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# Federal Register

3–29–04 Monday
Vol. 69 No. 60 Mar. 29, 2004

Pages 16163–16454

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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 HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[COTP San Francisco Bay 04–002]**

**RIN 1625–AA00**

## Security Zones; Monterey Bay and Humboldt Bay, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security zones extending 100 yards in the U.S. navigable waters around and under all cruise ships, tank vessels, and High Interest Vessels (HIVs) that enter, are moored in, anchored in, or depart from the designated waters of the Pacific Ocean, Monterey Bay, or Humboldt Bay, California. These security zones are needed for national security reasons to protect the public and ports of Monterey Bay and Humboldt Bay from potential subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** This rule is effective from 11:59 p.m. PST on March 5, 2004, to 11:59 p.m. PDT on September 5, 2004.

**ADDRESSES:** Documents indicated in this preamble, as being available in the docket, are part of docket COTP San Francisco Bay 04–002 and are available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Ensign John Bannon, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437–3073.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM because the threat to U.S. assets and the public currently exists and is ongoing. Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the threat of maritime attacks is real as evidenced by the October 2002 attack of a tank vessel off the coast of Yemen and the continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002) that the security of the U.S. is endangered by the September, 11, 2001 attacks and that such disturbances continue to endanger the international relations of the United States. *See also* Continuation of the National Emergency with Respect to Certain Terrorist Attacks, (67 FR 58317, September 13, 2002); Continuation of the National Emergency With Respect To Persons Who Commit, Threaten To Commit, Or Support Terrorism, (67 FR 59447, September 20, 2002). Additionally, a Maritime Advisory was issued to: Operators of U.S. Flag and Effective U.S. Controlled Vessels and Other Maritime Interests, detailing the current threat of attack, MARAD 02–07 (October 10, 2002). As a result, a heightened level of security has been established around all cruise ships, tank vessels, and High Interest Vessels (HIVs) in Monterey Bay and Humboldt Bay, California, and designated waters of the Pacific Ocean adjacent to Humboldt Bay. Additionally, the measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships, tank vessels, and HIVs located in designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay. Any delay in the effective date of this TFR is impractical and contrary to the public interest.

In addition to this temporary final rule (TFR), we plan to publish a notice of proposed rulemaking (NPRM) under docket COTP San Francisco Bay 04–003, in which we will propose to make permanent these temporary security zones around cruise ships, tank vessels, and HIVs in Monterey Bay, Humboldt Bay or designated waters of the Pacific Ocean. In the forthcoming NPRM, we will propose to amend 33 CFR 165.1183, which was added by the final rule [COTP San Francisco Bay 02–019] published in the **Federal Register** (67 FR 79854) on December 31, 2002, and later amended by final rule [COTP San Francisco Bay 03–002] published in the **Federal Register** (69 FR 8817) on February 26, 2004. 33 CFR 165.1183, ''Security Zones; Cruise Ships, Tank Vessels, and High Interest Vessels, San Francisco Bay and Delta ports, California'', establishes security zones around cruise ships, tank vessels, and HIVs in the San Francisco Bay and Delta ports, but does not address security zones around these vessels when they are located in the designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay, California. This temporary rule will provide necessary security measures during a notice-and-comment rulemaking for a permanent rule, and section 165.1183 will remain in effect until amended by a future rule.

### Background and Purpose

Since the September 11, 2001 terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and Iraq have made it prudent for U.S. ports to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of

August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against a cruise ship, tank vessel, or HIV would have on the public interest, the Coast Guard is establishing security zones around and under cruise ships, tank vessels, and HIVs entering, departing, moored or anchored within designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay, California. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against these types of vessels. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on a cruise ship, tank vessel, or HIV would have on the crew and passengers on board, and the surrounding area and communities, security zones are prudent for these types of vessels.

**Discussion of Rule**

On December 31, 2002, we published the final rule [COTP San Francisco Bay 02–019] adding § 165.1183, ''Security Zones; Cruise Ships and Tank Vessels, San Francisco Bay and Delta ports, California'' in the **Federal Register** (67 FR 79854). That section set forth security zones for cruise ships and tank vessels in San Francisco Bay and delta ports. A subsequent final rule [COTP San Francisco Bay 03–002] published in the **Federal Register** (69 FR 8817) on February 26, 2004, amended section 165.1183 to include HIVs as protected vessels in that section, along with cruise ships and tank vessels.

In this temporary rule, the Coast Guard is establishing security zones around all cruise ships, tank vessels, and HIVs that are anchored, moored or underway within designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay, California.

For Monterey Bay, a security zone is activated when any cruise ship, tank vessel, or HIV passes shoreward of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′N, 122°01.60′W, and Cypress Point, Monterey to the south, in position 36°34.90′N, 121°58.70′W.

For Humboldt Bay, a security zone is activated when any cruise ship, tank vessel, or HIV enters the waters within Humboldt Bay or the waters in the Pacific Ocean within a 4 nautical mile radius of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25′N, 124°16.13′W.

The security zone remains in effect while the cruise ship, tank vessel, or HIV is underway, anchored or moored within the designated waters of the Pacific Ocean, Monterey Bay or Humboldt Bay. When activated, the security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of the vessel. This security zone is automatically deactivated when the vessel departs from the designated areas of the Pacific Ocean, Monterey Bay or Humboldt Bay. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and *in rem* liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years, and a civil penalty of not more than $25,000 for each day of a continuing violation.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation.

**Regulatory Evaluation**

This rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the impact of this rule to be so minimal that a full regulatory evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this rule restricts access to the waters encompassed by the security zones, the effect of this rule is not significant because: (i) The zones encompass only a small portion of the waterway; (ii) vessels are able to pass safely around the zones; and (iii) vessels may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port or his designated representative.

The size of the zones is the minimum necessary to provide adequate protection for all cruise ships, tank vessels, and HIVs, other vessels operating in the vicinity of these vessels, adjoining areas, and the public. The entities most likely to be affected are fishing vessels and pleasure craft engaged in recreational activities and sightseeing.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. We expect this rule may affect owners and operators of vessels, some of which may be small entities, intending to fish, sightsee, transit, or anchor in the waters affected by these security zones. These security zones will not have a significant economic impact on a substantial number of small entities for several reasons: small vessel traffic will be able to pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them

and participate in the rulemaking process.

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

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

**Indian Tribal Governments**

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

**Energy Effects**

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this rule under Commandant Instruction M16475.lD, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone. An ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' (CED) will be available in the docket where indicated under **ADDRESSES**.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T11–004, to read as follows:

**§ 65.T11–004 Security Zones; Monterey Bay and Humboldt Bay, California.**

(a) *Definitions.* As used in this section—

*Cruise ship* means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the ports of Monterey or Humboldt Bay.

*High Interest Vessel* or *HIV* means any vessel deemed by the Captain of the Port or higher authority as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

*Tank vessel* means any self-propelled tank ship that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

(b) *Locations.* The following areas are security zones:

(1) *Monterey Bay.* All waters extending from the surface to the sea floor, within 100 yards of all cruise ships, tank vessels, and HIVs within the waters of Monterey Bay east of a line drawn between Santa Cruz Light (LLNR 305) to the north in position 36°57.10′ N, 122°01.60′ W, and Cypress Point, Monterey to the south, in position 36°34.90′ N, 121°58.70′ W.

(2) *Humboldt Bay.* All waters extending from the surface to the sea floor, within 100 yards of all cruise ships, tank vessels, and HIVs within the waters of Humboldt Bay and the waters of the Pacific Ocean within a 4 nautical mile radius of the Humboldt Bay Entrance Lighted Whistle Buoy HB (LLNR 8130), in position 40°46.25′ N, 124°16.13′ W.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into these security zones is prohibited, unless doing so is specifically authorized by the Captain of

the Port San Francisco Bay, or his designated representative.

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

(3) When a cruise ship, tank vessel, or HIV approaches within 100 yards of a vessel that is moored or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship, tank vessel or HIV's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) *Authority.* The authority for this section includes 33 U.S.C. 1226, 1231; 50 U.S.C. 191, 195.

(e) *Enforcement.* All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. Patrol personnel comprise commissioned, warrant, and petty officers of the Coast Guard onboard Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels. Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed. The U.S. Coast Guard may be assisted in the patrol and enforcement of these security zones by local law enforcement as necessary.

(f) *Effective Dates.* This section becomes effective at 11:59 p.m. PST on March 5, 2004, and will terminate at 11:59 p.m. PDT on September 5, 2004.

Dated: March 3, 2004.

**Gerald M. Swanson,**

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

[FR Doc. 04–6899 Filed 3–26–04; 8:45 am]

**BILLING CODE 4910–15–P**

## POSTAL SERVICE

## 39 CFR Part 233

## Circulars and Rewards

**AGENCY:** Postal Service.

**ACTION:** Final rule.

**SUMMARY:** The Postal Service has amended its regulations to update the list of types of postal offenses covered by Poster 296, Notice of Reward.

**EFFECTIVE DATE:** March 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Evelena C. Carroll (202) 268–4549.

**SUPPLEMENTARY INFORMATION:** Under certain conditions, the Postal Service pays rewards for information and services leading to the arrest and conviction of persons for certain types of postal offenses. Poster 296, Notice of Reward, gives detailed information regarding the types of offenses covered, the maximum amounts of rewards, and the conditions under which rewards will be paid. This final rule updates Poster 296 to cover certain additional types of offenses, including the mailing of weapons of mass destruction, the facilitation crimes relating to the sexual exploitation of children, and the use of Postal Money Orders for money laundering purposes.

### List of Subjects in 39 CFR Part 233

Administrative practice and procedure, Banks, banking, Credit, Crime, Infants and children, Law enforcement, Penalties.

■ In view of the considerations discussed above, the Postal Service adopts the following amendments to 39 CFR part 233:

## PART 233—INSPECTION SERVICE AUTHORITY

■ 1. The authority citation for part 233 continues to read as follows:

**Authority:** 39 U.S.C. 101, 102, 202, 204, 401, 402, 403, 404, 406, 410, 411, 1003, 3005(e)(1); 12 U.S.C. 3401–3422; 18 U.S.C. 981, 1956, 1957, 2254, 3061; Omnibus Budget Reconciliation Act of 1996, sec. 662 (Pub. L. 104–208).

### § 233.2 [Amended]

■ 2. In § 233.2 paragraphs (b)(1) introductory text, (ii), (ix), (x), and the note following paragraph (b)(2) are revised to read as follows:

### § 233.2 Circulars and rewards.

(b) *Rewards.* (1) Rewards will be paid up to the amounts and under the conditions stated in Poster 296, Notice of Reward, for the arrest and conviction of persons for the following postal offenses:

* * * * *

(ii) Mailing or causing to be mailed bombs, explosives, poison, weapons of mass destruction, or controlled substances.

* * * * *

(ix) Mailing or receiving through the mail any visual depiction involving the use of a minor engaging in sexually explicit conduct, or the use of the mail to facilitate any crime relating to the sexual exploitation of children.

(x) Mailing or causing to be mailed any money which has been obtained illegally, or the use of Postal Money Orders to launder illicit proceeds.

* * * * *

**Note:** The text of Poster 296, referred to in paragraph (b)(1) of this section, reads as follows:

The United States Postal Service offers a reward up to the amounts shown for information and services leading to the arrest and conviction of any person for the following offenses:

Murder or Manslaughter, $100,000. The unlawful killing of any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Bombs or Explosives, $100,000. Mailing or causing to be mailed any bombs or explosives which may kill or harm another, or injure the mails or other property, or the placing of any bomb or explosive in a postal facility, vehicle, depository or receptacle established, approved or designated by the Postmaster General for the receipt of mail.

Offenses Involving the Mailing of Threatening Communications, Weapons of Mass Destruction, Poisons, or Hazardous Materials, $100,000. Mailing or causing to be mailed any threatening communications, actual or simulated weapons of mass destruction, dangerous chemicals or biological materials, which may kill or injure another, or injure the mails or other property.

Assault on Postal Employees, $50,000. Forcibly assaulting any officer or employee of the Postal Service while engaged in or on account of the performance of their official duties.

Controlled Substances, Illegal Drugs, or Cash Proceeds from Illegal Drugs, $50,000. Mailing or causing to be mailed any controlled substances, illegal drugs, or proceeds from the sale of illegal drugs.

Money Laundering, $50,000. Mailing or causing to be mailed any money which has been obtained illegally, or the use of postal money orders to launder illicit proceeds.

Postage or Meter Tampering, $50,000. The unlawful use, reuse, or forgery of postage stamps, postage meter stamps, permit imprints or other postage; or the use, sale or possession with intent to use or sell, any used, forged or counterfeited postage stamp or other postage.

Robbery, $50,000. Robbery or attempted robbery of any custodian of any mail, or money or other property of the United States under the control and jurisdiction of the United States Postal Service.

Sexual Exploitation of Children, $50,000. The use of the mails to traffic

in child pornography, or facilitate any other crime relating to the sexual exploitation of children.

Burglary of Post Office, $10,000. Breaking into, or attempting to break into, a post office, station, branch, or building used wholly or partially as a post office, or any building or area in a building where the business of the Postal Service is conducted, with intent to commit a larceny or other depredation therein.

Offenses Involving Postal Money Orders, $10,000. Theft or possession of stolen postal money orders or any Postal Service equipment used to imprint money orders; or altering, counterfeiting, forging, unlawful uttering, or passing of postal money orders.

Theft, Possession, Destruction, or Obstruction of Mail, $10,000. Theft or attempted theft of any mail, or the contents thereof, or the theft of money or any other property of the United States under the custody and control of the United States Postal Service from any custodian, postal vehicle, railroad depot, airport, or other transfer point, post office or station or receptacle or depository established, approved, or designated by the Postmaster General for the receipt of mail; or destroying, obstructing, or retarding the passage of mail, or any carrier or conveyance carrying the mail.

Workers' Compensation Fraud, $10,000. Defrauding the Workers' Compensation Program by any current or former postal employee.

**Related Offenses**

The United States Postal Service also offers rewards as stated above for information and services leading to the arrest and conviction of any person: (1) For being an accessory to any of the above crimes; (2) for receiving or having unlawful possession of any mail, money or property secured through the above crimes; and (3) for conspiracy to commit any of the above crimes.

**General Provisions**

1. The Postal Inspection Service investigates the above described crimes. Information concerning the violations, requests for applications for rewards, and written claims for rewards should be furnished to the nearest Postal Inspector. The written claim for reward payment must be submitted within six months from the date of conviction of the offender, or the date of formally deferred prosecution or the date of the offender's death, if killed in committing a crime or resisting lawful arrest for one of the above offenses.

2. The amount of any reward will be based on the significance of services rendered, character of the offender, risks and hazards involved, time spent, and expenses incurred. Amounts of rewards shown above are the maximum amounts which will be paid.

3. The term ''custodian'' as used herein includes any person having lawful charge, control, or custody of any mail matter, or any money or other property of the United States under the control and jurisdiction of the United States Postal Service.

4. The Postal Service reserves the right to reject a claim for reward where there has been collusion, criminal involvement, or improper methods have been used to effect an arrest or to secure a conviction. It has the right to allow only one reward when several persons were convicted of the same offense, or one person was convicted of several of the above offenses. Postal employees are not eligible to receive a reward for the offenses listed above, other than Workers' Compensation fraud. Employees assigned to the Postal Inspection Service, the General Counsel's office, and those who manage or administer the Injury Compensation Program are not eligible to receive rewards.

5. Other rewards not specifically referred to in this notice may be offered upon the approval of the Chief Postal Inspector (39 U.S.C. 404(a)(8)).

**Stanley F. Mires,**

*Chief Counsel, Legislative.*

[FR Doc. 04–6886 Filed 3–26–04; 8:45 am]

BILLING CODE 7710–12–P

## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[FL–90–200322(a); FRL–7640–6]**

## Approval and Promulgation of Implementation Plans, Florida: Tampa Bay Area Maintenance Plan Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Direct final rule.

**SUMMARY:** The EPA is approving revisions to the State Implementation Plan (SIP) submitted by the Florida Department of Environmental Protection (FDEP) on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the second 10-year update for the Tampa Bay area (Hillsborough and Pinellas Counties) 1-hour ozone maintenance plan. For transportation purposes, EPA is also finalizing its adequacy determination of the new Motor Vehicle Emissions Budgets (MVEBs) for the year 2015. EPA has determined that the MVEBs for the year 2015 contained in this SIP revision are adequate for transportation conformity purposes.

**DATES:** This direct final rule is effective May 28, 2004, without further notice, unless EPA receives adverse comment by April 28, 2004. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

**ADDRESSES:** Comments may be submitted by mail to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in sections V.B.1. through 3. of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Air, Pesticides & Toxics Management Division, Air Planning Branch, Regulatory Development Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Mr. Lakeman's phone number is (404) 562–9043. He can also be reached via electronic mail at *lakeman.sean@epa.gov* or Lynorae Benjamin, Air, Pesticides & Toxics Management Division, Air Planning Branch, Air Quality Modeling & Transportation Section, U.S. Environmental Protection Agency Region 4, Atlanta Federal Center, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's phone number is (404) 562–9040. She can also be reached via electronic mail at *benjamin.lynorae@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

The air quality maintenance plan is a requirement of the 1990 CAA for nonattainment areas that come into compliance with the national ambient air quality standard (NAAQS). The Tampa Bay area (Hillsborough and Pinellas Counties) was not in compliance with the 1-hour ozone air quality standard until 1990, when air quality measurements showed compliance with the standard. The State subsequently requested that EPA redesignate these counties as

attainment/maintenance for the 1-hour ozone standard. Included with this request was a 10-year air quality maintenance plan covering the years 1995 to 2005. This plan was developed in accordance with the appropriate guidelines. The EPA published approval of this plan on December 7, 1995, with an effective date of February 6, 1996 (60 FR 62748).

Subsequent revisions to this maintenance plan have been made. The current plan was approved by EPA on August 15, 2002, and became effective on October 15, 2002 (66 FR 53314). FDEP revised the original plan to update emissions inventories reflecting more accurate emission estimates, to define specific MVEBs, and to remove emissions reduction credits attributable to the motor vehicle inspection program (MVIP) (67 FR 53314).

## II. Analysis of State's Submittal

On December 20, 2002, the FDEP submitted revisions to Florida's SIP to provide a 10-year update to the maintenance plan as required by section 175A(b) of the CAA as amended in 1990. The underlying strategy of the maintenance plan is to maintain compliance with the 1-hour ozone standard by assuring that current and future emissions of Volitile Organic Compound (VOC) and Nitrogen Oxide ($NO_X$) remain at or below attainment year emission levels. The estimated emissions of ozone precursors (*i.e.,* VOC and $NO_X$) for the two counties for the Tampa Bay area during the 1990 ozone season are provided in the following table. Projected VOC and $NO_X$ emissions for 2005 and 2015 are also provided.

VOLATILE ORGANIC COMPOUNDS

[tons per day]

| VOC | Category | 1990 base year | 2005 | 2015 |
|---|---|---|---|---|
| Hillsborough | Stationary Point | 11 | 9.3 | 10.7 |
| | Stationary Area | 49.4 | 67.4 | 79.1 |
| | On-Road Mobile | 100.8 | 42.9 | 23.6 |
| | Non-Road Mobile | 28.7 | 21.4 | 16.5 |
| | Biogenic | 165.2 | 165.2 | 165.2 |
| Total | n/a | 355.1 | 306.2 | 295.1 |
| Safety Margin | Calculated as 1990 base-year minus projected year total. | n/a | 48.9 | 60 |
| Pinellas | Stationary Point | 6.7 | 3.6 | 4.4 |
| | Stationary Area | 50.8 | 44.6 | 51.8 |
| | On-Road Mobile | 76.9 | 24.6 | 12.3 |
| | Non-Road Mobile | 24.1 | 17.9 | 13.9 |
| | Biogenic | 25.9 | 25.9 | 25.9 |
| Total | n/a | 184.4 | 116.6 | 108.3 |
| Safety Margin | Calculated as 1990 base-year minus projected year total. | n/a | 67.8 | 76.1 |
| Overall Total | n/a | 539.5 | 422.8 | 403.4 |
| Total Safety Margin | n/a | n/a | 116.7 | 136.1 |

NITROGEN OXIDE

[tons per day]

| $NO_X$ | Category | 1990 base year | 2005 | 2015 |
|---|---|---|---|---|
| Hillsborough | Stationary Point | 300.7 | 40.4 | 40.7 |
| | Stationary Area | 1.3 | 3.2 | 3.6 |
| | On-Road Mobile | 89 | 73.4 | 30.3 |
| | Non-Road Mobile | 38.2 | 43.4 | 35.5 |
| | Biogenic | 1.6 | 1.6 | 1.6 |
| Total | n/a | 430.8 | 162 | 111.7 |
| Safety Margin | Calculated as 1990 base-year minus projected year total. | n/a | 268.8 | 319.1 |
| Pinellas | Stationary Point | 19.1 | 22.4 | 24.5 |
| | Stationary Area | 8.7 | 3.5 | 3.8 |
| | On-Road Mobile | 67.9 | 42 | 15.8 |
| | Non-Road Mobile | 20.3 | 24.2 | 19.8 |
| | Biogenic | 0.2 | 0.2 | 0.2 |
| Total | n/a | 116.2 | 92.3 | 64.1 |
| Safety Margin | Calculated as 1990 base-year minus projected year total. | n/a | 23.9 | 52.1 |
| Overall Total | n/a | 546.9 | 254.3 | 175.8 |
| Total Safety Margin | n/a | n/a | 292.7 | 371.2 |

This SIP revision satisfies the requirement of the CAA for the second 10-year update for the Tampa Bay area 1-hour ozone maintenance plan. Changes to the current maintenance plan include revisions to the emissions inventory for both on-road and non-road mobile sources, reflecting improved methodologies contained in the MOBILE6 and NONROAD emission models. New emissions data for both the base year (1990 attainment year) and the projected years (2005 and 2015) are calculated.

**III. Finalization of MVEBs Adequacy Determination for Transportation Conformity Purposes**

The second 10-year update for the Tampa Bay area 1-hour ozone maintenance plan also contains updated MVEBs in support of the transportation conformity process. These updated MVEBs are defined for VOC and $NO_X$ for each county in the Tampa Bay maintenance area. The updated budgets for 2005 replace the previous MVEBs contained in the first maintenance plan, which were based on an older emissions estimate using MOBILE5 emission factors for on-road motor vehicles. Additionally, this maintenance plan update provides new MVEBs for the year 2015.

The availability of the SIP with MVEBs for 2015 was placed on EPA's adequacy web page on January 7, 2003. No request for this SIP submittal or adverse comments were received by the end of the public comment period on February 7, 2003. In this action, EPA finds the 2015 MVEBs adequate for transportation conformity, and is approving the MVEBs for 2005 and 2015. Note, since the 2005 MVEB are replacing existing 2005 MVEBs, these budgets are not subject to EPA's adequacy process. This is because EPA generally will not review the adequacy of a budget from a submitted SIP that revises an existing approved SIP with budgets for the same year and CAA requirement because as a matter of law, a submitted SIP may not supersede an approved SIP for the same CAA requirement, year, and pollutant (68 FR 38974).

Under the CAA, States are required to submit, at various times, control strategy SIPs and maintenance plans in ozone areas. These control strategy SIPs (*e.g.*, reasonable further progress SIPs and attainment demonstration SIPs) and maintenance plans create MVEBs for criteria pollutants and/or their precursors to address pollution from cars and trucks. The MVEBs are the portion of the total allowable emissions that is allocated to highway and transit vehicle use and emissions. The MVEBs serve as a ceiling on emissions from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the MVEBs in the SIP and revise the MVEBs.

Under section 176(c) of the CAA, new transportation projects, such as the construction of new highways, must ''conform'' to (*e.g.*, be consistent with) the part of the State's air quality plan that addresses pollution from cars and trucks. ''Conformity'' to the SIP means that transportation activities will not cause new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards. If a transportation plan does not ''conform,'' most projects that would expand the capacity of roadways cannot go forward. Regulations at 40 CFR part 93 set forth by EPA policy, criteria, and procedures for demonstrating and assuring conformity of such transportation activities to a SIP.

When reviewing submitted ''control strategy'' SIPs or maintenance plans containing MVEBs, EPA must affirmatively find the MVEBs budget contained therein ''adequate'' for use in determining transportation conformity before they can be used for such purposes. Once EPA affirmatively finds the submitted MVEB is adequate for transportation conformity purposes, that MVEB can be used by the state and federal agencies in determining whether proposed transportation projects ''conform'' to the state implementation plan as required by section 176(c) of the Clean Air Act. EPA's substantive criteria for determining ''adequacy'' of MVEBs is set out in 40 CFR 93.118(e)(4).

EPA's process for determining ''adequacy'' consists of three basic steps: public notification of a SIP submission, a public comment period, and EPA's adequacy finding. This process for determining the adequacy of submitted SIP MVEBs is set out in EPA's May 14, 1999 guidance, ''Conformity Guidance on Implementation of March 2, 1999, Conformity Court Decision.'' This guidance is incorporated into EPA's June 30, 2003, proposed rulemaking entitled ''Transportation Conformity Rule Amendments: Response to Court Decision and Additional Rule Changes'' (68 FR 38974). EPA follows this guidance in making its adequacy determination.

Specific emissions budgets are defined for VOC and $NO_X$ for the Tampa Bay area in the Florida submittal. Pursuant to 40 CFR 93.124(d), Tampa Bay has elected to allocate subarea budgets for each of the counties for the purpose of transportation conformity. The specific MVEBs for Hillsborough County in 2005 and 2015 are 53.6 tpd for VOC and 91.8 tpd for $NO_X$. Pinellas County's MVEBs for 2005 and 2015 are 30.8 tpd for VOC and 52.5 tpd for $NO_X$. With this allocation, each county must demonstrate conformity to the county-specific subarea budgets. The chart below provides a summary of the county-specific subarea budgets.

MVEB

[tons per day]

| County | Pollutant | 2005 | 2015 |
|---|---|---|---|
| Hillsborough | VOC | 53.6 | 53.6 |
| | $NO_X$ | 91.8 | 91.8 |
| Pinellas | VOC | 30.8 | 30.8 |
| | $NO_X$ | 52.5 | 52.5 |
| Total | VOC | 84.4 | 84.4 |
| | $NO_X$ | 144.3 | 144.3 |

The MVEBs are defined for each Tampa Bay county, for 2005 and 2015, in the State's submittal. The values, for both years, are equal to the 2005 on-road mobile source projected level of emissions plus a buffer of 25 percent. This buffer, which is an allocation from the safety margin, accounts for uncertainty in the projections and is available because of significant reductions of VOC and $NO_X$ that have occurred, and are projected to occur, primarily from mobile sources. The MVEBs are constrained in each of the budget years to assure that the total emissions (*i.e.*, all source categories) do not exceed the 1990 attainment year emissions. In no case are the projected total emissions from mobile sources for any year, greater than the attainment year emissions totals for either VOC or $NO_X$.

Under 40 CFR 93.101, the term safety margin is the difference between the attainment level (from all sources) and the projected level of emissions (from all sources) in the maintenance plan. The attainment level of emissions is the level of emissions during one of the years in which the area met the air quality health standard. The safety margin credit can be allocated to the transportation sector, however the total emission level must stay below the attainment level.

SAFETY MARGINS

[tons per day]

| VOC | 2005 | 2015 | $NO_X$ | 2005 | 2015 |
|---|---|---|---|---|---|
| **Hillsborough** | | | | | |
| Safety Margin | 48.9 | 60 | Safety Margin | 268.8 | 319.1 |
| Allocation to MVEB | 10.7 | 30 | Allocation to MVEB | 18.4 | 76 |
| Remaining Safety Margin after partial allocation | 38.2 | 30 | Remaining Safety Margin after partial allocation | 250.4 | 243.1 |
| **Pinellas** | | | | | |
| Safety Margin | 67.8 | 76.1 | Safety Margin | 23.9 | 52.1 |
| Allocation to MVEB | 6.2 | 18.5 | Allocation to MVEB | 10.5 | 36.7 |
| Remaining Safety Margin after partial allocation | 61.6 | 57.6 | Remaining Safety Margin after partial allocation | 13.4 | 15.4 |

## IV. Final Action

EPA is approving the second 10-year update for the Tampa Bay 1-hour ozone maintenance plan. In this action, EPA also finds the 2015 MVEBs adequate for transportation conformity purposes and is approving the MVEBs for 2005 and 2015. EPA's adequacy determination for the 2015 MVEBs is based on EPA's finding that the substantive criteria for determining adequacy of a MVEB, under 40 CFR 93.118(e)(4), have been met. The MVEBs will be available for use upon the effective date of this action. The MVEBs, based on the on-road mobile sources, are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation plans, programs, and projects are consistent with, and conform to, the long term maintenance of acceptable air quality in the Tampa Bay area.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 28, 2004, without further notice unless the Agency receives adverse comments by April 28, 2004.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 28, 2004, and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

## V. General Information

### *A. How Can I Get Copies of This Document and Other Related Information?*

1. The Regional Office has established an official public rulemaking file available for inspection at the Regional Office. EPA has established an official public rulemaking file for this action under FL–90. The official public file consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public rulemaking file does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public rulemaking file is the collection of materials that is available for public viewing at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

2. Copies of the State submittal and EPA's technical support document are also available for public inspection during normal business hours, by appointment, at the State Air Agency. Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

3. Electronic Access. You may access this **Federal Register** document electronically through the Regulation.gov Web site located at *http://www.regulations.gov* where you can find, review, and submit comments on Federal rules that have been published in the **Federal Register**, the Government's legal newspaper, and are open for comment.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or on paper, will be made available for public viewing at the EPA Regional Office, as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in the official public rulemaking file. The entire printed comment, including the copyrighted material, will be available at the Regional Office for public inspection.

### *B. How and To Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate rulemaking identification number by including the text ''Public comment on proposed rulemaking FL–90'' in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed

below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

i. *E-mail.* Comments may be sent by electronic mail (e-mail) to *lakeman.sean@epa.gov.* Please include the text ''Public comment on proposed rulemaking FL–90'' in the subject line. EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly without going through Regulations.gov, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

ii. *Regulation.gov.* Your use of Regulation.gov is an alternative method of submitting electronic comments to EPA. Go directly to Regulations.gov at *http://www.regulations.gov,* then select Environmental Protection Agency at the top of the page and use the go button. The list of current EPA actions available for comment will be listed. Please follow the online instructions for submitting comments. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

iii. *Disk or CD–ROM.* You may submit comments on a disk or CD–ROM that you mail to the mailing address identified in section 2, directly below. These electronic submissions will be accepted in WordPerfect, Word or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Please include the text ''Public comment on proposed rulemaking FL–90'' in the subject line on the first page of your comment.

3. *By Hand Delivery or Courier.* Deliver your comments to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, 12th floor, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 9 to 3:30, excluding Federal holidays.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically to EPA. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI (if you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the official public regional rulemaking file. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public file and available for public inspection without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at your estimate.

5. Provide specific examples to illustrate your concerns.

6. Offer alternatives.

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

8. To ensure proper receipt by EPA, identify the appropriate regional file/rulemaking identification number in the subject line on the first page of your response. It would also be helpful if you provided the name, date, and **Federal Register** citation related to your comments.

## VI. Statutory and Executive Order Reviews

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

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

levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 28, 2004. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 17, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

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

## PART 52—[AMENDED]

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

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

## Subpart K—Florida

■ 2. Section 52.520 (e), is amended by revising the entry for ''Revision to Maintenance Plan for the Tampa, Florida Area'' to read as follows:

**§ 52.520 Identification of plan.**

* * * * *

(e) * * *

EPA—APPROVED FLORIDA NON-REGULATORY PROVISIONS

| Provision | State EPA date | EPA approval date | **Federal Register** notice | Explanation |
|---|---|---|---|---|
| * | * | * | * | * |
| Revision to Maintenance Plan for the Tampa, Florida Area. | 12/20/02 | 3/29/04 | [Insert citation of publication] | 10 year update. |
| * | * | * | * | * |

[FR Doc. 04–6824 Filed 3–26–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 04–550, MB Docket No. 02–92, RM–10363]**

## Digital Television Broadcast Service; Albany, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Clear Channel Broadcasting Licenses, Inc., substitutes DTV channel 7 for DTV channel 4 at Albany, New York. *See* 67 FR 31169, May 9, 2002. DTV channel 7 can be allotted to Albany, New York, in compliance with the principle community coverage requirements of § 73.625(a) at reference coordinates 42–37–31 N. and 74–00–38 W. with a power of 10, HAAT of 434 meters and with a DTV service population of 1442 thousand. Since the community of Albany is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government was obtained for this allotment. With this action, this proceeding is terminated.

**DATES:** Effective April 26, 2004.

**FOR FURTHER INFORMATION CONTACT:** Pam Blumenthal, Media Bureau, (202) 418–1600.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Report and Order, MB Docket No. 02–92, adopted February 26, 2004, and released March 10, 2004. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893,

facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

**List of Subjects in 47 CFR Part 73**

Digital television broadcasting, Television.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 73—[AMENDED]

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

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

**§ 73.622 [Amended]**

■ 2. Section 73.622(b), the Table of Digital Television Allotments under New York, is amended by removing DTV channel 4 and adding DTV channel 7 at Albany.

Federal Communications Commission.

**Barbara A. Kreisman,**

*Chief, Video Division, Media Bureau.*

[FR Doc. 04–6942 Filed 3–26–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

## Surface Transportation Board

## 49 CFR Part 1002

**[STB Ex Parte No. 542 (Sub–No. 4)]**

## Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—2002 New Fees

**AGENCY:** Surface Transportation Board, Transportation.

**ACTION:** Final rules.

**SUMMARY:** The Board adopts final rules establishing 19 fees for services for which no fee currently is assessed; raising the below-cost fee that currently applies to six fee items; updating fees for nine existing fee items; and amending, renumbering and deleting certain rules to conform to existing and adopted fee collection policies and processes. The Board adopts these rules under the Independent Offices Appropriations Act and OMB Circular A–25, User Fees.

**DATES:** These rules are effective April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anne K. Quinlan (202) 565–1727 or David T. Groves (202) 565–1551. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–(800) 877–8339.]

**SUPPLEMENTARY INFORMATION:** Under the Independent Offices Appropriations Act, 31 U.S.C. 9701 (IOAA), federal agencies are obliged to establish fees for specific services provided to identifiable beneficiaries. Office of Management and Budget Circular A–25 contains guidelines for agencies to apply in assessing and collecting those fees.

Pursuant to the IOAA and Circular A–25, the Board, on August 29, 2002, served and on September 11, 2002, published in the **Federal Register** (67 FR 57554) a notice of proposed rulemaking (NPR) to amend its regulations to accomplish the following: (1) Establish 22 new fees to cover services and activities not previously included in the Board's user fee regulations, including a catch-all ''basic'' fee for STB adjudicatory services not already covered by a specific fee; (2) raise the below-cost fee assessment applied to six fee items; (3) update fees for nine existing fee items; and (4) amend, renumber and delete certain rules to clarify the applicability and scope of certain fee items and to reflect current and proposed fee and billing practices and tariff requirements.

The Board received comments from the Association of American Railroads, The Burlington Northern and Santa Fe Railway Company, the National Industrial Transportation League, the North Dakota Grain Dealers Association and the United Transportation Union—General Committee of Adjustment. Some comments challenged the validity of several proposed fees; others challenged the levels of several proposed fees.

The Board found that it is appropriate to charge the proposed fees because, while the public in general will always benefit, either directly or indirectly, from the services the Board provides, the services provide special benefits to those requesting the services beyond those received by the general public.

The Board, after considering comments, lowered the level of several proposed fees and left others at the level proposed. The Board also declined, at this time, to adopt fees in connection with motions to compel discovery and appeals of discovery rulings because the agency recently adopted rules that may have the desired effect of reducing the incidence of frivolous, costly and ineffective discovery requests. Also, note that the Board amended several fee regulations to accomplish the following: (1) Reflect current business practices with respect to fee processing; (2) permit use of the billing account system to collect fees for documents filed for recording under 49 U.S.C. 11301; and (3) change the process for handling fee waiver requests. The final rules are set forth in the Appendix.

Pursuant to 5 U.S.C. 605(b) the Board certifies that the final rules will not have a significant economic impact on a substantial number of small entities. The economic impact of the proposed fees will not be significant because the Board fees represent only a small portion of the overall cost of the related endeavors. Moreover, few small entities avail themselves of the services to which the proposed fees apply. Finally, the Board's regulations provide for waiver of filing fees for those entities that can make the required showing of financial hardship.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Additional information is contained in the Board's decision. To obtain a free copy of the full decision, visit the Board's Web site at *http://www.stb.dot.gov*; call the Board's Information Officer at (202) 565–1500; or pick up in person at Suite 100, Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001. To purchase a copy of the decision, write to, call, email, or pick up in person from ASAP Document Solutions, 9332 Annapolis Road, Suite 103, Lanham, Maryland 20706, (301) 577–2600, *asapmd@verison.net*. [Assistance for the hearing impaired is available through Federal Information Relay Services (FIRS): (800) 877–8339.]

**List of Subjects in 49 CFR Part 1002**

Administrative practice and procedure, Common carriers, Freedom of information, User fees.

Decided: March 23, 2004.

By the Board, Chairman Nober.

**Vernon A. Williams,**

*Secretary.*

■ For the reasons set forth in the decision, the Surface Transportation Board amends 49 CFR part 1002 as follows:

## PART 1002—FEES

■ 1. The authority citation for part 1002 is revised to read as follows:

**Authority:** 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; and 49 U.S.C. 721. Section 1002.1(g)(11) also issued under 5 U.S.C. 5514 and 31 U.S.C. 3717.

■ 2. Amend §1002.1 as follows:

■ a. Redesignate paragraphs (e) through (h) as paragraphs (f) through (i);

■ b. Remove newly redesignated paragraph (f)(2) and designate newly redesignated paragraph (f)(3) as paragraph (f)(2);

■ c. Add new paragraph (e) and revise newly redesignated paragraphs (g)(7), (g)(8) and (h) to read as follows:

**§ 1002.1 Fees for records search, review, copying, certification, and related services.**

* * * * *

(e) Fees for courier services to transport agency records to provide on-site access to agency records stored off-site will be set at the rates set forth in the Board's agreement with its courier service provider. Rate information is available on the Board's Web site (*http://www.stb.dot.gov*), or can be obtained from the Board's Information Officer, Suite 880, Surface Transportation Board, Washington, DC 20423–0001.

* * * * *

(g) * * *

(7) The fee for photocopies shall be $1.00 per letter or legal size exposure with a minimum charge of $5.00.

(8) The fees for ADP data are set forth in paragraph (f) of this section.

* * * * *

(h) Fees for services described in paragraphs (a) through (g) of this section may be charged to accounts established in accordance with 49 CFR 1002.2(a)(2), or paid for by check, money order, currency, or credit card in accordance with 49 CFR 1002.2(a)(3).

* * * * *

■ 3. Amend §1002.2 as follows:

■ a. From paragraph (g)(1)(ii) remove ''6.00'' and in its place add ''$20.00'';

■ b. Remove paragraphs (f)(100)(ii) and (v)–(vii), and (f)(101)(ii), (iv) and (v).

■ c. Redesignate paragraph (f)(2) as paragraph (f)(2)(i); redesignate paragraph (f)(27) as paragraph (f)(27)(i); redesignate paragraphs (f)(56)(ii) and (iii) as paragraphs (f)(56)(iii) and (iv); redesignate paragraph (f)(61) as paragraph (f)(61)(i); redesignate paragraph (f)(78)(i) as paragraph (f)(78); remove paragraph (f)(78)(ii); redesignate paragraphs (f)(100)(iii) and (iv) as paragraphs (f)(100)(ii) and (iii) and redesignate paragraphs (f)(101)(iii) and (vi) as paragraphs (f)(101)(ii) and (iii).

■ d. Revise the last sentence of paragraph (a)(1), paragraph (a)(2), the first sentence of paragraph (b), and paragraphs (f)(27)(i), (f)(47), (f)(48), (f)(60) through (f)(62) and (f)(86).

■ e. Add paragraphs (f)(2)(ii) and (iii), (f)(12)(iv), (f)(27)(ii), (f)(38)(vii), (f)(39)(vii), (f)(40)(vii), (f)(41)(vii), (f)(56)(ii) and (v), (f)(63), (f)(64), (f)(88) and (f)(101)(iv).

The added and revised text is set forth as follows:

**§ 1002.2 Filing fees.**

(a) * * *

(1) * * * Filing fees for tariffs, including schedules, and contract summaries, including supplements (Item 78), and filing fees for documents submitted for recording (Item 83) may be charged to accounts established by the Board in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* Form STB–1032 must be submitted to the Board's Section of Financial Services to establish STB billing accounts for filing fees for tariffs and for documents submitted for recording.

* * * * *

(b) Any filing that is not accompanied by the appropriate filing fee, payment via credit card or STB billing account, or a request for waiver of the fee, is deficient. * * *

* * * * *

(f) *Schedule of filing fees.*

| Type of Proceeding | Fee |
|---|---|
| * * * * * * * | |
| (2) (i) * * * | |
| (ii) A petition for exemption under 49 U.S.C. 13541 (other than a rulemaking) filed by a non-rail carrier not otherwise covered. | $2,300. |
| (iii) A petition to revoke an exemption filed under 49 U.S.C. 13541(d) | 1,900. |
| * * * * * * * | |
| (12) * * * | |
| (iv) A request for determination of a dispute involving a rail construction that crosses the line of another carrier under 49 U.S.C. 10901(d). | 200. |
| * * * * * * * | |
| (27) (i) A request for a trail use condition in an abandonment proceeding under 16 U.S.C. 1247(d) | 200. |
| (ii) A request to extend the period to negotiate a trail use agreement | 300. |
| * * * * * * * | |
| (38) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a). | 3,800. |
| (39) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a). | 3,800. |
| (40) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a). | 3,800. |
| (41) * * * | |
| (vii) A request for waiver or clarification of regulations filed in a major financial proceeding as defined at 49 CFR 1180.2(a). | 3,800. |
| * * * * * * * | |
| (47) National Railroad Passenger Corporation (Amtrak) conveyance proceeding under 45 U.S.C. 562 | 200. |
| (48) National Railroad Passenger Corporation (Amtrak) compensation proceeding under Section 402(a) of the Rail Passenger Service Act. | 200. |
| * * * * * * * | |
| (56) * * *. | |
| (ii) A formal complaint filed under the small rate case procedures | 150. |

| Type of Proceeding | Fee |
|---|---|
| * * * * * * * | |
| (v) A request for an order compelling a carrier to file a common carrier rate | 200. |
| * * * * * * * | |
| (60) A labor arbitration proceeding | 200. |
| (61) (i) An appeal of a Surface Transportation Board decision on the merits or petition to revoke an exemption pursuant to 49 U.S.C. 10502(d). | 200. |
| (ii) An appeal of a Surface Transportation Board decision on procedural matters except discovery rulings | 250. |
| (62) Motor carrier undercharge proceeding | 200. |
| (63) Expedited relief for service inadequacies: | |
| (i) A request for expedited relief under 49 U.S.C. 11123 and 49 CFR part 1146 for service emergency | 200. |
| (ii) A request for temporary relief under 49 U.S.C. 10705 and 11102, and 49 CFR part 1147 for service inadequacy | 200. |
| (64) A request for waiver or clarification of regulations except one filed in an abandonment or discontinuance proceeding, or in a major financial proceeding as defined at 49 CFR 1180.2(a). | 400. |
| * * * * * * * | |
| (86) Informal opinions: | |
| (i) A request for an informal opinion not otherwise covered | 1,100. |
| (ii) A proposal to use on a voting trust agreement pursuant to 49 CFR 1013 and 49 CFR 1180.4(b)(4)(iv) in connection with a major control proceeding as defined at 49 CFR 1180.2(a). | 3,500. |
| (iii) A request for an informal opinion on a voting trust agreement pursuant to 49 CFR 1013.3(a) not otherwise covered | 350. |
| * * * * * * * | |
| (88) Basic fee for STB adjudicatory services not otherwise covered | 200. |
| * * * * * * * | |
| (98) Processing the paperwork related to a request for the Carload Waybill Sample to be used in a Board or State proceeding that: | |
| (i) Does not require a Federal Register notice: | |
| (a) Set cost portion | 100. |
| (b) Sliding cost portion | 32 per party. |
| (ii) Does require a Federal Register notice: | |
| (a) Set cost portion | 300. |
| (b) Sliding cost portion | 32 per party. |
| * * * * * * * | |
| (100) Uniform Railroad Costing System (URCS) software and information: | |
| (i) Initial PC version URCS Phase III software program and manual | 50. |
| (ii) Updated URCS PC version Phase III cost file—per year | 25. |
| (iii) Public requests for *Source Codes* to the PC version URCS Phase III | 100. |
| (101) Carload Waybill Sample data or recordable disk (R–CD): | |
| (i) Requests for Public Use File on R–CD—per year | 250. |
| (ii) Waybill—Surface Transportation Board or State proceedings on R–CD—per year | 500. |
| (iii) User Guide for latest available Carload Waybill Sample | 50. |
| (iv) Specialized Programming for Waybill requests to the Board | 76 per hour. |
| * * * * * * * | |

[FR Doc. 04–6895 Filed 3–26–04; 8:45 am]
BILLING CODE 4915–01–P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 648

**[Docket No. 040113012–4093–02; I.D. 121903D]**

**RIN 0648–AR62**

### Fisheries of the Northeastern United States; Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework Adjustment 4

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule for summer flounder, scup, and black sea bass fisheries.

**SUMMARY:** NMFS issues a final rule implementing measures contained in Framework Adjustment 4 (Framework 4) to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) that would allow for the transfer at sea of scup between commercial fishing vessels, and clarify the circumstances under which a vessel must operate with the specified mesh. Regulations regarding the establishment and administration of research set-aside (RSA) quota would also be amended to clarify how unused RSA quota is to be returned to the fishery.

**DATES:** This rule is effective April 28, 2004.

**ADDRESSES:** Copies of the Framework 4 document, its Regulatory Impact Review (RIR), the Initial Regulatory Flexibility Analysis (IRFA), the Environmental Assessment (EA), and other supporting documents for the framework adjustment are available from Daniel Furlong, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South Street, Dover, DE 19901–6790. The EA/RIR/IRFA is also accessible via the Internet at *http:/www.nero.nmfs.gov*. The Final Regulatory Flexibility Analysis (FRFA) consists of the IRFA, public comments and responses, and the summary of impacts and alternatives contained in this final rule. Copies of the small entity compliance guide are

available from Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930.

**FOR FURTHER INFORMATION CONTACT:** Paul Perra, Fishery Policy Analyst, (978) 281–9153, fax (978) 281–9135, e-mail *paul.perra@noaa.gov*.

**SUPPLEMENTARY INFORMATION:**

## Background

The summer flounder, scup, and black sea bass fisheries are managed cooperatively by the Atlantic States Marine Fisheries Commission (Commission) and the Mid-Atlantic Fishery Management Council (Council), in consultation with the New England and South Atlantic Fishery Management Councils. The management unit for scup (*Stenotomus chrysops*), specified in the FMP, is defined as U.S. waters of the Atlantic Ocean from 35°13.3′ N. lat. (the latitude of Cape Hatteras Lighthouse, Buxton, NC) northward to the U.S./Canada border. The FMP and its implementing regulations at 50 CFR part 648, subparts A (general provisions), and H (scup) describe the process for specifying commercial scup measures that apply in the Exclusive Economic Zone (EEZ). The states manage these fisheries within 3 geographic miles of their coasts, under the Commission's Interstate Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan. The Federal regulations govern vessels fishing in the EEZ, as well as vessels possessing a Federal fisheries permit, regardless of where they fish.

NMFS published a proposed rule (69 FR 3300, January 23, 2004) to implement Framework 4, pursuant to § 648.127(a), to reduce regulatory discards of scup that can occur when vessels catch large amounts of scup, which would exceed their trip limits, and must discard them. The majority of these discarded scup would die, and represent fishing mortality not accounted for by landings that would be recorded under the quota. Framework 4 would allow the commercial scup fishery to be more efficient and to better achieve the management objectives of the FMP, specifically regarding attainment of optimum yield from the scup fishery.

The commercial scup fishery is managed under a system that allocates the annual quota to three periods: Winter I, January-April (45.11 percent); Summer, May-October (38.95 percent); and Winter II, November-December (15.94 percent). During the Winter periods, the quota is monitored on a coastwide basis. During the Summer period, the quota is also monitored on a coastwide basis, but the Commission uses a state-by-state allocation system to help manage the Federal quota. The Federal commercial scup fishery is closed coastwide when the allocation for a period is reached. In addition, any overages during a quota period are subtracted from that period's allocation for the following year. Also, the regulations allow for the rollover of unused quota from the Winter I period to the Winter II period within a fishing year (68 FR 62250, November 3, 2003). The final rule to implement the 2004 annual quota specifications (69 FR 2074, January 14, 2004) established possession limits of 15,000 lb (6,804 kg) per trip during Winter I and 1,500 lb (680 kg) during Winter II, and specified that the Winter I possession limit be reduced to 1,000 lb (454 kg) per trip when 80 percent of the commercial quota allocated to that period is projected to be harvested.

Framework 4 allows for the transfer at sea of scup between commercial fishing vessels, subject to certain requirements intended to improve the enforceability of the transfers and to ensure that they are used to respond to occasional unanticipated catches, rather than targeted fishing. Any amount of scup less than the possession limit could be transferred between two vessels, given the following conditions: Transfers may only occur between vessels with Federal scup permits; transfers may only occur seaward of a boundary line that is roughly 20 nm from shore; the donating and receiving vessels must possess gear that meets the regulatory requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear; transfers may occur in the Winter I or Winter II periods only; only one transfer will be allowed per fishing trip for the donor vessel; after the donor vessel removes only enough scup to attain the scup possession limit, the transfer must include the entire codend, with all its contents; only scup and its normal bycatch may be transferred; only scup may be retained by the receiving vessel; while fishing for scup, all other nets must be stored in accordance with § 648.23(b); and the donating and receiving vessels must report the transfer amount on the vessel trip report for each vessel.

Framework 4 was initiated to address discard issues, because otter trawl vessels targeting scup occasionally make very large hauls consisting almost entirely of scup, which can easily exceed the scup possession limit. Currently, when one of these large hauls occurs, most scup in the net are dead, and all scup in excess of the possession limit must be discarded. Under Framework 4, the contents of a large scup haul could be transferred to another federally permitted scup vessel under prescribed circumstances. This would convert regulatory discards of scup into landings, thus reducing bycatch and improving the efficiency of the commercial scup fishery. Both the donor and receiver vessels could benefit financially. The donor vessel could benefit by selling fish that would otherwise be discarded, and the receiver vessel could benefit from obtaining fish while using less resources (e.g., fuel) than under a typical fishing operation. It is possible that allowing the transfer of scup at sea could result in an earlier closure of the fishery because of higher scup retained catch rates. However, discard rates of scup are expected to be less during a scup fishery closure, because vessels would not be directing on scup. Thus, the measures in the final rule should serve to minimize bycatch and improve efficiency in fleet operations.

It is the Council's intention that the framework adjustment apply only to the scup otter trawl fishery, and that the transfer of scup at sea would occur only under safe weather and sea conditions, as determined by the participants in any such transfer.

This final rule implements the conditions on the transfer of scup at sea that the Council included in Framework 4, as summarized in this preamble. In addition, NMFS has defined a boundary only beyond which transfers of scup may occur. This boundary is intended to improve enforceability of these regulations and to restrict transfers at sea to vessels already on the fishing grounds. The boundary line begins at 40°50′ N. lat., 70°00′ W. long., and runs south to connect the points at 40°15′ N. lat., 73°3′0 W. long.; 37°50′ N. lat., 75°00′ W. long; and 35°30′ N. lat., 75°00′ W. long. Further, this final rule modifies the Council's recommendations that the transfer include the entire codend, and that only scup and its normal bycatch could be transferred. This rule requires that the donor vessel may only remove enough scup from the net to attain the scup possession limit for the donor vessel, and that, after removal of scup from the net by the donor vessel, the entire codend, with all its contents, must be transferred to the receiving vessel. This is intended to allow for retention of scup by the donor vessel up to its possession limit, and to improve at-sea enforcement of the proposed measures.

## Need for Correction/Clarification

This final rule also clarifies the circumstances under which a vessel

must operate consistent with the specified mesh size restrictions for otter trawl vessels that possess scup. This final rule modifies current regulations to indicate that no owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4.kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5–inch (11.4–cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0–inch (12.7–cm) mesh forward of the 4.5–inch (11.4–cm) mesh, and all other nets are stored in accordance with § 648.23(b). For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net. Scup on board these vessels must be stored separately and kept readily available for inspection.

Also, current regulations state that unused RSA quota from disapproved RSA proposals may be reallocated to the respective commercial and recreational fisheries by the Regional Administrator. However, the regulations are silent regarding the reallocation of RSA quota from approved projects that are unable to utilize the entire amount of their RSA allocation. Framework 1 to the FMP states that, in the event approved proposals do not make use of any or all of the set-aside quota for a particular species, the Regional Administrator is authorized to restore the unutilized portion to its respective commercial and recreational fisheries. In order to clarify the circumstances under which the Regional Administrator must reallocate unutilized RSA quota, this rule modifies the RSA provisions that appear in the Atlantic mackerel, squid, and butterfish regulations. Therefore, this final rule modifies current regulations to indicate that, if an RSA proposal is disapproved, or if the Regional Administrator determines that the allocated RSA quota cannot be utilized by a project, the Regional Administrator shall reallocate the unused amount of RSA quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided that the reallocation of the unused amount of RSA quota is in accord with National Standard 1, and must be available for harvest before the end of the fishing year in which the initial RSA allocation was made. Any reallocation of unused RSA quota will be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP, and allocated to the remaining quota periods for the fishing year, proportionally. The intent of this measure is to ensure that unused quota be returned to the fishery, to the extent possible.

## Comments and Responses

Only one comment on the proposed rule was received prior to the end of the comment period.

*Comment:* The commenter expressed general support for environmental reforms, marine sanctuaries, and improved enforcement of fishery regulations. The commenter suggested that the TAC be reduced for all quota's by 50 percent and by 10 percent in each subsequent year thereafter. The commenter also suggested that the commercial interests not sit on the Councils. The commenter did not support the use of research quotas, and stated researchers were taking too many fish.

*Response:* This final rule is designed to provide for the fair and efficient use of the Federal scup quotas. While NMFS acknowledges the importance of the issues raised by the commenter, they are outside the scope of this rulemaking.

The commenter gave no specific rationale for her suggestion that the quotas be reduced. The reasons presented by the Council and NMFS for implementing this final rule are discussed in the preambles to both the proposed and final rules, and are sufficiently analyzed within the Framework 4 documents. Basically, this final rule is designed to reduce scup mortality and enhance stock rebuilding. This final rule was developed based on the best data available at the time, in accordance with the process established by the Magnuson-Stevens Fishery Conservation and Management Act. There is no known scientific basis for reducing the quotas as suggested by the commenter. Also, the research quotas establish a unique and equitable mechanism to provide funding for fisheries research while not overfishing the stocks.

## Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866.

Included in this final rule is the Final Regulatory Flexibility Analysis (FRFA), prepared pursuant to 5 U.S.C. 604(a). The FRFA incorporates the IRFA, the comments and responses to the proposed rule, and the analyses completed to support the action. A copy of the IRFA is available from the Council (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA and that discussion is not repeated here.

## Final Regulatory Flexibility Analysis

*Statement of Objective and Need*

A description of the legal basis and reasons for the action, and its objectives, can be found in the preamble to the proposed rule (69 FR 3300, January 23, 2004) and is not repeated here.

*Summary of Significant Issues Raised in Public Comments*

One comment was received on the proposed rule, but the comment did not specifically refer to the IRFA or the economic impacts of the rule. The commenter was not supportive of the proposed measures, but offered no rationale for making changes. No changes to the proposed rule were required to be made as a result of public comments. For a summary of the comment, refer to the section above entitled ''Comments and Responses.≥

*Description and Estimate of Number of Small Entities to Which the Final Rule Will Apply*

Fishing vessels issued Federal scup moratorium permits represent the universe of small entities potentially affected by this action. Data from the Northeast permit application database show that 878 commercial vessels held scup moratorium permits in 2001. Since all permit holders may not actually target scup, the more immediate impact of the action will be derived by the subset of permit holders actively participating in this fishery that choose to take advantage of the opportunity to transfer scup at sea.

*Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

There are no new recordkeeping or reporting requirements proposed in this final rule.

*Description of the Steps Taken to Minimize Economic Impact on Small Entities*

All vessels that would be impacted by this final rulemaking are considered to be small entities (i.e., commercial fishing entities with less than $3.5 million in gross receipts); therefore, there would be no disproportionate impacts between large and small entities.

The purpose of this framework is to reduce discards and improve efficiency in the scup fishery by allowing for the

transfer at sea of scup between commercial fishing vessels, and clarifying the circumstances under which a vessel must operate with the specified mesh. Alternative 1 (No Action) would not affect the manner in which the commercial fishery operates or the quantity of scup landed in the commercial sector. The Preferred Alternative will allow for the transfer of scup at sea; both the donor and receiver vessels may benefit economically. The owner of the donor vessel may benefit by selling fish that would otherwise be discarded to the owner of the receiving vessel and the owner of the receiving vessel may benefit from acquiring fish obtained from fishing activity of another vessel, thus requiring less resources (e.g., less fuel and wear and tear on the net) than under a typical fishing operation. It is possible that allowing the transfer of scup at sea could result in the scup fishery being closed earlier because of higher retained catch rates. This would depend on the number of vessels that have large scup catches, and the opportunity to conduct transfers. If a scup period were to close sooner under the Preferred Alternative, the reduction of discards realized through the ability to transfer may not offset the level of increased discards that may occur during a longer closure. However, scup discards are expected to be lower during a closure of the directed scup fishery than before the fishery closes, because vessels will not be directing on scup. Also, it is reasonable to expect that the ability to transfer scup would be limited to a somewhat narrow window of time and would depend on the proximity of a nearby, permitted scup vessel, and how quickly that vessels could retrieve the codend of the donor vessel. Large catches of scup in the net die quickly and may sink to a point where they are irretrievable or, if held in the codend on board the donor vessel for too long, they spoil and become unmarketable. A longer closure may also have adverse economic impacts if affected fishermen do not have suitable alternative opportunities. However, since there are no data available to determine accurately how many vessels would participate in the transfer of scup at sea and how much scup would be transferred at sea under this alternative, the full impact of this alternative on early closures cannot be fully assessed.

The Council's recommendation on this action was predicated upon the need to make a decision to either allow at-sea transfers of scup to reduce regulatory discards (the preferred alternative), or to maintain the current prohibition on at-sea transfers (the no action alternative). Other alternatives to address the larger issues of regulatory discards and/or economic efficiency of the fleet were not considered to be within the scope of this action (which is a Framework Adjustment and therefore of limited scope). The Council did identify and discuss additional options to be part of the preferred alternative, but these were determined to be either unenforceable (e.g., allowing transfers of scup in excess of the possession limit to occur off the fishing grounds), cost prohibitive (e.g., requiring vessels to obtain a vessel monitoring system prior to participating), or not practicable (e.g., requiring participating vessels to contact NMFS personnel prior to conducting an at-sea transfer).

Section 212 of the Small Business Regulatory Enforcement and Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a small entity compliance guide will be sent to all holders of scup moratorium vessel permits. In addition, copies of this final rule and guide (i.e., permit holder letter) are available from NMFS (see **ADDRESSES**) and at the following web site: *http://www.nero.noaa.gov/*.

Dated: March 23, 2004.

**Rebecca Lent,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

■ For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

## PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 1. The authority citation for part 648 continues to read as follows:

**Authority:** 16 U.S.C. 1801 *et seq.*

■ 2. In § 648.6, paragraph (a)(1) is amended by adding a new final sentence to read as follows:

### § 648.6 Dealer/processor permits.

(a) *General.* (1) * * * Persons aboard vessels receiving transfers of scup at sea from other vessels are deemed not to be dealers, and are not required to possess a valid dealer permit under this section, for purposes of receiving scup, provided the vessel complies with § 648.13(2).

* * * * *

■ 3. In § 648.13, paragraph (i) is added to read as follows:

### § 648.13 Transfers at sea.

* * * * *

(i) *Scup.* (1) Except as provided in paragraph (i)(2) of this section, all persons or vessels issued a Federal scup permit are prohibited from transferring, or attempting to transfer, at sea any scup to any vessel, and all persons or vessels are prohibited from transferring, or attempting to transfer, at sea to any vessel any scup while in the EEZ, or any scup taken in or from the EEZ portion of the Scup Management Unit.

(2) The owner or operator of a vessel issued a Federal scup permit under § 648.4(a)(6)(i)(A) may transfer at sea scup taken in or from the EEZ portion of the Scup Management Unit, provided:

(i) The transfer occurs between two vessels with Federal scup permits;

(ii) The transfer occurs seaward of a boundary line that begins at 40°50' N. lat., 70°00′ W. long., and runs south to connect points at 40°15′ N. lat., 73°30′ W. long.; 37°50′ N. lat., 75°00′ W. long.; and 35°30′ N. lat., 75°00′ W. long.;

(iii) The donating and receiving vessels possess gear that meets the requirements at § 648.123(a)(2), (3), and (4) for commercial scup fishing gear;

(iv) The transfer occurs in the Winter I or Winter II periods of the scup fishing year;

(v) There is only one transfer per fishing trip for the donor vessel;

(vi) The donor vessel removes only enough scup from the net to attain the scup possession limit;

(vii) After removal of scup from the net by the donor vessel, the entire codend, with all its contents, is transferred to the receiving vessel;

(viii) Only scup in an amount not to exceed the possession limit are retained by the receiving vessel;

(ix) While fishing for scup, all other nets are stored in accordance with § 648.23(b)(1); and

(x) The donating and receiving vessels report the transfer amount on the vessel trip report for each vessel.

■ 4. In § 648.14, new paragraph (k)(13) is added to read as follows:

### § 648.14 Prohibitions.

(k) * * *

(13) Transfer scup at sea, or attempt to transfer at sea to any vessel, any scup taken from the EEZ, unless in compliance with the provisions of § 648.13(i).

* * * * *

■ 5. In § 648.21, paragraph (g)(5) is revised to read as follows:

**§ 648.21 Procedures for determining initial annual amounts.**

(g) * * *

(5) If a proposal is disapproved by the Regional Administrator or the NOAA Grants Office, or if the Regional Administrator determines that the allocated research quota cannot be utilized by a project, the Regional Administrator shall reallocate the unallocated or unused amount of research quota to the respective commercial and recreational fisheries by publication of a notice in the **Federal Register** in compliance with the Administrative Procedure Act, provided:

(i) The reallocation of the unallocated or unused amount of research quota is in accord with National Standard 1, and can be available for harvest before the end of the fishing year for which the research quota is specified; and

(ii) Any reallocation of unallocated or unused research quota shall be consistent with the proportional division of quota between the commercial and recreational fisheries in the relevant FMP and allocated to the remaining quota periods for the fishing year proportionally.

* * * * *

■ 6. In § 648.123, paragraph (a)(1) is revised to read as follows:

**§ 648.123 Gear restrictions.**

(a) * * *

(1) *Minimum mesh size.* No owner or operator of an otter trawl vessel that is issued a scup moratorium permit may possess 500 lb (226.8 kg) or more of scup from November 1 through April 30, or 100 lb (45.4 kg) or more of scup from May 1 through October 31, unless fishing with nets that have a minimum mesh size of 4.5–inch (11.4–cm) diamond mesh for no more than 25 continuous meshes forward of the terminus of the codend, and with at least 100 continuous meshes of 5.0–inch (12.7–cm) mesh forward of the 4.5–inch (11.4–cm) mesh, and all other nets are stowed in accordance with § 648.23(b)(1). For trawl nets with codends (including an extension) less than 125 meshes, the entire trawl net must have a minimum mesh size of 4.5 inches (11.4 cm) throughout the net. Scup on board these vessels shall be stowed separately and kept readily available for inspection. Measurement of nets will be in conformity with § 648.80(f)(2)(ii).

* * * * *

[FR Doc. 04–6971 Filed 3–26–04; 8:45 am]

BILLING CODE 3510–22–S

# Proposed Rules

Federal Register
Vol. 69, No. 60
Monday, March 29, 2004

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Ch.1

### Semiannual Regulatory Agenda

*Correction*

The Regulatory Information Service Center inadvertently omitted the following entry from the regulatory agenda of the Office of Personnel Management, published in the Unified Agenda of Federal Regulatory and Deregulatory Actions, part XXXVIII of the issue of Monday, December 22, 2003 (68 FR 73770), and should have included the following:

### Office of Personnel Management (OPM)—Proposed Rule Stage

### • ORGANIZATION OF THE GOVERNMENT FOR PERSONNEL MANAGEMENT; OVERSEAS EMPLOYMENT; TEMPORARY AND TERM EMPLOYMENT; RECRUITMENT AND SELECTION FOR TEMPORARY AND TERM APPOINTMENTS OUTSIDE THE REGISTER

**Priority:** Other Significant. Major status under 5 U.S.C. 801 is undetermined.

**Legal Authority:** Public Law 107–296

**CFR Citation:** 5 CFR 316; 5 CFR 333; 5 CFR 337; 5 CFR 410

**Legal Deadline:** None

**Abstract:** The Office of Personnel Management (OPM) is issuing interim regulations to implement certain Governmentwide human resources flexibilities contained in the Homeland Security Act of 2002. This regulation provides agencies with increased flexibility in assessing applicants using alternative ranking and selection procedures; the ability to select qualified candidates for jobs in the competitive service using direct-hire procedures including selection for temporary and term positions; the authority to pay or reimburse the costs of academic degree training from appropriated or other available funds under specified conditions; and increased flexibility in the use of academic degree training to address agency-specific human capital needs, goals, and challenges. This interim regulation will also remove part 333 of title 5, Code of Federal Regulations, Recruitment and Selection for Temporary and Term Appointments Outside the Register.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 06/13/03 | 68 FR 35265 |
| NPRM | 09/00/04 | |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**RIN:** 3206–AJ99

**Agency Contact:** Diane Tyrrell, Division for Strategic Human Resources Policy, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415, Phone: 202 606–0960, Fax: 202 606–2329, E-mail: *dmtyrrel@opm.gov*.

