 1.25 miles of rail line located in the Township of Bridgewater and the Borough of Manville, Somerset County, NJ, that is part of a rail line known as the Reading Company New York Branch (also known as the Raritan Valley Connecting Track), and identified as Line Code 0326, between milepost 57.25 at Manville Yard and milepost 58.50 at a junction with New Jersey's commuter line.[1] STRR will provide common carrier rail service through a subcontractor who will conduct the day-to-day operations on the line.

STRR states that it has purchased the right to operate over this line of railroad, which is owned by Joseph C. Horner, pursuant to a perpetual, irrevocable, exclusive and assignable easement. STRR also states that it has acquired title to a railroad bridge spanning the Raritan River that connects the properties on which the easement lies. STRR indicates that, although Mr. Horner and STRR effectuated the transfer of property by Quitclaim Deeds on July 26 and 27, 2002, the ownership of the property is a matter pending in the United States Bankruptcy Court. *In the Matter of Bridgwater Resources, Inc.,* No. 00–60057 (WHG) (D.N.J.).

Publication of this notice and effectiveness of the exemption does not constitute any finding by the Board concerning the ownership of the property involved. The exemption merely permits STRR and Mr. Horner to consummate the described transaction if and when they, in fact, have the legal capacity to do so.[2]

It should be noted that there may be two operators on the line if STRR begins operations. The Board has sanctioned dual operations on rail lines previously, and requires coordinated dispatching and operating protocols to assure safe operations. The Federal Railroad Administration also has regulations governing rail safety in the instance of such operations. These regulations have assured safe operations in the past and may be relied upon to do so in the future, on this line and elsewhere. To assure coordination of dispatching, STRR must certify to the Board that coordination protocols for dual operations are in place and have been fully communicated to the other operator before its operations can commence on the line under this authority.

STRR certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

STRR states that it intends to consummate the transaction by the later of 7 days after the exemption was filed or upon affirmation of its ownership rights by the bankruptcy court.

If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34551, must be filed with

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[1] The Board previously granted an exemption to Morristown & Erie Railway, Inc. (M&E) to operate the rail property that is the subject of this notice of exemption. *See Morristown & Erie Railway, Inc.—Operation Exemption—Somerset Terminal Railroad Corporation,* STB Finance Docket No. 34267 (STB served Dec. 20, 2002).

[2] By letter filed on September 16, 2004, Bridgewater Resources, Inc. (Bridgewater), which owns and operates a solid waste transfer facility near Bridgewater, NJ, states that neither STRR nor M&E have operating rights over the property in question. Bridgewater states that it owns the exclusive easement over the property, as well as the track and track structure. According to Bridgewater, Norfolk Southern Railway Company has used the track, with Bridgewater's permission, to provide direct rail service to Bridgewater's facility. Bridgewater does not seek to stay the exemption but urges the Board in publishing its notice to stress that publication of this notice does not constitute any finding by the Board concerning the ownership of the property involved and does not provide any basis for STRR to claim that the Board has permitted STRR to conduct or subcontract operations in the absence of a decision by the court that STRR has the legal right to conduct such operations. STRR replied on September 17, 2004.

the Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Jeffrey O. Moreno, Esq., Thompson Hine LLP, 1920 N Street, NW., Suite 800, Washington, DC 20036–1600.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 30, 2004.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 04–22703 Filed 10–7–04; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

[Docket No. BTS–2004–19241]

Request for Public Comments on Reporting Requirements

AGENCY: Bureau of Transportation Statistics (BTS), DOT.

ACTION: Request for public comments.

SUMMARY: As part of our data quality review, we have contacted Federal Express (FedEx Express) concerning the carrier's compliance with the Department's mail reporting requirements. FedEx Express states that due to the structure and operation of its transportation agreement with the United States Postal Service, it is no longer in a position to comply with the mail reporting requirements. BTS is seeking public comments on the merits of the FedEx Express position and views on whether the Department's mail reporting requirements should be retained, amended, supplemented, replaced, or removed.

DATES: Comments must be received by December 7, 2004.

ADDRESSES: You may submit comments (identified by DMS Docket Number BTS–2004–19241) through 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 Rulemaking 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. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. You should know that 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.*

Docket: For access to the docket to read background documents or comments, 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.

FOR FURTHER INFORMATION CONTACT: Bernie Stankus, Office of Airline Information, Bureau of Transportation Statistics, Department of Transportation, Room 4125, 400 Seventh Street, SW., Washington, DC, 20590–0001, (202) 366–4387; *bernard.stankus@bts.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 14 CFR part 241, certain air carriers are required to file quarterly BTS Schedule P–1.2 Statement of Operations. This schedule has a separate line item for mail revenues. The schedule requires that reporting air carriers use account code 3905 for their mail revenues. According to BTS, FedEx Express has been reporting large amounts of mail as freight using account code 3906. In addition, pursuant to 14 CFR 214.19–5, certain air carriers are required to report the tons of mail carried on each nonstop segment flown using account code 239 and tons of mail enplaned using account code 219. According to BTS, rather than report all its mail traffic using these account codes, FedEx Express reported a large volume of mail as freight using account codes 237 and 217.

Following an April 1, 2004 meeting with BTS representatives, FedEx Express submitted an April 23 letter explaining its position. In its letter, FedEx Express asserted that because of its unique relationship with the United States Postal Service (USPS) it could not report its mail traffic in the format required by the regulation. According to FedEx Express, its transportation agreement with USPS is based on ''linehaul space'' and is not based on weight. Under this agreement, USPS purchases cubic feet of space in an aircraft. According to FedEx Express, USPS can use the space for the U.S. mail or shipping USPS supplies. In addition, the agreement allows FedEx to place its own items in those containers which have additional space. Thus, according to FedEx Express, it does not segregate the USPS product and weigh it separately. Therefore, according to FedEx Express, it does not have the data required by the part 241 regulation.

FedEx Express is also claiming that the reporting codes are not applicable to its operations because the codes only apply to ''scheduled service'' and the services provided to USPS are ''not part of services performed pursuant to published flight schedules.''

FedEx Express also stated that to collect the required data would be ''extremely burdensome''. According to FedEx Express, ''[i]f the Department were to insist that FedEx Express generate the information, FedEx Express would have to unload containers, analyze the contents, sort the mail from freight, separate priority from non-priority mail, and weigh each group separately.''

FedEx Express also claimed that the disclosure of this required data would cause ''serious competitive harm'' to FedEx Express. FedEx Express stated that disclosure of the required data elements ''would enable competitors to undercut [its] pricing or rates in future negotiations with USPS.'' Finally, FedEx Express asserted that the data serve no official DOT purpose.

Request for Public Comments

We are treating FedEx Express' April 23rd letter as a waiver request (*see* 14 CFR part 241, Section 1–2 and 14 CFR 385.19(c)). Thus, we are inviting public comments on the FedEx Express request and views on whether the Department's mail reporting requirements should be retained, amended, supplemented, replaced, or removed. Based on the public comments and a review of the waiver request, BTS will consider a future rulemaking to amend, supplement, replace, or remove the relevant regulations.

We are posing a series of questions in the hope that the public comments will address several issues in particular:

(1) Do you use BTS' mail data elements required under part 241 and, if so, how do you use the information?

(2) Should BTS consider these mail data elements as confidential business information which, if disclosed to the

public, would cause significant competitive harm to the supplier of the information?

(3) Should BTS change the manner in which it collects these mail data elements?

(4) Should BTS continue to collect the mail data elements under part 241?

(5) Would it be in the public interest for BTS to grant FedEx Express' waiver request?

(6) If your company is subject to the current part 241 reporting requirements, is it an extreme burden for your company to comply with those requirements? If so, please explain, in detail.

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

Don Bright,

Assistant Director, Office of Airline Information.

[FR Doc. 04–22625 Filed 10–7–04; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 28, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 8, 2004 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0109.

Form Number: TTB F 5013.1.

Type of Review: Extension.

Title: Electronic filing User Access Enrollment Form.

Description: TTB F 5013.1 will be used in a pilot program for electronic filing of TTB forms. The pilot is being developed by TTB and Treasury's Financial Management Service. Participants will need to complete the form to be granted a password to access the e-filing system.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 25.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 7 hours.

Clearance Officer: William H. Foster, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G Street, NW., Washington, DC 20005, (202) 927–8210.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–22731 Filed 10–7–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 29, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 8, 2004 to be assured of consideration.

Alcohol and Tobacco Tax and Trade Bureau (TTB)

OMB Number: 1513–0025.

Form Number: TTB F 5200.

Type of Review: Reinstatement.

Title: Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes.

Description: The form documents releases of tobacco products and cigarette papers and tubes from customs custody and returns of each article to a manufacturer or export warehouse shipment for use in the United States. The form is also used to ensure compliance with laws and regulations at the time of transactions and for post audit examination.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 153.

Estimated Burden Hours per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 306 hours.

OMB Number: 1513–0058.

Recordkeeping Requirement ID Number: TTB REC 5130/1.

Type of Review: Reinstatement.

Title: Usual and Customary Business Records Maintained by Brewers.

Description: TTB audits brewers' records to verify production of beer and cereal beverage and to verify the quantity of beer removed subject to tax and removed without payment of tax.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 1,400

Estimated Burden Hours per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1513–0110.

Form Number: None.

Type of Review: Reinstatement.

Title: Recordkeeping for Tobacco Products Removed in Bond from Manufacturers Premises for Experimental Purposes—27 CFR 270.232(d).

Description: The prescribed records apply to manufacturers who ship tobacco products in bond for experimental purposes. TTB can examine these records to determine that the proprietor has complied with law and regulations that allow such tobacco products to be shipped in bond for experimental purposes without payment of the excise tax.

Respondents: Business of other for-profit.

Estimated Number of Respondents: 165.

Estimated Burden Hours per Respondent: 1 hour.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: William H. Foster, Alcohol and Tobacco Tax and Trade Bureau, Room 200 East, 1310 G. Street, NW., Washington, DC 20005, (202) 927–8210.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–22732 Filed 10–7–04; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

September 29, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 8, 2004, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1317.

Regulation Project Number: INTL–79–31 Final.

Type of Review: Extension.

Title: Information Returns Required of United States Persons with Respect to Certain Foreign Corporations.

Description: These regulations clarify certain requirements of sections 1.6035.1, 1.6038–2 and 1.6046–1 of the Income Tax Regulations relating to Form 5471 and affect controlled foreign corporations and their United States shareholders.

Respondents: Business of other for-profit, individuals or households.

Estimated Number of Respondents: 1.

Estimated Burden Hours Respondent: 1 hour.

Frequency of response: Annually.

Estimated Total Reporting Burden: 1 hour.

OMB Number: 1545–1324.

Regulation Project Number: CO–88–90 Final.

Type of Review: Extension.

Title: Limitation on Net Operating Loss Carryforwards and Certain Built-in Losses Following Ownership Change; Special Rule for Value of a Loss Corporation under the Jurisdiction of a Court in a Title II Case.

Description: This information serves as evidence of an election to apply section 382(1)(6) in lieu of section 382(1)(5) and an election to apply the provisions of the regulations retroactively. It is required by the Internal Revenue Service to assure that the proper amount of carryover attributes are used by a loss corporation following specified types of ownership changes.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 3,250.

Estimated Burden Hours Respondent: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 813 hours.

OMB Number: 1545–1341.

Regulation Project Number: EE–43–92 Final.

Type of Review: Extension.

Title: Direct Rollovers and 20-Percent Withholding Upon Eligible Rollover Distributions from Qualified Plans.

Description: These regulations provide rules implementing the provisions of the Unemployment Compensation Amendments (Public Law 102–318) requiring 20 percent income tax withholding upon certain distributions from qualified pension plans or tax-sheltered annuities.

Respondents: Individuals or households, Business of other for-profit, not-for-profit institutions, Federal government, State, local or tribal government.

Estimated Number of Respondents: 10,323,926.

Estimated Burden Hours Respondent: 13 minutes.

Frequency of response: Annually.

Estimated Total Reporting Burden: 2,129,669 hours.

OMB Number: 1545–1343.

Regulation Project Number: PS–100–88 Final.

Type of Review: Extension.

Title: Valuation tables.

Description: The regulations require individuals or fiduciaries to report information on Forms 706 and 709 in connection with the valuation of an annuity, an interest for life or a term of years, or a remainder or reversionary interest.

Respondents: Individuals or households.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Respondent: 45 minutes.

Frequency of response: On occasion.

Estimated Total Reporting Burden: 4,500 hours.

OMB Number: 1545–1361.

Regulation Project Number: PS–89–91 Final.

Type of Review: Extension.

Title: Exports of Chemicals That Deplete the Ozone Layer; Special Rules for Certain Medical Uses of Chemicals That Deplete the Ozone Layer.

Description: Section 4681 imposes a tax on ozone-depleting chemicals sold or used by a manufacturer or importer thereof. Section 4682 provides exemptions and reduced rates of tax for certain uses of ozone-depleting chemicals. This regulation provides reporting and recordkeeping rules.

Respondents: Business of other for-profit.

Estimated Number of Respondents/Recordkeepers: 1,305.

Estimated Burden Hours Respondent/Recordkeeper: 12 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 201 hours.

OMB Number: 1545–1416.

Form Number: IRS Form 8847.

Type of Review: Extension.

Title: Credit for Contributions to Selected Community Development Corporations.

Description: Form 8847 is used to claim a credit for qualified contributions to a selected community development corporation (CDC).

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 34.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—5 hr., 5 min.
Learning about the law or the form—24 min.
Preparing and sending the form to the IRS—30 min.

Frequency of response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 210 hours.

OMB Number: 1545–1743.

Form Number: IRS Form 8851.

Type of Review: Extension.

Title: Summary of Archer MSAs.

Description: This form will be used by the IRS to determine whether numerical limits set forth in section 220(j)(1) have been exceeded.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Respondent/Recordkeeper:

Recordkeeping—3 hr., 35 min.
Learning about the law or the form—6 min.
Preparing, copying, assembling, and sending the form to the IRS—9 min.

Frequency of response: Annually, other (additional report for 2001).

Estimated Total Reporting/Recordkeeping Burden: 1,540,000 hours.

Clearance Officer: Paul H. Finger, (202) 622–4078, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Joseph F. Lackey, Jr., (202) 395–7316, Office of Management

and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–22733 Filed 10–7–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

October 1, 2004.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before November 8, 2004 to be assured of consideration.

Internal Revenue Service (IRS).

OMB Number: 1545–1897.

Regulation Project Number: REG–120616–03 NPRM and Temporary.

Type of Review: Extension.

Title: Entry of Taxable Fuel.

Description: The regulation imposes joint and several liability on the importer of record for the tax imposed on the entry of taxable fuel into the United States and revises definition of ''enterer''.

Respondents: Business of other for-profit.

Estimated Number of Respondents/Recordkeepers: 224.

Estimated Burden Hours Respondent/Recordkeeper: 15 minutes.

Frequency of response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 281 hours.

Clearance Officer: Paul H. Finger, (202) 622–4078, Internal Revenue Service, Room 6516, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–4078.

OMB Reviewer: Joseph F. Lackey, Jr., Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, (202) 395–7316.

Lois K. Holland,

Treasury PRA Clearance Officer.

[FR Doc. 04–22734 Filed 10–7–04; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Professional Certification and Licensure Advisory Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Professional Certification and Licensure Advisory Committee has scheduled a meeting for Friday, November 5, 2004, at the Department of Veterans Affairs, Veterans Benefits Administration Conference Room 542, 1800 G Street, NW., Washington, DC, from 8:30 a.m. to 4 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the requirements of organizations or entities offering licensing and certification tests to individuals for which payment for such tests may be made under chapters 30, 32, 34, or 35 of title 38, United States Code.

The meeting will begin with opening remarks by Ms. Sandra Winborne, Committee Chair. During the morning session, there will be a presentation on the usage of the license and certification test reimbursement benefit; a presentation on improvements, for program purposes, to VA systems; and a discussion of the changes VA is considering to the draft VA circular 22–01–01, Appendix C, Licensing and Certification Tests. The afternoon session will include a presentation on the results of the second government-wide Advisory Committee Engagement Survey, statements from the public, old business, and any new business.

Interested persons may file written statements to the Committee before the meeting, or within 10 days after the meeting, with Mr. Giles Larrabee, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Oral statements from the public will be heard at 1 p.m. on November 5. Anyone wishing to attend the meeting should contact Mr. Giles Larrabee or Mr. Michael Yunker at (202) 273–7187.

Dated: September 27, 2004.

By Direction of the Secretary

E. Philip Riggin,

Committee Management Officer.

[FR Doc. 04–22669 Filed 10–7–04; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Friday,
October 8, 2004

Part II

Department of Housing and Urban Development

Notice of Funding Availability for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Fiscal Year 2004; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4894–N–01]

Notice of Funding Availability for the Community Development Block Grant Program for Indian Tribes and Alaska Native Villages; Fiscal Year 2004

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability (NOFA).

Overview Information

A. Federal Agency Name: Department of Housing and Urban Development, Office of the Assistant Secretary for Public and Indian Housing, Office of Native American Programs.

B. Funding Opportunity Title: Community Development Block Grant (ICDBG) Program for Indian Tribes and Alaska Native Villages.

C. Announcement Type: Initial Announcement.

D. Funding Opportunity Number: The **Federal Register** number for this NOFA is FR–4894–N–01. The OMB approval number for this program is 2577–0191.

E. Catalog of Federal Domestic Assistance (CFDA) Number(s): The Catalog of Federal Assistance (CFDA) Number for the Indian Community Development Block Grant Program is 14.862.

F. Dates: Application Deadline: The application due date is December 13, 2004.

G. Optional, Additional Overview Content Information:

1. Applicants for funding should carefully review the requirements identified in this NOFA. There is no separate application kit for this program in FY2004.

2. The total approximate amount of funding available for the ICDBG Program for FY2004 is $71,575,200 plus FY2003 carry-over of $2,140,538 for a total (approximately) of $73,715,738. Funds that are recaptured may also be used for grant awards under this NOFA.

3. Eligible applicants are Indian tribes or tribal organizations on behalf of Indian tribes. Specific information on eligibility is located in section III.A. of this NOFA.

Full Text of Announcement

I. Funding Opportunity Description

A. General: Title I of the Housing and Community Development Act of 1974, which authorizes Community Development Block Grants, requires that grants for Indian tribes be awarded on a competitive basis in accordance with selection criteria contained in a regulation promulgated by the Secretary after notice and public comment. All grant funds awarded in accordance with this NOFA are subject to the requirements of 24 CFR part 1003. Applicants within an Area ONAP geographic jurisdiction compete only against each other for that Area ONAP allocation of funds.

B. Program Description: The purpose of the ICDBG Program is the development of viable Indian and Alaska Native communities, including the creation of decent housing, suitable living environments, and economic opportunities primarily for persons with low- and moderate-incomes as defined in 24 CFR 1003.4. The Office of Native American Programs (ONAP) in HUD's Office of Public and Indian Housing administers the program.

All federally recognized Indian Tribes and Alaska Native Villages are eligible to participate in the ICDBG Program. Tribal organizations, as described in 24 CFR 1003.5, are also eligible applicants. Projects funded by the ICDBG Program must meet the primary objective, defined at 24 CFR 1003.2, to principally benefit low- and moderate-income persons. Consistent with this objective, not less than 70 percent of the expenditures of each single-purpose grant shall be for activities which meet the regulatory criteria at 24 CFR 1003.208 for:

1. Area Benefit Activities
2. Limited Clientele Activities
3. Housing Activities
4. Job Creation or Retention Activities

ICDBG funds may be used to improve housing stock, provide community facilities, improve infrastructure, and expand job opportunities by supporting the economic development of the communities, especially by nonprofit tribal organizations or local development corporations. ICDBG single-purpose grants are distributed as annual competitive grants, in response to this NOFA. Additional information on eligible activities can be found in section III.

C. Definitions Used in This NOFA:

1. *Adopt.* To approve by formal tribal resolution.

2. *Assure.* As an applicant, you must state your compliance, or in the case of future actions, your intent to comply with a specific NOFA requirement.

3. *Document.* To supply supporting written information and data in the application that satisfies the NOFA requirement. Documentation should clearly and concisely support your response to the rating factor.

4. *Entity Other Than Tribe.* A distinction is made between the requirements for point award under Rating Factor 3 if a tribe or an entity other than the tribe will assume maintenance and related responsibilities for projects other than economic development and land acquisition to support new housing. Entities other than the tribe must have the following characteristics:

(a) Must be legally distinct from the tribal government; (b) their assets and liabilities cannot be considered to be assets and liabilities of the tribal government; (c) claims against such entities cannot be made against the tribal government; and (d) must have governing boards, boards of directors, or groups or individuals similar in function and responsibility to such boards which are separate from the tribe's general council, tribal council, or business council, as applicable.

5. *Homeownership Assistance Programs.* Tribes may apply for assistance to provide direct homeownership assistance to low- and moderate-income households to: (a) Subsidize interest rates and mortgage principal amounts for low- and moderate-income homebuyers; (b) finance the acquisition by low- and moderate-income homebuyers of housing that is occupied by the homebuyers; (c) acquire guarantees for mortgage financing obtained by low- and moderate-income homebuyers from private lenders (except that ICDBG funds may not be used to guarantee such mortgage financing directly, and grantees may not provide such guarantees directly); (d) provide up to 50 percent of any downpayment required from a low- and moderate-income homebuyer; or (e) pay reasonable closing costs (normally associated with the purchase of a home) incurred by a low-or moderate-income homebuyer.

6. *Leveraged Resources.* Leveraged resources are resources that you will use in conjunction with ICDBG funds to achieve the objectives of the project. Leveraged resources include, but are not limited to: Tribal trust funds; loans from individuals or organizations; business investments; private foundations; State or Federal loans or guarantees; other grants; and non-cash contributions and donated services. (*See* Rating Factor 4 of this NOFA for documentation requirements for point award for leveraged resources.)

7. *Microenterprise Programs.* Tribes may apply for assistance to operate programs to fund the development, expansion, and stabilization of microenterprises. Microenterprises are defined as commercial entities with five or fewer employees, including the

owner. Microenterprise program activities may entail the following assistance to eligible businesses: (a) Providing credit, including, but not limited to, grants, loans, loan guarantees, and other forms of financial support for the establishment, stabilization, and expansion of microenterprises; (b) providing technical assistance, advice, and business support services to owners of microenterprises and persons developing microenterprises; and (c) providing general support, including, but not limited to, peer support programs, counseling, child care, transportation, and other similar services to owners of microenterprises and persons developing microenterprises.

8. *Operations and Maintenance (O&M) for Public Facilities and Improvements.* While various items of cost will vary in importance and significance depending on the type of facility proposed, there are items of expense related to the operation of the physical plant which must be addressed in an O&M plan (tribe assumes responsibility) or in a letter of commitment (entity other than tribe will assume these responsibilities). These items include daily or other periodic maintenance activities; repairs such as replacing broken windows; capital improvements or replacement reserves for repairs such as replacing the roof; fire and liability insurance (may not be applicable to most types of infrastructure projects such as water and sewer lines); and security (may not be applicable to many types of infrastructure projects such as roads). Please note that while it is possible that the service provider may, in its agreement with a tribe, commit itself to cover certain or all facility O&M costs, as defined, these O&M costs do not include the program service provision costs related to the delivery of services (social, health, recreational, educational or other) which may be provided in a facility.

9. *Outcomes.* The ultimate impact you hope to achieve with the proposed project. Outcomes should be quantifiable measures or indicators and identified in terms of the change in the community, lives, economic status, etc. Common outcomes could include increases in percent of housing units in standard condition, rates of homeownership, or rates of employment.

10. *Outputs.* Outputs are the direct products of a program's activities. They are usually measured in terms of the volume of work accomplished, such as number of low-income households served, number of units constructed or rehabilitated, linear feet of curbs and gutters installed, or numbers of jobs created or retained. Outputs should be clear enough to allow HUD to monitor and assess your proposed project's progress if funded.