U.S. Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–6813 Filed 3–26–04; 8:45 am]

BILLING CODE 6820–27–M

## DEPARTMENT OF HOMELAND SECURITY

### Office of the Secretary

### 6 CFR Chs. I and II

### Semiannual Regulatory Agenda

*Correction*

The regulatory agenda of the Department of Homeland Security, published in the Unified Agenda of Federal Regulatory and Deregulatory Actions, part IX of the issue of Monday, December 22, 2003 (68 FR 72922), should include the following two entries.

### Department of Homeland Security (DHS)

### Bureau of Citizenship and Immigration Services—Final Rule Stage

### • EXTENDING THE FILING DEADLINE AND REMOVING THE APPLICATION FEE WHEN APPLYING FOR POSTHUMOUS UNITED STATES CITIZENSHIP

**Priority:** Other Significant

**Legal Authority:** 8 U.S.C. 1103; 8 U.S.C. 1440 and note; 8 U.S.C. 1440–1; 8 CFR 2

**CFR Citation:** 8 CFR 3292; 8 CFR 103

**Legal Deadline:** None

**Abstract:** This rule amends the regulations of the Department of Homeland Security's (DHS), Bureau of Citizenship and Immigration Services, formerly the Immigration and Naturalization Service, to implement Public Law 107–273, the 21st Century Department of Justice Appropriations Authorization Act, section 11030 (November 2, 2002). Public Law 107–273 amends section 329A of the Immigration and Nationality Act by extending the filing deadline for applications for posthumous citizenship for deceased noncitizen veterans. It will also amend the regulations to remove the prescribed filing fee for Form N–644, Application for Posthumous Citizenship.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Interim Final Rule | 02/00/04 | |
| Interim Final Rule Comment Period End | 04/00/04 | |

**Regulatory Flexibility Analysis Required:** No

**Small entities Affected:** No

**Government Levels Affected:** None

**Additional Information:** Merged with CIS No. 2271–03, Extension of Deadline for Filing for Posthumous Citizenship

**Agency Contact:** Craig Howie, Adjudications Officer, Adjudications Division, Department of Homeland Security, Bureau of Citizenship and Immigration Services, Room 3040, 425 I Street, NW., Washington, DC 20536, Phone: (202) 616–7869, Fax: (202) 514–0198

**RIN:** 1615–AB04

**Department of Homeland Security (DHS)**

**Bureau of Citizenship and Immigration Services—Completed Actions**

**• EXTENSION OF DESIGNATION OF EL SALVADOR UNDER THE TEMPORARY PROTECTED STATUS (TPS) PROGRAM; AUTOMATIC EXTENSION OF EMPLOYMENT AUTHORIZATION DOCUMENT FOR EL SALVADOR**

**Priority:** Other Significant. Major status under 5 U.S.C. 801 is undetermined.

**Legal Authority:** Immigration and Nationality Act, sec 244; 8 U.S.C. 1254a

**CFR Citation:** None

**Legal Deadline:** The designation of El Salvador under the Temporary Protected Status Program expires September 9, 2003.

**Abstract:** This notice designates El Salvador for TPS for 18 months until March 9, 2005 and automatically extends Employment Authorization Documentation until March 9, 2004.

**Timetable:**

| Action | Date | FR Cite |
|---|---|---|
| Notice (CIS No. 2279–03) Extension of Designation of El Salvador Under TPS | 07/16/03 | 68 FR 42071 |

**Regulatory Flexibility Analysis Required:** No

**Small Entities Affected:** No

**Government Levels Affected:** None

**Additional Information:** CIS No. 2279–03

**Agency Contact:** Jonathan Mills, Adjudications Officer, Department of Homeland Security, Bureau of Citizenship and Immigration Services, 425 I Street, NW., Washington, DC 20536, Phone: (202) 514–4754, E-mail:*jonathan.mills@dhs.gov*

**RIN:** 1615–AB05

**Richard Sloan,**

*Director, Regulations and Forms Services Division.*

[FR Doc. 04–6814 Filed 3–26–04; 8:45 am]

BILLING CODE 6820–27–M

**DEPARTMENT OF AGRICULTURE**

**Animal and Plant Health Inspection Service**

**7 CFR Part 340**

**[Docket No. 03–031–3]**

**Environmental Impact Statement; Introduction of Genetically Engineered Organisms**

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of intent to prepare an environmental impact statement and proposed scope of study; reopening of comment period.

**SUMMARY:** We are reopening the comment period for a notice of intent to prepare an environmental impact statement that we published in connection with potential changes to the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms. The earlier notice identified potential issues and alternatives that will be studied in the environmental impact statement and requested public comment to further delineate the scope of the issues and alternatives. We are reopening the comment period to allow interested persons additional time to prepare and submit comments.

**DATES:** We will consider all comments that we receive on or before April 13, 2004.

**ADDRESSES:** You may submit comments by any of the following methods:

• *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. 03–031–2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 03–031–2.

• *E-mail:* Address your comment to *regulations@aphis.usda.gov.* Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and ''Docket No. 03–031–2'' on the subject line.

• *Agency Web Site:* Go to *http://www.aphis.usda.gov/ppd/rad/cominst.html* for a form you can use to submit an e-mail comment through the APHIS Web site.

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for locating this docket and submitting comments.

*Reading Room:* You may read any comments that we receive on Docket No. 03–031–2 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

*Other Information:* You may view APHIS documents published in the **Federal Register** and related information, including the names of groups and individuals who have commented on APHIS dockets, on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html.*

**FOR FURTHER INFORMATION CONTACT:** Ms. Stephanie Stephens, Environmental Services, PPD, APHIS, 4700 River Road Unit 149, Riverdale, MD 20737–1238; (301) 734–4836.

**SUPPLEMENTARY INFORMATION:**

**Background**

On January 23, 2004, we published in the **Federal Register** (69 FR 3271–3272, Docket No. 03–031–2) a notice that the Animal and Plant Health Inspection Service intends to prepare an environmental impact statement in connection with potential changes to the regulations regarding the importation, interstate movement, and environmental release of certain genetically engineered organisms.

Comments on that notice were required to be received on or before March 23, 2004. To provide interested persons additional time to prepare and submit comments, we are reopening the comment period on the notice until April 13, 2004. We will also consider all comments received between March 24, 2004 (the day after the close of the original comment period), and the date of this notice.

Done in Washington, DC, this 25th day of March, 2004.

**Kevin Shea,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 04–7008 Filed 3–26–04; 8:45 am]

BILLING CODE 3410–34–P

**DEPARTMENT OF AGRICULTURE**

**Federal Crop Insurance Corporation**

**7 CFR Part 457**

**Common Crop Insurance Regulations; Apple Crop Insurance Provisions**

**AGENCY:** Federal Crop Insurance Corporation, USDA.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** The Federal Crop Insurance Corporation (FCIC) proposes to amend the Apple Crop Insurance Provisions. The intended effect of this action is to provide policy changes and clarify existing policy provisions to better meet the needs of the insureds and to restrict the effect of the current Apple Crop Insurance Regulations to the 2004 and prior crop years.

**DATES:** Written comments and opinions on this proposed rule will be accepted until close of business April 28, 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, Risk Management Agency, United States Department of Agriculture, 6501 Beacon Drive, Stop 0812, Room 421, Kansas City, MO 64133–4676. Comments titled ''Apple Crop Provisions'' may be sent via the Internet to *DirectorPDD@rma.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., CDT, Monday through Friday except holidays, at the above address.

**FOR FURTHER INFORMATION CONTACT:** Gary Johnson, Risk Management Specialist, Research and Development, Product Development Division, Risk Management Agency, at the Kansas City, MO, address listed above, telephone (816) 926–7730.

**SUPPLEMENTARY INFORMATION:**

## Executive Order 12866

The Office of Management and Budget (OMB) has determined that this rule is not significant for the purpose of Executive Order 12866 and, therefore, it has not been reviewed by OMB.

## Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by OMB under control number 0563–0053 through February 28, 2005.

## Regulatory Flexibility Act

FCIC certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Program requirements for the Federal crop insurance program are the same for all producers regardless of the size of their farming operation. For instance, all producers are required to submit an application and acreage report to establish their insurance guarantees, and compute premium amounts, or a notice of loss and production information to determine an indemnity payment in the event of an insured cause of crop loss. Whether a producer has 10 acres or 1000 acres, there is no difference in the kind of information collected. To ensure crop insurance is available to small entities, the Federal Crop Insurance Act authorizes FCIC to waive collection of administrative fees from limited resource farmers. FCIC believes this waiver helps to ensure small entities are given the same opportunities to manage their risks through the use of crop insurance. A Regulatory Flexibility Analysis has not been prepared since this regulation does not have an impact on small entities, and, therefore, this regulation is exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605).

## Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

## Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

## Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. With respect to any action taken by FCIC under the terms of the crop insurance policy, the administrative appeal provisions published at 7 CFR part 11 or 7 CFR 400.169, as applicable, must be exhausted before any action for judicial review of any determination or action by FCIC may be brought.

## Environmental Evaluation

This action is not expected to have a significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

*Background*

FCIC proposes to amend the Common Crop Insurance Regulations (7 CFR part 457) by amending § 457.158 Apple Crop Insurance Provisions effective for the 2005 and succeeding crop years. The changes to the provisions for insuring apples are as follows:

1. Section 1—Add definitions for the terms ''apple production,'' ''fresh apple production,'' ''processed apple production,'' ''damaged apple production,'' ''mature,'' and ''type''. The definition of ''harvest'' has been revised to clarify that apples collected from the ground that cannot be sold for human consumption will not be considered harvested. The definition of ''marketable'' has been revised to conform to the new standards for apples considered damaged.

2. Section 2—Revise section 2 to incorporate the provisions previously contained in section 14 for clarity and to conform to the elimination of some of the options previously available under the policy.

3. Section 3—Move the requirement to report acreage by varietal group to the acreage reporting date to be consistent with the requirement that the insured report their types on the acreage report.

4. Section 4—The contract change date in California has been changed to October 1 to conform to the changes in the insurance period for California.

5. Section 5—Add provisions to clarify that an insurance provider may not cancel an insured's policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation and termination date.

6. Section 6—Revise the reporting requirements to require the insured to report and designate all acreage grown for fresh apples and all acreage grown for processing apples, by varietal group, by the acreage reporting date to ensure that the proper price is used to value the production.

7. Section 9—Add provisions to specify that if the insured policy is canceled or terminated for any crop year after insurance attached for that crop year, but on or before the cancellation and termination dates, whichever is later, then insurance will be considered to not have attached for that year and no premium, administrative fee, or indemnity will be due. Add provisions to allow a different insurance period for California because the varieties grown there are typically harvested later than other varieties.

8. Section 10—Revise the provision to specify that unavoidable hail, wind, sunburn, and russeting caused by frost or freeze will now be a covered cause

of loss without the need to purchase a specific option.

9. Section 12—Clarify that value of the production guarantee is also calculated by variety as well as type.

10. Replaced provisions of the previous sections 13 (Optional Coverage for Quality Adjustment) and section 14 (Option C—Prices and Units by Varietal Group) with a new section 14 (Optional Coverage for Fresh Fruit Quality Adjustment) to provide quality adjustments for all perils. This modification eliminates several options under the current program and simplifies the apple crop insurance program. In addition, an example was added for clarification of the Optional Coverage for Fresh Quality Adjustment.

**List of Subjects in 7 CFR Part 457**

Crop insurance, Apple, Reporting and record keeping requirements.

**Proposed Rule**

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 457, Common Crop Insurance Regulations, for the 2005 and succeeding crop years as follows:

## PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

**Authority:** 7 U.S.C. 1506(l), 1506(p).

2. Revise § 457.158 to read as follows:

### § 457.158 Apple crop insurance provisions.

The Apple Crop Insurance Provisions for the 2005 and succeeding crop years are as follows:

1. Definitions

*Apple production.* All production of fresh apples and processing apples from the insurable acreage.

*Area A.* A geographic area that includes Montana, Wyoming, Utah, New Mexico and all states west thereof.

*Area B.* A geographic area that includes all states not included in Area A, except for Colorado.

*Area C.* Colorado.

*Bin.* A container that contains a minimum of 875 pounds of apples or another quantity if so designated in the Special Provisions.

*Box.* A container that contains 35 pounds of apples or another quantity if so designated in the Special Provisions.

*Bushel.* In all states except Colorado, 42 pounds of apples. In Colorado, 40 pounds of apples.

*Damaged apple production.*

A. With respect to losses calculated under section 12 only, the percentage of fresh or processing apple production that fails to grade U.S. No. 1 Processing or better in accordance with the United States Standards for Grades of Apples for processing, or such other standard contained on the Special Provisions, within each lot, bin, bushel or box, as applicable; or

B. With respect to losses calculated under sections 12 and 14—The percentage of fresh apple production that fails to grade U.S. Fancy or better in accordance with the United States Standards for Grades of Apples, or such other standard contained on the Special Provisions, within each lot, bin, bushel or box, as applicable.

*Direct marketing.* Sale of the insured crop directly to consumers without the intervention of an intermediary such as a wholesaler, retailer, packer, processor, shipper, buyer or broker. Examples of direct marketing include selling through an on-farm or roadside stand, or a farmer's market, and permitting the general public to enter the field for the purpose of picking all or a portion of the crop.

*Fresh apples.* Apple production reported from acreage that is intended to be marketed for fresh consumption and is reported as fresh on the acreage report and grades U.S. Fancy or better in accordance with the United States Standards for Grades of Apples, or such other standard contained on the Special Provisions.

*Harvest.* The picking of mature apples from the trees or collecting of mature apples from the ground. Mature apples that are collected from the ground but cannot be sold for human consumption will not be considered harvested.

*Lot.* A quantity of production that can be separated from other quantities of production by grade characteristics, load, location or other distinctive features.

*Marketable.* Apple production that is not damaged apple production.

*Mature.* Having reached the full natural growth or development, at which time harvest normally takes place.

*Non-contiguous.* Any two or more tracts of land whose boundaries do not touch at any point, except that land separated only by a public or private right-of-way, waterway, or an irrigation canal will be considered as contiguous.

*Processing apples.* Apple production from acreage that is intended to be marketed for processing and is reported as processing on the acreage report, and grades U.S. No.1 Processing or better in accordance with the United States Standards for Grades of Apples for Processing, or such other standard contained on the Special Provisions.

*Production guarantee (per acre).* The quantity of apples in bushels, bins, or boxes, determined by multiplying the approved APH yield per acre by the coverage level percentage you elect.

*Russeting.* The same meaning as the definition of ''russeting'' contained in the United States Standards for Grades of Apples, or such other standard contained on the Special Provisions.

*Sunburn.* The same meaning as the definition of ''sunburn'' contained in the United States Standards for Grades of Apples, or such other standard contained on the Special Provisions.

*Type.* Either fresh or processing apples.

*Varietal group.* Apple varieties with similar characteristics that are grouped for insurance purposes as specified in the Special Provisions.

2. Unit Division

(a) In addition to the requirements of section 34(b) of the Basic Provisions, optional units may be established if each optional unit is:

(1) Located on non-contiguous land; and

(2) By varietal group;

(b) Optional units may only be established if the following conditions are met:

(1) You have not elected to insure your apples under the Catastrophic Risk Protection (CAT) Endorsement; and

(2) You have maintained separate production records for each optional unit and you can identify the acreage upon which the apples are produced.

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities

In addition to the requirements of section 3 of the Basic Provisions:

(a) You may select only one price election for all the apples in the county insured under this policy unless the Special Provisions provide different price elections by type or varietal group, in which case you may select one price election for each apple type or varietal group designated in the Special Provisions. The price elections you choose for each type or varietal group must have the same percentage relationship to the maximum price offered by us for each type or varietal group. For example, if you choose 100 percent of the maximum price election for one type or varietal group, you must also choose 100 percent of the maximum price election for all other types or varietal groups.

(b) You must report, by the production reporting date designated in section 3 of the Basic Provisions, by type or varietal group if applicable:

(1) Any damage, removal of trees, change in practices, or any other circumstance that may reduce the expected yield below the yield upon which the insurance guarantee is based, and the number of affected acres;

(2) The number of bearing trees on insurable and uninsurable acreage;

(3) The age of the trees and the planting pattern; and

(4) For the first year of insurance for acreage interplanted with another perennial crop, and anytime the planting pattern of such acreage has changed:

(i) The age of the interplanted crop, and type if applicable;

(ii) The planting pattern; and

(iii) Any other information that we request in order to establish your approved yield.

(c) We will reduce the yield used to establish your production guarantee as necessary, based on our estimate of the effect of the following: interplanted perennial crop; removal of trees; damage; change in practices and any other circumstance on the yield potential of the insured crop. If you fail to notify us of any circumstance that may reduce your yields from previous levels, we will reduce your production guarantee as necessary at any time we become aware of the circumstance.

(d) You may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election if a cause of loss that could or would reduce the yield of the insured crop has occurred prior to the time that you request the increase.

4. Contract Changes

In accordance with section 4 of the Basic Provisions, the contract change date is October 31 preceding the cancellation for California and August 31 preceding the cancellation date for all other states.

5. Cancellation and Termination Dates

(a) In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are January 31 in California and November 20 in all other states.

(b) If your apple policy is canceled or terminated by us for any crop year, in accordance with the terms of the policy, after insurance attached for that crop year, but on or before the cancellation and termination dates whichever is later, insurance will be considered to not have attached for that crop year and no premium, administrative fee, or indemnity will be due for such crop year.

(c) We may not cancel your policy when an insured cause of loss has occurred after insurance attached, but prior to the cancellation date. However, your policy can be terminated if a cause for termination contained in sections 2 or 27 of the Basic Provisions exists.

6. Report of Acreage

In addition to the requirements contained in the section 6 of the Basic Provisions, you must report and designate all acreage by type and varietal group by the acreage reporting date.

7. Insured Crop

In accordance with section 8 of the Basic Provisions, the crop insured will be all the apples in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That are grown on tree varieties that:

(1) Are adapted to the area; and

(2) Are in area A and have produced at least an average of 10 bins of apples per acre; or

(3) Are in area B and have produced at least an average of 150 bushels of apples per acre; or

(4) Are in area C and have produced at least an average of 200 bushels of apples per acre; and

(c) That are grown in an orchard that, if inspected, is considered acceptable by us.

8. Insurable Acreage

In lieu of the provisions in section 9 of the Basic Provisions that prohibit insurance from attaching to a crop planted with another crop, apples interplanted with another perennial crop are insurable unless we inspect the acreage and determine that it does not meet the requirements contained in your policy.

9. Insurance Period

(a) In accordance with the provisions of section 11 of the Basic Provisions:

(1) For the year of application in California, coverage begins on February 1 of the calendar year the insured crop normally blooms. In all other states, coverage begins November 21 of the calendar year prior to the calendar year the insured crop normally blooms, except that, if your application is received by us after January 12 but prior to February 1 in California, or after November 1 but prior to November 21 in all other states, insurance will attach on the 20th day after your properly completed application is received in our local office, unless we inspect the acreage during the 20 day period and determine that it does not meet insurability requirements. You must provide any information that we require for the crop or to determine the condition of the apple acreage.

(2) For each crop year subsequent to the year of application, that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring an existing policy to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

(3) For California, the calendar date for the end of the insurance period for each crop year is November 5, or such other date as specified in the Special Provisions. For all other states, the calendar date for the end of the insurance period for each crop year is November 20.

(4) Cancellation and termination provisions that pertain to the period after insurance has attached, but prior to the cancellation and termination date, are contained in section 5 of these crop provisions.

(b) In addition to the provisions of section 11 of the Basic Provisions:

(1) If you acquire an insurable share in any insurable acreage after coverage begins but on or before the acreage reporting date for the crop year, and after an inspection we consider the acreage acceptable, insurance will be considered to have attached to such acreage on the calendar date for the beginning of the insurance period. There will be no coverage of any insurable interest acquired after the acreage reporting date.

(2) If you relinquish your insurable share on any insurable acreage of apples on or before the acreage reporting date for the crop year, insurance will not be considered to have attached to, and no premium or indemnity will be due for such acreage for that crop year unless:

(i) A transfer of coverage and right to an indemnity, or a similar form approved by us, is completed by all affected parties;

(ii) We are notified by you or the transferee in writing of such transfer on or before the acreage reporting date; and

(iii) The transferee is eligible for crop insurance.

10. Causes of Loss

(a) In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss that occur during the insurance period:

(1) Adverse weather conditions;

(2) Fire, unless weeds and other forms of undergrowth have not been

controlled or pruning debris has not been removed from the orchard;

(3) Earthquake;

(4) Volcanic eruption;

(5) Failure of irrigation water supply, if caused by an insured peril that occurs during the insurance period;

(6) Wildlife; and

(7) All other natural causes of loss that cannot be prevented, including, but not limited to hail, wind, sunburn, and russeting caused by frost or freeze.

(b) In addition to the causes of loss excluded in section 12 of the Basic Provisions, we will not insure against damage or loss of production due to:

(1) Disease or insect infestation, unless adverse weather:

(i) Prevents the proper application of control measures or causes properly applied control measures to be ineffective; or

(ii) Causes disease or insect infestation for which no effective control mechanism is available;

(2) Inability to market the apples for any reason other than actual physical damage from an insurable cause specified in this section. For example, we will not pay you an indemnity if you are unable to market due to quarantine, boycott, or refusal of any person to accept production.

11. Duties in the Event of Damage or Loss

In addition to the requirements of section 14 of the Basic Provisions, the following will apply:

(a) You must notify us within 3 days of the date harvest should have started if the crop will not be harvested.

(b) You must notify us at least 15 days before any production from any unit will be sold by direct marketing. We will conduct an appraisal that will be used to determine your production to count for production that is sold by direct marketing. If damage occurs after this appraisal, we will conduct an additional appraisal. These appraisals, and any acceptable records provided by you, will be used to determine your production to count. Failure to give timely notice that production will be sold by direct marketing will result in an appraised amount of production to count of not less than the production guarantee per acre if such failure results in our inability to make the required appraisal.

(c) If you intend to claim an indemnity on any unit, you must notify us at least 15 days prior to the beginning of harvest or immediately if damage is discovered during harvest. You must not sell or dispose of the damaged crop until after we have given you written consent to do so. If you fail to meet the requirements of this section and such failure results in our inability to inspect the damaged production, we may consider all such production to be undamaged and include it as production to count.

12. Settlement of Claim

(a) We will determine your loss on a unit basis. In the event you are unable to provide separate acceptable production records:

(1) For any optional unit, we will combine all optional units for which such production records were not provided; or

(2) For any basic unit, we will allocate any commingled production to such units in proportion to our liability on the harvested acreage for the units.

(b) In the event of loss or damage covered by this policy, we will settle your claim on any unit by:

(1) Multiplying the insured acreage by its respective production guarantee, by type or varietal group as applicable;

(2) Multiplying each result in section 12(b)(1) by the respective price election;

(3) Totaling the results in section 12(b)(2) if there are more than one type or varietal group;

(4) Multiplying the total production to count (see section 12(c)), for each type or varietal group as applicable, by the respective price election;

(5) Totaling the results in section 12(b)(4), if there are more than one type or varietal group;

(6) Subtracting the total in section 12(b)(5) from the total in section 12(b)(3); and

(7) Multiplying the result in section 12(b)(6) by your share. Basic Coverage example:

You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushel per acre guarantee for both fresh and processing apples and a price election of $9.10 per bushel for fresh apples and $4.76 per bushel for processing apples that graded U.S. No. 1 Processing or better. You are only able to harvest 5,000 bushel of fresh apples and 1,000 bushels of processing apples. Your indemnity would be calculated as follows:

(1) 10 acres × 600 bushels = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels = 3,000 bushels guarantee of processing apples;

(2) 6,000 bushels × $9.10 price election = $54,600.00 value of guarantee for fresh apples; 3,000 bushels × $4.76 price election = $14,280.00 value of guarantee for processing;

(3) $54,600.00 + $14,280.00 = $68,880.00 total value guarantee;

(4) 5,000 bushels × $9.10 price election = $45,500.00 value of production to count for fresh apples; 1,000 bushels × $4.76 price election = $4,760.00 value of production to count for processing;

(5) $45,500.00 + $4,760.00 = $50,260.00 total value of production to count;

(6) $68,880.00 − $50,260.00 = $18,540.00 loss; and

(7) $18,540.00 × 100 percent share = $18,540.00 indemnity payment.

(c) The total apple production to count (in boxes or bushels) from all insurable acreage on the unit will include:

(1) All appraised apple production as follows:

(i) Not less than the production guarantee per acre for acreage:

(A) That is abandoned;

(B) That is sold by direct marketing if you fail to meet the requirements contained in section 11;

(C) That is damaged solely by uninsured causes; or

(D) For which you fail to provide production records that are acceptable to us;

(ii) Apple production lost due to uninsured causes;

(iii) Unharvested apple production that would be marketable if harvested; and

(iv) Potential marketable apple production on insured acreage that you intend to abandon or no longer care for, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end. If you do not agree with our appraisal, we may defer the claim only if you agree to continue to care for the crop. We will then make another appraisal when you notify us of further damage or that harvest is general in the area unless you harvested the crop, in which case we will use the harvested production. If you do not continue to care for the crop, our appraisal made prior to deferring the claim will be used to determine the production to count; and

(2) All harvested marketable apple production from the insurable acreage.

(3) Unharvest and harvested mature fresh apple production to count may be reduced in accordance with section 14 of these Crop Provisions if you elect this option.

13. Late and Prevented Planting

The late and prevented planting provisions of the Basic Provisions are not applicable.

14. Optional Coverage for Fresh Fruit Quality Adjustment.

(a) In the event of a conflict between the Apple Crop Insurance Provisions and this option, this option will control.

(b) In return for payment of the additional premium designated in the actuarial documents, this option provides for quality adjustment of fresh apple production as follows:

(1) You must elect this option on or before the sales closing date for the initial crop year for which you wish to insure your apples under this option. This option will continue in effect until canceled by either you or us for any succeeding crop year by written notice to the other party on or before the cancellation date.

(2) To be eligible for this option, you must have elected to insure your apples at the additional coverage level. If you elect Catastrophic Risk Protection (CAT) after this option is effective, it will be considered as notice of cancellation of this option by you.

(3) This option will apply to all your apple acreage designated in your acreage report as grown for fresh apples and that meets the insurability requirements specified in the Apple Crop Insurance Provisions, except any acreage specifically excluded by the actuarial documents. Any acreage designated in your acreage report as grown for processing apples are not eligible for coverage under this option.

(4) In lieu of sections 12(c)(1)(iii) and (iv) and (2), the production to count for appraised and harvested production for a unit will include all fresh apple production in accordance with this option.

(5) If appraised or harvested fresh apple production is damaged by an insured cause of loss to the extent that 80 percent or more of the fresh apples do not grade U.S. Fancy or better, in accordance with applicable USDA Standards for Grades of Apples, the following adjustments will apply:

(i) Production to count with 21 through 40 percent of the fresh apples not grading U.S. Fancy or better will be reduced 2 percent for each full percent in excess of 20 percent.

(ii) Production to count with 41 through 50 percent of the fresh apples not grading U.S. Fancy or better will be reduced 40 percent plus an additional 3 percent for each full percent in excess of 40 percent.

(iii) Production to count with 51 percent through 64 percent of the fresh apples not grading U.S. Fancy or better will be reduced 70 percent plus an additional 2 percent for each full percent in excess of 50 percent.

(iv) Production to count with 65 percent or more of the fresh apples not grading U.S. Fancy or better will not be considered as production to count.

The following is an example of loss under the Quality Option Fresh Fruit Coverage: You have 100 percent share and designated 10 acres of fresh apples and 5 acres of processing apples in the unit on the acreage report, with a 600 bushels per acre guarantee for both fresh and processing apples and a price election of $9.10 per bushel for fresh apples and $4.76 per bushel for processing apples that graded U.S. No. 1 Processing or better. You are only able to harvest 5,000 bushels of fresh apples, and of those only 2,750 bushels of apples grade U.S. Fancy or better, and 1,000 bushels of processing apples. Your indemnity would be calculated as follows:

(1) 10 acres × 600 bushels = 6,000 bushels guarantee of fresh apples; 5 acres × 600 bushels = 3,000 bushels guarantee of processing apples;

(2) 6,000 bushels × $9.10 price election = $54,600.00 value of guarantee for fresh apples; 3,000 bushels × $4.76 price election = $14,280.00 value of guarantee for processing;

(3) $54,600.00 + $14,280.00 = $68,880.00 total value guarantee;

(4) 5,000 bushels of fresh apples would be adjusted as follows: 2,750 / 5000 = 55 percent; 5,000 × .45 (40 percent reduction, plus an additional 3 percent for each full percent in excess of 40 percent) = 2,250 bushels × $9.10 = $20,475.00 value of the fresh bushels; 1,000 bushels of processing apples × $4.76 price election = $4,760.00 value of production to count.

(5) $20,475.00 + $4,760.00 = $25,235.00 total value of production to count;

(6) $68,880.00 − $25,235.00 = $43,645.00 loss; and

(7) $43,645.00 × 100 percent share = $43,645.00 indemnity payment.

Signed in Washington, DC, on March 24, 2004.

**Ross J. Davidson, Jr.,**

*Manager, Federal Crop Insurance Corporation.*

[FR Doc. 04–6938 Filed 3–26–04; 8:45 am]

BILLING CODE 3410–08–P

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD09–04–001]**

**RIN 1625–AA00**

## Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary security zone for a portion of Lake Michigan in Sheboygan, WI for the Professional Golfers' Association (PGA) Championship Tour. This action is necessary to ensure the waterside security to protect the international high-profile participants and spectators during this event. This action is intended to restrict vessel traffic for a portion of Lake Michigan off of Sheboygan, WI.

**DATES:** Comments and related material must reach the Coast Guard on or before May 28, 2004.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Marine Safety Office (MSO) Milwaukee maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Marine Science Technician Chief McClintock, U.S. Coast Guard MSO Milwaukee, at (414) 747–7155.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

Establishing security zones by notice-and-comment rulemaking gives the public an opportunity to comment on the proposed zones. We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–04–001], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all

comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know that your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

This security zone is necessary to safeguard the PGA Championship Tour players and attendees from potential waterborne threats and hazards. Due to the high profile nature and extensive publicity associated with this event, the Captain of the Port (COTP) expects a significantly large number of spectators in confined areas adjacent to Lake Michigan. As such, the COTP is proposing to implement a security zone to ensure the safety and security of both participants and spectators in these areas beginning on August 9, 2004 and concluding on August 17, 2004. Security zone enforcement would occur daily between 7 a.m. and 8 p.m.

**Discussion of Proposed Rule**

The Coast Guard proposes to establish a security zone that would include all waters and adjacent shoreline encompassed by the following coordinates: starting at 43°49.845′ N, 087°43.079′ W; then east to 43°49.28′ N, 087°42.93′ W; then north to 43°52.591′ N, 087°43.426′ W; then going west to 43°52.05′ N, 087°43.33′ W; then following the shoreline back to point of origin. These coordinates are based upon North American Datum 1983 (NAD 83). This security zone would be enforced daily from 7 p.m. until 8 p.m. on August 9, 2004 until 8 p.m. August 17, 2004.

The Coast Guard would notify the public about this security zone, in advance, by way of the Ninth Coast Guard District Local Notice to Mariners, the Broadcast Notice to Mariners, and, for those who request it, from MSO Milwaukee, by facsimile (fax).

**Regulatory Evaluation**

This proposed rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This determination is based on the minimal time that vessels would be restricted from the zone.

**Small Entities**

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit, moor or anchor in a portion of the activated security zone.

This security zone would not have a significant economic impact on a substantial number of small entities for the following reasons: This rule would be in effect for only the 9 days of the event and vessel traffic can safely pass outside of the proposed security zone during the event.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact MSO Milwaukee (*see* **ADDRESSES**).

**Collection of Information**

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

**Federalism**

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

**Unfunded Mandates Reform Act**

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

**Taking of Private Property**

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

**Civil Justice Reform**

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

**Protection of Children**

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

**Indian Tribal Governments**

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a ''tribal implication'' under the Order.

**Energy Effects**

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation.

**List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. Add § 165.T09–001 to read as follows:

**§ 165.T09–001 Security Zone; Professional Golfer's Association Championship Tour, Sheboygan, WI; Lake Michigan.**

(a) *Location.* The following area is a security zone: All waters and adjacent shoreline encompassed by the following coordinates starting at 43°49.845′ N, 087°43.079′ W; then east to 43°49.28′ N, 087°42.93′ W; then north to 43°52.591′ N, 087°43.426′ W; then going west to 43°52.05′ N, 087°43.33′ W; then following the shoreline back to point of origin (NAD 83).

(b) *Enforcement period.* This section will be enforced daily between the hours of 7 a.m. and 8 p.m., from 7 a.m. on August 9, 2004, until 8 p.m. on August 17, 2004.

(c) *Regulations.* (1) Entry into or remaining in this zone is prohibited unless authorized by Captain of the Port Milwaukee.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (414) 747–7155 or on VHF channel 16 or VHF channel 21A to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his designated representative.

Dated: March 15, 2004.

**H.M. Hamilton,**

*Commander, U.S. Coast Guard, Captain of the Port Milwaukee.*

[FR Doc. 04–6741 Filed 3–26–04; 8:45 am]

BILLING CODE 4910–15–P

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Chapter I

**[OAR–2003–0214, FRL–7640–3]**

## Petition to Amend Fuel Economy Testing and Calculation Procedures; Request for Comments

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of petition for rulemaking.

**SUMMARY:** EPA has received a petition from Bluewater Network requesting rulemaking to ''revise the test procedures, calculation methods and/or correction factors employed in the calculations used to determine the fuel economy information relayed to consumers and policy makers so that they more accurately reflect the actual, real-world fuel economy that vehicles are achieving on the road.'' Bluewater Network contends that EPA's fuel economy estimates do not accurately reflect results achieved in actual on-road operation; more accurate estimates would benefit both consumers and those involved in setting national energy policy. Before acting on the petition, EPA would like to solicit information and comments from other interested parties.

**DATES:** In order to receive full consideration, comments should be submitted by July 27, 2004.

**ADDRESSES:** Comments may be submitted electronically, by mail, or through hand delivery/courier. Follow the detailed instructions as provided in the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** Holly Pugliese, 2000 Traverwood DR, Ann Arbor MI 48105. (734) 214–4288; *harrison.dan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*A. How Can I Get Copies Of Related Information ?*

EPA has established an official public docket for this action under Docket ID No. OAR–2003–0214. The official public docket is the collection of materials that is available for public viewing at the Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1744.

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the appropriate docket identification number.

Certain types of information will not be placed in the EPA Dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not

included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA's policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified above.

For public commenters, it is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing in EPA's electronic public docket as EPA receives them and without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. When EPA identifies a comment containing copyrighted material, EPA will provide a reference to that material in the version of the comment that is placed in EPA's electronic public docket. The entire printed comment, including the copyrighted material, will be available in the public docket.

Public comments submitted on computer disks that are mailed or delivered to the docket will be transferred to EPA's electronic public docket. Public comments that are mailed or delivered to the Docket will be scanned and placed in EPA's electronic public docket. Where practical, physical objects will be photographed, and the photograph will be placed in EPA's electronic public docket along with a brief description written by the docket staff.

*B. How and to Whom Do I Submit Comments?*

You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

1. *Electronically.* If you submit an electronic comment as prescribed below, EPA recommends that you include your name, mailing address, and an e-mail address or other contact information in the body of your comment. Also include this contact information on the outside of any disk or CD–ROM you submit, and in any cover letter accompanying the disk or CD–ROM. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. EPA's policy is that EPA will not edit your comment, and any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Your use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to EPA Dockets at *http://www.epa.gov/edocket,* and follow the online instructions for submitting comments. Once in the system, select ''search,'' and then key in Docket ID No. OAR–2003–0214. The system is an ''anonymous access'' system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

Comments may be sent by electronic mail (e-mail) to *a-and-r-docket@epamail.epa.gov,* Attention Docket ID No. OAR–2003–0214. In contrast to EPA's electronic public docket, EPA's e-mail system is not an ''anonymous access'' system. If you send an e-mail comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

You may submit comments on a disk or CD–ROM that you mail to the mailing address identified below. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW., Washington, DC 20460], Attention: Docket ID No. OAR–2003–0214.

3. *By Hand Delivery or Courier.* Deliver your comments to: Air and Radiation Docket in the EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC, Attention: Docket ID No. OAR–2003–0214. Such deliveries are only accepted during the Docket's normal hours of operation as identified above.

*C. How Should I Submit CBI to the Agency?*

Do not submit information that you consider to be CBI electronically through EPA's electronic public docket or by e-mail. You may claim information that you submit to EPA as CBI by marking any part or all of that information as CBI. If you submit CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket and EPA's electronic public docket. If you submit the copy that does not contain CBI on disk or CD–ROM, mark the outside of the disk or CD–ROM clearly that it does not contain CBI. Information not marked as CBI will be included in the public docket and EPA's electronic public docket without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at your estimate.
5. Provide specific examples to illustrate your concerns.
6. Offer alternatives.
7. Make sure to submit your comments by the comment period deadline identified.
8. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your response. It would also be helpful if you provided

the name, date, and **Federal Register** citation related to your comments.

## II. History of EPA's Fuel Economy Program

The Federal Government began regulating vehicle exhaust emissions in the late 1960's. At that time, fuel economy was not considered an area of concern. However, the fuel shortage crisis in 1973 placed an urgent focus on fuel efficiency, and created a new demand for accurate and comparable fuel economy information.

In evaluating how to accomplish this, it was determined that the data collected during EPA's vehicle emission test could be used to calculate a ''city'' fuel economy estimate. The same methods for calculating vehicle emission, involving determining the volume and composition of various components in the exhaust, could be used to calculate the quantity of fuel consumed. At the time of the 1973 fuel shortage crisis, the emission test data from 1974 models had already been collected by EPA. Thus, it was relatively simple to use that data to calculate the fuel economy for those vehicles and compile that information into the first ''Fuel Economy Guide''. Because the data was collected under tightly controlled laboratory conditions, it allowed for comparisons amongst the different vehicle models. Moreover, it was an efficient method for vehicle manufacturers, since a single test could serve two purposes—emission and fuel economy measurements.

The downside of using the data collected for regulation of exhaust emissions was that it encompassed only one type of driving: urban stop-and-go at lower average speeds. Higher speed highway driving was not simulated for the emissions test. EPA responded to this concern by establishing a separate ''highway'' driving test that simulated sustained moderate speed operation typical of an urban highway.

In 1975 Congress passed the Energy Policy and Conservation Act (EPCA), Public Law 94–163. EPCA established fuel economy labeling information requirements and Corporate Average Fuel Economy (CAFÉ) standards, and was based on EPA's voluntary program. It also codified the use of the—''highway'' driving cycle. For vehicle labeling, it required that EPA's fuel economy test results be posted on a label affixed to all new cars and light trucks, and that the label values for those vehicles be published in an annual consumer booklet, which is known as the Fuel Economy Guide. (Fuel Economy Guides for the present and past model years are available at *www.fueleconomy.gov;* the fuel economy estimates are also included in EPA's Green Vehicle Guide, *www.epa.gov/greenvehicles.*)

Shortly after the fuel economy labeling program was established, EPA began receiving consumer complaints that they were not achieving their ''city'' and ''highway'' fuel economy label values during actual on-road operation. EPA determined that the label values allowed relative comparisons from one vehicle to another but were less effective at estimating the actual mileage of in-use vehicles. This was due to the differences between the strictly controlled laboratory conditions and the real-world conditions that could impact individual experiences with fuel economy (*e.g.* extreme climate conditions, driving habits, lack of proper maintenance, higher driving speeds, severe traffic congestion, *etc.*). Many of these factors tend to lower fuel economy compared to the laboratory test conditions used by EPA when measuring vehicle fuel economy. In response to this concern, EPA evaluated the data available at the time on in-use fuel economy and established adjustment factors which reduced the ''city'' estimate by 10 percent and the ''highway'' estimate by 22 percent. (49 FR 13832, April 6, 1984). The number of consumer complaints declined significantly after the adjustment factors became effective. These adjusted results are currently used for the fuel economy values posted on vehicle labels and in the Fuel Economy Guide.

## III. Bluewater Network's Petition

The petition submitted to EPA from Bluewater Network, San Francisco CA, concerns the accuracy of fuel economy label values. Bluewater Network believes that despite the adjustments made to the city and highway fuel economy values, EPA's fuel economy label values still overstate what consumers actually achieve. Bluewater Network contends that the primary causes for this discrepancy are increased highway speeds, a higher proportion of urban driving and greater city traffic congestion which have occurred since EPA's procedures and adjustment factors were established. They have requested that EPA issue a rulemaking to revise its test procedures to more accurately reflect what the average consumer will achieve.

The Bluewater Network petition was addressed to both EPA and the Department of Transportation (DOT). Both EPA and the DOT's National Highway Traffic Safety Administration (NHTSA) have specific statutorily defined roles regarding vehicle fuel economy. (*See* Energy Policy and Conservation Act, 49 U.S.C. 32901 *et seq.*) By this Notice, EPA is soliciting comment on the petition, specifically on the accuracy of fuel economy label values.

Bluewater Network's complete petition is available from their Web site, the docket or from the individual listed under **FOR FURTHER INFORMATION CONTACT** above.

## Request for Comments

EPA is soliciting comments on Bluewater Network's petition regarding fuel economy information in order to assist EPA in determining whether to grant or deny the petition. Comments from all interested parties are requested concerning EPA regulations implementing the fuel economy program as discussed in the petition and other related fuel economy information issues.

EPA is specifically requesting comments on whether current national driving patterns have changed in a manner that directionally impacts fuel economy. We also request the submission of any recent data that compares in-use fuel economy with the EPA city and highway label values, including data from vehicles operated on gasoline, diesel, and alternative fuels (such as CNG and LPG), and hybrid electric vehicles. Diesel and alternative fuel passenger cars and light trucks were not common in the early 1980's and therefore were not represented in the data used to determine the existing adjustment factors. Similarly, hybrid vehicles did not exist at that time. Also requested is information and/or data about how any specific conditions that may have an impact on fuel economy, such as air conditioning usage, road conditions, driving patterns, driving habits, etc., may have changed over time. Finally, we request information on why any changes in those conditions could have an impact on fuel economy. Please send all comments to the address indicated above under **SUPPLEMENTARY INFORMATION** above.

Dated: March 17, 2004.

**Robert Brenner,**

*Acting Assistant Administrator for Air and Radiation.*

[FR Doc. 04–6827 Filed 3–26–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[FL–90–200322(b); FRL–7640–5]**

### Approval and Promulgation of Implementation Plans; Florida: Tampa Bay Area Maintenance Plan Update

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The EPA is proposing to approve the State Implementation Plan (SIP) revision submitted by the Florida Department of Environmental Protection on December 20, 2002. This SIP revision satisfies the requirement of the Clean Air Act (CAA) as amended in 1990 for the second 10-year update for the Tampa Bay area (Hillsborough and Pinellas Counties) 1-hour ozone maintenance plan. For transportation purposes, EPA is also finalizing its adequacy determination of the new Motor Vehicle Emissions Budgets (MVEBs) for the year 2015. EPA has determined that the MVEBs for the year 2015 contained in this SIP revision are adequate for transportation conformity purposes. In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

**DATES:** Written comments must be received on or before April 28, 2004.

**ADDRESSES:** Comments may be submitted by mail to: Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Comments may also be submitted electronically, or through hand delivery/courier. Please follow the detailed instructions described in the direct final rule, **SUPPLEMENTARY INFORMATION** (sections V. B.1. through 3.) which is published in the Rules Section of this **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Sean Lakeman, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. The telephone number is (404) 562–90343. Mr. Lakeman can also be reached via electronic mail at *lakeman.sean@epa.gov* or Lynorae Benjamin, Air Quality Modeling & Transportation Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Ms. Benjamin's phone number is 404–562–9040. She can be reached via electronic mail at *benjamin.lynorae@epa.gov.*

**SUPPLEMENTARY INFORMATION:** For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: March 17, 2004.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 04–6825 Filed 3–26–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 123

**[FRL–7641–1]**

### State Program Requirements; Revision of the Approved National Pollutant Discharge Elimination System (NPDES) Program in North Dakota

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule; notice of application and public comment period.

**SUMMARY:** The State of North Dakota has submitted an application to EPA to revise the existing North Dakota Pollutant Discharge Elimination System (NDPDES) program to include administration and enforcement of the Industrial Pretreatment Program. According to the State's application dated November 12, 2003, this program would be administered by the North Dakota Department of Health (NDDOH), Division of Water Quality Department.

The application from North Dakota is complete and is available for viewing and copying. The EPA has reviewed the State's request for delegation for completeness and adequacy and has found that the application meets federal equivalency regulations.

**DATES:** Written comments on this proposed rule received on or before April 28, 2004, will be considered before issuing an approved final rule. Comments postmarked after this date will not be considered.

**ADDRESSES:** Anyone can view and copy North Dakota's application for revision from 8 a.m. until 5 p.m., Monday through Friday, excluding holidays, at the North Dakota Department of Health, 1200 Missouri Avenue, Bismarck, North Dakota or at the EPA Regional Offices located at 999 18th Street, Suite 300, Denver, Colorado. Requests for copies should be addressed to Gary Bracht, North Dakota Department of Health at the above address or at telephone number (701) 328–5210. (There may be a charge for copies.) Electronic comments are encouraged and should be submitted to the e-mail address of *harris.jennifer@epa.gov* or send written comments to Jennifer Harris, U.S. EPA Region 8, 8P–W, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Harris, Water Program (8P–W), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; telephone number (303) 312–6254, email address *harris.jennifer@epa.gov.*

*I. Background:* Under section 402 of the Clean Water Act (CWA), 33 U.S.C. 1342, the EPA may issue permits allowing discharges of pollutants from point sources into waters of the United States, subject to various requirements of the CWA. These permits are known as National Pollutant Discharge Elimination System (NPDES) permits. Section 402(b) of the CWA, 33 U.S.C. 1342(b), allows states to apply to the EPA for authorization to administer their own NPDES permit programs. In 1975, the EPA approved North Dakota's application to administer the North Dakota Pollutant Discharge Elimination System (NDPDES) program.

Section 402(b) of the CWA, 33 U.S.C. 1345(c), authorizes any state desiring to administer its own industrial pretreatment program to do so in accordance with section 402 (b)(8) and (9) of the CWA, following the procedures and requirements set out in 40 CFR 403.10. On November 12, 2003, North Dakota submitted a letter to the EPA requesting that the State's original NPDES authorization be amended to include an Industrial Pretreatment program described in an accompanying application dated November 12, 2003.

*II. Public Comments:* A public comment period will be conducted for

30 days and noticed in a **Federal Register** notice. Commenters may request a public hearing. A hearing will be held if there is significant public interest based on requests received. A request should be made in writing within the comment period and sent to Jennifer Harris, Water Program (8P–W), U.S. EPA, Region 8, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; telephone number (303) 312–6254, email address *harris.jennifer@epa.gov.* A copy of the notice will be published in the following newspapers in North Dakota: Bismarck Tribune, Bismarck, the Herald in Grand Forks, and the Fargo Forum in Fargo, and in individual mailings to persons known to be interested in such matters.

*III. Threatened and Endangered Species:* On February 25, 2004, following discussions with representatives of the EPA, the Field Supervisor of the North Dakota Field Office of the United States Fish and Wildlife Service concurred with the EPA's determination that approving North Dakota's Industrial Pretreatment program application was unlikely either to jeopardize the continued existence of any species listed as threatened or endangered under the Endangered Species Act, 16 U.S.C. 1531 *et seq.*, or to result in the adverse modification of designated critical habitat for any such species.

*IV. Historic Preservation:* On February 3, 2004, the North Dakota State Historical Society provided the EPA with a written determination that the addition of the Industrial Pretreatement program to the NDPDES program would have no effect on historic properties in North Dakota.

*V. Indian Country:* North Dakota is not authorized to carry out its Industrial Pretreatment program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian reservations located within the State of North Dakota:

A. Fort Totten Indian Reservation,

B. Standing Rock Indian Reservation,

C. Fort Berthold Indian Reservation, and

D. Turtle Mountain Indian Reservation,

2. Any land held in trust by the U.S. for an Indian Tribe, and

3. Any other land which is ''Indian country'' within the meaning of 18 U.S.C. 1151.

*VI. Administrative Requirements:* The EPA has long considered a determination to approve or deny a State NPDES program submission to constitute an adjudication, not a rulemaking. This is because an ''approval,'' as that term is used in the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, constitutes a ''license,'' which, in turn, is the product of an ''adjudication.'' Therefore, the requirements for rules that are established by the statutes and Executive Orders mentioned below would not apply to this action. Even if this action were considered a rulemaking, the statutes and Executive Orders discussed below would not apply for the following reasons.

A. *Paperwork Reduction Act:* The EPA has determined that there is no need for an Information Collection Request under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, because this action would not impose any new federal reporting or recordkeeping requirements. Because the State of North Dakota has adopted the EPA's Industrial Pretreatment regulations at 40 CFR 403.10(f)(1), the matters subject to reporting and recordkeeping requirements will remain the same after the EPA's approval of North Dakota's program.

B. *Regulatory Flexibility Act:* The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

As Regional Administrator for EPA Region 8, I hereby certify, pursuant to 5 U.S.C. 605(b), that this action will not have a significant economic impact on a substantial number of small entities.

C. *Unfunded Mandates Reform Act:* Title II of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA is generally required to prepare a written statement, including a cost-benefit analysis, for proposed and final rules with federal mandates that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. The EPA's approval of North Dakota's program is not a federal mandate because there is no federal mandate for states to establish industrial pretreatment programs.

D. *National Technology Transfer and Advancement Act:* 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), directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards, *e.g.*, material specifications, test methods, sampling procedures, and business practices, that are developed or adopted by voluntary consensus standards bodies. This action does not involve the use of technical standards subject to the NTTAA.

E. *Executive Order 12866:* Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether its regulatory actions are ''significant'' and therefore subject to review by the Office of Management and Budget. The EPA has determined that this approval action is not ''significant'' for purposes of Executive Order 12866 because, as mentioned above, North Dakota has adopted the EPA's industrial pretreatment program regulations.

F. *Executive Order 12898—Environmental Justice:* Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' dated February 11, 1994, focuses federal attention on the environmental and human health conditions of minority populations and low-income populations with the goal of achieving environmental protection for all communities. Today's action will not diminish the health protection to minority and low-income populations because, as mentioned above, it will not impose any different requirements than those already in effect for industrial pretreatment facilities.

G. *Executive Order 13045—Protection of Children:* Executive Order 13045, dated April 23, 1997 (62 FR 19885), applies to any rule that (1) is determined to be ''economically significant'' as defined in Executive Order 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and it does not concern any additional health or safety risks to children.

H. *Executive Order 13175—Consultation with Tribes:* Under Executive Order 13175, no federal

agency may issue a regulation that has tribal implications, that imposes substantial direct compliance costs on Indian tribal governments, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or the agency consults with tribal officials early in the process of developing the proposed regulation. This action will not significantly affect any Indian tribes. As indicated above, North Dakota is not authorized to implement its pretreatment program in Indian country. The EPA will continue to administer the existing Industrial Pretreatment program in Indian country in North Dakota.

I. *Executive Order 13132—Federalism:* Executive Order 13132, entitled ''Federalism,'' dated August 10, 1999 (64 FR 43255), requires the 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.'' The phrase ''policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on States, on the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government.'' This action does not have federalism implications. It will not have any substantial direct effects on the States, on the relationship between States and the national government, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. It will merely put in place a State regulatory program that is identical to the existing federal program.

J. *Executive Order 13211—Energy Effects:* Because it is not a ''significant regulatory action'' under Executive Order 12866, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001).

Dated: March 19, 2004.

**Robert E. Roberts,**

*Regional Administrator, Region VIII.*

[FR Doc. 04–6928 Filed 3–26–04; 8:45 am]

BILLING CODE 6560–50–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Chapter I

**[WC Docket No. 04–36; FCC 04–28]**

### Review of Regulatory Requirements for IP-Enabled Services

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document seeks comment on issues relating to services and applications utilizing Internet Protocol (IP), collectively referred to here as ''IP-enabled services.'' These services include, but are not limited to, voice over IP (VoIP) services, other communications capabilities utilizing the Internet Protocol, software-based applications that facilitate use of those services, and future services using IP expected to emerge in the market. As customers begin to substitute IP-enabled services for traditional communications, the Commission seeks comment as to the rate and extent of that substitution. Further, comments are requested on IP-enabled services presently available, expected future development of such services, how to distinguish among such services, and what regulatory requirements, if any, should apply to IP-enabled services.

This NPRM seeks comment on ways in which the Commission might categorize IP-enabled services to ensure that any regulations applied are limited to those services and/or applications for which they are most appropriate. In particular, comments are requested on whether the services comprising each category constitute ''telecommunications services'' or ''information services'' under the definitions set forth in the Act. Noting the importance of these legal classifications, as well as the Commission's statutory forbearance authority and Title 1 ancillary jurisdiction, this NPRM describes several central regulatory requirements and asks which, if any, should apply to each category of IP-enabled service. These regulatory requirements include, among others, those addressing disability accessibility, the 911 and E911 systems, access charges, universal service, consumer protection, and traditional common carrier obligations.

**DATES:** Comments are due on or before May 28, 2004, and Reply Comments are due on or before June 28, 2004.

**ADDRESSES:** Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. *See* **SUPPLEMENTARY INFORMATION** for further filing instructions.

**FOR FURTHER INFORMATION CONTACT:** Russell Hanser, Senior Attorney, Competition Policy Division, Wireline Competition Bureau, at (202) 418–0832, or at *Russell.Hanser@fcc.gov.*

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Notice of Proposed Rulemaking (NPRM)* in WC Docket No. 04–36, FCC 04–28, adopted February 12, 2004, and released March 10, 2004. The complete text of this NPRM is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail at *qualexint@aol.com.* It is also available on the Commission's Web site at *http://www.fcc.gov.*

Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. All filings should refer to WC Docket No. 04–36. Comments filed through ECFS can be sent as an electronic file via the Internet at *http://www.fcc.gov/e-file/ecfs.html.* Only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, postal service mailing address, and the applicable docket number, which in this instance is WC Docket No. 04–36. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfshelp@fcc.gov,* and should include the following words in the regarding line of the message: ''get form<your e-mail address>.'' A sample form and directions will be sent in reply.

Parties who choose to file by paper must file an original and four copies of each filing. Parties filing by paper must also send five (5) courtesy copies to the attention of Janice M. Myles, Wireline Competition Bureau, Competition Policy Division, 445 12th Street, SW., Suite 5–C327, Washington, DC 20554, or via e-mail *janice.myles@fcc.gov.* Paper filings and courtesy copies must be delivered in the following manner. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience

delays in receiving U.S. Postal Service mail).

The Commission's contractor, Natek, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. This facility is the only location where hand-delivered or messenger-delivered paper filings or courtesy copies for the Commission's Secretary and Commission staff will be accepted. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

Each comment and reply comment must include a short and concise summary of the substantive arguments raised in the pleading. Comments and reply comments must also comply with section 1.48 and all other applicable sections of the Commission's rules. We direct all interested parties to include the name of the filing party and the date of the filing on each page of their comments and reply comments. All parties are encouraged to utilize a table of contents, regardless of the length of their submission.

**Synopsis of the Notice of Proposed Rulemaking**

1. *Background.* IP is a protocol used to transmit data in a packetized format. Widespread common usage of IP-based applications has facilitated the proliferation of a great variety of services, including the world wide web, e-mail, file transfer, instant messaging, and virtual private networks, each of which can integrate audio, video and data functionality to provide capabilities beyond those traditionally available via the public circuit-switched network. Moreover, IP-enabled services provide consumers with opportunities for customization beyond those offered by circuit-switched voice services, including virtual telephone numbers, unified messaging, and call management. Finally, these services generally may transit wireline, wireless, cable, or other broadband facilities, promoting inter-platform competition.

2. Several carriers transport voice calls over their backbone IP networks, and recently consumers—in both the residential and enterprise markets—have more widely begun to substitute IP-enabled services and applications for traditional circuit-switched network voice calls. Cable providers and traditional wireline carriers have deployed or announced plans to deploy IP-enabled voice services to consumers. Consumers have also begun to use peer-to-peer IP-enabled voice applications to facilitate direct communication over their existing broadband facilities.

3. The prospect that IP-enabled services might come to be used as substitutes for the public circuit-switched network requires that the Commission examine the extent, if any, to which regulations currently applied to circuit-switched telephony should also be applied to any class of IP-enabled service. However, the Commission's examination must also recognize that these IP-enabled services differ in critical ways from traditional telephony, and that these differences may have important consequences for the Commission's decisions.

4. *Categorizing IP Enabled Services.* The Commission seeks comment on how, if at all, it should distinguish among IP-enabled services, and requests comment on several potential grounds for categorization, including (among others) the degree to which a service is functionally equivalent to traditional telephony; the degree to which a service is viewed as a substitute for traditional telephony; and whether a service interconnects with the PSTN and/or uses traditional telephone numbers. The Commission also asks commenters to propose any appropriate ground for categorization not specified in the NPRM.

5. *Jurisdictional Considerations.* The NPRM seeks comment on the jurisdictional nature of IP-enabled services. The Commission recently concluded that Pulver.com's Free World Dialup (FWD) service is an unregulated information service subject to Federal jurisdiction, and that it would in any event be inappropriate to apply the Commission's traditional end-to-end jurisdictional analysis to FWD. The Commission seeks comment on whether these conclusions also apply to other classes of IP-enabled services. Additionally, comment is sought on other grounds for Federal jurisdiction over IP-enabled services. Finally, the NPRM seeks comment on whether there is any ground for asserting exclusive Federal jurisdiction over all or some IP-enabled services, including but not limited to the Supremacy Clause or Commerce Clause of the U.S. Constitution, section 253 of the Communications Act, or section 332 of the Communications Act.

6. *Appropriate Legal and Regulatory Framework.* The NPRM seeks comment on which IP-enabled services (if any) should be classified as telecommunications services, which (if any) should be classified as information services, and the effect, if any, of recent judicial decisions on the Commission's discretion to make such classifications. Comments are also requested regarding how the Commission should achieve important Federal policy goals, including whether it should use its ancillary jurisdiction for those IP-enabled services classified as information services or its forbearance authority for those services classified as telecommunications services. The Commission encourages specific, pragmatic proposals that will account for the technical, economic and other features that differentiate IP-enabled services from other services. Finally, the Commission seeks comment on the relevance of certain existing rules in the context of IP-enabled services and on what constraints there may be on the Commission's authority to revisit its existing interpretation of the statutory terms ''telecommunications service'' and ''information service.''

7. *Specific Regulatory Requirements:* 911/E911. The Commission seeks comment on the current capabilities of VoIP services to deliver traditional callback and location information. Additionally, comments are requested on means by which IP-enabled services can be used to improve current 911 and E911 services. Finally, the Commission seeks comment on whether any existing IP-enabled services satisfy the criteria established by the Commission to determine whether a service should be subject to some form of 911/E911 regulation and whether those criteria form the appropriate bases for determining whether IP-enabled services should be subject to those requirements.

8. *Specific Regulatory Requirements: Disability Access.* The NPRM invites comment regarding how the Act's requirements concerning the accessibility of communications equipment and services to the disabled should be applied in the context of IP-enabled services. Commenters are invited to refresh the record compiled in the context of a previous Notice of Inquiry concerning the applicability of section 255 to IP telephony. Finally, the NPRM seeks comment regarding how migration to IP-enabled services will affect the Commission's statutory

obligation to ensure that interstate and intrastate telecommunications relay services are available to hearing-impaired and speech-impaired individuals.

9. *Specific Regulatory Requirements: Carrier Compensation*. Comments are invited on the extent to which access charges should apply to VoIP or other IP-enabled services.

10. *Specific Regulatory Requirements: Universal Service*. The NPRM seeks comment on how the regulatory classification of IP-enabled services, including VoIP, would affect the Commission's ability to fund universal service. Several related issues have been raised previously in other Commission proceedings, and parties are encouraged to incorporate into this docket any relevant prior filings. In this proceeding, commenters are invited to address obligations and entitlements of both facilities-based and non-facilities-based providers of IP-enabled services.

11. *Specific Regulatory Requirements: Title III*. To the extent that providers of IP-enabled services use wireless technology to deliver such services, they may fall within the ambit of Title III of the Act, which provides the structure for the Commission's regulation of spectrum-based services, including broadcasting and all other services that use radio waves. Section 332 of the Act provides a specific framework for Commercial Mobile Radio Service (CMRS) providers. Given the Commission's previous history of forbearance from application of economic regulation to CMRS providers, the NPRM seeks comment on the impact of Section 332 on IP-enabled services offered by CMRS providers, and what other effect Title III may have on the provision or regulation of IP-enabled services provided in whole or in part over a wireless platform. In addition, comments are requested as to whether the Commission should distinguish among wireless providers of IP-enabled services based on the nature of their spectrum use (*e.g.* fixed mobile, licensed/unlicensed).

12. *Specific Regulatory Requirements: Title VI*. Often, IP-enabled services are provided over cable facilities. The Commission seeks comment on what impact, if any, the provision of broadband over cable plant should have on its treatment of IP-enabled services, as well as any effect that Title VI of the Act might have on any potential regulation of cable-based IP-enabled services. If the Commission classifies IP-enabled services as telecommunications services, should it forbear from applying certain Title II provisions to cable providers offering IP-enabled services, and what would be the basis for such forbearance? The NPRM also asks whether any class of IP-enabled service should be construed to be a ''cable service'' under the Act.

13. *Specific Regulatory Requirements: Other Requirements*. The Commission also seeks comment on a number of other provisions in the Act, including consumer protection requirements and economic regulations set forth in Title II of the Act and in previous Commission orders.

14. *Other Considerations*. The NPRM invites comment on the implications of decisions in this docket for rural carriers, which generally face high operating expenses and equipment costs and rely on intrastate access charges for revenues. Comments are also requested on potential implications for international issues including settlement rates, the ability of consumers to use their IP CPE overseas to send and receive calls, and foreign policy or trade concerns. Additionally, comments are invited regarding the effect of IP-enabled services on numbering resources. The NPRM also requests comment regarding other policy objectives, including the interest in maintaining an open network architecture. Finally, the NPRM seeks comment regarding the availability of enforcement mechanisms to address disputes between IP-enabled service providers and their customers and between or among two or more providers.

**Initial Regulatory Flexibility Analysis**

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared the present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities that might result from this NPRM. *See* 5 U.S.C. 603, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, 110 Stat. 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided above. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

*1. Need for, and Objectives of, the Proposed Rules*

This NPRM examines issues relating to services and applications making use of Internet Protocol (IP), including but not limited to voice over IP (VoIP) services (collectively, ''IP-enabled services''). IP-enabled ''services'' could include the digital communications capabilities of increasingly higher speeds, which use a number of transmission network technologies, and which generally have in common the use of the Internet Protocol. Some of these may be highly managed to support specific communications functions. IP-enabled ''applications'' could include capabilities based in higher-level software that can be invoked by the customer or on the customer's behalf to provide functions that make use of communications services. The NPRM states that the Commission must examine what its role should be in this new environment of increased consumer choice and power, and asks whether it can best meet its role of safeguarding the public interest by continuing its established policy of minimal regulation of the Internet and the services provided over it.

To assist the Commission in its analysis of how properly to treat IP-enabled services, the NPRM seeks comment on ways in which the Commission might distinguish among such services, and on what regulatory treatment, if any, would be appropriate for different classes of service. The NPRM then requests comment on whether the services comprising each category constitute ''telecommunications services'' or ''information services'' under the definitions set forth in the Act. Finally, recognizing the central importance of these legal classifications but also highlighting the Commission's statutory forbearance authority and Title I ancillary jurisdiction, the NPRM describes a number of central regulatory requirements (including, for example, those relating to access charges, universal service, the 911 and E911 systems, and disability accessibility), and asks which, if any, should apply to each category of IP-enabled services.

*2. Legal Basis*

The legal basis for any action that may be taken pursuant to this NPRM is contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 154(j), and sections 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216, of the Commission's rules, 47 CFR 1.1, 1.48, 1.411, 1.412, 1.415, 1.419, and 1.1200–1.1216.

*3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules May 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 proposed rules. 5 U.S.C. 603(b)(3), 604(a)(3).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. 5 U.S.C. 601(3) A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. This present NPRM might, in theory, reach a variety of industries; out of an abundance of caution, we have attempted to cast a wide net in describing categories of potentially affected small entities. We would appreciate any comment on the extent to which the various entities might be affected by our action.

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

*Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.

*Small Governmental Jurisdictions.* The term ''small governmental jurisdiction'' is defined as ''governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' As of 1997, there were approximately 87,453 governmental jurisdictions in the United States. This number includes 39,044 county governments, municipalities, and townships, of which 37,546 (approximately 96.2%) have populations of fewer than 50,000, and of which 1,498 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 84,098 or fewer.

a. Telecommunications Service Entities

(i) *Wireline Carriers and Service Providers.* The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have nevertheless included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

*Incumbent Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a small business size standard specifically for incumbent local exchange services. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), 1,032 incumbent LECs would be deemed small.

*Competitive Local Exchange Carriers (CLECs), Competitive Access Providers (CAPs), ''Shared-Tenant Service Providers,'' and ''Other Local Service Providers.''* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), 458 CLECs or CAPs would be deemed small businesses. In addition, 16 carriers have reported that they are ''Shared-Tenant Service Providers,'' and all 16 are estimated to have 1,500 or fewer employees.