11. *Project Cost.* The total cost to implement the project. Project cost includes both ICDBG and non-ICDBG funds and resources.

12. *Standard Housing/Standard Condition.* Housing that meets the housing quality standards (HQS) adopted by the applicant. The HQS adopted by the applicant must be at least as stringent as the Section 8 HQS contained in 24 CFR 982.401 (Section 8 Tenant-Based Assistance: Housing Choice Voucher Program) unless the ONAPs approve less stringent standards based on a determination that local conditions make the use of Section 8 HQS infeasible. You may submit, before the application due date, a request for the approval of standards less stringent than section 8 HQS. If you submit the request with your application, you should not assume automatic approval by the ONAPs. The adopted standards must provide for (a) a safe house, in physically sound condition with all systems performing their intended design functions; (b) a livable home environment and an energy efficient building and systems that incorporate energy conservation measures; and (c) an adequate space and privacy for all intended household members.

13. *Tribe.* **Please note:** when used in this NOFA the word ''tribe'' means an Indian tribe, band, group or nation, including Alaska Indians, Aleuts, Eskimos, Alaska Native Villages, ANCSA Village Corporations, and ANCSA Regional Corporations.

II. Award Information

A. *Available Funds:* The FY2004 appropriation for the ICDBG Program is $71,575,200. In addition, an FY2003 ICDBG carry-over of $2,140,538 is available for distribution for a total of $73,715,738. Funds that are recaptured may also be used for grant awards under this NOFA.

B. *Allocations to Area ONAPs:* The requirements for allocating funds to Area ONAPs responsible for program administration are found at 24 CFR 1003.101. Following these requirements, based on an appropriation of $71,575,200 and FY2003 ICDBG carry-over of $2,140,538, the allocations for FY2004 are approximately as follows:

Eastern/Woodland	$ 8,279,282
Southern Plains	15,894,094
Northern Plains	10,455,318
Southwest	27,766,597
Northwest	3,603,106
Alaska	7,717,341
Total	$73,715,738

III. Eligibility Information

A. Eligible Applicants: Eligible applicants are Indian tribes or tribal organizations on behalf of Indian tribes. To apply for funding you must be eligible as an Indian tribe (or as a tribal organization), as required by 24 CFR 1003.5, by the application submission date.

Tribal organizations are permitted to submit applications under 24 CFR 1003.5(b) on behalf of eligible tribes when one or more eligible tribe(s) authorize the organization to do so under concurring resolutions. As is stated in this regulatory section, the tribal organization must itself be eligible under Title I of the Indian Self-Determination and Education Assistance Act. The Bureau of Indian Affairs (BIA) or the Indian Health Service, as appropriate, must make a determination of such eligibility. This determination must be provided to the Area ONAP by the application submission date.

If a tribe or tribal organization claims that it is a successor to an eligible entity, the Area ONAP must review the documentation to determine whether it is in fact the successor entity.

Due to the unique structure of tribal entities eligible to submit ICDBG applications in Alaska, and as only one ICDBG application may be submitted for each area within the jurisdiction of an entity eligible under 24 CFR 1003.5, a tribal organization that submits an application for activities in the jurisdiction of one or more eligible tribes or villages must include a concurring resolution from each such tribe or village authorizing the submittal of the application. Each such resolution must also indicate that the tribe or village does not itself intend to submit an ICDBG application for that funding round. The hierarchy for funding priority continues to be the IRA Council, the Traditional Village Council, the ANCSA Village Corporation, and the ANCSA Regional Corporation.

On December 5, 2003 (68 FR 68180), the BIA published a **Federal Register** notice entitled, ''Indian Entities Recognized and Eligible to Receive Services From the United States Bureau of Indian Affairs.'' This notice provides a listing of Indian Tribal Entities in Alaska found to be Indian tribes as the term is defined and used in 25 CFR part 83. Additionally, pursuant to Title I of the Indian Self-Determination and

Education Assistance Act, ANCSA Village Corporations and Regional Corporations are also considered tribes and therefore eligible applicants for the ICDBG program.

Any questions regarding eligibility determinations and related documentation requirements for entities in Alaska should be referred to the Alaska Area ONAP prior to the application submission date. (See 24 CFR 1003.5 for a complete description of eligible applicants.)

B. Cost Sharing or Matching: Cost sharing or matching is not required under this grant; however, applicants who leverage this grant with other funds receive points. See section V, (A)(2) Rating Factor 4.

C. Other:

1. Program and Project Specific Requirements:

a. Low- and Moderate-Income Status for Rehabilitation Projects. All households that receive grant assistance under a housing rehabilitation project must be of low- and moderate-income status.

b. Housing Rehabilitation Cost Limits. Grant funds spent on rehabilitation per house must fall within the following limits for each Area ONAP jurisdiction:

Eastern/Woodlands	$35,000
Southern Plains	30,000
Northern Plains	45,000
Southwest	40,000
Northwest	40,000
Alaska	55,000

c. Commitment to Housing for Land Acquisition to Support New Housing Projects. For land acquisition to support new housing projects, your application must include evidence of a financial commitment and an ability to construct at least 25 percent of the housing units to be built on the land proposed for acquisition. This evidence must consist of one (or more) of the following: a firm or conditional commitment to construct (or to finance the construction of) the units; documentation that an approvable application for the construction of these units has been submitted to a funding source or entity; or, documentation that these units are specifically identified in the Indian Housing Plan (IHP) (one-Year Financial Resources Narrative; Table 2, Financial Resources, Part I., Line 1E; and Table 2, Financial Resources, Part II) submitted by or on behalf of the applicant as an affordable housing resource with a commensurate commitment of Indian Housing Block Grant (IHBG) (also known as the Native American Housing Block Grant) (NAHBG) resources. If the IHP for the IHBG (also known as NAHBG) program year that coincides with the implementation of the ICDBG-proposed project has not been submitted, you must provide an assurance that when submitted, the IHP will specifically reference the proposed project.

d. Health Care Facilities. If you propose a facility that would provide health care services funded by the Indian Health Service (IHS), you must assure that the facility meets all applicable IHS facility requirements. We recognize that tribes that are contracting services from the IHS may establish other facility standards. These tribes must assure that these standards are at least comparable to nationally accepted minimum standards.

2. Application Screening: The Area ONAP will screen applications for single-purpose grants. The Area ONAP will reject an application that fails this screening and will return it unrated. The Area ONAP will accept your application if it meets all the criteria listed below in items *a* through *f.*

a. Your application is received or submitted in accordance with the requirements set forth under Application and Submission Procedures in section IV of this NOFA;

b. You are eligible;

c. The proposed project is eligible;

d. Your application contains substantially all the components specified in section IV. B. of this NOFA;

e. Your application shows that at least 70 percent of the grant funds are to be used for activities that benefit low- and moderate-income persons, in accordance with the requirements of 24 CFR 1003.208. For screening purposes only, HUD will use the 2000 Census data if the data you submitted does not meet this screening requirement; and

f. Your application is for an amount that does not exceed the grant ceilings listed in section IV.E.3.

3. Name Check Review: Applicants are subject to a name check review process. Name checks are intended to reveal matters that significantly reflect on the applicant's management and financial integrity, or if any key individuals have been convicted or are presently facing criminal charges. If the name check reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and key individual, HUD reserves the right to: (a) Require the removal of any key individual from association with management of and implementation of the award; and (b) make appropriate provisions or revisions with respect to the method of payment and financial reporting requirements.

4. Delinquent Federal Debt: Consistent with the purpose and intent of 31 U.S.C. 3720B and 28 U.S.C. 3201(e), no award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established; or (c) other arrangements satisfactory to the Department of Housing and Urban Development are made prior to the deadline submission date.

5. False Statements: False statements in an application are grounds for denial or termination of an award and grounds for possible punishment as provided in 18 U.S.C. 1001.

6. DUN and Bradstreet Universal Numbering System (DUNS) Number Requirement: Beginning in Federal Fiscal Year 2004, any applicant seeking funding directly from HUD, or other Federal agencies, must obtain a DUNS number and include it in their SF424 Application for Federal Assistance submission. Failure to provide a DUNS number will prevent you from obtaining an award. This policy is pursuant to OMB Policy issued in the **Federal Register** on June 27, 2003 (68 FR 38402, June 27, 2003). A copy of the OMB **Federal Register** notice and HUD's regulation implementing the DUNS number can be found on HUD's Web site at *http://www.hud.gov/offices/adm/grants/duns.cfm.* Failure to provide a DUNS number with the application submission will be treated as a technical deficiency to the application. If the DUNS number is not provided within the cure period (*see* section V.B.9.a.), the application will not be funded.

Organizations can receive a DUNS number at no cost by calling the dedicated toll-free DUNS number request line at 866–705–5711 or applying online at *http://www.dunandbradstreet.com.* Persons with speech or hearing impairments may access the above telephone number via TTY by calling the Federal Information Relay Service at (800) 877–8339. For faster service, HUD recommends using the telephone request line to obtain the DUNS number.

7. 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. The Act's coverage 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, funding recipients must ensure that the EIT

allows employees with disabilities and members of the public with disabilities to have access to and use of information and data that is comparable to the access and use of information and data by employees and members of the public who do not have disabilities. If these standards impose a hardship on a funding recipient, they may provide an alternative means to allow the individual to use the information and data. However, no grantee will be required to provide information services to a person with disabilities at any location other than one at which the information services is generally provided.

8. Ensuring the Participation of Small Businesses, Small Disadvantaged Businesses, and Women-Owned Businesses: HUD is committed to ensuring that small businesses, small disadvantaged businesses, and women-owned businesses participate fully in HUD's direct contracting and in contracting opportunities generated by HUD grant funds. Too often, these businesses still experience difficulty in accessing information and successfully bidding on Federal contracts. State, local, and tribal governments are required by 24 CFR 85.36(e) and nonprofit recipients of assistance (grantees and sub-grantees) by 24 CFR 84.44(b), to take all necessary affirmative steps in contracting for purchase of goods or services to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

9. Salary Limitation for Consultants: FY2004 funds may not be used to pay or to provide reimbursement for payment of the salary of a consultant at more than the daily equivalent of the rate paid for level IV of the Executive Schedule, unless specifically authorized by law.

10. Executive Order 13202, Preservation of Open Competition and Government Neutrality Toward Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects: Compliance with HUD regulations in 24 CFR 5.108, which implements E.O. 13202, is a condition of receipt of assistance under this NOFA.

11. Executive Order 13279, Equal Protection of the Laws for Faith-Based and Community Organizations: HUD is committed to full implementation of Executive Order 13279 and has undertaken a review of all policies and regulations that have implications for faith-based and community organizations. Also, it has established a policy priority to provide full and equal access to grassroots faith-based and other community-based organizations in HUD program implementation. Applicants are urged to complete and return the ''Survey Ensuring Equal Opportunity for Applicants,'' included with other standard forms in appendix B. Your participation in the survey will help HUD measure its success providing equal access to its programs for all applicants.

12. Executive Order 13166, Improving Access to Services for Persons With Limited English Proficiency (LEP): Executive Order 13166 seeks to improve access to federally assisted services, programs, and benefits for individuals with limited English proficiency. Applicants obtaining an award from HUD must seek to provide access to program benefits and information to LEP individuals through translation and interpretative services in languages other than English that are common in significant numbers in the community, in accordance with HUD LEP guidance published at 68 FR 70967–70980 on December 19, 2003 (*http://a257.g.akamaitech.net/7/257/2422/14mar20010800/edocket.access.gpo.gov/2003/pdf/03–31267.pdf*). Further guidance may be found at the LEP Web site at *http://www.lep.gov.*

13. Conducting Business in Accordance With Core Values and Ethical Standards: Entities subject to 24 CFR part 85 (most nonprofit organizations and State, local, and tribal governments or government agencies or instrumentalities that receive Federal awards of financial assistance) are required to develop and maintain a written code of conduct (*see* section 85.36(b)(3)). Consistent with regulations governing specific programs, your code of conduct must: Prohibit real and apparent conflicts of interest that may arise among officers, employees, or agents; prohibit the solicitation and acceptance of gifts or gratuities by your officers, employees, and agents for their personal benefit in excess of minimal value; and outline administrative and disciplinary actions available to remedy violations of such standards. If awarded assistance under this NOFA, you will be required, prior to entering into an agreement with HUD, to submit a copy of your code of conduct and describe the methods you will use to ensure that all officers, employees, and agents of your organization are aware of your code of conduct. Failure to meet the requirement for a code of conduct will prohibit you from receiving an award of funds from HUD.

14. Pre-Award Accounting System Surveys: HUD may arrange for a pre-award survey of the applicant's financial management system in cases where the recommended applicant has no prior federal support, the program area has reason to question whether the applicant's financial management system meets Federal financial management standards, or the applicant is considered a high risk based upon past performance or financial management findings. HUD will not make an award to any applicant who does not have a financial management system that meets federal standards.

IV. Application and Submission Information

A. Addresses to Request Application Package: All required information and application forms are contained in this NOFA. A separate application kit is not available this year. In response to concerns about how long it takes for the publication and dissemination of application kits, HUD has made an effort to improve the readability of the NOFA and publish all required forms and application submission information in the **Federal Register**. As a result of this effort, you will not have to wait for an application kit to begin to prepare your application for funding.

A copy of the published NOFA and application forms for the ICDBG Program may be downloaded from the grants.gov Web site at *http://www.grants.gov,* ONAP's Web site at *http://www.codetalk.fed.us/HUD_ONAP.html*, or you may call HUD's NOFA Information Center at 800–HUD–8929 or for the hearing impaired, call 800–HUD–2209.

B. Content and Form of Application Submission:

1. Application Information: To expedite the review of your application and ensure that your application is given a thorough and complete review of all responses to each of the components of the selection criteria, please indicate, on the first page of each project submission, the type of project(s) being proposed: Economic Development, Homeownership Assistance, Housing Rehabilitation, Land Acquisition to Support New Housing, Microenterprise Programs, New Housing Construction, or Public Facilities and Improvements. This will help to ensure that the appropriate project-specific thresholds and rating subfactors will be applied.

In addition, please use separate tabs for each rating factor and rating subfactor. In order to be rated, make sure the response is beneath the appropriate heading. Keep the responses in the same order as the NOFA. Limit your narrative explanations to 200 words or less and provide the necessary

data such as a market analysis, a pro forma, housing survey data, etc., that support the response. Include all relevant material to a response under the same tab. *Only include documentation that will clearly and concisely support your response to the rating criteria.*

HUD suggests that you do a preliminary rating for your project, providing a score according to the NOFA point system. This will show you how reviewers might score your project. Also, it will show you where the strengths and weaknesses of the application are located. This will help you determine where improvements can be made to your application prior to its submission.

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 hard copy or on *www.grants.gov,* or on any HUD Web site, and the **Federal Register** publication of the NOFA, the information published in the NOFA **Federal Register** publication (including any corrections published in the **Federal Register**) prevails.

2. Content of Application, Forms, Certifications, and Assurances: The applicant must respond in narrative form to all five of the rating factors listed in section V.A.2. of this NOFA. In addition, the applicant must submit all of the forms required in this section of the NOFA, along with other data listed below.

a. *Demographic data.* You may submit data that are unpublished and not generally available in order to meet the requirements of this section. Your application must contain a statement that the following criteria have been met:

(1) Generally available published data are substantially inaccurate or incomplete;

(2) Data that you submit have been collected systematically and are statistically reliable;

(3) Data are, to the greatest extent feasible, independently verifiable; and

(4) Data differentiate between reservation and BIA service area populations, when applicable.

b. *Publication of Community Development Statement.* You must prepare and publish or post the community development statement portion of your application according to the citizen participation requirements of 24 CFR 1003.604.

c. *Application Submission.* Your application must contain the items listed below.

(1) Application for Federal Assistance (SF–424);

(2) Applicant/Recipient Disclosure/Update Report (HUD–2880);

(3) Acknowledgement of Application Receipt (HUD–2993).

If the application has been submitted by a tribal organization as defined in 24 CFR 1003.5(b), on behalf of an Indian tribe, you must submit concurring resolutions from the Indian tribe stating that the tribal organization is applying on the tribe's behalf.

The other required items are as follows:

(4) Community Development Statement that includes:

(a) Components that address the general threshold requirement and the relevant project-specific thresholds and rating factors;

(b) A schedule for implementing the project (Form HUD–4125, Implementation Schedule); and

(c) Cost information for each separate project, including specific activity costs, administration, planning, technical assistance, and total HUD share (Form HUD–4123, Cost Summary).

(5) Certifications (Form HUD–4126);

(6) A map showing project location, if appropriate;

(7) If the proposed project will result in displacement or temporary relocation, a statement that identifies:

(a) The number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission of the application (or date of initial site control, if later);

(b) The number to be displaced or temporarily relocated;

(c) The estimated cost of relocation payments and other services;

(d) The source of funds for relocation; and

(e) The organization that will carry out the relocation activities;

(8) If applicable, evidence of the disclosure required by 24 CFR 1003.606(e) regarding conflict of interest.

(9) If applicable, the demographic data statement described in section IV.B.2.a. and section V.A.2., Rating Factor 2 of this NOFA. The data accompanying the statement must identify the total number of persons benefiting from the project and the total number of low- and moderate-income persons benefiting from the project. To be considered, supporting documentation must include all of the following: A sample copy of a completed survey form; an explanation of the methods used to collect the data; and a listing of incomes by household.

(10) Optional submissions are:

(a) Client Comments and Suggestions (HUD–2994);

(b) Logic Model, HUD–96010;

(c) SF 424, Supplemental Survey on Ensuring Equal Opportunity for Applicants.

Copies of all application forms listed in this section are provided in appendix B of this NOFA.

C. Submission Dates and Times:

1. Application Due Date. Your completed application (one original and two copies) must be postmarked on or before 12 midnight, and be received by the designated Area Office of Native American Programs (ONAP) on or within 15 days of the application due date. HUD will not accept any applications sent electronically or by facsimile.

D. Intergovernmental Review: Executive Order 12372, Intergovernmental Review of Federal Programs, 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. HUD implementing regulations are published in 24 CFR part 52. 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.* Please note that Indian tribes are not subject to the intergovernmental review process.

E. Funding Restrictions:

1. Ineligible Activities: In general, any activity that is not authorized under the provisions of 24 CFR 1003.201–1003.206 is ineligible to be assisted with ICDBG grant funds. The regulations at 24 CFR 1003.207 govern ineligible activities and should be referred to for details. The following guidance is provided in determining the eligibility of other activities frequently associated with ICDBG projects.

a. Government Office Space. Buildings, or portions thereof, used *predominantly* for the general conduct of government, cannot be assisted with ICDBG funds. Those buildings include, but are not limited to, local government office buildings, courthouses, and other headquarters of government where the governing body meets regularly. Buildings that contain both governmental and nongovernmental services can be assisted as long as the ICDBG funds are used only for the nongovernmental sections. Examples of ineligible buildings are a building to house the community development division or a tribal administration

building. Your Area ONAP office should be consulted for projects of this nature.

b. General Government Expenses. Except as authorized in the regulations or under OMB Circular A–87, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance with ICDBG funds.

c. Maintenance and Operation Expenses. In general, any expenses associated with repairing, operating, or maintaining public facilities and services are not eligible for assistance. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities [24 CFR 1003.201(e)], office space for program staff employed in carrying out the ICDBG program [24 CFR 1003.206(a)(4)], and interim assistance [24 CFR 1003.201(f)]. For example, where a public service is being assisted with CDBG funds, the cost of operating and maintaining that portion of the facility in which the service is located is eligible as part of the public service. Examples of ineligible operating and maintenance expenses are routine and non-routine maintenance and repair of streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking facilities, similar public facilities, payment of salaries for staff, utility costs, and similar expenses necessary for the operation of public works and facilities.

d. New Housing Construction. The construction of new permanent residential structures and any program to subsidize or finance such new construction is ineligible unless carried out by a Community-Based Development Organization (CBDO) pursuant to 24 CFR 1003.204(a).

e. Furnishings and Personal Property. In general, the purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property that is not an integral structural fixture is ineligible. Exceptions include when such purchases are necessary for use in grant administration (24 CFR 1003.206); necessary and appropriate for use in a project carried out by a CBDO (24 CFR 1003.204); used in providing a public service (24 CFR 1003.201(e)); or used as firefighting equipment (24 CFR 1003.201(c)(1)(ii). However, ICDBG funds may be used to pay depreciation or use allowances (in accordance with OMB Circular A–87 or A–122 as applicable).

f. Construction Tools and Equipment. The purchase of construction tools and equipment is generally ineligible. However, compensation for the use of such tools and equipment through leasing, depreciation, or use allowances pursuant to OMB Circulars A–87 and A–122, as applicable, for an otherwise eligible activity is an eligible use of ICDBG funds. Exceptions include construction tools *and* equipment purchased for use as part of a solid waste facility (24 CFR 1003.201(c)(1)(ii)) and construction tools only (not equipment) purchased for use in a housing rehabilitation project being administered by the recipient using the force account construction method (24 CFR 1003.202(b)(8)).

g. Income Payments. In general, assistance shall not be used for income payments for housing or any other purpose. Income payments mean a series of subsistence-type grant payments made to an individual or family for items such as food, clothing, housing (rent or mortgage), or utilities, but excludes emergency payments made over a period of up to three months to the provider of such items or services on behalf of an individual or family. Examples of ineligible income payments include the payments for income maintenance and housing allowances.

2. Grant Ceilings: The authority to establish grant ceilings is found at 24 CFR 1003.100(b)(1). Grant ceilings are established for FY2004 funding at the following levels:

Area ONAP	Population	Ceiling
Eastern Woodlands	ALL	$500,000
Southern Plains	ALL	800,000
Northern Plains	ALL	900,000
Southwest	50,001+	5,500,000
	10,501–50,000	2,750,000
	7,501–10,500	2,200,000
	6,001–7,500	1,100,000
	1,501–6,000	825,000
	0–1,500	605,000
Northwest	ALL	500,000
Alaska	ALL	500,000

For the Southwest Area ONAP jurisdiction, the population used to determine ceiling amounts is the Native American population that resides on a reservation or rancheria. Please contact that office before submitting your application if you are unsure of the population level to use to determine the ceiling amount for your tribe or if you believe that the level used for previous years needs to be revised or corrected. The Southwest ONAP must approve any corrections or revisions to Native American population data before you submit your application.

3. Program Related Threshold Requirements:

a. Outstanding ICDBG Obligation. According to 24 CFR 1003.301(a), an applicant who has an outstanding ICDBG obligation to HUD that is in arrears, or one that has not agreed to a repayment schedule, will be disqualified from the competition.

b. Compliance with Fair Housing and Civil Rights Laws. With the exception of federally recognized Indian tribes and their instrumentalities, all applicants and their subrecipients must comply with all Fair Housing and Civil Rights laws, statutes, regulations, and Executive Orders as enumerated in 24 CFR 5.105(a). If you are a federally recognized Indian tribe, you must comply with the nondiscrimination provisions enumerated at 24 CFR 1003.601, as applicable. If you, the applicant:

(1) Have been charged with a systemic violation of the Fair Housing Act alleging ongoing discrimination; or

(2) Are a defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or

(3) Have received a letter of noncompliance findings identifying ongoing or systemic noncompliance, under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974; and the charge, lawsuit, or letter of findings referenced above has not been resolved to HUD's satisfaction before the application deadline stated in this NOFA, you are ineligible and the

application will not be rated or ranked. HUD makes a determination of whether actions to resolve a charge, lawsuit, or letter of findings taken prior to the application deadline are sufficient to resolve the matter.

Examples of actions that would normally be considered sufficient to resolve the matter include but are not limited to:

(a) A voluntary compliance agreement signed by all parties in response to the letter of findings;

(b) A HUD-approved conciliation agreement signed by all parties;

(c) A consent order or consent decree; or

(d) An issuance of a judicial ruling or a HUD Administrative Law Judge's decision.