*Local Resellers.* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 127 local resellers would be deemed small businesses.

*Toll Resellers.* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 590 toll resellers would be deemed small businesses.

*Payphone Service Providers (PSPs).* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 757 PSPs would be deemed to be small businesses.

*Interexchange Carriers (IXCs).* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 223 interexchange carriers would be deemed to be small businesses.

*Operator Service Providers (OSPs).* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 22 OSP would be deemed small businesses.

*Prepaid Calling Card Providers.* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), an estimated 36 prepaid calling card providers would be deemed small businesses.

*800 and 800-Like Service Subscribers.* Under the SBA's Wired Telecommunications Carriers standard for small businesses (1,500 or fewer employees), we estimate that there are 7,692,955 or fewer small entity 800 subscribers; 7,706,393 or fewer small entity 888 subscribers; and 1,946,538 or fewer small entity 877 subscribers.

(ii) International Service Providers. The appropriate size standards under SBA rules are for the two broad categories of Satellite Telecommunications and Other Telecommunications. Under both categories, such a business is small if it has $12.5 million or less in average annual receipts. For the first category of Satellite Telecommunications, Census Bureau data for 1997 show that there were a total of 324 firms that operated for the entire year. Census data for 1997 shows that 273 Satellite Telecommunications firms had annual receipts of under $10 million. The second category—Other Telecommunications—includes ''establishments primarily engaged in * * * providing satellite terminal stations and associated facilities operationally connected with one or more terrestrial communications systems and capable of transmitting telecommunications to or receiving telecommunications from satellite systems.'' According to Census Bureau data for 1997, 424 firms had annual receipts of $5 million to $9,999,999.

(iii) Wireless Telecommunications Service Providers. Wireless Service Providers. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of ''Paging'' and ''Cellular and Other Wireless Telecommunications.'' Under both SBA categories, a wireless business is small if it has 1,500 or fewer employees. Census Bureau data for 1997 show that 1,303 paging firms had employment of 999 or fewer employees, and an additional 17 paging firms had employment of 1,000 employees or more. For the census category Cellular and Other Wireless Telecommunications, Census Bureau data for 1997 show that 965 firms had employment of 999 or fewer employees, and an additional 12 firms had employment of 1,000 employees or more.

*Cellular Licensees.* According to the most recent Commission data, 719 carriers reported that they were engaged in the provision of cellular service, Personal Communications Service (PCS), or Specialized Mobile Radio

(SMR) Telephony services, which are placed together in the data. Under the SBA standard that businesses with 1500 or fewer employees are deemed small, we have estimated that 294 of these are small, under the SBA's small business size standard.

*Common Carrier Paging.* For the census category of Paging, Census Bureau data for 1997 show that 1,303 firms had employment of 999 or fewer employees, and an additional 17 firms had employment of 1,000 employees or more. Under the SBA's small business size standard, we estimate that the majority of these businesses are small.

*Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission established small business size standards for the wireless communications services (WCS) auction. A ''small business'' is an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' is an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these small business size standards. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as ''very small business'' entities, and one that qualified as a ''small business'' entity.

*Wireless Telephony.* Wireless telephony includes cellular, personal communications services (PCS), and specialized mobile radio (SMR) telephony carriers. Under the SBA's small business size standard, we estimate that 294 wireless telephony carriers are small.

*Broadband Personal Communications Service.* The broadband Personal Communications Service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years.'' These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved small business size standards, bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. On March 23, 1999, the Commission re-auctioned 347 C, D, E, and F Block licenses. There were 48 small business winning bidders. On January 26, 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction No. 35, and 29 successful bidders qualified as ''small'' or ''very small'' businesses.

*Narrowband Personal Communications Services.* For purposes of two past auctions of narrowband personal communications services (PCS) licenses, ''small businesses'' were defined as entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission has awarded a total of 41 licenses, out of which 11 were obtained by small businesses. To ensure meaningful participation of small business entities in future auctions, the Commission has adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order.* A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards.

*220 MHz Radio Service—Phase I Licensees.* According to the Census Bureau data for 1997, only 12 wireless firms out of a total of 1,238 such firms that operated for the entire year, had 1,000 or more employees. Consequently, under the SBA's small business standard, we estimate that a very small minority of such firms are small.

*220 MHz Radio Service—Phase II Licensees.* Phase II 220 MHz service is a new service, and is subject to spectrum auctions. For purposes of the auctions, we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not exceed $3 million for the preceding three years. The SBA has approved these small business size standards. After two auctions of these Phase II licenses, fourteen winning companies that claimed small business status won 158 licenses.

*800 MHz and 900 MHz Specialized Mobile Radio Licenses.* The Commission awards ''small entity'' and ''very small entity'' bidding credits in auctions for Specialized Mobile Radio (SMR) geographic area licenses in the 800 MHz and 900 MHz bands to firms that had revenues of no more than $15 million in each of the three previous calendar years, or that had revenues of no more than $3 million in each of the previous calendar years, respectively. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz SMR bands. There were 60 winning bidders that qualified as small or very small entities in the 900 MHz SMR auctions. Of the 1,020 licenses won in the 900 MHz auction, bidders qualifying as small or very small entities won 263 licenses. In the 800 MHz auction, 38 of the 524 licenses won were won by small and very small entities. Consequently, the Commission estimates that there are 301 or fewer small entity SMR licensees in the 800 MHz and 900 MHz bands.

*700 MHz Guard Band Licensees.* In the 700 MHz Guard Band Order, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Five of the winning bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. One winning bidder was a small business and won a total of two licenses.

*Rural Radiotelephone Service.* Under the SBA's small business standard, the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service.

*Air-Ground Radiotelephone Service.* There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and under the SBA's small business standard, we estimate that almost all of them qualify as small.

*Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. Under the SBA's small business standard, we estimate that there are up to approximately 712,000 licensees that are held by small businesses or individuals. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million dollars. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards.

*Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard.

*Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard.

*39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses.

*Multipoint Distribution Service, Multichannel Multipoint Distribution Service, and ITFS.* Multichannel Multipoint Distribution Service (MMDS) systems, often referred to as ''wireless cable,'' transmit video programming to subscribers using the microwave frequencies of the Multipoint Distribution Service (MDS) and Instructional Television Fixed Service (ITFS). In connection with the 1996 MDS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of less than $40 million in the previous three calendar years. The MDS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (BTAs). Of the 67 auction winners, 61 met the definition of a small business. MDS also includes licensees of stations authorized prior to the auction. In addition, the SBA has developed a small business size standard for Cable and Other Program Distribution, which includes all such companies generating $12.5 million or less in annual receipts. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million. This SBA small business size standard also appears applicable to ITFS. There are presently 2,032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we tentatively conclude that at least 1,932 licensees are small businesses.

*Local Multipoint Distribution Service.* Local Multipoint Distribution Service (LMDS) is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 1,030 Local Multipoint Distribution Service (LMDS) licenses began on February 18, 1998 and closed on March 25, 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. On March 27, 1999, the Commission re-auctioned 161 licenses; there were 40 winning bidders. Based on this information, we conclude that the number of small LMDS licenses consists of the 93 winning bidders in the first auction and the 40 winning bidders in the re-auction, for a total of 133 small entity LMDS providers.

*218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years.

*24 GHz—Incumbent Licensees.* According to Census Bureau data for 1997, there were 977 licensees that operated for the entire year. Of this total, 965 firms employed 999 or fewer employees, and an additional 12 firms employed 1,000 employees or more. Thus, under the SBA's standard for small businesses, the great majority of firms can be considered small.

*24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the small business size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size

standards. These size standards will apply to any future auctions, if held.

b. Cable and OVS Operators

*Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating $12.5 million or less in revenue annually. According to Census Bureau data for 1997, there were a total of 1,311 firms in this category that had operated for the entire year. Of this total, 1,180 firms had annual receipts of under $10 million and an additional 52 firms had receipts of $10 million or more but less than $25 million.

*Cable System Operators (Rate Regulation Standard).* Under the Commission's rules, a ''small cable company'' is one serving fewer than 400,000 subscribers nationwide. The most recent estimates indicate that there were 1,439 cable operators who qualified as small cable system operators at the end of 1995.

*Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

*Open Video Services.* Open Video Service (OVS) systems provide subscription services. The SBA has created a small business size standard for Cable and Other Program Distribution. This standard provides that a small entity is one with $12.5 million or less in annual receipts. The Commission estimates that up to 24 OVS operators might qualify as small businesses that may be affected by the rules and policies adopted herein.

c. Internet Service Providers

*Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs ''provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.'' Under the SBA size standard, such a business is small if it has average annual receipts of $21 million or less. According to Census Bureau data for 1997, there were 2,751 firms in this category that operated for the entire year. Of these, 2,659 firms had annual receipts of under $10 million, and an additional 67 firms had receipts of between $10 million and $24, 999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

d. Other Internet-Related Entities

*Web Search Portals.* We note that, in this NPRM, we have described activities such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the census bureau has identified firms that ''operate web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format. Web search portals often provide additional Internet services, such as e-mail, connections to other web sites, auctions, news, and other limited content, and serve as a home base for Internet users.'' The SBA has developed a small business size standard for this category; that size standard is $6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $21 million or less in average annual receipts. According to Census Bureau data for 1997, there were 3,700 firms in this category that operated for the entire year. Of these, 3,477 had annual receipts of under $10 million, and an additional 108 firms had receipts of between $10 million and $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*All Other Information Services.* ''This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).'' We note that, in this NPRM, we have described activities such as e-mail, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP–enabled services. The SBA has developed a small business size standard for this category; that size standard is $6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year. Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*Internet Publishing and Broadcasting.* ''This industry comprises establishments engaged in publishing and/or broadcasting content on the Internet exclusively. These establishments do not provide traditional (non–Internet) versions of the content that they publish or broadcast.'' The SBA has developed a small business size standard for this new (2002) census category; that size standard is 500 or fewer employees. To assess the prevalence of small entities in this category, we will use 1997 Census Bureau data for a relevant, now-superseded census category, ''All Other Information Services.'' The SBA small business size standard for that prior category was $6 million or less in average annual receipts. According to Census Bureau data for 1997, there were 195 firms in the prior category that operated for the entire year. Of these, 172 had annual receipts of under $5 million, and an additional nine firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*Software Publishers.* These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of

specific users. The SBA has developed a small business size standard of $21 million or less in average annual receipts for all of the following pertinent categories: Software Publishers, Custom Computer Programming Services, and Other Computer Related Services. For Software Publishers, Census Bureau data for 1997 indicate that there were 8,188 firms in the category that operated for the entire year. Of these, 7,633 had annual receipts under $10 million, and an additional 289 firms had receipts of between $10 million and $24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 19,334 firms that operated for the entire year. Of these, 18,786 had annual receipts of under $10 million, and an additional 352 firms had receipts of between $10 million and $24,999,999. For providers of Other Computer Related Services, the Census Bureau data indicate that there were 5,524 firms that operated for the entire year. Of these, 5,484 had annual receipts of under $10 million, and an additional 28 firms had receipts of between $10 million and $24,999,999.

*Equipment Manufacturers.* In this NPRM, we invite comment on whether the disability access provisions of sections 255 and 252(a)(2) of the Act, as well as the Commission's Rules implementing these statutes in the *Disability Access Order,* apply in the context of VoIP and other IP–enabled services. Section V.B.1 notes that sections 255 and 252(a)(2) and the Commission's implementing rules apply to manufacturers of equipment that the Act and the rules deem covered by the provisions. The Commission currently does not collect data regarding how many, or which, companies manufacture such equipment. Thus, out of an abundance of caution, we have perhaps been over-inclusive in creating the following list of possibly covered entities. Again, commenters are invited to comment on these categories and on the possible number of small entities within these categories.

*Wireless Communications Equipment Manufacturers.* The SBA has established a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing. Examples of products in this category include ''transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment'' and may include other devices that transmit and receive IP–enabled services, such as personal digital assistants (PDAs). Under the SBA size standard, firms are considered small if they have 750 or fewer employees. According to Census Bureau data for 1997, there were 1,215 establishments in this category that operated for the entire year. Of those, there were 1,150 that employed fewer than 500 employees, and an additional 37 that employed 500 to 999 employees. The percentage of wireless equipment manufacturers in this category was approximately 61.35%, so we estimate that the number of wireless equipment manufacturers with employment of under 500 was actually closer to 706, with an additional 23 establishments having employment of between 500 and 999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*Telephone Apparatus Manufacturing.* This category ''comprises establishments primarily engaged in manufacturing wire telephone and data communications equipment.'' Examples of pertinent products are ''central office switching equipment, cordless telephones (except cellular), PBX equipment, telephones, telephone answering machines, and data communications equipment, such as bridges, routers, and gateways.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 598 establishments in this category that operated for the entire year. Of these, 574 had employment of under 1,000, and an additional 17 establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

*Electronic Computer Manufacturing.* This category ''comprises establishments primarily engaged in manufacturing and/or assembling electronic computers, such as mainframes, personal computers, workstations, laptops, and computer servers.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 563 establishments in this category that operated for the entire year. Of these, 544 had employment of under 1,000, and an additional 11 establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

*Computer Terminal Manufacturing.* ''Computer terminals are input/output devices that connect with a central computer for processing.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 142 establishments in this category that operated for the entire year, and all of the establishments had employment of under 1,000. Consequently, we estimate that the majority or all of these establishments are small entities that may be affected by our action.

*Other Computer Peripheral Equipment Manufacturing.* Examples of peripheral equipment in this category include keyboards, mouse devices, monitors, and scanners. The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 1,061 establishments in this category that operated for the entire year. Of these, 1,046 had employment of under 1,000, and an additional six establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

*Fiber Optic Cable Manufacturing.* These establishments manufacture ''insulated fiber-optic cable from purchased fiber-optic strand.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 38 establishments in this category that operated for the entire year. Of these, 37 had employment of under 1,000, and one establishment had employment of 1,000 to 2,499. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

*Other Communication and Energy Wire Manufacturing.* These establishments manufacture ''insulated wire and cable of nonferrous metals from purchased wire.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 275 establishments in this category that operated for the entire year. Of these, 271 had employment of under 1,000, and four establishments had employment of 1,000 to 2,499. Consequently, we estimate that the majority or all of these establishments are small entities that may be affected by our action.

*Audio and Video Equipment Manufacturing.* These establishments manufacture ''electronic audio and video equipment for home entertainment, motor vehicle, public address and musical instrument amplifications.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data for 1997, there were 554 establishments in this category that operated for the entire year. Of these, 542 had employment of under 500, and nine establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

*Electron Tube Manufacturing.* These establishments are ''primarily engaged in manufacturing electron tubes and parts (except glass blanks).'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 750 or fewer employees. According to Census Bureau data for 1997, there were 158 establishments in this category that operated for the entire year. Of these, 148 had employment of under 500, and three establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

*Bare Printed Circuit Board Manufacturing.* These establishments are ''primarily engaged in manufacturing bare (*i.e.*, rigid or flexible) printed circuit boards without mounted electronic components.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,389 establishments in this category that operated for the entire year. Of these, 1,369 had employment of under 500, and 16 establishments had employment of 500 to 999. Consequently, we estimate that the majority of these establishments are small entities that may be affected by our action.

*Semiconductor and Related Device Manufacturing.* These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,082 establishments in this category that operated for the entire year. Of these, 987 had employment of under 500, and 52 establishments had employment of 500 to 999.

*Electronic Capacitor Manufacturing.* These establishments manufacture ''electronic fixed and variable capacitors and condensers.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 128 establishments in this category that operated for the entire year. Of these, 121 had employment of under 500, and four establishments had employment of 500 to 999.

*Electronic Resistor Manufacturing.* These establishments manufacture ''electronic resistors, such as fixed and variable resistors, resistor networks, thermistors, and varistors.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 118 establishments in this category that operated for the entire year. Of these, 113 had employment of under 500, and 5 establishments had employment of 500 to 999.

*Electronic Coil, Transformer, and Other Inductor Manufacturing.* These establishments manufacture ''electronic inductors, such as coils and transformers.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 448 establishments in this category that operated for the entire year. Of these, 446 had employment of under 500, and two establishments had employment of 500 to 999.

*Electronic Connector Manufacturing.* These establishments manufacture ''electronic connectors, such as coaxial, cylindrical, rack and panel, pin and sleeve, printed circuit and fiber optic.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 347 establishments in this category that operated for the entire year. Of these, 332 had employment of under 500, and 12 establishments had employment of 500 to 999.

*Printed Circuit Assembly (Electronic Assembly) Manufacturing.* These are establishments ''primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 714 establishments in this category that operated for the entire year. Of these, 673 had employment of under 500, and 24 establishments had employment of 500 to 999.

*Other Electronic Component Manufacturing.* These are establishments ''primarily engaged in loading components onto printed circuit boards or who manufacture and ship loaded printed circuit boards.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 500 or fewer employees. According to Census Bureau data for 1997, there were 1,835 establishments in this category that operated for the entire year. Of these, 1,814 had employment of under 500, and 18 establishments had employment of 500 to 999.

*Computer Storage Device Manufacturing.* These establishments manufacture ''computer storage devices that allow the storage and retrieval of data from a phase change, magnetic, optical, or magnetic/optical media.'' The SBA has developed a small business size standard for this category of manufacturing; that size standard is 1,000 or fewer employees. According to Census Bureau data for 1997, there were 209 establishments in this category that operated for the entire year. Of these, 197 had employment of under 500, and eight establishments had employment of 500 to 999.

4. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

None at this time.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c).

The NPRM expressly states that the Commission may ultimately need to

differentiate among various IP-enabled services, and that regulation may be deemed inappropriate with regard to most, if not all, IP-enabled services, applications or providers. It thus seeks comment on the appropriate grounds on which to differentiate among providers of IP-enabled services. The NPRM further seeks comment on the appropriate legal classification for each category of IP-enabled services, and on which regulatory requirements, if any, should be applied to services falling into each category. The NPRM makes no conclusions regarding which regulations, if any, would apply to any entity, including small entities. We seek comment here on the effect various proposals will have on small entities, and on the effect alternative rules would have on those entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

15. Pursuant to the authority contained in sections 1, 4(i), and 4(j) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), this *Notice of Proposed Rulemaking is adopted.*

16. That the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Notice of Proposed Rulemaking,* including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–6944 Filed 3–26–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[DA 04–608; MB Docket No. 04–67; RM–10856]**

### Radio Broadcasting Services; Easthampton and Pittsfield, MA, and Malta, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document requests comments on a petition for rule making filed by Vox New York, LLC, licensee of Station WNYQ(FM) (''WNYQ''), Malta, New York, and Great Northern Radio, LLC, licensee of Station WBEC–FM, Pittsfield, Massachusetts. The licensees propose to upgrade Channel 289A, Station WNYQ, to Channel 289B1 and to reallot Channel 288A, Station WBEC–FM, from Pittsfield to Easthampton, Massachusetts. The reallotment of Channel 288A to Easthampton will provide Easthampton with its first local aural transmission service. The coordinates for requested Channel 289B1 at Malta, New York, are 42–58–17 NL and 73–40–52 WL, with a site restriction of 9.1 kilometers (5.7 miles) east of Malta. The coordinates for requested Channel 288A at Easthampton, Massachusetts, are 42–18–52 NL and 72–41–18 WL, with a site restriction of 5.5 kilometers (3.4 miles) north of Easthampton.

Petitioners' proposal complies with the provisions of Sections 1.420(g)(3) and (i) of the Commission's Rules, and therefore, the Commission will not accept competing expressions of interest in the use of Channel 289B1 at Malta, New York, or Channel 288A at Easthampton, Massachusetts, or require the licensees to demonstrate the availability of additional equivalent class channels for use by other parties.

**DATES:** Comments must be filed on or before May 3, 2004, and reply comments on or before May 18, 2004.

**ADDRESSES:** Secretary, Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: David G. O'Neil, Esq., Rini Coran, PC; 1501 M Street, NW., Suite 500; Washington, DC 20005.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 04–67, adopted March 10, 2004, and released March 12, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractors, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

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 Massachusetts, is amended by adding Easthampton, Channel 288A, and removing Channel 288A at Pittsfield.

3. Section 73.202(b), the Table of FM Allotments under New York, is amended by adding Channel 289B1 and removing Channel 289A at Malta.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04–6943 Filed 3–26–04; 8:45 am]

BILLING CODE 6712–01–P

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### 49 CFR Part 571

**[Docket No. 99–5891; Notice 02]**

**RIN 2127–AH14**

### Federal Motor Vehicle Safety Standards; Child Restraint Systems

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

**ACTION:** Termination of rulemaking.

**SUMMARY:** This notice terminates a rulemaking proceeding concerning a petition for rulemaking from Kathleen Weber of the University of Michigan Child Passenger Protection Research Program in Ann Arbor, Michigan. The

petition addresses the unavailability of child restraints for children weighing more than 18 kg (approximately 40 pounds (lb)) that can be used in seating positions that are equipped with only lap belts instead of lap and shoulder belts.

The agency published a request for comments in the **Federal Register**. After considering the public comments received on the agency's request for comments on the petition, evaluating the results of a test program conducted to aid in the evaluation of the petition, considering recent developments concerning child restraints and tethers in Standards 213 and 225, passage of Anton's Law, and noting the emergence of products that have been available to restrain children over 18 kg that utilize a lap belt only without a tether, the agency has concluded that Standard 213 should not be amended at this time as proposed in the petition. However, we will continue to address this issue in support of Anton's Law.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may call Mike Huntley of the NHTSA Office of Crashworthiness Standards, at (202) 366–0029.

For legal issues, you may call Deirdre Fujita of the NHTSA Office of Chief Counsel at (202) 366–2992.

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

**SUPPLEMENTARY INFORMATION:**

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## I. Background

### *A. Unavailability of Child Restraints for Children Weighing More Than 40 Pounds in Seating Positions With Lap Belts Only*

Booster seats are designed for children who have outgrown a convertible or toddler child restraint system. They are generally designed for children who are about 4 to 8 years old, and who weigh more than 18 kg. Shield booster seats, which are capable of being used with only a vehicle's lap belt, were available in the past, but became unavailable for children weighing over 18 kg subsequent to an upgrade that NHTSA made to the standard pursuant to the Intermodal Surface Transportation Efficiency Act (''ISTEA'') of 1991 (Pub. L. 102–240). That Act directed NHTSA to initiate rulemaking on a number of safety matters, including child booster seat safety (§ 250). The legislative history for the directive indicated that its impetus was a study finding that shield booster seats then manufactured could not adequately restrain test dummies representing the children for whom the seats were recommended by the manufacturers. In the study [1], the boosters could not adequately restrain a 22 kg (48 lb) test dummy (representing a 6-year-old) when dynamically tested under Standard 213. The boosters were ineffective at limiting head excursions to within the requirements of Standard 213, and two of the boosters failed structurally. The boosters also failed to prevent the ejection of a 9 kg (20 lb) test dummy (representing a 9-month-old child) in the dynamic test. These phenomena were observed notwithstanding the recommendation of some booster seat manufacturers that their seats were suitable for children weighing from 9 up to 32 kg (20 up to 70 lb).[2]

In response to this study and to the ISTEA directive, NHTSA amended Standard 213 in two ways. First, the standard was amended to permit the manufacture of belt-positioning booster seats (59 FR 37167, July 21, 1994). A belt-positioning booster seat is designed to use both portions of a vehicle's Type II belt to restrain the child. A belt-positioning seat is not directly attached to the vehicle seat, but is held in place by the child's mass and the vehicle's Type II belt, which is strapped over the child's lap and torso, just as the Type II belt is used to restrain an adult occupant. A belt-positioning seat must not be used with a vehicle's lap belt alone, since the seat lacks structure or an internal belt to restrain the child's upper torso. Second, NHTSA also incorporated the 6-year-old and 9-month-old dummies into the standard's compliance test protocols, to ensure a more thorough evaluation of the ability of a child restraint to adequately restrain children recommended for the restraint, as compared to testing done with only the 3-year-old dummy. Beginning in September 1996, any child restraint recommended for children weighing over 18 kg must be able to comply with the standard when tested with the 6-year-old child dummy (60 FR 35126, July 6, 1995; 60 FR 63651, December 12, 1995).

Comments from manufacturers and others on the proposal to use the 6-year-old dummy in compliance tests did not indicate that shield boosters manufactured at the time of the rulemaking could not comply. To the extent there were any shield boosters that could not pass the standard's requirements with the 6-year-old dummy, NHTSA anticipated that manufacturers might (1) design their seats to achieve compliance (such as by raising the height of the shield relative to the child's torso), (2) label shield boosters as being suitable for children weighing less than 18 kg (and thus avoid testing with the 6-year-old dummy), or (3) replace production of shield boosters with belt-positioning boosters. While the latter two responses to the final rule have occurred, manufacturers have not redesigned shield boosters to pass Standard 213 with the 6-year-old dummy. Thus, the shield boosters manufactured today are not recommended for use with the shield by children over 18 kg.

### *B. The Petition*

On December 4, 1997, Ms. Kathleen Weber of the University of Michigan Child Passenger Protection Research Program, submitted a petition for rulemaking to amend Federal Motor Vehicle Safety Standard No. 213, ''Child Restraint Systems'' (49 CFR 571.213). The petition, which NHTSA granted on January 30, 1998, concerns the manufacture of child restraints that can be used by families in pre-1989 model year vehicles. These vehicles are permitted to have only lap belts in rear seating positions.

The petitioner suggests that Standard 213 be amended to allow—

> Child restraint systems to be certified for children who weigh between 18 and 23 kg using a top tether if the restraint meets current FMVSS 213 test criteria (using the Part 572:I 6-year dummy) when secured by a lap belt and top tether strap, as long as the same restraint can be certified for children under 18 kg (using the Part 572:C 3-year dummy) without a tether.

The petitioner notes that—

> this would allow the ''hybrid'' toddler/booster restraints (forward facing with internal harness/high-back belt-positioning

[1] Edward C. Hiltner, ''Evaluation of Booster Seat Suitability for Children of Different Ages and Comparison of Standard and Modified SA103C and SA106C Child Dummies,'' Final Report DOT HS 807 844, February 1990.

[2] Because at that time only a 3-year-old dummy was used in Standard 213's compliance test, the boosters could meet the standard when tested with that dummy and were thus certified as complying with the standard.

booster) to be used by a [20 kg] 45 lb child in the toddler mode with its internal harness and installed with a lap belt and top tether strap.

An example of such a ''hybrid'' seat is Century's Breverra booster car seat, which is recommended for children 14 to 45 kg (30 to 100 lb). The Breverra has a removable 5-point harness system. When used with children weighing up to 18 kg (40 lb), the Breverra is used with the 5-point harness, and the restraint is secured to the vehicle seat by either a Type I or Type II belt. This configuration (using the restraint system with children weighing up to 18 kg (40 lb), and restraining them with the internal 5-point harness) is what the petitioner refers to as the ''toddler mode.'' The Breverra is also designed for use as a belt-positioning booster seat with children 14 to 45 kg (30 to 100 lb). Parents are instructed to remove the 5-–point harness from the booster seat, and to use the vehicle's Type II belt to restrain the child. Because seats such as the Breverra are designed for use both as a ''toddler seat'' and as a ''belt-positioning booster seat,'' the petitioner refers to them as ''hybrid'' restraints.

The petitioner seeks to permit child restraints to be certified as meeting the standard when recommended for children up to 20 kg (45 lb) in the toddler mode (using the 5-point harness, attached to the vehicle by lap belt). Currently, restraints recommended for children up to 20 kg are tested with the 6-year-old dummy. At the time the petition was submitted, child restraints were required to limit head excursion to a maximum of 813 mm (32 inches (in)) when tested dynamically in a simulated 30 mph frontal crash in accordance with Standard 213. Because of the increased height and higher center of gravity of the 6-year-old dummy as compared to the 3-year-old dummy, convertible and hybrid restraints were not typically able to meet the 813-mm head excursion limit when tested with the 6-year-old dummy in the toddler mode (using the 5-point harness), untethered. As the basis for the petition, the petitioner presumes they could meet the 813-mm limit when tethered.

The effect of the petition would be to eliminate the requirement for child restraints to meet the 813-mm head excursion requirement when tested with the 6-year-old dummy, untethered, as long as the same restraint meets the 813-mm head excursion limit when tested with a tether attached. Further, the petitioner suggests that the same restraints should be required to meet all of Standard 213's requirements with the 3-year-old dummy untethered. Petitioner states:

Requiring restraints to meet the dynamic test criteria without a tether using the 3-year dummy is somewhat consistent with the ''misuse'' test formerly required by the standard for restraints equipped with top tether straps . . .

### C. Changes Regarding Tether and Head Excursion Requirements

At the time of the petition, NHTSA did not require a tether on child restraints or a tether anchorage on vehicles. The agency did not prohibit a tether, but generally required child restraints to meet Standard 213's 48 km/hr (30 mph) dynamic testing requirements without attaching a tether to reflect the historically low use rate of tethers in this country in vehicles that did not have factory-equipped tether anchors. As such, all child restraints recommended for use by children weighing under 22.7 kg (50 pounds) (the limit of Standard 213) were required to limit head excursion to a maximum of 813 mm in the dynamic test.

As noted above, nonuse of the tether has been a problem in the U.S. In an effort to boost use rates, NHTSA once proposed requiring all vehicles under 4536 kg (10,000 lb) GVWR to have tether anchorages at all rearmost seating positions, to make it possible for motorists to easily attach the tether straps on their child restraints to the vehicle (45 FR 81625; December 11, 1980). At the time of the proposal, tether use was about 50 percent. NHTSA terminated rulemaking on this proposal after determining that (a) since the proposal, there was a continual shift toward untethered seats, so that most seats did not need a tether to meet Standard 213's requirements; (b) motor vehicle manufacturers had increasingly been voluntarily providing provisions, such as indentations to identify anchorage points and pre-drilled or threaded holes to facilitate the attachment of tether straps; and (c) the most effective way to promote child safety would be to amend Standard 213 to require all child restraints to meet Standard 213's requirements without attachment of the tether (50 FR 27632; July 5, 1985).

As part of the agency's development of Standard 225, ''Child Restraint Anchorage Systems,'' NHTSA concluded that a top tether should be provided to better secure child restraints. By restraining the top portion of a child seat, a tether would supplement the vehicle belt system in limiting forward movement of the child restraint in a crash. With less forward movement, head excursion could be reduced. However, instead of expressly requiring child restraints to have a top tether strap, NHTSA established a performance requirement that has the practical effect of requiring a tether on child restraints. NHTSA established a new head excursion requirement for forward-facing child restraints that limits excursion to 720 mm (28.35 inches) forward of the Z-point on the FMVSS No. 213 test seat assembly when a child restraint is attached to the standard seat assembly in accordance with the manufacturer's recommendations. To meet this requirement, manufacturers provide a top tether, which is attached in the test for this new requirement. The agency felt that the head excursion limit of 720 mm was practicable with a tether because it is the same as a Canadian requirement and because most, if not all, child restraint manufacturers currently produce child restraints for sale in Canada and thus already meet the requirements for those products.

NHTSA concluded however, that tethers would be much more likely to be used if child seats are equipped with a tether and if vehicles are equipped with a factory-installed, easy- and ready-to-use tether anchorage. Citing experience with respect to higher tether use rates in Australia and Canada where factory installed tether anchorages and/or tether hardware are available, NHTSA required vehicle manufacturers to begin installing factory-installed, user-ready tether anchorages (with hardware) in new vehicles beginning September 1, 1999.

## II. NHTSA Conducts Test Program To Evaluate Performance of Child Restraints in Limiting Head Excursion of 6-Year-Old Dummy

NHTSA conducted a test program at our Vehicle Research and Test Center (VRTC) in March 1998, to evaluate the performance of various types of child restraints in restricting the amount of head excursion of the 6-year-old dummy. In developing this test program, NHTSA asked child restraint manufacturers and the National Transportation Safety Board (NTSB) for suggestions as to which approaches and products should be evaluated. One objective of this test program was to obtain baseline information on the dynamic performance of a ''typical'' shield-type booster seat, tested with the 6-year-old dummy while secured to the vehicle seat by a lap belt only. It was presumed that this type of seat was unable to meet the 813 mm head excursion requirement of Standard 213, and had therefore resulted in child restraint manufacturers limiting these restraints to use for children weighing no more than 18 kg. Pre-test discussions

with restraint manufacturers confirmed that Standard 213's head injury criterion (HIC), chest acceleration, and knee excursion parameters did not pose concerns when testing this type of restraint with the 6-year-old dummy. Rather, because of the increase in height and weight of the 6-year-old dummy as compared to the 3-year-old dummy—1168 versus 965 mm standing height (46 versus 38 inches), and 22 versus 15 kg in weight (48 versus 33 lb)—the standard's head excursion limit was the issue. The shield portion of the restraint apparently does not provide adequate upper torso restraint to limit the head excursion within acceptable limits when subjected to Standard 213's dynamic test. NHTSA chose the Cosco Grand Explorer as a representative shield-type booster for the baseline test.

The test program also evaluated a combination forward-facing toddler/high-back belt-positioning booster seat, utilizing its internal 5-point harness, secured to the vehicle seat by a lap belt and a top tether. This represented the specific configuration recommended in the Weber petition. NHTSA chose the Century Breverra, which comes with an optional top tether, as a representative seat for the test program.

NHTSA also tested two convertible seats. Pre-test conversations with restraint manufacturers indicated that there may be some convertible restraints that are equipped with tethers which may also perform adequately when attached to the vehicle seat with a lap belt only, when restraining the 6-year-old dummy. Not all convertible restraints were equipped with a top tether strap at the time, and not all convertible restraints were able to accommodate the 6-year-old dummy. Britax Child Safety, Inc. indicated that they manufactured two convertible restraints, the ''Roundabout'' with a standard top tether and the ''Elite'' with an optional top tether attachment, which they felt would perform satisfactorily in a crash test with the 6-year-old dummy when the restraint was secured to the vehicle seat by a lap belt and top tether. Accordingly, NHTSA included both of the Britax convertible restraints in the subject test program.

At the time of the test program, the only commercially available products marketed specifically for children weighing over 18 kg and secured with a lap belt only were the 86-Y-harness and vest systems produced by E-Z-On Products. Both of these systems required the use of a top tether. The 86–Y harness system consisted of two shoulder straps extending from the top tether anchorage, and looped ends to allow the vehicle lap belt to be routed through and fastened over the pelvic area. The vest system functioned similarly, with a single strap extending from the top tether anchorage that split into two separate straps with hardware that attached to rings located on each shoulder of the vest, and the vehicle lap belt threaded through web loops on the bottom of each side of the vest. Both the 86–Y harness and the vest systems were included in the test program for evaluation.

The dynamic sled tests were conducted at VRTC, and were based on the test conditions and procedures prescribed in S6 of Standard No. 213. This test program was intended for research only and did not precisely replicate compliance testing. The VRTC tests evaluated the ability of the restraints at limiting head excursion, HIC, chest acceleration, and knee excursion. The test conditions were fixed throughout the sled test series, with the only variable being the particular restraint being tested and its attachment method (*i.e.* tethered or untethered). With the exception of the baseline test utilizing the shield booster seat, each restraint was tested in each attachment configuration on two separate sled runs. Two identical shield boosters were tested, but on the same sled run rather than separate sled runs as with the other restraints.

All tests were conducted using the 6-year-old dummy, and each of the restraints—whether tethered or untethered—was attached to the vehicle test seat using a lap belt only. At that time, Standard 213's limits were as follows: HIC—1000; chest acceleration—60g; head excursion—813 mm; and knee excursion—914 mm (36 in).[3] The full test results are provided in Table 1. It is important to note that in each of the tests conducted, values for both the HIC and chest acceleration parameters were typically significantly below the established limits prescribed in Standard 213, and none exceeded the maximum allowable limits.

TABLE 1.—SUMMARY OF SLED TEST RESULTS FOR ALL RESTRAINTS

| Restraint configuration | HIC | 3 ms chest clip (G) | Head excursion (mm) | Knee excursion (mm) | Test No. |
|---|---|---|---|---|---|
| FMVSS No. 213 limit | 1000 | 60 | 813 | 914 | |
| Cosco Grand Explorer Lap Belt w/Sm. Shield | 424 | 32.9 | 698 | 614 | UMP01 |
| Cosco Grand Explorer Lap Belt w/Sm. Shield | 417 | 32.2 | 749 | 660 | UMP02 |
| Century Breverra Contour/5-pt. Harness Lap Belt w/Top Tether | 332 | 38.9 | 760 | 904 | UMP03 |
| Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether | 273 | 30.8 | 851 | 926 | UMP04 |
| Century Breverra Contour/5-pt. Harness Lap Belt w/Top Tether | 307 | 40.5 | 719 | 881 | UMP05 |
| Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether* | 243 | 50.2 | NA | NA | UMP06 |
| E–Z ON 86–Y Harness Lap Belt w/Top Tether | 463 | 52.5 | 495 | 540 | UMP07 |
| E–Z ON 103Z Vest Lap Belt w/Top Tether | 702 | 59.3 | 558 | 636 | UMP08 |
| E–Z ON 86–Y Harness Lap Belt w/Top Tether | 461 | 52.9 | 474 | 540 | UMP09 |
| E–Z ON 103Z Vest Lap Belt w/Adj. CAM-Wrap | 315 | 35.9 | 713 | 598 | UMP10 |
| Britax Roundabout Lap Belt w/Top Tether | 270 | 42.3 | 623 | 799 | UMP11 |
| Britax Roundabout Lap Belt; No Top Tether | 477 | 39.3 | 810 | 896 | UMP12 |
| Britax Roundabout Lap Belt w/Top Tether | 303 | 43.4 | 574 | 736 | UMP13 |
| Britax Roundabout Lap Belt; No Top Tether | 425 | 36.1 | 795 | 864 | UMP14 |
| Britax Elite Lap Belt w/Top Tether | 554 | 51.2 | 640 | 782 | UMP15 |
| Britax Elite Lap Belt; No Top Tether | 377 | 39.2 | 820 | 868 | UMP16 |
| Britax Elite Lap Belt w/Top Tether | 614 | 58.9 | 580 | 720 | UMP17 |
| Britax Elite Lap Belt; No Top Tether | 377 | 43.1 | 822 | 878 | UMP18 |

[3] As noted in Section I(C) above, the agency subsequently established a new head excursion limit of 720 mm for forward-facing child restraints that limits excursion. A tether strap may be attached in this test, but child restraints must also meet the previous limit of 813 mm without the tether strap attached.

TABLE 1.—SUMMARY OF SLED TEST RESULTS FOR ALL RESTRAINTS—Continued

| Restraint configuration | HIC | 3 ms chest clip (G) | Head excursion (mm) | Knee excursion (mm) | Test No. |
|---|---|---|---|---|---|
| FMVSS No. 213 limit | 1000 | 60 | 813 | 914 | |
| Century Breverra Contour/5-pt. Harness Lap Belt; No Top Tether (Repeat of UMP | 299 | 31.2 | 844 | 918 | UMP19 (Repeat of UMP06) |

*HIC based on head contact w/CRS as dummy slipped out of failed 5-pt. harness.

While NHTSA anticipated that shield-type boosters could not meet the 813–mm head excursion limit of the standard when tested with the 6-year-old dummy, test results showed that when tested in this configuration, the Cosco Grand Explorer shield booster seats used for the baseline testing satisfactorily limited head excursion to under 762 mm (30 inches) in both instances. In addition, knee excursion was measured to be 254 to 300 mm (10 to 12 inches) below the 914 mm limit. As these head and knee excursion measurements were in direct contrast with the Calspan and VRTC studies conducted in support of NHTSA's ISTEA rulemakings on booster seats, NHTSA conducted a second set of testing to evaluate three other then-available shield-type booster seats (the Gerry Double Guard, Evenflo Sidekick, and Fisher Price T-Shield). As before, each seat was tested twice, on separate test runs, to enhance the repeatability of the test results. In each instance, the measured head excursion significantly exceeded the 813 mm limit of Standard 213, ranging from 874 to 1016 mm (34.5 to 40.0 inches). The measured knee excursion was well within the FMVSS No. 213 limit of 914 mm in each of these tests, ranging from 749 mm to 838 mm (29.5 to 33 inches). These results more closely paralleled those recorded in the earlier tests conducted by Calspan and VRTC. Full test results are provided in Table 2.

TABLE 2.—ADDITIONAL SHIELD BOOSTER TESTS

| Restraint configuration | HIC | 3 ms chest clip (G) | Head excursion (mm) | Knee excursion (mm) | Test No. |
|---|---|---|---|---|---|
| FMVSS No. 213 limit | 1000 | 60 | 813 | 214 | |
| Gerry Double Guard Lap Belt w/sm. Shield | 748 | 35.8 | 980 | 826 | UMP21 |
| Evenflo Sidekick Lap Belt w/sm. Shield | 721 | 37.8 | 874 | 762 | UMP22 |
| Fisher Price T-Shield Lap Belt w/sm. Shield | 349 | 26.1 | 927 | 767 | UMP23 |
| Evenflo Sidekick Lap Belt w/sm. Shield | 820 | 35.9 | 876 | 749 | UMP24 |
| Gerry Double Guard Lap Belt w/sm. Shield | 780 | 34.6 | 1016 | 838 | UMP25 |
| Fisher Price T-Shield Lap Belt w/sm. Shield | 525 | 31.5 | 955 | 785 | UMP26 |

Following the baseline tests with the shield-type booster seats, the agency tested the Century Breverra hybrid booster both with and without the top tether strap. In the tethered configuration, head excursion was measured to be below 762 mm (30 inches), and knee excursion was measured to be below the 914 mm limit (although only marginally in one instance at 904 mm). However, in each of the test runs conducted using the untethered configuration, head and knee excursions beyond the respective 813 and 914 mm limits were measured, with marginal reductions in both the HIC and chest acceleration parameters. It should be noted that a total of three test runs were conducted using the untethered configuration, as the test dummy slipped out of the child restraint during the second test run due to a failure of the 5-point harness, voiding the measurement of head and knee excursion. Interestingly, a comparison between the untethered shield-type boosters used in the baseline testing and the tethered hybrid booster (forward facing with internal harness/high-back belt-positioning booster) indicates that the untethered shield booster performs marginally better (on average) with respect to limiting head excursion and significantly better with respect to limiting knee excursion than the hybrid booster.

Two convertible restraints were evaluated in the same manner, first with a top tether strap attached and then without. In the tethered configuration, the Britax Roundabout limited head excursion to 622 and 574 mm (24.5 and 22.6 inches) in the two tests performed, well below the 813 mm limit prescribed in the standard and also well below the results observed in the baseline test with the shield-type booster. Knee excursion measurements were also well below the established limit. However, whereas the untethered hybrid toddler/booster restraint configuration resulted in unacceptable head and knee excursions, the untethered Roundabout configuration limited both head and knee excursion within acceptable limits (although only marginally with respect to head excursion in the first test at 810.26 mm (31.90 inches)). Additionally, while the untethered hybrid toddler/booster restraint tests resulted in reduced HIC and chest acceleration measurements, the untethered Roundabout tests resulted in reduced chest acceleration measurements but increased HIC values.

The second convertible restraint, the Britax Elite, demonstrated similar results. In the tethered configuration, head excursion was limited to 640 and 580 mm (25.2 and 22.85 inches) in the two tests performed, again well below the 813 mm limit prescribed in the standard and also well below the results observed in the baseline test with the shield-type booster. Knee excursion measurements were also well below the established limit. However, each of the tests conducted in the untethered configuration resulted in head excursion measurements that marginally (820 and 821 mm) (32.29 and 32.35 inches)

exceed the 813 mm limit, while knee excursion measurements remained within acceptable limits.

The two different E–Z On products, the 86–Y harness and the vest, were the only products marketed for children over 18 kg that do not require the use of a shoulder harness to attach to the vehicle. Both of these systems require the use of a tether. Test results show that the 86–Y harness system dramatically limited head excursion to 495 and 474 mm (19.5 and 18.65 inches) on the two tests, or approximately 33 percent below the 813 mm limit prescribed in the standard, and significantly below the other tethered systems. Knee excursion was also limited to values well below established limits.

E–Z On markets two different styles of the vest system. The first is an adjustable vest, which can be adjusted for fit as the child grows via three different zipper locations on the back of the vest. This was not used in this test program, as the vest, when configured in its smallest size, was still too large to properly fit the 6-year-old test dummy. E–Z On also manufactures fitted or custom vests, provided to the consumer based on anatomical measurements of the child as provided to E–Z On. NHTSA utilized a fitted vest in this testing program, although it should be noted that the vest provided by the manufacturer for this testing was very tight on the 6-year-old dummy, and the next larger size would likely have provided a better fit. The E–Z On vest system was tested utilizing a top tether strap. The head and knee excursion values were both well below established limits. The chest acceleration was 59.3 g, marginally below the limit of 60 g. This high value for chest acceleration may be partially attributable to the very snug fit of the vest on the test dummy.

## III. Comments Received

On July 7, 1999, NHTSA published a Request for Comment (64 FR 36657) to obtain information that would aid in determining whether Standard 213 should be amended as proposed by the petitioner. Following publication of the notice, the petitioner wrote the agency and expressed concern that the issues raised in the petition had been misinterpreted and/or misstated in the notice (Docket No. 99–5891–8). The petitioner felt that the text of the notice wrongly suggested that the petitioner offered tethered booster seats as an option to properly restrain children weighing more than 18 kg in seating positions equipped with only lap belts. The petitioner emphasized that the proposal would permit manufacturers to certify any child restraint system—not only boosters—for weights up to 20.4 kg (45 lb) if those restraints could meet the requirements of Standard 213 when tested with the 6-year-old dummy with the use of a tether.[4]

The agency received comments from child restraint manufacturers (Fisher-Price[5], E–Z–On, Cosco), auto manufacturers and associated trade organizations (Ford, NADA), child passenger safety advocate groups (SafetyBeltSafe USA, National Safe Kids Campaign), the medical community (AAP, Children's Hospital of Philadelphia(CHOP)), the National Transportation Safety Board (NTSB), and eight individuals. Generally, commenters (1) agreed that appropriate restraints need to be developed to facilitate the proper protection of children above 40 pounds in vehicles equipped with only lap belts; (2) differed on whether they feel tether use will improve over that documented by the agency in the past, with many feeling that the introduction of FMVSS 225 will prompt an increased awareness about the benefits of tether use, and therefore, increase tether usage; and (3) noted that while alternative means of protecting older children are currently available (*i.e.,* vest and harness systems, retrofit shoulder belts) that these alternatives are often costly and/or difficult to obtain via traditional retail avenues.

The request for comments posed a number of questions that asked for comments and data on specific issues relating to the petition. Responses to these questions are summarized as follows:

Question 1: *How likely are tethers to be used in vehicles that lack user-ready tether anchorages?* NHTSA noted that tether use in vehicles not originally equipped with tether anchorages has been very low in this country, and asked if there are data showing that tether use in such vehicles will be greater than it has been in the past. Donald and Roberta Wegeng replied stating:

> Past evidence would suggest that tethers are not likely to be used in this case. However, we believe that this trend will change as parents become more aware of the need to use tethers. Recently there has been a tremendous amount of media attention given to the safe use of child restraints. More and more parents are having their installations checked by qualified inspectors. With the recent rule change that requires all new cars to have user-ready tether anchorages, even more attention will be given to this subject.

Fisher-Price, Cosco, and CHOP all generally supported the Wegengs' position with respect to the use of tethers in instances where the anchorage hardware was not provided as standard equipment on the vehicle. Cosco noted that the number of requests they receive for tethers through their Consumer Relations Department is currently ''less than overwhelming.'' Fisher-Price provided detailed insight into their experience regarding child restraints equipped with tether straps at a time where tether anchorages were not required to be installed in vehicles:

> We believe that tether use will be limited until the passenger vehicle fleet in the field today is replaced by vehicles which came from the factory with tether anchors already installed.
>
> Fisher-Price has the unique viewpoint as the only U.S. child seat manufacturer who has recent experience with tethers. In 1997, we provided a tether on our 79700 Safe Embrace Convertible Car Seat because the increased performance of a tether was consistent with our objective to provide a safer seat than what the market had to offer. The product launched with a retail price of $140 in a sea of competitive offerings where the mass volumes occurred at a $80 price point. We consider our consumers who justified the additional expense to be among the most safety conscientious.
>
> In an effort to promote the use of the tether, several provisions were made to encourage the installation of the tether anchor: A universal tether anchor kit with installation instructions was provided with every product; A collaborative program was established with nationwide Goodyear service centers who provided free tether anchor installation; An enveloped letter, addressed to ''vehicle dealer'' which explained what a tether was and what hardware and service was required for anchor installation, written on behalf of our consumer, was provided with each product; Our consumer affairs personnel were trained to answer anchor installation questions, were enabled to provide vehicle manufacturer's anchor kit part numbers and stocked and provided free-of-charge vehicle manufacturer anchor kits to consumers who were unable to get a kit on their own. Despite these efforts and an assumed higher level of safety conscientiousness, a recent random survey of approximately 200 of our U.S. consumers identified only 58 percent used the tether.
>
> Tether anchor installation requires action on the part of a consumer, who is consumed with other parental responsibilities, may not appreciate the performance benefit, does not anticipate involvement in an accident, and is generally reluctant to modify their vehicle. Today's family vehicle of choice is the minivan. In most minivans, vehicle manufacturers provide means for tether

[4] The petitioner requested that a follow-up notice be published to clarify the intent of the petition, as she felt that commenters to the original notice would be misled by the perceived misstatement of the issues. NHTSA reviewed the text of the original notice, and concluded that the issues raised in the petition had been sufficiently and clearly presented, and that a follow-up notice was unnecessary.

[5] Fisher-Price no longer manufactures or markets child restraints.

anchorage in the third row seat only. Parents may have to forgo the tether attachment option if they desire to have the child located in the second row, closer to the driver.

We do not believe at this point and time that tethers will be greatly used by the general car seat user population. Therefore, allowance of the certification of a child safety seat whose performance is solely dependent on the tether is not in the best interest of child safety. As factory-installed tether anchors become more prevalent in vehicles on the road, we expect that tether usage will increase.

Question 2: *Is a child better off in an untethered booster or seated directly on the vehicle seat and restrained by a lap belt? Are there alternative approaches?* Citing Fatality Analysis Reporting System (FARS) and Multiple Cause of Death (MCOD) data from 1988 through mid-1997, the agency noted that (1) children 5–14 appear to derive the greatest incremental benefit from using back seat lap/shoulder belts rather than just a lap belt when compared to the other age and sex groups evaluated in the study, (2) children ages 5–14 do not have an increased risk of abdominal injuries compared to occupants in other age groups, but (3) the head injury rate for the same children, seated in the back seat in frontal crashes restrained by a lap belt only, is double that of those children restrained with a lap and shoulder belt (and thus provided with upper torso protection similar to what could be expected through the use of child restraint systems).

The agency asked for information regarding ''lap belt syndrome,'' which refers to bruising across the abdomen, internal injuries and lower spine fractures which, allegedly, are caused mainly by a lap belt that is used incorrectly or that moves off the child's pelvis during a crash. The agency also requested comment on approaches that would eliminate, or alternatively, extend the existing limit on head excursion when testing child restraints with the 6-year-old dummy, untethered. Most commenters felt that an untethered child restraint would be preferable to a lap belt only for children, but generally did not have specific data to support their position. Rather, commenters noted that child restraints would provide some measure of upper torso protection, as compared to none with lap belts only. Cosco and CHOP stated that FARS data is probably not an adequate source for making a judgement, in that this data source only includes fatal crashes and cannot provide estimates for child exposure to non-fatal or non-injury crashes. CHOP noted:

We cannot answer this question without more study. We need more evidence that the use of lap belt only restraint systems by young children does not significantly increase the incidence of abdominal injuries over lap shoulder belted children * * * It is difficult to assess the risk of abdominal injuries through laboratory testing since current child dummies are not equipped to measure abdominal loads. Computer simulations are a useful tool to compare relative injury measures and should be utilized to address this issue.

Wearing a lap belt only, however, dramatically increases the risk of head injuries and as a result, is an unacceptable option. An untethered booster, in contrast, still provides some degree of upper body restraint.

Both child restraint manufacturers, Fisher-Price and Cosco, along with the AAP, opposed increasing the head excursion limit when testing with the 6-year-old dummy untethered. Fisher-Price stated that ''increasing the head excursion limit to 34'' based on what is possible with current products does not seem appropriate without first determining what is a safe limit for the older/taller child in today's vehicles.''

Question 3: *Should the test that evaluates child restraint performance without attaching the tether be deleted for all restraints, not just hybrid toddler/booster restraints? Should the test be deleted when testing with dummies other than the 6-year-old?* NHTSA asked, if the agency would consider deleting the head excursion requirement for hybrid boosters when testing with the 6-year-old dummy untethered, should the same requirements be similarly revised when testing other types of restraints (*i.e.,* convertible child restraints) or testing with other dummies (*i.e.,* the 3-year-old dummy)? Donald and Roberta Wegeng, Fisher-Price, Cosco, AAP, and CHOP all opposed deleting the untethered test currently required by Standard 213. The AAP noted:

The untethered restraint performance requirement should not be rescinded for other restraints or for testing with other dummies. Such a change is not necessary and the current testing should be retained for optimal safety. The petitioner's proposal is necessary at this time only to enhance safety for a specific group of children until all vehicles have lap/shoulder harnesses.

Ford provided differing viewpoints in its comments, stating, in part:

Ford strongly supports deleting the untethered test for all types of child restraints when tested with the 6-year-old dummy, not just hybrid or harness boosters. If there are convertible restraints that fit and protect a 6-year-old child, such as the tested Britax Roundabout, our customers should have the option to use that available protection. That option should also be available for vehicles equipped with ISOFIX anchors.

Ford also supports deletion of the untethered test for other dummies, but timing for such a change is not critical. We have repeatedly suggested that testing with only lap belts, using the FMVSS 213 standard seat, is no longer appropriate to today's vehicles. Added tests with tether straps, ISOFIX anchors, and additional dummies are increasing the test burden of the child restraint industry.

Ford prefers deletion of the untethered 6-year-old dummy test to the Notice's suggestion of an increased head excursion limit for an untethered test with a 6-year-old dummy. Any child restraint for children over 40 pounds must soon meet the head excursion criteria in two tethered tests with the 6-year-old dummy, one with a lap belt and tether and another with ISOFIX anchors and a tether. Adding two additional 6-year-old dummy untethered tests (with lap belt only and with ISOFIX only) adds an unnecessary test burden to the child restraint manufacturers, and may discourage offering harness boosters for children up to 50 pounds.

Question 4: *Why are shield boosters no longer manufactured for children weighing over 18 kg (40 lb)?* NHTSA requested information, particularly from child restraint manufacturers, concerning the reasons shield-type booster seats are no longer marketed for children weighing more than 18 kg. The two manufacturers that responded, Fisher-Price and Cosco presented differing viewpoints regarding the performance of shield boosters. Fisher-Price stated:

Our version of the shielded booster marketed in the early 90's could not, without modification, pass the revised requirements for the 6-year-old dummy. Rather than invest in the proliferation of the ''back-less'' booster, we felt that greater levels of performance, more consistent to our goal of marketing safer car seats, was better achieved with a high back belt positioning booster configuration.

On the other hand, Cosco provided the following:

The current certification test bench, while desirable for continuity, familiarity, and comparison, was never intended for testing backless booster seats with the 6-year-old dummy. The current set-up has some anomalies, which may cause excessive HIC readings on rebound after the test is essentially over that prevent booster seats from passing the standard with the 6-year-old dummy. In the real world, shield boosters, of which literally millions have been sold, perform very well. We believe the March 1998 VRTC tests conducted by NHTSA at a facility, using the same methodology but not designated for compliance testing is more indicative of actual performance of shield boosters.

Question 5: *What is the feasibility of redesigning hybrid/toddler booster*

*restraints such that the restraint can be certified for use with older children, without the use of a tether?* Both Fisher-Price and Cosco commented that it may be possible to design a child restraint appropriate for older children that can be certified under Standard 213's 813–mm head excursion limits without the use of a tether. Ford, however, was critical of the suggestion that hybrid/toddler boosters be redesigned to meet the requirements of Standard 213 using a 6-year-old dummy untethered, stating:

> What is the point of redesigning hybrid boosters (or other child restraints) to meet an arbitrary head excursion limit when tested in an artificial sled test at the center of a front bench seat replicating an obsolete vehicle equipped with a lap belt that is now highly atypical? * * * Child restraint manufacturers should concentrate on improving performance when child restraints are installed in rear seats and restrained by typical lap/shoulder belts or ISOFIX anchors, plus top tethers. Lap-only belts are rapidly disappearing from new cars, and many millions of vehicles on the road have no lap-only belts * * * Tethers will soon be installed on all new forward-facing harness restraints. All Ford products built in the last 15 years have tether anchorages, and new vehicles will soon have built-in tether anchors. Child restraint regulations should permit customers to make the best use of this safety equipment to protect their children, even if some customers may not be able to, or may choose not to, use the restraint to its full capacity.

Question 6: *Is the suggested amendment warranted when there are products now available for older children that may perform better than a tethered seat at limiting head excursion?* E–Z–On Products, Inc. manufactures vest and harness restraint systems for use with a lap belt and tether. Vests and harnesses are ''child restraint systems'' under Standard 213 and are certified as meeting all requirements of the standard. NHTSA's March 1998 test program evaluated the performance of E–Z–On's products in limiting the amount of head excursion of the 6-year-old dummy. In brief, the tethered vest and harness performed much better than the tethered hybrid booster or tethered convertible restraint at limiting head excursion. Based on this, NHTSA noted that vests and harnesses could address the petitioner's concerns and provide a viable alternative to consumers. However, NHTSA noted that because the vest and harness systems do not ''look like'' traditional child restraint systems, they might not be as readily accepted by some consumers as a tethered hybrid or convertible seat might be. NHTSA requested input regarding the performance and public acceptance of the E–Z–On devices.

Comments submitted by Ford and Fisher-Price acknowledge that data from NHTSA's testing of the E–Z–On products demonstrate the ability of those products to provide adequate restraint in lap belt only seating positions (with a tether). However, Ford, Fisher-Price, Donald and Roberta Wegeng, Cosco, AAP, and CHOP all cite various concerns regarding the availability and/or acceptance of the E–Z–On products, which in turn, leads the commenters to conclude that the vest and harness systems should not be relied on as the preferred method by which to restrain children in lap belt only equipped seating positions. Specifically, Ford (''these products have been available for many years, and have not achieved significant acceptance, except for niche markets''); Fisher-Price (''the convenience of vest and harness systems, however, leaves much to be desired''); Donald and Roberta Wegeng (''the products that are currently available are not readily or easily available''); Cosco (''the products cited can be expensive and are not available at retail, where most people shop for car seats''); AAP (''we are not aware of any evidence to indicate that a tether would more likely be used with a vest than with a hybrid booster''); and CHOP (''the E–Z–On vest and Y harness are not easily obtained by parents and do not look like traditional child restraints and as a result, may not be readily accepted by consumers'') all provided information supporting the adoption of alternative solutions to vest and harness systems as a means by which to address the concerns of the petitioner. Further, Cosco and CHOP both noted that while the E–Z–On products were very effective in limiting head and knee excursion of the dummies during the dynamic testing, the tethered hybrid boosters and convertible restraints that were tested generally performed better than the E–Z–On products with respect to HIC and chest acceleration parameters.

Question 7: *Would adoption of the suggested amendment inappropriately encourage some parents to position restraints in the center rear seating position?* Petitioner only addressed the need of consumers with pre-1989 vehicles, but adoption of the suggested amendment could also affect the preference of parents who wish to install a booster seat in the center rear position (which is typically equipped with only a lap belt). NHTSA and others have long supported the placement of children in child restraints in the center rear seating position, when possible, to minimize the number and severity of injuries in side impact crashes. However, optimal performance of the restraint, if the suggested proposal were adopted, is dependent on attachment of the tether. An untethered seat in the center rear seat is unlikely to perform as effectively as an untethered belt-positioning booster used at the outboard seating position with a lap and shoulder belt. NHTSA requested comments regarding whether adoption of the proposed amendment might further confuse the public regarding the correct restraint choice and/or seating location for children weighing more than 18 kg.

The AAP responded, stating:

> The proposed change might encourage some parents to position restraints in the center-rear seating position, but this would not be a bad choice if the hybrid booster were properly tethered. We do not think the proposed change would increase the likelihood of inappropriate positioning of the hybrid seat in the toddler mode due to a desire to use a center seat without a lap/shoulder harness; caretakers can make that same mistake now with the hybrid product.

Other commenters offered varying opinions. Ford commented that ''this is not a significant concern,'' while Fisher-Price noted that ''if a new misuse scenario is created, then obviously misuse potential increases.''

Question 8: *What is the feasibility of retrofitting a rear seat shoulder belt in pre-1989 vehicles?* NHTSA noted that many vehicle manufacturers offer shoulder belt retrofit kits for rear seating positions, although availability and cost of these kits tend to vary widely. We also noted that installation of a shoulder belt can benefit children who have completely outgrown a child restraint, and can also benefit adults. NHTSA requested comments regarding these retrofit kits.

Ford provided the following, specific to their vehicles:

> Installing accessory rear seat shoulder belts is practicable in most Ford passenger cars, but not in trucks. Ford has encouraged installation of rear seat shoulder belts, which provide safety benefits for a wide range of rear seat occupants. Ford has an ample supply of accessory kits available for nearly all cars built during the 1980's. The kits include two black shoulder belts and all necessary hardware and instructions for only $53. The labor time standard for installation in most sedans is 0.8 hours, so dealer installation should cost about $50. Installation in hatchbacks and station wagons is somewhat more complicated and time-consuming. Ford also prepared do-it-yourself installation manuals with step-by-step photographs for consumer installation. But customer installation rates have been disappointing. Despite repeated direct mail offers to owners of affected vehicles, including personalized letters to all registered owners that included coupons

offering the kits for only $30, sales have been low. Sales continue to decline as these vehicles age and are scrapped.

AAP and CHOP both generally agreed with the agency's analysis that retrofit shoulder belts are often too expensive and not readily available to the consumers needing them.

**IV. Agency Decision To Terminate Rulemaking**

At the time of the petition, there were limited options for parents of children weighing more than 18 kg in vehicles that lacked lap and shoulder belts. There were no ''traditional'' child restraint systems (*e.g.,* convertible or forward-facing child restraints, hybrid boosters, or belt-positioning boosters) that were certified above 18 kg and that could be secured to the vehicle with a lap belt only. The E–Z–On vest and harness systems were the only available child restraint systems that were certified to address this specific segment of the child and vehicle population. However, proper use of these systems requires use of a tether attachment. Also, as noted in response to the request for comments published by the agency, there have been concerns regarding the availability and/or acceptance of the E–Z–On products. These are only available through authorized E–Z–On distributors and not at retail, and do not ''look like the traditional child restraints.'' As such, they have typically not been readily accepted by consumers as a viable alternative to restrain children in lap belt only equipped seating positions.

NHTSA does not believe that it is likely that tether anchorages will be installed in pre-1989 vehicles. Transport Canada has required vehicles *to be able to be equipped with locations suitable for the installation of tether anchorages* since 1989 (the same year NHTSA mandated all vehicles be equipped with lap and shoulder belts installed in rear outboard seating positions). As virtually all vehicles manufactured for use in Canada are also manufactured for use in the U.S., most of the post-1989 vehicles still on the road today in the U.S. can be retrofitted with tether anchorages. However, in pre-1989 vehicles—the vehicles that are the focus of this petition because they have only lap belts in the rear seating positions—there is typically no tether anchorage point designated by the vehicle manufacturer. Installation of a tether anchorage in pre-1989 vehicles (1) without a designated anchorage location, and (2) lacking hardware and instructions supplied directly by the vehicle manufacturer is likely to be a difficult and costly process for a consumer. The agency believes that independent repair and body shop personnel may not be familiar with tether anchorages, and may express concern about the potential liability of installing aftermarket safety equipment. For these reasons, the agency does not believe that it is likely that tethers will be used in pre-1989 vehicles. Further, the agency is hesitant to facilitate the use of a product that is likely to be misused in the real world (*e.g.,* child restraints that depend on tethering when the vehicle for which it is recommended would not have a tether anchorage.)

Since the time of the petition, there have been various child restraint systems developed that address the gap existing for the combination of older vehicles and heavier children. Although Fisher-Price is no longer marketing child restraints, it had developed and marketed the first forward-facing child restraint certified for more than 18 kg that used a lap only belt to secure the restraint to the vehicle and a 5-point harness to restrain the child within the restraint. The Futura 20/60 forward-facing child restraint was certified for children weighing up to 27.2 kg (60 lb) using a 5-point-harness while secured to the vehicle with either a lap only or lap/shoulder belt combination. In addition to being the only child restraint at the time certified for more than 18 kg using a lap belt only, the Futura 20/60 was also the only forward-facing child restraint that was able to meet FMVSS No. 213's revised head excursion limit of 720 mm without the use of a tether strap.

Similarly, Britax recently marketed a different child restraint that was designed to be used with children weighing more than 18 kg with the restraint secured to the vehicle by a lap only belt. The Britax Laptop was an energy-absorbing restraint designed to reduce the impact forces that occur in a crash. The Laptop was designed to be used with either a lap belt only or a lap and shoulder belt combination, could be placed in both rear outboard and rear center seating positions, and was certified for use by children weighing up to 29.5 kg (65 lb). The agency performed compliance testing on the Britax Laptop using both the 3- and 6-year-old dummies. In each instance, the performance criteria set forth in the standard were met by a large margin. When tested with the 3-year-old dummy, the HIC was 576 (limit = 1000), the chest acceleration was 31.87 g's (limit = 60), the head excursion was 502 mm (19.75 in) (limit = 720 mm (28 in)), and the knee excursion was 544 mm (21.41 in) (limit = 915 mm (36 in)). When tested with the 6-year-old dummy, the HIC was 277, the chest acceleration was 31.73 g's, the head excursion was 599 mm (23.6 in), and the knee excursion was 530 mm (20.88 in). Britax is no longer manufacturing the Laptop for sale in the United States.