4. Project-Specific Threshold Requirements:

a. Housing Rehabilitation Project Thresholds. In accordance with 24 CFR 1003.302(a), for housing rehabilitation projects, you must adopt rehabilitation standards and rehabilitation policies before you submit an application. You must submit with the application evidence the policies or standards have been adopted in accordance with tribal law or practice. You must also provide an assurance that project funds will be used to rehabilitate HUD-assisted houses only when the tenant or homebuyer's payments are current or the tenant or homebuyer is current in a repayment agreement except in emergency situation. The ONAP Administrator on a case-by-case basis may approve exceptions to this requirement.

b. Land Acquisition to Support New Housing Project Thresholds. No project-specific thresholds.

c. New Housing Construction Project Thresholds.

(1) In accordance with 24 CFR 1003.302(b), new housing construction can be implemented only when necessary through a Community Based Development Organization (CBDO). Eligible CBDOs are described in 24 CFR 1003.204(c). You must provide documentation establishing that the entity implementing your new housing construction project qualifies as a CBDO.

(2) In accordance with 24 CFR 1003.302, you must submit a current (in effect) tribal resolution adopting and identifying construction standards.

(3) In accordance with 24 CFR 1003.302, you must also include in your application documentation that supports the following:

(a) All households to be assisted under a new housing construction project must be of low- or moderate-income status;

(b) No other housing is available in the immediate reservation area that is suitable for the households to be assisted;

(c) No other sources including an IHBG can meet the needs of the household(s) to be served; and

(d) Rehabilitation of the unit occupied by the household(s) to be assisted is not economically feasible, or the household(s) to be housed currently is in an overcrowded house (more than one household per house), or the household to be assisted has no current residence.

d. Homeownership Assistance Project Thresholds. No project specific thresholds.

e. Public Facilities and Improvements Project Thresholds. No project specific thresholds.

f. Economic Development Project Thresholds. In accordance with 24 CFR 1003.302, for economic development assistance projects, you must provide a financial analysis. The financial analysis must demonstrate that the project is financially feasible and the project has a reasonable chance of success. The analysis must also demonstrate the public benefit resulting from the ICDBG assistance. The more funds you request, the greater public benefit you must demonstrate. The analysis must also establish that to the extent practicable, reasonable financial support will be committed from non-federal sources prior to disbursement of federal funds; any grant amount provided will not substantially reduce the amount of non-federal financial support for the activity; not more than a reasonable rate of return on investment is provided to the owner; and that grant funds used for the project will be disbursed on a pro-rata basis with amounts from other sources.

g. Microenterprise Program Thresholds. No project specific threshold.

5. Public Service Projects: Because there is a statutory 15 percent cap on the amount of grant funds that may be used for public service activities, you may not receive a single-purpose grant solely to fund public service activities. Your application, however, may contain a public service component for up to 15 percent of the total grant. This component may be unrelated to the other project(s) included in your application. If your application does not receive full funding, we will reduce the public service allocation proportionately so that it comprises no more than 15 percent of the total grant award. In making such reductions, the feasibility of the proposed project will be taken into consideration. If a proportionate reduction of the public service allocation renders such a project infeasible, the project will not be funded. A complete description of Public Service Projects is located at 24 CFR part 1003.201.

6. Restrictions on Eligible Activities: Activities that are eligible for ICDBG funding are identified at 24 CFR part 1003, subpart C. Please note that although this subpart has not yet been revised to include the restrictions on activity eligibility that were added to section 105 of the CDBG statute by section 588 of the Quality Housing and Work Responsibility Act of 1998, these restrictions apply. Specifically, ICDBG funds may not be used to assist directly in the relocation of any industrial or commercial plant, facility, or operation, from one area to another, if the relocation is likely to result in a significant loss of employment in the labor market area from which the relocation occurs. Rating Factors 2 and 3 included under section V. specify many of the activities listed as eligible under part 1003, subpart C. Those listed include new housing construction (in certain circumstances as described in Rating Factors 2 and 3 in section V.), housing rehabilitation, land acquisition to support new housing, homeownership assistance, public facilities and improvements, economic development, and microenterprise programs. However, the following eligible activities not clearly identified by the rating factors may be proposed and rated as described below. During the past few years, many tribes have experienced high incidences of mold growth in tribal homes and buildings. Renovation of affected buildings is eligible under housing rehabilitation or public facility improvement projects.

For a complete description of eligible activities, please refer to 24 CFR part 1003, subpart C.

a. Acquisition of property. This activity can be proposed as Land to Support New Housing or as part of New Housing Construction, Public Facilities and Improvements, or Economic Development depending on the purpose of the land acquisition to support new construction.

b. Assistance to Institutions of Higher Learning. If such entities have the capacity, they can help the ICDBG grantees to implement eligible projects.

c. Assistance to Community Based Development Organizations (CBDOs). Grantees may provide assistance to these organizations to undertake activities related to neighborhood

revitalization, community economic development, or energy conservation.

d. Clearance, Demolition. These activities can be proposed as part of Housing Rehabilitation, New Housing Construction, Public Facilities and Improvements, Economic Development, or Land to Support New Housing. Section 1003.201(d) states, ''Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.''

e. Code Enforcement. This activity can be proposed as Housing Rehabilitation. The activity must comply with the requirements at 24 CFR 1003.202.

f. Comprehensive Planning. This activity is eligible, and can be proposed, as part of any otherwise-eligible project to the extent allowed by the 20 percent cap on the grant for planning and administration.

g. Energy Efficiency. Associated activities can be proposed under Housing Rehabilitation or Public Facilities and Improvements depending upon the type of energy efficiency activity.

h. Lead Based Paint Abatement and Evaluation. These activities can be proposed under Housing Rehabilitation.

i. Non-Federal Share. ICDBG funds can be used as a match for any non-ICDBG funding to the extent allowed by such funding and the activity is eligible under 24 CFR part 1003, subpart C.

j. Privately and Publicly Owned Commercial or Industrial Buildings (real property improvements). These activities can be proposed under Economic Development. Privately owned commercial rehabilitation is subject to the requirements at 24 CFR 1003.202.

k. Privately Owned Utilities. Assistance to privately owned utilities can be proposed under Public Facilities and Improvements.

l. Removal of Architectural Barriers. This includes removing barriers that restrict mobility and access for elderly and persons with disabilities. In addition, accommodation should be made for persons with all varieties of disabilities to enable them to benefit from these activities. This activity can be proposed under Housing Rehabilitation or Public Facilities and Improvements depending upon the type of structure where the barrier will be removed.

F. Other Submission Requirements:

1. Mailing and Receipt Procedures. The following procedures apply to the delivery and receipt of applications. Please read the following instructions carefully and completely as failure to comply with these procedures may disqualify your application. HUD's delivery and receipt policies are:

a. Hand deliveries will be accepted in FY2004 until 5 p.m. local time at the Area ONAP designated for your jurisdiction in section IV.F.3. However, if HUD staff are not available to accept your package or the courier service, due to security or other reasons, is not allowed to enter the building to deliver the package, the package will be determined not delivered and not accepted by HUD. HUD will not accept responsibility for ensuring that staff is available to take your package and will not breach security measures in order to accept an undeliverable package. If the applicant experiences problems gaining entry to HUD's offices, the applicant is encouraged to take the application to the nearest post office and follow the mailing instructions for postal service timely delivery.

b. Applications may be shipped using DHL, Falcon Carrier, Federal Express (FedEx), United Parcel Services (UPS), or the United States Postal Service. Please be aware that the United States Postal Service is no longer delivering large packages dropped in mailboxes, even though there may be sufficient postage. In order to have your application package delivered and not returned to sender, you must have the package accepted by a postal clerk at a post office counter. At the counter, you can proceed to obtain the necessary postage and the USPS Form 3817 or the receipt received from the post office showing the postal facility name, location and date and time of mailing, as noted below under Proof of Timely Submission. Be sure to obtain a receipt for applications submitted to delivery services or to the United States Postal Service.

c. All mailed applications must be postmarked on or before midnight of their due date and received within 15 days of the due date.

2. Proof of Timely Submission. In the case of a disputed submission for applications mailed by the United States Postal Service, the proof of timely submission to HUD field offices will be the Certificate of Mailing (USPS Form 3817). If the postal service does not normally postmark large packages, the proof of timely submission shall be received within 15 days at the designated Area Office, and upon request by a HUD official, proof of mailing using USPS Form 3817, Certificate of Mailing or a receipt from the Post Office which contains the post office name, location, and date and time of mailing. For submission through the United States Postal Service, no other proof of timely submission will be accepted. If items are mailed from the post office using express mail delivery service, the express mail receipt will be acceptable if it indicates the date and time of mailing. In the case of disputed submissions for applications submitted to HUD via a delivery service other than the United States Postal Service, the documentary proof of timely submission will be the delivery service receipt indicating the application was submitted to the delivery service at least 24 hours prior to the application due date and, through no fault of the applicant, delivery could not be made on or before the application due date. If a courier attempting application delivery is turned away from a HUD facility due to security issues, this situation will not be considered as meeting the requirement of ''no fault of the applicant.'' Applicants have been advised that delivery issues can arise when use of courier services results in late application submission.

Please remember that mail to federal facilities is screened prior to delivery, so please allow time for your package to be delivered. If you mail your application to the wrong location and the office designated for receipt in accordance with these submission requirements does not receive it, your application will be considered late and not be considered for funding. HUD will not be responsible for directing it to the appropriate office.

3. Addresses for Submitting Applications. Submit the original signed application and two copies to the appropriate Area ONAP for your jurisdiction. A list identifying each Area ONAP jurisdiction is provided below. Please note that the Denver, Oklahoma, and Alaska offices have new addresses.

If you are applying from this geographic location then...	send your application to this Area ONAP: (Persons with hearing or speech impairments may access the telephone numbers listed on this page via TTY (text telephone) by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number)
All States East of the Mississippi River, Plus Iowa and Minnesota.	Eastern/Woodlands Office of Native American Programs, Grants Management Division, 77 West Jackson Blvd., Room 2400, Chicago, IL 60604–3507, Telephone: (312) 886–4532, Ext. 2815 or 800–735–3239.
Louisiana, Kansas, Oklahoma, and Texas, except West Texas.	Southern Plains Office of Native American Programs, Grants Management Division, 301 NW., 6th Street, Suite 200, Oklahoma City, OK 73102, Telephone: (405) 609–8525.
Colorado, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming.	Northern Plains Office of Native American Programs, Grants Management Division, UMB Plaza, 1670 Broadway, Denver, CO 80202–4801, Telephone: (303) 672–5465 or 888–814–2945.
Arizona, California, and Nevada	Southwest Office of Native American Programs, Grants Management Division, One North Central Avenue, Suite 600, Phoenix, AZ 85004–2361, Telephone: (602) 379–7220.
New Mexico and West Texas	Southwest Office of Native American Programs, Grants Management Division, 625 Silver Ave., SW., Suite #300, Albuquerque, NM 87102–3185, Telephone: (505) 346–6923.
Idaho, Oregon, and Washington	Northwest Office of Native American Programs, Grants Management Division, Federal Office Building, 909 First Avenue, Suite 300, Seattle, WA 98104–1000, Telephone: (206) 220–5270.
Alaska	Alaska Office of Native American Programs, Grants Management Division, 3000 C. Street, Suite 401, Anchorage, AK 99503, Telephone: (907) 677–9800.

V. Application Review Information

A. Criteria:

1. Planning and Administrative Costs. Applicants must report project planning and administration costs on Form HUD–4123, Cost Summary. Planning and administrative costs cannot exceed 20 percent of the grant. The following criteria applies to planning and administrative costs:

a. Planning and administrative activities may be funded only in conjunction with a physical development activity.

b. If you are submitting an application for more than one project, costs must be broken down by project. Submit one Form HUD–4123 for each proposed project in addition to a consolidated Form HUD–4123 that includes costs for all proposed projects.

c. Do not include project costs (*i.e.* architectural/engineering, environmental, technical assistance, staff/overhead costs) directly related to project.

2. Rating Factors to Evaluate and Rate Applications. The factors for rating and ranking applications and the points for each factor are provided below. A maximum of 100 points may be awarded under Rating Factors 1 through 5. To be considered for funding, your application must receive a minimum of 15 points under rating factor 1 and an application score of 70 out of the possible total of 100, the maximum any project can receive. The following summarizes the points assigned to each rating factor and each rating subfactor and lists which rating subfactors apply to which project types. Please use this table to ensure that you are addressing the appropriate rating subfactor for your project.

Rating factor	Rating subfactor	Points	Project type
1	Total	30	Minimum of 15 Points Required
	(1)(a)	10	All Project Types.
	(1)(b)	*5 or 7	All Project Types.
	(1)(c)	*3 or 8	All Project Types.
	(1)(d)	*2 or 5	All Project Types.
	(2)(a)	*2 or 0	All Project Types.
	(2)(b)	*2 or 0	All Project Types.
	(2)(c)	*2 or 0	All Project Types.
	(2)(d)	*2 or 0	All Project Types.
	(2)(e)	*2 or 0	All Project Types.
2	Total	20	
	1	5	All Project Types.
	(2)(a)	15	Public Facilities and Improvements and Economic.
	(2)(b)	15	New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Assistance Projects.
	(2)(c)	15	Microenterprise Programs.
3	Total	35	
	(1)	14	All Project Types.
	(2)	5	All Project Types.
	(3)	1	By Project Type.
	(4)(a)	15	Public Facilities and Improvements.
	(4)(b)	15	New Housing Construction, Housing Rehabilitation, and Homeownership Assistance Programs.
	(4)(c)	15	Economic Development.
	(4)(d)	15	Microenterprise Programs.
	(4)(e)	15	Land Acquisition to Support New Housing.
4	Total	10	All Project Types.
5	Total	5	All Project Types.

Rating factor	Rating subfactor	Points	Project type
Total	.....	*100*	Minimum of 70 Points Required

* The first number listed indicates the maximum number of points available to current ICDBG grantees under this subfactor. The second number indicates the maximum number of points available to new applicants.

Rating Factor 1: Capacity of the Applicant (30 Points)

This factor addresses the extent to which you have the organizational resources necessary to successfully implement the proposed activities in accordance with your implementation schedule. If applicable, past performance in administering previous ICDBG grants will be taken into consideration. You must address the existence or availability of these resources for the *specific type of activity* for which you are applying. You must receive a minimum of 15 points under this factor for your proposed activity to be eligible for funding. Under this factor, HUD will not rate any projects further that do not receive a minimum of 15 points. Please note: If your application is funded, you will be required to submit an annual status and evaluation report which will describe the status of completed activities and any remaining work to be done (*see* section VI.C. Reporting). For this factor, the implementation schedule and the Logic Model, Form HUD 96010, you submit will also be measured against actual progress if you are funded.

(1) (*20 points for current ICDBG grantees) (30 points for new applicants*) *Managerial, Technical, and Administrative Capability.*

Your application must include documentation demonstrating that you possess or can obtain managerial, technical, and administrative capability necessary to carry out the proposed project. Your application must address who will administer the project and how you plan to handle the technical aspects of executing it in accordance with your implementation schedule.

(a) (10 points) *Managerial and Technical Staff.*

The extent to which your application describes the roles and responsibilities and the knowledge and experience of your overall proposed project director and staff, including the day-to-day program manager, consultants, and contractors in planning, managing, and implementing projects in accordance with the implementation schedule for which funding is being requested. Experience will be judged in terms of recent, relevant, and successful experience of your staff to undertake eligible program activities. In rating this factor, HUD will consider experience within the last 5 years to be recent; experience pertaining to the specific activities being proposed to be relevant; and experience producing specific accomplishments to be successful. The more recent the experience and the more experience your own staff members who work on the project have in successfully conducting and completing similar activities, the greater the number of points you will receive for this rating factor.

(10 Points). The applicant has adequately described the roles and responsibilities and the knowledge and experience of its overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning, managing, and implementing projects for which funding is being requested. Staff experience as described in the application is recent (within 5 years), relevant (pertains to the specific activities being proposed) and successful (has produced specific accomplishments).

(5 Points). The applicant has adequately described the roles and responsibilities and the knowledge and experience of its overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning, managing and implementing projects for which funding is being requested. However, one of the following applies: staff experience as described in the application is not recent (not within 5 years), is not relevant (does not pertain to the specific activities being proposed), or is not successful (did not produce specific accomplishments).

(0 Points). The applicant has not adequately described the roles and responsibilities and the knowledge and experience of its overall project director and staff, including the day-to-day program manager, consultants, and contractors in planning, managing, and implementing projects for which funding is being requested or more than one of the following applies: staff experience as described in the application is not recent (not within 5 years), is not relevant (does not pertain to the specific activity being proposed), or is not successful (did not produce specific accomplishments).

(b) *(5 points for current ICDBG grantees) (7 points for new applicants) Project Implementation Plan and Program Evaluation.*

The extent to which your project implementation plan identifies the specific tasks and timelines that you and your partner contractors and subgrantees will undertake to complete your proposed project on time and within budget. The Project Implementation Schedule, Form HUD–4125, may serve as the required schedule, provided that it is sufficiently detailed to demonstrate that you have clearly thought out your project implementation.

The extent to which your project identifies, measures, and evaluates the specific benchmarks, outputs, outcomes, and goals of your project that enhance community viability. The Logic Model, Form HUD–96010, may serve as the format to address this information.

(5 points for current ICDBG grantees) (7 points for new applicants). The applicant submitted a project implementation plan that clearly specifies project tasks and timelines. The documentation identifies the steps in place to make adjustments to the work plan if tasks are not completed within established time frames. The applicant submitted clear project benchmarks, outputs, outcomes, and targets and identified objectively quantifiable program measures and evaluation processes.

(3 points for current ICDBG grantees) (4 points for new applicants). The applicant submitted a project implementation plan that specifies project tasks and timelines. The applicant submitted project benchmarks, outputs, outcomes, and targets for each, but did not clearly identify objectively quantifiable program measures and evaluation processes.

(0 points for current ICDBG grantees or new applicants). The applicant submitted a project implementation schedule that does not address all project tasks and timelines associated with the project. Project benchmarks, outputs, outcomes, and goals were not submitted, or if submitted, did not address either the quantifiable program measures and the evaluation process.

(c) *(3 points for current ICDBG grantees) (8 points for new applicants) Financial Management.*

This subfactor evaluates the extent to which your application describes how your financial management systems will facilitate effective fiscal control over your proposed project and meet the requirements of 24 CFR part 85 and 24 CFR part 1003. You must also describe how you will apply your financial management systems to the specific project for which you are applying. The application must include a tribal resolution or other written document signed by the appropriate entity according to tribal practices that adopts your financial management and internal control policies and procedures. The application will also be rated on the seriousness and significance of the findings related to your financial management system identified in your current audit. If you are required to have an audit but do not have a current audit, you must submit a letter from your Independent Public Accountant that is dated within the past 12 months stating that your financial management system complies with all applicable regulatory requirements. If you are not required to have an audit, you will automatically receive points for this portion of the subfactor. For purposes of this subfactor, a current audit is one which has been submitted to the Federal Audit Clearinghouse within 9 months of the end of the applicant's last fiscal year, or 30 days after receipt of the audit report from the auditor, whichever comes first.

(3 points for current ICDBG grantees) (8 points for new applicants). The applicant clearly described how it will apply its financial management systems to the proposed project. A tribal resolution or other written document signed by the appropriate entity according to tribal practices adopting financial management or internal control policies and procedures were included with the application. The applicant's current audit does not contain any serious or significant findings related to its financial management system, or if there is no current audit, the applicant submitted a letter from its Independent Public Accountant stating that its financial management system complies with all applicable regulatory requirements.

(2 points for current ICDBG grantees) (4 points for new applicants). The applicant's current audit does not contain any serious or significant findings related to its financial management system, or if there is no current audit, the applicant submitted a letter from its Independent Public Accountant stating that its financial management system complies with all applicable regulatory requirements. The applicant did not describe how it would apply its financial management systems to the proposed project, or it did not submit a tribal resolution or other written document adopting financial management or internal control policies and procedures. For purposes of this subfactor, a current audit is one which has been submitted to the Federal Audit Clearinghouse within 9 months of the end of the applicant's last fiscal year, or 30 days after receipt of the audit report from the auditor, whichever comes first.

(1 point for current ICDBG grantees) (2 points for new applicants). The applicant's current audit does not contain any serious or significant findings related to its financial management system, or if there is no current audit, the applicant submitted a letter from its Independent Public Accountant stating that its financial management system complies with all applicable regulatory requirements. The applicant did not describe how it would apply its financial management systems to the proposed project, and it did not submit a tribal resolution or other written document adopting financial management or internal control policies and procedures.

(0 points for current ICDBG grantees or new applicants). The applicant's current audit included serious or significant findings related to its financial management systems or if there is no current audit, the applicant did not submit a letter from its Independent Public Accountant stating its financial management systems comply with all regulatory requirements. No tribal resolution or other written document adopting financial management or internal control policies and procedures were submitted with the application, and the applicant did not describe how it would apply its financial management systems to the proposed project.

(d) (2 points for current ICDBG grantees) (5 points for new applicants) Procurement and Contract Management.

This subfactor evaluates the extent to which your application describes how your procurement and contract management policies and procedures will facilitate effective procurement and contract control over your proposed project and meet the requirements of 24 CFR part 85 and 24 CFR part 1003. You must also describe how you will apply your procurement and contract management systems to the specific project for which you are applying. The application must include a tribal resolution or other written document signed by the appropriate entity according to tribal practices that adopts your procurement and contract management policies and procedures. The application will also be rated on the seriousness of the findings related to procurement and contract management identified in your current financial audit. If you are required to have an audit but do not have a current audit, you must submit a letter from your Independent Public Accountant stating that your procurement and contract management system complies with all applicable regulatory requirements. If you are not required to have an audit, you will automatically receive points for this portion of the subfactor.

(2 points for current ICDBG grantees) (5 points for new applicants). The applicant clearly described how its procurement and contract management policies and procedures will facilitate effective procurement and contract control over the proposed project, and meet the requirements of 24 CFR part 85 and 24 CFR part 1003. A tribal resolution or other written document signed by the appropriate entity according to tribal practices adopting procurement and contract management policies and procedures were included with the application. The applicant's current audit does not contain any serious or significant findings related to its procurement and contract management system, or if there is no current audit, the applicant submitted a letter from its Independent Public Accountant stating that its procurement and contract management system complies with all applicable regulatory requirements.

(1 point for current ICDBG grantees) (4 points for new applicants). The applicant's current audit does not contain any serious or significant findings related to its procurement or contract management system, or if there is no current audit, the applicant submitted a letter from its Independent Public Accountant stating that its procurement and contract management system complies with all applicable regulatory requirements. The applicant did not describe how it would apply its procurement and contract management systems to the proposed project, or it did not submit a tribal resolution or other written document adopting procurement and contract management policies and procedures.

(0 points for current ICDBG grantees or new applicants). The applicant's current audit included serious or significant findings related to its procurement and contract management systems or if there is no current audit, it did not submit a letter from its Independent Public Accountant stating its procurement and contract management systems comply with all regulatory requirements. No tribal

resolution or other written document adopting procurement or contract management policies and procedures were submitted with the application, and the applicant did not describe how it would apply its procurement and contract management systems to the proposed project.

(2) (10 points for current ICDBG grantees) (0 points for new applicants) Past Performance.

HUD will evaluate your experience in producing timely products and reports in any previous grant programs undertaken with HUD funds for the following performance measures. HUD reserves the right to take into account your past performance in meeting performance and reporting goals on any previous HUD awards.

(a) (2 points for current ICDBG grantees) (0 points for new applicants). You have had satisfactory progress in meeting the timeframes established in the HUD-approved Implementation Schedule for the ICDBG Program.

(2 points). The applicant has made satisfactory progress in meeting the timeframes established in the implementation schedule, or was behind schedule, but has an approved revised implementation schedule that was submitted prior to application deadline.

(0 points). The applicant has not made satisfactory progress meeting timeframes in the most recently approved implementation schedule.

(b) (2 points for current ICDBG grantees) (0 points for new applicants).

(2 points). The applicant has submitted both the Annual Status and Evaluation Reports and Federal Cash Transaction Reports for ICDBG programs in a timely manner.