There are currently a number of child restraints available that are certified for use by children weighing more than 18 kg that can be used in vehicle seating positions equipped with lap only belts. The Britax Wizard and the Britax Marathon are convertible child restraints with 5-point harnesses that can be used forward-facing by children weighing up to 29.5 kg. The Britax Husky is a forward-facing only child restraint with a 5-point harness that is certified for children weighing up to 36.3 kg (80 lb). The Nania Airway LX Booster is a forward-facing child restraint that can be used with its 5-point harness by children weighing up to 22.7 kg.

While restraints certified for children weighing more than 18 kg in seating positions equipped with lap only belts were largely unavailable at the time this petition was submitted, the introduction of the various restraints described above has demonstrated the ability of child restraint manufacturers to devise solutions for this segment of the population. The fact that there are not more restraints currently marketed for this segment of the population could be due to the fact that it is a small population that is shrinking as the numbers of pre-1989 vehicles on the road are steadily declining in number, and will eventually be replaced by vehicles with lap and shoulder belts in the rear seats.

As part of the recently enacted ''Anton's Law'' (Pub. L. 5504; December 4, 2002), NHTSA has issued an NPRM to require lap and shoulder belts at rear center seating positions (68 FR 46546; August 6, 2003). Anton's Law also requires in part that NHTSA initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 22.7 kg. As part of this rulemaking, the agency is required to consider ''whether to address situations where children weighing more than 22.7 kg only have access to seating positions with lap belts, such as allowing tethered child restraints for such children.'' (Reference Section 3(a)(3) of Anton's Law) NHTSA has initiated a program to address this specific provision of Anton's Law, which directly parallels the issues raised in Ms. Weber's petition. As a result, efforts within the agency to address the development of acceptable restraint options for children weighing more than 22.7 kg in lap belt

only seating positions will continue, even though the subject rulemaking is being terminated.

For the reasons outlined above, the agency has decided to terminate the rulemaking that was initiated in response to the petition submitted by Ms. Weber.

Issued on: March 24, 2004.

**Stephen R. Kratzke,**

*Associate Administrator for Rulemaking.*

[FR Doc. 04–6901 Filed 3–26–04; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF COMMERCE

## National Oceanic and Atmospheric Administration

## 50 CFR Parts 300 and 635

**[Docket No. 040316092–4092–01; I.D. 103003A]**

**RIN 0648–AQ37**

## International Fisheries; Atlantic Highly Migratory Species

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** NMFS proposes regulations to require dealers who import, export, or re-export bluefin tuna (BFT), southern bluefin tuna (SBFT), bigeye tuna (BET) and swordfish (SWO), regardless of ocean area of origin, to hold a valid highly migratory species (HMS) international trade permit, to complete and submit required statistical documents and re-export certificates, and to comply with all applicable recordkeeping and reporting requirements of the trade monitoring programs. The regulations would implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) to establish statistical document programs to track the international trade of SWO and BET, would implement the recommendation of the Inter-American Tropical Tuna Commission (IATTC) to establish a statistical document program to track the international trade of BET, would require dealers to comply with the SBFT statistical document program adopted by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), and would expand the current BFT statistical document program to include the re-export of BFT.

**DATES:** Comments on the proposed rule and supporting documents must be received on or before May 10, 2004. Comments sent to the Office of Management and Budget (OMB) on the information collection requirements of the proposed rule must be received on or before May 10, 2004.

**ADDRESSES:** Please submit your comments on the proposed rule and supporting documents by mail to Dianne Stephan, Highly Migratory Species Management Division, NMFS, 1 Blackburn Drive, Gloucester, MA 01930. Comments may be submitted by e-mail. The mailbox address for providing e-mail comments is *NeroHMSTrade@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: Nero HMS Trade Rule.

Comments on the burden-hour estimates or on other aspects of the collection of information relevant to this proposed rulemaking may be submitted to NMFS at the above address, or may be submitted to the Office of Regulatory Affairs, Office of Management and Budget, by email to *David_Rostker@omb.eop.gov* or by facsimile (Fax) to (202) 395–7285.

Copies of the supporting documents, including the original ICCAT and IATTC recommendations, are available by sending your request to Dianne Stephan at the NMFS address listed above.

BFT, SBFT, BET, and SWO statistical documents, re-export certificates, and biweekly dealer reports may be obtained from:

Atlantic coast: NMFS, HMS, ATTN: Kathy Goldsmith, 1 Blackburn Drive, Gloucester, MA 01930–2298,

Gulf coast: NMFS, National Seafood Inspection Laboratory, ATTN: Lori Robinson, 705 Convent St, Pascagoula, MS 39568–1207;

West coast: NMFS, Southwest Region, Sustainable Fisheries Division, ATTN: Pat Donley, 501 West Ocean Blvd. Suite 4200, Long Beach, CA 90802–4213, and;

Western Pacific:NMFS, Pacific Islands Regional Office, ATTN: Raymond Clarke, 1601 Kapiolani Blvd, Suite 1110, Honolulu, HI 96814–4700.

**FOR FURTHER INFORMATION CONTACT:** Dianne Stephan (Atlantic coast), 978–281–9397; Raymond Clarke (Western Pacific), 808–973–2935; Lori Robinson (Gulf coast), 228–769–8964; or Patricia J. Donley (West coast), 562–980–4033.

**SUPPLEMENTARY INFORMATION:**

### Background

At its 2001 meeting, ICCAT adopted recommendations for the establishment of SWO and BET statistical document programs to further the domestic and international understanding of these fisheries, and to help address illegal, unreported and unregulated (IUU) fishing for these species. More recently, IATTC also adopted a recommendation to establish a BET statistical document program similar to the ICCAT program. At its 2003 meeting, ICCAT made slight modifications to all of its statistical document forms to collect more information relevant to vessel identification and farming operations. Generally, these programs require that imports of certain fish be accompanied by a species specific statistical document, or when appropriate, a re-export certificate. The United States is a member of both ICCAT and IATTC. The purpose of this proposed rule is to implement these ICCAT and IATTC recommendations.

The Atlantic Tunas Convention Act (ATCA) of 1975 (16 U.S.C. 971 *et seq.*) authorizes the promulgation of regulations as may be necessary and appropriate to implement ICCAT recommendations. The Tuna Conventions Act of 1950 (TCA)(16 U.S.C. 951 *et seq.*) authorizes rulemaking to carry out IATTC recommendations. NMFS manages the Atlantic SWO and tuna fisheries under the Fishery Management Plan for Atlantic Tunas, Swordfish and Sharks (HMS FMP). Regulations implementing the HMS FMP at 50 CFR part 635 were promulgated under the authorities of the Magnuson-Stevens Fishery Conservation and Management Act (M-SA or Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and ATCA. NMFS manages SWO and tuna in the Pacific Ocean under the Western Pacific Pelagics Fishery Management Plan (PFMP) that was prepared by the Western Pacific Fishery Management Council (WPFMC). Regulations implementing those plans at 50 CFR parts 300 and 660 were promulgated under the authorities of the ATCA, TCA and the M-SA, respectively. The Pacific Fishery Management Council also has developed an FMP for U.S. West Coast Highly Migratory Species, which is under review.

Other authorities relevant to Pacific management include the South Pacific Tuna Act of 1988 (16 U.S.C. 973 *et seq.*), the High Seas Fishing Compliance Act (16 U.S.C. 5501 *et seq.*), and the U.S.-Canada Albacore Treaty. A new Western and Central Tuna Fisheries Convention is likely to come into force sometime in 2004. Customs requirements pertaining to the import and export of product harvested by national and international SWO and tuna fisheries include those under 19 U.S.C. 1 *et seq.* and regulations of the Bureau of Customs and Border Protection (CBP), formerly the U.S.

Customs Service (Customs), under title 19 of the CFR.

**Statistical Document Programs**

International commissions such as ICCAT, IATTC, CCSBT and the Indian Ocean Tuna Commission (IOTC) have recognized the use of statistical document programs as an effective tool to combat IUU fishing by controlling the illegal trade of stocks and to improve the effectiveness of conservation and management measures and the scientific evaluation of the stocks. This proposed rule would implement such programs for BFT, SBFT, BET, and SWO in the United States, which includes the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and all other U.S. commonwealths, territories, or possessions. Specifically, the regulations would require dealers who import, export, or re-export these species from any ocean area to hold an HMS international trade permit, complete statistical documents and re-export certificates, and submit biweekly reports on these trade activities. Documentation requirements would apply to all imports and exports of the species regardless of whether an importing or exporting nation is a member of one of the above-referenced commissions. Often, non-member countries have difficulty obtaining HMS catch information from vessels under their own flag. The statistical document programs are designed to capture these unreported catches.

ICCAT, IATTC, and IOTC individually adopted recommendations for a BET statistical document program, noting that better quality trade data would reduce uncertainty in catch information for this species. NMFS is proposing to implement a BET statistical document program, but is considering delaying implementation of the documentation requirements for fresh BET products initially and only implementing them for frozen BET products. In the past, ICCAT and IATTC have recognized that prior to implementing this program for fresh products, several practical problems need to be solved, such as guidelines to ensure procedures for handling fresh products at customs. NMFS particularly seeks public comment on this issue.

Similar to the BET program, ICCAT's SWO statistical document program is intended to track the trade of SWO and reduce IUU fishing. The United States currently requires a SWO certificate of eligibility (COE) for imports of SWO (50 CFR 635.46) to ensure that Atlantic SWO imported into the United States meet ICCAT and NMFS minimum size requirements. The ICCAT SWO statistical document program would incorporate all the requirements of the COE, thus replacing the COE requirement.

To be effective, the SWO and BET statistical document programs track the international trade of SWO and BET whose origin is from any ocean. Although ICCAT's area of concern is the Atlantic Ocean and IATTC's area of concern is the eastern Pacific Ocean, these programs would easily be circumvented if they did not also track catches from other oceans. The ocean of origin for these species, once on the international market, cannot be ascertained without documentation of the flag state of harvesting vessels and ocean areas of catch. Moreover, without validation, an importing country has no effective means to tell whether a shipment is composed of Indian Ocean product rather than Atlantic or Pacific. The trade tracking programs adopted by these international commissions assist in providing a comprehensive, global monitoring program for these species.

The BFT statistical document program, which was previously implemented in the United States pursuant to an ICCAT recommendation (60 FR 14381; March 17, 1995), set a precedent for tracking trade from all ocean areas. When it was adopted, the ICCAT recommendation for the BFT program only included a statistical document requirement for imports and exports. A 1997 ICCAT recommendation added a re-export certificate to the program; this requirement is included in this proposed rule. More recently, the CCSBT has developed a SBFT statistical document program and requested non-members such as the United States to support this program. While the United States is not a member of CCSBT and ICCAT has not issued a recommendation pertaining to SBFT, the United States proposes to implement the CCSBT SBFT program under its ATCA authority in order to ensure that there are no loopholes in the existing BFT program. The BFT reporting requirements could be circumvented if BFT is mislabeled as SBFT and not properly identified. Thus, this proposed rule would therefore require U.S. dealers importing, exporting, or re-exporting SBFT to comply with the SBFT statistical document program in order to ensure the effectiveness of the BFT program.

**Form Design and Implementation Process**

Prior to passing their statistical document recommendations, ICCAT, IATTC, and technical experts extensively discussed the scope of areal coverage and jurisdiction of international fishery organizations. As described below, they also discussed the specific structure and format of the statistical documents and suitability and applicability of certain exemptions.

ICCAT convened an international meeting of technical experts in July 2001 to consider and resolve technical issues related to the implementation of the recommended SWO and BET statistical document programs. Prior to this meeting, members of the U.S. fishing industry were consulted to review initial BET and SWO statistical document prototypes. Harmonization of all statistical document programs under ICCAT purview (SWO, BET, and BFT) was also considered. At the July 2001 meeting, the U.S. proposed a single, harmonized document to track BFT, SWO, and BET imports. Although this proposal was consistent with ICCAT's directive to endeavor to harmonize all statistical documents under its purview, it was rejected by the technical experts. Some experts expressed concern that the trade patterns and practices of the three species were so different that one document was not practical. In addition, some stated that there could be a risk to the current functioning and effectiveness of the current BSD program if it was altered to include additional species. As a result, ICCAT has developed separate species-specific forms for BET and SWO. This proposed rule allows the use of statistical documents from ICCAT, IATTC, or IOTC for BET relative to area of harvest. The existing statistical document for BFT will remain unchanged, and the statistical document approved by the CCSBT for SBFT will be implemented.

Harmonizing these individual forms is a long-term goal of NMFS. NMFS has begun and will continue to have discussions on how to significantly streamline the existing reporting processes, reduce paperwork, ease reporting requirements on dealers and minimize government administrative oversight. However, in the interest of implementing and complying with the ICCAT and IATTC recommendations as soon as possible, NMFS proposes to implement these separate trade tracking programs and associated paperwork through the existing internal infrastructure. Several different NMFS offices on the east and west coasts and western and central Pacific Islands already manage the operations and tracking of HMS trade and dealer activity. This proposed rule intends to implement the SWO and tuna trade tracking programs by building on the existing body of expertise and

capability, thereby minimizing disruption and confusion between dealers and associated NMFS offices. Extensive coordination and consultation has taken place between the relevant NMFS offices to assist as much as possible with smooth implementation of the program, if adopted, and to assist with constituent concerns.

**Dealer Permitting Requirements**

NMFS proposes to require a Federal HMS international trade permit for each dealer in the United States, including those in U.S. commonwealths, territories, and possessions, who import, export, or re-export BFT, SBFT, BET or SWO from any ocean area. These dealers would have to prepare and submit appropriate statistical documents and re-export certificates, complete biweekly reports and validate exports of all BFT, BET, SBFT or SWO as described below. NMFS specifically solicits public comment on implementation aspects of the proposed rule as well as ideas for future improvements.

**Dealer Statistical Documents and Re-export Certificate Reporting Requirements**

The proposed rule would require a completed statistical document as a condition for the import or export of SBFT, BET or SWO, and a re-export certificate for re-export of all BFT, SBFT, BET or SWO shipments into or from the customs territory of the United States, which includes the States, District of Columbia, and Commonwealth of Puerto Rico, 19 CFR 101.1, and into or from the customs territories of insular possessions of the United States, which include the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and other U.S. commonwealths, territories, and possessions that are outside the customs territory of the United States, 19 CFR 7.2.The statistical document and, where appropriate, re-export certificate would be required to accompany each fresh or frozen shipment of BFT, SBFT, BET or SWO along with other shipping documentation ordinarily required for international trade.

In order to be considered complete, the species-specific statistical document or statistical document and re-export certificate accompanying each shipment would have to include the information required under proposed Subpart L to title 50 of the CFR, be certified by the exporter, importer, and re-exporter, and be validated by a government official or other non-government institution upon export or re-export, as applicable. Copies of statistical documents or re-export certificates may be obtained from NMFS (see **ADDRESSES**).

Dealers re-exporting BFT, SBFT, BET or SWO that were previously imported into the customs territory of the United States or of a U.S. insular possession, must complete the intermediate importer certification section on the original statistical document that accompanied the import shipment, and complete a re-export certificate to accompany each fresh or frozen shipment of BET, BFT, SBFT, or SWO for re-export. The original statistical document that accompanied the import shipment must be included together with the original re-export certificate for re-export. If the original shipment is subdivided into sub-shipments and exported to more than one location, the original statistical document or a copy must accompany each sub-shipment along with an original re-export certificate.

The completed statistical document accompanying any import of BET, SBFT, or SWO into the customs territory of the United States or any U.S. insular possession must be validated by a responsible government official of the country whose flag vessel harvested the fish regardless of where it is first landed, unless NMFS waives this requirement for that country pursuant to a recommendation by the appropriate international commission. For BET, SBFT, or SWO exports from the United States, the accompanying statistical document must be validated by a U.S. Government official, unless an authorized waiver provides for validation by NMFS-authorized non-government officials. BFT, SBFT, BET, and SWO re-exports would also need to be validated by a U.S. Government official, unless there is an applicable waiver. In the case of a U.S. insular possession, a statistical document or re-export certificate may be validated by a U.S. Government official, authorized government official from that possession, or NMFS-authorized non-government official. For any situations where validation by someone other than a Federal NMFS official is authorized, NMFS may, in the future, consider developing a verification system that assesses whether procedures set up by third parties are working as intended. Such a verification system may include auditing, random inspections, and compliance checks

The BSD program developed by ICCAT allowed for the use of BFT dealer (BSD) tags to fulfill the validation requirement for statistical documents. However, the statistical document programs for BET, SBFT, and SWO do not include this provision and NMFS does not currently have a system for issuing dealer tags for these species. If U.S. dealers indicate an interest in having a tagging option for BET, SBFT, and SWO as an alternative method for validating statistical documents, NMFS may consider pursuing such an option at the appropriate international commission. If the use of tags is recommended, then a system for distributing, affixing, and recording tags on BET, SBFT and SWO could be developed.

**Responsible Parties for Certification**

For purposes of exporter certification, the exporter would be considered the person(s) or company that first exported the shipment from the country where the fish is first landed.

For purposes of the importer certification, the intermediate country importer would be considered the person(s) or company who shipped the product through an intermediate country, entering that country's customs territory as an import. An intermediate country for the purposes of these proposed regulations under 50 CFR part 300, is distinct from an intermediary nation as defined in section 3(5) of the MMPA, 16 U.S.C. 1362(5). Shipments of BET, BFT, SBFT or SWO made on a through bill of lading, or made in any other manner that does not enter the products into that country's customs territory as an import, would not make that country an intermediate country under the MMPA.

For purposes of the importer certification, the final destination importer would be considered the persons or company that is the recipient of the product at its final destination (i.e., country of consumption).

**Dealer Biweekly Reporting Requirements**

All dealers who obtain an HMS international trade permit would be required to submit biweekly reports on imports, exports, and re-exports of BFT, SBFT, BET and/or SWO. The report would have to be postmarked and mailed within 10 days after the end of each reporting period in which BFT, SBFT, BET and/or SWO were imported, exported, or re-exported. The biweekly reporting periods would be defined as the first day to the fifteenth day of each month and the sixteenth day to the last day of each month. Each report would have to specify accurately and completely for each fish or shipment of bulk frozen fish exported: date of landing or import; any tag number (if so tagged); and weight in pounds (specify

if round or dressed). Negative reports would not be required.

**Dealer Maintenance of Forms and Enforcement**

Dealers would be required to maintain a copy of statistical documents, re-export certificates, and biweekly reports (forms) and records supporting the information provided in the forms for a period of 2 years from the date on which each form was submitted to NMFS. Also, dealers would be required to make forms and records available for inspection and duplication by any person authorized to carry out enforcement activities under these regulations, or any employee of NMFS designated by the Regional Administrator or Assistant Administrator (AA).

**Applicable Products**

The Harmonized Tariff Schedule (HTS) subheading numbers for each product to which this proposed rule would apply are given below.

BFT: The re-export certificate proposed under this rule would be required for all fresh or frozen BFT products exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by HTS subheading numbers for the following:

(1) Fresh or chilled BFT, excluding fillets and other fish meat, No. 0302.39.00;

(2) Frozen BFT, excluding fillets, No. 0303.49.00.00.

SBFT: The statistical document and re-export certificate proposed under this rule would be required for all fresh or frozen SBFT products that are exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by HTS subheading numbers for the following:

(1) Fresh or chilled SBFT, excluding fish fillets and other fish meat, No. 0302.36.00.00;

(2) Frozen SBFT, No. 0303.46.00.00.

BET: The statistical document and re-export certificate proposed under this rule would be required for all fresh or frozen BET products that are exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by HTS subheading numbers for the following:

(1) Fresh or chilled BET tuna, excluding fillets and other fish meat, No. 0302.34.00.00;

(2) Frozen BET tuna, excluding fillets, No. 0303.44.00.00.

NMFS is considering whether implementation should be delayed for fresh BET, and specifically seeks comment on this issue.

SWO: The statistical document and re-export certificate proposed under this rule would be required for all SWO in any form that are exported from or imported into the customs territory of the United States or of a U.S. insular possession and identified by any HTS subheading numbers including the following:

(1) Fresh or chilled SWO, steaks, No. 0302.69.20.41,

(2) Fresh or chilled SWO, excluding fish fillets, steaks, and other fish meat, No. 0302.69.20.49,

(3) Frozen SWO, steaks, No. 0303.79.20.41,

(4) Frozen SWO, excluding fillets, steaks and other fish meat, No. 0303.79.20.49,

(5) Fresh, chilled or frozen SWO, fillets and other fish meat No. 0304.20.60.92.

**Ports of Entry**

To facilitate enforcement, the AA may, in the future, designate ports of entry. If ports of entry are designated through a rulemaking, all BFT, SBFT, BET and/or SWO entering the United States would be restricted to those ports of entry. Currently, no ports of entry have been proposed.

**Enforcement**

Under this proposed rule, any BET, SBFT, and/or SWO product identified by the HTS subheading numbers referred to previously that is unaccompanied by a completed statistical document would be considered unlawful for importation into the United States. If the AA has designated ports of entry for shipments of BET, SBFT, and/or SWO products, any shipment arriving at non-designated ports of entry would be considered unlawful and the importer would be subject to penalties under ATCA. Actions that would be considered unlawful and subject to penalties under NMFS and customs regulations include: importing, exporting, or re-exporting BFT, BET, SBFT, and/or SWO without an appropriate dealer permit, falsifying records, or failing to submit reports and other required documentation.

Dealers would also be expected to allow inspections by government officials or risk penalties. Similarly, non-government institutions given authorization to validate statistical documents accompanying BET, SBFT and SWO would also be subject to inspections by government officials or risk penalties. Scienter requirements (i.e., knowledge and intent level) and sanctions for TCA and ATCA violations are set forth in 16 U.S.C. §§ 957 and 971e.

This proposed rule also corrects an existing cross-reference in Part 300 in the prohibitions set forth at § 300.28(l).

**Exemptions**

The ICCAT and IATTC BET statistical document program recommendations state that BET destined principally for canneries are not subject to the statistical document requirement. Thus, BET caught by purse seiners and pole and line (bait) vessels and destined principally for the canneries in the United States, including Puerto Rico and the United States Pacific coast and the western and central Pacific Islands (e.g., American Samoa, Northern Marianas, and Guam), would be exempt from the statistical document and re-export certificate requirements under this proposed rule. This exemption would cover all potential U.S. ports of entry, as well as ports within commonwealths, territories, and possessions of the United States on the Pacific coast and in the western and central Pacific Islands.

**Dolphin Safe Tuna Requirements**

This proposed rule would not change any requirements under the Marine Mammal Protection Act (MMPA), as amended by the International Dolphin Conservation Program Act (IDCPA), 16 U.S.C. 1361 *et seq.*, and their implementing regulations (50 CFR Part 216).

The MMPA established a moratorium with certain exceptions on the taking or importation of marine mammals. Because of dolphin interactions with purse seine vessels fishing for yellowfin tuna in the eastern tropical Pacific Ocean (ETP), imports of yellowfin tuna from the ETP are subject to various documentation and other requirements. For an overview of the requirements, see *http://www.nmfs.noaa.gov/prot_res/PR2/Tuna_Dolphin/tunadolphin.html*.

**Scenarios**

The following are examples of use of the BET, SBFT, or SWO statistical document programs under the proposed rule in which shipments of BET, SBFT, and SWO are imported into or exported or re-exported from the United States, which includes all U.S. commonwealths, territories, and possessions:

1. Imports of fresh or frozen SWO, regardless of ocean of origin, into the United States:

An ICCAT SWO statistical document would have to be validated by a responsible government official by the exporting country and accompany the

product. The exporter would complete the export, export certification, and description of the shipment sections of the statistical document. The exporter would also complete the SWO minimum size certification of the statistical document. The original statistical document would accompany the shipment to the United States and a copy would be submitted to the domestic fisheries agency of the exporter.

If a U.S. importer plans to sell the fish for consumption in the domestic market, the import section (naming a U.S. state and city as final point of import) and the importer's certification section of the statistical document would be completed by the importer. The original statistical document with the importer's entries and certification would be submitted to NMFS within 24 hours of time of import.

If a U.S. dealer re-exports the product, the U.S. dealer would complete the importer's certification section of the statistical document (naming the United States as the intermediate country) and a re-export certificate. The dealer would also be required to obtain validation of the re-export certificate. The original statistical document, with the intermediate country importer's entries and certification, and the re-export certificate would accompany the shipment to the final destination. If the shipment was subdivided and re-exported to more than one location, the original statistical document or a copy and an original re-export certificate would be required for each sub-shipment. Completed copies would be submitted to NMFS within 24 hours of the time of re-export.

2. Exports of U.S.-caught fresh SWO, regardless of ocean of origin, from the United States:

Exports of SWO or SWO products, whether fresh or frozen, would be accompanied by an ICCAT SWO statistical document. The exporter would complete the export, exporter certification, and description of shipment sections of the statistical document and have the document validated by either a U.S. Government official or an authorized non-Government institution or association. In the case of a U.S. insular possession, validation can be made by a U.S. Government official, authorized government official from that possession, or NMFS-authorized non-government official. The original statistical document with the exporter's entries and certification would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of export.

3. Exports of U.S.-caught fresh or frozen BET, regardless of ocean of origin, from the United States:

Exports of BET, whether fresh or frozen, would be accompanied by a species specific statistical document. When exporting Atlantic BET, the ICCAT statistical document would be used. When exporting Pacific BET, the IATTC statistical document would be used. The exporter would complete the export, exporter certification, and description of shipment sections on the appropriate statistical document and have the document validated by either a U.S. Government official or an authorized non-Government institution or association. In the case of a U.S. insular possession, validation can be made by a U.S. Government official, authorized government official from that possession, or NMFS-authorized non-government official. The original statistical document with the exporter's entries and certification would accompany the shipment to the final destination, and a completed copy of the statistical document would be submitted to NMFS by the exporter within 24 hours of the time of export.

4. Re-Exports of fresh or frozen BET or SWO, regardless of ocean of origin, through the United States:

If a U.S. dealer imports and then re-exports a product, the dealer would complete the importer's certification section of the statistical document (naming the United States as the intermediate country) and re-exporter section of the re-export certificate. The dealer would also need validation of the re-export certificate. When re-exporting Atlantic BET (e.g. an ICCAT statistical document accompanies the shipment), the ICCAT Re-export certificate would be used. When re-exporting Pacific BET (e.g. an IATTC statistical document accompanies the shipment), the IATTC re-export certificate would be used. The original statistical document, with the intermediate country importer's entries and certification, and the re-export certificate would accompany the shipment to the final destination, and a completed copy would be submitted to NMFS within 24 hours of the time of re-export. If the shipment was subdivided and re-exported to more than one location, the original statistical document or a copy of the original statistical document would accompany each sub-shipment along with an original re-export certificate.

## Classification

This proposed rule is published under the authority of the ATCA, 16 U.S.C. 971 *et seq.*, the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) and the TCA (16 U.S.C. 955 *et seq.*). The AA has preliminarily determined that this proposed rule is necessary to implement the recommendations of ICCAT and IATTC and is necessary for the management of BFT, BET and SWO.

NMFS has prepared a Regulatory Impact Review and an Initial Regulatory Flexibility Analysis (IRFA) that examine the impacts of the alternatives for implementing the ICCAT and IATTC recommendations for international trade monitoring programs. The objectives of the proposed rule, its legal basis, and reasons for its consideration are set forth in the Summary and Supplementary Information sections of this Preamble. The proposed programs would affect approximately 1,890 seafood dealers that participate in international trade of swordfish, bluefin tuna, southern bluefin tuna and bigeye tuna, all of which are considered small entities. Impacts to dealers would occur in two areas - permitting and reporting. NMFS expects only minor negative economic impacts from the preferred alternative because the proposed measures only involve adjusting the permitting and reporting requirements. A description of the alternatives, associated requirements, and estimated costs follows.

The no action/status quo alternative (alternative 2) would make no changes to current programs. The remaining three alternatives would implement the recommended trade programs for swordfish, bigeye tuna, and bluefin tuna. The preferred alternative (alternative 1) and alternative 4 would implement the recordkeeping requirements by linking them to the proposed HMS international dealer trade permit for dealers of these species. The preferred alternative differs from alternative 4 by requiring trade monitoring for southern bluefin tuna in addition to the other species, in order to facilitate program effectiveness, whereas alternative 4 would not require the use of SBFT statistical documents or require a dealer permit for trading in SBFT. Alternative 3 would implement the trade program by building onto existing dealer permits and associated recordkeeping requirements. Overall, the immediate costs associated with the preferred alternative and alternatives 3 and 4 are expected to be greater than for alternative 2 (no action); however, access to international markets could be reduced under the status quo, which is expected to have much greater negative economic impacts in the long term.

The initial cost of obtaining the permit for each U.S. dealer under the

preferred alternative and alternative 4 is expected to be $100 plus the time of filling out the form and the cost of postage, which would be approximately $2. NMFS expects this amount to be a minor negative impact for the affected dealers. The permit-associated cost for the preferred alternative and alternative 4 differs from building onto existing systems (alternative 3) in an amount between $0 to $100 per dealer, depending upon the other permits held by the dealer. Under alternative 3, if the dealer were required to have an Atlantic or Pacific tuna permit to trade in bigeye tuna or southern bluefin tuna, there would be no associated cost since these permits are issued free of charge. However, if the dealer were required to have a swordfish permit for importing or exporting swordfish, the cost could be either $25 or $100, depending upon whether the dealer has another permit issued by the Southeast Region of NMFS. NMFS estimates that approximately 960 dealers would be impacted by the preferred alternative and alternative 3. Alternative 4 would entail similar costs per dealer as alternative 1; however, slightly fewer dealers would be impacted since dealers trading in southern bluefin tuna without trade in any of the other covered species would not be required to purchase a permit.

NMFS estimates that approximately 1,890 dealers (930 foreign and 960 domestic) could be impacted by the reporting requirements under the preferred alternative and alternatives 3 and 4. Impacts for each of these alternatives is expected to be approximately the same since all dealers must submit the required reports, regardless of the type of permit. The professional skills necessary to complete the reporting requirements are equivalent to an educational level of high school completion. The annual economic impacts of the reporting requirements, in addition to the potential costs of the HMS ITP discussed in the previous paragraph, would be approximately $386 per dealer, including statistical document and re-export certificate opportunity costs ($285) and mailing ($2), biweekly opportunity cost ($90) and mailing ($9). This amount will vary depending on the volume of HMS imported or exported or the number of forms submitted. Alternative four would eliminate the need for reporting southern bluefin tuna trade, so costs would be slightly reduced. Finally, dealers could be negatively impacted if the time burden interferes with how dealers conduct their business; however, NMFS does not expect the direct or indirect costs or associated time burden of additional reporting to be more than a minor negative impact for the affected constituents.

NMFS does not believe that the proposed alternatives would conflict with any relevant regulations, federal or otherwise. To avoid duplication with the requirements of the HMS ITP, this rule would remove the international components of the existing swordfish and Atlantic tuna dealer permits.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

This proposed rule contains new and revised collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act. These requirements have been submitted to OMB for approval. The public reporting burden for completing an application for a Federal permit for Atlantic coast dealers that import, export, or re-export BET, BFT, SBFT, or SWO is estimated at 0.08 hours (5 minutes) per response. The public reporting burden for dealers for collection-of-information on dealer reports is estimated at 0.08 hours (5 minutes) each for statistical documents and re-export certificates; 2 hours for validation; 2 hours for authorization for non-governmental validation; 0.25 hours (15 minutes) for international trade biweekly report; 0.25 hours (15 minutes) for Southeast Region HMS dealer report; 0.05 hours (3 minutes) for Southeast Region HMS dealer negative reporting; 0.25 hours (15 minutes) for Atlantic BFT biweekly dealer report; 0.02 hours (1 minute) for tagging; and 0.03 hours (2 minutes) for landing cards. The proposed rule also addresses previously approved requirements for domestic dealer permits as follows: a swordfish dealer permit and shark dealer permit have been approved under collection 0648–0205 and an Atlantic tuna dealer permit has been approved under collection 0648–0202. The response time for each of these domestic permits is 5 minutes. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; 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, including through the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NMFS at the **ADDRESSES** above, and e-mail to *David__Rostker@omb.eop.gov*, or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

**List of Subjects**

*50 CFR Part 300*

Fisheries, Reporting and recordkeeping requirements, Treaties.

*50 CFR Part 635*

Fisheries, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: March 22, 2004.

**William T. Hogarth,**

*Assistant Administrator for Fisheries, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS proposes to amend 50 CFR parts 300 and 635 to read as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for subpart C is revised to read as follows:

**Authority:** 16 U.S.C. 951–961 *et seq.*

2. In subpart C, revise § 300.20 to read as follows:

### § 300.20 Purpose and scope.

The regulations in this subpart are issued under the authority of the Tuna Conventions Act of 1950 (Act). The regulations implement recommendations of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean so far as they affect vessels and persons subject to the jurisdiction of the United States.

3. In § 300.21, remove the definitions for ''*Pacific bluefin tuna*'' and ''*Tag*,'' and revise the introductory paragraph to read as follows:

### § 300.21 Definitions.

In addition to the terms defined in § 300.2, the Act, and the Convention for the Establishment of an Inter-American Tropical Tuna Commission, the terms used in this subpart have the following meanings. If a term is defined differently in § 300.2, the Act, or the

Convention, the definition in this section shall apply.

* * * * *

**Subpart C [Amended]**

4. Remove §§ 300.24 through 300.25 and redesignate §§ 300.28 and 300.29 as §§ 300.24 and 300.25, respectively, and remove and reserve §§ 300.26 through 300.27.

5. In newly redesignated § 300.24, remove (e) through (g), redesignate paragraphs (h) through (l) as paragraphs (e) through (i), respectively, and revise newly redesignated paragraphs (h) and (i) to read as follows:

**§ 300.24 Prohibitions.**

* * * * *

(h) Fail to use the sea turtle handling, release, and resuscitation procedures in § 300.25(e); or

(i) Fail to report information when requested by the Regional Administrator under § 300.22.

6. Subpart L is added to read as follows:

**Subpart L—International Trade Documentation and Tracking Programs**

Sec.
300.180 Purpose and scope.
300.181 Definitions.
300.182 Highly migratory species (HMS) international trade permit.
300.183 Dealer recordkeeping and reporting.
300.184 Species subject to documentation requirements.
300.185 Documentation and reporting requirements.
300.186 Contents of documentation.
300.187 Validation requirements.
300.188 Ports of entry.
300.189 Prohibitions.

## Subpart L—International Trade Documentation and Tracking Programs

**Authority:** 16 U.S.C. 951–961 and 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

**§ 300.180 Purpose and scope.**

The regulations in this subpart are issued under the authority of the Atlantic Tunas Convention Act of 1975 (ATCA), Tuna Conventions Act of 1950, and Magnuson-Stevens Act. The regulations implement the recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) for the conservation and management of tuna and tuna-like species in the Atlantic Ocean and of the Inter-American Tropical Tuna Commission (IATTC) for the conservation and management of highly migratory fish resources in the Eastern Tropical Pacific Ocean, so far as they affect vessels and persons subject to the jurisdiction of the United States.

**§ 300.181 Definitions.**

*Atlantic bluefin tuna* means the species *Thunnus thynnus* found in the Atlantic Ocean.

*Bigeye tuna* means the species *Thunnus obesus* found in any ocean area.

*Bluefin tuna*, for purposes of this subpart, means Atlantic and Pacific bluefin tuna, as defined in this section.

*BSD tag* means a numbered tag affixed to a bluefin tuna issued by any country in conjunction with a catch statistics information program and recorded on a bluefin tuna statistical document.

*CCSBT* means the Commission for the Conservation of Southern Bluefin Tuna established pursuant to the Convention for the Conservation of Southern Bluefin Tuna.

*Customs territory of the United States* has the same meaning as § 101.1 of title 19 of the CFR and includes only the States, the District of Columbia, and Puerto Rico.

*Dealer*, for purposes of this subpart, means, unless otherwise specified, a person who obtains a dealer permit under § 300.182 of this subpart.

*Dealer tag* means the numbered, flexible, self-locking ribbon issued by NMFS for the identification of Atlantic bluefin tuna sold to a dealer permitted under § 635.4 of this title as required under § 635.5(b) of this title.

*Export* means, for purposes of this subpart, a shipment to a destination outside the customs territory of the United States for which a Shipper's Export Declaration Commerce Form (7525–V) is required. For a U.S. insular possession, an export means a shipment to a destination outside the customs territory of that possession for which authorized export documentation from that possession's customs authority is required. HMS destined from one foreign country to another, which transit the customs territory of the United States or a U.S. insular possession and for which a Shipper's Export Declaration or authorized, equivalent documentation is not required to be filed, is not an export under this definition.

*Exporter* means the principal party responsible for effecting export from the United States as listed on the Shipper's Export Declaration Commerce Form (7525–V) or any authorized, equivalent electronic medium, or any authorized export documentation from the customs authority of a U.S. insular possession.

*Finlet* means one of the small individual fins on a tuna located behind the second dorsal and anal fins and forward of the tail fin.

*Fish or fish products regulated under this subpart* means bluefin tuna, bigeye tuna, southern bluefin tuna and swordfish and products of these species.

*Foreign dealer*, for purposes of this subpart, means a person who imports fish products regulated under this subpart from the United States or exports fish or fish products regulated under this subpart to the United States.

*IATTC* means the Inter-American Tropical Tuna Commission, established pursuant to the Convention for the Establishment of an Inter-American Tropical Tuna Commission.

*ICCAT* means the International Commission for the Conservation of Atlantic Tunas established pursuant to the International Convention for the Conservation of Atlantic Tunas.

*International Commission*, as defined under this subpart, means CCSBT, IATTC, ICCAT, or IOTC.

*IOTC* means the Indian Ocean Tuna Commission established pursuant to the Agreement for the Establishment of the Indian Ocean Tuna Commission approved by the Food and Agriculture Organization (FAO) Council of the United Nations.

*Import* means, for the purposes of this subpart, the release of HMS from a nation's customs' custody and entry into the customs territory of that nation. HMS are imported into the customs territory of the United States pursuant to filing an entry summary document (Customs Form 7501) or any authorized, equivalent electronic medium. HMS are imported into the customs territory of a U.S. insular possession pursuant to filing any authorized entry documentation from that possession's customs authority. HMS destined from one foreign country to another that transit the customs territory of the United States or a U.S. insular possession and for which an entry summary or equivalent documentation is not required to be filed, is not an import under this definition.

*Importer*, for the purposes of this subpart, means the importer of record as declared on U.S. Customs Form 7501 or any authorized, equivalent electronic medium, or any authorized entry documentation from the customs authority of a U.S. insular possession.

*Insular possession of the United States or U.S. insular possession*, for purposes of this section, means the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, and other possessions listed under 19 CFR 7.2, that are outside the customs territory of the United States.

*Intermediate country* means a country that exports to another country HMS previously imported by that nation. Shipments of HMS through a country on a through bill of lading or in another

manner that does not enter the shipments into that country as an importation do not make that country an intermediate country under this definition.

*Pacific Bluefin Tuna* means the species *Thunnus orientalis* found in the Pacific Ocean.

*Re-export*, for purposes of this subpart, means the export of HMS that were previously imported into the customs territory of the United States or a U.S. insular possession.

*Southern Bluefin Tuna* means the species *Thunnus maccoyii* found in any ocean area.

*Swordfish* means the species *Xiphias gladius* that is found in any ocean area.

*Tag* means either a dealer tag or a BSD tag.

**§ 300.182 HMS international trade permit.**

(a) *General.* A person importing, exporting, or re-exporting fish or fish products regulated under this subpart from any ocean area must possess a valid dealer permit issued under this section. Importation of fish or fish products regulated under this subpart by nonresident corporations is restricted to those entities authorized under 19 CFR 141.18.

(b) *Application.* A person must apply for a permit in writing on an appropriate form obtained from NMFS. The application must be completed, signed by the applicant, and submitted with required supporting documents, at least 30 days before the date upon which the permit is made effective. Application forms and instructions for their completion are available from NMFS.

(c) *Issuance.* (1) Except as provided in subpart D of 15 CFR 904, NMFS will issue a permit within 30 days of receipt of a completed application.

(2) NMFS will notify the applicant of any deficiency in the application. If the applicant fails to correct the deficiency within 15 days following the date of notification, the application will be considered abandoned.

(d) *Duration.* Any permit issued under this section is valid until December 31 of the year for which it is issued, unless suspended or revoked.

(e) *Alteration.* Any permit that is substantially altered, erased, or mutilated is invalid.

(f) *Replacement.* NMFS may issue replacement permits. An application for a replacement permit is not considered a new application. An appropriate fee, consistent with paragraph (j) of this section, may be charged for issuance of a replacement permit.

(g) *Transfer.* A permit issued under this section is not transferable or assignable; it is valid only for the dealer to whom it is issued.

(h) *Inspection.* The dealer must keep the permit issued under this section at his/her principal place of business. The permit must be displayed for inspection upon request of any authorized officer, or any employee of NMFS designated by NMFS for such purpose.

(i) *Sanctions.* The Assistant Administrator may suspend, revoke, modify, or deny a permit issued or sought under this section. Procedures governing permit sanctions and denials are found at subpart D of 15 CFR part 904.

(j) *Fees.* NMFS may charge a fee to recover the administrative expenses of permit issuance. The amount of the fee is calculated, at least annually, in accordance with the procedures of the NOAA Finance Handbook, available from NMFS, for determining administrative costs of each special product or service. The fee may not exceed such costs and is specified on each application form. The appropriate fee must accompany each application. Failure to pay the fee will preclude issuance of the permit. Payment by a commercial instrument later determined to be insufficiently funded shall invalidate any permit.

(k) *Change in application information.* Within 15 days after any change in the information contained in an application submitted under this section, the dealer issued a permit must report the change to NMFS in writing. The permit is void if any change in information is not reported within 15 days.

(l) *Renewal.* Persons must apply annually for a dealer permit issued under this section. A renewal application must be submitted to NMFS, at an address designated by NMFS, at least 30 days before the permit expiration to avoid a lapse of permitted status. NMFS will renew a permit provided that the application for the requested permit is complete, all reports required under the Magnuson-Stevens Act, ATCA, and the Tuna Conventions Act of 1950 have been submitted, including those required under §§ 300.183, 300.185, 300.186, and 300.187 and 50 CFR Part 635.5; and the applicant is not subject to a permit sanction or denial under paragraph (i) of this section.

**§ 300.183 Dealer recordkeeping and reporting.**

(a) Any person issued a dealer permit under § 300.182 must submit to NMFS a biweekly report of imports, exports, and re-exports of fish or fish products regulated under this subpart on forms supplied by NMFS.

(1) The report required to be submitted under paragraph (a) must be postmarked within 10 days after the end of each biweekly reporting period in which bluefin tuna, southern bluefin tuna, bigeye tuna, or swordfish were imported, exported, or re-exported. The bi-weekly reporting periods are defined as the first day to the 15th day of each month and the 16th day to the last day of the month.

(2) Each report must specify accurately and completely the requested information for fresh shipments of fish or fish products regulated under this subpart, and for each shipment of bulk-frozen fish or fish products regulated under this subpart that are imported, exported or re-exported.

(b) Any person issued a dealer permit under § 300.182 must retain at his/her principal place of business a copy of each biweekly report and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(c) Any person authorized to carry out the enforcement activities under the regulations in this part has the authority, without warrant or other process, to inspect, at any reasonable time, fish or fish products regulated under this subpart, biweekly reports, statistical documents or re-export certificates, sales receipts, or other records and reports required by this part to be made, kept, or furnished. A dealer that has been issued a permit under § 300.182 must allow NMFS or an authorized person to inspect and copy any required reports and the records, in any form, on which the completed reports are based, wherever they exist. An agent of a person issued a dealer permit under this part, or anyone responsible for importing, exporting, storing, packing, or selling fish or fish products regulated under this subpart, shall be subject to the inspection provisions of this section.

**§ 300.184 Species subject to documentation requirements.**

The following fish or fish products are subject to the documentation requirements of this subpart regardless of ocean area of catch.

(a) *Bluefin tuna.* (1) Documentation is required for bluefin tuna identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled bluefin tuna, excluding fillets and other fish meat, No. 0302.35.00.00.

(ii) Frozen bluefin tuna, excluding fillets, No. 0303.45.00.00.

(2) In addition, bluefin tuna products in other forms (e.g., chunks, fillets, canned) listed under any other

subheading numbers from the Harmonized Tariff Schedule are subject to the documentation requirements of this subpart, except that fish parts other than meat (e.g., heads, eyes, roe, guts, tails) may be allowed entry without said statistical documentation.

(b) *Southern bluefin tuna.* (1) Documentation is required for southern bluefin tuna identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled southern bluefin tuna, excluding fillets and other fish meat, No. 0302.36.00.00

(ii) Frozen southern bluefin tuna, excluding fillets, No. 0303.46.00.00.

(2) [Reserved]

(c) *Bigeye tuna.* (1) Documentation is required for bigeye tuna identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled bigeye tuna, excluding fillets and other fish meat, No. 0302.34.00.00.

(ii) Frozen bigeye tuna, excluding fillets, No. 0303.44.00.00.

(2) Bigeye tuna caught by purse seiners and pole and line (bait) vessels and destined for canneries within the United States, including all U.S. commonwealths, territories, and possessions, may be allowed entry without the statistical documentation required under this section.

(d) *Swordfish.* (1) Documentation is required for swordfish identified by the following subheading numbers from the Harmonized Tariff Schedule:

(i) Fresh or chilled swordfish, steaks, No. 0302.69.20.41

(ii) Fresh or chilled swordfish, excluding fish fillets, steaks, and other fish meat, No. 0302.69.20.49,

(iii) Frozen swordfish, steaks, No. 0303.79.20.41,

(iv) Frozen swordfish, excluding fillets, steaks and other fish meat, No. 0303.79.20.49,

(v) Fresh, chilled or frozen swordfish, fillets and other fish meat, No. 0304.20.60.92.

(2) [Reserved]

**§ 300.185 Documentation and reporting requirements.**

Imports into and exports or re-exports from the customs territory of the United States or a U.S. insular possession of fish or fish products specified under § 300.184 are subject to the documentation and reporting requirements of this subpart.

(a) *Imports.* (1) Imports of all fish or fish products specified under § 300.184 into the customs territory of the United States or a U.S. insular possession must, at the time of completing an entry summary, be accompanied by an original completed approved species specific statistical document with the information and exporter's certification specified in § 300.186. An entry summary consists of a Customs Form 7501 or authorized, electronic equivalent, or other authorized, equivalent document from the customs authority of a U.S. insular possession. Customs Form 7501 can be obtained by contacting the local Customs and Border Protection port office; contact information is available at www.cbp.gov. For a U.S. insular possession, contact the local customs office for any forms required for entry. The statistical document must be validated as specified in § 300.187 by a responsible government official of the country whose flag vessel caught the fish (regardless of where the fish are first landed). The U.S. dealer who receives the imported fish products either for domestic commercial use or for re-export must provide on the original statistical document that accompanied the import shipment the correct information and importer's certification specified in § 300.186 and must note on the top of the statistical document the entry number assigned at the time of filing the entry summary.

(2) Bluefin tuna imported into the customs territory of the United States or a U.S. insular possession from a country requiring a BSD tag on all such bluefin tuna available for sale must be accompanied by the appropriate BSD tag issued by that country, and said BSD tag must remain on any bluefin tuna until it reaches its final destination. If the final import destination is the United States, which includes all U.S. commonwealths, territories, and possessions, the BSD tag must remain on the bluefin tuna until it is cut into portions. If the bluefin tuna portions are subsequently packaged for domestic commercial use or re-export, the BSD tag number and the issuing country must be written legibly and indelibly on the outside of the package.

(3) *Reporting.* For imports of fish or fish products regulated under this subpart whose final destination is within the United States, which includes all U.S. commonwealths, territories, and possessions, a dealer must submit to NMFS the original statistical document that accompanied the fish product as completed under paragraph (a)(1) of this section. A copy of the original completed statistical document must be postmarked and mailed, or faxed, by said dealer to NMFS at an address designated by NMFS within 24 hours of the time the fish product was imported into the customs territory of the United States or a U.S. insular possession. For imports of fish products specified in § 300.184 which are re-exported, a dealer must submit to NMFS a copy of the statistical document that accompanied the product as completed under paragraph (a)(1) of this section and a copy of the re-export certificate as completed under paragraph (c)(1) of this section.

(b) *Exports.* (1) A dealer who exports fish or fish products regulated under this subpart that were harvested by U.S. vessels and first landed in the United States, or harvested by vessels of a U.S. insular possession and first landed in that U.S. insular possession, must complete an original numbered species specific statistical document issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific export shipment. A dealer must provide on the statistical document the correct information and exporter certification specified in § 300.186. The statistical document must be validated, as specified in § 300.187, by a U.S. Government official, authorized government official for a U.S. insular possession, or authorized non-government official. A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. validation for exports should notify NMFS as soon as possible after arrival of the vessel to avoid delays in inspection and validation of the export shipment.

(2) For exports of fish or fish products regulated under this subpart, a dealer must submit an original statistical document as completed under paragraph (b)(1) of this section to accompany the shipment of such products to their export destination. A copy of the statistical document must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was exported from the United States.

(c) *Re-exports.* (1) A dealer who re-exports fish or fish products regulated under this subpart that were previously imported into the customs territory of the United States or a U.S. insular possession through filing the documentation specified under paragraph (a)(1) of this section must complete an original individually numbered species specific re-export certificate issued to that dealer by NMFS. Such an individually numbered document is not transferable and may be used only once by the dealer to which it was issued to report on a specific re-export shipment. A dealer must provide on the re-export certificate the correct

information and re-exporter certification specified in § 300.186. The dealer must also attach the original statistical document that accompanied the import shipment and provide the correct information and intermediate importer's certification specified in § 300.186 and must note on the top of both the statistical document and the re-export certificate the entry number assigned at the time of filing the entry summary. If the original shipment is subdivided into sub-shipments for re-export to more than one location, the original statistical document or a copy must be attached to each re-export shipment.

(2) The re-export certificate must be validated, as specified in § 300.187, by a U.S. Government official, authorized government official for a U.S. insular possession, or authorized non-government official. A list of such officials may be obtained by contacting NMFS. A dealer requesting U.S. validation for re-exports should notify NMFS as soon as possible to avoid delays in inspection and validation of the re-export shipment. The requirements of this paragraph do not apply to fish products destined from one foreign country to another which transit the United States or a U.S. insular possession and for which an entry summary, as specified under paragraph (a)(1) of this section, is not filed and for which a Shipper's Export Declaration for in-transit merchandise must be filed. A Shipper's Export Declaration consists of an ENG Form 7513 or electronic equivalent, or other authorized, equivalent document from the customs authority of a U.S. insular possession. ENG Form 7513 can be obtained by contacting the U.S. Army Corps of Engineers at *http://www.iwr.usace.army.mil/ndc/usforeign/.* For a U.S. insular possession, contact the local customs office for any forms required for in-transit merchandise.

(3) For re-exports of fish products specified in § 300.184, a dealer must submit the original of the completed statistical document and re-export certificate completed as specified under paragraphs (c)(1) and (c)(2) of this section to accompany the shipment of such products to their re-export destination. A copy of the completed statistical document and re-export certificate must be postmarked and mailed by said dealer to NMFS, at an address designated by NMFS, within 24 hours of the time the fish product was re-exported from the United States.

(d) *Recordkeeping.* A dealer must retain at his or her principal place of business a copy of each statistical document and re-export certificate required to be submitted to NMFS pursuant to this section and supporting records for a period of 2 years from the date on which it was submitted to NMFS.

(e) *Inspection.* A dealer must comply with the inspection requirements provided at § 300.183(c).

**§ 300.186 Contents of documentation.**

(a) *Statistical Documents.* All statistical documents, to be deemed complete, must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country whose flag vessel harvested the fish, regardless of where it is first landed.

(3) The name of the vessel that caught the fish, the vessel's length (in meters), the vessel's registration number and the ICCAT record number, if applicable.

(4) The point of export, which is the city, state or province, and country from which the fish is first exported.

(5) The product type (fresh or frozen), time of harvest (month/year), and product form (round, gilled and gutted, dressed, fillet, or other).

(6) The method of fishing used to harvest the fish (e.g., purse seine, trap, rod and reel).

(7) The ocean area from which the fish was harvested.

(8) The weight of each fish (in kilograms for the same product form previously specified) or the net weight of each product type, as applicable.

(9) The name and license number of, and be signed and dated in the exporter's certification block by, the exporter.

(10) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the country whose flag vessel caught the fish (regardless of where the fish are first landed) or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the statistical document.

(11) If applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by, each intermediate and the final importer.

(b) *Bluefin Tuna Statistical Documents.* Bluefin tuna statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must also state:

(1) Whether the fish was farmed or captured.

(2) The name and address of the owner of the trap that caught the fish, or the farm from which the fish was taken, if applicable.

(3) The identifying tag number, if landed by vessels from countries with BSD tagging programs or tagged pursuant to § 635.5(b) of this or pursuant to § 300.187(d).

(c) *Southern Bluefin Tuna Statistical Documents.* Southern bluefin tuna statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must also state:

(1) The name and address of the processing establishment, if applicable.

(2) [Reserved]

(d) *Bigeye Tuna Statistical Documents.* Bigeye tuna statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must also state:

(1) The name of the owner of the trap that caught the fish, if applicable.

(2) The net weight of product for each product type (in kilograms for the same product form previously specified).

(e) *Swordfish Statistical Documents.* Swordfish statistical documents, to be deemed complete, in addition to the elements in § 300.186(a), must state:

(1) Certification by the exporter that the individual Atlantic swordfish included in the shipment are greater than 15 kilograms (33 lb) or if pieces, that the pieces were derived from a swordfish weighing more than 15 kilograms (33 lb).

(2) [Reserved]

(f) *Re-Export Certificates.* All re-export certificates, to be deemed complete must state:

(1) The document number assigned by the country issuing the document.

(2) The name of the country issuing the document, which must be the country through which the product is being re-exported.

(3) The point of re-export, which is the city, state, or province, and country from which the product was re-exported.

(4) The description of the fish product as imported, including the product type (fresh or frozen), product form (round, gilled and gutted, dressed, fillet, or other), the net weight, flag country of the vessel that harvested the fish in the shipment, and the date of import to the country from which it is being re-exported.

(5) The description of the fish product as re-exported, including the product type (fresh or frozen), product form (round, gilled and gutted, dressed, fillet, or other) and the net weight.

(6) The name and license number (if applicable) of, and be signed and dated

in the re-exporter's certification block by, the re-exporter.

(7) If applicable, the name and title of, and be signed and dated in the validation block by, a responsible government official of the re-exporting country appearing on the certificate, or by an official of an institution accredited by said government, with official government or accredited institution seal affixed, thus validating the information on the re-export certificate.

(8) If applicable, the name(s) and address(es), including the name of the city and state or province of import, and the name(s) of the intermediate country(ies) or the name of the country of final destination, and license number(s) of, and be signed and dated in the importer's certification block by each intermediate and the final importer.

(g) *Bluefin Tuna Re-Export Certificates.* Bluefin tuna re-export certificates, to be deemed complete, in addition to the elements in § 300.186(f), must also state:

(1) Whether the fish for re-export was farmed.

(2) The name and address of the farm from which the fish was taken.

(h) An approved statistical document or re-export certificate may be obtained from NMFS to accompany exports of fish or fish products regulated under this subpart from the customs territory of the United States or a U.S. insular possession. Foreign dealers in a country that does not provide an approved statistical document or re-export certificate to exporters may obtain an approved statistical document or re-export certificate from the appropriate website as follows: *www.iccat.org*, *www.iattc.org*, *www.ccsbt.org*, or *www.iotc.org* to accompany exports to the United States.

(i) A foreign dealer who exports or re-exports fish or fish products regulated under this subpart to the United States may use an approved statistical document or re-export certificate obtainable from the websites listed in paragraph (h) of this section or a document developed by the country of export, if that country submits a copy to the ICCAT Executive Secretariat and NMFS concurs with the ICCAT Secretariat's determination that the document meets the information requirements of the ICCAT recommendation. In such case, NMFS will provide a list of countries for which statistical documents and re-export certificates are approved, with examples of approved documents, to the appropriate official of the Bureau of Customs and Border Protection or customs authority for a U.S. insular possession. Effective upon the date indicated in such notice to the customs officials, shipments of fish or fish products regulated under this subpart offered for importation from said country(ies) may be accompanied by either that country's approved statistical document or re-export certificate or by the statistical document or re-export certificate obtained by the foreign country exporter from the websites listed in paragraph (h) of this section.

**§ 300.187 Validation requirements.**

(a) *Imports.* The approved statistical document accompanying any import of any fish or fish product regulated under this subpart must be validated by a government official from the issuing country, unless NMFS waives this requirement pursuant to an applicable recommendation of the relevant international commission. NMFS will furnish a list of countries for which government validation requirements are waived to the appropriate official of the Bureau of Customs and Border Protection or customs authority for a U.S. insular possession. Such list will indicate the circumstances of exemption for each issuing country and the non-government institutions, if any, accredited to validate statistical documents and re-export certificates for that country.

(b) *Exports and re-exports.* The approved statistical document and, as appropriate, re-export certificate accompanying any export or re-export of fish or fish products regulated under this subpart from the United States or a U.S. insular possession must be validated, except pursuant to a waiver, if any, specified on the form and accompanying instructions, or in a letter to the permitted dealer from NMFS. Validation must be made by a U.S. Government official or authorized government official from a U.S. insular possession. Any waiver of government validation will be consistent with applicable recommendations of the respective international commission concerning validation of statistical documents and re-export certificates. If authorized, such waiver of government validation may include:

(1) Exemptions from government validation for Pacific bluefin tuna with individual BSD tags affixed pursuant to paragraph (d) of this section or for Atlantic bluefin tuna with tags affixed pursuant to § 635.5(b) of this title; or

(2) Validation by non-government officials authorized to do so by NMFS under paragraph (c) of this section.

(c) *Authorization for non-government validation.* An institution or association seeking authorization to validate statistical documents or re-export certificates accompanying exports or re-exports from the United States, which includes U.S. commonwealths, territories, and possessions, must apply in writing to NMFS at an address designated by NMFS for such authorization. The application must indicate the procedures to be used for verification of information to be validated, list the names, addresses, and telephone/fax numbers of individuals to perform validation, and provide an example of the stamp or seal to be applied to the statistical document or re-export certificate. NMFS, upon finding the institution or association capable of verifying the information required on the statistical document or re-export certificate, will issue, within 30 days, a letter specifying the duration of effectiveness and conditions of authority to validate statistical documents or re-export certificates accompanying exports from the United States. The effectiveness of such authorization will be delayed as necessary for NMFS to notify the appropriate international commission of non-government institutions and associations authorized to validate statistical document or re-export certificates. Institutions or associations given authorization to validate statistical documents or re-export certificates must renew such authorization on a yearly basis.

(d) *BSD tags*—(1) *Issuance.* NMFS will issue numbered BSD tags for use on Pacific bluefin tuna upon request to each person receiving a dealer's permit under § 300.182.

(2) *Transfer.* BSD tags issued under this section are not transferable and are usable only by the permitted dealer to whom they are issued.

(3) *Affixing BSD tags.* At the discretion of dealers permitted under § 300.182, a tag issued under paragraph (1) of this section may be affixed to Pacific bluefin tuna purchased or received by the dealer. If so tagged, the tag must be affixed to the tuna between the fifth dorsal finlet and the keel and tag numbers must be recorded on NMFS reports required by § 300.183 and any documents accompanying the shipment of bluefin tuna for domestic commercial use or export as indicated in § 300.186.

(4) *Removal of tags.* A tag, as defined in this subpart and affixed to any bluefin tuna, must remain on the fish until it is cut into portions. If the bluefin tuna or bluefin tuna parts subsequently are packaged for transport for domestic commercial use or for export, the number of the dealer tag or the BSD tag must be written legibly and indelibly on

the outside of any package containing the bluefin tuna. Such tag number also must be recorded on any document accompanying the shipment of bluefin tuna for commercial use or export.

(5) *Labeling.* BSD tags affixed to a Pacific bluefin tuna under paragraph (d)(3) must be recorded on any document accompanying the shipment of the fish or fish product for commercial use or for export.

(6) *Reuse.* BSD tags issued under this section are separately numbered and may be used only once, one tail tag per Pacific bluefin tuna, to distinguish the purchase of one Pacific bluefin tuna. Once affixed to a tuna or recorded on any package, container or report, a BSD tag and associated number may not be reused.

**§ 300.188 Ports of entry.**

NMFS shall monitor the importation of fish or fish products regulated under this subpart into the United States. If NMFS determines that the diversity of handling practices at certain ports at which fish or fish products regulated under this subpart are being imported into the United States allows for circumvention of the statistical document requirement, NMFS may undertake a rulemaking to designate, after consultation with the Bureau of Customs and Border Protection, those ports at which fish or fish products regulated under this subpart from any ocean area may be imported into the United States.

**§ 300.189 Prohibitions.**

In addition to the prohibitions specified in §§ 300.4, 600.725 and 635.71 of this title, it is unlawful for any person subject to the jurisdiction of the United States to violate any provision of this part, the Atlantic Tunas Convention Act, the Magnuson-Stevens Act, the Tuna Conventions Act of 1950, or any other rules promulgated under those Acts.

It is unlawful for any person or vessel subject to the jurisdiction of the United States to:

(a) Falsify information required on an application for a permit submitted under § 300.182.

(b) Import, receive for export, export, or re-export any fish or fish product regulated under this subpart or purchase or receive for export any fish or fish product regulated under this subpart without a valid dealer permit issued under § 300.182.

(c) Fail to possess and make available for inspection a dealer permit at the dealer's place of business, or alter any such permit as specified in § 300.182.

(d) Falsify or fail to record, report, or maintain information required to be recorded, reported, or maintained, as specified in § 300.183 or § 300.185.

(e) Fail to allow an authorized agent of NMFS to inspect and copy reports and records, as specified in § 300.183 or § 300.185.

(f) Fail to comply with the documentation requirements for imported, exported, or re-exported fish or fish product regulated under this subpart as specified in §§ 300.185 and 300.186.

(g) Fail to comply with the documentation requirements for the importation, exportation, or re-exportation of a swordfish, or part thereof, that is less than the minimum size, as specified in § 300.186.

(h) Validate statistical documents or re-export certificates without authorization as specified in § 300.187.

(i) Validate statistical documents or re-export certificates as provided for in § 300.187 with false information.

(j) Remove any NMFS issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BSD tag program before removal is allowed under § 300.187, fail to write the tag number on the shipping package or container as specified in § 300.187, or reuse any NMFS issued numbered tag affixed to any Pacific bluefin tuna or any tag affixed to a bluefin tuna imported from a country with a BSD tag program or any tag number previously written on a shipping package or container as prescribed by § 300.187.

(k) Import, or attempt to import, any fish or fish product regulated under this subpart in a manner inconsistent with any ports of entry designated by NMFS as authorized by § 300.188.

(l) Ship, transport, purchase, sell, offer for sale, import, export, re-export, or have in custody, possession, or control any fish or fish product regulated under this subpart that was imported, exported, or re-exported contrary to this subpart.

## PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

1. The authority citation for 50 CFR part 635, continues to read as follows:

**Authority:** 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

2. In § 635.4 revise paragraph (g) to read as follows:

**§ 635.4 Permits and fees.**

* * * * *

(g) Dealer Permits—(1) *Atlantic tunas.* A person that receives, purchases, trades for, or barters for Atlantic tunas from a fishing vessel of the United States, as defined under § 600.10, must possess a valid dealer permit.

(2) *Shark.* A person that receives, purchases, trades for, or barters for Atlantic sharks from a fishing vessel of the United States, as defined under § 600.10, must possess a valid dealer permit.

(3) *Swordfish.* A person that receives, purchases, trades for, or barters for Atlantic swordfish from a fishing vessel of the United States, as defined under § 600.10, must possess a valid dealer permit.

* * * * *

3. In § 635.5, remove paragraph (b)(1)(ii) and redesignate paragraphs (b)(1)(iii) through (b)(1)(v) as (b)(1)(ii) through (b)(1)(iv), respectively, and revise paragraph (b) introductory text, (b)(1)(i) and newly redesignated paragraph (b)(1)(ii) to read as follows:

**§ 635.5 Recordkeeping and reporting.**

* * * * *

(b) *Dealers.* Persons who have been issued a dealer permit under § 635.4 must submit reports to NMFS, to an address designated by NMFS, and maintain records as follows:

(1) *Atlantic HMS.* (i) Dealers that have been issued an Atlantic tunas, swordfish and/or sharks dealer permit under § 635.4 must submit to NMFS all reports required under this section.

(ii) Reports of Atlantic tunas, Atlantic swordfish, and/or Atlantic sharks received by dealers from U.S. vessels, as defined under § 600.10, on the first through the 15th of each month, must be postmarked not later than the 25th of that month. Reports of such fish received on the 16th through the last day of each month must be postmarked not later than the 10th of the following month. If a dealer issued an Atlantic tunas, swordfish or sharks dealer permit under § 635.4 has not received any Atlantic HMS from U.S. vessels during a reporting period as specified in this section, he or she must still submit the report required under paragraph (b)(1)(i) of this section stating that no Atlantic HMS were received. This negative report must be postmarked for the applicable reporting period as specified in this section. This negative reporting requirement does not apply for Bluefin tuna.

* * * * *

**Subpart D [Amended]**

4. In subpart D, § 635.41 is removed and § 635.45 is redesignated as § 635.41 and §§ 635.42, 635.43, 635.44, 635.46, and 635.47 are removed and reserved.

5. In subpart F, § 635.71 paragraphs (b)(2), (b)(25), (e)(10) and (e)(12) are

removed and reserved and paragraphs (a)(24), (b)(26) and (e)(1) are revised as follows:

**§ 635.71 Prohibitions**

* * * * *

(a) * * *

(24) Import, or attempt to import, any fish or fish products regulated under this part in a manner contrary to any import requirements or import restrictions specified at §§ 635.40 or 635.41.

* * * * *

(b) * * *

(26) Import a bluefin tuna or bluefin tuna product into the United States from Belize, Panama, or Honduras other than as authorized in § 635.41.

* * * * *

(e) * * *

(1) Purchase, barter for, or trade for a swordfish from the north or south Atlantic swordfish stock without a dealer permit as specified in § 635.4(g).

* * * * *

[FR Doc. 04–6857 Filed 3–26–04; 8:45 am]

BILLING CODE 3510–22–S

# Notices

Federal Register

Vol. 69, No. 60

Monday, March 29, 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

### Agricultural Marketing Service

**[Doc. No. FV03–33–1NC]**

### Notice of Request for Extension and Revision of a Currently Approved Information Collection

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved Information Collection for the Export Fruit Acts covering exports of apples and grapes.

**DATES:** Comments on this notice must be received by May 28, 2004 to be assured of consideration.

**ADDRESSES:** Interested persons are invited to submit written comments concerning this rule. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMSA, USDA, 1400 Independence Avenue, SW., STOP 0237, Washington, DC 20250–0237; fax (202) 720–8938; or e-mail to: *http://www.regulations.gov.*

*Additional Information or Comments:* Contact Caroline Thorpe, Marketing Order Administration Branch, F & V, AMS, USDA, 1400 Independence Avenue SW., Stop 0237, Washington, DC 20250–0237, telephone (202) 720–8139 or fax (202) 720–8938, or e-mail to *caroline.thorpe@usda.gov.*

**SUPPLEMENTARY INFORMATION:** *Title:* Export Fruit Regulations—Export Apple Act (7 CFR part 33) and Export Grape and Plums (7 CFR part 35).

*OMB Number:* 0581–0143.

*Expiration Date of Approval:* May 31, 2004.

*Type of Request:* Extension and revision of a currently approved Information Collection.

*Abstract:* Fresh apples and grapes grown in the United States and shipped to a designated foreign destination must meet minimum quality and other requirements established by regulations issued under the Export Apple Act (7 U.S.C. 581–590) and the Export Grape and Plum Act (7 U.S.C. 591–599) (Acts). Currently, plums are not regulated under the Act. The regulations issued under the Acts cover exports of fresh apples and grapes grown in the United States and shipped to foreign destinations, except Canada and Mexico. Certain limited quantity provisions may exempt some shipments and exporters from this Information Collection. The Secretary of Agriculture is authorized to oversee the implementation of the Acts and issue regulations regarding that activity.

The Information Collection requirements in this request are essential to carry out the intent and administration of the Acts. Both Acts were designed to promote foreign trade in the export of apples, grapes and plums grown in the United States; to protect the reputation of the American-grown commodities; and to prevent deception or misrepresentation of the quality of such products moving in foreign commerce. The Acts have been in effect since 1933 (apples) and 1960 (grapes).

The regulations issued under the Acts (7 CFR 33.11 for apples and § 35.12 for grapes) require that the U.S. Department of Agriculture (USDA) officially inspect and certify that each export shipment of fresh apples and grapes is in compliance with quality and shipping requirements effective under the Acts. Shipments are inspected and certified by Federal or Federal-State Inspection Service (FSIS) inspectors. FSIS is administered by USDA.

The Information Collection requirements in this action impose the minimum burden necessary to effectively administer the Acts.

The Information Collection burden for this action is primarily in the form of recordkeeping. Export Form Certificates (certificates) issued by FSIS are used to facilitate the export process. The certificates are not completed by the exporters or carriers and are not filed with USDA. The certificates are retained by each exporter, and third party carrier which ships the commodity, to verify their compliance with the Acts. There are an estimated 80 exporters of apples and grapes and an estimated 20 carriers which transport those shipments. Pursuant to the Acts, exporters and carriers must retain inspection certificates for three years.

*Estimate of Burden:* Public reporting burden for this collection of information is estimated to average .25 hours per response.

*Recordkeepers:* Apple and grape exporters and carriers.

*Estimated Number of Recordkeepers:* 100.

*Estimated Number of Responses:* 100.

*Estimated Number of Responses per Respondent:* 1.

*Estimated Total Annual Burden on Recordkeepers:* 25 hours.

Comments are invited on: (1) 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) 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) 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 those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, D.C. 20250–0237. Comments should reference the docket number, the date, and the page number of this issue of the **Federal Register**. Comments received will be available for public inspection during regular business hours in Room 2525 at the same address. All comments received on this action can be viewed at: *http://www.ams.usda.gov/fv/moab.html.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: March 25, 2004.

**A.J. Yates,**

*Administrator, Agricultural Marketing Service.*

[FR Doc. 04–7037 Filed 3–26–04; 8:45 am]

BILLING CODE 3410–02–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—School Breakfast Program

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service requests public comment on the information collections related to the School Breakfast Program, OMB number 0584–0012.

**DATES:** To be assured of consideration, comments must be received by May 28, 2004.

**ADDRESSES:** Comments and requests for copies of this information collection may be sent to Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of 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.

All responses to this Notice will be summarized and included in the request for OMB approval, and will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Mr. Terry Hallberg, at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR part 220, School Breakfast Program.

*OMB Number:* 0584–0012.

*Expiration Date:* May 31, 2004.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* Section 4 of the Child Nutrition Act of 1966 (CNA) (42 U.S.C. 1773), authorizes the School Breakfast Program. The School Breakfast Program is a nutrition assistance program whose benefit is a breakfast meeting nutritional requirements prescribed by the Department in accordance with section 4(e) of the CNA. That provision requires that ''Breakfasts served by schools participating in the school breakfast program under this section shall consist of a combination of foods and shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research.''

No new reporting and recordkeeping burdens are requested under this information collection. However, numbers of the reporting and recordkeeping burdens are reduced due to the number of State agencies administering the program dropping from 58 to 57.

The purpose of this Notice is to allow the public 60 days to comment on all reporting and recordkeeping burdens as indicated under the *Estimated Total Annual Burden on Respondents* below. The information being requested is required to administer and operate this program in accordance with the CNA. The program is administered at the state and school food authority levels, and the operations include the submission and approval of applications, execution of agreements, submission of claims, payment of claims, monitoring and providing technical assistance. All of the reporting and recordkeeping requirements associated with the School Breakfast Program are currently approved by the Office of Management and Budget and are in force.

*Estimated Number of Respondents:* 57 States agencies, 10,108 school food authorities and 72,145 schools. Total: 82,747.

*Reporting:*

Total Annual Responses: 1,278,095.

Total Annual Burden: 221,530.

Average Time per Response: .173 hour.

*Recordkeeping:*

Total Annual Responses: 27,478,837.

Total Annual Burden: 4,672,908.

Average Time per Response: .17 hour.

Estimated Total Annual Burden:

Reporting Burden: 221,530.

Recordkeeping burden: 4,672,908.

Total annual burden hours: 4,894,438.

Dated: March 22, 2004.

**Roberto Salazar,**

*Administrator, Food and Nutrition.*

[FR Doc. 04–6916 Filed 3–26–04; 8:45 am]

BILLING CODE 3410–30–P

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Agency Information Collection Activities: Proposed Collection; Comment Request—National School Lunch Program

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, the Food and Nutrition Service requests public comment on the information collection related to the National School Lunch Program, OMB number 0584–0006.

**DATES:** To be assured of consideration, comments must be received by May 28, 2004.

**ADDRESSES:** Send comments and requests for copies of this information collection to: Mr. Terry Hallberg, Chief, Program Analysis and Monitoring Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 640, Alexandria, Virginia 22302.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for OMB approval, and will become a matter of public record.

**FOR FURTHER INFORMATION CONTACT:** Contact Mr. Terry Hallberg at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:**

*Title:* 7 CFR part 210, National School Lunch Program.

*OMB Number:* 0584–0006.

*Expiration Date:* May 31, 2004.

*Type of Request:* Revision of a currently approved collection.

*Abstract:* The National School Lunch Act of 1946 (NSLA), as amended, authorizes the National School Lunch Program (NSLP). The Department of Agriculture provides States with general and special cash assistance and donations of foods to assist schools in serving nutritious lunches to children each school day. Participating schools must serve lunches that are nutritionally adequate and to the extent practicable ensure that participating children gain a full understanding of the relationship between proper eating and good health.

The Department of Agriculture prescribes the nutritional requirements of the lunches in accordance with Section 9(a) of the NSLA (42 U.S.C. 1758). That provision requires that ''Lunches served by schools participating in the school lunch program under this Act shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional Research * * *.''

No new reporting and recordkeeping burden are requested under this information collection. However, numbers of the reporting and recordkeeping burdens are reduced due to the number of the State agencies administering the program dropping from 58 to 57, and also the elimination of 7 CFR 210.28(d), 64 FR 50735, 50741 (Sept. 20, 1999), which contained the requirements for the State Food Distribution Advisory Council.

The purpose of this Notice is to allow the public 60 days to comment on all reporting and recordkeeping burdens as indicated under the *Estimated Total Annual Burden on Respondents* below. The information being requested is required to administer and operate this program in accordance with the NSLA. The Program is administered at the State and school food authority levels and the operations include the submission and approval of applications, execution of agreements, submission of claims, payment of claims, providing monitoring and technical assistance. All of the reporting and recordkeeping requirements associated with the NSLP are currently approved by the Office of Management and Budget and in force.

*Estimated Number Respondents:* 57 State agencies, 20,144 school food authorities and 97,767 schools, Total: 118,224.

*Reporting:*

Total Annual Responses: 2,200,706.

Total Annual Burden: 1,126,021.

Average Time per Response: .51 hour.

*Recordkeeping:*

Total Annual Responses: 30,472,990.

Total Annual Burden: 8,335,490.

Average Time per Response: .27 hour.

*Estimated Total Annual Burden:*

Reporting burden: 1,126,021.

Recordkeeping burden: 8,335,490.

Total annual burden hours: 9,461,511.

Dated: March 22, 2004.

**Roberto Salazar,**

*Administrator.*

[FR Doc. 04–6917 Filed 3–26–04; 8:45 am]

**BILLING CODE 3410–30–P**

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## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Child Nutrition Programs—Income Eligibility Guidelines

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 2004 through June 30, 2005. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the Richard B. Russell National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

**EFFECTIVE DATE:** July 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2590.

**SUPPLEMENTARY INFORMATION:** This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

### Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the Richard B. Russell National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in accordance with applicable program rules.

### Definition of Income

In accordance with the Department's policy as provided in the Food and Nutrition Service publication *Eligibility Guidance for School Meals Manual,* ''income,'' as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular

contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources that would be available to pay the price of a child's meal.

''Income,'' as the term is used in this Notice, does not include any income or benefits received under any Federal programs that are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the Richard B. Russell National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

**The Income Eligibility Guidelines**

The following are the Income Eligibility Guidelines to be effective from July 1, 2004 through June 30, 2005. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2004 Federal income poverty guidelines by 1.30 and 1.85, respectively, and by rounding the result upward to the next whole dollar.

The income eligibility chart for School Year 2004–2005 contains a few minor changes from previous years. Prior to this Notice, the Department displayed the monthly and weekly amounts for the Federal poverty guidelines in addition to the annual figures as issued by the Department of Health and Human Services. This Notice, however, only displays the annual figures because the monthly and weekly Federal poverty guidelines were not used to determine the Income Eligibility Guidelines. As detailed below, all calculations are based on the annual figures.

An additional change is that the chart which details the free and reduced price eligibility criteria now includes columns for income received twice monthly as well as income received every two weeks. To differentiate: A person paid every two weeks is paid 26 times per year, whereas a person paid twice monthly is paid 24 times per year. Furthermore, the addition of columns for income received twice per month as well as income received every two weeks conforms to the format currently being used by the Special Supplemental Nutrition Program for Women, Infants and Children (WIC) (42 U.S.C. 1786; 7 CFR part 248).

Income calculations are made based on the following formulas: Monthly income is calculated by dividing the annual income by 12; twice monthly income is computed by dividing annual income by 24; income received every two weeks is calculated by dividing annual income by 26; and weekly income is computed by dividing annual income by 52. All numbers are rounded upward to the next whole dollar. The numbers reflected in this notice for a family of four in the 48 contiguous states, the District of Columbia, Guam and the territories represent an increase of 2.45% over the July 2003 numbers for a family of the same size.

**Authority:** (42 U.S.C. 1758(b)(1)).

Dated: March 23, 2004.

**Roberto Salazar,**

*Administrator.*

BILLING CODE 3410–30–P

INCOME ELIGIBILITY GUIDELINES

Effective from July 1, 2004 to June 30, 2005

| HOUSEHOLD SIZE | FEDERAL POVERTY GUIDELINES | REDUCED PRICE MEALS - 185 % | | | | | FREE MEALS - 130 % | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|
| | ANNUAL | ANNUAL | MONTHLY | TWICE PER MONTH | EVERY TWO WEEKS | WEEKLY | ANNUAL | MONTHLY | TWICE PER MONTH | EVERY TWO WEEKS | WEEKLY |
| **48 CONTIGUOUS STATES, DISTRICT OF COLUMBIA, GUAM, AND TERRITORIES** | | | | | | | | | | | |
| 1 ..... | 9,310 | 17,224 | 1,436 | 718 | 663 | 332 | 12,103 | 1,009 | 505 | 466 | 233 |
| 2 ..... | 12,490 | 23,107 | 1,926 | 963 | 889 | 445 | 16,237 | 1,354 | 677 | 625 | 313 |
| 3 ..... | 15,670 | 28,990 | 2,416 | 1,208 | 1,115 | 558 | 20,371 | 1,698 | 849 | 784 | 392 |
| 4 ..... | 18,850 | 34,873 | 2,907 | 1,454 | 1,342 | 671 | 24,505 | 2,043 | 1,022 | 943 | 472 |
| 5 ..... | 22,030 | 40,756 | 3,397 | 1,699 | 1,568 | 784 | 28,639 | 2,387 | 1,194 | 1,102 | 551 |
| 6 ..... | 25,210 | 46,639 | 3,887 | 1,944 | 1,794 | 897 | 32,773 | 2,732 | 1,366 | 1,261 | 631 |
| 7 ..... | 28,390 | 52,522 | 4,377 | 2,189 | 2,021 | 1,011 | 36,907 | 3,076 | 1,538 | 1,420 | 710 |
| 8 ..... | 31,570 | 58,405 | 4,868 | 2,434 | 2,247 | 1,124 | 41,041 | 3,421 | 1,711 | 1,579 | 790 |
| For each add'l family member, add | 3,180 | 5,883 | 491 | 246 | 227 | 114 | 4,134 | 345 | 173 | 159 | 80 |
| **ALASKA** | | | | | | | | | | | |
| 1 ..... | 11,630 | 21,516 | 1,793 | 897 | 828 | 414 | 15,119 | 1,260 | 630 | 582 | 291 |
| 2 ..... | 15,610 | 28,879 | 2,407 | 1,204 | 1,111 | 556 | 20,293 | 1,692 | 846 | 781 | 391 |
| 3 ..... | 19,590 | 36,242 | 3,021 | 1,511 | 1,394 | 697 | 25,467 | 2,123 | 1,062 | 980 | 490 |
| 4 ..... | 23,570 | 43,605 | 3,634 | 1,817 | 1,678 | 839 | 30,641 | 2,554 | 1,277 | 1,179 | 590 |
| 5 ..... | 27,550 | 50,968 | 4,248 | 2,124 | 1,961 | 981 | 35,815 | 2,985 | 1,493 | 1,378 | 689 |
| 6 ..... | 31,530 | 58,331 | 4,861 | 2,431 | 2,244 | 1,122 | 40,989 | 3,416 | 1,708 | 1,577 | 789 |
| 7 ..... | 35,510 | 65,694 | 5,475 | 2,738 | 2,527 | 1,264 | 46,163 | 3,847 | 1,924 | 1,776 | 888 |
| 8 ..... | 39,490 | 73,057 | 6,089 | 3,045 | 2,810 | 1,405 | 51,337 | 4,279 | 2,140 | 1,975 | 988 |
| For each add'l family member, add | 3,980 | 7,363 | 614 | 307 | 284 | 142 | 5,174 | 432 | 216 | 199 | 100 |
| **HAWAII** | | | | | | | | | | | |
| 1 ..... | 10,700 | 19,795 | 1,650 | 825 | 762 | 381 | 13,910 | 1,160 | 580 | 535 | 268 |
| 2 ..... | 14,360 | 26,566 | 2,214 | 1,107 | 1,022 | 511 | 18,668 | 1,556 | 778 | 718 | 359 |
| 3 ..... | 18,020 | 33,337 | 2,779 | 1,390 | 1,283 | 642 | 23,426 | 1,953 | 977 | 901 | 451 |
| 4 ..... | 21,680 | 40,108 | 3,343 | 1,672 | 1,543 | 772 | 28,184 | 2,349 | 1,175 | 1,084 | 542 |
| 5 ..... | 25,340 | 46,879 | 3,907 | 1,954 | 1,804 | 902 | 32,942 | 2,746 | 1,373 | 1,267 | 634 |
| 6 ..... | 29,000 | 53,650 | 4,471 | 2,236 | 2,064 | 1,032 | 37,700 | 3,142 | 1,571 | 1,450 | 725 |
| 7 ..... | 32,660 | 60,421 | 5,036 | 2,518 | 2,324 | 1,162 | 42,458 | 3,539 | 1,770 | 1,633 | 817 |
| 8 ..... | 36,320 | 67,192 | 5,600 | 2,800 | 2,585 | 1,293 | 47,216 | 3,935 | 1,968 | 1,816 | 908 |
| For each add'l family member, add | 3,660 | 6,771 | 565 | 283 | 261 | 131 | 4,758 | 397 | 199 | 183 | 92 |

[FR Doc. 04–6905 Filed 3–26–04; 8:45 am]
BILLING CODE 3410–30–C

## DEPARTMENT OF AGRICULTURE

### Food and Nutrition Service

### Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Notice.

**SUMMARY:** The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

**EFFECTIVE DATE:** July 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2746.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

This notice is exempt from review by the Office of Management and Budget under Executive Order 12866.

#### Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

#### Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

#### Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, 48 FR 29112, June 24, 1983, and 49 FR 22676, May 31, 1984).

#### Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2004 was published by the Department of Health and Human Services (HHS) at 69 FR 7336, February 13, 2004. The guidelines published by HHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations (title 7, Code of Federal Regulations) specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2004, through June 30, 2005. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 2004. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2004. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

BILLING CODE 3410–30–P

**INCOME ELIGIBILITY GUIDELINES**
**(Effective from July 1, 2004 to June 30, 2005)**

| Household Size | Federal Poverty Guidelines- 100% | | | | | Reduced Price Meals - 185% | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Annual | Monthly | Twice-Monthly | Bi-Weekly | Weekly | Annual | Monthly | Twice-Monthly | Bi-Weekly | Weekly |
| **48 Contiguous States, D.C., Guam and Territories** | | | | | | | | | | |
| 1 | $9,310 | $776 | $388 | $359 | $180 | $17,224 | $1,436 | $718 | $663 | $332 |
| 2 | 12,490 | 1,041 | 521 | 481 | 241 | 23,107 | 1,926 | 963 | 889 | 445 |
| 3 | 15,670 | 1,306 | 653 | 603 | 302 | 28,990 | 2,416 | 1,208 | 1,115 | 558 |
| 4 | 18,850 | 1,571 | 786 | 725 | 363 | 34,873 | 2,907 | 1,454 | 1,342 | 671 |
| 5 | 22,030 | 1,836 | 918 | 848 | 424 | 40,756 | 3,397 | 1,699 | 1,568 | 784 |
| 6 | 25,210 | 2,101 | 1,051 | 970 | 485 | 46,639 | 3,887 | 1,944 | 1,794 | 897 |
| 7 | 28,390 | 2,366 | 1,183 | 1,092 | 546 | 52,522 | 4,377 | 2,189 | 2,021 | 1,011 |
| 8 | 31,570 | 2,631 | 1,316 | 1,215 | 608 | 58,405 | 4,868 | 2,434 | 2,247 | 1,124 |
| Each Add'l Member Add | + $3,180 | + $265 | + $133 | + $123 | + $62 | + $5,883 | + $491 | + $246 | + $227 | + $114 |
| **Alaska** | | | | | | | | | | |
| 1 | $11,630 | $970 | $485 | $448 | $224 | $21,516 | $1,793 | $897 | $828 | $414 |
| 2 | 15,610 | 1,301 | 651 | 601 | 301 | 28,879 | 2,407 | 1,204 | 1,111 | 556 |
| 3 | 19,590 | 1,633 | 817 | 754 | 377 | 36,242 | 3,021 | 1,511 | 1,394 | 697 |
| 4 | 23,570 | 1,965 | 983 | 907 | 454 | 43,605 | 3,634 | 1,817 | 1,678 | 839 |
| 5 | 27,550 | 2,296 | 1,148 | 1,060 | 530 | 50,968 | 4,248 | 2,124 | 1,961 | 981 |
| 6 | 31,530 | 2,628 | 1,314 | 1,213 | 607 | 58,331 | 4,861 | 2,431 | 2,244 | 1,122 |
| 7 | 35,510 | 2,960 | 1,480 | 1,366 | 683 | 65,694 | 5,475 | 2,738 | 2,527 | 1,264 |
| 8 | 39,490 | 3,291 | 1,646 | 1,519 | 760 | 73,057 | 6,089 | 3,045 | 2,810 | 1,405 |
| Each Add'l Member Add | + $3,980 | + $332 | + $166 | + $154 | + $77 | + $7,363 | + $614 | + $307 | + $284 | + $142 |
| **Hawaii** | | | | | | | | | | |
| 1 | $10,700 | $892 | $446 | $412 | $206 | $19,795 | $1,650 | $825 | $762 | $381 |
| 2 | 14,360 | 1,197 | 599 | 553 | 277 | 26,566 | 2,214 | 1,107 | 1,022 | 511 |
| 3 | 18,020 | 1,502 | 751 | 694 | 347 | 33,337 | 2,779 | 1,390 | 1,283 | 642 |
| 4 | 21,680 | 1,807 | 904 | 834 | 417 | 40,108 | 3,343 | 1,672 | 1,543 | 772 |
| 5 | 25,340 | 2,112 | 1,056 | 975 | 488 | 46,879 | 3,907 | 1,954 | 1,804 | 902 |
| 6 | 29,000 | 2,417 | 1,209 | 1,116 | 558 | 53,650 | 4,471 | 2,236 | 2,064 | 1,032 |
| 7 | 32,660 | 2,722 | 1,361 | 1,257 | 629 | 60,421 | 5,036 | 2,518 | 2,324 | 1,162 |
| 8 | 36,320 | 3,027 | 1,514 | 1,397 | 699 | 67,192 | 5,600 | 2,800 | 2,585 | 1,293 |
| Each Add'l Member Add | + $3,660 | + $305 | + $153 | + $141 | + $71 | + $6,771 | + $565 | + $283 | + $261 | + $131 |

**Authority:** 42 U.S.C. 1786.

Dated: March 23, 2004.

**Roberto Salazar,**

*Administrator.*

[FR Doc. 04–6896 Filed 3–26–04; 8:45 am]

**BILLING CODE 3410–30–C**

## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Big Delta State Historical Park Streambank Protection Project, Big Delta, AK

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Finding of no significant impact according to the environmental assessment.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S.

Department of Agriculture, gives notice of a Finding of No Significant Impact according to the Environmental Assessment of the Big Delta State Historical Park Streambank Protection Project.

**FOR FURTHER INFORMATION CONTACT:** Shirley Gammon, State Conservationist, Natural Resources Conservation Service, 800 West Evergreen, Suite 100, Palmer, Alaska 99645–6539; telephone: 907–761–7760.

**SUPPLEMENTARY INFORMATION:** The Environmental Assessment of this Federally assisted action indicates that there will be no significant environmental impacts. As a result of these findings, Shirley Gammon, State Conservationist, has determined that the project should be completed as outlined in the assessment document.

The objective of the Big Delta State Historical Park Streambank Protection Project is to install streambank protection measures to control erosion and protect the historic district while minimizing disturbance to the fall chum spawning habitat. The selected alternative is four rock barbs extending approximately 65 feet into the river, angling about 45 degrees upstream rising 1.4 feet above the riverbed. In conjunction with the barb installation, a vegetation re-establishment plan will be implemented to address the eroding sections of the bank between the barbs and enhance the existing landscape and riparian buffer. Alternatives evaluated were No Action, relocation of threatened facilities, modification of existing vegetation maintenance practices, groins, riprap revetment, riprap revetment with soil wraps and brush layers, and rock barbs. The selected alternative is rock barbs. This alternative was selected because it protects the riverbank adjacent to the Big Delta State Historical Park, minimizes the constructed footprint in the fall chum spawning habitat, and maintains the aesthetic qualities of the site. The barbs result in no significant rise in the flood waters in Tanana River.

A limited number of copies of the EA are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Shirley Gammon, State Conservationist, at the above address. Further information on the proposed action may be obtained from Shirley Gammon, State Conservationist.

Dated: March 8, 2004.

**Shirley Gammon,**

*State Conservationist.*

[FR Doc. 04–6937 Filed 3–26–04; 8:45 am]

**BILLING CODE 3410–16–P**

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## DEPARTMENT OF AGRICULTURE

### Natural Resources Conservation Service

### Rehabilitation Plan/Environmental Assessment for the White Tanks No. 3 Project, Maricopa County, AZ

**AGENCY:** Natural Resources Conservation Service, USDA.

**ACTION:** Notice of finding of no significant impact.

**SUMMARY:** Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service (NRCS) Regulations (7 CFR Part 650); the NRCS, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Rehabilitation Plan/Environmental Assessment for the White Tanks No. 3 Project, Maricopa County, Arizona.

**FOR FURTHER INFORMATION CONTACT:** Michael Somerville, State Conservationist, USDA/NRCS, 3003 North Central Avenue, Suite 800, Phoenix, Arizona 85012; telephone: (602) 280–8801.

**SUPPLEMENTARY INFORMATION:** The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. Based on evidence presented, Michael Somerville, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project proposes to rehabilitate the White Tanks No. 3 FRS to meet NRCS standards and State of Arizona dam safety criteria.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. Copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Don Paulus, Assistant State Conservationist for Programs, at the above address.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

**Michael Somerville,**

*State Conservationist.*

[FR Doc. 04–6936 Filed 3–26–04; 8:45 am]

**BILLING CODE 3410–16–P**

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## DEPARTMENT OF AGRICULTURE

### Rural Utilities Service

### Rural Broadband Access Loans and Loan Guarantees Program

**AGENCY:** Rural Utilities Service, USDA.

**ACTION:** Notice of funds availability.

**SUMMARY:** The Rural Utilities Service (RUS) announces funding available for the Rural Broadband Access Loan and Loan Guarantee program. For FY 2004, no less than $2.211 billion in loans is available, $2.051 billion for direct cost-of-money loans, $80 million for direct 4 percent loans, and $80 million for loan guarantees.

**FOR FURTHER INFORMATION CONTACT:** Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

**SUPPLEMENTARY INFORMATION:**

#### General Information

During FY 2004, no less than $2.211 billion will be made available for loans and loan guarantees for the construction, improvement, and acquisition of facilities and equipment for broadband service in eligible rural communities. Of the total loan funds available, $2.051 billion will be available for direct cost-of-money loans, $80 million for 4 percent direct loans, and $80 million for loan guarantees. The funding levels for the 4 percent direct loans and the loan guarantees is derived from the budget authority carried over from prior years' mandatory funding. The Rural Broadband Access Loan and Loan Guarantee Program is authorized by the Rural Electrification Act (7 U.S.C. 601) (the Act), as added by the Farm Security and Rural Investment Act of 2002 (Farm Bill), Public Law 101–171.

Applications must be submitted in accordance with 7 CFR part 1738. This part and an application guide to assist in the preparation of applications are available in the Internet at: *http://www.usda.gov/rus/telecom/broadband.htm.* Application guides may also be requested from RUS by contacting the agency contact.

**Agency Contacts**

For application information, contact the following individual: Kenneth Kuchno, Program Manager ''Broadband Program, Telecommunications Program, RUS/USDA, Room 2846, Stop 1599, 1400 Independence Avenue, SW., Washington, DC 20250–1599, (202) 690–4673.

**Eligible Rural Community**

The definition of eligible rural community in Section 601(b)(2) of the Rural Electrification Act (7 U.S.C. 950bb)(b)(2), qualifying for financial assistance under the Rural Broadband Access Loan and Loan Guaranty Program, has been amended by provisions in the Consolidated Appropriations Act, 2004, to mean any area of the United States that is not contained in an incorporated city or town with a population in excess of 20,000 inhabitants. Therefore, an applicant no longer must demonstrate that it is not located in an area designated as a standard metropolitan statistical area. This change supersedes and nullifies contrary provisions in regulations implementing the broadband program found at 7 CFR part 1738.

**Minimum and Maximum Loan Amounts**

Loans and loan guarantees under this authority will not be made for less than $100,000. Maximum loan amounts apply only to the direct 4 percent loan program. The maximum amount available for any one applicant for a direct 4 percent loan is $7,500,000.

**Minimum Rate of Data Transmission Criteria**

The Secretary of Agriculture determines what qualifies as broadband service for the purpose of determining eligibility for financial assistance under the Rural Broadband Access Loan and Loan Guarantee Program. During fiscal year 2004, to qualify as broadband service, the minimum rate-of-data transmission shall be 200 kilobits/second in the customer's connection to the network, both from the provider to the customer (downstream) and from the customer to the provider (upstream).

**State Allocations**

The annual state allocation will not be made for Fiscal Year 2004. To ensure the obligation of funds by April 1, as required by the Farm Bill, an annual application submission deadline of January 31 for funding from the state allocation reserves was adopted and published in the enacting regulations. With the enactment of the Consolidated Appropriations Act on January 23, 2004, insufficient time remained for the submission of applications by the regulatory deadline.

**4 Percent Direct Loans:**

An applicant will be eligible for a direct 4 percent loan if: (1) the community being served has a population of less than 2,500, and is not currently receiving broadband service as defined at § 1738.11(b)(1); (2) the per capita income in the county being served as a percent of national per capita income, is not more than 65 percent of the national per capita income, as determined by the Bureau of Economic Analysis, U.S. Department of Commerce, at *www.bea.doc.gov/bea/regional/reis,* and using the data for the most recent year published as of the date of application; and (3) the population density, calculated as the total number of persons in the service area divided by the square miles of the service area is not more than 20 persons per square mile.

Dated: March 24, 2004.

**Hilda Gay Legg,**

*Administrator, Rural Utilities Service.*

[FR Doc. 04–6951 Filed 3–26–04; 8:45 am]

**BILLING CODE 3410–15–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

### United States Travel and Tourism Promotion Advisory Board

**AGENCY:** International Trade Administration, Department of Commerce.

**ACTION:** Notice of open meeting.

**DATES:** April 16, 2004.

**TIME:** 10 a.m.–12 p.m

**PLACE:** Capital Hilton—Senate Room, 1001 16th Street, NW., Washington, DC 20036.

**SUMMARY:** The United States Travel and Tourism Promotion Advisory Board (''Board'') will hold a Board meeting on April 16, 2004 at the Capital Hilton Hotel.

The Board will discuss the design, development and subsequent implementation of an international advertising and promotional campaign, which will seek to encourage individuals from the United Kingdom to travel to the United States for the express purpose of engaging in tourism. The meeting will be open to the public. Time will be permitted for public comment. To sign up for public comment, please contact Julie Heizer by 5 p.m. EDT Wednesday, April 14, 2004. She may be contacted at U.S. Department of Commerce, 1401 Constitution Avenue, NW., Room 7025, Washington, DC 20230; via fax at (202) 482–2887; or, via e-mail at *promotion@tinet.ita.doc.gov.*

Written comments concerning Board affairs are welcome any time before or after the meeting. Written comments should be directed to Julie Heizer. Minutes will be available within 90 days of this meeting.

The Board is mandated by Pub. L. 108–7, Section 210. As directed by Pub. L. 108–7, Section 210, the Secretary of Commerce shall design, develop and implement an international advertising and promotional campaign, which seeks to encourage individuals to travel to the United States. The Board shall recommend to the Secretary of Commerce the appropriate coordinated activities for funding. This campaign shall be a multi-media effort that seeks to leverage the Federal dollars with contributions of cash and in-kind products unique to the travel and tourism industry. The Board was chartered in August of 2003 and will expire on August 8, 2005.

For further information, phone Julie Heizer, Office of Travel and Tourism Industries (OTTI), International Trade Administration, U.S. Department of Commerce at (202) 482–0140. This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to OTTI.

Dated: March 23, 2004.

**Julie Heizer,**

*Deputy Director for Industry Relations, Office of Travel and Tourism Industries.*

[FR Doc. 04–6867 Filed 3–26–04; 8:45 am]

**BILLING CODE 3510–25–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 032204I]**

### Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits (EFPs)

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Notification of a proposal for EFPs to conduct experimental fishing; request for comments.

**SUMMARY:** The Assistant Regional Administrator for Sustainable Fisheries, Northeast Region, NMFS (Assistant Regional Administrator) has made a preliminary determination that the subject EFP application contains all the required information and warrants further consideration. The Assistant Regional Administrator has also made a preliminary determination that the activities authorized under the EFP would be consistent with the goals and objectives of the Northeast (NE) Multispecies Fishery Management Plan (FMP). However, further review and consultation may be necessary before a final determination is made to issue the EFP. Therefore, NMFS announces that the Assistant Regional Administrator proposes to recommend that an EFP be issued that would allow up to 20 commercial fishing vessels to conduct fishing operations that are otherwise restricted by the regulations governing the fisheries of the Northeastern United States. The EFP would allow for exemptions from the FMP as follows: The GOM Rolling Closure Areas; the Cashes Ledge and Western Gulf of Maine (WGOM) Closure Areas; the Days-at-Sea (DAS) notification requirements; the effort-control program (DAS); and minimum fish size restrictions for the temporary retention of undersized fish for data collection purposes.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

**DATES:** Comments on this document must be received on or before April 13, 2004.

**ADDRESSES:** Comments on this notice may be submitted by e-mail. The mailbox address for providing e-mail comments is *DA453@noaa.gov*. Include in the subject line of the e-mail comment the following document identifier: ''Comments on CCCHFA GOM Cod Tagging Study.'' Written comments should be sent to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 1 Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on CCCHFA GOM Cod Tagging Study.'' Comments may also be sent via facsimile (fax) to (978) 281–9135.

**FOR FURTHER INFORMATION CONTACT:** Brian Hooker, Fishery Management Specialist, phone 978–281–9220.

**SUPPLEMENTARY INFORMATION:** The Cape Cod Commercial Hook Fishermen's Association (CCCHFA) submitted an application for an EFP on March 8, 2004. The application was complete as received. The experimental fishing application requests authorization to allow the catch, tagging, and release of Atlantic cod using rod and reel only. The primary goal of the study is to provide high quality scientific data on the current distribution and movement patterns of Atlantic cod in the GOM. It is anticipated that the improved understanding of the cod stocks expected to result from this study will ultimately enable better and more effective management of the cod fishery.

The study proposes to catch, tag, and release 2,000 individual cod during 20 dedicated tagging trips, using up to 20 commercial fishing vessels. The participating vessels would catch cod using rod and reel with treble hooks eliminated from the jigs, temporarily hold cod alive in tanks aboard the vessel while processing and tagging the fish, and return the fish alive to the sea. Any other species caught would be released as soon as practicable. During the study, no fish of any species would be landed or retained for commercial sale. Cod would be tagged on dedicated tagging trips focused on, but not limited to, Jeffery's Ledge, Platt's Bank, Cashes Ledge, Massachusetts Bay, Race Point, and Cape Cod Bay. The study would likely have minimal impacts on the target species in the area due to the use of rod and reel as the catch method and efforts to minimize trauma and release all specimens alive. Tagging program staff would be on board the vessel for training purposes and to observe 20 percent of the dedicated trips to assist with tagging operations.

The research study would occur between April 15–December 31, 2004, in an area encompassed by the following coordinates: From the outer Cape Cod shoreline at 42° N lat., 70° W long.; east along 42° N lat. to 69° W long; then north along 69° W long. to 43°30' N; and then west along 43°30' N lat. to the Maine coastline.

This EFP would allow for exemptions from the Northeast (NE) Multispecies Fishery Management Plan (FMP) as follows: The GOM Rolling Closure Areas specified at 50 CFR 648.81(g)(1)(i)-(v); the Cashes Ledge and Western Gulf of Maine (WGOM) Closure Areas specified at § 648.81(h)(1) and (i)(1); the Days-at-Sea (DAS) notification requirements specified at § 648.10; the effort-control program (DAS) as specified at § 648.82(a); and minimum fish size restrictions specified at § 648.83(a) for the temporary retention of undersized fish for data collection purposes.

**Authority:** 16 U.S.C. 1801 *et seq.*

Dated: March 24, 2004.

**Bruce C. Morehead,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. 04–6969 Filed 3–26–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 111403B]**

### Small Takes of Marine Mammals Incidental to Specified Activities; Oceanographic Surveys off the Northern Yucatan Peninsula in the Gulf of Mexico

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Notice of issuance of an incidental take authorization.

**SUMMARY:** In accordance with provisions of the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an Incidental Harassment Authorization (IHA) to take marine mammals by harassment incidental to conducting oceanographic surveys off the northern Yucatan Peninsula in the Gulf of Mexico to Lamont-Doherty Earth Observatory (LDEO).

**DATES:** Effective from February 27, 2004, through February 26, 2005.

**ADDRESSES:** A copy of the IHA and the application are available by writing to Mr. P. Michael Payne, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225, or by telephoning the contact listed here. A copy of the application containing a list of the

references used in this document may be obtained by writing to this address or by telephoning the contact listed here and is also available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Small__Take/smalltake__info.htm#applications*

**FOR FURTHER INFORMATION CONTACT:** Kimberly Skrupky, Office of Protected Resources, NMFS, (301) 713–2322, ext 163.

**SUPPLEMENTARY INFORMATION:**

## Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review and comment.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses and that the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''...an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Section 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. Under section 3(18)(A), the MMPA defines ''harassment'' as:

> any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

The term ''Level A harassment'' means harassment described in subparagraph (A)(i). The term ''Level B harassment'' means harassment described in subparagraph (A)(ii).

Section 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

## Summary of Request

On October 8, 2003, NMFS received an application from LDEO for the taking, by harassment, of several species of marine mammals incidental to conducting a seismic survey program. As presently scheduled, a seismic survey will be conducted in the Gulf of Mexico off the northern Yucatan Peninsula. The Gulf of Mexico research cruise will be off the coast of the northern Yucatan Peninsula in an area extending between 21° to 22.5° N and 88° to 91° W. The operations will partly take place in the Exclusive Economic Zone (EEZ) of Mexico.

The purpose of the project is to study the Chicxulub Crater. The Chicxulub Crater was formed 65 million years ago when a massive meteor crashed into the Yucatan Peninsula of Mexico leaving behind the crater with a diameter of about 195 km (121 mi). The well-known massive extinction event at the Cretaceous-Tertiary (K-T) boundary appears to have been caused, at least in part, by this impact. It is also the only large terrestrial impact crater with a well preserved topographic peak ring. The Chicxulub Crater is uniquely suited for a seismic investigation into the deformation mechanisms of large diameter impacts in general and the physical parameters of the K-T impact in particular. The goals are to: (1) determine the direction of approach and angle of the Chicxulub impact through the collaborative seismic and modeling effort, (2) map the deformation recorded in the upper crust near the crater center that may yield important information about the kinematics of large bolide impacts, (3) image the peak ring and other morphologic features in the northwest quadrant of the crater to further understand the physical parameters of the Chicxulub impact structure, and (4) model the 3–D collapse of an asymmetric transient crater to help better understand the mechanics of large impact craters and to quantify the environmental effects of the K-T impact.

## Description of the Activity

Information of the work proposed for 2004 is contained in the proposed authorization notice (68 FR 70000, December 16, 2003), and in the application and in the Final Yucatan Environmental Assessment for oceanographic surveys in the Gulf of Mexico off the northern Yucatan Peninsula (LDEO, 2003) which are available (see **ADDRESSES**).

In spring 2003, LDEO conducted an acoustic calibration study in the northern Gulf of Mexico. The purpose of the study was to calibrate LDEO's various seismic sources and determine the distances at which received sound levels diminish below levels that may result in take of marine mammals. NMFS received the results of this study on February 20, 2004. They are the first measurements of sound propagation in shallow water using this particular seismic source and are the best available science. The data indicate that the safety zone radius used for mitigation to prevent Level A harassment of marine mammals should be larger than the safety radius in the proposed IHA. The results of the study are available (See **ADDRESSES**).

## Changes from the Proposed IHA

The calibration study data indicate that the 180 dB isopleth is at a distance of 3500 m (11483 ft) from the array, rather than the 900 m (2935 ft) estimated in the application and proposed IHA. This new data changes the take estimates for marine mammals. Refer to the Estimates of Take for the Northern Yucatan Peninsula Cruise in this Notice for the updated take estimates.

In light of the new data, NMFS has imposed additional mitigation measures for this seismic survey. First, the safety radius will be 3500 m (11483 ft) rather than the proposed 1350 m (4429 ft) (which is 1.5 times the estimated 180 dB isopleth). Second, in addition to visual observers, LDEO will use passive acoustic monitoring (PAM) whenever the vessel is operating in waters deep enough for the PAM hydrophone array to be towed. Third, LDEO will increase the number of visual observers from two to at least four, and several acousticians will be available to monitor the PAM system. Finally, LDEO will use Big Eyes binoculars to enable observers to detect marine mammals at greater distances from the vessel. See Mitigation for more information.

NMFS has also determined that takes of pinnipeds are not likely to occur in the action area. Therefore, hooded seals are not included in this IHA.

## Comments and Responses

A notice of receipt of the LDEO northern Yucatan application and proposed IHA was published in the

**Federal Register** on December 16, 2003 (68 FR 70000). During the 30–day comment period, comments were received from the Animal Welfare Institute, the Center for Biological Diversity (CBD), and an individual. In addition, NMFS received supplemental comments from CBD on February 26, 2004. Those comments were received well after the comment period closed and shortly before the subject seismic surveys were scheduled to begin. Therefore, NMFS did not consider them in issuing this IHA, except where they overlap with CBD's first set of comments.

*Comment 1:* One commentor states that it is the job of the Office of Protected Resources to administer programs that deal with the protection, conservation, and recovery of species protected under the Endangered Species Act and they must pay attention to the fact that marine mammals are sentient beings.

*Response:* NMFS affirms that marine mammals should be protected and encouraged to develop to the greatest extent feasible commensurate with sound policies of resource management. In that regard, the MMPA was amended in 1981 and 1994 to allow for the taking (by harassment, injury and mortality) of marine mammals by otherwise lawful activities provided that the total taking by the activity is not having more than a negligible impact on affected marine mammal stocks, and would not have an unmitigable adverse impact on the availability of those marine mammal stocks for subsistence uses. For the proposed activity, the requisite findings have been made, as explained in this document.

*Comment 2:* The Animal Welfare Institute objects to the issuance of an Incidental Harassment Authorization for this project based on the precautionary principle. They feel that it is dangerous to experiment with sounds as loud as these in the open ocean.

*Response:* As mentioned in the previous comment, the MMPA requires the Secretary to authorize the taking of marine mammals provided certain conditions are met. For this authorization, NMFS believes it has applied a precautionary approach that is consistent with the requirements of the MMPA and based on the best available science. That is, LDEO has implemented several mitigation measures that will minimize harassment takings to the lowest level practicable (as required by the MMPA). These mitigation measures include (1) establishment and monitoring of safety zones to prevent Level A harassment; (2) implementation of ramp-up to allow marine mammals sufficient time to leave the immediate vicinity of the seismic array before sounds become annoying or dangerous; (3) establishment of a 30–minute pre-ramp-up monitoring program; and (4) passive acoustic monitoring where practicable. The research being conducted is not an ''experiment'' but scientifically valid peer-reviewed research being undertaken to improve knowledge of geological history. Seismic arrays were developed to mitigate impacts to marine life by eliminating the use of large explosives used in earlier decades to explore for oil and conduct scientific research.

*Comment 3:* CBD believes NMFS has not demonstrated that the LDEO project will take only small numbers of marine mammals.

*Response:* NMFS believes that the small numbers requirement has been satisfied. The U.S. District Court for the Northern District of California held in *NRDC* v. *Evans* that NMFS' regulatory definition of ''small numbers'' improperly conflates it with the ''negligible impact'' definition. Even if that is the case, NMFS has made a separate determination that the numbers of takes of the affected marine mammal species will be small. The best estimate of takes indicates that 9.4 percent or less of the affected species or stocks will be harassed. Although the absolute numbers may arguably not be small, they are small relative to the population sizes.

*Comment 4:* CBD states that NMFS does not adequately analyze the depths of water in which the surveys will take place and how the difference in depths affect the impacts to marine mammals.

*Response:* The LDEO application describes how seismic sounds can be received in the ocean. Seismic sound received at any given point will arrive via a direct path, indirect paths that include reflection form the sea surface and bottom, and often indirect paths including segments through the bottom sediments. Sound propagating via indirect paths travel longer distances and often arrive later than sounds arriving via a direct path. These variations in travel time have the effect of lengthening the duration of the received pulse.

Received levels of low-frequency underwater sounds diminish close to the surface because of pressure-release and interference phenomena that occur at and near the surface (Urick, 1983; Richardson *et al.* 1995). Paired measurements of received airgun sounds at depths of 3 m (9.8 ft) vs 9 m (29.5 ft) or 18 m (59 ft) have shown that received levels are typically several decibels lower at 3 m (Greene and Richardson, 1988).

During a 2003 study in the northern Gulf of Mexico, LDEO obtained measurements of received sound levels as a function of distance from LDEO's airgun arrays. The report on those ''calibration measurements'' has been completed. The measurement indicate that received levels in deep water (3200 m) (10499 ft) diminish more rapidly with increasing distance, whereas levels in shallow water (30 m) (98 ft) diminish less rapidly. The 2003 calibration results show that the measured depth-specific 180 dB distance is 3500 m (11483 ft). The required mitigation measures have been modified to account for this.

LDEO plans to obtain additional data on received levels of the sounds from the various LDEO airgun configurations during a follow-up calibration study in the northern Gulf of Mexico in April 2004. Plans for that study call for measurements in shallow, intermediate, and deep water.

*Comment 5:* CBD states that there is no mention of the compounded impact of the 20–airgun array's seismic output along with the two other acoustical data acquisition systems, the sonar and sub-bottom profiler. CBD states that the proposed IHA **Federal Register** notice provides no estimate of take from the sonar and profiler individually or from all three sources collectively, and instead assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the multibeam sonar. CBD comments that this explanation does not account for times when all three sources may not be operating simultaneously or provide any discussion of the enhanced impact of multiple acoustic sources when operating together.

*Response:* As NMFS indicated in the FR notice of the proposed IHA, the multibeam sonar has an anticipated radius of influence less than that for the airgun array. It is further stated that marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional allowance is included for animals that might be affected by the sonar. There is no enhanced impact of using the multibeam when operating it together with the airgun array. The sub-bottom profiler would not enhance impacts, since the radii of influence are smaller for the profiler than those of the airgun array.

It is true that there are no estimates of take for times when the multibeam sonar and/or sub-bottom profiler are operated without airguns. This is because the 160–dB and 180–dB isopleths of the sub-bottom profiler and multibeam are small. Durations of exposure and of behavioral responses to these sources would be brief, and any behavioral reactions would not rise to the level of take. Also, visual monitoring would be most effective at those shorter distances from the vessel, allowing for greater detection and avoidance of marine mammals in the vicinity.

*Comment 6:* CBD states that NMFS' analysis of mitigation measures to ensure least practicable impact is flawed because its analysis of impacts is incomplete, for the following reasons. First, the safety radii have not been verified. Also, the only proposed marine mammal detection method is visual surveillance by daytime observers. Although bridge personnel will keep watch at night, nighttime detection rates of marine mammals are probably very low. There is no discussion of why nighttime operations are considered necessary, why experienced marine mammal observers will not be on duty during nighttime hours, how effective any observation efforts are expected to be, or why alternative means of ensuring that the required monitoring program is likely to detect most marine mammals in or near the safety zones are not identified and required. Also, NMFS has failed to mention or require any exclusion zones to avoid seismic operations in coastal areas and key habitat for feeding, mating, breeding, and migration.

*Response:* NMFS believes that the required mitigation measures ensure the least practicable adverse impacts. The 180–dB isopleth modeling has been recently verified and NMFS' IHA has accordingly set the safety radius as 3500 m (11483 ft) from the arrays, within which sound levels greater than or equal to 180 dB re 1 μPa rms (the criteria for onset of Level A harassment for cetaceans) are predicted to be received.

Nighttime operations are necessary due to cost considerations. The daily cost to the Federal Government to operate vessels such as *Ewing* and the *Seaward Johnson* is approximately $33,000 to $35,000/day (Ljunngren, pers. comm. May 28, 2003). If the vessels were prohibited from operating during nighttime, it is possible that each trip would require an additional three to five days, or up to $175,000 more, depending on average daylight at the time of work.

NMFS agrees that the effectiveness of nighttime visual monitoring is limited. LDEO will now also incorporate passive acoustic monitoring whenever depth conditions allow. LDEO and the marine mammal observers have attended an orientation course for the use of the Lamont Seamap system onboard the *Ewing*. In addition to the observers, several acousticians from the science party will be able to monitor the passive acoustic system.

Taking into consideration the additional costs of prohibiting nighttime operations and the likely impact of the activity (including all required mitigation and monitoring), NMFS has determined that the IHA's requirements ensure that the activity will have the least practicable impact on the affected species or stocks. Marine mammals will have sufficient notice of a vessel approaching with operating seismic airguns (at least 1 hour in advance), thereby giving them an opportunity to avoid the approaching array; if ramp-up is required after an extended power-down, two marine mammal observers will be required to monitor the safety radii using night vision devices for 30 minutes before ramp-up begins and verify that no marine mammals are in or approaching the safety radii; start-up may not begin unless the entire safety radii are visible; and ramp-up may occur at night only if one airgun with a sound pressure level of at least 180 dB has been maintained during interruption of seismic activity. Therefore it is virtually impossible that the 20–gun array will be ramped-up from a shut-down at night.

In regards to exclusion zones, during the period of the survey, marine mammals will be dispersed throughout the proposed study area in the southern Gulf of Mexico. No concentrations of marine mammals or marine mammal prey species are known to occur in the study area at that time of year. The airgun operations will not result in any permanent impact on habitats used by marine mammals or their food sources. The use of the OBS receivers may have a temporary disturbance to sediments and benthic organisms, but the area that may be disturbed is a small fraction of marine mammal habitat and the habitat of their prey species. The airguns are used as the energy source for the seismic surveys because they do not kill fish. Injurious effects on fish would be limited to short distances. The ramp-ups will also give the fish an opportunity to move away from the sound source as the strength of the sound increases.

*Comment 7:* CBD believes that in order for NMFS to comply with the National Environmental Policy Act (NEPA), it must demonstrate that it has fully analyzed the impacts of, alternatives to, and mitigation measures for the project prior to issuing an IHA for the LDEO project. NMFS must assess the cumulative impacts of the project in conjunction with other actions on the environment.

*Response:* NMFS follows NEPA regulations and NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999) before making a determination on whether it will adopt another federal agency's NEPA document, or prepare its own. Critical to this determination is the quality of another agency's NEPA document, whether it fully addresses the action proposed by NOAA Fisheries, and whether NOAA Fisheries' proposed action is significant as defined in 40 CFR 1508.27 and NAO 216–6, section 6.01. As noted in the proposed authorization notice (68 FR 60086; October 21, 2003), an EA was prepared by National Science Foundation (NSF) and released to the public by NOAA Fisheries. That EA contained a complete description of the proposed action and identified alternatives to that action; a description of the affected environment; an assessment of impacts, including unavoidable impacts, indirect impacts and cumulative impacts; and the mitigation measures to reduce impacts to the lowest level practicable. In accordance with NAO 216–6, NMFS has reviewed the information contained in the NSF EA and determined that it accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Based on this review and analysis, NMFS adopted the NSF EA under 40 CFR 1506.3 and made its own Finding of No Significant Impact (FONSI). As a result, NMFS has determined that it is not necessary to issue either a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to LDEO for this activity.

**Description of Habitat and Marine Mammals Affected by the Activity**

A detailed description of the Gulf of Mexico off the northern Yucatan Peninsula and its associated marine mammals can be found in the LDEO application and a number of documents referenced in the LDEO application, and is not repeated here. In the Gulf of Mexico near the Yucatan Peninsula, 29 marine mammal species are known to occur within the proposed study area. The species included in this application

are the sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), dwarf sperm whale (*Kogia sima*), Cuvier's beaked whale (*Ziphius cavirostris*), Sowerby's beaked whale (*Mesoplodon densirostris*), Gervais' beaked whale (*Mesoplodon europaeus*), Blainville's beaked whale (*Mesoplodon densirostris*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), pantropical spotted dolphin (*Stenella attenuata*), Atlantic spotted dolphin (*Stenella frontalis*), spinner dolphin (*Stenella longirostris*), clymene dolphin (*Stenella clymene*), striped dolphin (*Stenella coeruleoalba*), short-beaked common dolphin (*Delphinus delphis*), long-beaked common dolphin (*Delphinus capensis*), Fraser's dolphin (*Lagenodelphis hosei*), Risso's dolphin (*Grampus griseus*), melon-headed whale (*Peponocephala electra*), pygmy killer whale (*Feresa attenuata*), false killer whale (*Pseudorca crassidens*), killer whale (*Orcinus orca*), short-finned pilot whale (*Globicephala macrorhynchus*), long-finned pilot whale (*Globicephala melas*), North Atlantic right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), minke whale (*Balaenoptera acutorostrata*), Bryde's whale (*Balaenoptera edeni*), sei whale (*Balaenoptera borealis*), fin whale (*Balaenoptera physalus*), and blue whale (*Balaenoptera musculus*). Seven of these species are listed as endangered under the U.S. Endangered Species Act (ESA): sperm, North Atlantic right, humpback, sei, fin, and blue whales, as well as West Indian manatee. Additional information on most of these species is available at: *http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html*.

**Potential Effects on Marine Mammals**

A discussion on potential impacts on marine mammals was provided in the **Federal Register** notice 68 FR 70000 (December 16, 2003) and in the LDEO application.

**Mitigation**

The following mitigation measures are proposed for the subject seismic surveys, provided that they do not compromise operational safety requirements: (1) Speed and course alteration; (2) power-down and shut-down procedures; (3) ramp-up procedures; and (4) marine mammal and sea turtle monitoring in the vicinity of the arrays through observers and passive acoustic monitoring. These mitigation measures are further described here.

These mitigation measures will incorporate use of established safety radius which LDEO has measured and modeled. The sound pressure fields for the 20–gun array in relation to distance and direction from the airguns are predicted to be at 3500 m (11483 ft) from the airgun array.

The directional nature (vertical beam-forming) of the 20–airgun array to be used in this project is also an important mitigating factor. The airguns comprising these arrays will be spread out horizontally, so that the energy from the arrays will be directed mostly downward, resulting in lower sound levels at any given horizontal distance than would be expected at that distance if the source were omnidirectional with the stated nominal source level. Also, because the actual seismic source is a distributed sound source (20 guns) rather than a single point source, the highest sound levels measurable at any location in the water will be less than the nominal source level.

**Speed and Course Alteration**

If a marine mammal is detected outside the appropriate safety radius and, based on its position and the relative motion, is likely to enter the safety radius, the vessel's speed and/or direct course will be changed in a manner that also minimizes the effect to the planned science objectives. The marine mammal activities and movements relative to the seismic vessel will be closely monitored to ensure that the marine mammal does not enter the safety radius. If the mammal appears likely to enter the safety radius, further mitigative actions will be taken, i.e., either further course alterations or shutdown of the airguns.

**Power-down and Shut-down Procedures**

Airgun operations will be powered-down (or shut-down) immediately when cetaceans or sea turtles are seen within or about to enter the safety radius. If a marine mammal is detected outside the safety radius but appears likely to enter it, and if the vessel's course and/or speed cannot be changed to avoid having the marine mammal enter the safety radius, the airguns will be powered-down before the mammal is within the safety radius. Likewise, if a marine mammal is already within the safety zone when first detected, the airguns will be powered-down immediately. If a marine mammal is seen within the safety radius of the array while the guns are powered-down, airgun operations will be shut-down. For the power-down procedure for the 20–gun array, one 80 $in^3$ airgun will continue to be operated during the interruption of seismic survey. Airgun activity (after both power-down and shut-down procedures) will not resume until any marine mammal has cleared the safety radius. The mammal or sea turtle has cleared the safety radius if it is visually observed to have left the safety radius, or if it has not been seen within the zone for 15 min (small odontocetes) or 30 min (mysticetes and large odontocetes, including sperm, pygmy sperm, dwarf sperm, beaked and bottlenose whales). These mitigation measures also apply in the case of sea turtles.

**Ramp-up Procedure**

When airgun operations with the 20–gun array commence after a certain period without airgun operations, the number of guns firing will be increased gradually, or ''ramped up'' (also described as a ''soft start''). Operations will begin with the smallest gun in the array (80 in3). Guns will be added in sequence such that the source level of the array will increase in steps not exceeding 6 dB per 5–min period over a total duration of approximately 25 minutes. Throughout the ramp-up procedure, the safety zone for the full 20–gun array will be maintained. Given the presence of the streamer and airgun array behind the vessel, the turning rate of the vessel with trailing streamer and array is no more than five degrees per minute, limiting the maneuverability of the vessel during operations.

The ''ramp-up'' procedure will be required under the following circumstances. Under normal operational conditions (vessel speed 4 knots, or 7.4 km/hr), a ramp-up would be required after a power-down or shut-down period lasting about 8 minutes or longer if the *Ewing* was towing the 20–gun array. At 4 knots, the source vessel would travel 900 m (2953 ft) during an 8–minute period. If the towing speed is reduced to 3 knots or less, as sometimes required when maneuvering in shallow water, ramp-up would be required after a ''no shooting'' period lasting 10 minutes or longer. At towing speeds not exceeding 3 knots, the source vessel would travel no more than 900 m (3117 ft) in 10 minutes. Based on the same calculation, a ramp-up procedure would be required after a 6 minute period if the speed of the source vessel was 5 knots.

Ramp-up will not occur if the safety radius has not been visible for at least 30 min prior to the start of operations in either daylight or nighttime. If the safety radius has not been visible for that 30 minute period (e.g., during darkness or fog), ramp-up will not commence unless at least one airgun has been firing continuously during the interruption of seismic activity.Passive

acoustic monitoring has been added to the mitigation measures. The Seamap system has four hydrophones which allow an observer to take a bearing on the vocalization of a marine mammal. Verification can then be made through visual observation by the marine mammal observers.

*Marine Mammal Monitoring*

LDEO must have at least four observers on board the vessel, and at least two must be experienced marine mammal observers that NMFS has approved in advance of the cruise. These observers will monitor marine mammals and sea turtles near the seismic source vessel during all daytime airgun operations and during any nighttime ramp-ups of the airguns. During daylight, vessel-based observers will watch for marine mammals and sea turtles near the seismic vessel during periods with shooting (including ramp-ups), and for 30 minutes prior to the planned start of airgun operations after an extended shut-down.

At least two observers will be on duty in shifts of no longer than 4 hours. At least three observers must be on watch during the 30–minute periods preceding startup of the airguns and during ramp-ups. Use of more than one observer will increase the likelihood that marine mammals near the source vessel are detected. LDEO bridge personnel will also assist in detecting marine mammals and sea turtles and implementing mitigation requirements whenever possible (they will be given instruction on how to do so), especially during ongoing operations at night when the designated observers are not on duty.

The observers will watch for marine mammals and sea turtles from the highest practical vantage point on the vessel, which is either the bridge or the flying bridge. On the bridge of the *Maurice Ewing*, the observer's eye level will be 11 m (36 ft) above sea level, allowing for good visibility within a 210° arc. If observers are stationed on the flying bridge, the eye level will be 14.4 m (47.2 ft) above sea level. The observers will systematically scan the area around the vessel with reticle binoculars (e.g., 7 X 50 Fujinon), with a set of Big Eyes binoculars, and with the naked eye during the daytime. Laser range-finding binoculars (Leica LRF 1200 laser rangefinder or equivalent) will be available to assist with distance estimation. The observers will be used to determine when a marine mammal or a sea turtle is in or near the safety radii so that the required mitigation measures, such as course alteration and power-down or shut-down, can be implemented. If the airguns are powered or shut down, observers will maintain watch to determine when the animal is outside the safety radius.

Observers will not be on duty during ongoing seismic operations at night; bridge personnel will watch for marine mammals and sea turtles during this time and will call for the airguns to be powered-down if marine mammals are observed in or about to enter the safety radii. If the airguns are ramped-up at night, at least three marine mammal observers will monitor for marine mammals and sea turtles for 30 minutes prior to ramp-up and during the ramp-up using night vision equipment that will be available (ITT F500 Series Generation 3 binocular image intensifier or equivalent).

**Reporting**

LDEO will submit a report to NMFS within 90 days after the end of the cruise, which is predicted to be on or around April 4, 2004. The report will describe the operations that were conducted and the marine mammals that were detected. The report must provide full documentation of methods, results, and interpretation pertaining to all monitoring tasks. The report will summarize the dates and locations of seismic operations, marine mammal sightings (dates, times, locations, activities, associated seismic survey activities), and estimates of the amount and nature of potential take of marine mammals by harassment or in other ways.

**Estimates of Take for the Northern Yucatan Peninsula Cruise**

NMFS' current criteria for onset of Level A harassment of cetaceans from impulse sound is 180 re 1 μPa root-mean-squared (rms). The rms pressure is an average over the pulse duration. The rms level of a seismic pulse is typically about 10 dB less than its peak level (Greene 1997; McCauley *et al.* 1998, 2000a). The criterion for Level B harassment onset is 160 dB.

Given the proposed mitigation, all anticipated takes involve a temporary change in behavior that may constitute Level B harassment. The proposed mitigation measures will minimize the possibility of Level A harassment to the lowest level practicable. LDEO has calculated the ''best estimates'' for the numbers of animals that could be taken by level B harassment during the proposed seismic survey at the northern Yucatan Peninsula using data on marine mammal abundance from a previous survey region.

These estimates are based on a consideration of the number of marine mammals that might be exposed to sound levels equal to or greater than 160 dB, the criterion for the onset of Level B harassment, by operations with the 20–gun array planned to be used for this project. The anticipated radius of influence of the multibeam sonar is less than that for the airgun array, so it is assumed that any marine mammals close enough to be affected by the multibeam sonar would already be affected by the airguns. Therefore, no additional incidental takings are included for animals that might be affected by the multibeam sonar.

The following table explains the corrected density estimates as well as the best estimate of the numbers of each species that would be exposed to seismic sounds greater than or equal to 160 dB.

| Species | ''Best Estimate'' of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB) | % of North Atlantic Population | Requested Take Authorization |
|---|---|---|---|
| *Physeteridae* | | | |
| Sperm whale | 0 | 0 | 10 |
| Dwarf/Pygmy sperm whale | 0 | 0 | 10 |
| *Ziphiidae* | | | |
| Cuvier's beaked whale | 0 | 0 | 10 |
| Sowerby's beaked whale | 0 | 0 | 10 |
| Gervais' beaked whale | 0 | 0 | 10 |
| Blainville's beaked whale | 0 | 0 | 10 |
| *Delphinidae* | | | |
| Rough-toothed dolphin | 393 (99) | N.A.[2] | 590 |
| Bottlenose dolphin | 12142 (3054) | 9.4 | 18213 |

| Species | "Best Estimate" of the Number of Exposures to Sound Levels ≥160 dB (≥170 dB) | % of North Atlantic Population | Requested Take Authorization |
|---|---|---|---|
| Pantropical spotted dolphin | 581 (146) | 1.0 | 872 |
| Atlantic spotted dolphin | 1317 (331) | 2.4 | 1975 |
| Spinner dolphin | 34 (9) | 0.3[1] | 100 |
| Clymene dolphin | 0 | 0 | 100 |
| Striped dolphin | 0 | 0 | 100 |
| Short-beaked common dolphin | | | 5 |
| Long-beaked common dolphin | | | 5 |
| Fraser's dolphin | 9 (2) | 6.7 | 100 |
| Risso's dolphin | 9 (2) | <0.1 | 10 |
| Melon-headed whale | 9 (2) | 0.2[1] | 15 |
| Pygmy killer whale | 0 | 0 | 15 |
| False killer whale | 479 (120) | N.A.[2] | 718 |
| Killer whale | 9 (2) | 0.1 | 10 |
| Short-finned pilot whale | 274 (69) | <0.1 | 410 |
| Long-finned pilot whale | 0 | 0 | 5 |
| *Mysticetes* | | | |
| North Atlantic right whale | 0 | 0 | 2 |
| Humpback whale | 0 | 0 | 2 |
| Minke whale | 0 | 0 | 2 |
| Bryde's whale | 0 | 0 | 5 |
| Sei whale | 0 | 0 | 2 |
| Fin whale | 0 | 0 | 2 |
| Blue whale | 0 | 0 | 2 |

[1]% of Gulf of Mexico population.
[2]N.A. = not available.

**Conclusions**

NMFS has determined that the impact of conducting the seismic survey at the northern Yucatan Peninsula in the Gulf of Mexico will result, at worst, in a temporary modification in behavior by certain species of marine mammals. This activity is expected to result in no more than a negligible impact on the affected species or stocks.