(1 point). The applicant has submitted either the Federal Cash Transaction Reports or the Annual Status and Evaluation Reports for ICDBG programs in a timely manner.

(0 points). The applicant has not submitted either of the required reports in a timely manner.

(c) (2 points for current ICDBG grantees) (0 points for new applicants). You have submitted close-out documents to HUD in a timely manner. Close-out documents are required for the ICDBG Program within 90 days of the date it is determined that the criteria for close-out at 24 CFR 1003.508 have been met.

(2 points). The applicant submitted close-out documents to HUD in accordance with the timeframe and criteria at § 1003.508.

(0 points). The applicant has not submitted close-out documents to HUD as required by § 1003.508.

(d) (2 points for current ICDBG grantees) (0 points for new applicants). You have submitted annual audits in a timely fashion in accordance with the ICDBG requirements and OMB Circular A–133 and its compliance supplements.

(2 points). The applicant has submitted annual audits in accordance with ICDBG requirements and OMB Circular A–133 and its compliance supplements, or if the applicant has not been required to submit an audit, it will receive 2 points.

(0 points). The applicant has not submitted annual audits in accordance with ICDBG requirements and OMB Circular A–133 and its compliance supplements.

(e) (2 points for current ICDBG grantees) (0 points for new applicants). You have resolved in a timely manner ICDBG monitoring findings and controlled audit findings or there are no findings in current reports.

(2 points). The applicant resolved open ICDBG monitoring findings and controlled audit findings in a timely manner. If there were no open audit or ICDBG monitoring findings (current grantees only), the applicant will receive 2 points.

(0 points). The applicant has not resolved open ICDBG monitoring findings and controlled audit findings in a timely manner.

Rating Factor 2: Need/Extent of the Problem (20 points)

This factor addresses the extent to which there is a need for the proposed project to address a documented problem among the intended beneficiaries.

(1) (up to 5 points). Your application includes quantitative documentation demonstrating that the proposed project meets an essential community development need by providing outcomes that are critical to the viability of the community.

(2) (15 points). Your project benefits the neediest segment of the population, in accordance with the ICDBG program's primary objective defined at 24 CFR 1003.2. The criteria for this subfactor vary according to the type of project for which you are applying. Please note that you may submit data that are unpublished and not generally available in order to meet the requirements of this section. However, to do so, you must submit a demographic data statement along with supporting documentation as described in section IV.B.2.a. For documenting persons employed by the project, you do not need to submit a demographic data statement and corresponding documentation. However, you do need to submit information that describes the nature of the jobs created or retained. Such information includes but is not limited to proposed job descriptions, salaries, and the number of full-time equivalent positions. If you believe jobs will be retained as a result of the ICDBG project, include information that show clearly and objectively, that jobs will be lost without the ICDBG project. Jobs that are retained only for the period of the grant will not count under this rating factor.

(a) *Public Facilities and Improvements and Economic Development Projects.* The proposed activities benefit the neediest segment of the population, as identified below. For economic development projects, you may consider beneficiaries of the project as persons served by the project and persons employed by the project, and jobs created or retained by the project.

(15 points). 85 percent or more of the beneficiaries are low-or moderate-income.

(10 points). At least 75 percent but less than 85 percent of the beneficiaries are low-or moderate-income.

(5 points). At least 55 percent but less than 75 percent of the beneficiaries are low-or moderate-income.

(0 points) Less than 55 percent of the beneficiaries are low-or moderate-income.

(b) *New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Assistance Projects.* The need for the proposed project is determined by utilizing data from the tribe's 2004 IHBG formula information. The ratio is based on the dollars allocated to a tribe under the IHBG Program for need divided by the sum of the number of AIAN households in the following categories:

— Annual income less than 30 percent of median income;
— Annual income between 30 percent and 50 percent of median income;
— Annual income between 50 percent and 80 percent of median income;
— Overcrowded or without kitchen or plumbing;
— Housing cost burden greater than 50 percent of annual income;
— Housing shortage (Number of low-income AIAN households less total number of NAHASDA and Formula Current Assisted Stock).

This ratio is computed for each tribe and contained in appendix A of this NOFA.

(15 points). The dollar amount for the Indian tribe is $390 to $699 or the tribe's total FY2004 IHBG amount was $100,000 or less and appendix A of this

NOFA does not indicate that the Indian tribe has no AIAN households experiencing income or housing problems.

(10 points). The dollar amount for the Indian tribe is $700 to $1,199.

(5 points). The dollar amount for the Indian tribe is $1,200 to $1,999.

(0 points). The dollar amount for the Indian tribe is $2,000 or higher, or appendix A of this NOFA indicates that the Indian tribe has no AIAN households experiencing income or housing problems.

(c) *Microenterprise Programs.*

A microenterprise is a business that has five or fewer employees, one or more of whom owns the enterprise. The owner(s) of the microenterprise must be low-or moderate-income and the majority of the jobs created or retained will be for low-or moderate-income persons. To evaluate need, the nature of the jobs created or retained will be evaluated. The owners of the microenterprises are low- and moderate-income *and*:

(15 points). All employees are low-or moderate-income.

(10 points). At least 75 percent but less than 100 percent of the employees are low-or moderate-income.

(5 points). At least 50 percent but less than 75 percent of the employees are low-or moderate-income.

(0 points). Less than 50 percent of the employees are low- and moderate-income.

Rating Factor 3: Soundness of Approach (35 Points)

This factor addresses the quality and anticipated effectiveness of your proposed project's outcomes in enhancing community viability and in meeting the needs you have identified in Rating Factor 2, as well as the commitment to sustain your proposed project. The populations that were described in demographics that documented need should be the same populations that will receive the primary benefit of the proposed project.

(1) (14 points). Description of and Rationale for Proposed Project.

(14 points). The proposed project is a viable and cost-effective approach to address the needs outlined under Rating Factor 2 of your application. The proposed project is described in detail and indicates why you believe the proposed project will be most effective in addressing the identified need. The proposed outcomes for the project clearly describe how the community's viability will be enhanced, including selection of measures listed in Rating Factor 5. The application includes a description of the size, type, and location of the project and a rationale for project design. The application must also include anticipated cost savings due to innovative program design and construction methods. For land acquisition to support new housing projects, you must establish that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low- and moderate-income households to benefit from the project.

(9 points). The proposed project is a viable and cost-effective approach to address the needs outlined under Rating Factor 2 of the application. The project is described in detail and indicates why you believe the project will be most effective in addressing the identified need. Proposed outcomes that will enhance the community's viability are included. The application includes a description of the size, type and location of the project as well as a rationale for project design. For land acquisition to support new housing projects, the applicant has established that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low- and moderate-income households to benefit from this project.

(5 points). The proposed project is a viable and cost-effective approach to address the needs outlined under Rating Factor 2 of the application. The project is described and indicates why you believe it will be most effective in addressing the identified need. Proposed outcomes are included but do not describe how the project will enhance community viability. The application includes a description of the size, type, and location of the project. For land acquisition to support new housing projects, the applicant has established that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low- and moderate-income households to benefit from the project.

(0 points). The proposed project is not a viable and cost-effective approach to address the needs outlined under Rating Factor 2 of the application. The proposed project is not described in detail with an indication of why the applicant believes the project will be most effective in addressing the identified need. Proposed outcomes describing how the project will enhance community viability are not included. For land acquisition to support new housing projects, the applicant has not established that there is a reasonable ratio between the number of net usable acres to be acquired and the number of low- and moderate-income households to benefit from the project.

(2) (5 points). Budget and Cost Estimates.

The quality, thoroughness, and reasonableness of the proposed project budget are documented. Cost estimates must be broken down by line item for each proposed activity, including planning and administration costs, and documented. You must submit documentation listing the qualifications of the person who prepared the cost estimate.

(3) (1 point). HUD Policy Priorities.

Your application addresses the goals for ''Improving Our Nation's Communities,'' one of HUD's 2004 Policy Priorities, as described in section V.B.12.b. of the NOFA.

(4) (15 points). Commitment to Sustain Activities.

Your application demonstrates your commitment to your community's viability by sustaining your proposed activities. The information provided is sufficient to determine that the project will proceed effectively.

The criteria for this subfactor vary according to the type of project for which you are applying.

(a) Public Facilities and Improvement Projects.

(15 points). If a tribe assumes operation and maintenance responsibilities for the public facilities and improvements, a tribal resolution is included in the application that adopts the operation and maintenance plan and commits the necessary funds to provide for these responsibilities. In addition, the operation and maintenance plan is included in the application and addresses maintenance, repairs, insurance, and replacement reserves and includes a cost breakdown for annual expenses. If an entity other than the tribe commits to pay for operation and maintenance for the public facilities, a letter of commitment from the entity is included in the application that identifies the maintenance responsibilities and, if applicable, responsibilities for operations the entity will assume as well as necessary funds to provide for those responsibilities. Submission of the operation and maintenance plan is not required when an entity other than the tribe assumes operation and maintenance responsibilities. For public facility buildings only, a tribal resolution or letter of commitment is included in the application that identifies the source of, and commits the necessary amount of, operating funds for any recreation, social, or other services to be provided. In addition, letters of commitment from service providers are included that address both operating expenses and space needs.

(10 points). If a tribe assumes operation and maintenance responsibilities for the public facilities and improvements, a tribal resolution is included in the application that adopts the operation and maintenance plan and commits the necessary funds to provide for these responsibilities. In addition, the operation and maintenance plan is included in the application and addresses most of the above items (maintenance, repairs, insurance, and replacement reserves) but does not include a satisfactory cost breakdown for annual expenses. If an entity other than the tribe commits to pay for operation and maintenance for the public facilities and maintenance, a letter of commitment from the entity is included in the application. The letter identifies the maintenance responsibilities and, if applicable, responsibilities for operations the entity will assume, but does not include information committing the necessary funds to provide for those responsibilities. Submission of the operation and maintenance plan is not required when an entity other than the tribe assumes operation and maintenance responsibilities. For public facility buildings only, a tribal resolution or letter of commitment is included in the application that identifies the source of, and commits the necessary amount of, operating funds for any recreation, social, or other services to be provided. In addition, letters of commitment from service providers are included that address both operating expenses and space needs. Information provided is sufficient to determine that the project will proceed effectively.

(5 points). If a tribe assumes operation and maintenance responsibilities for the public facilities and improvements, a tribal resolution is included in the application that adopts the operation and maintenance plan and commits the necessary funds to provide for those responsibilities, or the operation and maintenance plan is included in the application and addresses most of the above items (maintenance, repairs, insurance, and replacement reserves). If an entity other than the tribe commits to pay for operation and maintenance for the public facilities and maintenance, the maintenance provider is identified and, if applicable, details the responsibilities for operations the entity will assume; however, no letter of commitment is included. For public facility buildings only, no tribal resolution or letter of commitment is included in the application that identifies the source of, and commits the necessary amount of, operating funds for any recreation, social, or other services to be provided. However, letters of commitment to provide services are included but do not address operating expenses and space needs. Information provided is sufficient to determine that the project will proceed effectively.

(0 points). None of the above criteria is met.

(b) *New Housing Construction, Housing Rehabilitation, and Homeownership Assistance Projects.*

(15 points). The ongoing maintenance responsibilities are clearly identified for the tribe and the participants, as applicable. Any participant maintenance responsibilities are included on a statement to be signed by the participant as a condition of receiving grant assistance. In addition, the statement to be used is included in the application. If the tribe or another entity is assuming maintenance responsibilities, then the applicant must submit either a tribal resolution or letter of commitment to that effect.

(10 points). Maintenance responsibilities are identified, but lacking in detail, and the above statement (if applicable) to be signed by the participant, or the tribal resolution or letter of commitment regarding maintenance responsibilities is submitted.

(5 points). Tribal maintenance responsibilities are identified but participant responsibilities are either not addressed or do not exist, or there is no tribal resolution or letter of commitment or statement signed by the participant.

(0 points). None of the above criteria is met.

(c) *Economic Development Projects.*

You must include information or documentation that addresses or provides all of the following in the application: a description of the organizational system and capacity of the entity that will operate the business; documents which show that formal provisions exist for separation of government functions from business operating decisions, an operating plan for the project, the feasibility and market analysis of the proposed business activity, and the financial viability of the project.

Appropriate documents to include in the application to address these items include:

(i) Articles of incorporation, by-laws, and resumes of key management positions and board members for the entity that will operate the business.

(ii) Business operating plan.

(iii) Market study no more than two years old and which has been conducted by an independent entity.

(iv) Feasibility study no more than two years old which indicates how the proposed business will capture a fair share of the market, and which has been conducted by an independent entity.

(v) Detailed cost summary for the development of the project.

(vi) Five-year operating or cash flow financial projections.

(vii) For the expansion of an existing business, copies of financial statements for the most recent three years (or the life of the business, if less than three years).

The submitted documentation will be evaluated to determine the project's financial chance for success. The following information must be addressed to meet this requirement:

(i) Does the business plan seem thorough and does the organizational structure have quality control and responsibilities built in?

(ii) Does the business plan or market analysis indicate that a substantial market share is likely within five years?

(iii) Do the costs appear to be reasonable given projected income and information about inputs?

(iv) Does the business plan or cash flow analysis indicate that cash flow will be positive within the first year?

(v) Is the financial statement clean with no indications of concern by the auditor?

(15 points). All above documents applicable to the proposed project are included in your application and provide evidence that the project's chance for financial success is excellent.

(8 points). All or most of the above documents applicable to the proposed project are included and provide evidence that the project's chance for financial success is reasonable.

(0 points). Neither of the above criteria is met.

(d) *Microenterprise Programs.*

You must include the following information or documentation in the application that addresses or provides a description of how your microenterprise program will operate. Appropriate information to include in the application to address program operations includes:

(i) Program description. A description of your microenterprise program including the types of assistance offered to microenterprise applicants and the types of entities eligible to apply for such assistance.

(ii) Processes for selecting applicants. A description of your processes for analyzing microenterprise applicants' business plans, market studies, and

financial feasibility. For credit programs, you must describe your process for determining the loan terms (*i.e.* interest rate, maximum loan amount, duration, loan servicing provisions) to be offered to individual microenterprise applicants.

(15 points). All of the above information or documentation applicable to the proposed project are thoroughly addressed in the application and the chances for success are excellent.

(8 points). All or most of the above information or documentation applicable to the proposed project are addressed in the application and the chances for success are reasonable.

(0 points). Neither of the above criteria is met.

(e) *Land Acquisition Projects to Support New Housing.*

Submissions must include the results of a preliminary investigation conducted by a qualified independent entity demonstrating that the proposed site has suitable soil conditions for housing and related infrastructure, has potable drinking water accessible for a reasonable cost, has access to utilities, vehicular access, drainage, nearby social and community services, and has no known environmental problems.

(15 points). The submissions include all of the above-mentioned items and all necessary infrastructure is in place.

(8 points). The submissions demonstrate that the proposed site(s) is/are suitable for housing but that not all necessary infrastructure is in place. A detailed description of resources to be used and a detailed implementation schedule for development of all necessary infrastructure demonstrates that such infrastructure, as needed for proposed housing development, will be developed in time for such development, but no later than two years after site purchase.

(0 points) Neither of the above criteria is met.

Rating Factor 4: Leveraging Resources (10 Points)

HUD believes that ICDBG funds can be used more effectively to benefit a larger number of Native American and Alaska Native persons and communities if projects are developed that use tribal resources and resources from other entities in conjunction with ICDBG funds. To encourage this, we will award points based on the percentage of non-ICDBG resources provided relative to project costs as follows:

Non-ICDBG resources to project costs	Points
Less than 5 percent	0
At least 5 percent but less than 10 percent	2
At least 10 percent but less than 15 percent	4
At least 15 percent but less than 20 percent	6
At least 20 percent but less than 25 percent	8
25 percent or more	10

Contributions that could be considered as leveraged resources for point award include, but are not limited to: tribal trust funds; loans from individuals, organizations, private foundations or businesses; State or Federal loans or guarantees; other grants including IHBG (also known as NAHBG) funds; donated goods and services needed for the project; land needed for the project; and direct administrative costs. With the exception of land acquisition, funds that have been expended on the project prior to application submission will not be counted as leverage. Applicants are reminded that environmental review requirements under 24 CFR part 58 apply to the commitment or use of both ICDBG and non-ICDBG funds in a leveraged project. *See* section VI.B.a. for information related to this requirement.

Contributions that will not be considered include, but are not limited to: indirect administrative costs as identified in OMB Circular A–87, attachment A, section F; contributions of resources to pay for anticipated operations and maintenance costs of the proposed project; and, in the cases of expansions to existing facilities, the value of the existing facility.

To be considered for point award, letters of firm or projected commitments, memoranda of understanding, or agreements to participate from any entity, including the tribe, which will be providing a contribution to the project, must accompany the application.

To demonstrate the commitment of tribal resources, the application must contain a council resolution or legal equivalent that identifies and commits the tribal resources to the project, subject to approval of the ICDBG assistance. In the case of IHBG funds, whether the tribe or a TDHE administers them, an approved IHP must identify and commit the IHBG resources to the project. If the tribe/TDHE intends to include the leveraged commitment in a future IHP, the application must contain a council resolution or legal equivalent that identifies and commits the IHBG resources to the project subject to the same requirements as above.

To demonstrate the commitment of public agency, foundation, or other private party resources, a letter of commitment, memorandum of understanding, and agreement to participate, including any conditions to which the contribution may be subject, must be submitted with the application. All letters of commitment must include the donor organization's name, the specific resource proposed, the dollar amount of the financial or in-kind resource and method for valuation, and the purpose of that resource within the proposed project. An official of the organization legally authorized to make commitments on behalf of the organization must sign the commitment.

HUD recognizes that in some cases, firm commitments of non-tribal resources may not be obtainable by your tribe by the application due date. For such projected resources, your application must include a statement from the contributing entity that describes why the firm commitment cannot be made at the current time and affirms that your tribe and the proposed project meets eligibility criteria for receiving the resource. In addition, a date by which the funding decisions will be made must be included. This date cannot be more than six months from the anticipated date of grant approval notification by HUD. Should HUD not receive notification of the firm commitment within 6 months of the date of grant approval, HUD will recapture the grant funds approved and will use them in accordance with the requirement of 24 CFR 1003.102.

In addition to the above requirements, for all contributions of goods, services and land, you must demonstrate that the donated items are necessary to the actual development of the project and include comparable costs (or time estimates, if appropriate) that support the donation. Land valuation must be established using one of the following methods and the documentation must be contained in the application: a site-specific appraisal no more than two years old; an appraisal of a nearby comparable site also no more than two years old; a reasonable extrapolation of land value based on current area realtor value guides; or, a reasonable extrapolation of land value based on recent sales of similar properties in the same area.

Rating Factor 5: Comprehensiveness and Coordination (5 Points)

This factor addresses the extent to which your project planning and proposed implementation reflect a coordinated, community-based process of identifying and addressing needs

including assisting beneficiaries and the program to achieve self-sufficiency and sustainability. Please note that the Logic Model, HUD Form 96010, is not required for Rating Factor 5 under the ICDBG Program. However, applicants may use this form to address program evaluation requirements under Rating Factor 1(1)b. of this NOFA, and measurable outputs and outcomes in section (2) of this factor.

(1) (Up to 2 points). The application addresses the extent to which you have coordinated your proposed ICDBG activities with other organizations and tribal departments that are not directly participating in your proposed work activities (not project partners such as those listed under Rating Factor 4: Leveraging), but with which you share common goals and objectives and are working toward meeting these objectives in a holistic and comprehensive manner. For example, your project is consistent with and, to the extent possible, identified in the IHP (One-Year Financial Resources Narrative; Table 2, Financial Resources, part I, Line 1E; and Table 2, Financial Resources, part II) submitted by you or on your behalf for the IHBG Program. If the IHP for the IHBG program year that coincides with the implementation of the ICDBG-proposed project has not been submitted, you must provide an assurance that when submitted, the IHP will specifically reference the proposed project.

(2) (Up to 3 points). Your proposed project will have measurable outputs and outcomes that will enhance community viability.

Outputs must include, where applicable:

- Number of houses rehabilitated;
- Number of jobs created or obtained;
- Square feet for any public facility;
- Number of education or job training opportunities provided;
- Number of homeownership units constructed or financed;
- Number of businesses assisted (including number that are minority or Native American);
- Number of families proposed to be assisted with a drug-elimination program, or with a program to reduce or eliminate health-related hazards.

Outcomes must include, where appropriate:

- Reduction in the number of families living in substandard housing;
- Increased income resulting from employment generated by project;
- Increased quality of life due to services provided by the public facility;
- Increased economic self-sufficiency of recipients of program beneficiaries;
- Increase in homeownership rates;
- Reduction of drug-related crime or health-related hazards.

B. Reviews and Selection Process:

1. Application Selection Process. You must meet all of the applicable threshold requirements listed in section IV.E.3. and 4. Your application must meet all screening for acceptance requirements and all identified applicant and project-specific thresholds. HUD will review each application and assign points in accordance with the selection factors described in this section.

2. Threshold Compliance. The Area ONAP will review each application that passes the screening process to ensure that each applicant and each proposed project meets the applicant threshold requirements set forth in 24 CFR 1003.301(a) and the project-specific threshold requirements set forth in 24 CFR 1003.302 and section IV.E.3 and 4 of this NOFA.

3. Past Performance. An applicant's past performance is evaluated under Rating Factor 1, Capacity of the Applicant. Applicants are encouraged to address all performance-related criteria prior to submission of an application. In order to meet the minimum point requirements outlined in this NOFA, an applicant must score a minimum of 15 points under Rating Factor 1.

4. Rating Panels. The Area ONAP office for your jurisdiction, as listed in section IV.F.3., will rate applications. Rating panels may be used only for the summary review, after the application is rated, as discussed in section V.B.5. below.

5. Rating. The Area ONAP will review and rate each project that meets the acceptance criteria and threshold requirements. After the applications are rated, a summary review of all applications will be conducted to ensure consistency in the application rating. The summary review will be performed by either the Grants Management Director (or designee) or by a panel composed of up to three staff members.

The total points for all rating factors are 100. A maximum of 100 points may be awarded under Rating Factors 1 through 5.

6. Minimum Points. To be considered for funding, your application must receive a minimum of 15 points under Rating Factor 1 and an application score of 70 out of the possible total of 100.

7. Ranking. All projects will be ranked against each other according to the point totals they receive, regardless of the type of project or component under which the points were awarded. Projects will be selected for funding based on the final ranking to the extent that funds are available. The Area ONAP will determine individual grant amounts in a manner consistent with the considerations set forth in 24 CFR 1003.100(b)(2). Specifically, the Area ONAP may approve a grant amount less than the amount requested. In doing so, the Area ONAP may take into account the size of the applicant, the level of demand, the scale of the activity proposed relative to need and operational capacity, the number of persons to be served, the amount of funds required to achieve project objectives, and the reasonableness of the project costs. If the Area ONAP determines that there are not enough funds available to fund a project as proposed by the applicant, it may decline to fund that project and may fund the next highest-ranking project or projects for which adequate funds are available. In rank order, the Area ONAP may select additional projects for funding if one of the higher-ranking projects is not funded or if additional funds become available.

8. Tiebreakers. When rating results in a tie among projects and insufficient resources remain to fund all tied projects, the Area ONAP will approve projects that can be fully funded over those that cannot be fully funded. When that does not resolve the tie, the Area ONAP will use the following factors in the order listed to resolve the tie:

(a) The applicant that has not received an ICDBG over the longest period of time.

(b) The applicant with the fewest active ICDBGs.

(c) The project that would benefit the highest percentage of low- and moderate-income persons.

9. Technical Deficiencies and Pre-award Requirements.

a. Technical Deficiencies: If there are technical deficiencies in successful applications, you must satisfactorily address these deficiencies before HUD can make a grant award. After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you to clarify an item in your application or to correct technical deficiencies. HUD may not seek clarification of items or responses that improve the substantive quality of your response to any rating factors. In order to not exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. Examples of curable (correctable) technical deficiencies include failure to

submit the proper certifications or failure to submit an application signed by an authorized official. In each case, HUD will notify applicants by facsimile or by USPS, return receipt requested. Clarifications or corrections of technical deficiencies in accordance with the information provided by HUD must be submitted within *14 calendar days of the date of receipt of the HUD notification.* (If the due date falls on a Saturday, Sunday, or federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or federal holiday). If the technical deficiency is not corrected within this time period, HUD will reject the application as incomplete and it will not be considered for funding.

b. Pre-award Requirements: Before a grant agreement can be executed, successful applicants may be required to provide supporting documentation concerning the management, maintenance, operation, or financing of proposed projects. Such documentation may include additional specifications on the scope, magnitude, timing, or method of implementing the project, or information to verify the commitment of other resources required to complete, operate, or maintain the proposed project. Applicants will be provided 30 calendar days to respond to these requirements. No extensions will be provided. If you do not respond within the time period or you make an insufficient response, the Area ONAP will determine that you have not met the requirements and will withdraw the grant offer. You may not substitute new projects for those originally proposed in your application and any new information will not affect your project's rating and ranking. In accordance with the provisions of this NOFA, the Area ONAP will award grant amounts that had been allocated for applicants unable to meet pre-award requirements.

10. Error and Appeals. Judgments made within the provisions of this NOFA and the program regulations (24 CFR part 1003) are not subject to claims of error. You may bring arithmetic errors in the rating and ranking of applications to the attention of the Area ONAPs within 30 days of being informed of your score. If an arithmetic error was made in the application review and rating process that, when corrected, would result in the award of sufficient points to warrant the funding of an otherwise approvable project, the Area ONAPs may fund that project in the next funding round without further competition.

11. HUD's Strategic Goals. Implementing HUD's Strategic Framework and Demonstrating Results. HUD is committed to ensuring that programs result in the achievement of HUD's strategic mission. To support this effort, grant applications submitted for HUD programs will be rated on how well they tie proposed outcomes to HUD's policy priorities and annual goals and objectives, and the quality of proposed evaluation and monitoring plans. HUD's Strategic Framework establishes the following goals and objectives for the Department:

a. Increase homeownership opportunities:

(1) Expand national homeownership opportunities.

(2) Increase minority homeownership.

(3) Make the homebuying process less complicated and less expensive.

(4) Fight practices that permit predatory lending.

(5) Help HUD-assisted renters become homeowners.

(6) Keep existing homeowners from losing their homes.

b. Promote decent affordable housing:

(1) Expand access to affordable rental housing.

(2) Improve the physical quality and management accountability of public and assisted housing.

(3) Increase housing opportunities for the elderly and persons with disabilities.

(4) Help HUD-assisted renters make progress toward self-sufficiency.

c. Strengthen communities:

(1) Improve economic conditions in distressed communities.

(2) Make communities more livable.

(3) End chronic homelessness.

(4) Mitigate housing conditions that threaten health.

d. Ensure equal opportunity in housing:

(1) Resolve discrimination complaints on a timely basis.

(2) Promote public awareness of Fair Housing laws.

(3) Improve housing accessibility for persons with disabilities.

e. Embrace high standards of ethics, management, and accountability:

(1) Rebuild HUD's human capital and further diversify its workforce.

(2) Improve HUD's management, internal controls and systems, and resolve audit issues.

(3) Improve accountability, service delivery, and customer service of HUD and our partners.

(4) Ensure program compliance.

f. Promote participation of grassroots faith-based and other community-based organizations:

(1) Reduce regulatory barriers to participation by grassroots faith-based and other community-based organizations.

(2) Conduct outreach to inform potential partners of HUD opportunities.

(3) Expand technical assistance resources deployed to grassroots faith-based and other community-based organizations.

(4) Encourage partnerships between grassroots faith-based and other community-based organizations and HUD's traditional grantees.

You can find out about HUD's Strategic Framework and Annual Performance Plans at *http://www.hud.gov/offices/cfo/reports/cforept.cfm.*

12. HUD Policy Priorities. HUD encourages applicants to undertake specific activities that will assist the Department in implementing its policy priorities and which help the Department achieve its goals for FY2005, when the majority of funding recipients will be reporting programmatic results and achievements. ICDBG applicants that include work activities which specifically address Policy Priority b (Improving Our Nation's Communities) will receive one point for addressing this Priority under section V.B 2., Rating Factor 3, Soundness of Approach.

a. *Providing Increased Homeownership and Rental Opportunities for Low- and Moderate-Income Persons, Persons with Disabilities, the Elderly, Minorities, and Families with Limited English Proficiency.* Too often, these individuals and families are shut out of the housing market through no fault of their own. Developers of housing, housing counseling agencies, and other organizations engaged in the housing industry often must work aggressively to open up the realm of homeownership and rental opportunities to low- and moderate-income persons, persons with disabilities, the elderly, minorities, or persons with limited English proficiency. Many of these families are anxious to have a home of their own but are not aware of the programs and assistance that is available. Applicants are encouraged to address the housing, housing counseling, and other related supportive services needs of these individuals and coordinate their proposed activities with funding available through HUD's affordable housing programs and home loan programs. Proposed activities support strategic goals *a*, *b* and *c.*

b. *Improving our Nation's Communities.* HUD wants to improve the quality of life for those living in distressed communities. Applicants are encouraged to include activities which:

(1) Bring private capital into distressed communities to:

(a) Finance business investments to grow new businesses;

(b) Maintain and expand existing businesses;

(c) Create a pool of funds for new small and minority-owned businesses;

(d) Create decent jobs for low-income persons.

(2) Improve the environmental health and safety of families living in public and privately owned housing by including activities which:

(a) Coordinate lead hazard-reduction programs with weatherization activities funded by State and local governments, and the Federal Government;

(b) Reduce or eliminate health-related hazards in the home caused by toxic agents such as molds and other allergens, carbon monoxide, and other hazardous agents and conditions.

(3) Make communities more livable by including activities which:

(a) Provide public and social services;

(b) Improve infrastructure and community facilities.

These activities support Strategic Goals *b*, *c*, and *d*.

c. *Encouraging Accessible Design Features.* As described in section VI.B.1.c., applicants must comply with applicable civil rights laws including the Fair Housing Act, section 504 of the Rehabilitation Act of 1973, and the Americans with Disabilities Act. These laws, and regulations implementing them, provide for nondiscrimination based on disability and require housing and other facilities to incorporate certain features intended to provide for their use and enjoyment by persons with disabilities. HUD is encouraging applicants to add accessible design features beyond those required under civil rights laws and regulations. These features would eliminate many other barriers limiting the access of persons with disabilities to housing and other facilities. Copies of the Uniform Federal Accessibility Standards (UFAS) are available from the SuperNOFA Information Center (1–800–HUD–8929 or 1–800–HUD–2209 (TTY)) and also from the Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development, Room 5230, 451 Seventh Street, SW., Washington, DC 20410; 202–755–5404 or 1–800–877–8399 (TTY Federal Information Relay Service).

Accessible design features are intended to promote visitability and incorporate features of universal design as described below:

(1) *Visitability in New Construction and Substantial Rehabilitation.* In areas where other accessibility requirements do not apply, applicants are encouraged to incorporate visitability standards where feasible in new construction and substantial rehabilitation projects. Visitability standards allow a person with mobility impairments access into the home, but do not require that all features be made accessible. Visitability means that there is at least one entrance at grade (no steps), approached by an accessible route such as a sidewalk; and that the entrance door and all interior passage doors are at least 2 feet 10 inches wide, allowing 32 inches of clear passage space. A visitable home also serves persons without disabilities, such as a mother pushing a stroller or a person delivering a large appliance. More information about visitability is available at *http://www.concretechange.org/*.

These activities support Strategic Goals *b*, *c*, and *d*.

(2) *Universal Design.* Applicants are encouraged to incorporate universal design in the construction or rehabilitation of housing, retail establishments, and community facilities funded with HUD assistance. 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. In addition to any applicable required accessibility features under section 504 of the Rehabilitation Act of 1973 or the design and construction requirements of the Fair Housing Act, the Department encourages applicants to incorporate the principles of universal design when developing housing, community facilities, and electronic communication mechanisms, or when communicating with community residents at public meetings or events. HUD believes that by creating housing that is accessible to all, it can increase the supply of affordable housing for all, regardless of ability or age. Likewise, creating places where people work, train, and interact which are useable and open to all residents increases opportunities for economic and personal self-sufficiency. More information on universal design is available from the Center for Universal Design, at *http://www.ncsu.edu/www/ncsu/design/sod5/cud/* or the Resource Center on Accessible Housing and Universal Design, at *http://www.abledata.com/Site_2/accessib.htm*.

These activities support Strategic Goals *a*, *b*, *c*, and *d*.

d. Providing Full and Equal Access to Grassroots Faith-Based and Other Community-Based Organizations in HUD Program Implementation.

(1) HUD encourages nonprofit organizations, including grassroots faith-based and other community-based organizations, to participate in the vast array of programs for which funding is available through this NOFA and the SuperNOFA. HUD also encourages states, units of local government, universities, colleges, and other organizations to partner with grassroots organizations, *e.g.*, civic organizations, faith-communities, and grassroots faith-based and other community-based organizations that have not been effectively utilized. These grassroots organizations have a strong history of providing vital community services such as assisting the homeless and preventing homelessness, counseling individuals and families on fair housing rights, providing elderly housing opportunities, developing first-time homeownership programs, increasing homeownership and rental housing opportunities in neighborhoods of choice, developing affordable and accessible housing in neighborhoods across the country, creating economic development programs, and supporting the residents of public housing facilities. HUD wants to make its programs more effective, efficient, and accessible by expanding opportunities for grassroots organizations to participate in developing solutions for their own neighborhoods. Additionally, HUD encourages applicants to include these grassroots faith-based and other community-based organizations in their workplans. Applicants, their partners, and participants must review the ICDBG NOFA to determine whether they are eligible to apply for funding directly or whether they must establish a working relationship with an eligible applicant in order to participate in a HUD funding opportunity. Grassroots faith-based and other community-based organizations, and applicants who currently or propose to partner, fund, subgrant or subcontract with grassroots organizations (including grassroots faith-based or other community-based nonprofit organizations eligible under applicable program regulations) in conducting their work programs will receive higher rating points if specified in the NOFA.

(2) Definition of Grassroots Organizations.

(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 a social services budget of $300,000 or less, or

(ii) has six or fewer full-time equivalent employees.

(b) Local affiliates of national organizations are not considered ''grassroots.'' Local affiliates of national organizations are encouraged, however, to partner with grassroots organizations but must demonstrate that they are currently working with a grassroots organization (*e.g.*, having a faith-community or civic organization, or other charitable organization provide volunteers).

(c) The cap provided in paragraph (2)(a)(i) above includes only that portion of an organization's budget allocated to providing social services. It does not include other portions of the budget such as salaries and expenses not directly expended in the provision of social services.

These activities support Strategic Goal *f*.

e. Participation of Minority Serving Institutions in HUD Programs. Pursuant to Executive Orders 13256 (President's Board of Advisors on Historically Black Colleges and Universities), 13230 (President's Advisory Commission on Educational Excellence for Hispanic Americans), 13216 (Increasing Participation of Asian Americans and Pacific Islanders in Federal Programs), and 13270 (Tribal Colleges and Universities), HUD is strongly committed to broadening the participation of Minority Serving Institutions (MSIs) in its programs. HUD is interested in increasing the participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. HUD encourages all applicants and recipients to include meaningful participation of MSIs in their work programs. A listing of MSIs can be found on the Department of Education Web site at *http://www.ed.gov/about/offices/list/ocr/edlite-minorityinst-as-vi.html* or HUD's Web site at *http://www.hud.gov*.

These activities support Strategic Goals *c* and *d*.

f. Ending Chronic Homelessness within Ten Years. President Bush has set a national goal to end chronic homelessness within ten years. HUD has embraced this goal and has pledged that HUD's grant programs will be used to support the President's goal and more adequately meet the needs of chronically homeless individuals. A person experiencing chronic homelessness is defined as an unaccompanied individual with a disabling condition who has been continuously homeless for a year or more or has experienced four or more episodes of homelessness over the last three years. Applicants are encouraged to target assistance to chronically homeless persons by undertaking activities that will result in:

(1) Creation of affordable group homes or rental housing units;

(2) Establishing a set-aside of units of affordable housing for the chronically homeless;

(3) Substance abuse treatment programs targeted to the homeless population;

(4) Job training programs that will provide opportunities for economic self-sufficiency;

(5) Counseling programs that assist homeless persons in finding housing, learning financial management and anger management, and building interpersonal relationships;

(6) Supportive services, such as health care assistance that will permit homeless individuals to become productive members of society;

(7) Provision of Service Coordinators or One Stop Assistance Centers that will ensure that chronically homeless persons have access to a variety of social services;

(8) Applicants that are developing programs to meet this goal should be mindful of the requirements implementing section 404 of the Rehabilitation Act of 1973, in particular, 24 CFR 8.4(b)(1)(iv), 8.4(c)(1), and 8.4(d).

These activities support Strategic Goals *b* and *c*.

13. Performance and Compliance Actions of Funding Recipients. HUD will measure and address the performance and compliance actions of funding recipients in accordance with the applicable standards and sanctions of their respective programs.

VI. Award Administration Information

A. Anticipated Announcement and Award Dates. Awards are expected to be announced by May 20, 2005. Once a congressional release date has been obtained, a grant award letter, a grant agreement, and other forms and certifications will be mailed to the recipient for signature and return to the Area ONAP.

As soon as rating and ranking are completed and it has been determined that the applicant has complied with any pre-award requirements (*see* section V.B.9.b. of this NOFA), the grant will be awarded. The grant agreement, which is signed by HUD and the recipient, establishes the conditions by which both the Area ONAP and the recipient must abide during the life of the grant. All grants are conditioned upon the completion of all environmental obligations and approval of release of funds by the Area ONAP in accordance with the requirements of 24 CFR part 58. HUD may impose other grant conditions if additional actions or approvals are required before the use of funds.

B. Administrative and National Policy Requirements.

1. Statutory and Regulatory Requirements.

a. Environmental Requirements. As required by 24 CFR 1003.605, ICDBG grantees must perform environmental reviews of ICDBG activities in accordance with 24 CFR part 58 (as amended September 29, 2003). Grantees and other participants in the development process may not commit or expend any ICDBG or nonfederal funds on project activities (other than those listed in 24 CFR 58.22(f), 58.34 or 58.35(b)) until HUD has approved a Request for Release of Funds and environmental certification submitted by the grantee. The expenditure or commitment of ICDBG or nonfederal funds for such activities prior to HUD approval may result in the denial of assistance for the project or activities under consideration.

b. Indian Preference. HUD has determined that the ICDBG program is subject to section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). The provisions and requirements for implementing this section are in 24 CFR 1003.510.

c. Anti-discrimination Provisions. Under the authority of section 107(e)(2) of the CDBG statute, HUD waived the requirement that recipients comply with the anti-discrimination provisions in section 109 of the CDBG statute with respect to race, color, and national origin. You must comply with the other prohibitions against discrimination in section 109 (HUD's regulations for section 109 are in 24 CFR part 6) and with the Indian Civil Rights Act.

d. Conflict of Interest. In addition to the conflict of interest requirements with respect to procurement transactions found in 24 CFR 85.36 and 84.42, as applicable, the provisions of 24 CFR 1003.606 apply to such activities as the provision of assistance by the recipient or sub-recipients to businesses, individuals, and other private entities under eligible activities that authorize such assistance.

e. Economic Opportunities for Low- and Very Low-Income Persons (Section

3). Section 3 requirements apply to the ICDBG Program, but as stated in 24 CFR 135.3(c), the procedures and requirements of 24 CFR part 135 apply to the maximum extent consistent with, but not in derogation of, compliance with Indian Preference.

2. OMB Circulars and Government-wide Regulations Applicable to Financial Assistance Programs. The policies, guidance, and requirements of OMB Circular A–87, Cost Principles Applicable to Grants, Contracts and other Agreements with State and Local Governments; and OMB Circular A–122, Cost Principles for Nonprofit Organizations; and OMB Circular A–133, Audits of State and Local Governments, and Nonprofit Organizations; and the regulations at 24 CFR part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments apply to the award, acceptance, and use of assistance under the ICDBG program and to the remedies for noncompliance, except when inconsistent with the provisions of the Consolidated Appropriations Act, 2004 (Public Law 108–199, approved January 23, 2004) or the ICDBG program regulations at 24 CFR part 1003. Copies of the OMB Circulars may be obtained from EOP publications. Room 22000, New Executive Office Building, Washington, DC 20503, telephone (202) 395–3080 (this is not a toll-free number) or (800) 877–8339 (TTY Federal Information Relay Service). Information may also be obtained from the OMB Web site at *http://www.whitehouse.gov/omb/circulars/index.html.*

C. Reporting.

1. Post Award Reporting Requirements.

a. Quarterly Financial Reports. Grant recipients must submit quarterly to the Area ONAP a SF–272, Federal Cash Transaction Report. The report accounts for funds received and disbursed by the recipient.

b. Annual Status and Evaluation Report. Recipients are required to submit this report in narrative form annually. The report is due 45 days after the end of the federal fiscal year and at the time of grant close-out. The report must include:

(1) The narrative part must address the progress made in completing approved activities and include a list of work remaining, along with a revised implementation schedule if necessary. This should include progress on any outputs or outcomes specified in Rating Factor 5;

(2) A breakdown of funds spent on each major project activity or category; and

(3) If the project has been completed, an evaluation of the effectiveness of the project in meeting the community development needs of the grantee, as well as the final outputs and outcomes.

c. Minority Business Enterprise Report. Recipients must submit this report on contract and subcontract activity during the first half of the fiscal year by April 10 and by October 10 for the second half of the fiscal year.

d. A close-out report must be submitted by the recipient within 90 days of completion of grant activities. The report consists of the final Financial Status Report (forms SF 269 or 269A), the final Status and Evaluation Report, and the Close-Out Agreement.

More information regarding these requirements may be found at 24 CFR 1003.506 and 1003.508.

VII. Agency Contact(s) (Required)

A. General Questions. You should direct general program questions to the Area ONAP serving your area or to Barbara Gallegos, Denver Program Office of Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202; telephone 800–561–5913. Persons with speech or hearing impairments may call HUD's TTY number 202–708–0770, or 1–800–877–8339 (the Federal Information Relay Service TTY). Other than the ''800'' numbers, these numbers are not toll-free.

B. Technical Assistance. Before the application due date, HUD staff will be available to provide you with general guidance and technical assistance about this NOFA. However, HUD staff is not permitted to assist in preparing your application. Following selection of applicants, but before awards are made, HUD staff are available to assist in clarifying or confirming information that is a prerequisite to the offer of an award.

VIII. Other Information

A. Authority. The authority for this program is Title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 *et seq.*), the Consolidated Appropriations Act of 2004 (Pub.L. 108–199, approved January 23, 2004), and the program regulations in 24 CFR part 1003.

B. NOFA Training. Training for potential applicants on the NOFA requirements will be provided by the Area ONAPs prior to the application deadline. Applicants should contact the Area ONAP for their jurisdiction as identified in section IV.C. 4. of this NOFA.

C. Section 102 of HUD Reform Act, Applicant Debriefing, Documentation, and Public Access Requirements. Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published a notice that also provides information on the implementation of section 102 (57 FR 1942). The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA.

1. Documentation, Public Access, and Disclosure Requirements. HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 15).

2. HUD Form 2880. HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also reported on HUD Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports, both applicant disclosures and updates, will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations (24 CFR part 5).

3. Publication of Recipients of HUD Funding. HUD's regulations at 24 CFR part 4 provide that HUD will publish a notice in the **Federal Register** to notify the public of all decisions made by the Department to provide:

a. Assistance subject to section 102(a) of the HUD Reform Act; and

b. Assistance provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

4. Debriefing. Beginning 30 days after the awards for assistance are publicly

announced and for at least 120 days after awards for assistance are announced publicly, HUD will provide a debriefing to any applicant requesting one on their application. All debriefing requests must be made in writing or by e-mail by the authorized official whose signature appears on the SF–424 form or by his or her successor in office, and submitted to the Area Office you submitted your application to. Information provided during a debriefing will include, at a minimum, the final score you received for each rating factor, final evaluator comments for each rating factor, and the final assessment indicating the basis upon which assistance was provided or denied.

D. Section 103 of the HUD Reform Act. HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, subpart B, § 4.26(2)(c) *et seq.* and § 4.28 apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4. Applicants or employees who have ethics-related questions should contact the HUD Ethics Law Division at 202–708–3815. (This is not a toll-free number.) HUD employees who have specific program questions should contact the appropriate field office counsel or Headquarters counsel for the program to which the question pertains.

E. Federal E-Grants Information. 1. Streamlining Federal Financial Assistance. The Federal Financial Assistance Management Improvement Act of 1999 (Public Law 106–107) directs each Federal agency to develop and implement a plan that, among other things, streamlines and simplifies the application, administrative, and reporting procedures for Federal financial assistance programs administered by the agency. This law also requires the Director of the Office of Management and Budget (OMB) to direct, coordinate, and assist federal agencies in establishing (1) a common application and reporting system and (2) an interagency process for addressing ways to streamline and simplify Federal financial assistance application and administrative procedures and reporting requirements for program applicants.

HUD is working with the 26 Federal grant-making agencies on President George W. Bush's Grants.gov ''FIND and APPLY'' Initiative. This Initiative is an effort by federal agencies to develop a common electronic application and reporting system for Federal financial assistance. This system, which will provide ''one-stop shopping'' for funding opportunities for all Federal programs, is being developed in response to public and government concerns that it is difficult for organizations to know all the funding available from the Federal Government and how to apply for funding. It also is an effort by the Federal Government to develop common application requirements that further streamline the application process, making it easier for you, our customers, to apply for funding.

The first segment of the Grants.gov Initiative focuses on allowing the public to easily FIND funding opportunities and then APPLY via Grants.gov. Funding decisions would still be under the control of the Federal Agency sponsoring the program-funding opportunity. In FY2004 HUD is posting all of its funding notices on *http://www.Grants.gov/FIND.* It is also placing copies of the electronic application on *http://www.Grants.gov/Apply.* Applicants should note that the URL for the grants.gov/Apply site is case sensitive, so please carefully copy the URL provided in this Notice to avoid message errors.

During FY2004, HUD applicants will be able to continue to submit paper copies of their application to HUD for funding consideration, and in fact, the paper copy will be the official copy. To find out more about Grants.gov, please go to its Web site and look at the Tutorials and Getting Started information. It is HUD's intent to move to a fully electronic application system in FY2005, so an early test of this feature would benefit both the applicant community and HUD.

F. *Paperwork Reduction Act Statement.* The information collection requirements in this NOFA 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 2577–0191. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid OMB control number. Public reporting burden for the collection of information is estimated to average 43 hours per annum for the application and grant administration. This includes the time for collecting, reviewing, and reporting the data. 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 1, 2004.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

Appendix A:

Data to Determine Need for Factor 2 (for Applicants for New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Assistance Projects) For applicants submitting applications for New Housing Construction, Housing Rehabilitation, Land Acquisition to Support New Housing, and Homeownership Acquisition Projects: The need for the proposed project for Factor 2 is determined by utilizing data from the tribe's 2004 IHBG formula information. The data is contained in appendix A. Should you disagree with this information, please consult the IHBG formula customer service center at 800–410–8808 for the process for challenging IHBG formula data. Persons with hearing and speech impairments should call 800–505–5908 (TTY).