While the number of potential incidental harassment takes will depend on the distribution and abundance of marine mammals in the vicinity of the survey activity, the number of potential harassment takings is estimated to be small. In addition, no take by injury and/or death is anticipated, and the potential for temporary or permanent hearing impairment is low and will be avoided through the incorporation of the mitigation measures mentioned in this document. In addition, the proposed seismic program is not expected to interfere with any subsistence hunts, since operations in the whaling and sealing areas will be limited or nonexistent.

*Conclusions- Effects on Cetaceans*

Strong avoidance reactions by several species of mysticetes to seismic vessels have been observed at ranges up to 8 km (4.3 nm) and occasionally as far as 30 km (16.2 nm) from the source vessel. In Arctic waters, some bowhead whales avoided waters within 30 km (16.2 nm) of the seismic operation. However, reactions at such long distances appear to be atypical of other species of mysticetes and, even for bowheads, may only apply during migration.

Odontocete reactions to seismic pulses, or at least those of dolphins, are expected to extend to lesser distances than are those of mysticetes. Odontocete low-frequency hearing is less sensitive than that of mysticetes, and dolphins are often seen in the vicinity of seismic vessels. There are documented instances of dolphins approaching active seismic vessels. However, dolphins as well as some other types of odontocetes will sometimes show avoidance responses and/or other changes in behavior when near operating seismic vessels.

Taking account of the mitigation measures that are planned, effects on cetaceans are generally expected to be limited to short-term avoidance of the area around the seismic operation, falling within the MMPA definition of Level B harassment.

The numbers of odontocetes that may be harassed by the proposed activities are small relative to the population sizes of the affected stocks. The best estimates for exposure to seismic sounds greater than or equal to 160 dB are 12142, 1317, and 581 for bottlenose, Atlantic spotted, and pantropical spotted dolphins, respectively (the most abundant delphinids in the proposed survey area). This represents between 1 and 9.4 percent of the North Atlantic populations of these species based on population estimates. However, surveys for these dolphin species have not been conducted for most of their range in the North Atlantic Ocean and adjacent waters. Therefore the true percentages of the populations that might be exposed to seismic sounds greater than or equal to 160 dB are likely to be much less, as the population sizes are based on only a small fraction of their range and their actual population sizes are much larger.

In light of the type of take expected (Level B harassment) and the small percentages of affected stocks, the action is expected to have no more than a negligible impact on the affected species or stocks of marine mammals. In addition, mitigation measures such as controlled vessel speed, course alteration, look-outs and biological observers, the use of passive acoustics, ramp-ups, and power-downs and shut-downs when marine mammals are seen within defined ranges (see Mitigation) should further reduce short-term reactions to disturbance, and minimize any effects on hearing sensitivity.

**ESA**

NMFS issued a biological opinion regarding the effects of this action on ESA-listed species and critical habitat. That biological opinion concluded that this action is not likely to jeopardize the continued existence of listed species or

result in the destruction or adverse modification of critical habitat. A copy of the Biological Opinion is available upon request (see **ADDRESSES**).

## NEPA

The NSF made a Finding of No Significant Impact (FONSI) determination on October 2, 2003, based on information contained within its EA, that implementation of the subject action is not a major Federal action having significant effects on the environment within the meaning of Executive Order 12114. NSF determined therefore, that an environmental impact statement would not be prepared. On December 16, 2003 (68 FR 70000), NMFS noted that the NSF had prepared an EA for the Yucatan Peninsula surveys and made this EA was available upon request. In accordance with NOAA Administrative Order 216–6 (Environmental Review Procedures for Implementing the National Environmental Policy Act, May 20, 1999), NMFS has reviewed the information contained in NSF's EA and determined that the NSF EA accurately and completely describes the proposed action alternative, reasonable additional alternatives, and the potential impacts on marine mammals, endangered species, and other marine life that could be impacted by the preferred alternative and the other alternatives. Therefore, it is not necessary to issue a new EA, supplemental EA or an environmental impact statement for the issuance of an IHA to LDEO for this activity. Based on this review and analysis, NMFS is adopting the NSF EA under 40 CFR 1506.3 and has made its own FONSI. A copy of the NSF EA and the NMFS FONSI for this activity is available upon request (see **ADDRESSES**).

## Authorization

NMFS has issued an IHA to take marine mammals, by harassment, incidental to conducting a seismic surveys in the northern Yucatan Peninsula in the Gulf of Mexico to LDEO for a 1–year period, provided the mitigation, monitoring, and reporting requirements are undertaken.

Dated: March 23, 2004.

**Laurie K. Allen,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 04–6970 Filed 3–26–04; 8:45 am]

**BILLING CODE 3510–22–S**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice. The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Survey of Supply Vendors; none; OMB Number 0704–[To Be Determined].

*Type of Request:* New collection.

*Number of Respondents:* 200.

*Responses Per Respondent:* 1.

*Annual Responses:* 200.

*Average Burden Per Response:* 1 hour.

*Annual Burden Hours:* 200.

*Needs and Uses:* The Defense Logistics Agency (DLA) is transforming its distribution business practices. The survey information will be used by DLA to help determine the extent to which shipments from contractor locations can be integrated into DLA's distribution practices.

Respondents are individuals/businesses who supply material to the Defense Logistics Agency in direct support of customer requirements or to be placed into stock for future requirements. The survey will seek information concerning each contractor's demographics, order management practices, shipping practices, costs and pricing, and utilization of technology.

*Affected Public:* Business or other for-profit.

*Frequency:* On occasion.

*Respondent's Obligation:* Voluntary.

*OMB Desk Officer:* Ms. Jacqueline Zeiher. Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DOD Clearance Officer:* Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6878 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Application for Establishment of Air Force Junior ROTC Unit; AFOATS Form 59; OMB Number 0701–0114.

*Type of Request:* Reinstatement.

*Number of Respondent's:* 40.

*Responses Per Respondent:* 1.

*Annual Responses:* 40.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 20.

*Needs and Uses:* The information collection requirement is necessary to obtain information about schools that would like to host an Air Force Junior ROTC unit. Respondents are high school officials who provide information about their school. The completed form is used to determine the eligibility of the school to host an Air Force JROTC unit.

*Affected Public:* Not-for-profit institutions.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6879 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Application for Air Force ROTC Membership; AFROTC Form 20; OMB Number 0701–0105.

*Type of Request:* Extension.

*Number of Respondents:* 12,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 12,000.

*Average Burden Per Response:* 20 minutes.

*Annual Burden Hours:* 4,000.

*Needs and Uses:* Respondents are college students who apply for membership in Air Force ROTC. The collected data is used to determine whether or not an applicant is eligible to join the Air Force ROTC program and, if accepted, the enrollment status of the applicant within the program. Upon acceptance into the program, the collected information is used to establish personal records for Air Force ROTC cadets.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6880 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* TRICARE Retiree Dental Program; OMB Number 0720–0015.

*Type of Request:* Reinstatement.

*Number of Respondents:* 50,000.

*Responses per Respondent:* 1.

*Annual Responses:* 50,000.

*Average Burden Per Response:* 9 minutes.

*Annual Burden Hours:* 7,500.

*Needs and Uses:* The information collection requirement is necessary to provide the TRDP contractor (Delta Dental) with the information required to enroll eligible beneficiaries in the TRDP. Respondents are those DoD retired, eligible personnel and some others who wish to join the TRDP.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Mr. John Kraemer. Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD Health Affairs, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing. Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6881 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provision of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Defense Federal Acquisition Regulation Supplement (DFARS) Appendix I, DoD Pilot Mentor-Protégé Program; None; OMB Number 0704–0332.

*Type of Request:* Extension.

*Number of Respondents:* 269.

*Responses Per Respondent:* 1.5 (average).

*Annual Responses:* 393.

*Average Burden Per Response:* 3.5 hours.

*Annual Burden Hours:* 1,388.

*Needs and Uses:* DoD needs this information to evaluate whether the purposes of the DoD Pilot Mentor-Protégé Program have been met. The purposes of the Program are to: (1) Provide incentives to major DoD contractors to assist protégé firms in enhancing their capabilities to satisfy contract and subcontract requirements; (2) increase the overall participation of protégé firms as subcontractors and suppliers; and, (3) foster the establishment of long-term business relationships between protégé firms and major DoD contractors. Participation in this program is voluntary. DFARS Appendix I–111(a) requires mentor firms to report on the progress made under active mentor-protégé agreements semiannually.

*Affected Public:* Business or other For Profit; Not-For-Profit Institutions.

*Frequency:* Semi-annually.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/

Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6882 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Submission for OMB Review; Comment Request

**ACTION:** Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

**DATES:** Consideration will be given to all comments received by April 28, 2004.

*Title, Form, and OMB Number:* Air Force ROTC College Scholarship Application; AF Form 113; OMB Number 0701–0101.

*Type of Request:* Extension.

*Number of Respondents:* 16,000.

*Responses Per Respondent:* 1.

*Annual Responses:* 16,000.

*Average Burden Per Response:* 30 minutes.

*Annual Burden Hours:* 8,000.

*Needs and Uses:* Respondents are high school seniors and recent graduates who apply for an Air Force ROTC college scholarship. Respondents will have the option of completing the application on the Air Force Internet homepage. Submitted data will be evaluated by selection boards to determine eligibility and to select individuals for the award of a college scholarship.

*Affected Public:* Individuals or households.

*Frequency:* On occasion.

*Respondent's Obligation:* Required to obtain or retain benefits.

*OMB Desk Officer:* Ms. Jacqueline Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

*DoD Clearance Officer:* Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/ESCD/Information Management Division, 1225 Jefferson Davis Highway, Suite 504, Arlington, VA 22202–4326.

Dated: March 22, 2004.

**L. M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6883 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Meeting of the DoD Advisory Group on Electron Devices

**AGENCY:** Department of Defense, Advisory Group on Electron Devices.

**ACTION:** Notice.

**SUMMARY:** The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

**DATES:** The meeting will be held at 0830, Friday, April 23, 2004.

**ADDRESSES:** The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

**SUPPLEMENTARY INFORMATION:** The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition, Technology and Logistics to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on microwave technology, microelectronics, electro-optics, and electronics materials.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. section 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: March 22, 2004.

**L.M. Bynum,**

*Alternate, OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–6884 Filed 3–26–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Meeting of the Board of Visitors of Marine Corps University

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice of open meeting.

**SUMMARY:** The Board of Visitors of the Marine Corps University (BOV MCU) will meet to review, develop and provide recommendations on all aspects of the academic and administrative policies of the University; examine all aspects of professional military education operations; and provide such oversight and advice as is necessary to facilitate high educational standards and cost effective operations. The Board will be focusing primarily on the University's progress in meeting the 2005 Southern Association of Colleges and Schools accreditation requirements and the quality enhancement plan. The Board will be apprised of the status of Academic Chairs and briefed on recent developments at Marine Corps University, including developments in the presidency of the institution. All sessions of the meeting will be open to the public.

**DATES:** The meeting will be held on Thursday, April 22, 2004, from 8 a.m. to 5 p.m. and on Friday, April 23, 2004, from 8 a.m. to 11:30 a.m.

**ADDRESSES:** The meeting will be held at the Alfred M. Gray Marine Corps Research Center in Rooms 164 and 165. The address is 2040 Broadway Street, Quantico, VA 22134.

**FOR FURTHER INFORMATION CONTACT:** Mary Lanzillotta, Executive Secretary, Marine Corps University Board of Visitors, 2076 South Street, Quantico, Virginia 22134, telephone number (703) 784–4037.

Dated: March 16, 2004.

**S. K. Melancon,**

*Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Register Liaison Officer.*

[FR Doc. 04–6885 Filed 3–26–04; 8:45 am]

**BILLING CODE 3810–FF–P**

## DEPARTMENT OF ENERGY

### Office of Environmental Management; Environmental Management Advisory Board Reestablishment

Pursuant to Section 14(a)(2)(A) of the Federal Advisory Committee Act (Pub. L. No. 92–463), and in accordance with Title 41 of the Code of Federal Regulations, section 102–3.65(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Environmental Management Advisory Board has been reestablished for a two-year period beginning in March 2004. The Board will provide advice to the Assistant Secretary for Environmental Management.

The Board provides the Assistant Secretary for Environmental Management with information and strategic advice on corporate issues, with a focus on achieving closure of selected sites by 2006. It recommends options to resolve difficult issues faced in the Environmental Management program including: contracts and acquisition strategies, public and worker health and safety, integration and disposition of waste, regulatory agreements, roles and authorities, risk based end-state activities and risk reduction, cost-benefit analyses, program performance and functionality, and science requirements and applications. Consensus recommendations to the Department of Energy from the Board on programmatic nationwide resolution of numerous difficult issues will help achieve the Department's objective of the safe and efficient cleanup of its contaminated sites.

Additionally, the reestablishment of the Environmental Management Advisory Board has been determined to be essential to the conduct of Department of Energy business and to be in the public interest in connection with the performance of duties imposed on the Department of Energy by law and agreement. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act, and rules and regulations issued in implementation of that Act.

Further information regarding this Advisory Board may be obtained from Ms. Rachel Samuel at (202) 586–3279.

Issued in Washington, DC on March 22, 2004.

**James N. Solit,**

*Advisory Committee Management Officer.*

[FR Doc. 04–6911 Filed 3–26–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Aluminum Visions of the Future Funding Opportunity Announcement

**AGENCY:** Golden Field Office, U.S. Department of Energy.

**ACTION:** Notice of issuance of funding opportunity announcement.

**SUMMARY:** The U.S. Department of Energy (DOE) is announcing its intention to seek applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of the domestic aluminum industry. The research is to address research priorities identified by the aluminum industry in the Aluminum Industry Technology Roadmap and the Inert Anode Roadmap (available at the following URL: *http://www.oit.doe.gov/aluminum/visions.shtml.*) Potential benefits of the research must be realized in manufacturing processes, not in end-use applications.

**DATES:** The funding opportunity announcement was issued March 22, 2004.

**ADDRESSES:** To obtain a copy of the announcement, interested parties should access the DOE Golden Field Office home page at *http://www.go.doe.gov/funding.html,* click on the word ''access.'' The link will open the Industry Interactive Procurement System (IIPS) web site and provide instructions on using IIPS. The Announcement can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contract Activity, for those announcements issued by the Golden Field Office. DOE will not issue paper copies of the announcement.

IIPS provides the medium for disseminating announcements, receiving financial assistance applications, and evaluating the applications in a paperless environment. The application may be submitted in the Industry Interactive Procurement System (IIPS) by the applicant or a designated representative that receives authorization from the applicant; however, the application documentation must reflect the name and title of the representative authorized to enter the applicant into a legally binding contract or agreement. The applicant or the designated representative must first register in IIPS, entering their first name and last name, then entering the company name/address of the applicant.

For questions regarding the operation of IIPS, contact the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or at (800) 683–0751.

**FOR FURTHER INFORMATION CONTACT:** DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393 or via facsimile to at (303) 275–4788, or electronically to *aluminum@go.doe.gov.*

Issued in Golden, Colorado, on March 22, 2004.

**Jerry L. Zimmer,**

*Director, Office of Acquisition and Financial Assistance.*

[FR Doc. 04–6914 Filed 3–26–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

**AGENCY:** Department of Energy.

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register**.

**DATES:** Wednesday, April 14, 2004, 6 p.m.

**ADDRESSES:** DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN.

**FOR FURTHER INFORMATION CONTACT:** Pat Halsey, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831. Phone (865) 576–4025; Fax (865) 576–5333 or e-mail: *halseypj@oro.doe.gov* or check the Web site at *http://www.oakridge.doe.gov/em/ssab.*

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

*Tentative Agenda*

Developing Recommendations on Soil Vapor Sampling at the East Tennessee Technology Park (ETTP)

Remediation Strategies for Trenches 5 and 7 and the Melton Valley Area of Oak Ridge National Laboratory

Discussion and Comments on the Focused Feasibility Study for Zone 2 Soils and Buried Waste at ETTP

*Public Participation:* The meeting is open to the public. Written statements

may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Pat Halsey at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

*Minutes:* Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Center at 475 Oak Ridge Turnpike, Oak Ridge, TN between 8 a.m. and 5 p.m. Monday through Friday, or by writing to Pat Halsey, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (865) 576–4025.

Issued at Washington, DC on March 24, 2004.

**Rachel M. Samuel,**

*Deputy Committee Management Officer.*

[FR Doc. 04–6912 Filed 3–26–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Environmental Management Site-Specific Advisory Board, Paducah

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of open meeting.

**SUMMARY:** This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, April 15, 2004, 5:30 p.m.–9:30 p.m.

**ADDRESSES:** 111 Memorial Drive, Barkley Centre, Paducah, Kentucky.

**FOR FURTHER INFORMATION CONTACT:** William E. Murphie, Deputy Designated Federal Officer (DDFO), Department of Energy Portsmouth/Paducah Project Office, 1017 Majestic Drive, Suite 200, Lexington, Kentucky 40513, (859) 219–4001.

**SUPPLEMENTARY INFORMATION:** *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

*Tentative Agenda*

5:30 p.m.—Informal Discussion
6 p.m.—Call to Order; Introductions; Approve March Minutes; Review Agenda
6:05 p.m.—DDFO's Comments
6:25 p.m.—Ex-officio Comments
6:35 p.m.—Federal Coordinator Comments
6:45 p.m.—Public Comments and Questions
6:55 p.m.—Break
7:05 p.m.—Task Forces/Presentations
Conflict of Interest
Waste Disposition
Water Quality
Community Outreach
Long Range Strategy/Stewardship
8:05 p.m.—Public Comments and Questions
8:15 p.m.—Administrative Issues
Review of Work Plan
Review of Next Agenda
Chairs Meeting
8:35 p.m.—Review of Action Items
8:50 p.m.—Subcommittee Reports
Executive Committee
9:15 p.m.—Final Comments
9:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

*Public Participation:* The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Dollins at the address listed below or by telephone at (270) 441–6819. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comments will be provided a maximum of five minutes to present their comments as the first item of the meeting agenda.

*Minutes:* The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 115 Memorial Drive, Barkley Centre, Paducah, Kentucky between 8 a.m. and 5 p.m. on Monday thru Friday or by writing to David Dollins, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6819.

Issued at Washington, DC on March 23, 2004.

**Rachel M. Samuel,**

*Deputy Advisory Committee Management Officer.*

[FR Doc. 04–6913 Filed 3–26–04; 8:45 am]

BILLING CODE 6450–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2165–015–Alabama Black Warrior River Project]**

### Alabama Power Company; Notice of Proposed Revised Restricted Service List for a Programmatic Agreement for Managing Properties Included in or Eligible for Inclusion in The National Register of Historic Places

March 22, 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 should contain 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 staff is consulting with the Alabama State Historic Preservation Officer (hereinafter, SHPO) and the Advisory Council on Historic Preservation (hereinafter, 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. 470 f), 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. 2165–015.

The programmatic agreement, when executed by the Commission, the SHPO, and the Council, 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 Black Warrior

[1] 18 CFR 385.2010.

River Project would be fulfilled through the programmatic agreement, which the Commission proposes to draft in consultation with Alabama Power Company, the licensee for Project No. 2165; the Mississippi Band of Choctaw Indians; the Jena Band of Choctaw Indians; the Chickasaw Nation, the Poarch Band of Creek Indians; the U.S. Forest Service; the U.S. Army Corp of Engineers; and the U.S. Bureau of Indian Affairs. The executed programmatic agreement would be incorporated into any Order issuing a license.

By the letter filed February 3, 2004, Steven Rickerson, Forest Supervisor, requested to be placed on the Restricted Service List for the Black Warrior River Project. For purposes of commenting on the programmatic agreement, we propose to add the following person to the restricted service list for the aforementioned project to represent the interests of the U.S. Forest Service:

Steven Rickerson, Forest Supervisor, National Forests in Alabama, 2946 Chestnut Street, Montgomery, AL 36107.

The addition to the restricted service list is effective immediately.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–697 Filed 3–26–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 2232–457]**

### Duke Power Company; Notice of Availability of Environmental Assessment

March 23, 2004.

In accordance with the National Environmental Policy Act of 1969, as amended, and the Federal Energy Regulatory Commission's (Commission) regulations (18 CFR Part 380), Commission staff have prepared an environmental assessment (EA) that analyzes the environmental impacts of allowing Duke Power Company, licensee for the Catawba-Wateree Hydroelectric Project, to grant an updated Water Withdrawal Easement to the City of Mount Holly, North Carolina for project property within Mountain Island Lake that will supercede an existing easement. The updated easement will allow Mount Holly to install and maintain new intake screens on existing water intake pipes at its Raw Water Intake Pumping Station at Mountain Island Lake, and allow Mount Holly to increase water withdrawals from the currently-permitted rate of 3.0 million gallons per day (MGD) to a maximum of 13.5 MGD. Increases in water withdrawal would occur incrementally over time. The EA contains staff's analysis of the potential environmental impacts of the proposal and concludes that approval of the Proposed Action would not constitute a major Federal action significantly affecting the quality of the human environment.

A copy of the EA is attached to a Commission order titled ''Order Approving Non-Project Use of Project Lands and Waters,'' which was issued March 23, 2004, and is available for review and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (prefaced by P-) and excluding the last three digits, in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, contact (202) 502–8659.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–698 Filed 3–26–04; 8:45 am]

BILLING CODE 6717–01–P

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EC04–73–000, et al.]**

### Midwest Generation, LLC, et al.; Electric Rate and Corporate Filings

March 22, 2004.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

**1. Midwest Generation, LLC; Nesbitt Asset Recovery, Series C–1; Nesbitt Asset Recovery, Series C–2; Nesbitt Asset Recovery, Series C–3; Nesbitt Asset Recovery, Series C–4**

[Docket No. EC04–73–000]

Take notice that on March 18, 2004, Midwest Generation, LLC; Nesbitt Asset Recovery, Series C–1; Nesbitt Asset Recovery, Series C–2; Nesbitt Asset Recovery, Series C–3; and Nesbitt Asset Recovery, Series 4 (collectively, the Applicants) filed a supplement to their application filed March 12, 2004 in the above-referenced Docket No. pursuant to section 203 of the Federal Power Act for authorization of the disposition of jurisdictional facilities in connection with the termination of a sale and leaseback transaction involving the Collins Generating Station, a 2,698–MW generating plant located in Morris, Illinois.

*Comment Date:* April 2, 2004.

**2. Exelon New England Holdings, LLC et al., EBG Holdings LLC**

[Docket No. EC04–77–000]

Take notice that on March 19, 2004, Exelon New England Holdings, LLC (Exelon New England), Boston Generating, LLC (Boston Generating), and EBG Holdings, LLC (EBG Holdings) filed with the Commission an application, pursuant to section 203 of the Federal Power Act, and Part 33 of the Commission's regulations, seeking authorization for the transfer of one hundred (100) percent of the membership interests of Boston Generating owned by Exelon New England from Exelon New England to EBG Holdings. The applicants request expedited consideration of the application.

*Comment Date:* April 9, 2004.

**3. Black River Generation, LLC**

[Docket No. EG04–39–000]

Take notice that on March 18, 2004, Black River Generation, LLC, (Black River Generation) tendered for filing with the Commission an Application for Determination of Exempt Wholesale Generator Status pursuant to section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's Regulations. Black River Generation states that it will lease and operate the Fort Drum Project, which is located at the Fort Drum Army base near Watertown, New York, until June 30, 2005, at which time it will acquire the Project.

Black River Generation states that copies of the Application have been served on the New York Public Service Commission and the U.S. Securities and Exchange Commission.

*Comment Date:* April 8, 2004.

**4. Frederickson Power, L.P.**

[Docket No. EG04–40–000]

Take notice that on March 12, 2004, Frederickson Power L.P. (Frederickson) tendered for filing a Notification of Change in Facts and Request for Confirmation of Exempt Wholesale Generator Status.

*Comment Date:* April 2, 2004.

**5. Pacific Gas and Electric Company**

[Docket Nos. ER99–2326–007 and EL99–68–007]

Take notice that on March 17, 2004, Pacific Gas and Electric Company (PG&E) submitted a compliance filing and refund report with respect to its third Transmission Owner Tariff (TO Tariff) in compliance with the Commission's Orders dated August 28, 2003 and February 17, 2004, Pacific Gas and Electric Co., 104 FERC ¶ 61,226 and 106 FERC ¶ 61,144.

PG&E states that copies of this filing have been served upon the California Independent System Operator Corporation, the California Public Utilities Commission, and the parties to the official service lists in the affected dockets.

*Comment Date:* April 7, 2004.

**6. Boston Edison Company**

[Docket Nos. ER01–890–007 and ER02–1465–002]

Take notice that on March 18, 2004, Boston Edison Company (Boston Edison) submitted a compliance filing pursuant to the order issued on February 17, 2004 in Docket No. ER01–890–004, *et al.*, 106 FERC ¶ 61,150 (2004).

Boston Edison states that copies of said filing have been served upon all persons included on the official service list in this proceeding.

*Comment Date:* April 8, 2004.

**7. Entergy Services, Inc.**

Docket No. ER03–1140–003]

Take notice that on March 18, 2004, Entergy Services, Inc., (Entergy) on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., submitted a compliance filing incorporating revisions to section 11.2(iv) of the creditworthiness provisions of Entergy's Open Access Transmission Tariff as required by the Commission's Order issued February 17, 2004 in Docket No. ER03–1140–001 and 002. 106 FERC ¶ 61,142 (2004).

*Comment Date:* April 8, 2004.

**8. Virginia Electric and Power Company**

[Docket No. ER04–561–001]

Take notice that on March 16, 2004, Virginia Electric and Power Company (Dominion Virginia Power) tendered for filing an amended application of the Ninth Amended Service Agreements for Sempra Energy Trading Corp under the Company's Open Access Transmission Tariff, FERC Electric Tariff, Second Revised Volume No. 5, to Eligible Purchasers dated June 7, 2000:

1. Ninth Amended Service Agreement for Firm Point-To-Point Transmission Service designated Tenth Revised Service Agreement No. 253 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Ninth Amended Service Agreement for Non-Firm Point-To-Point transmission Service designated Tenth Revised Service Agreement No. 49 under the Company's FERC Electric Tariff, Second Revised Volume no. 5.

Dominion Virginia Power respectfully renews its requests for an effective date of January 17, 2003.

*Comment Date:* April 6, 2004.

**9. RWE Trading Americas Inc.**

[Docket No. ER04–661–000]

Take notice that on March 18, 2004, RWE Trading Americas Inc. (RWE Trading) tendered for filing a Notice of Cancellation of its FERC Electric Tariff, Original Volume No. 1 (Tariff). RWE Trading requested an effective date of May 19, 2004.

*Comment Date:* April 8, 2004.

**10. Entergy Services, Inc.**

[Docket No. ER04–663–000]

Take notice that on March 18, 2004, Entergy Services, Inc. (Entergy Services) submitted for filing on behalf of Entergy Arkansas, Inc. (EAI) a 2004 Wholesale Formula Rate Update in accordance with: (1) The Power Coordination, Interchange and Transmission Service Agreements between EAI and the Cities of Conway, West Memphis and Osceola Arkansas; the cities of Campbell and Thayer, Missouri; and the Arkansas Electric Cooperative Corporation; (2) the Transmission Service Agreement (TSA) between EAI and the City of Hope, Arkansas; (3) the TSA between EAI and the Louisiana Energy & Power Authority; (4) the Wholesale Power Service Agreement (WPSA) between EAI and the City of Prescott, Arkansas; and (5) the WPSA between EAI and the Farmers Electric Cooperative Corporation. In addition, Energy Services states that the distribution rate charged to the City of North Little Rock pursuant to the Network Integration Transmission Service Agreement is also redetermined by this filing.

*Comment Date:* April 8, 2004.

**Standard Paragraph**

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov*, using the ''FERRIS'' link. Enter the docket number excluding the last three digits in the docket number filed to access the document. For assistance, call (202) 502–8222 or TTY, (202) 502–8659. Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–691 Filed 3–26–04;8:45 am]

BILLING CODE 6717–01–P

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Project No. 1971–079 Idaho/Oregon]**

## Idaho Power Company; Notice on Clarification of Tribal Consultation Meetings

March 17, 2004.

In the Notice of Tribal Consultation Briefing, issued March 9, 2004, the Commission indicated that it would hold meetings with the Indian Tribes potentially affected by the relicensing of the Hells Canyon Project between March 29 and March 31, 2004. These meetings will not be open to the public but will be transcribed by a court reporter. The transcripts will be available on the Commission's Web site (*http://www.ferc.gov/docs-filing/elibrary.asp*) as soon as possible after the meetings.

In addition, as also indicated in the notice, to review the matters discussed at the tribal meetings, the Commission staff will be holding a separate tribal consultation briefing, on Thursday, April 1, 2004, from 9:30 a.m. to 11:30 a.m. at the Boise Center on the Grove, 850 Front Street, Boise, Idaho. This briefing will be open to the public, including all tribes, agencies, non-governmental organizations, and individuals.

For more information, contact Alan Mitchnick at (202) 502–6074, *alan.mitchnick@ferc.gov*; or Emily Carter at (202) 502–6512, *emily.carter@ferc.gov.*

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–699 Filed 3–26–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. RM98–1–000]**

### Records Governing Off-the Record Communications; Public Notice

March 23, 2004.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or prohibited off-the-record communication relevant to the merit's of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of prohibited and exempt communications recently received in the Office of the Secretary. The communications listed are grouped by docket numbers. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary (FERRIS) link. Enter the docket number excluding the last three digits in the docket number field to access the document. For Assistance, please contact FERC, Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

*Prohibited:*

| Docket number | Date filed | Presenter or requester |
|---|---|---|
| 1. CP04–58–000. | 3–16–04 | Cory Trembath. |
| 2. Project No. 2342–000. | 3–22–04 | Jeffrey Baumoel. |
| 3. Project No. 2342–000. | 3–22–04 | Kurt Olson. |
| 4. Project No. 2342–000. | 3–22–04 | Darian Mark. |
| 5. Project No. 2342–000. | 3–22–04 | Jarrett Mattson. |
| 6. Project No. 2342–000. | 3–22–04 | James Mulder. |
| 7. Project No. 2342–000. | 3–22–04 | Diana Dixon. |
| 8. Project No. 2342–000. | 3–22–04 | Trinity Lila. |

*Exempt:*

| Docket number | Date filed | Presenter or requester |
|---|---|---|
| 1. Project No. 2169–000. | 3–11–04 | Kimberly Carter/Sergiu Serban. |

**Magalie R. Salas,**

*Secretary.*

[FR Doc. E4–696 Filed 3–26–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Western Area Power Administration

### Post-2005 Resource Pool, Pick-Sloan Missouri Basin Program—Eastern Division

**AGENCY:** Western Area Power Administration, DOE.

**ACTION:** Notice of proposed allocation.

**SUMMARY:** The Western Area Power Administration (Western), Upper Great Plains Customer Service Region, a Federal power marketing agency of the Department of Energy, announces the Post-2005 Resource Pool Proposed Allocation of Power. The Energy Planning and Management Program (Program) provides for project-specific resource pools and power allocations from these pools to new preference customers and/or other appropriate purposes as determined by Western. Western, under the Program, is proposing allocations from a Federal power resource pool of the long-term marketable resource of the Pick-Sloan Missouri Basin Program—Eastern Division (P–SMBP—ED) that will become available January 1, 2006. Western will prepare and publish the Final Allocation of Power in the **Federal Register** after all public comments have been considered.

**DATES:** Entities interested in commenting on the proposed allocations of power must submit written comments to Western's Upper Great Plains Customer Service Regional Office at the address below. Western must receive written and/or electronic comments by 4 p.m., MDT, on June 28, 2004. Entities are encouraged to use certified mail, e-mail, or fax for delivery of comments. Western will accept comments received via regular mail through the United States Postal Service if postmarked at least 3 days before June 28, 2004, and received no later than July 2, 2004. Western reserves the right to not consider any comments that are not received by the prescribed dates and times. Western will hold public information forums and public comment forums (immediately following the information forums) on the proposed allocation of power.

The public information and comment forum dates and times are:

1. April 27, 2004, 2 p.m., Billings, Montana.

2. April 28, 2004, 1 p.m., Sioux Falls, South Dakota.

**ADDRESSES:** Send written comments regarding these proposed allocations of Western power to Robert J. Harris, Regional Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT, 59107–1266. Comments on the proposed allocations may also be faxed to (406) 247–7408 or e-mailed to *Post2005UGP@wapa.gov.*

The public information and comment forum locations are:

1. Billings—Billings Hotel and Convention Center, 1223 Mullowney Lane, Billings, Montana.

2. Sioux Falls—Best Western Ramkota Hotel, 3200 West Maple Street, Sioux Falls, South Dakota.

**FOR FURTHER INFORMATION CONTACT:** Jon R. Horst, Public Utilities Specialist, Upper Great Plains Customer Service Region, Western Area Power Administration, 2900 4th Avenue North, Billings, MT 59107–1266, telephone (406) 247–7444, e-mail *horst@wapa.gov.*

All documents developed or retained by Western in developing this Post-2005 Resource Pool will be available for inspection and copying at the Upper Great Plains Customer Service Region in Billings, Montana. Public comments will be available for viewing at *http://www.wapa.gov/ugp/contracts/post2005/comments.htm* after the close of the comment period.

**SUPPLEMENTARY INFORMATION:** On March 4, 2003, Western published the proposed procedures and call for applications in the **Federal Register**. Western held public information and comment forums on April 8–10, 2003, to accept oral and written comments on the proposed procedures and call for applications. Applications for power were accepted at Western's Upper Great Plains Customer Service Region until close of business on June 2, 2003. On December 2, 2003, Western published the final procedures in the **Federal Register**. The proposed allocations of power published here are the result of those applications received during the call for applications. Applications received were subjected to the Final Post-2005 Resource Pool Allocation Procedures.

## I. Proposed Allocation of Power

Western received 14 applications for the Post-2005 Resource Pool. Review of the applications indicated that 11 of the 14 applicants did not qualify under the Final Post-2005 Resource Pool Allocation Procedures. The proposed allocations of power for new customers were calculated using the Final Post-2005 Resource Pool Allocation Procedures. The proposed summer allocations are 24.84413 percent of total summer load; the proposed winter allocations are 35.98853 percent of total winter load as defined in the Post-1985 Marketing Plan criteria, under the Final Post-2005 Resource Pool Allocation Procedures. The proposed allocations of power for new eligible customers and the loads these allocations are based upon are as follows:

| New customers | 2002 Summer season load kilowatts | 2002 Winter season load kilowatts | Proposed post–2005 power allocation | |
|---|---|---|---|---|
| | | | Summer kilowatts | Winter kilowatts |
| City of Auburn, IA | 515 | 409 | 128 | 147 |
| City of Pocahontas, IA | 4,236 | 2,980 | 1,052 | 1,072 |
| Montana State University—Bozeman, MT | 8,506 | 8,536 | 2,113 | 3,072 |

The proposed allocations of power for new customers listed in the table above are based on the P–SMBP—ED marketable resource available at this time. If the P–SMBP—ED marketable resource is adjusted in the future, the proposed allocations of power may be adjusted accordingly. Entities interested in commenting on the proposed allocations of power must submit comments to Western's Upper Great Plains Customer Service Regional Office as described earlier. Western will respond to the comments received on the proposed allocations of power and publish its final allocations after the end of the public comment period. Western will then begin negotiating new customer contracts.

## II. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability relating to rates or services.

## III. Small Business Regulatory Enforcement Fairness Act

Western determined this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking to approve or prescribe rates or services and involves matters of agency procedure.

## IV. Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; so this notice requires no clearance by the Office of Management and Budget.

Dated: March 17, 2004.

**Michael S. Hacskaylo,**

*Administrator.*

[FR Doc. 04–6915 Filed 3–26–04; 8:45 am]

**BILLING CODE 6450–01–P**

# ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7641–4, EDocket ID No. OAR–2004–0015]**

## Agency Information Collection Activities: Proposed Collection; Comment Request; Part 70 Operating Permits Regulations, EPA ICR Number 1587.06, OMB Control Number 2060–0243

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice; correction.

**SUMMARY:** The EPA published a document in the **Federal Register** of March 23, 2004 (69 FR 13524), soliciting comments on a proposal to renew an information collection request (ICR), before submitting the ICR to the Office of Management and Budget for review and approval. The document contained incorrect EDocket ID and EPA ICR Numbers.

**FOR FURTHER INFORMATION CONTACT:** Grecia A. Castro, 919–541–1351.

**SUPPLEMENTARY INFORMATION:**

## Correction

In the **Federal Register** of March 23, 2004, in FR 04–6430, on page 13524, in the first column, make the following corrections to the heading section:

1. EDocket ID No. ''OAR–2004–0016'' is corrected to read: OAR–2004–0015.

2. EPA ICR Number ''1713.06'' is corrected to read: 1587.06.

Dated: March 24, 2004.

**William T. Harnett,**

*Director, Information Transfer and Program Implementation Division.*

[FR Doc. 04–6927 Filed 3–26–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7641–3]**

## Science Advisory Board Staff Office; Request for Nominations for Experts for the Perfluorooctanoic Acid Human Health Risk Assessment Review Panel

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The EPA Science Advisory Board (SAB) Staff Office announces the formation of a new SAB review panel known as the Perfluorooctanoic Acid Human Health Risk Assessment Review Panel (PFOA Review Panel), and is soliciting nominations for members of the Panel.

**DATES:** The deadline for submitting nominations is three (3) weeks from publication of this notice.

**FOR FURTHER INFORMATION CONTACT:** Nominations should be submitted in electronic format through the Form for Nominating Individuals to Panels of the U.S. Environmental Protection Agency (EPA) Science Advisory Board provided on the SAB Web site. The form can be accessed through a link on the blue navigational bar of the SAB Web site at: *http://www.epa.gov/sab.* To be considered, all nominations should include the information requested on that form. Anyone who is unable to access nominations on the SAB Web site can obtain a paper copy of the form by contacting Dr. Suhair Shallal, Designated Federal Officer (DFO), as indicated below.

Any member of the public requiring further information regarding this Request for Nominations, or a paper nomination form, may contact Dr. Shallal by telephone/voice mail at (202) 343–9977, via e-mail at *shallal.suhair@epa.gov,* or at the following address: Suhair Shallal, PhD., Science Advisory Board Staff Office, U.S. Environmental Protection Agency (Mail Code 1400F), 1200 Pennsylvania Avenue, NW., Washington, DC 20460. General information about the SAB can be found in the SAB Web site at: *http://www.epa.gov/sab.*

**SUPPLEMENTARY INFORMATION:**

*Summary:* The EPA SAB Staff Office is announcing the formation of a new review panel and soliciting nominations for members of the panel. This panel is being formed to help provide advice to the Agency, as part of the SAB's mission, established by 42 U.S.C. 4365, to provide independent scientific and technical advice, consultation, and recommendations to the EPA Administrator on the technical bases for EPA policies and regulations. The work of this panel is expected to continue until the review is complete. The SAB is a chartered Federal Advisory Committee that reports directly to the Administrator. The PFOA Review Panel will provide advice through the SAB. The PFOA Review Panel will comply with the openness provisions of the Federal Advisory Committee Act (FACA) and all appropriate SAB procedural policies, including the SAB process for panel formation described in the Overview of the Panel Formation Process at the Environmental Protection Agency, Science Advisory Board (EPA–SAB–EC–COM–02–010), *http://www.epa.gov/sab/pdf/ecm02010.pdf.*

*Background:* EPA's Office of Pollution Prevention and Toxics has been studying perfluorooctanoic acid (PFOA) in order to understand the health and environmental impact of perfluorochemicals. PFOA is a synthetic (man-made) chemical and does not occur naturally in the environment. The term PFOA refers to not only perfluorooctanoic acid itself, but also its principal salts. The most commonly used chemical in this grouping is the ammonium salt, ammonium perfluorooctanoate, or APFO. PFOA is primarily used as a reactive intermediate, while its salts are used as processing aids in the production of fluoropolymers and fluoroelastomers and in other surfactant uses. Fluoropolymers are used in a wide variety of consumer and industrial applications. Although fluoropolymers are made using PFOA, the finished products themselves are not expected to contain PFOA. The EPA has completed its draft *Risk Assessment of Potential Human Health Effects Associated with PFOA and Its Salts.* The EPA Science Advisory Board (SAB) has been asked to review and comment on the scientific soundness of this assessment.

*Request for Nominations:* The EPA SAB Staff Office requests nominations of experts to serve as Panel members on the PFOA Review Panel. Areas of expertise sought include at least the following: (a) Toxicology of perfluorinated compounds and mechanism of toxicity; (b) Reproductive and Developmental Toxicity; (c) Toxicokinetics; (d) Carcinogenesis; (e) Public Health; (f) Epidemiology; and (g) Human Health Risk Assessment.

*Process and Deadline for Submitting Nominations:* Any interested person or organization may nominate qualified individuals to serve as panel members in the areas described above. The nominating form requests the following: (1) Contact information about the person making the nomination; (2) contact information about the nominee; (3) the disciplinary and specific areas of expertise of the nominee; (4) the nominee's resume; and (5) a general biosketch of the nominee indicating education, expertise, past research, recent service on other advisory committees or with professional associations, and recent grant and/or contract support. Anyone who is unable to submit nominations through the SAB Web site, or has questions concerning any aspect of the nomination process, may contact Dr. Shallal as indicated, above. Nominations should be submitted in time to arrive no later than three (3) weeks after publication of this notice.

From the nominees identified by respondents to this notice and through other sources (termed the ''Widecast''), the SAB Staff Office will develop a smaller subset (known as the ''Short List'') for more detailed consideration. Criteria used by the SAB Staff Office in developing this Short List are given at the end of the following paragraph. The SAB Staff Office will contact individuals who are considered for inclusion in the Short List to determine whether they are willing to serve on the Panel. The Short List will be posted on the SAB Web site at: *http://www.epa.gov/sab,* and will include, for each candidate, the nominee's name and their biosketch. The Short List also will be available from Dr. Shallal at the address listed above. Public comments will be accepted for 21 calendar days on the Short List. During this comment period, the public will be requested to provide information, analysis or other documentation on nominees that the SAB Staff Office should consider in evaluating candidates for the Panel. For the EPA SAB, a balanced Panel is characterized by inclusion of candidates who possess the necessary domains of knowledge, the relevant scientific perspectives (which, among other factors, can be influenced by work history and affiliation), and the collective breadth of experience to adequately address the charge. Public

responses to the Short List candidates will be considered in the selection of the Panel members, along with information provided by candidates and information gathered by EPA SAB Staff Office independently on the background of each candidate (*e.g.*, financial disclosure information and computer searches to evaluate a nominee's prior involvement with the topic under review). Specific criteria to be used in evaluating individual nominees include: (a) Scientific and/or technical expertise, knowledge, and experience (primary factors); (b) absence of financial conflicts of interest; (c) scientific credibility and impartiality; (d) availability and willingness to serve; and (e) ability to work constructively and effectively in panels.

Those Short List candidates ultimately chosen to serve on the Panel will be appointed as Special Government Employees (SGEs). Therefore, all Short List candidates will be required to fill out the ''Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency'' (EPA Form 3110–48. This confidential form allows Government officials to determine whether there is a statutory conflict between that person's public responsibilities as an SGE and private interests and activities, or the appearance of a lack of impartiality, as defined by Federal regulation. The form may be viewed and downloaded from the following URL address: *http://www.epa.gov/sab/pdf/epaform3110-48.pdf.* As an SGE, EPA SAB members are required to abide by the letter and spirit of the ethical regulations to which all U.S. Government employees must adhere. SGEs are required to take annual ethics training in order to serve on the SAB.

Dated: March 23, 2004.

**Richard Albores,**

*Acting Director, EPA Science Advisory Board Staff Office.*

[FR Doc. 04–6926 Filed 3–26–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority

March 23, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before May 28, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, 445 12th Street, SW., Room 1–A804, Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0029.

*Title:* Application for TV Broadcast Station License, FCC Form 302-TV.

*Form Number:* FCC 302-TV.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities; not-for-profit institutions.

*Number of Respondents:* 200.

*Estimated Hours per Response:* 1–2 hours.

*Frequency of Response:* On occasion reporting requirements.

*Total Annual Burden:* 600.

*Total Annual Cost:* $143,000.

*Privacy Impact Assessment:* No.

*Needs and Uses:* Licensees and permittees of TV broadcast stations are required to file FCC Form 302–TV to obtain a new or modified station license, and/or to notify the Commission of certain changes in the licensed facilities of these stations. The Commission revised the FCC 302–TV in June 2001 to facilitate electronic filing by replacing narrative exhibits with the use of certifications and an engineering technical box. The Commission also deleted and narrowed overly burdensome questions. The FCC 302–TV has been supplemented with detailed instructions to explain processing standards and rule interpretations to help ensure that applicants certify accurately. These changes streamlined the Commission's processing of FCC 302–TV applications. FCC staff use the data to confirm that the station has been built to terms specified in the outstanding construction permit, and to update FCC station files. Data are then extracted from FCC 302–TV for inclusion in the subsequent license to operate the station.

*OMB Control Number:* 3060–0594.

*Title:* Cost of Service Filing for Regulated Cable Services, FCC Form 1220.

*Form Number:* FCC 1220.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local, or Tribal Government.

*Number of Respondents:* 20.

*Estimated Hours per Response:* 4–80 hours.

*Frequency of Response:* On occasion reporting requirement.

*Total Annual Burden:* 1,220 hours.

*Total Annual Costs:* $60,000.

*Privacy Impact Assessment:* No.

*Needs and Uses:* Cable operators file FCC Form 1220 with their Local Franchising Authorities to demonstrate the costs of providing cable service in order to justify rates above levels determined under the Commission's benchmark methodology. The Commission uses Form 1220 to determine whether cable rates for basic service, cable programming service, and associated equipment are reasonable under the Commission's rules.

*OMB Control Number:* 3060–0601.

*Title:* Setting Maximum Initiated Permitted Rates for Regulated Cable Services, FCC Form 1200.

*Form Number:* FCC 1200.

*Type of Review:* Extension of currently approved collection.

*Respondents:* Business or other for-profit entities; State, Local or Tribal Government.

*Number of Respondents:* 100.

*Estimated Hours per Response:* 2–10 hours.

*Frequency of Response:* One time reporting requirement.

*Total Annual Burden:* 800 hours.

*Total Annual Costs:* $37,500.

*Privacy Impact Assessment:* No.

*Needs and Uses:* Cable operators and local franchise authorities file FCC Form 1200 to justify the reasonableness of rates in effect on or after May 15, 1994. The FCC staff use the data to evaluate cable rates the first time they are reviewed on or after May 15, 1994, so that maximum permitted rates for regulated cable service can be determined.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–6945 Filed 3–26–04; 8:45 am]

BILLING CODE 6712–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Agency Information Collection Activities: Renewal of an Information Collection; Comment Request

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Notice and request for comment.

**SUMMARY:** The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the proposed renewal of an information collection, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled ''Extensions of Credit to Executive Officers.''

**DATES:** Comments must be submitted on or before May 28, 2004.

**ADDRESSES:** Interested parties are invited to submit written comments to Thomas Nixon, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. All comments should refer to ''Extensions of Credit to Executive Officers.'' Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. Comments may also be submitted to the OMB desk officer for the FDIC: Joseph F. Lackey, Jr., Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Thomas Nixon, (202) 898–8766, or at the address above.

**SUPPLEMENTARY INFORMATION:** Proposal to renew the following currently approved collection of information:

*Title:* Extensions of Credit to Executive Officers.

*OMB Number:* 3064–0108.

*Frequency of Response:* On occasion.

*Affected Public:* State chartered banks that are not members of the Federal Reserve system and executive officers.

*Estimated Number of Respondents:* 4,000.

*Estimated Number of Responses per Respondent:* 2

*Estimated Time Per Response:* 1 hour.

*Estimated Total Annual Burden:* 8,000 hours.

*General Description of Collection:* The collection, required by statute, is used to determine compliance with the FDIC's regulation 12 CFR 337.3(a). An executive officer of an insured nonmember bank files a report with his or her board of directors within 10 days of incurring any indebtedness to any other bank in an amount in excess of the amount the insured nonmember bank could lend to the officer. Insured nonmember banks include in their reports of condition (Call Report) information about extensions of credit made by the bank to its executive officers since the bank filed its last report of condition.

**Request for Comment**

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, DC, this 24th day of March, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. 04–6925 Filed 3–26–04; 8:45 am]

BILLING CODE 6714–01–P

## 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 April 22, 2004.

**A. Federal Reserve Bank of Chicago** (Patrick M. Wilder, Managing Examiner) 230 South LaSalle Street, Chicago, Illinois 60690-1414:

*1. First Busey Corporation*, Urbana, Illinois; to acquire 100 percent of the voting shares of First Capital Bankshares, Inc., Peoria, Illinois, and thereby indirectly acquire First Capital Bank, Peoria, Illinois, and Community Bank of Lemont, Lemont, Illinois.

*2. Independent Bank Corporation*, Ionia, Michigan; to merge with Midwest Guaranty Bancorp, Inc., Troy, Michigan, and thereby indirectly acquire Midwest Guaranty Bank, Troy, Michigan.

Board of Governors of the Federal Reserve System, March 23, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E4–694 Filed 3–26–04; 8:45 am]

BILLING CODE 6210–01–S

## FEDERAL RESERVE SYSTEM

### Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center Web site at *http://www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 22, 2004.

**A. Federal Reserve Bank of Atlanta** (Sue Costello, Vice President) 1000 Peachtree Street, NE., Atlanta, Georgia 30303:

*1. United Community Banks, Inc.*, Blairsville, Georgia; to acquire 100 percent of the voting shares of Fairbanco Holding Company, Inc., Fairburn, Goergia, and thereby indirectly acquire 1st Community Bank, Fairburn, Georgia, and thereby engage in operating a savings association pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, March 23, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. E4–695 Filed 3–26–04; 8:45 am]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

### National Institute for Occupational Safety and Health, Advisory Board on Radiation and Worker Health.

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 committee meeting:

*Name:* Advisory Board on Radiation and Worker Health (ABRWH), National Institute for Occupational Safety and Health (NIOSH).

*Times and Dates:* 8 a.m.–4 p.m., April 20, 2004. 7 p.m.–8:30 p.m., April 20, 2004. 8:30 a.m.–4:30 p.m., April 21, 2004.

*Place:* Red Lion Hotel Richland, 802 George Washington Way, Richland, Washington 99352, telephone 509/946–7611, fax 509/943–8564.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 65 people.

*Background:* The Advisory Board on Radiation and Worker Health (''the Board'') was established under the Energy Employees Occupational Illness Compensation Program Act (EEOICPA) of 2000 to advise the President, through the Secretary of Health and Human Services (HHS), on a variety of policy and technical functions required to implement and effectively manage the new compensation program. Key functions of the Board include providing advice on the development of probability of causation guidelines which have been promulgated by HHS as a final rule, advice on methods of dose reconstruction which have also been promulgated by HHS as a final rule, evaluation of the scientific validity and quality of dose reconstructions conducted by NIOSH for qualified cancer claimants, and advice on petitions to add classes of workers to the Special Exposure Cohort.

In December 2000 the President delegated responsibility for funding, staffing, and operating the Board to HHS, which subsequently delegated this authority to CDC. NIOSH implements this responsibility for CDC. The charter was issued on August 3, 2001, and renewed on August 3, 2003.

*Purpose:* This board is charged with (a) providing advice to the Secretary, HHS, on the development of guidelines under Executive Order 13179; (b) providing advice to the Secretary, HHS, on the scientific validity and quality of dose reconstruction efforts performed for this Program; and (c) upon request by the Secretary, HHS, advise the Secretary on whether there is a class of employees at any Department of Energy facility who were exposed to radiation but for whom it is not feasible to estimate their radiation dose, and on whether there is reasonable likelihood that such radiation doses may have endangered the health of members of this class.

*Matters to be Discussed:* The agenda for this meeting will focus on Program Status Reports from NIOSH and Department of Labor; Site Profile Status; Research Issues; Report on Access to Information for Performance of Dose Reconstruction; Blockson Chemical Update; an Update from Sanford Cohen and Associates, and a Board working session to discuss case selection processes. There will also be an evening public comment period scheduled for April 20, 2004.

The agenda is subject to change as priorities dictate.

*For Further Information Contact:* Larry Elliott, Executive Secretary, ABRWH, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone 513/533–6825, fax 513/533–6826.

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: March 22, 2004.

**Joseph E. Salter,**

*Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–6897 Filed 3–26–04; 8:45 am]

BILLING CODE 4163–19–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 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 69 FR 11444–11445, dated March 10, 2004) is amended to revise the mission of the Office of Science Policy and Technology Transfer.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the functional statement for the Office of Science Policy and Technology Transfer (CAE) and insert the following:

*Office of Science Policy and Technology Transfer (CAE).* The

Associate Director for Science and staff promote and support an environment of scientific excellence and integrity, and the rapid dissemination of scientific innovations, technology, and information. Activities in support of the mission include: (1) Advises the CDC Director and Senior Staff on science matters and represents CDC in these areas to the Department, other agencies, and Congress; (2) maintains the integrity and productivity of CDC's scientists by resolving controversial scientific issues, developing scientific policies and procedures, supporting training and information exchange, and presenting awards for outstanding scientific efforts; (3) assures the protection of human subjects in public health research; (4) integrates behavioral and social sciences research into public health research; (5) provides advice and guidance on the management of intellectual property; interprets policies, rules, and regulations, especially those related to the Federal Technology Transfer Act; (6) promotes and facilitates the timely transfer of technology, knowledge, products, and processes that improve public health through the use of patents, trademarks, Biological Materials Licensing Agreements, and Cooperative Research and Development Agreements; (7) provides leadership, vision, and coordination for CDC Public Health Research, both for research conducted within CDC and for research conducted by external partners and grantees; (8) advises the Secretary of HHS and Director of CDC about the most appropriate use of vaccines and immunization practices for effective disease control in the population through the Advisory Committee for Immunization Practices; and (9) manages the CDC and ATSDR Specimen and Data Bank, an archive of biological materials, including blood components, tissue, bacterial isolates, DNA, and other biological and environmental specimens.

Dated: March 8, 2004.

**William H. Gimson,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 04–6874 Filed 3–26–04; 8:45 am]

BILLING CODE 4160–18–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for OMB Review; Comment Request

*Title:* Quarterly Performance Report, ORR–6.

*OMB No.:* 0970–0036.

*Description:* We ask for the information on this form in order to determine the effectiveness of the state cash and medical assistance, social services, and targeted assistance programs as required by 412(e) of the Immigration and Naturalization Act. We also calculate state-by-state Refugee Cash Assistance and Refugee Medical Assistance utilization rates for use in formulating program initiatives, priorities, standards, budget requests, and assistance policies. The Office of Refugee Resettlement (ORR) regulations require that this form be completed in order to participate in the program.

*Respondents:* ORR State Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| ORR–6 | 48 | 4 | 3.875 | 744 |
| Estimated total annual burden hours | | | | 744 |

*Additional Information:* Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Offices of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *grjohnson@acf.hhe.gov.*

*OMB Comment:* OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register.** Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Attn: Desk Officer for ACF, E-mail address: *katherine_t._astrich@omb.eop.gov.*

Dated: March 22, 2004.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 04–6872 Filed 3–26–04; 8:45 am]

BILLING CODE 4184–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Comment Request Proposed Projects

*Title:* IV–E Foster Care and Adoption Financial Report (IV–E–1).

*OMB No.:* 0970–0205.

*Description:* This form is used by states, the District of Columbia and Puerto Rico to facilitate the reporting of expenditures for the Foster Care and Adoption Assistance programs. State agencies (including the District of Columbia and Puerto Rico) use this form to report data on a quarterly basis. The form provides specific data regarding financial disbursements, obligations and estimates. It provides states with a mechanism to request grant awards and certify the availability of state matching funds. Failure to collect this data would seriously compromise the Administration for Children and Families' (ACF) ability to issue grant awards and monitor expenditures. This form is also used to prepare the ACF budget submission to Congress. ACF is implementing the On-Line Data Collection System (OLDC) to allow grantees the option to electronically submit the data.

*Respondents:* States, the District of Columbia and Puerto Rico.

ANNUAL BURDEN ESTIMATES

| Instrument | Number of respondents | Number of responses per respondent | Average burden hours per response | Total burden hours |
|---|---|---|---|---|
| IV–E–1 | 52 | 4 | 25 | 5200 |

*Estimated Total Annual Burden Hours:* 5200.

In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer, E-mail address: *grjohnson@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information ; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 23, 2004.

**Robert Sargis,**

*Reports Clearance Officer.*

[FR Doc. 04–6922 Filed 3–26–04; 8:45 am]

**BILLING CODE 4184–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs for Fiscal Year 2005

**AGENCY:** Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

**ACTION:** Notification of fiscal year 2005 Federal allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant programs.

**SUMMARY:** This notice sets forth Fiscal Year (FY) 2005 individual allotments and percentages of the total appropriation to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to Section 122 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based on the FY 2005 President's Budget request and are contingent on congressional appropriations for FY 2005. If the Congress enacts a different appropriation amount in FY 2005, these allotments will be adjusted accordingly. The State allotments are available on the ADD homepage on the Internet: *http://www.acf.hhs.gov/programs/add/.*

**EFFECTIVE DATE:** October 1, 2004.

**FOR FURTHER INFORMATION CONTACT:** Catherine Wade, Grants Fiscal Management Specialist, Office of Grants Management, Office of Administration, Administration for Children and Families, telephone (202) 401–5798.

**SUPPLEMENTARY INFORMATION:** Section 122(a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States must be notified no less than six (6) months before the beginning of the fiscal year in which such adjustment is to take effect. The Catalog of Federal Domestic Assistance (CFDA) number is 93.630. In relation to the State Developmental Disabilities Council allotments, the descriptions of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 122(a)(5)).

The Administration on Developmental Disabilities has updated the following data elements for issuance of Fiscal Year 2005 allotments for both of the Developmental Disabilities formula grant programs.

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the ''Annual Statistical Supplement, 2002, to the Social Security Bulletin'' issued by the Social Security Administration;

B. State data on Average Per Capita Income are from Table B—Per Capita Personal Income, 1999–2001 of the ''Survey of Current Business,'' October, 2002, issued by the Bureau of Economic Analysis, U.S. Department of Commerce. The most recent comparable data for the Territories were obtained from the Department of Commerce September 2002; and

C. State data on Total Population is based on ''State Population Estimates: July 1, 2003'' issued December 2003 by the U.S. Census Bureau. The State working population (ages 18–64) is based on the ''Estimate of Resident Population of the U.S. by Selected Age Groups and Sex, July 1, 2002'' issued by the U.S. Census Bureau. Total population estimates for the Territories are based on Census 2000 data issued by the U.S. Census Bureau. The Territories working population is based on ''Population and Housing Profile: 2000'' issued by the U.S. Census Bureau from Census 2000 data.

TABLE 1.—FY 2005 ALLOTMENTS
ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

| | Developmental disabilities councils | Percentage of total appropriation |
|---|---|---|
| Total | $ 73,081,262 | 100.000000 |
| Alabama | 1,315,925 | 1.800633 |
| Alaska | 462,315 | .632604 |
| Arizona | 1,285,145 | 1.758515 |
| Arkansas | 805,462 | 1.102146 |
| California | 6,795,666 | 9.298781 |
| Colorado | 836,106 | 1.144077 |
| Connecticut | 690,715 | .945133 |
| Delaware | 462,315 | .632604 |
| District of Columbia | 462,315 | .632604 |
| Florida | 3,641,185 | 4.982378 |
| Georgia | 1,904,329 | 2.605769 |
| Hawaii | 462,315 | .632604 |
| Idaho | 462,315 | .632604 |
| Illinois | 2,669,813 | 3.653211 |
| Indiana | 1,514,002 | 2.071669 |
| Iowa | 774,177 | 1.059337 |
| Kansas | 621,286 | .850130 |
| Kentucky | 1,225,694 | 1.677166 |
| Louisiana | 1,385,313 | 1.895579 |
| Maine | 462,315 | .632604 |
| Maryland | 1,026,488 | 1.404584 |
| Massachusetts | 1,367,725 | 1.871513 |
| Michigan | 2,540,965 | 3.476904 |
| Minnesota | 1,041,526 | 1.425161 |
| Mississippi | 948,925 | 1.298452 |
| Missouri | 1,385,181 | 1.895398 |
| Montana | 462,315 | .632604 |
| Nebraska | 462,315 | .632604 |
| Nevada | 462,315 | .632604 |
| New Hampshire | 462,315 | .632604 |
| New Jersey | 1,589,253 | 2.174638 |
| New Mexico | 521,855 | .714075 |
| New York | 4,263,616 | 5.834075 |
| North Carolina | 1,989,293 | 2.722029 |
| North Dakota | 462,315 | .632604 |
| Ohio | 2,891,529 | 3.956594 |
| Oklahoma | 914,772 | 1.251719 |
| Oregon | 785,280 | 1.074530 |
| Pennsylvania | 3,113,657 | 4.260541 |
| Rhode Island | 462,315 | .632604 |
| South Carolina | 1,132,839 | 1.550109 |
| South Dakota | 462,315 | .632604 |
| Tennessee | 1,517,325 | 2.076216 |
| Texas | 4,775,777 | 6.534886 |
| Utah | 602,828 | .824874 |
| Vermont | 462,315 | .632604 |
| Virginia | 1,524,134 | 2.085533 |
| Washington | 1,196,582 | 1.637331 |
| West Virginia | 772,441 | 1.056962 |
| Wisconsin | 1,309,753 | 1.792187 |
| Wyoming | 462,315 | .632604 |
| American Samoa | 240,761 | .329443 |
| Guam | 240,761 | .329443 |
| Northern Mariana Islands | 240,761 | .329443 |
| Puerto Rico | 2,506,931 | 3.430333 |
| Virgin Islands | 240,761 | .329443 |

TABLE 2.—FY 2005 ALLOTMENTS
ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

| | Protection and advocacy | Percentage of total appropriation |
|---|---|---|
| Total | [1] $37,647,680 | 100.000000 |

TABLE 2.—FY 2005 ALLOTMENTS—Continued
ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

| | Protection and advocacy | Percentage of total appropriation |
|---|---|---|
| Alabama | 629,286 | 1.671513 |
| Alaska | 365,940 | .972012 |
| Arizona | 587,829 | 1.561395 |
| Arkansas | 388,340 | 1.031511 |
| California | 3,195,668 | 8.488354 |
| Colorado | 414,702 | 1.101534 |
| Connecticut | 378,998 | 1.006697 |
| Delaware | 365,940 | .972012 |
| District of Columbia | 365,940 | .972012 |
| Florida | 1,749,350 | 4.646634 |
| Georgia | 928,659 | 2.466710 |
| Hawaii | 365,940 | .972012 |
| Idaho | 365,940 | .972012 |
| Illinois | 1,281,987 | 3.405222 |
| Indiana | 729,561 | 1.937864 |
| Iowa | 370,786 | .984884 |
| Kansas | 365,940 | .972012 |
| Kentucky | 578,589 | 1.536852 |
| Louisiana | 651,487 | 1.730484 |
| Maine | 365,940 | .972012 |
| Maryland | 496,219 | 1.318060 |
| Massachusetts | 616,816 | 1.638390 |
| Michigan | 1,182,440 | 3.140804 |
| Minnesota | 500,234 | 1.328725 |
| Mississippi | 450,056 | 1.195442 |
| Missouri | 665,060 | 1.766536 |
| Montana | 365,940 | .972012 |
| Nebraska | 365,940 | .972012 |
| Nevada | 365,940 | .972012 |
| New Hampshire | 365,940 | .972012 |
| New Jersey | 766,400 | 2.035716 |
| New Mexico | 365,940 | .972012 |
| New York | 1,953,358 | 5.188522 |
| North Carolina | 977,015 | 2.595153 |
| North Dakota | 365,940 | .972012 |
| Ohio | 1,367,093 | 3.631281 |
| Oklahoma | 438,101 | 1.163687 |
| Oregon | 391,568 | 1.040085 |
| Pennsylvania | 1,444,385 | 3.836584 |
| Rhode Island | 365,940 | .972012 |
| South Carolina | 547,408 | 1.454029 |
| South Dakota | 365,940 | .972012 |
| Tennessee | 728,411 | 1.934810 |
| Texas | 2,235,839 | 5.938849 |
| Utah | 365,940 | .972012 |
| Vermont | 365,940 | .972012 |
| Virginia | 741,878 | 1.970581 |
| Washington | 566,996 | 1.506058 |
| West Virginia | 392,097 | 1.041490 |
| Wisconsin | 626,865 | 1.665083 |
| Wyoming | 365,940 | .972012 |
| American Samoa | 195,775 | .520019 |
| Guam | 195,775 | .520019 |
| Northern Mariana Islands | 195,775 | .520019 |
| Puerto Rico | 1,108,404 | 2.944150 |
| Virgin Islands | 195,775 | .520019 |
| DNA People Legal Services [2] | 195,775 | .520019 |

[1] In accordance with Public Law 106–402, Section 142(a)(6)(A), $768,320 has been withheld to fund technical assistance. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 142 for this purpose. Unused funds will be reallotted in accordance with Section 122(e) of the Act.

[2] American Indian Consortiums are eligible to receive an allotment under Section 142(a)(6)(B) of the Act.

Dated: March 23, 2004.

**Patricia A. Morrissey,**

*Commissioner, Administration on Developmental Disabilities.*

[FR Doc. 04–6873 Filed 3–26–04; 8:45 am]

**BILLING CODE 4184–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families, Head Start; Funding Opportunity Title: Head Start Historically Black Colleges and Universities

*Announcement Type:* Competitive Grant—Initial.

*Funding Opportunity Number:* HHS–2004–ACF–HS–YH–0002.

*CFDA Number:* 93.600.