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Appendix A
for use in Rating Factor 2

(IHBG Need Dollars Relative to Low Income Households and Housing Conditions)

*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004	Office	Tribe	Need $/ Income + Conditions 2004
ALASKA	Afognak	$1,200	ALASKA	Cantwell	$921
ALASKA	Ahtna, Incorporated	$1,298	ALASKA	Chalkyitsik	$1,341
ALASKA	Akhiok	$1,155	ALASKA	Chanega	$1,250
ALASKA	Akiachak	$1,241	ALASKA	Cheesh-Na	$1,031
ALASKA	Akiak	$1,385	ALASKA	Chefornak	$1,501
ALASKA	Akutan	$1,060	ALASKA	Chevak	$1,309
ALASKA	Alakanuk	$1,253	ALASKA	Chickaloon	$831
ALASKA	Alatna	$1,357	ALASKA	Chignik	$1,513
ALASKA	Aleknagik	$1,105	ALASKA	Chignik Lagoon	$2,083
ALASKA	Aleut Corporation	$12,500	ALASKA	Chignik Lake	$1,355
ALASKA	Algaaciq (St. Mary's)	$1,594	ALASKA	Chilkat	$812
ALASKA	Allakaket	$1,325	ALASKA	Chilkoot	$875
ALASKA	Ambler	$1,213	ALASKA	Chitina	$1,245
ALASKA	Anaktuvuk Pass	$1,541	ALASKA	Chuatbaluk	$1,184
ALASKA	Andreafski	$1,119	ALASKA	Chugach Alaska Corp.	$1,010
ALASKA	Angoon	$899	ALASKA	Chuloonawick	N/A
ALASKA	Aniak	$1,234	ALASKA	Circle	$1,309
ALASKA	Annette Island (Metlakakla)	$913	ALASKA	Clark's Point	$1,265
ALASKA	Anvik	$1,260	ALASKA	Cook Inlet Alaska Native Regional Corporation	$915
ALASKA	Arctic Slope Regional Corp.	N/A	ALASKA	Council	N/A
ALASKA	Arctic Village	$1,409	ALASKA	Craig	$985
ALASKA	Atka	$1,157	ALASKA	Crooked Creek	$1,278
ALASKA	Atmautluak	$1,368	ALASKA	Curyung (Dillingham)	$1,306
ALASKA	Atqasuk (Atkasook)	$1,981	ALASKA	Deering	$1,352
ALASKA	Baranof Island Regional Corporation	$890	ALASKA	Dot Lake	$926
ALASKA	Barrow	$1,563	ALASKA	Douglas	$759
ALASKA	Beaver	$1,216	ALASKA	Doyon Native Regional Corporation	$1,112
ALASKA	Belkofski	N/A	ALASKA	Eagle	$1,064
ALASKA	Bering Straits Regional Corp.	N/A	ALASKA	Eek	$1,438
ALASKA	Bill Moore's Slough	N/A	ALASKA	Egegik	$1,032
ALASKA	Birch Creek	$1,571	ALASKA	Eklutna	$978
ALASKA	Brevig Mission	$1,447	ALASKA	Ekuk	N/A
ALASKA	Bristol Bay Native Corp.	N/A	ALASKA	Ekwok	$1,278
ALASKA	Buckland	$1,269	ALASKA	Elim	$1,290
ALASKA	Calista Corporation	N/A	ALASKA	Emmonak	$1,185

Appendix A
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(IHBG Need Dollars Relative to Low Income Households and Housing Conditions)

*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004		Office	Tribe	Need $/ Income + Conditions 2004
ALASKA	Evansville (Bettles Field)	$1,261		ALASKA	Klawock	$873
ALASKA	Eyak	$1,106		ALASKA	Kluti Kaah (Copper Center)	$978
ALASKA	False Pass	$1,526		ALASKA	Knik	$1,009
ALASKA	Fort Yukon	$1,158		ALASKA	Kobuk	$1,343
ALASKA	Gakona	$872		ALASKA	Kokhanok	$1,193
ALASKA	Galena	$1,377		ALASKA	Koliganek	$1,313
ALASKA	Gambell	$1,365		ALASKA	Kongiganak	$1,299
ALASKA	Georgetown	N/A		ALASKA	Koniag, Inc.	$1,359
ALASKA	Golovin (Chinik)	$1,412		ALASKA	Kotlik	$1,237
ALASKA	Goodnews Bay	$1,187		ALASKA	Kotzebue	$1,345
ALASKA	Grayling	$1,185		ALASKA	Koyuk	$1,340
ALASKA	Gulkana	$950		ALASKA	Koyukuk	$1,218
ALASKA	Hamilton	N/A		ALASKA	Kwethluk	$1,267
ALASKA	Healy Lake	$1,659		ALASKA	Kwigillingok	$1,349
ALASKA	Holy Cross	$1,204		ALASKA	Kwinhagak (Quinhagak)	$1,166
ALASKA	Hoonah	$967		ALASKA	Larsen Bay	$1,403
ALASKA	Hooper Bay	$1,278		ALASKA	Lesnoi (Woody Island)	$1,162
ALASKA	Hughes	$1,214		ALASKA	Levelock	$1,230
ALASKA	Huslia	$1,209		ALASKA	Lime	N/A
ALASKA	Hydaburg	$924		ALASKA	Lower.Kalskag	$1,249
ALASKA	Igiugig	$1,488		ALASKA	Manley Hot Springs	$1,350
ALASKA	Iliamna	$1,477		ALASKA	Manokotak	$1,256
ALASKA	Inalik (Diomede)	$1,374		ALASKA	Marshall	$1,284
ALASKA	Ivanoff Bay	$6,250		ALASKA	Mary's Igloo	N/A
ALASKA	Kaguyak	$25,000		ALASKA	McGrath	$1,262
ALASKA	Kake	$1,139		ALASKA	Mekoryuk	$1,015
ALASKA	Kaktovik	$1,838		ALASKA	Mentasta	$1,139
ALASKA	Kalskag	$1,351		ALASKA	Minto	$1,239
ALASKA	Kaltag	$1,158		ALASKA	Mountain Village (Asa'Carsarmiut)	$1,129
ALASKA	Kanatak	$1,241		ALASKA	Naknek	$1,111
ALASKA	Karluk	$1,681		ALASKA	NANA Corporation	N/A
ALASKA	Kasigluk	$1,238		ALASKA	Nanwelek (English Bay)	$1,078
ALASKA	Kassan	$924		ALASKA	Napaimute	N/A
ALASKA	Kenaitze	$905		ALASKA	Napakiak	$1,176
ALASKA	Ketchikan	$919		ALASKA	Napaskiak	$1,212
ALASKA	Kiana	$1,297		ALASKA	Nelson Lagoon	$1,008
ALASKA	King Cove	$1,362		ALASKA	Nenana	$1,157
ALASKA	King Island	$1,245		ALASKA	New Stuyahok	$1,271
ALASKA	King Salmon Tribe	N/A		ALASKA	Newhalen	$1,241
ALASKA	Kipnuk	$1,210		ALASKA	Newtok	$1,248
ALASKA	Kivalina	$1,377		ALASKA	Nightmute	$1,099

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(IHBG Need Dollars Relative to Low Income Households and Housing Conditions)

*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004	Office	Tribe	Need $/ Income + Conditions 2004
ALASKA	Nikolai	$1,203	ALASKA	Scammon Bay	$1,397
ALASKA	Nikolski	$1,563	ALASKA	Selawik	$1,287
ALASKA	Ninilchik	$923	ALASKA	Seldovia	$896
ALASKA	Noatuk	$1,599	ALASKA	Shageluk	$1,175
ALASKA	Nome	$1,294	ALASKA	Shaktoolik	$1,144
ALASKA	Nondalton	$1,241	ALASKA	Sheldon's Point	$1,299
ALASKA	Noorvik	$1,274	ALASKA	Shishmaref	$1,394
ALASKA	Northway	$1,164	ALASKA	Shoonaq' Tribe of Kodiak	$984
ALASKA	Nuiqsut	$1,511	ALASKA	Shungnak	$1,375
ALASKA	Nulato	$1,135	ALASKA	Skagway	$811
ALASKA	Nunapitchuk	$1,155	ALASKA	Sleetmute	$1,223
ALASKA	Ohogamiut	N/A	ALASKA	Solomon	N/A
ALASKA	Old Harbor	$1,320	ALASKA	South Naknek	$1,022
ALASKA	Orutsararmuit (Bethel)	$1,284	ALASKA	Stebbins	$1,307
ALASKA	Oscarville	$1,318	ALASKA	Stevens	$1,182
ALASKA	Ouzinkie	$1,209	ALASKA	Stoney River	$1,175
ALASKA	Paimiut	N/A	ALASKA	Takotna	$1,309
ALASKA	Pauloff Harbor Village	N/A	ALASKA	Tanacross	$1,086
ALASKA	Pedro Bay	$1,097	ALASKA	Tanana	$1,265
ALASKA	Perryville	$1,456	ALASKA	Tatitlek	$935
ALASKA	Petersburg	$863	ALASKA	Tazlina	$1,186
ALASKA	Pilot Point	$1,108	ALASKA	Telida	N/A
ALASKA	Pilot Station	$1,147	ALASKA	Teller	$1,346
ALASKA	Pitka's Point	$1,305	ALASKA	Tetlin	$1,247
ALASKA	Platinum	$995	ALASKA	Tlingit Haida Central Council	$937
ALASKA	Point Hope	$1,836	ALASKA	Togiak	$1,277
ALASKA	Point Lay	$1,585	ALASKA	Toksook Bay	$1,230
ALASKA	Port Graham	$1,211	ALASKA	Tuluksak	$1,157
ALASKA	Port Heiden	$941	ALASKA	Tuntutuliak	$1,262
ALASKA	Port Lions	$1,077	ALASKA	Tununak	$1,115
ALASKA	Portage Creek	N/A	ALASKA	Twin Hills	$1,101
ALASKA	Qagan Tayagungin (Sand Point)	$1,252	ALASKA	Tyonek	$928
ALASKA	Qawalangin (Unalaska)	$1,807	ALASKA	Ugashik	$1,286
ALASKA	Rampart	$1,437	ALASKA	Umkumiute	N/A
ALASKA	Red Devil	$1,185	ALASKA	Unalakleet	$1,236
ALASKA	Ruby	$1,407	ALASKA	Unga	$12,500
ALASKA	Russian Mission (Yukon)	$936	ALASKA	Venetie	$1,108
ALASKA	Saint George	$1,408	ALASKA	Wainwright	$1,533
ALASKA	Saint Michael	$1,448	ALASKA	Wales	$1,378
ALASKA	Saint Paul	$1,390	ALASKA	White Mountain	$1,230
ALASKA	Salamatoff	$929	ALASKA	Wrangell	$697
ALASKA	Savoonga	$1,350	ALASKA	Yakutat	$1,006
ALASKA	Saxman	$1,089			

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*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004	Office	Tribe	Need $/ Income + Conditions 2004
CHICAGO	Aroostook Band of Micmac	$553	CHICAGO	Oneida Nation of New York	$596
CHICAGO	Bad River Band	$577	CHICAGO	Oneida Tribe	$564
CHICAGO	Bay Mills Indian Community	$677	CHICAGO	Onondaga Nation	$771
CHICAGO	Boise Forte Band of Minnesota Chippewa	$620	CHICAGO	Passamaquody Indian Tribe	$546
CHICAGO	Catawba Indian Tribe	$463	CHICAGO	Penobscot Tribe	$584
CHICAGO	Cayuga Nation	$680	CHICAGO	Pleasant Point	$580
CHICAGO	Coharie State Tribe	$491	CHICAGO	Poarch Band of Creek Indians	$473
CHICAGO	Eastern Cherokee	$519	CHICAGO	Pokagon Band of Potawatomi	$582
CHICAGO	Fond Du Lac Band of Minnesota	$634	CHICAGO	Red Cliff Band of Lake Superior Chippe	$565
CHICAGO	Forest County Potawatami	$1,345	CHICAGO	Red Lake Band of Chippewa	$650
CHICAGO	Grand Portage Band of Minnesota	$638	CHICAGO	Sac & Fox Tribe	$514
CHICAGO	Grand Traverse Band	$562	CHICAGO	Saginaw Chippewa	$1,633
CHICAGO	Haliwa-Saponi State Tribe	$523	CHICAGO	Saint Croix Chippewa	$742
CHICAGO	Hannahville Community	$663	CHICAGO	Sault Ste. Marie Tribe	$529
CHICAGO	Ho-Chunk Nation	$560	CHICAGO	Seminole Tribe	$653
CHICAGO	Houlton Band of Maliseets	$603	CHICAGO	Seneca Nation of New York	$721
CHICAGO	Huron Band of Potawatomi	$523	CHICAGO	Shakopee Sioux	$774
CHICAGO	Keweenaw Bay Indian Community	$706	CHICAGO	Sokagoan Chippewa Tribe	$819
CHICAGO	Lac Courte Oreilles	$635	CHICAGO	St. Regis Mohawk Tribe	$647
CHICAGO	Lac Du Flambeau Band	$655	CHICAGO	Stockbridge-Munsee Tribe	$608
CHICAGO	Lac Vieux Desert Band	$825	CHICAGO	Tonawanda Band of Senecas	$578
CHICAGO	Leech Lake Band of Minnesota Chippewa	$616	CHICAGO	Tuscarora Nation	$518
CHICAGO	Little River Band of Ottawa	$547	CHICAGO	Upper Sioux Indian Community	$673
CHICAGO	Little Traverse Bay Band	$557	CHICAGO	Waccamaw Siouan State Tribe	$508
CHICAGO	Lower Sioux	$729	CHICAGO	Wampanoag Tribe	$895
CHICAGO	Lumbee State Tribe	$510	CHICAGO	White Earth Band of Minnesota Chippewa	$540
CHICAGO	Match-e-be-nash-she-wish Band of Potta	$520			
CHICAGO	Menominee Indian Tribe	$663	DENVER	Blackfeet Tribe	$616
CHICAGO	Miccosukee Tribe	N/A	DENVER	Cheyenne River Sioux	$658
CHICAGO	Mille Lacs Band of Minnesota Chippewa	$629	DENVER	Crow Creek Sioux	$607
CHICAGO	Mississippi Choctaw Tribe	$560	DENVER	Crow Tribe	$646
CHICAGO	MOWA Band of Choctaw Indians	$558	DENVER	Flandreau Santee Sioux	$1,188
CHICAGO	Narragansett Tribe	$621			

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*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004		Office	Tribe	Need $/ Income + Conditions 2004
DENVER	Fort Belknap Indian Community	$714		OKLAHOMA	Choctaw Nation	$444
DENVER	Fort Peck Assiniboine and Sioux	$596		OKLAHOMA	Citizen Band Potawatomi Tribe	$458
DENVER	Ft. Berthold Affiliated Tribes	$628		OKLAHOMA	Comanche Tribe	$502
DENVER	Goshute Reservation	$595		OKLAHOMA	Coushatta Tribe	$3,571
DENVER	Lower Brule Sioux	$708		OKLAHOMA	Delaware Tribe	$449
DENVER	Northern Arapahoe	$574		OKLAHOMA	Delaware Tribe of Indians (Eastern)	$482
DENVER	Northern Cheyenne	$692		OKLAHOMA	Eastern Shawnee Tribe	$684
DENVER	NW Band of Shoshone Nation	$586		OKLAHOMA	Fort Sill Apache Tribe	$475
DENVER	Oglala Sioux of Pine Ridge Reservation	$682		OKLAHOMA	Iowa Tribe of Kansas and Nebraska	$501
DENVER	Omaha Tribe	$701		OKLAHOMA	Iowa Tribe of Oklahoma	$440
DENVER	Ponca Tribe of Nebraska	$541		OKLAHOMA	Jena Band of Choctaw	$433
DENVER	Rocky Boy Chippewa-Cree	$664		OKLAHOMA	Kaw Tribe	$431
DENVER	Rosebud Sioux	$710		OKLAHOMA	Kialegee Tribal Town	$433
DENVER	Salish and Kootenai Tribes	$529		OKLAHOMA	Kickapoo Tribe	$483
DENVER	Santee Sioux Tribe	$628		OKLAHOMA	Kickapoo Tribe of Oklahoma	$425
DENVER	Shoshone Tribe of the Wind River Reser	$614		OKLAHOMA	Kiowa Tribe	$456
DENVER	Sisseton-Wahpeton Sioux	$667		OKLAHOMA	Loyal Shawnee	$438
DENVER	Skull Valley Band of Goshute	N/A		OKLAHOMA	Miami Tribe	$420
DENVER	Southern Ute Tribe	$556		OKLAHOMA	Modoc Tribe	$25,000
DENVER	Spirit Lake Sioux Tribe	$657		OKLAHOMA	Muskogee (Creek) Nation	$427
DENVER	Standing Rock Sioux	$657		OKLAHOMA	Osage Tribe	$393
DENVER	Turtle Mountain Band of Chippewa	$709		OKLAHOMA	Otoe-Missouria Tribe	$426
DENVER	Uintah & Ouray Ute Indian	$552		OKLAHOMA	Ottawa Tribe	$418
DENVER	Utah Paiute Tribe	$639		OKLAHOMA	Pawnee Tribe	$464
DENVER	Ute Mountain Tribe	$560		OKLAHOMA	Peoria Tribe	$610
DENVER	Winnebago Tribe	$644		OKLAHOMA	Ponca Tribe	$425
DENVER	Yankton Sioux	$617		OKLAHOMA	Prairie Band of Potawatomi	$691
				OKLAHOMA	Quapaw Tribe	$392
OKLAHOMA	Absentee-Shawnee	$615		OKLAHOMA	Sac and Fox of Missouri	$3,125
OKLAHOMA	Alabama-Coushatta	$485		OKLAHOMA	Sac and Fox Tribe	$458
OKLAHOMA	Alabama-Quassarte Tribal Town	$426		OKLAHOMA	Seminole Nation	$430
OKLAHOMA	Apache Tribe	$512		OKLAHOMA	Seneca-Cayuga	$407
OKLAHOMA	Caddo Tribe	$450		OKLAHOMA	Texas Band of Kickapoo Indians	$459
OKLAHOMA	Cherokee Nation	$447		OKLAHOMA	Thlopthlocco Tribal Town	$432
OKLAHOMA	Cheyenne-Arapaho Tribes	$477		OKLAHOMA	Tonkawa Tribe	$558
OKLAHOMA	Chickasaw	$439		OKLAHOMA	Tunica-Biloxi Tribe	$512
OKLAHOMA	Chitimacha Tribe	$587		OKLAHOMA	United Keetoowah	$439

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*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004	Office	Tribe	Need $/ Income + Conditions 2004
OKLAHOMA	Wichita Tribe	$559	PHOENIX	Enterprise Rancheria	$674
OKLAHOMA	Wyandotte	$460	PHOENIX	Ely Shoshone	$702
			PHOENIX	Ewiiaapaayp Band of Kumeyaay	N/A
PHOENIX	Acoma Pueblo	$654	PHOENIX	Fallon Paiute-Shoshone	$618
PHOENIX	Agua Caliente Band of Cahuilla	$677	PHOENIX	Fort Bidwell	$885
PHOENIX	Ak-Chin	$511	PHOENIX	Fort Independence	$1,087
PHOENIX	Alturas Rancheria	N/A	PHOENIX	Fort McDermitt Paiute and Shoshone	$588
PHOENIX	Auburn Rancheria	$738	PHOENIX	Fort McDowell Yavapai Nation	$722
PHOENIX	Augustine Band of Cahuilla	N/A	PHOENIX	Fort Mojave Tribe	$680
PHOENIX	Barona Group of Capitan Grande	$1,834	PHOENIX	Gila River	$670
PHOENIX	Berry Creek Rancheria	$698	PHOENIX	Graton Rancheria	$910
PHOENIX	Big Lagoon Rancheria	$771	PHOENIX	Greenville Rancheria	$629
PHOENIX	Big Pine Band	$716	PHOENIX	Grindstone Rancheria	$696
PHOENIX	Big Sandy Rancheria	$692	PHOENIX	Guidiville Rancheria	$699
PHOENIX	Big Valley Rancheria	$743	PHOENIX	Havasupai	$1,047
PHOENIX	Blue Lake Rancheria	$1,389	PHOENIX	Hoopa Valley	$742
PHOENIX	Bridgeport Paiute Indian Colony	$906	PHOENIX	Hopi	$656
PHOENIX	Buena Vista Rancheria	$3,571	PHOENIX	Hopland Rancheria	$691
PHOENIX	Cabazon Band	N/A	PHOENIX	Hualapai	$794
PHOENIX	Cahuilla Band	$779	PHOENIX	Inaja Band	N/A
PHOENIX	California Valley	N/A	PHOENIX	Ione Band of Miwok Indians	$732
PHOENIX	Campo Band	$771	PHOENIX	Isleta Pueblo	$448
PHOENIX	Cedarville Rancheria	$893	PHOENIX	Jackson Rancheria	N/A
PHOENIX	Chemehuevi	$621	PHOENIX	Jamul Indian Village	N/A
PHOENIX	Chicken Ranch Rancheria	N/A	PHOENIX	Jemez Pueblo	$557
PHOENIX	Chico Rancheria	$677	PHOENIX	Jicarilla Reservation	$598
PHOENIX	Cloverdale Rancheria	$733	PHOENIX	Kaibab Band of Paiute	$548
PHOENIX	Cochiti Pueblo	$507	PHOENIX	Karuk	$710
PHOENIX	Cocopah Tribe	$554	PHOENIX	La Jolla Band	$805
PHOENIX	Cold Springs Rancheria	$708	PHOENIX	La Posta Band	$862
PHOENIX	Colorado River Indian Tribes	$774	PHOENIX	Laguna Pueblo	$555
PHOENIX	Colusa Rancheria	$578	PHOENIX	Las Vegas Colony	$725
PHOENIX	Cortina Rancheria	$695	PHOENIX	Laytonville Rancheria	$933
PHOENIX	Coyote Valley Band	$740	PHOENIX	Lone Pine Paiute-Shoshone	$710
PHOENIX	Death Valley Timba-Sha	$609	PHOENIX	Los Coyotes Band of Cahuilla	$633
PHOENIX	Dry Creek Rancheria	$735	PHOENIX	Lovelock Colony	$657
PHOENIX	Duck Valley Shoshone-Paiute	$543	PHOENIX	Lower Lake Rancheria	$1,471
PHOENIX	Duckwater Shoshone	$615	PHOENIX	Lytton Rancheria of California	$732
PHOENIX	Elk Valley Rancheria	$457			

Appendix A
for use in Rating Factor 2

(IHBG Need Dollars Relative to Low Income Households and Housing Conditions)