**DATES:** Applications are due May 13, 2004. Letters of intent are due April 15, 2004.

### I. Funding Opportunity Description

The Head Start Bureau is announcing the availability of funds and request for applications for professional development and training grants for Historically Black Colleges and Universities (HBCUs) in partnership with Head Start and Early Head Start programs to improve staff training and to thereby enhance services to Head Start and Early Head Start children and families.

Purpose: Through this announcement, the Administration on Children, Youth and Families (ACYF) is making available up to $1,500,000 annually for each of five years to support Head Start Historically Black Colleges and Universities (HBCUs) Partnerships. These partnerships are designed to improve the quality and long-term effectiveness of Head Start and Early Head Start grantees by developing academic and other training models to increase the number of Head Start teachers with degrees in early childhood education.

*A. Background*

The overall goal of Head Start is to ensure that children of low-income families acquire the skills and knowledge necessary to allow them to enter school ready for success. In order to accomplish this goal, Head Start provides comprehensive services to these children and their families. Head Start enhances children's physical, cognitive, social, and emotional development. It supports parents in their efforts to fulfill their parental roles as their child's primary educator, helps support them while they work towards employment and self-sufficiency, and provides for their involvement in administering the Head Start program.

In an attempt to ensure that highly qualified and well trained staff provides high quality services to enrolled children and their families, Head Start has supported many demonstration projects. For example, Head Start supported the creation of the Child Development Associate (CDA) credential designed for early childhood development teaching staff, implemented the Head Start Teaching Centers, and developed other related innovative projects. The Head Start Bureau also implemented partnerships with Tribally Controlled Land Grant Colleges and Universities (TCUs) and Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs) in addition to key innovative training and staff development projects.

The 1998 reauthorization of the Head Start Act contains provisions to improve Head Start program quality and accountability. These include new education performance standards and measures, the expansion of program monitoring to incorporate evidence of progress on outcomes-based measures, funding to upgrade program quality and staff compensation, and higher education standards for Head Start teachers. In January 2001, the President signed into law the ''No Child Left Behind Act'' to make the education of every child in America one of the country's top priorities. The Act seeks to ensure that public schools teach children what they need to know to be successful in life and that they also set high education standards in the classroom. In his 2002 State of the Union address, the President indicated the need to prepare our children to read and succeed in school, including the improvement of Head Start and early childhood development programs. In response to these goals, the White House has developed an early childhood initiative, which is built on raising the bar for Head Start education methods to create a better learning environment and improved outcomes for children. In his announcement of the Good Start, Grow Smart Early Childhood Initiative in April 2002, the President identified children's early literacy as a key focus for Head Start program improvement. In this initiative, the President presented three areas of focus for Head Start: (1) Strengthening Head Start programs; (2) partnering with states to improve early childhood education, and (3) providing information to teachers, caregivers, and parents.

The Head Start Act, as amended 42 U.S.C. 9801 *et seq.* is the authorizing legislation for the Head Start HBCU program. The key purpose in funding the HBCU program is to increase the number of Head Start staff with college degrees in early childhood education. To assure that selected colleges and universities will be able to fulfill this task it is important that HBCUs applying for funds under this announcement clearly demonstrate that they have established relationships with the Head Start programs in their community and that these Head Start programs have indicated that they are willing to work collaboratively with the institution.

### II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated total Priority Area Funding:* $1,500,000.

*Anticipated Number of Awards:* 6–10 per budget period.

*Ceiling on amount of Individual Awards:* $150,000 per budget period.

*Floor on Individual Award Amounts:* none.

*Average projected Award Amount:* $100,000 per budget period.

*Project Periods for Awards:* Up to 60 months with 12 month budget periods.

Awards will be made on a competitive basis and will be for a one-year budget period. The total project period will not exceed 60 months. Applications for continuation grants funded under these awards beyond the first 12 month budget period (but within the project period) will be considered on a noncompetitive basis subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the Government.

### III. Eligibility Information

*1. Eligible Applicants*

State Controlled Institutions of Higher Education, Private Institutions of Higher Education, and faith-based institutions of Higher Education.

Additional Information on Eligibility

This announcement is limited to Historically Black Colleges and Universities (HBCUs) as defined in the amended version of the Higher Education Act of 1965, codified at 20 U.S.C. 1061(2). HBCUs are institutions established prior to 1964 whose principal mission was, and is, the education of Black Americans, and must satisfy Section 322 of the Higher Education Act of 1965, as amended. Only those institutions that meet the

definition of ''Part B institution'' in Section 322 of the Higher Education Act of 1965, as amended, 20 U.S.C. 1061(2), shall be eligible for assistance under this announcement. Faith-based institutions planning to compete under this announcement must also meet the same eligibility criteria as other applicants.

HBCUs that are not accredited are not eligible to apply under this announcement. Applications from HBCUs that are not accredited will be considered non-responsive and returned without review.

HBCUs that are currently funded under the Head Start Partnership with HBCUs and whose funding will end after October 31, 2004 are not eligible to apply under this announcement.

HBCUs that fail to provide a Head Start program participation agreement as specified in Section IV. Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

*2. Cost Sharing or Matching—No*

*3. Other (If Applicable)*

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications from applicants that do not meet the definition of an HBCU specified in Section III.1 and the accreditation requirements specified in Section III.1 will be considered non-responsive and returned without review.

## IV. Application and Submission Information

*1. Address to Request Application Package*

ACYF Operations Center, c/o The Dixon Group, Inc., Historically Black Colleges and Universities (HBCUs), 118 Q Street, NE., Washington, DC 20002, Telephone: (800) 351–2293, E-mail: *HS@dixongroup.com.*

An application kit including copies of the program announcement, necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at *www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm*

*2. Content and Form of Application Submission*

Submission of Intent

Prior to submittal of the application, applicants must submit a post card or call the ACYF Operations Center c/o The Dixon Group with the following information: the name, address, telephone and fax numbers, and e-mail address of the college/university intending to apply to receive Head Start Historically Black Colleges and Universities Partnerships funds. Please see Section III.1 for ACYF Operations Center address and telephone contact information.

Proof of HBCU Accreditation Status

Applicants must submit proof of accreditation by an accreditation agency recognized by the Secretary of the Department of Education.

Head Start Program Participation Agreement

Applicants must submit a letter of agreement with their applications from a Head Start Program Director verifying that the applicant has an established relationship with the program and that the Head Start program is willing to work with the HBCU.

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* apply site. If you use Grants.Gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.Gov.

- Electronic submission is voluntary
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.Gov that contains a Grants.Gov tracking number. The Administration for Children and Families will retrieve your application form Grants.Gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.* You must search for the downloadable application package by the CFDA number.

Application Requirements

The project description of the application should be double-spaced and single-sided on 8½″ × 11″ plain white paper, with 1″ margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All narrative sections of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. The length of the application, including the projection description, appendices and resumes must not exceed 75 pages. Anything over 75 pages will be removed and not considered by the reviewers. The

abstract should not be counted in the 75 pages and not exceed 1 page.

Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications. These materials, if submitted, will not be included in the review process. In addition, applicants must NOT submit any additional letters of endorsement beyond any that stated as required in this announcement.

Project Descriptions

Specific factual information and statements of measurable goals in quantitative terms must be included in the project description. Extensive exhibits are not required. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Please see section V for further information regarding the Project Description.

Table of Contents

All pages must be numbered and a table of contents should be included for easy reference.

Forms and Certifications

The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

3. Submission Dates and Times

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on May 13, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

*Deadline:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address:

ACYF Operations Center, c/o The Dixon Group, Inc., Historically Black Colleges and Universities (HBCUs), 118 Q Street, NE., Washington, DC 20002 Attn: Delores Dickenson, Telephone: (800) 351–2293.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the following address:

ACYF Operations Center, c/o The Dixon Group, Inc., Historically Black Colleges and Universities (HBCUs), 118 Q Street, NE., Washington, DC 20002 Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Cover letter | Self explanatory | Self explanatory | By application due date. |
| Table of Contents | Per description in announcement. | Described in Section IV | By application due date. |
| SF 424, including sections A and B. | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Dun and Bradstreet Data Universal Numbering System (DUNS) number. | Per description in announcement. | Described in Section III | By application due date. |
| Abstract | Per description in announcement. | Described in Section V | By application due date. |
| Project description | Per description in announcement. | Described in Section IV and V | By application due date. |
| Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL). | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Environmental Tobacco Smoke certification. | Requirement met by signing and submitting application. | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Notice to State Single Point of Contact (SPOC), as required. | Per description in announcement. | Described in Section IV | By application due date. |
| Proof of HBCU accreditation status. | Per description in announcement. | Described in Section III and IV | By application due date. |
| Head Start program(s) participation agreement. | Letter of agreement from Head Start Director. | Described in Section IV | By application due date. |

4. Intergovernmental Review

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia. Applicants from these jurisdictions need not take action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

5. Funding Restrictions

HBCUs that are currently funded under the Head Start Partnership with HBCUs and whose funding will end after October 31, 2004 are not eligible to apply under this announcement.

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

6. Other Submission Requirements

*Submission by Mail:* An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 5 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to:

ACYF Operations Center, c/o The Dixon Group, Inc., Historically Black Colleges and Universities (HBCUs), 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Hand Delivery:* An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations Center c/o The Dixon Group, 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Electronic Submission:* Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

## V. Application Review Information

*1. Criteria*

General Instructions for the Uniform Project Description

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

**Project Abstract**

Provide a summary of the project description (not to exceed one page) with reference to the funding request.

**Approach**

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated,

clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.''

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

**Objectives And Need For Assistance**

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

**Organizational Profiles**

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

**Results or Benefits Expected**

Identify the results and benefits to be derived. For example, describe how the intermediary's assistance to faith-based and community organizations will increase their effectiveness, enhance their ability to provide social services, diversify their funding sources, and create collaborations to better serve those most in need.

**Budget and Budget Justification**

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

*Criterion 1. Approach (25 points)*

The extent to which the application describes a detailed plan of action pertaining to the scope of the project including details on how the proposed work will be accomplished, such as detailed timelines and lists of each organization as well as consultant and key individuals who will work on the project. The extent to which the applicant describes a brief yet clear description of the nature of the effort and contribution each organization, consultant, or key individual will make to the project. The extent to which the applicant demonstrates adequate time key staff will devote to the project and that this staff is qualified and knowledgeable of Head Start and Early Head Start. The extent to which the applicant describes a well-vetted approach and methodology for implementing the project, including a clear description that delineates the relationship of each task to the accomplishment of the proposed objectives. The extent to which the applicant provides evidence that the planned approach reflects sufficient input from and partnership with Head Start and Early Head Start grantees.

The extent to which the applicant demonstrates effective planning for activities developed during the start-up period in preparation of implementation of the program including assurance that no more than six months will be devoted to planning activities.

The extent to which the applicant demonstrates effective methods for recruiting Head Start center-based teaching staff and an effective selection process for participation in the program.

The extent to which the applicant demonstrates how training and coursework will be contextually and culturally relevant to the Head Start and Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, program quality, and outcomes for Head Start children and families.

The extent to which the application describes efforts the applicant and Head Start partners will make to ensure that training and coursework are accessible to Head Start staff and how the applicant will support their successful completion of courses, training, and degrees. The extent to which the applicant provides discussion of relevant issues such as timing, scheduling, and location of classes or training, support to enhance the literacy and study skills of participants, and approaches to integrate training in the working environment of the Head Start program. The extent to which the applicant describes costs (if any) associated with training and courses for Head Start staff.

The extent to which the applicant describes strong efforts to complement the Federal funds requested in this proposal with other sources to maximize the benefits to Head Start and Early Head Start grantees including efforts or plans to assist Head Start/Early Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff.

The extent to which the applicant describes credit courses offered particularly in the area of Early Childhood Development/Education.

The extent to which the applicant describes how CDA training and certification of Head Start and Early Head Start staff, as appropriate, as well as previous coursework and credits will be linked to academic credits and course sequences leading to AA/BA degrees including estimates indicating how many Head Start and Early Head Start staff members will be included in this effort.

The extent to which the applicant presents an organizational structure that will support the project objectives. The extent to which the applicant demonstrates how joint planning and assessment with the Head Start and Early Head Start grantees will be effectively implemented with timelines and clear lines of responsibility. The extent to which the applicant explains how staff positions will be assigned and describes their major functions and responsibilities.

The extent to which the applicant describes appropriate activities that will continue after the completion of this project that will ensure that the applicant will continue to participate in providing educational opportunities for Head Start and Early Head Start classroom staff.

*Criterion 2. Results or Benefits Expected (25 Points)*

The results and benefits to be derived. The anticipated contribution to policy, practice, theory and research. Specific benefits for both the applicant and the Head Start/Early Head Start community.

Based on the stated program objectives, the results and benefits to be derived. The specific results or benefits that could be expected for the Head Start/Early Head Start grantees and the institution.

The qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. How the program will determine the extent to which it has achieved its stated objectives.

The extent to which the applicant provides an accurate projection of the estimated number of Head Start/Early Head Start teachers that will earn degrees over the duration of the project based on an analysis of the current levels of credits/courses earned by participants and a proposed sequence of courses.

The extent to which the applicant proposes new teaching methods for Head Start/Early Head Start teachers and staff for teaching early literacy in the classrooms and enhancing parental skills to encourage children to read and succeed in school.

*Criterion 3. Objectives and Need for Assistance (20 Points)*

Relevant physical, economic, social, financial, institutional or other problems requiring intervention. The need for assistance. The principal and subordinate objectives of the project. The supporting documentation provided or other testimonies from concerned interests other than the applicant.

The objectives for the program. How these objectives are based on an assessment of community needs and how they relate to Head Start goals. The extent to which the applicant proposes a detailed process that will be used to assess the need for the proposed program including the total number of staff needing training, including preschool and infant/toddler teachers.

Specifically identified population to be served. The extent to which the applicant describes proposed Head Start and Early Head Start grantees as participating partners. The extent to which the applicant provides the numbers and types of staff to be trained, and the proposed areas of training, courses, and degrees to be awarded, as appropriate.

The consultative process related to the development of the proposed initiative. The extent to which the applicant describes detailed efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early childhood and child care programs. The extent to which the applicant provides letters of support that document consultation and support from the proposed grantee or delegate agency partners, the Head Start State Collaboration Office, and any existing state level early childhood career development initiative.

*Criterion 4. Budget and Budget Justification (20 Points)*

How the proposed project costs are reasonable and appropriate in view of the activities to be carried out and the anticipated outcomes. The extent to which the applicant describes a thorough line item budget for the costs associated with key project staff attending two ACF-sponsored conferences in Washington, D.C.

*Criterion 5. Geographic Location (5 Points)*

The extent to which the application describes the precise location of the project and area to be served, including the location of the Head Start and Early Head Start grantees the applicant partners with.

*Criterion 6. Staff and Position Data (5 Points)*

The extent to which the applicant demonstrates that key staff are qualified and knowledgeable of Head Start and Early Head Start. The extent to which the applicant demonstrates the capacity of its organization, key leaders, managers, and project personnel to provide: high quality, relevant, and responsive training to Head Start staff; competent project staff to plan and deliver appropriate course material to Head Start trainees that is culturally relevant; implementation of the training grant in an effective and timely manner; and successful partnerships that involve sharing resources, staffing, and facilities.

2. Review and Selection Process

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Section V of this announcement as well as the eligibility criteria specified in Section III to review and score the applications. The results of this review will be a primary factor in making funding decisions.

## VI. Award Administration Information

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing by the Head Start Bureau.

*2. Administrative and National Policy Requirements*

45 CFR Part 74 and 45 CFR Part 92.

*3. Reporting*

*Programmatic Reports:* Semi-annually.

*Financial Reports:* Semi-annually.

*Special Reporting Requirements:* None.

All grantees are required to submit semi-annual program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

## VII. Agency Contacts

Program Office Contact: Katherine Gray, U.S. Department of Health and Human Services, Administration for Children and Families, ACYF-Head Start Bureau, Switzer Building—330 C Street, SW., Washington, DC 20447. Telephone: (202) 205–8390, E-Mail: *kgray@acf.hhs.gov.*

Grants Management Office Contact: Delores Dickenson, U.S. Department of Health and Human Services, Administration for Children and Families, ACYF-Head Start Bureau, Switzer Building—330 C Street, SW., Washington, DC 20447. Telephone: (202) 260–7622, E-Mail: *ddickenson@acf.hhs.gov.*

General: ACYF Operations Center, c/o The Dixon Group, Inc., Historically Black Colleges and Universities (HBCUs), 118 Q Street, NE., Washington, DC 20002, Telephone: (800) 351–2293.

## VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *www.headstartinfo.org www.hsnrc.org.*

Dated: March 23, 2004.

**Joan E. Ohl,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 04–6959 Filed 3–26–04; 8:45 am]

BILLING CODE 4184–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Head Start Hispanic Latino Service Partnership Institutions

*Federal Agency Name:* Administration for Children and Families, Administration on Children, Youth and Families, Head Start.

*Funding Opportunity Title:* Head Start Hispanic Latino Service Partnership Institutions.

*Announcement Type:* Competitive Grant-Initial.

*Funding Opportunity Number:* HHS–2004–ACF–HS–YP–0003.

*CFDA Number:* 93.600.

**DATES:** Applications are due May 13, 2004. Letters of intent are due April 15, 2004.

## I. Funding Opportunity Description

The Head Start Bureau is announcing the availability of funds and request for applications for professional development and training grants for institutions of higher education with experience and capability in educating and preparing professionals to work effectively with Hispanic/Latino young children and families, in partnership with Head Start, Migrant Head Start and Early Head Start programs. The Head Start—Higher Education Hispanic/Latino Service Institution Partnership (HS-HEHLSIPs) program is funded to improve the quality and long-term effectiveness of program services to Hispanic/Latino children and their families by developing academic and other training models and forming partnerships between institutions of higher education and Head Start, Migrant Head Start, and Early Head Start programs. In addition, the institutions of higher education that will be funded under this announcement, together with those HS-HEHLSIPs currently funded under this initiative, will form a consortium to share methods, approaches, experiences, and lessons learned.

*A. Purpose*

Through this announcement, the Administration on Children, Youth and Families (ACYF) is making available up to $1,500,000 annually for each of five years to support Head Start—Higher Education Hispanic/Latino Service Institution Partnerships (HS-HEHLSIPs). These partnerships are designed to improve the quality and long-term effectiveness of Head Start, Migrant Head Start and Early Head Start grantees by developing academic and other training models to increase the number of Head Start teachers with degrees in early childhood education.

*B. Background*

The overall goal of Head Start is to ensure that children of low-income families acquire the skills and knowledge necessary to allow them to enter school ready for success. In order to accomplish this goal, Head Start provides comprehensive services to these children and their families. Head Start enhances children's physical, cognitive, social, and emotional development. It supports parents in their efforts to fulfill their parental roles as their child's primary educator, helps support them while they work towards employment and self-sufficiency, and provides for their involvement in administering the Head Start program.

In an attempt to ensure that highly qualified and well trained staff provides high quality services to enrolled children and their families, Head Start has supported many demonstration projects. For example, Head Start supported the creation of the Child Development Associate (CDA) credential designed for early childhood development teaching staff, implemented the Head Start Teaching Centers, and developed other innovative projects. The Head Start Bureau also implemented partnerships with Historically Black Colleges and Universities (HBCUs) and Tribally-Controlled Land Grant Colleges and Universities (TCUs) in addition to other innovative training and staff development projects.

The 1998 reauthorization of the Head Start Act contains provisions to improve Head Start program quality and accountability. These include new education performance standards and measures, the expansion of program monitoring to incorporate evidence of progress on outcomes-based measures, funding to upgrade program quality and staff compensation, and higher education standards for Head Start teachers. In January 2001, the President signed into law the ''No Child Left Behind Act'' to make the education of every child in America one of the country's top priorities. The Act seeks to ensure that public schools teach children what they need to know to be successful in life and that they also set high education standards in the classroom. In his 2002 State of the Union address, the President indicated the need to prepare our children to read and succeed in school, including the improvement of Head Start and early childhood development programs. In response to these goals, the White House has developed an early childhood initiative, which is built on raising the bar for Head Start education methods to create a better learning environment and improved outcomes for children. In his announcement of the Good Start, Grow Smart Early Childhood Initiative in April 2002, the President identified children's early literacy as a key focus for Head Start program improvement. In this initiative, the President presented three areas of focus for Head Start: (1) Strengthening Head Start programs; (2) partnering with states to improve early childhood education, and (3) providing information to teachers, caregivers, and parents.

The Head Start Act, as amended 42 U.S.C. 9801 *et seq.* is the authorizing legislation for the HS-HEHLSIPS program. The key purpose in funding the program is to increase the number of Head Start staff with college degrees in early childhood education. To assure that selected colleges and universities will be able to fulfill this task it is important that HS-HEHLSIPs applying for funds under this announcement clearly demonstrate that they have established relationships with the Head Start programs in their community and that these Head Start programs have indicated that they are willing to work collaboratively with the institution.

## II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated total Priority Area Funding:* $1,500,000.

*Anticipated Number of Awards:* 10 per budget period.

*Ceiling on amount of Individual Awards:* $150,000 per budget period.

*Floor on Individual Award Amounts:* none.

*Average projected Award Amount:* $100,000 per budget period.

*Project Periods for Awards:* Up to 60 months with 12 month budget periods.

Awards will be made on a competitive basis and will be for a one-year budget period. The total project period will not exceed 60 months. Applications for continuation grants

funded under these awards beyond the first 12 month budget period (but within the project period) will be considered on a noncompetitive basis subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the Government.

**III. Eligibility Information**

*1. Eligible Applicants*

State Controlled Institutions of Higher Education, Private Institutions of Higher Education, and faith-based institutions of Higher Education.

Additional Information on Eligibility

This announcement is limited to institutions of higher education with experience and capability in educating and preparing professionals to work effectively with Hispanic/Latino young children and families. Faith-based institutions planning to compete under this announcement must also meet the same eligibility criteria as other applicants.

HEHLSIPs that are not accredited are not eligible to apply under this announcement. Applications from HEHLSIPs that are not accredited will be considered non-responsive and returned without review.

HEHLSIPs that are currently funded under the Head Start Partnership with HEHLSIPs and whose funding will end after October 31, 2004 are not eligible to apply under this announcement.

HEHLSIPs that fail to provide a Head Start program participation agreement as specified in Section IV. Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

*2. Cost Sharing or Matching—No.*

*3. Other (if applicable)*

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications from applicants that do not meet the accreditation requirements specified in Section III.1 will be considered non-responsive and returned without review.

**IV. Application and Submission Information**

*1. Address to Request Application Package*

ACYF Operations Center, c/o The Dixon Group, Inc., Higher Education Hispanic/Latino Service Institutions Partnerships (HS–HEHLSIPs), 18 Q Street, NE., Washington, DC 20002, Telephone: (800) 351–2293, E-mail: *HS@dixongroup.com.*

An application kit including copies of the program announcement, necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at: *www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm.*

*2. Content and Form of Application Submission*

Submission of Intent

Prior to submittal of the application, applicants must submit a post card or call the ACYF Operations Center c/o The Dixon Group with the following information: the name, address, telephone and fax numbers, and e-mail address of the college/university intending to apply to receive Head Start Higher Education Hispanic/Latino Service Institutions Partnerships funds. Please see Section III.1 for ACYF Operations Center address and telephone contact information.

Proof of HEHLSIP Accreditation Status

Applicants must submit proof of accreditation by an accreditation agency recognized by the Secretary of the Department of Education.

Head Start Program Participation Agreement

Applicants must submit a letter of agreement with their applications from a Head Start Program Director verifying that the applicant has an established relationship with the program and that the Head Start program is willing to work with the HBCU.

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *www.Grants.gov apply site.* If you use Grants.Gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants.Gov.

- Electronic submission is voluntary.
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.Gov that contains a Grants.Gov tracking number. The Administration for Children and Families will retrieve your application form Grants. Gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.* You must search for the downloadable application package by the CFDA number.

Application Requirements

The project description of the application should be double-spaced

and single-sided on 8½″ x 11″ plain white paper, with 1'' margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All narrative sections of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents.

The length of the application, including the projection description, appendices and resumes must not exceed 75 pages. Anything over 75 pages will be removed and not considered by the reviewers. The abstract should not be counted in the 75 pages and not exceed 1 page.

Applicants are requested NOT to send pamphlets, brochures, or other printed material along with their applications. These materials, if submitted, will not be included in the review process. In addition, applicants must NOT submit any additional letters of endorsement beyond any that stated as required in this announcement.

Project Descriptions

Specific factual information and statements of measurable goals in quantitative terms must be included in the project description. Extensive exhibits are not required. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Please see section V for further information regarding the Project Description.

Table of Contents

All pages must be numbered and a table of contents should be included for easy reference.

*Forms and Certifications*: The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

*3. Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on May 13, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

*Deadline*: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., Higher Education Hispanic/Latino Service Institutions Partnerships (HS–HEHLSIPs), 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., Higher Education Hispanic/Latino Service Institutions Partnerships (HS–HEHLSIPs), 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Late applications*: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines*: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Cover letter | Self explanatory | Self explanatory | By application due date. |
| Table of Contents | Per description in announcement | Described in Section IV | By application due date. |
| SF 424, including Sections A and B. | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Dun and Bradstreet Data Universal Numbering System (DUNS) Number. | Per description in announcement | Described in Section III | By application due date. |
| Abstract | Per description in announcement | Described in Section V | By application due date. |
| Project Description | Per description in announcement | Described in Section IV and V | By application due date. |
| Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL). | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Environmental Tobacco Smoke Certification. | Requirement met by signing and submitting application. | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Notice to State Single Point of Contact (SPOC), as required. | Per description in announcement | Described in Section IV | By application due date |

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Proof of HEHLSIP accreditation status. | Per description in announcement | Described in Section III and IV .... | By application due date. |
| Head Start program(s) participation agreement. | Letter of agreement from Head Start Director. | Described in Section IV ..... | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia. Applicants from these jurisdictions need not take action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

*5. Funding Restrictions*

HEHLSIPs that are currently funded under the Head Start Partnership with HEHLSIPs and whose funding will end after October 31, 2004 are not eligible to apply under this announcement.

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

*6. Other Submission Requirements*

*Submission by Mail:* An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 5 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Inc., Higher Education Hispanic/Latino Service Institutions Partnerships (HS–HEHLSIPs), 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Hand Delivery:* An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations Center c/o The Dixon Group, 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Electronic Submission:* Please see section IV. 2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*1. Criteria*

General Instructions for the Uniform Project Description

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004.

An agency may nor conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

Project Abstract

Provide a summary of the project description (not to exceed one page) with reference to the funding request.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological

innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.'' List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe how the intermediary's assistance to faith-based and community organizations will increase their effectiveness, enhance their ability to provide social services, diversify their funding sources, and create collaborations to better serve those most in need.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

*Criterion 1. Approach:* (25 Points)

The extent to which the application describes a detailed plan of action pertaining to the scope of the project including details on how the proposed work will be accomplished, such as detailed timelines and lists of each organization as well as consultant and key individuals who will work on the project. The extent to which the applicant describes a brief yet clear description of the nature of the effort and contribution each organization, consultant, or key individual will make to the project. The extent to which the applicant demonstrates adequate time key staff will devote to the project and that this staff is qualified and knowledgeable of Head Start and Early Head Start. The extent to which the applicant describes a well-vetted approach and methodology for implementing the project, including a clear description that delineates the relationship of each task to the accomplishment of the proposed objectives. The extent to which the applicant provides evidence that the planned approach reflects sufficient input from and partnership with Head Start and Early Head Start grantees.

The extent to which the applicant demonstrates effective planning for activities developed during the start-up period in preparation of implementation of the program including assurance that no more than six months will be devoted to planning activities.

The extent to which the applicant demonstrates effective methods for recruiting Head Start center-based teaching staff and an effective selection process for participation in the program.

The extent to which the applicant demonstrates how training and coursework will be contextually and culturally relevant to the Head Start, Migrant Head Start, and Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, program quality, and outcomes for Head Start children and families.

The extent to which the application describes efforts the applicant and Head Start partners will make to ensure that training and coursework are accessible to Head Start staff and how the applicant will support their successful completion of courses, training, and degrees. The extent to which the applicant provides discussion of relevant issues such as timing, scheduling, and location of classes or training, support to enhance the literacy and study skills of participants, and approaches to integrate training in the working environment of the Head Start program. The extent to which the applicant describes costs (if any) associated with training and courses for Head Start staff.

The extent to which the applicant describes strong efforts to complement the Federal funds requested in this proposal with other sources to maximize the benefits to Head Start and Early Head Start grantees including efforts or plans to assist Head Start/Early Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff.

The extent to which the applicant describes credit courses offered particularly in the area of Early Childhood Development/Education.

The extent to which the applicant describes how CDA training and certification of Head Start and Early Head Start staff, as appropriate, as well as previous coursework and credits will be linked to academic credits and course sequences leading to AA/BA degrees including estimates indicating how many Head Start and Early Head Start staff members will be included in this effort.

The extent to which the applicant presents an organizational structure that will support the project objectives. The extent to which the applicant demonstrates how joint planning and assessment with the Head Start, Migrant

Head Start, and Early Head Start grantees will be effectively implemented with timelines and clear lines of responsibility. The extent to which the applicant explains how staff positions will be assigned and describes their major functions and responsibilities.

The extent to which the applicant describes appropriate activities that will continue after the completion of this project that will ensure that the applicant will continue to participate in providing educational opportunities for Head Start, Migrant Head Start, and Early Head Start classroom staff.

*Criterion 2. Results or Benefits Expected:* (25 Points)

The results and benefits to be derived. The anticipated contribution to policy, practice, theory and research. Specific benefits for both the applicant and the Head Start/Migrant Head Start/Early Head Start community.

Based on the stated program objectives, the results and benefits to be derived. The specific results or benefits that could be expected for the Head Start/Migrant Head Start/Early Head Start grantees and the institution.

The qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. How the program will determine the extent to which it has achieved its stated objectives.

The extent to which the applicant provides an accurate projection of the estimated number of Head Start/Migrant Head Start/Early Head Start teachers that will earn degrees over the duration of the project based on an analysis of the current levels of credits/courses earned by participants and a proposed sequence of courses.

The extent to which the applicant proposes new teaching methods for Head Start/Migrant Head Start/Early Head Start teachers and staff for teaching early literacy in the classrooms and enhancing parental skills to encourage children to read and succeed in school.

*Criterion 3. Objectives and Need for Assistance:* (20 Points)

Relevant physical, economic, social, financial, institutional or other problems requiring intervention. The need for assistance. The principal and subordinate objectives of the project. The supporting documentation provided or other testimonies from concerned interests other than the applicant.

The objectives for the program. How these objectives are based on an assessment of community needs and how they relate to Head Start goals. The extent to which the applicant proposes a detailed process that will be used to assess the need for the proposed program including the total number of staff needing training, including preschool and infant/toddler teachers.

Specifically identified population to be served. The extent to which the applicant describes proposed Head Start, Migrant Head Start, and Early Head Start grantees as participating partners. The extent to which the applicant provides the numbers and types of staff to be trained, and the proposed areas of training, courses, and degrees to be awarded, as appropriate.

The consultative process related to the development of the proposed initiative. The extent to which the applicant describes detailed efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early childhood and child care programs. The extent to which the applicant provides letters of support that document consultation and support from the proposed grantee or delegate agency partners, the Head Start State Collaboration Office, and any existing state level early childhood career development initiative.

*Criterion 4. Budget and Budget Justification:* (20 Points)

How the proposed project costs are reasonable and appropriate in view of the activities to be carried out and the anticipated outcomes. The extent to which the applicant describes a thorough line item budget for the costs associated with key project staff attending two ACF-sponsored conferences in Washington, DC.

*Criterion 5. Geographic Location:* (5 Points)

The extent to which the application describes the precise location of the project and area to be served, including the location of the Head Start, Migrant Head Start, and Early Head Start grantees the applicant partners with.

*Criterion 6. Staff and Position Data:* (5 Points)

The extent to which the applicant demonstrates that key staff are qualified and knowledgeable of Head Start, Migrant Head Start, and Early Head Start. The extent to which the applicant demonstrates the capacity of its organization, key leaders, managers, and project personnel to provide: high quality, relevant, and responsive training to Head Start staff; competent project staff to plan and deliver appropriate course material to Head Start trainees that is culturally relevant; implementation of the training grant in an effective and timely manner; and successful partnerships that involve sharing resources, staffing, and facilities.

*2. Review and Selection Process*

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Section V of this announcement as well as the eligibility criteria specified in Section III to review and score the applications. The results of this review will be a primary factor in making funding decisions.

## VI. Award Administration Information

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing by the Head Start Bureau.

*2. Administrative and National Policy Requirements*

45 CFR Part 74 and 45 CFR Part 92.

*3. Reporting*

*Programmatic Reports:* Semi-annually.

*Financial Reports:* Semi-annually.

*Special Reporting Requirements:* None.

All grantees are required to submit semi-annual program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

## VII. Agency Contacts

*Program Office Contact:* Katherine Gray, U.S. Department of Health and Human Services, Administration for Children and Families, ACYF-Head Start Bureau, Switzer Building—330 C Street, SW., Washington, DC 20447, Telephone : (202) 205–8390, E-mail: *kgray@acf.hhs.gov.*

*Grants Management Office Contact:* Delores Dickenson, U.S. Department of Health and Human Services,

Administration for Children and Families, ACYF-Head Start Bureau, Switzer Building—330 C Street, SW., Washington, DC 20447, Telephone: (202) 260–7622, E-mail: *ddickenson@acf.hhs.gov.*

*General:* ACYF Operations Center, c/o The Dixon Group, Inc., Higher Education Hispanic/Latino Service Institutions Partnerships (HS–HEHLSIPs), 118 Q Street, NE., Washington, DC 20002, Telephone: (800) 351–2293.

**VIII. Other Information**

Additional information about this program and its purpose can be located on the following Web sites: *www.headstartinfo.org* and *www.hsnrc.org.*

Dated: March 23, 2004.

**Joan E. Ohl,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 04–6957 Filed 3–26–04; 8:45 am]

BILLING CODE 4184–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Administration on Children, Youth and Families, Head Start

*Funding Opportunity Title:* Head Start Tribally Controlled Land Grant Colleges and Universities.

*Announcement Type:* Competitive Grant-Initial.

*Funding Opportunity Number:* HHS–2004–ACF–HS–YT–0004.

*CFDA Number:* 93.600.

*Dates:* Applications are due May 13, 2004. Letters of intent are due April 15, 2004.

**I. Funding Opportunity Description**

The Head Start Bureau is announcing the availability of funds and request for applications for professional development and training grants for Tribally Controlled Land Grant Colleges and Universities (TCUs) in partnership with Head Start and Early Head Start programs to improve staff training and to thereby enhance services to Head Start and Early Head Start children and families.

*Purpose*

Through this announcement, the Administration on Children, Youth and Families (ACYF) is making available up to $1,500,000 annually for each of five years to support Tribally Controlled Land Grant Colleges and Universities (TCUs) partnerships. These partnerships are designed to improve the quality and long-term effectiveness of Head Start and Early Head Start grantees by developing academic and other training models to increase the number of Head Start teachers with degrees in early childhood education.

*A. Background*

The overall goal of Head Start is to ensure that children of low-income families acquire the skills and knowledge necessary to allow them to enter school ready for success. In order to accomplish this goal, Head Start provides comprehensive services to these children and their families. Head Start enhances children's physical, cognitive, social, and emotional development. It supports parents in their efforts to fulfill their parental roles as their child's primary educator, helps support them while they work towards employment and self-sufficiency, and provides for their involvement in administering the Head Start program.

In an attempt to ensure that highly qualified and well trained staff provides high quality services to enrolled children and their families, Head Start has supported many demonstration projects. For example, Head Start supported the creation of the Child Development Associate (CDA) credential designed for early childhood development teaching staff, implemented the Head Start Teaching Centers, and developed other related innovative projects. The Head Start Bureau also implemented partnerships with Historically Black Colleges and Universities (HBCUs) and Higher Education Hispanic/Latino Service Partnerships (HS–HEHLSPs) in addition to key innovative training and staff development projects.

The 1998 reauthorization of the Head Start Act contains provisions to improve Head Start program quality and accountability. These include new education performance standards and measures, the expansion of program monitoring to incorporate evidence of progress on outcomes-based measures, funding to upgrade program quality and staff compensation, and higher education standards for Head Start teachers. In January 2001, the President signed into law the ''No Child Left Behind Act'' to make the education of every child in America one of the country's top priorities. The Act seeks to ensure that public schools teach children what they need to know to be successful in life and that they also set high education standards in the classroom. In his 2002 State of the Union address, the President indicated the need to prepare our children to read and succeed in school, including the improvement of Head Start and early childhood development programs. In response to these goals, the White House has developed an early childhood initiative, which is built on raising the bar for Head Start education methods to create a better learning environment and improved outcomes for children. In his announcement of the Good Start, Grow Smart Early Childhood Initiative in April 2002, the President identified children's early literacy as a key focus for Head Start program improvement. In this initiative, the President presented three areas of focus for Head Start: (1) Strengthening Head Start programs; (2) partnering with states to improve early childhood education, and (3) providing information to teachers, caregivers, and parents.

The Head Start Act, as amended 42 U.S.C. 9801 *et seq.* is the authorizing legislation for the Head Start TCU program. The key purpose in funding the TCU program is to increase the number of Head Start staff with college degrees in early childhood education. To assure that selected colleges and universities will be able to fulfill this task it is important that TCUs applying for funds under this announcement clearly demonstrate that they have established relationships with the Head Start programs in their community and that these Head Start programs have indicated that they are willing to work collaboratively with the institution.

**II. Award Information**

*Funding Instrument Type:* Grant.

*Anticipated total Priority Area Funding:* $1,500,000.

*Anticipated Number of Awards:* 6–10 per budget period.

*Ceiling on amount of Individual Awards:* $150,000 per budget period.

*Floor on Individual Award Amounts:* None.

*Average projected Award Amount:* $100,000 per budget period.

*Project Periods for Awards:* Up to 60 months with 12 month budget periods. Awards will be made on a competitive basis and will be for a one-year budget period. The total project period will not exceed 60 months. Applications for continuation grants funded under these awards beyond the first 12 month budget period (but within the project period) will be considered on a noncompetitive basis subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding is in the best interest of the Government.

## III. Eligibility Information

*1. Eligible Applicants*

Tribally Controlled Land Grant Colleges and Universities (TCUs)

*Additional Information on Eligibility:* This announcement is limited to Tribally Controlled Land Grant Colleges and Universities (TCUs) as defined in section 532 of the Equity in Educational Land Grant Status Act of 1994 (7 U.S.C. 301 note), any other institution that qualifies for funding under the Tribally Controlled Community College Assistance Act of 1978, (25 U.S.C. 1801 et seq.), and Navajo Community College, Authorized in the Navajo Community College Assistance Act of 1978, Public Law 95–471, Title II (25 U.S.C. 640a note).

Only those institutions that meet these definitions shall be eligible for assistance under this announcement.

TCUs that are not accredited are not eligible to apply under this announcement. Applications from TCUs that are not accredited will be considered non-responsive and returned without review.

TCUs that are currently funded under the Head Start Partnership with TCUs and whose funding will end after October 31, 2004 are not eligible to apply under this announcement.

TCUs that fail to provide a Head Start program participation agreement as specified in Section IV. Content and Form of Application Submission will be considered non-responsive and will not be eligible for funding under this announcement.

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

*2. Cost Sharing or Matching—No*

*3. Other (If Applicable)*

On June 27, 2003, the Office of Management and Budget published in the **Federal Register** a new Federal policy applicable to all Federal grant applicants. The policy requires all Federal grant applicants to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number when applying for Federal grants or cooperative agreements on or after October 1, 2003. The DUNS number will be required whether an applicant is submitting a paper application or using the government-wide electronic portal (*http://www.Grants.gov*). A DUNS number will be required for every application for a new award or renewal/continuation of an award, including applications or plans under formula, entitlement and block grant programs, submitted on or after October 1, 2003.

Please ensure that your organization has a DUNS number. You may acquire a DUNS number at no cost by calling the dedicated toll-free DUNS number request line on 1–866–705–5711 or you may request a number on-line at *http://www.dnb.com.*

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

Applications from applicants that do not meet the definition of a TCU specified in Section III.1 and the accreditation requirements specified in Section III.1 will be considered non-responsive and returned without review.

## IV. Application and Submission Information

*1. Address To Request Application Package*

ACYF Operations Center, c/o The Dixon Group, Inc., Head Start Tribally Controlled Land Grant Colleges and Universities (TCUs), 18 Q Street, NE., Washington, DC 20002, Telephone: (800) 351–2293, E-mail: *HS@dixongroup.com.*

An application kit including copies of the program announcement, necessary application forms and appendices can be obtained by contacting the above address, and/or visiting the ACYF Web site at: *http://www.acf.hhs.gov/programs/hsb/grant/fundingopportunities/fundopport.htm*

*2. Content and Form of Application Submission*

Submission of Intent

Prior to submittal of the application, applicants must submit a post card or call the ACYF Operations Center c/o The Dixon Group with the following information: the name, address, telephone and fax numbers, and e-mail address of the college/university intending to apply to receive Tribally Controlled Land Grant Colleges and Universities funds. Please see Section III.1 for ACYF Operations Center address and telephone contact information.

Proof of TCU Accreditation Status

Applicants must submit proof of accreditation by an accreditation agency recognized by the Secretary of the Department of Education.

**Head Start Program Participation Agreement**

Applicants must submit a letter of agreement with their applications from a Head Start Program Director verifying that the applicant has an established relationship with the program and that the Head Start program is willing to work with the TCU.

You may submit your application to us either in electronic or paper format. To submit an application electronically, please use the *http://www.Grants.gov* apply site. If you use Grants.Gov you will be able to download a copy of the application package, complete it off-line, and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to us.

Please note the following if you plan to submit your application electronically via Grants. Gov.

- Electronic submission is voluntary
- When you enter the Grants.Gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.Gov.
- To use Grants.gov, you, as the applicant, must have a DUNS Number and register in the Central Contractor Registry (CCR). You should allow a minimum of five days to complete the CCR registration.
- You will not receive additional point value because you submit a grant application in paper format.
- You may submit all documents electronically, including all information typically included on the SF424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.Gov that contains a Grants.Gov tracking number. The Administration for Children and Families will retrieve your application form Grants. Gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.* You must search for the downloadable application package by the CFDA number.

**Application Requirements**

The project description of the application should be double-spaced and single-sided on 8½″ × 11″ plain white paper, with 1'' margins on all sides. Use only a standard size font no smaller than 12 pitch throughout the application. All narrative sections of the application (including appendices, resumes, charts, references/footnotes, tables, maps and exhibits) must be sequentially numbered, beginning on the first page after the budget justification, the principal investigator contact information and the Table of Contents. The length of the application, including the projection description, appendices and resumes must not exceed 75 pages. Anything over 75 pages will be removed and not considered by the reviewers. The abstract should not be counted in the 75 pages and not exceed 1 page.

Applicants are requested not to send pamphlets, brochures, or other printed material along with their applications. These materials, if submitted, will not be included in the review process. In addition, applicants must NOT submit any additional letters of endorsement beyond any that stated as required in this announcement.

Project Descriptions

Specific factual information and statements of measurable goals in quantitative terms must be included in the project description. Extensive exhibits are not required. Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant-funded activity should be placed in an appendix. Please see section V for further information regarding the Project Description.

Table of Contents

All pages must be numbered and a table of contents should be included for easy reference.

*Forms and Certifications:* The project description should include all the information requirements described in the specific evaluation criteria outlined in the program announcement under Part V. In addition to the project description, the applicant needs to complete all the standard forms required for making applications for awards under this announcement. Applicants requesting financial assistance for non-construction projects must file the Standard Form 424B, ''Assurances: Non-Construction Programs.'' Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications. Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non-Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form, if applicable, with their applications. The forms (Forms 424, 424A–B; and Certifications may be found at: *http://www.acf.hhs.gov/programs/ofs/forms.htm* under new announcements. Fill out Standard Forms 424 and 424A and the associated certifications and assurances based on the instructions on the forms.

*3. Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on May 13, 2004. Mailed or hand carried applications received after 4:30 p.m. on the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., Head Start Tribally Controlled Land Grant Colleges and Universities (TCUs), 118 Q Street, NE., Washington, DC 20002 Attn: Delores Dickenson, Telephone: (800) 351–2293.

Applicants are responsible for mailing applications well in advance, when using all mail services, to ensure that the applications are received on or before the deadline time and date.

Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m., EST, at the following address: ACYF Operations Center, c/o The Dixon Group, Inc., Head Start Tribally Controlled Land Grant Colleges and Universities (TCUs), 118 Q Street, NE., Washington, DC 20002 Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

Required Forms:

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Cover letter | Self explanatory | Self explanatory | By application due date. |
| Table of contents | Per description in announcement. | Described in Section IV | By application due date. |
| SF 424, including Sections A and B. | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Dun and Bradstreet Data Universal Numbering System (DUNS) Number. | Per description in announcement. | Described in Section III | By application due date. |
| Abstract | Per description in announcement. | Described in Section V | By application due date. |
| Project Description | Per description in announcement. | Described in Section IV and V | By application due date. |
| Certification regarding Lobbying and associated Disclosure of Lobbying Activities (SF LLL). | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Environmental Tobacco Smoke Certification. | Requirement met by signing and submitting application. | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Proof of TCU accreditation status. | Per description in announcement. | Described in Section III and IV | By application due date. |
| Head Start program(s) participation agreement. | Letter of agreement from Head Start Director. | Described in Section IV | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, ''Intergovernmental Review of Federal Programs,'' and 45 CFR Part 100, ''Intergovernmental Review of Department of Health and Human Services Programs and Activities.'' Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. As of October 1, 2003, the following jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372:

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, and Virginia. Applicants from these jurisdictions need not take action.

Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the ''accommodate or explain'' rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW. Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included with the application materials for this announcement.

*5. Funding Restrictions*

TCUs that are currently funded under the Head Start Partnership with TCUs and whose funding will end after October 31, 2004 are not eligible to apply under this announcement.

Applicants are cautioned that the ceiling for individual awards is $150,000. Applications exceeding the $150,000 threshold will be considered non-responsive and will not be eligible for funding under this announcement.

*6. Other Submission Requirements*

*Submission by Mail:* An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 5 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to: ACYF Operations Center, c/o The Dixon Group, Inc., Head Start Tribally Controlled Land Grant Colleges and Universities (TCUs), 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Hand Delivery:* An Applicant must provide an original application with all attachments signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications that are hand delivered will be accepted between the hours of 8 a.m. to 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations Center c/o The Dixon Group, 118 Q Street, NE., Washington, DC 20002, Attn: Delores Dickenson, Telephone: (800) 351–2293.

*Electronic Submission:* Please see section IV.2 Content and Form of Application Submission, for guidelines and requirements when submitting applications electronically.

**V. Application Review Information**

*1. Criteria*

General Instructions for the Uniform Project Description

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. Under the evaluation criteria section, note that each criterion is preceded by the generic evaluation requirement under the ACF Uniform Project Description (UPD). Public Reporting for this collection of information is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection information.

The project description is approved under OMB Control Number 0970–0139 which expires 3/31/2004.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Applicants have the option of omitting from the application copies (not the original) specific salary rates or amounts for individuals specified in the application budget and Social Security Numbers. The copies may include summary salary information.

Project Abstract

Provide a summary of the project description (not to exceed one page) with reference to the funding request.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement. Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of activities accomplished. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

If any data is to be collected, maintained, and/or disseminated, clearance may be required from the U.S. Office of Management and Budget (OMB). This clearance pertains to any ''collection of information that is conducted or sponsored by ACF.'' List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated. Supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners, such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe how the intermediary's assistance to faith-based and community organizations will increase their effectiveness, enhance their ability to provide social services, diversify their funding sources, and create collaborations to better serve those most in need.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

*Criterion 1. Approach:* (25 Points)

The extent to which the application describes a detailed plan of action pertaining to the scope of the project including details on how the proposed work will be accomplished, such as detailed timelines and lists of each organization as well as consultant and key individuals who will work on the project. The extent to which the applicant describes a brief yet clear description of the nature of the effort and contribution each organization, consultant, or key individual will make to the project. The extent to which the applicant demonstrates adequate time key staff will devote to the project and that this staff is qualified and knowledgeable of Head Start and Early Head Start. The extent to which the applicant describes a well-vetted approach and methodology for implementing the project, including a clear description that delineates the relationship of each task to the accomplishment of the proposed objectives. The extent to which the applicant provides evidence that the planned approach reflects sufficient input from and partnership with Head Start and Early Head Start grantees.

The extent to which the applicant demonstrates effective planning for activities developed during the start-up period in preparation of implementation of the program including assurance that no more than six months will be devoted to planning activities.

The extent to which the applicant demonstrates effective methods for recruiting Head Start center-based teaching staff and an effective selection process for participation in the program.

The extent to which the applicant demonstrates how training and coursework will be contextually and culturally relevant to the Head Start and Early Head Start environment and how it will contribute to enhancing the effectiveness of teachers, program quality, and outcomes for Head Start children and families.

The extent to which the application describes efforts the applicant and Head Start partners will make to ensure that training and coursework are accessible to Head Start staff and how the applicant will support their successful completion of courses, training, and degrees. The extent to which the applicant provides discussion of relevant issues such as timing, scheduling, and location of classes or training, support to enhance the literacy and study skills of participants, and approaches to integrate training in the working environment of the Head Start program. The extent to which the applicant describes costs (if any) associated with training and courses for Head Start staff.

The extent to which the applicant describes strong efforts to complement the Federal funds requested in this proposal with other sources to maximize the benefits to Head Start and Early Head Start grantees including efforts or plans to assist Head Start/Early Head Start staff in accessing sources of financial assistance or to make use of other funding for training and career development of early childhood program staff.

The extent to which the applicant describes credit courses offered particularly in the area of Early Childhood Development/Education.

The extent to which the applicant describes how CDA training and certification of Head Start and Early Head Start staff, as appropriate, as well as previous coursework and credits will

be linked to academic credits and course sequences leading to AA/BA degrees including estimates indicating how many Head Start and Early Head Start staff members will be included in this effort.

The extent to which the applicant presents an organizational structure that will support the project objectives. The extent to which the applicant demonstrates how joint planning and assessment with the Head Start and Early Head Start grantees will be effectively implemented with timelines and clear lines of responsibility. The extent to which the applicant explains how staff positions will be assigned and describes their major functions and responsibilities.

The extent to which the applicant describes appropriate activities that will continue after the completion of this project that will ensure that the applicant will continue to participate in providing educational opportunities for Head Start and Early Head Start classroom staff.

*Criterion 2. Results or Benefits Expected:* (25 Points)

The results and benefits to be derived. The anticipated contribution to policy, practice, theory and research. Specific benefits for both the applicant and the Head Start/Early Head Start community.

Based on the stated program objectives, the results and benefits to be derived. The specific results or benefits that could be expected for the Head Start/Early Head Start grantees and the institution.

The qualitative and quantitative data the program will collect to measure progress towards the stated results or benefits. How the program will determine the extent to which it has achieved its stated objectives.

The extent to which the applicant provides an accurate projection of the estimated number of Head Start/Early Head Start teachers that will earn degrees over the duration of the project based on an analysis of the current levels of credits/courses earned by participants and a proposed sequence of courses.

The extent to which the applicant proposes new teaching methods for Head Start/Early Head Start teachers and staff for teaching early literacy in the classrooms and enhancing parental skills to encourage children to read and succeed in school.

*Criterion 3. Objectives and Need for Assistance:* (20 Points)

Relevant physical, economic, social, financial, institutional or other problems requiring intervention. The need for assistance. The principal and subordinate objectives of the project. The supporting documentation provided or other testimonies from concerned interests other than the applicant.

The objectives for the program. How these objectives are based on an assessment of community needs and how they relate to Head Start goals. The extent to which the applicant proposes a detailed process that will be used to assess the need for the proposed program including the total number of staff needing training, including preschool and infant/toddler teachers.

Specifically identified population to be served. The extent to which the applicant describes proposed Head Start and Early Head Start grantees as participating partners. The extent to which the applicant provides the numbers and types of staff to be trained, and the proposed areas of training, courses, and degrees to be awarded, as appropriate.

The consultative process related to the development of the proposed initiative. The extent to which the applicant describes detailed efforts to frame the proposed initiative within broader state or community efforts to enhance professional and career development for staff in all forms of early childhood and child care programs. The extent to which the applicant provides letters of support that document consultation and support from the proposed grantee or delegate agency partners.

*Criterion 4. Budget and Budget Justification:* (20 Points)

How the proposed project costs are reasonable and appropriate in view of the activities to be carried out and the anticipated outcomes. The extent to which the applicant describes a thorough line item budget for the costs associated with key project staff attending two ACF-sponsored conferences in Washington, DC.

*Criterion 5. Geographic Location:* (5 Points)

The extent to which the application describes the precise location of the project and area to be served, including the location of the Head Start and Early Head Start grantees the applicant partners with.v

*Criterion 6. Staff and Position Data:* (5 Points)

The extent to which the applicant demonstrates that key staff are qualified and knowledgeable of Head Start and Early Head Start. The extent to which the applicant demonstrates the capacity of its organization, key leaders, managers, and project personnel to provide: high quality, relevant, and responsive training to Head Start staff; competent project staff to plan and deliver appropriate course material to Head Start trainees that is culturally relevant; implementation of the training grant in an effective and timely manner; and successful partnerships that involve sharing resources, staffing, and facilities.

*2. Review and Selection Process*

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed in Section V of this announcement as well as the eligibility criteria specified in Section III to review and score the applications. The results of this review will be a primary factor in making funding decisions.

## VI. Award Administration Information

*1. Award Notices*

The successful applicants will be notified through the issuance of a Financial Assistance Award document which sets forth the amount of funds granted, the terms and conditions of the grant, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer and transmitted via postal mail.

Organizations whose applications will not be funded will be notified in writing by the Head Start Bureau.

*2. Administrative and National Policy Requirements*

45 CFR Part 74 and 45 CFR Part 92

*3. Reporting*

*Programmatic Reports:* Semi-annually.

*Financial Reports:* Semi-annually.

*Special Reporting Requirements:* None.

All grantees are required to submit semi-annual program reports; grantees are also required to submit semi-annual expenditure reports using the required financial standard form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.* A suggested format for the program report will be sent to all grantees after the awards are made.

## VII. Agency Contacts

Program Office Contact: Katherine Gray, U.S. Department of Health and Human Services, Administration for

Children and Families, ACYF-Head Start Bureau, Switzer Building—330 C Street, SW., Washington, DC 20447, Telephone : (202) 205–8390, E-Mail: *kgray@acf.hhs.gov.*

Grants Management Office Contact: Delores Dickenson, U.S. Department of Health and Human Services, Administration for Children and Families, ACYF-Head Start Bureau, Switzer Building—330 C Street, SW., Washington, DC 20447, Telephone: (202) 260–7622, E-Mail: *ddickenson@acf.hhs.gov.*

General: ACYF Operations Center, c/o The Dixon Group, Inc., Head Start Tribally Controlled Land Grant Colleges and Universities (TCUs), 118 Q Street, NE., Washington, DC 20002, Telephone: (800) 351–2293.

**VIII. Other Information**

Additional information about this program and its purpose can be located on the following Web sites: *http://www.headstartinfo.org; http://www.hsnrc.org.*

Dated: March 23, 2004.

**Joan E. Ohl,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 04–6958 Filed 3–26–04; 8:45 am]

BILLING CODE 4184–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Nutrition Subcommittee of the Food Advisory Committee; Notice of Meeting

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

*Name of Committee*: Nutrition Subcommittee of the Food Advisory Committee.

*General Function of the Committee*: To provide advice and recommendations to the agency on FDA's regulatory issues.

*Date and Time*: The meeting will be held on April 27, 2004, from 12:30 p.m. to 6 p.m., and April 28, 2004, from 8 a.m. to 4 p.m.

*Location*: Loew's L'Enfant Plaza Hotel, 480 L'Enfant Plaza, Washington, DC.

*Contact Person*: Jeanne Latham, Center for Food Safety and Applied Nutrition (HFS–800), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301–436–1756, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014510564. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The subcommittee will discuss the scientific issues and principles involved in using ''total fat'' as a disqualifying level for foods that receive a health claim for coronary heart disease; and to discuss evidence supporting a possible daily value (DV) for trans fatty acids.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the subcommittee. Written submissions may be made to the contact person by April 13, 2004. Oral presentations from the public will be scheduled between approximately 5 p.m. and 6 p.m. on April 27, 2004. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 22, 2004, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Jeanne Latham at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 19, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–6921 Filed 3–26–04; 8:45 am]

BILLING CODE 4160–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Health Resources and Services Administration

### National Advisory Council on Migrant Health; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

*Name:* National Advisory Council on Migrant Health.

*Dates and Times:* April 28, 9 a.m. to 5 p.m.; April 29, 9 a.m. to 5 p.m.

*Place:* Marriott Biscayne Bay Hotel and Marina, 1633 North Bayshore Drive, Miami, Florida 33132, Phone: (305) 374–3900; Fax: (305) 375–0597.

*Status:* The meeting will be open to the public.

*Agenda:* The agenda includes an overview of general Council business activities. In addition, the Council will continue working on the Year 2004 recommendations to the Secretary.

Finally, the Council will hear presentations from experts on farmworker issues, including technical assistance for Migrant Health Centers and training for community health workers.

The Council meeting is being held in conjunction with the 2004 National Farmworker Health Conference sponsored by the National Association of Community Health Centers, which is being held in Miami, Florida, during the same period of time.

Agenda items are subject to change as priorities indicate.

*For Further Information Contact:* Anyone requiring information regarding the Council should contact Gladys Cate, Office of Minority and Special Populations, staff support to the National Advisory Council on Migrant Health, Bureau of Primary Health Care, Health Resources and Services Administration, 4350 East-West Highway, Bethesda, Maryland 20814, Telephone (301) 594–0367.

Dated: March 22, 2004.

**Tina M. Cheatham,**

*Director, Division of Policy Review and Coordination.*

[FR Doc. 04–6868 Filed 3–26–04; 8:45 am]

BILLING CODE 4165–15–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

### Funding Opportunity Title: Grants To Expand Substance Abuse Treatment Capacity in Targeted Areas of Need—[Short Title: Targeted Capacity Expansion (TCE) Grants]

*Announcement Type:* Modification.

This modification provides information on reasonable costs to be used in preparing Section E-Evaluation and Data, of the application. (*See* Section V–1.3 of this announcement.)

*Funding Opportunity Number:* TI 04–003.

*Catalog of Federal Domestic Assistance (CFDA) Number:* 93.243.

*Due Date for Applications:* May 25, 2004.

**[Note:** Letters from State Single Point of Contact (SPOC) in response to E.O. 12372 are due (July 26, 2004.]

**SUMMARY:** The Substance Abuse and Mental Health Services Administration (SAMHSA), Center for Substance Abuse Treatment (CSAT), announces the availability of FY 2004 funds for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need [Short Title: Targeted Capacity Expansion (TCE) Grants]. A synopsis of this funding opportunity, as well as many other Federal Government funding opportunities, is also available at the Internet site: *www.grants.gov.*

For complete instructions, potential applicants must obtain a copy of SAMHSA's standard Services Grants Program Announcement, SVC–04 PA (MOD), and the PHS 5161–1 (Rev. 7/00) application form before preparing and submitting an application. The SVC–04 PA (MOD) describes the general program design and provides instructions for applying for most SAMHSA Services Grants including the Targeted Capacity Expansion Grants program. SAMHSA's Services Grants provide funds to expand and strengthen effective, culturally appropriate substance abuse and/or mental health services at the State and local levels. The services implemented through SAMHSA's Services Grants must incorporate the best objective information available regarding effectiveness and acceptability. In general, SAMHSA's Services Grants are appropriate for applicants seeking Federal support to implement substance abuse and/or mental health services that have a strong evidence-base for effectiveness. SAMHSA's Services Grants must be used primarily to support direct service delivery. SAMHSA expects that the services will be sustained beyond the term of the grant. Additional instructions and specific requirements for the Targeted Capacity Expansion Grants are described below.

### I. Funding Opportunity Description

*Authority:* Section 509 of the Public Health Service Act, as amended and subject to the availability of funds.

The purpose of the Targeted Capacity Expansion Grants program is to expand and/or enhance the community's ability to provide a comprehensive, integrated, and community-based response to a targeted, well-documented substance abuse treatment capacity problem and/or improve the quality and intensity of services. For example, a community might seek a Targeted Capacity Expansion Grant to add state-of-the-art treatment approaches or new services to address emerging trends or unmet needs (*e.g.*, intensive case management, referral, and follow-up services to address related HIV, tuberculosis, hepatitis B and C, and other primary health care needs of substance abusing clients). Applicants are encouraged to engage (coordinate with or subcontract) the skills of private, non-profit, and community-based organizations not eligible to apply on their own because they are not a State or local government entity.

To encourage the substance abuse treatment system to become more responsive and bridge the gap between what is needed by individual States, localities, and/or tribal organizations, and what is known about effective treatments to meet those needs, SAMHSA/CSAT intends to fund programs in four areas in FY 2004: (1) Treatment for minority populations *; (2) treatment in rural areas; (3) treatment focused on methamphetamine and other emerging drugs; and (4) other innovative approaches to treatment capacity expansion that: Focus on early identification of, and interventions for, persons with substance use disorders that have not progressed to dependence; are implemented in general medical and othercommunity settings (*e.g.*, community health centers, social service agencies, schools/school-based health clinics and student assistance programs, occupational health clinics, hospitals, emergency departments); and seek to improve linkages among such community agencies and specialist substance abuse treatment agencies.**

*Background:* Information reported by SAMHSA underscores a significant disparity between the availability of treatment services for persons with alcohol and drug use disorders and the demand for such services. It is estimated, based on various studies, that there are 3–5 million individuals who use and abuse alcohol and other drugs who have a significant impact on both the utilization of services and costs within the health care, juvenile justice, welfare, child welfare, and other publicly funded social support systems. However, currently, of these individuals, only 1.8 million can be served through the existing publicly funded treatment system. By providing needed treatment services, this program is intended to reduce the health and social costs of substance abuse and dependence to the public, and increase the safety of America's citizens by reducing substance abuse related crime and violence.

### II. Award Information

1. *Estimated Funding Available/Number of Awards:* It is expected that $12 million will be available in FY 2004 to fund programs in four categories: (1) Treatment focused on minority populations; (2) treatment in rural areas; (3) treatment focused on methamphetamine and other emerging drugs in specific States and localities; and (4) other innovative approaches to treatment capacity expansion that: Focus on early identification of, and interventions for, persons with substance use disorders that have not progressed to dependence; are implemented in general medical and other community settings (*e.g.*, community health centers, social service agencies, schools/school-based health clinics and student assistance programs, occupational health clinics, hospitals, emergency departments); and seek to improve linkages among such community agencies and specialist substance abuse treatment agencies.

SAMHSA expects that approximately $3 million will be available for awards in each category, and that approximately 6 awards will be made in each category. The maximum allowable award is $500,000 in total costs (direct and indirect) per year for up to 3 years. Proposed budgets cannot exceed the allowable amount in any year of the proposed project. The actual amount

* Minority population include, but are not limited to, Hispanic/Latino(a); African American; Native populations including American Indian, Alaska Natives, and Pacific Islanders; and Asians, among other minority racial/ethnic groups.

** A community may be a geopolitical unit (city, county), a health district or human services region, or a substate planning area as defined for purposes of allocating Substance Abuse Prevention and Treatment Block Grant (SAPTBG) funds.

available for the awards may vary, depending on unanticipated program requirements and the number and quality of the applications received. Annual continuations will depend on the availability of funds, grantee progress in meeting program goals and objectives, and timely submission of required data and reports.

2. *Funding Instrument:* Grant.

## III. Eligibility Information

1. *Eligible Applicants:* Eligibility is restricted to States and units of local government (*e.g.*, cities, towns, counties) or Indian tribes and tribal organizations in recognition of their responsibility for, and interest in, providing for the needs of their citizens, and because the success of the program will depend upon their authority and ability to broadly coordinate a variety of resources. Funding is not designed to meet statewide treatment needs, but to meet the needs of individual communities in cities, towns, counties, and multi-county partnerships. Therefore, States that apply must identify a specific city, town, county or multi-county partnership that will be the targeted geographic area of need. These eligibility criteria supersede the criteria specified in Section III–1 of the SVC 04 PA (MOD).

Applications for SAMHSA Services Grants must include evidence of experience and credentials as described in Section III–3 of the SVC–04 PA (MOD). Applications that do not include the required evidence will be screened out and will not be reviewed.

1. *Cost Sharing or Matching* is not required.

2. *Other:* Applicants must also meet certain application formatting and submission requirements, or the application will be screened out and will not be reviewed. These requirements are described in Section IV–2 below, as well as in the SVC–04 PA (MOD).

## IV. Application and Submission Information

1. *Address To Request Application Package:* Complete application kits may be obtained from: The National Clearinghouse for Alcohol and Drug Information (NCADI) at 1–800–729–6686. When requesting an application kit for this program, the applicant must specify the funding opportunity title (TCE Grants) and number (TI 04–003) for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, is included in the application kit. The PHS 5161–1 application form is also available electronically via SAMHSA's World Wide Web Home Page: *http://www.samhsa.gov/* (Click on ''Grant Opportunities'') and the SVC–04 PA (MOD) is available electronically at *http://www.samhsa.gov/grants/2004/standard/Services/index.asp.*

When submitting an application, be sure to type ''TI 04–003, TCE'' in Item Number 10 on the face page of the application form. Also, SAMHSA applicants are required to provide a DUNS Number on the face page of the application. To obtain a DUNS Number, access the Dun and Bradstreet web site at *www.dunandbradstreet.com* or call 1–866–705–5711.

Because grantees in the TCE Grants program may use grant funds to provide direct substance abuse services, applicants are required to complete the Assurance of Compliance with SAMHSA Charitable Choice Statutes and Regulations, Form SMA 170. This form will be posted on SAMHSA's Web site with the NOFA and provided in the application kits available at NCADI.