*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004		Office	Tribe	Need $/ Income + Conditions 2004
PHOENIX	Manchester Point Arena	$734		PHOENIX	San Ildefonso Pueblo	$480
PHOENIX	Manzanita Band	$1,563		PHOENIX	San Juan Pueblo	$620
PHOENIX	Mescalero Reservation	$609		PHOENIX	San Juan So Paiute Tribe	$627
PHOENIX	Mesa Grande Band	$801		PHOENIX	San Manuel Band	$1,724
PHOENIX	Middletown Rancheria	$750		PHOENIX	San Pasqual Band	$712
PHOENIX	Moapa Band of Paiute	$738		PHOENIX	San Rosa Band of Cahuilla	$862
PHOENIX	Mooretown Rancheria	$682		PHOENIX	Sandia Pueblo	$485
PHOENIX	Morongo Band of Cahuilla	$1,773		PHOENIX	Santa Ana Pueblo	$535
PHOENIX	Nambe Pueblo	$586		PHOENIX	Santa Clara Pueblo	$504
PHOENIX	Navajo Nation	$646		PHOENIX	Santa Rosa Rancheria	$791
PHOENIX	North Fork Rancheria	$708		PHOENIX	Santa Ynez Band of Chumash	$1,250
PHOENIX	Paiute-Shoshone of Bishop Colony	$575		PHOENIX	Santa Ysabel Reservation	$566
PHOENIX	Pala Bank	$714		PHOENIX	Santo Domingo Pueblo	$542
PHOENIX	Pascua Yaqui Tribe	$680		PHOENIX	Scotts Valley (Pomo)	$744
PHOENIX	Paskenta Band of Nomlaki Indian	$633		PHOENIX	Sherwood Valley Rancheria	$757
PHOENIX	Pauma Band	$698		PHOENIX	Shingle Springs Rancheria	$907
PHOENIX	Pechanga Band	$671		PHOENIX	Smith River Rancheria	$681
PHOENIX	Picayune Rancheria	$706		PHOENIX	Soboba Band	$1,041
PHOENIX	Picuris Pueblo	$542		PHOENIX	Stewarts Point Rancheria	$734
PHOENIX	Pinoleville Rancheria	$756		PHOENIX	Sulphur Bank Rancheria	$743
PHOENIX	Pit River Tribe	$687		PHOENIX	Summit Lake Paiute Tribe	N/A
PHOENIX	Pojoaque Pueblo	$463		PHOENIX	Susanville Rancheria	$629
PHOENIX	Potter Valley Rancheria	$714		PHOENIX	Sycuan Band	$2,500
PHOENIX	Pyramid Lake Paiute	$635		PHOENIX	Table Bluff Rancheria	$664
PHOENIX	Quartz Valley Reservation	$665		PHOENIX	Table Mountain Rancheria	N/A
PHOENIX	Quechan Tribe	$682		PHOENIX	Taos Pueblo	$545
PHOENIX	Ramona Band	N/A		PHOENIX	Te-Moak	$649
PHOENIX	Redding Rancheria	$686		PHOENIX	Tesuque Pueblo	$491
PHOENIX	Redwood Valley Rancheria	$712		PHOENIX	Tohono O'Odham Nation	$678
PHOENIX	Reno-Sparks Colony	$500		PHOENIX	Tonto Apache of Arizona	$528
PHOENIX	Resighini Rancheria	N/A		PHOENIX	Torres-Martinez Band of Cahuilla	$650
PHOENIX	Rincon Reservation	$712		PHOENIX	Tule River Indian Tribe	$874
PHOENIX	Robinson Rancheria	$776		PHOENIX	Tulomne Rancheria	$663
PHOENIX	Rohnerville Rancheria	$696		PHOENIX	Twenty Nine Palms Band	N/A
PHOENIX	Round Valley Reservation	$720		PHOENIX	Upper Lake Rancheria	$738
PHOENIX	Rumsey Rancheria	$1,042		PHOENIX	Utu Utu Gwaiti Paiute	$632
PHOENIX	Salt River PIma-Maricopa	$641		PHOENIX	Viejas Group of Capitan Grande	$812
PHOENIX	San Carlos Apache	$664		PHOENIX	Walker River Paiute Tribe	$663
PHOENIX	San Felipe Pueblo	$581		PHOENIX	Washoe Tribe	$671

Appendix A
for use in Rating Factor 2

(IHBG Need Dollars Relative to Low Income Households and Housing Conditions)

*N/A = No income or housing problems

Office	Tribe	Need $/ Income + Conditions 2004		Office	Tribe	Need $/ Income + Conditions 2004
PHOENIX	White Mountain Apache (Fort Apache)	$663		SEATTLE	Lummi Tribe	$668
PHOENIX	Winnemucca Colony	$1,111		SEATTLE	Makah Indian Tribe	$681
PHOENIX	Yavapai-Apache (Camp Verde)	$789		SEATTLE	Muckleshoot Indian Tribe	$681
PHOENIX	Yavapai-Prescott	$3,125		SEATTLE	Nez Perce Tribe	$576
PHOENIX	Yerington Paiute Tribe	$570		SEATTLE	Nisqually Indian Community	$740
PHOENIX	Yomba Shoshone Tribe	$714		SEATTLE	Nooksack Tribe	$677
PHOENIX	Ysleta Del Sur	$531		SEATTLE	Port Gamble Indian Community	$682
PHOENIX	Yurok Tribe	$704		SEATTLE	Puyallup Tribe	$685
PHOENIX	Zia Pueblo	$562		SEATTLE	Quileute Tribe	$737
PHOENIX	Zuni Tribe	$605		SEATTLE	Quinault Tribe	$686
				SEATTLE	Samish Nation	$656
SEATTLE	Burns-Paiute Colony	$592		SEATTLE	Sauk-Suiattle Indian Tribe	$709
SEATTLE	Chehalis Confederated Tribes	$789		SEATTLE	Shoalwater Bay Tribe	$682
SEATTLE	Coeur D'Alene Tribe	$670		SEATTLE	Siletz Confederated Tribes	$655
SEATTLE	Colville Confederated Tribes	$611		SEATTLE	Skokomish Indian Tribe	$703
SEATTLE	Coos Bay Confederated Tribes	$640		SEATTLE	Snoqualmie	$656
SEATTLE	Coquille Indian Tribe	$663		SEATTLE	Spokane Tribe	$558
SEATTLE	Cow Creek Tribes	$635		SEATTLE	Squaxin Island Tribe	$716
SEATTLE	Cowlitz Tribe	$626		SEATTLE	Stillaguamish Tribe	$660
SEATTLE	Fort Hall Shoshone-Bannock	$581		SEATTLE	Suquamish Tribal Council	$700
SEATTLE	Grand Ronde Confederated Tribe	$653		SEATTLE	Swinomish Indians	$878
SEATTLE	Hoh Indian Tribe	$743		SEATTLE	Tulalip Tribes	$798
SEATTLE	Jamestown S'Klallam Tribe	$661		SEATTLE	Umatilla Confederated Tribes	$777
SEATTLE	Kalispel Indian Community	$644		SEATTLE	Upper Skagit Tribe	$717
SEATTLE	Klamath Indian Tribe	$610		SEATTLE	Warm Springs Confederated Tribes	$747
SEATTLE	Kootenai Tribe	$3,125		SEATTLE	Yakima Indian Nation	$773
SEATTLE	Lower Elwha Tribal Community	$695				

Appendix B: Forms.

The non-standard forms, which follow, are required for your ICDBG application.

2004 ICDBG APPLICATION CHECKLIST

1. ____ Application for Federal Assistance (SF-424).

2. ____ Applicant/Recipient Disclosure/Update Report (HUD-2880).

3. ____ Acknowledgment of Application Receipt (HUD-2993).

4. ____ Client Comments and Suggestions (HUD-2994), optional.

5. ____ If applicable, concurring resolutions from the Tribe(s) if the application is prepared by a "Tribal Organization" for one or more eligible applicants.

6. ____ Community Development Statement that includes:

6a ____ Components addressing relevant threshold requirements and rating factors.

6b ____ Cost information by project, including specific activity costs, administration, planning, and technical assistance (if any), other dollars to be included in the project, and total HUD share. (Use of HUD-4123, Cost Summary, is required).

6c ____ A schedule for implementing the project. (Use of HUD-4125, Implementation Schedule, is required).

7. ____ Certifications (HUD-4126)

8. ____ If applicable, a map showing the project location.

9. ____ If applicable, displacement or temporary relocation information.

10. ____ If applicable, evidence of public disclosure (24 CFR 1003.606, Conflict of Interest).

11. ____ If applicable, survey and demographic data statement (see sample in Appendix B).

12. ____ Logic Model, HUD 96010 (optional for use with Factor 1).

13. _____ Survey on Ensuring Equal Opportunity for Applicants, HUD 23004 (optional form to respond to the requirement for compliance with Executive Order 13279).

1. Application for Federal Assistance (SF-424). IMPORTANT: Previous versions of 424 and HUD-424 are obsolete. Please use the SF-424 form included in this application package and fill in all the required information,

   - The Catalog of Federal Domestic Assistance (CFDA) number for the ICDBG Program is 14.862.

   - In Section 16, check the box 16b-No.

2. Applicant/Recipient Disclosure/Update Report (HUD-2880). This form is required and must be completed and submitted by all applicants to comply with Section 102 of the HUD Reform Act of 1989 (Public Law 101-235). Please note the following:

   - If the amount of assistance requested from HUD, states, and units of general local governments for the project in your application is less than $200,000 (in total), you are only required to complete Part I, (1) and (2) of the form. References in the instructions to the form to HUD housing projects do not apply to ICDBG funded housing activities; therefore, the applicant should check "no" under Section 1 (2)

   - If the $200,000 threshold is met or exceeded, Part II must list all other federal, state or local funds requested (or to be provided to the project) regardless of amount.

   - References in the instructions to the form to HUD housing projects do not apply to ICDBG funded housing activities. Therefore, the applicant should check the "No" box under Part I (2) and sign where indicated.

   - Interested parties (as defined in the instructions to the form) must only be listed in Part III if their monetary interest in the project will exceed $50,000 or 10 percent of the assistance requested, whichever is less. However, these dollar or percentage thresholds do not apply to consultants who have assisted in the preparation of the application. They must be listed regardless of the dollar amount of their contract with the applicant.

   - For Part V--Report on Sources and Uses of Funds--please note that if information on sources and uses of all funds has been provided elsewhere in the application (such as on Form HUD 4123, Cost Summary), it is not necessary to repeat the information in Part V. However, you must note on Form 2880, where the information is located in the application.

3. Acknowledgment of Application Receipt (HUD-2993). Applicants complete the top section of the form. Area ONAPs complete the bottom section. All applicants must submit this form to HUD.

4. Client Comments and Suggestions (HUD-2994). Complete this form should you have comments and recommendations for improvements to the NOFA document. It is optional to complete this HUD form.

5. If applicable, concurring resolutions from the Indian Tribe(s) if a "Tribal Organization" prepares the application for one or more eligible applicants. Such resolutions are required from an otherwise eligible applicant if a tribal organization applies on its behalf. See 24 CFR 1003.5(b) of the Program regulations for additional information.

6. Community Development Statement

6a. Components that address the relevant threshold requirements and rating factors. This section of your application should include information necessary to address any general thresholds, project specific thresholds established for the type of project for which your Tribe has applied, and rating factors. Be specific to address all aspects of each relevant criterion and thresholds. It is important that these items be addressed as completely as possible since you may not submit additional information to address them after the application is submitted. If there are any questions regarding what project-specific thresholds apply or under what rating factors your project will be rated, please contact the Area ONAP that serves your community for clarification prior to the submission of the application. Please refer to Section IV.E.3 and 4 of the NOFA for a description of the program and project specific thresholds. No required or optional form applies.

6b. Cost information by project. This is a very straightforward requirement. The use of form HUD-4123, Cost Summary, is required. Please make sure that the detailed cost estimates provided in the application component that provides the description of the project are accurately reflected in the cost summary.

An estimate of indirect costs may be included on the cost summary, but only if the indirect cost negotiation agreement is submitted with the application. Please note that since the cost of an OMB Circular A-133 audit is an indirect cost item, if an amount is entered on the cost summary for indirect cost, a separate amount for audit should not be included. As is indicated above, the total of administrative costs (direct and indirect) and planning costs cannot exceed 20 percent of the total grant award. Also as indicated, the amount provided for technical assistance activities cannot exceed ten percent of the grant award.

6c. A schedule for implementing the project. This application component should demonstrate that the project can be completed in a timely manner. The use of form HUD-4125, Implementation Schedule, is required. In completing this form please note that a project is defined as the item proposed for funding, e.g., the construction of a community building. In addition, for each project (except planning and technical assistance), there will be at least three component activities: Preparation and completion of an environmental review; construction (or rehabilitation) activities; and project administration. Each of these component activities will have milestones that will be projected and tracked. If funds have been requested for technical assistance or a planning project, these activities should be treated as separate projects.

7. Certifications. Form HUD-4126 is required. Should you have any questions regarding any of the matters to which assurance and certification is required, contact the Area ONAP office that serves your community.

8. If applicable, submit a map showing project location. For most types of projects, a map that identifies the location of the proposed project and its service area will aid in the review of your application. Please remember that certain of the individuals involved in the review of your application may have no personal knowledge of your community and a map with this information will assist them in their review.

9. If applicable, submit displacement or temporary relocation information. If the proposed project will result in displacement or temporary relocation, a statement that identifies (a) the number of persons (families, individuals, businesses, and nonprofit organizations) occupying the property on the date of the submission; (b) the number to be displaced or temporarily relocated; (c) the estimated cost of relocation payments and other services; (d) the source of funds for relocation; and (e) the organization that will carry out the relocation activities must be included. Please note that ICDBG funds may be used to pay for eligible costs related to temporary relocation or displacement (see § 1003.602 for a description of grantee responsibilities).

10. If applicable, evidence of public disclosure. This is a required application component for housing rehabilitation or new housing construction if the proposed recipient of such assistance was a covered person as defined in 24 CFR 1003.606(c). See 24 CFR 1003.606(e) for requirements.

11. If applicable, submit a survey and demographic data statement. The primary objective of the ICDBG Program is that not less than 70 percent of the funds of each single purpose grant must be used for activities that benefit low- and moderate-income persons.

    One way to meet this objective is to demonstrate that at least 51 percent of the persons who will benefit from the proposed project are of low- or moderate-income status (for other ways, see discussion below). HUD will use the best available demographic data to determine compliance with the 51 percent requirement. Applicants can rely on published data or conduct their own survey if they believe that generally published data are substantially inaccurate or incomplete. Sometimes (see below) the applicant has no choice but to submit a survey. If this is the case, you <u>must</u> state in your application that the survey and demographic data are true and correct to the best of your knowledge. To do this, you may submit a signed copy of the sample Survey and Demographic Data Statement found in Appendix B of this NOFA or you may submit an equivalent statement. The Area ONAP that serves your community has available low- and moderate-income limits by household size for your area. Contact that office for a copy of this information.

    Identified below are common situations when you may want to use published data or when you might want to generate your own data. If you believe that your project does not fit one of these situations, please contact the Area ONAP that serves your community.

- Use of Published Data. You may want to use already published data when the benefits accrued to your community from your project are area-wide. Area-wide activities are those such as a community center that would serve the entire village or reservation. Census Bureau data have been used by some applicants to determine the percentage of low- and moderate-income persons by geographic area. The Area ONAP that serves your community may be able to provide this information for your area.

- Applicant Generated Data. There are circumstances under which an applicant MUST prepare and submit demographic data to meet the low- and moderate- income person benefit requirement. These cases include:

- For activities with area-wide benefits, if the service area is one that is listed as having less than 51 percent low-and moderate-income persons, but the applicant feels that the published data is inaccurate; other demographic data can be submitted for review. If the reliability of this information can be verified, HUD will use it. In addition, there will often be situations in which census data is not available for the service area of an area-wide benefit activity

- For activities benefiting a small, discrete area of the community (such as a water/sewer extension), information must be provided to establish that at least 51 percent of the persons to be served are of low- or moderate-income status.

- For housing rehabilitation projects: All single-family units to be rehabilitated must be occupied by low- or moderate-income households.

- For new housing construction projects: All proposed beneficiary households must be of low- or moderate-income status.

HUD will review and accept demographic data provided by an applicant, if it is determined that the generally available, published data are substantially inaccurate or incomplete; the data provided has been collected systematically; and, to the greatest extent feasible, the data is independently verifiable. If HUD does not accept the data provided, the best available data will be used.

There are two special cases where the 70 percent objective can be demonstrated in alternative ways than listed above. The first case involves Economic Development Projects. The 51 percent low- or moderate-income benefit requirement can be demonstrated in one of two ways:

- By determining how many of the total number of jobs being created or retained will be available to or are held by low-and moderate-income persons. Availability is determined by the type and degree of skills required to qualify for the jobs created, as well as actions to be taken to insure that low-and moderate-income persons receive first consideration for the jobs.

- If the purpose of the project is to provide goods or services to an area in which at least 51 percent resident households are of low- or moderate-income status, the income characteristics of the service area must be documented as indicated above.

The second case involves groups presumed to be principally of low- or moderate- income status. Certain groups are presumed by HUD to be composed principally but not entirely of low- or moderate-income persons [see §1003.208(b)(1)(i)]. These groups are abused children, battered spouses, the elderly, handicapped persons, homeless persons, illiterate persons, and migrant farm workers. Proposed projects that would exclusively serve one of these groups automatically demonstrate the 51 percent low- or moderate-income benefit requirement.

Please note that the presumption of benefit will not affect point award under the "Need/Extent of the Problem" rating factor for public facilities and improvements and economic development. The award of points under these factors will be based on the provision in the application of beneficiary income information by household size.

12. Logic Model, HUD 96010 (optional for use to respond to Factor 1) references in instructions for the form to Rating Factor 5 are not applicable. Instead, this form may be used to address Rating Factor 1(b), Project Implementation Plan and Program Evaluation.

13. Survey on Ensuring Equal Opportunity for Applicants, HUD 23004. Responses to this survey are optional.

SAMPLE SURVEY AND DEMOGRAPHIC DATA STATEMENT

Applicant: _____

Project:* _____

The following demographic data is submitted for purposes of evaluating our application to the Indian Community Development Block Grant Program. By submitting this information with our application, we state that we are in compliance with all of the following:

- Generally available, published data are substantially accurate or complete.
- Data provided have been collected systematically and are statistically reliable.
- Data provided are, to the greatest extent feasible, independently verifiable and data differentiate between reservation and BIA service area populations, when applicable.

In accordance with Section IV.B. of the NOFA, we have also submitted the following:

- Total number of persons benefiting from our proposed project. (Include both Native and non-Native persons served)
- Number of persons benefiting who are low- and moderate-income.
- A sample copy of a completed survey form (see attachment).
- An explanation of the methods used to collect the data (see attachment).
- A listing of incomes by household (see attachment).

_____ _____

(President) (Chairperson) (Title-Other) (Secretary) (Clerk)

* A separate survey and demographic data statement (or its equivalent) must be submitted for each project that includes applicant-generated data unless the service area is the same for each of the different projects. In such instances, a separate statement need not be submitted.

APPLICATION FOR FEDERAL ASSISTANCE

Version 7/03

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Pre-application ☐ Construction ☐ Non-Construction	**2. DATE SUBMITTED**	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

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:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**
a. Federal	$ .00	a. Yes. ☐ THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE:
b. Applicant	$ .00	
c. State	$ .00	
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
e. Other	$ .00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
f. Program Income	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**
g. TOTAL	$ .00	☐ 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

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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.		

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:
My Home, 14401 Artery LN #21, Dale City, VA 22193

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 tc 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.

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)

Implementation Schedule

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 8/31/2006)

See Instructions and Public Reporting Statement on back.
Submit a separate implementation schedule for each project category.

1. Name of Applicant (as shown in Item 5, Standard Form 424)	2. Application/Grant Number (to be assigned by HUD)	3. ☐ Original (First submission to HUD) ☐ Pre-Award Submission ☐ Amendment (submitted after grant approval)	Date (mm/dd/yyyy)

4. Name of Project (as shown on form HUD-4123, item 4)	5. Effective Date (mm/dd/yyyy)	Expected Completion Date (mm/dd/yyyy)	Expected Closeout Date (mm/dd/yyyy)

6. Environmental Review Status

☐ **Exempt** (As described in 24 CFR 58.34)

☐ **Under Review** (Review underway; findings not yet made)

☐ **Finding of No Significant Impact** (Finding made that request for release of funds for project is not an action which may significantly affect the environment.)

☐ **EIS Required** (Finding that project may significantly affect environment or EIS automatically required by 24 CFR 58.37)

☐ **Not Started** (Review not yet begun)

☐ **Certification** (Environmental review completed; certification and request for release of funds being prepared for submission.)

☐ **Categorically Excluded** (as described in 24 CFR 58.35)

7. Tribal Fiscal Year (mm/dd/yyyy)

8. Task List
(List tasks such as environmental assessment, acquisition, etc.)

9. Schedule.
Use Calendar Year (CY) quarters. Fill-in the CY below. See detailed instructions on back.

	CY ____							CY ____								Date (mm/dd/yyyy) (If exceeds 8th Quarter)
	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	5th Qtr.	6th Qtr.	7th Qtr.	8th Qtr.								
10. **Planned Drawdowns by Quarter** (Enter amounts non-cumulatively)	$	$	$	$	$	$	$	$	$Total							
11. **Cumulative Drawdown** (If more than one page, enter total on last page only)	$	$	$	$	$	$	$	$	$Total							

Previous editions are obsolete

page of pages

form **HUD-4125** (12/97)

Public reporting burden for this collection of information is estimated to average 40 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. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Paperwork Reduction Project (2577-0191), Office of Information Technology, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600. 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.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of I990. The information requested does not lend itself to confidentiality.

Instructions for Item 9 Schedule: Use Calendar Year (CY) quarters. Fill-in the CY below. If the project begins in May, for example, enter under "1st Qtr.", A(April), M(May), J(June). Indicate time period required to complete each activity, e.g., acquisition, by entering "X" under the months it will begin and end. Draw a horizontal line from the first to the second "X". If the completion date will extend beyond the 8th quarter, enter date in the far right column and attach an explanation.

Cost Summary

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 8/31/2006)

See Instructions and Public Reporting Statement on back.

1. Name of Applicant (as shown in Item 5, Standard Form 424)

2. Application/Grant Number (to be assigned by HUD upon submission)

3. ☐ **Original** (check here if this is the first submission to HUD) ☐ **Revision** (check here if submitted with implementation schedule as part of pre-award requirements ☐ **Amendment** (check here if submitted after HUD approval of grant)

Date (mm/dd/yyyy)

4. **Project Name & Project Category** (see instructions on back) a	**ICDBG** Amount Requested for each activity b	**Program Funds** (in thousands of $) **Other** Other Source Amount for each activity c	Source of Other Funds for each activity d
	$	$	
5. Administration a. General Management and Oversight			
b. Indirect Costs: Enter indirect costs to be charged to the program pursuant to a cost allocation plan.			
c. Audit: Enter estimated cost of Program share of A-133 audits.			
Administration Total *			
6. Planning The Project description must address the proposed use of these funds.			
7. Technical Assistance Enter total amount of ICDBG funds requested for technical assistance. **			
8. Sub Total Enter totals of columns b. and c.	$	$	
9. Grand Total Enter sum of column b. plus column c.			$

* The total of items 5 and 6 cannot exceed 20% of the total ICDBG funds requested.

** No more than 10% of ICDBG funds requested may be used for technical assistance. If funds are requested under this line item, a separate project description must accompany the application to describe the technical assistance the application intends to obtain. Only technical assistance costs associated with the development of a capacity to undertake a specific funded program activity are eligible (24 CFR 1003.206).

Public reporting burden for this collection of information is estimated to average 40 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.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of I990. The information requested does not lend itself to confidentiality.

Instructions for Item 4.
Project Name and Project Type

Participants enter the project name and the name of one of the following three categories of activities:

- Housing
- Community Facilities
- Economic Development

Also enter the component name if applicable. Use a separate Cost Summary sheet (form HUD-4123) for each project included in the application.
Examples of categories and/or components including examples of eligible activities are listed below.

Housing

Rehabilitation Component
- Rehabilitation
- Demolition

Land to Support New Housing Component

New Housing Construction Component

Community Facilitites

Infrastructure Component
- Water
- Sewer
- Roads and Streets
- Storm Sewers

Buildings Component
- Health Clinic
- Daycare Center
- Community Center
- Multi-purpose Center

Economic Development
- Commercial (wholesale, retail)
- Industrial
- Motel/Hotel
- Restaurant
- Agricultural Development

Certifications

Indian Community Development Block Grant (ICDBG)

U.S. Department of Housing and Urban Development
Office of Public and Indian Housing

OMB Approval No. 2577-0191
(exp. 8/31/2006)

Public reporting burden for this collection of information is estimated to average 40 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.

This collection of information requires that each eligible applicant submit information to enable HUD to select the best projects for funding during annual competitions for the ICDBG Program. The information will be used by HUD to determine whether applications meet minimum screening eligibility requirements and application submission requirements. Applicants provide general information about the project which is preliminary to the review of the applicant's response to the criteria for rating the application. The information is essential for HUD in monitoring grants to ensure that grantees are making proper use of Federal dollars. Responses to the collection are required by Section 105 of the Department of Housing and Urban Development Reform Act (P.L. 101-235) as amended by the Cranston-Gonzales National Affordable Housing Act of I990. The information requested does not lend itself to confidentiality.

The grantee hereby certifies and assures that it will comply with the regulations, guidelines, and requirements with respect to the acceptance and use of Federal funds for this Federally-assisted program. Also, the grantee gives assurances and certifies with respect to the grant that:

A. It possesses the legal authority to apply for the grant and execute the proposed program.

B. The governing body has duly authorized the filing of the application, including all understandings and assurances contained in the application and has directed and authorized the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

C. It will comply with the HUD general administration requirements in 24 CFR Part 85.

D. It will comply with the requirements of Title II of Public Law 90-284 (25 USC 1301) (the Indian Civil Rights Act).

E. It will comply with the Indian preference provisions required in 24 CFR 1003.510.

F. It will establish written safeguards to prevent employees from using positions funded under the ICDBG programs for a purpose that is, or gives the appearance of being, motivated by private gain for themselves, their immediate family or business associates. Nothing in this certification should be construed as to limit employees from benefiting from program activities for which they would otherwise be eligible.

G. It will give HUD and the Comptroller General access and right to examine all books, records, papers, or documents related to the grant for a period of not less than three years after program completion or until resolution of any final audit findings.

H. Neither the applicant nor its principals are presently excluded from participation in any HUD programs, as required by 24 CFR part 24.

I. It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR part 24 and the requirements of 24 CFR 1003.602.

J. The chief executive officer or other official of the applicant approved by HUD:

1. Consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 insofar as the provisions of the Act apply to the applicant's proposed program pursuant to 24 CFR 1003.605.

2. Is authorized and consents on behalf of the applicant and him/her self to accept the jurisdiction of the Federal courts for the purpose of enforcement of his/her responsibilities as such an official.

Note: Applicants for whom HUD has approved a claim of incapacity to accept the responsibilities of the Federal government for purposes of complying with the environmental review requirements of 24 CFR part 58 pursuant to 24 CFR 1003.605 need not include the provision of paragraph J in their assurance.

K. It will comply with the requirements of Section 3 of the Housing and Urban Development Act of 1968 and the regulations in 24 CFR part 135 (Economic Opportunities for Low and Very Low Income Persons) to the maximum extent consistent with, but not in derogation of, compliance with Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 USC. 450e(b)).

L. It will comply with the requirements of the Fire Authorization Administration Act of 1992 (Pub.L. 102-522).

M. It will provide the drug-free workplace required by 24 CFR part 24, subpart F.

N. It will comply with 24 CFR, part 4, subpart A, showing full disclosure of all benefits of the project as collected by Form HUD-2880, Applicant/Recipient Disclosure Report.

O. Prior to submission of its application to HUD, the grantee has met the citizen participation requirements which includes following traditional means of member involvement, as required in 24 CFR 1003.604.

P. It will administer and enforce the labor standard requirements prescribed in 24 CFR 1003.603.

Q. The Program has been developed so that not less than 70 percent of the funds received under this grant will be used for activities that benefit low- and moderate-income persons.

Note: Applicants receiving Imminent Threat Grants need not include the provision of this paragraph in their assurance

Name (type or print)	Title
Signature	Date (mm/dd/yyyy)

Previous editions are obsolete

form **HUD-4126** (12/98)

Client Comments and Suggestions

U.S. Department of Housing and Urban Development

You are our Client! Your comments and suggestions, please!

The Department of Housing and Urban Development in preparing this Notice of Funding Availability and application forms, has tried to produce a more user friendly, customer driven funding process. Please let us have your comments and recommendations for improvements to this document. You may leave this form attached to your application, or feel free to detach the form and return it to:

The Department of Housing and Urban Development
Office of Departmental Grants Management and Oversight
Room 3156
451 7th Street, SW
Washington, DC 20410

Please Provide Comments on HUD's Efforts:

The NOFA (insert title) _____

is: (please check one)

(a) ☐ is clear and easily understandable

(b) ☐ better than before, but still needs improvement (please specify)

(c) other (please specify)

The application form (insert title) _____

is: (please check one)

(a) ☐ is acceptable given the volume of information required by statute and the volume of information required for accountability in selecting and funding projects.

(b) ☐ is simpler and more user-friendly than before, but still needs work (please specify).

(c) other comments (please specify)

Name & Organization (Optional):

Are additional pages attached? ☐ Yes ☐ No

Previous versions obsolete form **HUD-2994** (03/2003)

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. Providing 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 Organizations 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. Providing 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 Organizations 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.

SURVEY ON ENSURING EQUAL OPPORTUNITY FOR APPLICANTS

OMB No. 1890-0014 Exp. 1/31/2006

Purpose: The Federal government is committed to ensuring that all qualified applicants, small or large, non-religious or faith-based, have an equal opportunity to compete for Federal funding. In order for us to better understand the population of applicants for Federal funds, we are asking nonprofit private organizations (not including private universities) to fill out this survey.

Upon receipt, the survey will be separated from the application. Information provided on the survey will not be considered in any way in making funding decisions and will not be included in the Federal grants database. While your help in this data collection process is greatly appreciated, completion of this survey is voluntary.

Instructions for Submitting the Survey: If you are applying using a hard copy application, please place the completed survey in an envelope labeled "Applicant Survey." Seal the envelope and include it along with your application package. If you are applying electronically, please submit this survey along with your application.

Applicant's (Organization) Name: _____

Applicant's DUNS Number: _____

Grant Name: _____ **CFDA Number:** _____

1. Does the applicant have 501(c)(3) status?

   ☐ Yes ☐ No

2. How many full-time equivalent employees does the applicant have? *(Check only one box).*

   ☐ 3 or Fewer ☐ 15-50
   ☐ 4-5 ☐ 51-100
   ☐ 6-14 ☐ over 100

3. What is the size of the applicant's annual budget? *(Check only one box.)*

   ☐ Less Than $150,000
   ☐ $150,000 - $299,999
   ☐ $300,000 - $499,999
   ☐ $500,000 - $999,999
   ☐ $1,000,000 - $4,999,999
   ☐ $5,000,000 or more

4. Is the applicant a faith-based/religious organization?

   ☐ Yes ☐ No

5. Is the applicant a non-religious community-based organization?

   ☐ Yes ☐ No

6. Is the applicant an intermediary that will manage the grant on behalf of other organizations?

   ☐ Yes ☐ No

7. Has the applicant ever received a government grant or contract (Federal, State, or local)?

   ☐ Yes ☐ No

8. Is the applicant a local affiliate of a national organization?

   ☐ Yes ☐ No

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Survey Instructions on Ensuring Equal Opportunity for Applicants

Provide the applicant's (organization) name and DUNS number and the grant name and CFDA number.

1. 501(c)(3) status is a legal designation provided on application to the Internal Revenue Service by eligible organizations. Some grant programs may require nonprofit applicants to have 501(c)(3) status. Other grant programs do not.

2. For example, two part-time employees who each work half-time equal one full-time equivalent employee. If the applicant is a local affiliate of a national organization, the responses to survey questions 2 and 3 should reflect the staff and budget size of the local affiliate.

3. Annual budget means the amount of money your organization spends each year on all of its activities.

4. Self-identify.

5. An organization is considered a community-based organization if its headquarters/service location shares the same zip code as the clients you serve.

6. An "intermediary" is an organization that enables a group of small organizations to receive and manage government funds by administering the grant on their behalf.

7. Self-explanatory.

8. Self-explanatory.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1890-0014. The time required to complete this information collection is estimated to average five (5) minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Housing and Urban Development, Office of Departmental Grants Management and Oversight, Room 3156, Washington, D.C. 20410.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to the address above.

OMB No. 1890-0014 Exp. 1/31/2006
SF 424 Supplement

[FR Doc. 04–22576 Filed 10–4–04; 2:15 pm]
BILLING CODE 4210–33–P

Federal Register

Friday,
October 8, 2004

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Prohibition Against Certain Flights Between the United States and Libya; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2004–19316; Special Federal Aviation Regulation (SFAR) No. 65–1]

RIN 2120–AI46

Prohibition Against Certain Flights Between the United States and Libya

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 65–1. SFAR 65–1 prohibits, with certain exceptions, the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Libya. In addition, SFAR 65–1 prohibits the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight's origin or ultimate destination is Libya. The FAA is removing SFAR 65–1 in response to the decision by the President of the United States to revoke Executive Order 12801, which serves as the basis for SFAR 65–1. This final rule informs the public that the restrictions on flights between the United States and Libya, which are contained in SFAR 65–1, are removed.

DATES: Effective October 8, 2004.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Telephone: (202) 267–3732 or 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by: (1) Searching the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*); (2) Visiting the Office of Rulemaking's Web page at *http://www.faa.gov/avr/arm/index.cfm;* or (3) Accessing the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

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

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.*

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under **FOR FURTHER INFORMATION CONTACT**. You can find out more about SBREFA on the Internet at *http://www.faa.gov/avr/arm/sbrefa.htm,* or by e-mailing us at *-AWA-SBREFA@faa.gov.*

Background

The United States Government has taken several actions to restrict air transportation between the United States and Libya. On January 7, 1986, the President issued Executive Order 12543, which prohibits ''[a]ny transaction by a United States person relating to transportation to or from Libya * * * or the sale in the United States by any person holding authority under the Federal Aviation Act of any transportation by air which includes any stop in Libya.'' On January 30, 1986, the Secretary of Transportation implemented Executive Order 12543 by issuing Order 86–2–23, which amended all Department of Transportation (DOT) certificates issued under section 401 of the former Federal Aviation Act, all permits issued under section 402 of the Act, and all exemptions from sections 401 and 402 accordingly.

The President later issued Executive Order 12801 on April 15, 1992. Section 1 of Executive Order 12801 prohibits:

> the granting of permission to any aircraft to take off from, land in, or overfly the United States, if the aircraft, as part of the same flight or a continuation of that flight, is destined to land in or has taken off from the territory of Libya * * * .

Executive Order 12801 cited the President's authority under the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), section 1114 of the Federal Aviation Act of 1958, as amended (formerly codified at 49 U.S.C. app. 1514, now recodified at 49 U.S.C. 40106), and section 301 of Title 3, United States Code (3 U.S.C. 301).

Pursuant to Executive Order 12801, the FAA adopted SFAR 65 on April 16, 1992. SFAR 65 prohibited the takeoff from, landing in, or overflight of the territory of the United States by an aircraft on a flight to or from the territory of Libya. SFAR 65 also prohibited the landing in, takeoff from, or overflight of the territory of the United States by any aircraft on a flight from or to any intermediate destination, if the flight is destined to land in or take off from the territory of Libya. After SFAR 65 expired on April 16, 1993, the FAA reinstated the prohibition against certain flights between the United States and Libya by issuing SFAR 65–1 (60 FR 48644). SFAR 65–1 became effective on September 20, 1995.

On September 20, 2004, the President revoked Executive Orders 12543 and 12801. With this action, the basis for the prohibitions in SFAR 65–1 no longer exists. Accordingly, the FAA is taking this action to remove the prohibitions imposed under SFAR 65–1. This action by the FAA has no effect on any other requirement or restriction concerning Libya that may have been imposed by another agency of the United States Government under that other agency's authority.

Justification for Immediate Adoption

On the basis of the above, I am ordering the removal of SFAR 65–1. Because this action lifts a prohibition on certain flight operations between the United States and Libya, I find that notice and public comment under 5 U.S.C. 533(b) are unnecessary and contrary to the public interest. Further, I find that good cause exists under 5 U.S.C. 533(d) for making this rule effective immediately upon issuance.

Economic Assessment, Regulatory Flexibility Determination, Trade Impact Assessment, and Unfunded Mandates Assessment

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19

U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

If it is determined that the expected cost impact is so minimal that a proposal does not warrant a full evaluation, this order permits a statement to that effect and the basis for it be included in the preamble and full regulatory evaluation cost benefit evaluation not be prepared.

Removing this SFAR is the result of the President's decision to withdraw the Executive Orders that served as its basis, but does not immediately allow for flight operations between the United States and Libya. Certain restrictions on these operations remain effective through other government agencies, particularly the Department of Commerce. Removal of this SFAR may eventually lead to an environment where operations could be resumed, but the removal by itself does not enable these operations. For that reason, the FAA certifies that this action will not have a significant economic impact, and the costs and benefits of the rule are considered minimal under DOT Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements into the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The RFA covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Removal of this SFAR is only a single step that may eventually lead to flight operations between the United States and Libya, but does not by itself provide for such operations. Consequently, the FAA certifies that the rule will not have a significant impact on a substantial number of small entities.

Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it will have no impact on international trade.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $120.7 million in lieu of $100 million. This final rule does not contain such a mandate. The requirements of Title II do not apply.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Libya.

The Amendment

■ For the reasons set forth above, the Federal Aviation Administration amends part 91 of Title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

■ 1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

Special Federal Aviation Regulation No. 65–1—[Removed]

■ 2. Remove Special Federal Aviation Regulation No. 65–1—Prohibition Against Certain Flights Between the United States and Libya from part 91.

Issued in Washington, DC, on September 27, 2004.

Marion C. Blakey,

Administrator.

[FR Doc. 04–22741 Filed 10–5–04; 2:57 pm]

BILLING CODE 4910–13–P

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COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cotton classing, testing and standards:

Classification services to growers; 2004 user fees; Open for comments until further notice; published 5-28-04 [FR 04-12138]

Nectarines and peaches grown in—

California; comments due by 10-15-04; published 8-16-04 [FR 04-18616]

Oranges, grapefruit, tangerines, and tangelos grown in—

Florida; comments due by 10-15-04; published 8-16-04 [FR 04-18614]

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant Protection Act:

Methyl bromide treatments or applications; official quarantine uses; comments due by 10-12-04; published 8-12-04 [FR 04-18445]

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Meat and poultry inspection:

Countries eligible to export meat and meat products to United States; addition of San Marino to list; comments due by 10-12-04; published 8-13-04 [FR 04-18567]

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Atlantic highly migratory species—

Pelagic longline fishery; sea turtle interaction and mortality reduction; comments due by 10-12-04; published 8-12-04 [FR 04-18474]

West Coast States and Western Pacific fisheries—

Oregon sport fisheries; Pacific halibut; comments due by 10-12-04; published 9-27-04 [FR 04-21553]

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

AmeriCorps National Service Program; provisions and requirements; comment request; comments due by 10-12-04; published 8-13-04 [FR 04-18594]

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

DEFENSE DEPARTMENT

Acquisition regulations:

Fidelity and forgery bonds; comments due by 10-12-04; published 8-10-04 [FR 04-18085]

Resolving tax problems; comments due by 10-12-04; published 8-10-04 [FR 04-18084]

Civilian health and medical program of uniformed services (CHAMPUS):

TRICARE program—

Unproven drugs, devices, medical treatments and procedures; exclusion clarification; comments due by 10-12-04; published 8-10-04 [FR 04-18182]

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Consumer products; energy conservation program:

Energy conservation standards—-

Commercial packaged boilers; test procedures and efficiency standards; Open for comments until further notice; published 12-30-99 [FR 04-17730]

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Electric rate and corporate regulation filings:

Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

ENVIRONMENTAL PROTECTION AGENCY

Air programs:

Fuel and fuel additives—

California Phase 3 reformulated gasoline; enforcement exemptions; comments due by 10-12-04; published 8-11-04 [FR 04-18380]

Stratospheric ozone protection—

Methyl bromide phaseout; critical use exemption process; comments due by 10-12-04; published 8-25-04 [FR 04-18933]

Air programs; approval and promulgation; State plans for designated facilities and pollutants:

Virginia; comments due by 10-12-04; published 9-10-04 [FR 04-20429]

Air quality implementation plans; approval and promulgation; various States:

California; comments due by 10-14-04; published 9-14-04 [FR 04-20682]

Virginia; comments due by 10-12-04; published 9-9-04 [FR 04-20132]

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Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Forchlorfenuron; N-(2-chloro-4-pyridinyl)-N'-phenylurea; comments due by 10-12-04; published 8-11-04 [FR 04-18383]

Isodecyl alcohol ethoxylated (2-8 moles) polymer with chloromethyl oxirane; comments due by 10-12-04; published 8-13-04 [FR 04-18574]

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Solid wastes:

State solid waste landfill permit program—

Minnesota; comments due by 10-12-04; published 9-10-04 [FR 04-20503]

Minnesota; comments due by 10-12-04; published 9-10-04 [FR 04-20504]

Superfund program:

National oil and hazardous substances contingency plan—

National priorities list update; comments due by 10-12-04; published 8-13-04 [FR 04-18655]

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Meat and poultry products processing facilities; Open for comments until further notice; published 9-8-04 [FR 04-12017]

FARM CREDIT ADMINISTRATION
Farm credit system:
Loan policies and operations, etc—
Other financial institutions and investments in Farmers' notes; comments due by 10-14-04; published 9-14-04 [FR 04-20607]

FARM CREDIT SYSTEM INSURANCE CORPORATION
Farm credit system:
Golden parachute and indemnification payments; comments due by 10-14-04; published 7-16-04 [FR 04-16225]

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Common carrier services:
Access charges—
Subscriber line charges assessments; comments due by 10-12-04; published 8-13-04 [FR 04-18550]
Commercial mobile radio services—
Maritime communications; comments due by 10-12-04; published 8-10-04 [FR 04-18258]

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Foods and cosmetics:
Prohibited cattle materials; use; comments due by 10-12-04; published 7-14-04 [FR 04-15881]
Reports and guidance documents; availability, etc.:
Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]
Medical devices—
Dental noble metal alloys and base metal alloys; Class II special controls; Open for comments until further notice; published 8-23-04 [FR 04-19179]

HOMELAND SECURITY DEPARTMENT
Customs and Border Protection Bureau
Organization and functions; field organization, ports of entry, etc.:
Rockford, IL; port limits extension; comments due by 10-12-04; published 8-13-04 [FR 04-18514]

HOMELAND SECURITY DEPARTMENT
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Anchorage regulations:
Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]
Drawbridge operations:
Massachusetts; comments due by 10-15-04; published 6-24-04 [FR 04-14370]
Virginia; comments due by 10-15-04; published 6-28-04 [FR 04-14628]
Ports and waterways safety:
Naval Base San Diego, CA; security zone; comments due by 10-13-04; published 9-13-04 [FR 04-20545]

HOMELAND SECURITY DEPARTMENT
Immigration:
Mexican nationals; admission time limit extension; comments due by 10-12-04; published 8-13-04 [FR 04-18651]

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species permit applications
Recovery plans—
Paiute cutthroat trout; Open for comments until further notice; published 9-10-04 [FR 04-20517]
Endangered and threatened species:
Critical habitat designations—
California tiger salamander; comments due by 10-12-04; published 8-10-04 [FR 04-17464]
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Incidental take permits—
Sussex and Southampton Counties, VA; red-cockaded woodpecker; comments due by 10-12-04; published 8-13-04 [FR 04-18629]

INTERIOR DEPARTMENT
National Park Service
Special regulations:
Apostle Islands National Lakeshore, WI; snowmobile and off-road motor vehicle routes designation and portable ice augers and power engines use; comments due by 10-12-04; published 8-12-04 [FR 04-18429]

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; comments due by 10-14-04; published 9-14-04 [FR 04-20660]
Virginia; comments due by 10-14-04; published 9-14-04 [FR 04-20661]

LABOR DEPARTMENT
Employment and Training Administration
Federal-State Unemployment Compensation Program; State unemployment compensation information; confidentiality and disclosure requirements; comments due by 10-12-04; published 8-12-04 [FR 04-18333]

LABOR DEPARTMENT
Mine Safety and Health Administration
Coal mine safety and health:
Underground mines—
Low-and medium-voltage diesel-powered electrical generators; comments due by 10-14-04; published 7-26-04 [FR 04-16903]

LABOR DEPARTMENT
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Construction safety and health standards:
Steel erection; skeletal structural steel slip resistance; comments due by 10-13-04; published 7-15-04 [FR 04-16084]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Acquisition regulations:
Final scientific and technical reports clause; alternate III use in small business innovation and research and technology transfer contracts; comments due by 10-12-04; published 8-12-04 [FR 04-18365]

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Environmental statements; availability, etc.:
Fort Wayne State Developmental Center; Open for comments until further notice; published 5-10-04 [FR 04-10516]

SMALL BUSINESS ADMINISTRATION
Disaster loan areas:
Maine; Open for comments until further notice; published 2-17-04 [FR 04-03374]

OFFICE OF UNITED STATES TRADE REPRESENTATIVE
Trade Representative, Office of United States
Generalized System of Preferences:
2003 Annual Product Review, 2002 Annual Country Practices Review, and previously deferred product decisions; petitions disposition; Open for comments until further notice; published 7-6-04 [FR 04-15361]

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; Open for comments until further notice; published 8-16-04 [FR 04-18641]
Bombardier-Rotax GmbH; comments due by 10-12-04; published 8-12-04 [FR 04-18440]
Empresa Brasileira de Aeronautica S.A. (EMBRAER); comments due by 10-12-04; published 9-9-04 [FR 04-20402]
General Electric Co.; comments due by 10-15-04; published 8-16-04 [FR 04-18642]
MD Helicopters, Inc.; comments due by 10-12-04; published 8-10-04 [FR 04-17793]
Pratt & Whitney; comments due by 10-15-04; published 8-16-04 [FR 04-18644]
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Special conditions—
AMSAFE, Inc.; comments due by 10-14-04; published 9-14-04 [FR 04-20622]
Boeing Model 777 series airplanes; comments due by 10-13-04; published 9-23-04 [FR 04-21393]
Transport category airplanes—

Flight guidance systems; safety standards; comments due by 10-12-04; published 8-13-04 [FR 04-18351]

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TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Railroad locomotive safety standards:

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Public hearing; comments due by 10-11-04; published 9-8-04 [FR 04-20416]

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Registered importers; vehicles not originally manufactured to conform with the Federal standards; comments due by 10-15-04; published 8-24-04 [FR 04-18833]

Motor vehicle safety standards:

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Income taxes:

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 1308/P.L. 108–311

Working Families Tax Relief Act of 2004 (Oct. 4, 2004; 118 Stat. 1166)

H.R. 265/P.L. 108–312

Mount Rainier National Park Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1194)

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Johnstown Flood National Memorial Boundary Adjustment Act of 2004 (Oct. 5, 2004; 118 Stat. 1196)

H.R. 1616/P.L. 108–314

Martin Luther King, Junior, National Historic Site Land Exchange Act (Oct. 5, 2004; 118 Stat. 1198)

H.R. 1648/P.L. 108–315

Carpinteria and Montecito Water Distribution Systems Conveyance Act of 2004 (Oct. 5, 2004; 118 Stat. 1200)

H.R. 1732/P.L. 108–316

To amend the Reclamation Wastewater and Groundwater Study and Facilities Act to authorize the Secretary of the Interior to participate in the Williamson County, Texas, Water Recycling and Reuse Project, and for other purposes. (Oct. 5, 2004; 118 Stat. 1202)

H.R. 2696/P.L. 108–317

Southwest Forest Health and Wildfire Prevention Act of 2004 (Oct. 5, 2004; 118 Stat. 1204)

H.R. 3209/P.L. 108–318

To amend the Reclamation Project Authorization Act of 1972 to clarify the acreage for which the North Loup division is authorized to provide irrigation water under the Missouri River Basin project. (Oct. 5, 2004; 118 Stat. 1211)

H.R. 3249/P.L. 108–319

To extend the term of the Forest Counties Payments Committee. (Oct. 5, 2004; 118 Stat. 1212)

H.R. 3389/P.L. 108–320

To amend the Stevenson-Wydler Technology Innovation Act of 1980 to permit Malcolm Baldrige National Quality Awards to be made to nonprofit organizations. (Oct. 5, 2004; 118 Stat. 1213)

H.R. 3768/P.L. 108–321

Timucuan Ecological and Historic Preserve Boundary Revision Act of 2004 (Oct. 5, 2004; 118 Stat. 1214)

S.J. Res. 41/P.L. 108–322

Commemorating the opening of the National Museum of the American Indian. (Oct. 5, 2004; 118 Stat. 1216)

H.R. 4654/P.L. 108–323

To reauthorize the Tropical Forest Conservation Act of 1998 through fiscal year 2007, and for other purposes. (Oct. 6, 2004; 118 Stat. 1218)

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