2. *Content and Form of Application Submission:* Information including required documents, required application components, and application formatting requirements is available in the SVC–04 PA (MOD) in Section IV–2.

### Checklist for Formatting Requirements and Screenout Criteria for SAMHSA Grant Applications

SAMHSA's goal is to review all applications submitted for grant funding. However, this goal must be balanced against SAMHSA's obligation to ensure equitable treatment of applications. For this reason, SAMHSA has established certain formatting requirements for its applications. *If you do not adhere to these requirements, your application will be screened out and returned to you without review.*

☐ Use the PHS 5161–1 application.

☐ Applications must be received by the application deadline. Applications received after this date must have a proof of mailing date from the carrier dated at least 1 week prior to the due date. Private metered postmarks are not acceptable as proof of timely mailing. Applications not received by the application deadline or not postmarked at least 1 week prior to the application deadline will not be reviewed.

☐ Information provided must be sufficient for review.

☐ Text must be legible.

- Type size in the Project Narrative cannot exceed an average of 15 characters per inch, as measured on the physical page. (Type size in charts, tables, graphs, and footnotes will not be considered in determining compliance.)
- Text in the Project Narrative cannot exceed 6 lines per vertical inch.

☐ Paper must be white paper and 8.5 inches by 11.0 inches in size.

☐ To ensure equity among applications, the amount of space allowed for the Project Narrative cannot be exceeded.

- Applications would meet this requirement by using all margins (left, right, top, bottom) of at least one inch each, and adhering to the page limit for the Project Narrative stated in the SVC–04 PA (MOD).
- Should an application not conform to these margin or page limits, SAMHSA will use the following method to determine compliance: The total area of the Project Narrative (excluding margins, but including charts, tables, graphs and footnotes) cannot exceed 58.5 square inches multiplied by the page limit. This number represents the full page less margins, multiplied by the total number of allowed pages.
- Space will be measured on the physical page. Space left blank within the Project Narrative (excluding margins) is considered part of the Project Narrative, in determining compliance.

☐ The page limit for Appendices stated in the SVC–04 PA (MOD) cannot be exceeded.

To facilitate review of your application, follow these additional guidelines. Failure to adhere to the following guidelines will not, in itself, result in your application being screened out and returned without review. However, the information provided in your application must be sufficient for review. Following these guidelines will help ensure your application is complete, and will help reviewers to consider your application.

☐ The 10 application components required for SAMHSA applications should be included. These are:

- Face Page (Standard Form 424, which is in PHS 5161–1)
- Abstract
- Table of Contents
- Budget Form (Standard Form 424A, which is in PHS 5161–1)
- Project Narrative and Supporting Documentation
- Appendices
- Assurances (Standard Form 424B, which is in PHS 5161–1)
- Certifications (a form in PHS 5161–

1)
- Disclosure of Lobbying Activities (Standard Form LLL, which is in PHS 5161–1)
- Checklist (a form in PHS 5161–1)

☐ Applications should comply with the following requirements:
- Provisions relating to confidentiality, participant protection and the protection of human subjects, as indicated in the SVC–04 PA (MOD).
- Budgetary limitations as indicated in Sections I, II, and IV–5 of the SVC–04 PA (MOD).
- Documentation of nonprofit status as required in the PHS 5161–1.

☐ Pages should be typed single-spaced with one column per page.

☐ Pages should not have printing on both sides.

☐ Please use black ink, and number pages consecutively from beginning to end so that information can be located easily during review of the application. The cover page should be page 1, the abstract page should be page 2, and the table of contents page should be page 3. Appendices should be labeled and separated from the Project Narrative and budget section, and the pages should be numbered to continue the sequence.

☐ Send the original application and two copies to the mailing address in the funding announcement. Please do not use staples, paper clips, and fasteners. Nothing should be attached, stapled, folded, or pasted. Do not use heavy or lightweight paper, or any material that cannot be copied using automatic copying machines. Odd-sized and oversized attachments such as posters will not be copied or sent to reviewers. Do not include videotapes, audiotapes, or CD–ROMs.

3. *Submission Dates and Times:* Applications must be received by May 25, 2004. You will be notified by postal mail that your application has been received. Additional submission information is available in the SVC–04 PA (MOD) in Section IV–3.

4. *Intergovernmental Review:* Applicants for this funding opportunity must comply with Executive Order 12372 (E.O.12372). E.O.12372, as implemented through Department of Health and Human Services (DHHS) regulation at 45 CFR part 100, sets up a system for State and local review of applications for Federal financial assistance. Instructions for complying with E.O. 12372 are provided in the SVC–04 PA (MOD) in section IV–4. A current listing of State Single Points of Contact (SPOCs) is included in the application kit and is available at *www.whitehouse.gov/omb/grants/spoc.html*.

5. *Funding Restrictions:* Information concerning funding restrictions is available in the SVC–04 PA (MOD) in Section IV–5.

**V. Application Review Information**

1. *Evaluation Criteria:* Applications will be reviewed against the Evaluation Criteria and requirements for the Project Narrative specified in the SVC–04 PA (MOD). The following information describes exceptions or limitations to the SVC–04 PA (MOD) and provides special requirements that pertain only to Targeted Capacity Expansion Grants. Applicants must discuss the following requirements in their applications, in addition to the requirements specified in the SVC–04 PA (MOD).

1.1 The 2-year experience requirement in Section III.3.2., Evidence of Experience and Credentials, of the SVC–04 PA (MOD) applies only to specialist substance abuse treatment providers participating in the project.

1.2 You must plan to send a minimum of three persons (Authorized Grantee, Project Director if different, Evaluator) to at least two joint grantee meetings each year instead of the requirement for two persons to one joint grantee meeting each year as stated in the SVC–04 PA (MOD).

1.3 In ''Section E, Evaluation and Data,'' applicants must, in addition to the requirements specified in the SVC–04 PA (MOD), address the following requirements that are added to the end of the 6th bullet under in the Evaluation Criteria section of the SVC–04 PA (MOD):

Applicants must state whether or not the per-person costs are within the following reasonable ranges by treatment modality. Applicants must also discuss the reasonableness of the per-person costs. If proposed costs exceed reasonable ranges, a detailed justification must be provided.

*Program costs.* The following are considered reasonable ranges by treatment modality:

*Residential:* $3,000 to $10,000.

*Outpatient (Non-Methadone):* $1,000 to $5,000.

*Outpatient (Methadone):* $1,500 to $8,000.

*Intensive Outpatient:* $1,500 to $7,500.

*Screen/Brief Intervention/Brief Treatment/Outreach/Pretreatment Services:* $200 to $1,200.

SAMHSA/CSAT computes per person costs as follows. The total support requested for the life of the project is multiplied by .8 (.2 will be the allowance for GPRA reporting requirements). The resulting amount is then divided by the number of persons the applicant proposes to serve over the life of the project.

The outreach and pretreatment services cost band only applies to outreach and pretreatment programs that do not also offer treatment services but operate within a network of substance abuse treatment facilities. Treatment programs that add outreach and pretreatment services to a treatment modality or modalities are expected to fall within the cost band for that treatment modality.

1.4 Performance Measurement: All SAMHSA grantees are required to collect and report certain data, so that SAMHSA can meet its obligations under the Government Performance and Results Act (GPRA). Grantees of the Targeted Capacity Expansion Grants program will be required to report performance in several areas. Applicants must document their ability to collect and report the required data in ''Section E: Evaluation and Data'' of their applications.

All Targeted Capacity Expansion grant applicants must document their ability to collect and report data using the Targeted Capacity Expansion Client Level GPRA tool that can be found at *www.csat-gpra.samhsa.gov* (click on ''Data Collection Tools/Instruments''), along with instructions for completing it. Hard copies are available in the application kits distributed by SAMHSA's National Clearinghouse for Alcohol and Drug Information (NCADI). GPRA data must be collected at baseline (*i.e.*, the client's entry into the project), 6 months after the baseline, and 12 months after the baseline. Projects serving adolescents also must collect 3 month post-baseline data to capture the nuances of change particular to this population. GPRA data must be entered into the GPRA web system within 7 business days of the forms being completed. In addition, 80% of the participants must be followed up on. GPRA data are to be collected and then entered into CSAT's GPRA Data Entry and Reporting System (*www.csat-gpra.samhsa.gov*). Training and technical assistance on data collecting, tracking, and follow-up, as well as data entry, will be provided by CSAT.

1.5 Progress and Financial Reports. Grantees must provide progress reports every six months instead of annual progress reports required by the SVC–04 PA (MOD). The last report will be a final, cumulative report.

1.6 Public Health System Impact Statement (PHSIS). State and local governments and Indian tribal government applicants are not subject to the Public Health System Reporting Requirements; therefore, applicants for this TCE program are not required to follow the instructions for completing the PHSIS contained in the SVC–04 PA (MOD). In addition, applicants do not have to include an Appendix 4, Letter to the SSA, as required in the SVC–04 PA (MOD).

2. *Review and Selection Process:* Information about the review and selection process is available in the SVC–04 PA (MOD) in Section V–2.

## VI. Award Administration Information

Award administration information, including information about award notices, administrative requirements and reporting requirements, is included in the SVC–04 PA (MOD) in Section VI. SAMHSA's standard terms and conditions are available at *www.samhsa.gov/grants/2004/useful_info.asp*.

## VII. Contacts for Additional Information

For questions about program issues, contact: Ken Robertson, SAMHSA/CSAT, 5600 Fishers Lane, Rockwall II, Suite 740, Rockville, MD 20857; 301–443–7612; E-mail: *kroberts@samhsa.gov*.

For questions on grants management issues, contact: Kathleen Sample, SAMHSA, Division of Grants Management, 5600 Fishers Lane, Rockwall II, Suite 630, Rockville, MD 20857; 301–443–9667; E-mail: *ksample@samhsa.gov*.

Dated: March 25, 2004.

**Margaret Gilliam,**

*Acting Director, Office of Policy, Planning and Budget, Substance Abuse and Mental Health Services Administration.*

[FR Doc. 04–7090 Filed 3–26–04; 8:45 am]

**BILLING CODE 4162–20–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4903–N–19]**

## Notice of Submission of Proposed Information Collection to OMB: Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for extension of this currently approved collection.

**DATES:** *Comments Due Date:* April 28, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0414) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Melanie_Kadlic@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Mortgage Insurance Termination; Application for Premium Refund or Distributive Share Payment.

*OMB Approval Number:* 2502–0414.

*Form Numbers:* HUD–27050–B.

*Description of the Need for the Information and Its Proposed Use:* The subject information is submitted through Electronic Data Interchange and via FHA Connection to HUD by mortgagees to report the termination of FHA mortgage insurance on single-family dwellings. The Application for Premium Refund or Distributive Share Payment is submitted by former FHA mortgagors to apply for homeowner refunds of the unearned portion of the mortgage insurance premium or a distributive share payment.

*Respondents:* Individuals and mortgage lenders.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| *Reporting Burden* | 1,506,000 | 3,070,001 | | 0.16 | | 500,600 |

*Total Estimated Burden Hours:* 500,600.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 19, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 04–6869 Filed 3–26–04; 8:45 am]

**BILLING CODE 4210–72–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No.FR–4903–N–20]**

### Notice of Submission of Proposed Information Collection to OMB: Adjustable Rate Mortgages (ARMs)

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for renewal of approval for the ARMs information collection requirement. The terms of all ARMS insured by HUD–FHA must be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect any adjustment to the interest rate and monthly mortgage amount.

**DATES:** *Comments Due Date:* April 28, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0322) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Melanie_Kadlic@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov*; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Adjustable Rate Mortgages (ARMs).

*OMB Approval Number:* 2502–0322.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* The terms of all ARMS insured by HUD–FHA must be fully disclosed as part of the loan approval process. Additionally, an annual disclosure is required to reflect any adjustment to the interest rate and monthly mortgage amount.

*Respondents:* Individuals or household, business or other for-profit.

*Frequency of Submission:* On occasion and annually.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| *Reporting Burden* | 20,000 | 9.8 | | 0.058 | | 11,520 |

*Total Estimated Burden Hours:* 11,520.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 22, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 04–6870 Filed 3–26–04; 8:45 am]

**BILLING CODE 4210–72–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4903–N–21]**

### Notice of Submission of Proposed Information Collection to OMB: Mortgage Insurance Termination and Application for Premium Refund or Distributive Share Payment

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for renewal of approval for the currently approved collection of information.

**DATES:** *Comments Due Date:* April 28, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0414) should be sent to: HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; E-mail *Melanie_Kadlic@omb.eop.gov.*

**FOR FURTHER INFORMATION CONTACT:** Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC

20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins or on HUD's Web page at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm.*

**SUPPLEMENTARY INFORMATION:** The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the contact information of an agency official familiar with the proposal and the OMB Desk Officer for the Department.

This notice also lists the following information:

*Title of Proposal:* Mortgage Insurance Termination and Application for Premium Refund or Distributive Share Payment.

*OMB Approval Number:* 2502–0414.

*Form Numbers:* None.

*Description of the Need for the Information and Its Proposed Use:* Mortgage Insurance Termination information is submitted to HUD by lenders to terminate FHA insurance. The Application for Premium Refund or Distributive Share Payment is submitted by homeowners applying for the unearned portion of the mortgage insurance premium or a distributive share payment.

*Respondents:* Individuals or household, Business or other for-profit.

*Frequency of Submission:* On occasion.

| | Number of respondents | Annual responses | × | Hours per response | = | Burden hours |
|---|---|---|---|---|---|---|
| *Reporting Burden* | 1,506,000 | 3,070,001 | | 0.16 | | 500,600 |

*Total Estimated Burden Hours:* 500,600.

*Status:* Extension of a currently approved collection.

**Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 22, 2004.

**Wayne Eddins,**

*Departmental Reports Management Officer, Office of the Chief Information Officer.*

[FR Doc. 04–6871 Filed 3–26–04; 8:45 am]

**BILLING CODE 4210–72–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4907–N–09]**

## Notice of Proposed Information Collection: Comment Request; Home Equity Conversion Mortgage Insurance (HECM) Application for Reverse Mortgages

**AGENCY:** Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** The Proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

**DATES:** *Comments Due Date:* May 28, 2004.

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW., L'Enfant Plaza Building, Room 8003, Washington, DC 20410 or *Wayne_Eddins@hud.gov.*

**FOR FURTHER INFORMATION CONTACT:** Vance T. Morris, Director, Office of Single Family Housing Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

**SUPPLEMENTARY INFORMATION:** The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed colleciton of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

This Notice also lists the following information.

*Title of Proposal:* Home Equity Conversion Mortgage Insurance (HECM) Application for Reverse Mortgages.

*OMB Control Number, if applicable:* 2502–0524.

*Description of the need for the information and proposed use:* HUD's collection of this information permits lenders to use this streamlined application as an optional form to gather borrowed data to determine eligiblity for the HECM program. The Department will gather the data for reports to Congress regarding the program.

*Agency form numbers, if applicable:* HUD–92900–A, HUD–92900–B, & Fannie Mae Form 1003.

*Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:* The estimated number of burden hours needed to prepare the information collection is 5,000; the number of respondents is 5,000 generating approximately 5,000 annual responses; the frequency of response is on occasion, and the estimated time needed to prepare the response is one hour.

*Status of the proposed information collection:* Reinstatement of a currently

approved collection for which approval has expired.

**Authority:** The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 22, 2004.

**Sean Cassidy,**

*General Deputy Assistant Secretary for Housing.*

[FR Doc. 04–6877 Filed 3–26–04; 8:45 am]

**BILLING CODE 4210–27–M**

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

**[GWCRC Meeting Notice No. 2–04]**

### Guam War Claims Review Commission

The Guam War Claims Review Commission, pursuant to section 10 of the Federal Advisory Committee Act (5 U.S.C. App. 10), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business, as follows:

*Date and Time:* Monday, April 5, 2004, 10 a.m.; Tuesday, April 6, 2004, 10 a.m.; Wednesday, April 7, 2004, 10 a.m.; Thursday, April 8, 2004, 10 a.m.

*Place:* 600 E St., NW., Room 6002, Washington, DC.

*Subject Matter:* Discussion of the report which the Commission is required to submit to the Secretary of the Interior and Congressional committees under the Guam War Claims Review Commission Act, Pub. L. 107–333.

*Status:* Open.

Requests for information concerning these meetings should be addressed to David Bradley, Executive Director, Guam War Claims Review Commission, c/o Foreign Claims Settlement Commission of the United States, 600 E St., NW., Washington DC 20579, telephone (202) 616–6975, FAX (202) 616–6993.

Dated at Washington, DC.

**Mauricio J. Tamargo,**

*Chairman.*

[FR Doc. 04–6894 Filed 3–26–04; 8:45 am]

**BILLING CODE 4310–93–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Sandhill Crane Harvest Survey

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

**DATES:** We accept comments until May 28, 2004.

**ADDRESSES:** Mail your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; or fax (703) 358–2269.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information, or related forms, contact by phone at Anissa Craghead at (703) 358–2445.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the Sandhill Crane Harvest Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0023.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection approval request seeks approval for us to continue conducting the Sandhill Crane Harvest Survey. This is an annual questionnaire survey of people who obtained a sandhill crane hunting permit. At the end of the hunting season, we randomly select a sample of permit holders and send those people a questionnaire that asks them to report the date, State, county, and number of birds harvested for each of their sandhill crane hunts. Their responses provide estimates of the temporal and geographic distribution of the harvest as well as the average harvest per hunter, which, combined with the total number of sandhill crane permits issued, enables the Service to estimate the total harvest of sandhill cranes.

The Sandhill Crane Harvest Survey enables us to annually estimate the magnitude of the harvest and the portion it constitutes of the total mid-continent sandhill crane population. Based on information from this survey, hunting regulations are adjusted as needed to optimize harvest at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

*Title:* Sandhill Crane Harvest Survey.

*OMB Control Number:* 1018–0023.

*Service Form Number(s):* 3–530, 3–530A, 3–2056N.

*Frequency of Collection:* Annually.

*Description of Respondents:* Individuals and households.

*Number of Respondents:* About 8,000 hunters will respond to the Sandhill Crane Harvest Survey annually.

*Total Annual Burden Hours:* The reporting burden is estimated to average 5 minutes per respondent. Total annual burden is 667 hours.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the

quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: March 23, 2004.

**Anissa Craghead,**

*Information Collection Officer, Fish and Wildlife Service.*

[FR Doc. 04–6875 Filed 3–26–04; 8:45 am]

**BILLING CODE 4310–55–P**

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## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act; Migratory Bird Harvest Surveys

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice; request for comments.

**SUMMARY:** The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A description of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, or explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

**DATES:** We accept comments until May 28, 2004.

**ADDRESSES:** Mail your comments on the requirement to Anissa Craghead, Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 4401 N. Fairfax Drive, Arlington, VA 22203; or fax (703) 358–2269.

**FOR FURTHER INFORMATION CONTACT:** To request a copy of the information collection request, explanatory information, or related forms, contact by phone at Anissa Craghead at(703) 358–2445.

**SUPPLEMENTARY INFORMATION:** The Office of Management and Budget (OMB) regulations at 5 CFR part 1320, which implement provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the Migratory Bird Harvest Surveys. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0015.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird harvest. Knowledge attained by determining harvests and harvest rates of migratory game birds is used to regulate populations (by promulgating hunting regulations) and to encourage hunting opportunity, especially where crop depredations are chronic and/or lightly harvested populations occur. Based on information from harvest surveys, hunting regulations can be adjusted as needed to optimize harvests at levels that provide a maximum of hunting recreation while keeping populations at desired levels.

This information collection approval request combines two sets of surveys (the Migratory Bird Hunter Survey and the Parts Collection Survey) and associated forms because they are interrelated and/or dependent upon each other. The Waterfowl Hunter Survey that was previously included in this information collection, and its associated forms (form 3–1823A and 3–2056G), is not a part of this renewal request because it has been completely replaced by the Migratory Bird Hunter Survey.

The Migratory Bird Hunter Survey is based on the Migratory Bird Harvest Information Program, under which each State annually provides a list of all licensed migratory bird hunters in the State. Randomly selected migratory bird hunters are sent either a waterfowl questionnaire (form 3–2056J), a dove and band-tailed pigeon questionnaire (form 3–2056K), a woodcock questionnaire (form 3–2056L), or a snipe, rail, gallinule, and coot questionnaire (form 3–2056M) and are asked to report their harvest of those species. The resulting estimates of harvest per hunter are combined with the complete list of migratory bird hunters to provide estimates of the total harvest of those species.

The Parts Collection Survey estimates the species, sex, and age composition of the harvest, and the geographic and temporal distribution of the harvest. Randomly selected successful hunters who responded to the Migratory Bird Hunter Survey the previous year are asked to complete and return a postcard (forms 3–165A and C) if they are willing to participate in the Parts Collection Survey. Respondents are provided postage-paid envelopes before the hunting season and asked to send in a wing or the tail feathers from each duck, goose, or coot (form 3–165) they harvest, or a wing from each woodcock, band-tailed pigeon, snipe, rail, or gallinule (form 3–165B) they harvest. The wings and tail feathers are used to identify the species, age, and sex of the harvested sample. Respondents are also asked to report on the envelope the date and location (state and county) of harvest for each bird. Results of this survey are combined with harvest estimates from the Migratory Bird Hunter Survey to provide species-specific national harvest estimates.

The combined results of these surveys enable the Service to evaluate the effects of season length, season dates, and bag limits on the harvest of each species, and thus help determine appropriate hunting regulations.

*Title:* Migratory Bird Harvest Surveys.

*Approval Number:* 1018–0015.

*Service Form Number(s):* 3–165, 3–165A–C, 3–2056J–M.

*Frequency of Collection:* Annually.

*Description of Respondents:* Individuals and households.

*Number of Respondents:* About 3,600,000 individuals are expected to participate in the Migratory Bird Harvest Information Program. Recent Service experience indicates that about 84,000 hunters will respond to the Migratory Bird Hunter Survey each year, and about 10,000 hunters will respond to the Parts Collection Survey annually.

*Total Annual Burden Hours:* Total annual burden is estimated to be 133,933 hours. The reporting burden is estimated to average 2 minutes per respondent for the Migratory Bird Harvest Information Program, 4 minutes per respondent for the Migratory Bird Hunter Survey, and 50 minutes per respondent for the Parts Collection Survey.

We invite comments concerning this renewal on: (1) Whether the collection

of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: March 23, 2004.

**Anissa Craghead,**

*Information Collection Officer, Fish and Wildlife Service.*

[FR Doc. 04–6876 Filed 3–26–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and/or marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*), the Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) The application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in section 2 of the Endangered Species Act of 1973, as amended.

| Permit No. | Applicant | Receipt of application Federal Register notice | Permit issuance date |
|---|---|---|---|
| **Endangered Species** | | | |
| 078822 | U.S. Fish and Wildlife Service | 68 FR 64638; November 14, 2003 | February 25, 2004. |
| **Marine Mammals** | | | |
| 080871 | James N. Maddox | 68 FR 75618; December 31, 2003 | March 2, 2004. |
| 080901 | James W. Ribman | 68 FR 75618; December 31, 2003 | March 10, 2004. |
| 081171 | David L. Currier | 69 FR 2155; January 14, 2004 | March 2, 2004. |
| 081749 | Paul Thompson | 69 FR 3386; January 23, 2004 | March 9, 2004. |
| 081757 | James Hunter Goodwin Jr. | 69 FR 3386; January 23, 2004 | March 10, 2004. |

Dated: March 12, 2004.

**Charles S. Hamilton,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–6907 Filed 3–26–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Issuance of Permits

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of issuance of permits for endangered species and/or marine mammals.

**SUMMARY:** The following permits were issued.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on the dates below, as authorized by the provisions of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*), and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), Fish and Wildlife Service issued the requested permit(s) subject to certain conditions set forth therein. For each permit for an endangered species, the Service found that (1) the application was filed in good faith, (2) the granted permit would not operate to the disadvantage of the endangered species, and (3) the granted permit would be consistent with the purposes and policy set forth in Section 2 of the Endangered Species Act of 1973, as amended.

| Permit No. | Applicant | Receipt of application Federal Register notice | Permit issuance date |
|---|---|---|---|
| **Endangered Species** | | | |
| 009445 | University of GA; Infectious Diseases Laboratory. | 69 FR 5568; February 5, 2004 | March 16, 2004. |

| Permit No. | Applicant | Receipt of application Federal Register notice | Permit issuance date |
|---|---|---|---|
| **Marine Mammals** | | | |
| 080423 | Terrance J. Mick | 69 FR 2155; January 14, 2004 | March 2, 2004. |
| 081357 | Timothy E. Brown | 69 FR 2155; January 14, 2004 | March 10, 2004. |
| 081170 | Robert D. McCutcheon | 69 FR 2155; January 14, 2004 | March 11, 2004. |
| 080874 | Robert D. Pettus | 68 FR 75618; December 31, 2003 | March 10, 2004. |

Dated: March 19, 2004.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–6908 Filed 3–26–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by April 28, 2004.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone (703) 358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

**PRT–081595**

*Applicant:* Gibbon Conservation Center, Saugus, California.

The applicant requests a permit to import one male capped gibbon (*Hylobates pileatus*) from the Twycross Zoo, Atherstone, Warks, United Kingdom, for the purpose of enhancement of the survival of the species through a cooperative breeding program and scientific research.

**PRT–084530**

*Applicant:* Bruce G. Cowell, Red Bud, IL.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

### Endangered Marine Mammals and Marine Mammals

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered marine mammals and/or marine mammals. The applications were submitted to satisfy requirements of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*) and/or the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing endangered species (50 CFR Part 17) and/or marine mammals (50 CFR Part 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

**PRT–084463**

*Applicant:* Jimmie C. Rosenbruch, Santa Clara, UT.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Davis Strait polar bear population in Canada prior to February 18, 1997, for personal use.

Dated: March 19, 2004.

**Monica Farris,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–6909 Filed 3–26–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Receipt of Applications for Permit

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications for permit.

**SUMMARY:** The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

**DATES:** Written data, comments or requests must be received by April 28, 2004.

**ADDRESSES:** Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:**

### Endangered Species

The public is invited to comment on the following applications for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications

should be submitted to the Director (address above).

*Applicant:* Edward J. Moore, Live Oak, TX, PRT–083886.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Silvio Arguello, Miami, FL, PRT–084042.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

*Applicant:* Illinois Natural History Survey, Champaign, Illinois, PRT–840202.

The applicant requests renewal of a permit to export and re-import museum specimens of endangered and threatened species of plants and animals previously accessioned into the applicant's collection for scientific research. This notification covers activities to be conducted by the applicant over a five-year period.

Date: March 12, 2004.

**Charles S. Hamilton,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–6910 Filed 3–26–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Emergency Exemption: Issuance of Permit for Endangered Species

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of emergency issuance of a permit for endangered species.

**SUMMARY:** The following permit was issued.

**ADDRESSES:** Documents and other information submitted for this application are available for review by any party who submits a written request to the U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax (703) 358–2281.

**FOR FURTHER INFORMATION CONTACT:** Division of Management Authority, telephone 703/358–2104.

**SUPPLEMENTARY INFORMATION:** On March 9, 2004, the U.S. Fish and Wildlife Service (Service) issued a permit (PRT–084147) to Marc Chandler, Oranjestad, Aruba, for the temporary import of one captive born female Siberian tiger (*Panthera tigris altaica*) for treatment of an emergency veterinary condition. The 30-day comment period required under the U.S. Endangered Species Act was waived pursuant to 16 U.S.C. 1539(c). This action was authorized under Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). The Service determined that a veterinary emergency existed effecting the life and welfare of the animal and no reasonable alternative was available. The tiger will remain in the United States for veterinary treatment and will then be re-exported.

The U.S. Fish and Wildlife Service has information collection approval from the Office of Management and Budget (OMB) through March 31, 2004, OMB Control Number 1018–0093. On March 8, 2004, the Service published a notice in the **Federal Register** (69 FR 10738) notifying the public that it has submitted a request to OMB to renew approval of this information collection for three (3) years. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: March 12, 2004.

**Charles S. Hamilton,**

*Senior Permit Biologist, Branch of Permits, Division of Management Authority.*

[FR Doc. 04–6906 Filed 3–26–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Endangered and Threatened Species Permit Applications

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of receipt of applications.

**SUMMARY:** The following applicants have applied for scientific research permits to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended.

**DATES:** To ensure consideration, written comments must be received on or before April 28, 2004.

**ADDRESSES:** Written comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act. Documents will be available for public inspection, by appointment only, during normal business hours at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW., Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

**FOR FURTHER INFORMATION CONTACT:** Chief, Endangered Species Division, (505) 248–6922.

**SUPPLEMENTARY INFORMATION:**

**Permit No. TE–083049**

*Applicant:* John R. Alexander, Fort Worth, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring for interior least tern (*Sterna antillarum*) within Texas.

**Permit No. TE–028986**

*Applicant:* ASM Affiliates, Inc., Encinitas, California.

Applicant requests a new permit for research and recovery purposes to receive and house dead specimens, which will be transferred from other institutions authorized to collect them, of the following species: bonytail chub (*Gila elegans*), Colorado pikeminnow (*Ptychocheilus lucius*), desert pupfish (*Cyprinodon macularius*), Gila topminnow (*Poeciliopsis occidentalis*), humpback chub (*Gila cypha*), razorback sucker (*Xyrauchen texanus*), and woundfin (*Plagopterus argentissimus*).

**Permit No. TE–083342**

*Applicant:* Anthony A. Echelle, Stillwater, Oklahoma.

Applicant requests a new permit for research and recovery purposes to survey for and collect desert pupfish (*Cyprinodon macularius*) within Arizona, California, and New Mexico.

**Permit No. TE–083036**

*Applicant:* John S. Shackford, Edmond, Oklahoma.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys and nest monitoring for black-capped vireo (*Vireo atricapillus*) within Oklahoma.

**Permit No. TE–083917**

*Applicant:* Jake W. Tanner, Bloomfield, New Mexico.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

**Permit No. TE–083956**

*Applicant:* Sandy A. Wolf, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes to survey for, capture, and affix radio transmitters to lesser long-nosed bats (*Leptonycteris curasoae yerbabuenae*) within Arizona.

**Permit No. TE–081509**

*Applicant:* Cecil R. Schwalbe, Tucson, Arizona.

Applicant requests a new permit for research and recovery purposes in order to establish and maintain a refugium population of Gila topminnow (*Poeciliopsis occidentalis*) within Arizona.

**Permit No. TE–083050**

*Applicant:* Stephen F. Austin State University, Nacogdoches, Texas.

Applicant requests a new permit for research and recovery purposes to survey for and collect American burying beetles (*Nicrophorus americanus*) within Texas.

**Authority:** 16 U.S.C. 1531, *et seq.*

Dated: March 15, 2004.

**Bryan Arroyo,**

*Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.*

[FR Doc. 04–6952 Filed 3–26–04; 8:45 am]

BILLING CODE 4310–55–P

## DEPARTMENT OF JUSTICE

### Justice Management Division

### Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-day notice of information collection under review: Electronic Applications for the Attorney General's Honor Program and Summer Law Intern Program.

The Department of Justice (DOJ), Justice Management Division (JMD), has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 28, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Deana M.C. Willis, 20, Massachusetts Avenue, NW., Suite 5200, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Electronic Applications for the Attorney General's Honor Program and Summer Law Intern Program.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. Justice Management Division, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals. This data collection is the only vehicle for the U.S. Department of Justice (Department) to hire graduating law students. This application is submitted voluntarily once a year by students and judicial law clerks. The information sought relates only to the hiring criteria established by the Department's personnel staff.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 5,000 respondents will complete each form within an hour.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 5,000 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 24, 2004.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, PRA, Department of Justice.*

[FR Doc. 04–6948 Filed 3–26–04; 8:45 am]

BILLING CODE 4410–26–P

## DEPARTMENT OF JUSTICE

### Office of Justice Programs; Agency Information Collection Activities: Proposed Collection; Comments Requested

**ACTION:** 60-Day Notice of Information Collection Under Review: Traffic Stop Data Collection Policies for State Police, 2004.

The Department of Justice (DOJ), Office of Justice Programs (OJP) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until May 28, 2004. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Lynn Bauer by email *bauerl@ojp.usdoj.gov.*

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your

comments should address one or more of the following four points:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Traffic Stop Data Collection Policies for State Police, 2004.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: SP–1, Office of Justice Programs.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: State Government. Other: none. 42 U.S.C. 3711, *et. Seq.* authorizes the Department of Justice to collect and analyze statistical information concerning crime, juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 49 respondents will complete each form within 45 minutes.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 38 total annual burden hours associated with this collection.

If additional information is required contact: Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: March 19, 2004.

**Brenda E. Dyer,**

*Department Deputy Clearance Officer, PRA, Department of Justice.*

[FR Doc. 04–6949 Filed 3–26–04; 8:45 am]

**BILLING CODE 4410–18–P**

## OFFICE OF NATIONAL DRUG CONTROL POLICY

### Meeting of the Advisory Commission on Drug Free Communities

**AGENCY:** Office of National Drug Control Policy.

**ACTION:** Notice of meeting.

**SUMMARY:** The Advisory Commission on Drug Free Communities will hold a regularly scheduled meeting on April 20th and 21st. The Commission provides recommendations to the Director concerning the development and evaluation of community anti-drug coalitions. The agenda includes a presentation on coalition sustainability, the role of the National Anti-Drug Coalition Institute's Training and Technical Assistance in coalition sustainability, and the effective and potential uses of community sectors.

**DATES:** The meeting will be held at noon through 5:30 p.m. Tuesday, April 20, 2004 and continue from 8:30 a.m. through 3 p.m. on Wednesday, April 21, 2004. There will be an opportunity for public comment from 11:30 p.m. to noon on Wednesday, April 21, 2004.

**ADDRESSES:** The meeting will held at the Office of National Drug Control Policy, 750 17th Street, NW., 5th Floor Conference Room, Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Sigrid Melus, (202) 395–5016.

Dated: March 18, 2004.

**Daniel R. Petersen,**

*Assistant General Counsel.*

[FR Doc. 04–6434 Filed 3–26–04; 8:45 am]

**BILLING CODE 3180–02–M**

## NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

### National Endowment for the Arts; Proposed Collection: Comment Request

**ACTION:** Notice.

**SUMMARY:** The National Endowment for the Arts, 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)(A)). This program helps ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the National Endowment for the Arts, on behalf of the Federal Council on the Arts and the Humanities, is soliciting comments concerning renewal of the Application for Indemnification. A copy of this collection request can be obtained by contacting the office listed below in the address section of this notice.

**DATES:** Written comments must be submitted to the office listed in the address section below on or before June 4, 2004. The National Endowment for the Arts is particularly interested in comments which:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

—Enhance the quality, utility and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting the electronic submissions of responses.

**ADDRESSES:** Alice Whelihan, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Room 726, Washington, DC 20506–0001, telephone (202) 682–5574 (this is not a toll-free number), fax (202) 682–5603.

**Murray Welsh,**

*Director, Administrative Services.*

[FR Doc. 04–6898 Filed 3–26–04; 8:45 am]

**BILLING CODE 7536–01–M**

## NUCLEAR REGULATORY COMMISSION

**[Docket No. 030–00883]**

### Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Rutgers, the State University of New Jersey, J. B. Smith Hall Building in New Brunswick, NJ

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Randolph C. Ragland, Jr., Decommissioning & Laboratory Branch, Division of Nuclear Materials Safety, Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406, telephone (610) 337–5083, fax (610) 337–5269; or by e-mail: *rcr1@nrc.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment to Materials License No. 29–05218–28 issued to Rutgers, the State University of New Jersey, licensee, to authorize release of their J. B. Smith Hall building, on Cook Campus, in New Brunswick, NJ for unrestricted use. NRC has prepared an Environmental Assessment (EA) in support of this action in accordance with the requirements of 10 CFR part 51. Based on the EA, the NRC has concluded that a Finding of No Significant Impact (FONSI) is appropriate. The amendment will be issued following the publication of this notice.

### II. EA Summary

The purpose of the proposed action is to authorize the release of the licensee's J. B. Smith Hall building, on their Cook Campus in New Brunswick, NJ for unrestricted use. Rutgers University was authorized by NRC from the 1970s to use radioactive materials for laboratory research and training purposes at the site. On November 21, 2003, Rutgers University requested that NRC release the facility for unrestricted use. Rutgers University has conducted surveys of the facility and provided information to the NRC to demonstrate that the site meets the license termination criteria in subpart E of 10 CFR part 20 for unrestricted release.

The NRC staff has prepared an EA in support of the proposed license amendment. The staff evaluated Rutgers University's request and the results of the surveys and has concluded that the completed action complies with the criteria in subpart E of 10 CFR part 20.

### III. Finding of No Significant Impact

The staff has prepared the EA, summarized above, in support of the proposed license amendment to release the J. B. Smith Hall for unrestricted use. The staff has found that the environmental impacts from the proposed action are bounded by the impacts evaluated by the ''Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Facilities'' (NUREG–1496). The staff has also found that the non-radiological impacts are not significant. On the basis of the EA, the NRC has concluded that the environmental impacts from the proposed action are expected to be insignificant and has determined not to prepare an environmental impact statement for the proposed action.

### IV. Further Information

The EA and the documents related to this proposed action, including the application for the license amendment and supporting documentation, are available for inspection at NRC's Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html* (ADAMS Accession Nos. ML040790360, ML033300511, ML040710910, ML040710882). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. These documents are also available for inspection and copying for a fee at the Region I Office, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. Persons who do not have access to ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or (301) 415–4737, or by e-mail to *pdr@nrc.gov*.

Dated in King of Prussia, Pennsylvania this 22nd day of March, 2004.

For the Nuclear Regulatory Commission.

**Ronald R. Bellamy,**

*Chief, Decommissioning & Laboratory Branch, Division of Nuclear Materials Safety, Region I.*

[FR Doc. E4–692 Filed 3–26–04; 8:45 am]

**BILLING CODE 7590–01–P**

## NUCLEAR REGULATORY COMMISSION

### Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of meeting.

**SUMMARY:** The U.S. Nuclear Regulatory Commission will convene a teleconference meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) on April 8, 2004. The topic of discussion will be ''ACMUI Vote on the Dose Reconstruction Subcommittee's Recommendation Relating to the NRC's Method of Dose Reconstruction.''

**DATES:** The teleconference meeting will be held on Thursday April 8, 2004, from 1 p.m. to 2 p.m. eastern standard time. *Public Participation:* Any member of the public who wishes to participate in the teleconference discussion may contact Angela R. Williamson using the contact information below.

**FOR FURTHER INFORMATION CONTACT:** Angela R. Williamson, telephone (301) 415–5030; e-mail *arw@nrc.gov* of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

*Conduct of the Meeting:* Manuel D. Cerqueira, M.D., will chair the meeting. Dr. Cerqueira will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit a reproducible copy to Angela Williamson, U.S. Nuclear Regulatory Commission, Two White Flint North, Mail Stop T8F5, Washington, DC 20555–0001. Hard copy submittals must be postmarked by March 30, 2004. Electronic submittals must be submitted by April 5, 2004. Any submittal must pertain to the topic on the agenda for the meeting.

2. Questions from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's Web site (*www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about May 10, 2004. Minutes of the meeting will be available on or about May 30, 2004.

This meeting will be held in accordance with the Atomic Energy Act

of 1954, as amended (primarily section 161a); the Federal Advisory Committee Act (5 U.S.C. App 2); and the Commission's regulations in title 10, U.S. Code of Federal Regulations, part 7.

Dated: March 23, 2004.

**Andrew L. Bates,**

*Advisory Committee Management Officer.*

[FR Doc. E4–693 Filed 3–26–04; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Submission for OMB Review; Commment Request for Reclearance of a Revised Information Collection: Forms RI 20–7 and RI 30–3

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget a request for reclearance of a revised information collection. RI 20–7, Representative Payee Application, is used by the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) to collect information from persons applying to be fiduciaries for annuitants or survivor annuitants who appear to be incapable of handling their own funds or for minor children. RI 30–3, Information Necessary for a Competency Determination, collects medical information regarding the annuitant's competency for OPM's use in evaluating the annuitant's condition.

Approximately 12,480 RI 20–7 forms will be completed annually. Each form requires approximately 30 minutes to complete. The annual burden is 6,240 hours. Approximately 250 RI 30–3 forms will be completed annually. Each form requires approximately 1 hour to complete. The total annual burden is 6,490 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via e-mail to *mbtoomey@opm.gov.* Please include a mailing address with your request.

**DATES:** Comments on this proposal should be received within 30 calendar days from the date of this publication.

**ADDRESSES:** Send or deliver comments to—

Ronald W. Melton, Chief, Operation Support Group, Center for Retirement and Insurance Services, U.S. Office of Personnel Management, 1900 E Street, NW., Room 3349A, Washington, DC 20415–3540;

and

Joseph Lackey, OPM Desk Officer, Office of Information & Regulatory Affairs, Office of Management & Budget, New Executive Office Building, NW., Room 10235, Washington, DC 20503.

*For Information Regarding Administrative Coordination—Contact:* Cyrus S. Benson, Team Leader, Publications Team, Support Group, (202) 606–0623.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–6924 Filed 3–26–04; 8:45 am]

**BILLING CODE 6325–38–P**

## OFFICE OF PERSONNEL MANAGEMENT

### Excepted Service

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** This gives notice of OPM decisions granting authority to make appointments under Schedules A, B and C in the excepted service as required by 5 CFR 6.6 and 213.103.

**FOR FURTHER INFORMATION CONTACT:** Ms. Delores Everett, Center for Leadership and Executive Resources Policy, Division for Strategic Human Resources Policy, 202–606–1050.

**SUPPLEMENTARY INFORMATION:** Appearing in the listing below are the individual authorities established under Schedule C between February 1, 2004 and February 29, 2004. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 is published each year.

### Schedule A

No Schedule A appointments for February 2004.

### Schedule B

No Schedule B appointments for February 2004.

### Schedule C

The following Schedule C appointments were approved for February 2004:

Section 213.3303 Executive Office of the President

Office of National Drug Control Policy

QQGS00016 Staff Assistant to the Associate Director, Legislative Affairs. Effective February 05, 2004

QQGS00026 Staff Assistant to the Press Secretary (Assistant Director). Effective February 06, 2004

Office of Science and Technology Policy

TSGS60021 Confidential Assistant to the Chief of Staff. Effective February 27, 2004

Section 213.3304 Department of State

DSGS60736 Staff Assistant to the Assistant Secretary. Effective February 02, 2004

DSGS60737 Special Assistant to the Legal Adviser. Effective February 02, 2004

DSGS60746 Legislative Management Officer to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective February 02, 2004

DSGS60740 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective February 06, 2004

DSGS60744 Special Assistant to the Under Secretary for Arms Control and Security Affairs. Effective February 11, 2004

DSGS60745 Special Assistant to the Assistant Secretary. Effective February 11, 2004

DSGS60725 Press Officer to the Assistant Secretary for Public Affairs. Effective February 12, 2004

DSGS60748 Attorney-Advisor to the Assistant Secretary for Administration. Effective February 13, 2004

DSGS60742 Public Affairs Specialist to the Assistant Secretary for Public Affairs. Effective February 18, 2004

DSGS60747 Staff Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective February 19, 2004

DSGS60751 Special Assistant to the Under Secretary for Public Diplomacy and Public Affairs. Effective February 20, 2004

DSGS60752 Special Assistant to the Under Secretary for Arms Control and Security Affairs. Effective February 20, 2004

DSGS60749 Special Assistant to the Deputy Assistant Secretary. Effective February 26, 2004

Section 213.3305 Department of the Treasury

DYGS00440 Public Affairs Specialist to the Director, Public Affairs. Effective February 04, 2004

DYGS60421 Special Assistant to the Assistant Secretary (Deputy Under Secretary) Legislative Affairs. Effective February 20, 2004

DYGS60395 Deputy Executive Secretary to the Executive Secretary. Effective February 27, 2004

Section 213.3306 Department of Defense
DDGS16790 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective February 04, 2004
DDGS16791 Public Affairs Specialist to the Public Affairs Specialist. Effective February 04, 2004
DDGS16784 Defense Fellow to the Special Assistant to the Secretary of Defense for White House Liaison. Effective February 19, 2004
Section 213.3307 Department of the Army
DWGS60076 Special Assistant to the Assistant Secretary of Army (Civil Works). Effective February 24, 2004
Section 213.3310 Department of Justice
DJGS00207 Special Assistant to the Director, Office on Violence against Women to the Director of the Violence against Women Office. Effective February 02, 2004
Section 213.3311 Department of Homeland Security
DMGS00189 Assistant Director for Legislative Affairs for Emergency Preparedness and Response to the Chief of Staff. Effective February 02, 2004
DMOT00190 Director, Stakeholder and Industry Affairs to the Administrator. Effective February 03, 2004
DMGS00191 Director of Scheduling and Advance to the Deputy Chief of Staff for Operations. Effective February 05, 2004
DMGS00193 Special Assistant to the Under Secretary for Border and Transportation Security. Effective February 05, 2004
DMGS00195 Policy Analyst to the Director, Office for Domestic Preparedness. Effective February 05, 2004
DMGS00192 Special Assistant to the Chief of Staff. Effective February 06, 2004
DMGS00172 Counsel to the General Counsel. Effective February 11, 2004
DMGS00194 Director of Communications for Immigration and Customs Enforcement to the Chief of Staff. Effective February 13, 2004
DMGS00171 Staff Assistant to the Assistant Secretary for Infrastructure Protection. Effective February 19, 2004
DMGS00174 Special Assistant for Special Projects to the Chief of Staff. Effective February 23, 2004
DMGS00200 Deputy White House Liaison to the White House Liaison. Effective February 23, 2004
DMGS00201 Business Liaison to the Special Assistant. Effective February 23, 2004
DMGS00198 Special Assistant to the Assistant Secretary for Plans, Programs and Budgets. Effective February 24, 2004
Section 213.3312 Department of the Interior
DIGS01590 Special Assistant—Advance to the Director of Scheduling and Advance. Effective February 23, 2004
Section 213.3313 Department of Agriculture
DAGS00602 Confidential Assistant to the Under Secretary for Rural Development. Effective February 02, 2004
DAGS00604 Confidential Assistant to the Director, Office of Business and Program Integration. Effective February 03, 2004
DAGS00605 Confidential Assistant to the Administrator for Risk Management. Effective February 11, 2004
DAGS00606 Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective February 11, 2004
DAGS00611 Director to the Administrator, Food and Nutrition Service. Effective February 18, 2004
DAGS00609 Special Assistant to the Associate Assistant Secretary for Civil Rights. Effective February 19, 2004
DAGS00607 Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective February 23, 2004
DAGS00603 Staff Assistant to the White House Liaison. Effective February 27, 2004
Section 213.3314 Department of Commerce
DCGS00573 Special Assistant to the Deputy Assistant Secretary for Export Promotion Services. Effective February 04, 2004
DCGS00657 Confidential Assistant to the Assistant Secretary for Export Enforcement. Effective February 05, 2004
DCGS00608 Confidential Assistant to the Chief of Staff to the Under Secretary. Effective February 11, 2004
DCGS00660 Public Affairs Director to the Assistant Secretary for Trade Development. Effective February 12, 2004
DCGS00486 Deputy Director of Speechwriting to the Director for Speechwriting. Effective February 27, 2004
DCGS00488 Special Assistant to the Director, Executive Secretariat. Effective 26, 2004
Section 213.3315 Department of Labor
DLGS60253 Special Assistant to the Deputy Secretary of Labor. Effective February 06, 2004
DLGS60235 Legislative Assistant to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 26, 2004
Section 213.3316 Department of Health and Human Services
DHGS60031 Speechwriter to the Assistant Secretary for Public Affairs. Effective February 11, 2004
Section 213.3317 Department of Education
DBGS00305 Special Assistant to the Director, Office of Public Affairs (Communications Director). Effective February 02, 2004
DBGS00304 Deputy Chief of Staff for Strategy/Policy to the Chief of Staff. Effective February 05, 2004
DBGS00306 Deputy Assistant Secretary to the Assistant Secretary for Legislation and Congressional Affairs. Effective February 06, 2004
DBGS00308 Special Assistant to the Deputy Assistant Secretary for Intergovernmental, Constituent Relations and Corporate Liaison. Effective February 12, 2004
DBGS00307 Special Assistant to the Director, Faith-Based and Community Initiatives Center. Effective February 23, 2004
DBGS00312 Confidential Assistant to the Assistant Secretary for Postsecondary Education. Effective February 27, 2004
Section 213.3318 Environmental Protection Agency
EPGS03612 Policy Advisor to the Administrator. Effective February 11, 2004
EPGS03613 Senior Advance Coordinator to the Deputy Associate Administrator for the Office of Public Affairs. Effective February 27, 2004
Section 213.3325 United States Tax Court
JCGS60072 Trial Clerk to the Chief Judge. Effective February 02, 2004
Section 213.3327 Department of Veterans Affairs
DVGS60004 Associate Dean, Veterans Administration Learning University/ Special Assistant to the Secretary to the Dean, Veterans Affairs Learning University. Effective February 18, 2004
Section 213.3330 Securities and Exchange Commission
SEOT60003 Confidential Assistant to a Commissioner. Effective February 05, 2004
Section 213.3331 Department of Energy
DEGS00394 Deputy Assistant Secretary for Energy Policy to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 03, 2004
DEGS00400 Policy Advisor to the Assistant Secretary for Fossil Energy. Effective February 04, 2004

DEGS00402 Advance Representative to the Director, Office of Scheduling and Advance. Effective February 05, 2004

DEGS00401 Special Assistant to the Director, Office of Scheduling and Advance. Effective February 11, 2004

DEGS00403 Special Assistant to the Chief of Staff. Effective February 18, 2004

Section 213.3332 Small Business Administration

SBGS60190 Deputy Chief of Staff to the Chief of Staff. Effective February 05, 2004

SBGS60019 Special Assistant to the Deputy Administrator. Effective February 11, 2004

SBGS60545 Assistant Administrator to the Associate Administrator for Field Operations. Effective February 11, 2004

SBGS60546 Senior Advisor to the Ombudsman to the National Ombudsman. Effective February 12, 2004

SBGS60004 Senior Advisor for Women's Issues to the Deputy Administrator. Effective February 20, 2004

Section 213.3337 General Services Administration

GSGS60094 Congressional Relations Officer to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective February 19, 2004

Section 213.3339 United States International Trade Commission

TCGS00033 Staff Assistant to a Commissioner. Effective February 04, 2004

TCGS00031 Executive Assistant to a Commissioner. Effective February 06, 2004

TCGS00013 Staff Assistant (Economics) to the Chairman. Effective February 18, 2004

Section 213.3344 Occupational Safety and Health Review Commission

SHGS00002 Confidential Assistant to the Commission Member (Chairman). Effective February 11, 2004

Section 213.3384 Department of Housing and Urban Development

DUGS60494 Special Assistant to the Deputy Assistant Secretary. Effective February 09, 2004

Section 213.3394 Department of Transportation

DTGS60460 Director of Public Affairs to the Administrator. Effective February 04, 2004

**Authority:** 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218.

Office of Personnel Management.

**Kay Coles James,**

*Director.*

[FR Doc. 04–6923 Filed 3–26–04; 8:45 am]

**BILLING CODE 6325–39–P**

## POSTAL SERVICE

### Plan for Secure Postage Meter Technology

**AGENCY:** Postal Service.

**ACTION:** Revision of final plan.

**SUMMARY:** The Postal™ Service published a schedule for the withdrawal from the market of postage meters involving technology defined as within ''phases III and IV'' of the Postal Service's Plan for Secure Postage Meter Technology. The schedule and definition of these phases were published in the **Federal Register** on February 13, 2002 (Vol. 67, No. 30, pages 6766–6767). This notice revises the postage meter retirement schedule by extending the final date for placement of enhanced Computerized Meter Resetting System (CMRS) letterpress meters, identified in the **Federal Register** notice as phase IV meters, to December 31, 2004. No other changes are made to the plan as stated in the **Federal Register**.

**DATES:** This notice is effective March 29, 2004.

**FOR FURTHER INFORMATION CONTACT:** Wayne Wilkerson by fax at (703) 292–4073.

**SUPPLEMENTARY INFORMATION:** Phases III and IV of the Postal Service Plan for Secure Postage Meter Technology describe the retirement of postage meters which employ letterpress printing technology. To address customer concerns regarding the availability of postage meters employing digital printing technology and capable of operating at sufficient speeds to meet the needs of market segments now using phase IV letterpress postage meters, the Postal Service is extending the date for final placements of phase IV meters to December 31, 2004. However, the final date for removal of these meters from the market remains December 31, 2008. To avoid any misunderstanding, we are reprinting in this notice the entire Postal Service Plan for the Retirement of Letterpress Postage Meters with the revised date for ending the placement of phase IV meters.

**Revision of the Final Postal Service Plan for the Retirement of Letterpress Postage Meters**

(The changes are shown in italicized text.)

Phases III and IV of the Postal Service Plan for Secure Postage Meter Technology affect *postage* meters that *use letterpress printing technology and* are reset *remotely* under the Computerized Meter Resetting System (CMRS). The affected meters print indicia *with* letterpress technology *and may or may not have* a digital display. If such a meter has an additional feature that automatically disables the meter if it is not reset within a specified time period or when certain preprogrammed criteria are met, it is called an enhanced meter. Phase III of the proposed plan required that the users of nonenhanced CMRS letterpress meters be notified *by the manufacturer* of the schedule for the retirement of their meters by December 31, 2001 *and* placement of nonenhanced CMRS letterpress meters *could not continue after* December 31, 2002. These meters must be off the market and withdrawn from service by December 31, 2006. Prior to the signing of a contract for the new placement of any nonenhanced CMRS non-digitally printing meter, the manufacturer placing the meter must notify the customer that the meter must be withdrawn from service by December 31, 2006. Phase IV of the plan *required* that the customers of enhanced CMRS letterpress meters be notified of the schedule for the retirement of their meters by June 30, 2003. The placement of enhanced CMRS letterpress meters *is scheduled to* cease by *December 31, 2004,* and these meters must be off the market and withdrawn from service by December 31, 2008. Prior to the signing of a contract for the new placement of any enhanced CMRS non-digitally printing meter, the manufacturer placing the meter must notify the customer that the meter must be withdrawn from service by December 31, 2008.

**Neva Watson,**

*Attorney, Legislative.*

[FR Doc. 04–6887 Filed 3–26–04; 8:45 am]

**BILLING CODE 7710–12–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Rel. No. IC–26390; File No. 812–13073]**

### Allstate Life Insurance Company, et al.; Notice of Application

March 23, 2004.

**AGENCY:** Securities and Exchange Commission (''SEC'' or ''Commission'').

**ACTION:** Notice of application for an order of exemption pursuant to section 17(b) of the Investment Company Act of

1940 (the ''Act'') from section 17(a) of the Act.

**APPLICANTS:** Allstate Life Insurance Company (''Allstate Life'') and Allstate Life Insurance Company of New York (''Allstate New York''), and Allstate Financial Advisors Separate Account I (''Allstate Separate Account I''), Allstate Life Insurance Company Separate Account A (''ALIC Separate Account A''), Allstate Life of New York Separate Account A (''ALNY Separate Account A''), Allstate Life of New York Variable Annuity Account (''ALNY VA''), and Allstate Life of New York Variable Annuity Account II (''ALNY VAII'') (collectively, the ''Separate Accounts'').

**SUMMARY OF APPLICATION:** Applicants seek an order of exemption to the extent necessary to permit a transfer of assets and assumption of liabilities of: (1) ALIC Separate Account A by Allstate Separate Account I; and (2) ALNY VA and ALNY VA II by ALNY Separate Account A.

**FILING DATE:** The application was filed on March 8, 2004.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 22, 2004, and must be accompanied by proof of service, on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the Commission.

**ADDRESSES:** Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicants, Charles Smith, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062.

**FOR FURTHER INFORMATION CONTACT:** Alison White, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; the complete application is available for a fee from the Public Reference Branch of the Commission.

**Applicants' Representations**

1. Allstate Life is a stock life insurance company organized under the laws of the State of Illinois in 1957. Allstate Life's home office is located at 3100 Sanders Road, Northbrook, Illinois, 60062. Allstate Life is licensed to operate in the District of Columbia, Puerto Rico, and all states except New York. Allstate Life is a wholly owned subsidiary of Allstate Insurance Company, a stock property-liability insurance company incorporated under the laws of Illinois. All of the outstanding capital stock of Allstate Insurance Company is owned by The Allstate Corporation.

2. Allstate Life established Allstate Separate Account I and ALIC Separate Account A (collectively ''Allstate Life Separate Accounts'') as separate accounts pursuant to Illinois law. Each is a ''separate account,'' as defined by section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

3. Allstate New York is a stock life insurance company organized under the laws of the State of New York in 1967 and was known as ''Financial Life Insurance Company'' from 1967 to 1978. From 1978 to 1984, the Company was known as ''PM Life Insurance Company.'' Since 1984, the Company has been known as ''Allstate Life Insurance Company of New York.'' Allstate New York's home office is located at 100 Motor Parkway, Hauppauge, NY 11788–5107. Allstate New York is licensed to operate in the states of New York and Texas. Allstate New York is a wholly owned subsidiary of Allstate Life.

4. Allstate New York established ALNY Separate Account A, ALNY VA and ALNY VAII (collectively ''Allstate New York Separate Accounts'') as separate accounts pursuant to New York law. Each is a ''separate account,'' as defined by section 2(a)(37) of the Act, and is registered with the Commission pursuant to the Act as a unit investment trust.

5. Certain variable annuity contracts sponsored by Allstate Life and issued through Allstate Separate Account I and ALIC Separate Account A are registered with the Commission pursuant to the Securities Act of 1933 (the ''Securities Act''). Certain variable annuity contracts sponsored by Allstate New York and issued through ALNY Separate Account A, ALNY VA and ALNY VA II are registered with the Commission pursuant to the Securities Act.

6. Allstate Separate Account I is divided into 105 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of an open-end, diversified management investment company registered under the Act (the ''Funds''). ALIC Separate Account A is divided into 47 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

7. ALNY Separate Account A is divided into 111 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds. ALNY VA is divided into 11 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds. ALNY VAII is divided into 52 sub-accounts, each of which invests exclusively in shares of a corresponding portfolio of the Funds.

8. After considering the nature and purpose of each separate account, the Boards of Directors of Allstate Life and Allstate New York have determined that the efficiency of the operations of the separate accounts could be improved, and the overall administration enhanced, by merging: (a) ALIC Separate Account A into Allstate Separate Account I ; and (b) ALNY VA and ALNY VA II into ALNY Separate Account A (together, the ''Mergers''). The Mergers will be structured so there will be no change in the rights and benefits of persons having an interest in any of the Contracts issued by those Separate Accounts.

9. The consolidation of the overlapping sub-accounts will take place at their respective net asset values and each Allstate Life or Allstate New York owner holding units of interest in one of the merging sub-accounts will have those units exchanged for units of equal value in the corresponding surviving sub-account. The values of the exchanged interests under the Contracts will thus be equivalent. The accumulation unit values for these sub-accounts will not change, and the Contract value of any affected Contract owner immediately after the sub-account consolidation will be the same as the value immediately before the sub-account consolidation.

10. The Merger provides for the transfer of ALIC Separate Account A assets to Allstate Separate Account I and the assumption of the liabilities and contractual obligations of ALIC Separate Account A by Allstate Separate Account I in return for the crediting of accumulation units of Allstate Separate Account I to ALIC Separate Account A contract owners. Once this process has been completed, the units of ALIC Separate Account A would be cancelled, ALIC Separate Account A would submit an application to the Commission pursuant to section 8(f) of the Act to

effect its deregistration as an investment company and would cease to exist, and Allstate Separate Account I would continue to exist.

11. Immediately following the Merger, each ALIC Separate Account A contract owner will possess a number of Allstate Separate Account I units (both full and fractional) that, when multiplied by the unit value of Allstate Separate Account I units, would result in an aggregate unit value equal to the aggregate unit value of the units the contract owner had in the respective Separate Account immediately before the consummation of the Merger.

12. Allstate Life will distribute to each existing ALIC Separate Account A contract owner: (a) A contract rider indicating that such contracts are thereafter funded by Allstate Separate Account I; (b) a letter informing such contract owners of the Merger; and (c) a prospectus supplement that reflects Allstate Separate Account I as the separate account funding the contracts.

13. The Merger provides for the transfer of ALNY VA and ALNY VA II assets to ALNY Separate Account A and the assumption of the liabilities and contractual obligations of each of ALNY VA and ALNY VA II by ALNY Separate Account A in return for the crediting of accumulation units of ALNY Separate Account A to ALNY VA and ALNY VA II contract owners. Once this process has been completed, the units of ALNY VA and ALNY VA II would be cancelled, ALNY VA and ALNY VA II would each submit an application to the Commission pursuant to section 8(f) of the Act to effect its deregistration as an investment company and would cease to exist, and ALNY Separate Account A would continue to exist.

14. Immediately following the Merger, each ALNY VA and ALNY VA II contract owner will possess a number of ALNY Separate Account A units (both full and fractional) that, when multiplied by the unit value of ALNY Separate Account A units, would result in an aggregate unit value equal to the aggregate unit value of the units the contract owner had in the respective Separate Account immediately before the consummation of the Merger.

15. Allstate New York will distribute to each existing ALNY VA and ALNY VA II contract owner: (a) A contract rider indicating that such contracts are thereafter funded by ALNY Separate Account A; (b) a letter informing such contract owners of the Merger; and (c) a prospectus supplement that reflects ALNY Separate Account A as the separate account funding the contracts.

16. Except for the change in the separate account funding the variable annuity contracts, all the rights and benefits of the contract owners will remain unchanged after the Mergers. Further, the fees and charges under the contracts will not change as a result of the Mergers.

17. Allstate Life and Allstate New York assert that the Mergers will have no tax consequences for Allstate Life and Allstate New York contract owners. In addition, no payments will be required or charges imposed under the Allstate Life and Allstate New York contracts in connection with, or by virtue of, the Mergers that would not otherwise be required or imposed.

**Applicants' Legal Analysis**

1. Section 17(a) of the Act provides generally that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such a person, acting as principal to knowingly purchase or to sell any security or other property from or to such registered company.

2. Section 17(b) of the Act provides generally that the Commission may grant an order exempting a transaction otherwise prohibited by section 17(a) of the Act if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of each registered investment company concerned; and (c) the proposed transaction is consistent with the general purposes of the Act.

3. The Mergers may be subject to the provisions of section 17(a) of the Act because it could be viewed as involving an investment company (ALIC Separate Account A, ALNY VA, ALNY VA II,) selling its assets to another investment company (Allstate Separate Account I, ALNY Separate Account A) that is affiliated by reason of having sponsoring insurance companies that are under common control, or by reason of having common directors.

4. Applicants request an order of the Commission pursuant to section 17(b) of the Act to the extent necessary to exempt the Mergers from the provisions of section 17(a) of the Act.

5. Applicants assert that the terms of the Mergers are fair and reasonable. Applicants represent that the transfer of assets held by ALIC Separate Account A will be made at the relative net asset values of the sub-accounts. Consequently, the interests of Allstate Separate Account I owners will not be diluted by the Merger, and each ALIC Separate Account A contract will be credited, immediately after the Merger, with units of Allstate Separate Account I having the same aggregate value as the aggregate value of the units of ALIC Separate Account A credited to such contract immediately prior to the Merger. Likewise, each ALNY VA and ALNY VA II contract will be credited, immediately after the Merger, with units of ALNY Separate Account A having the same aggregate value as the aggregate value of the units of ALNY VA and ALNY VA II credited to such contract immediately prior to the Merger. The Merger will not result in any change in charges, costs, fees or expenses borne by any Contract owner. No direct or indirect costs will be incurred by any Separate Account concerned as a result of the Mergers. Therefore, the proposed transactions will not result in dilution of the economic interests of any Contract owner. In addition, the Mergers will result in no change in the investment options available to Contract owners. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Mergers.

6. The consolidation of any overlapping sub-accounts will take place at their respective net asset values and each Allstate Life or Allstate New York Contract owner holding units of interest in one of the merging sub-accounts will have those units exchanged for units of equal value in the corresponding surviving sub-account. The values of the exchanged interests under the Contracts will thus be equivalent. The accumulation unit values for these sub-accounts will not change, and the Contract value of any affected Contract owner immediately after the sub-account consolidation will be the same as the value immediately before the sub-account consolidation.

7. Applicants assert that the Mergers do not involve overreaching on the part of any party involved and is consistent with the general purposes of the Act. The purposes of the Mergers are to consolidate three variable annuity separate accounts, each of which issue variable annuity contracts, into a single separate account and to consolidate two variable life separate accounts, each of which issue variable life contracts, into a single separate account. The Mergers will allow for administrative efficiencies and cost savings by Allstate Life and Allstate New York because they can consolidate its separate account operations. The Merger will not dilute or otherwise adversely affect the economic interests of the owners of the Allstate Life and Allstate New York contracts, nor will the Mergers affect the values determined under the Allstate Life and Allstate New York contracts.

8. Applicants represent that the Mergers are consistent with the policy of each Separate Account as set forth in its registration statement. The policy of each Separate Account is to invest in the Funds. As noted above, the Mergers will result in no change to any Fund underlying the Separate Accounts. Each sub-account of the Separate Accounts will continue to invest in the same Fund as that sub-account invested in prior to the Mergers. Accordingly, the assets underlying the Contracts will continue to be invested in accordance with the policies recited in the Separate Accounts' respective registration statements.

**Conclusion**

For the reasons summarized above, Applicants assert that the terms of the Merger, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, are consistent with the policies of the Allstate Life and Allstate New York Separate Accounts as recited in their registration statements, are consistent with the general purposes of the Act, and therefore meet the conditions for exemptive relief established by section 17(b).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6891 Filed 3–26–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Investment Company Act Release No. 26392; 812–13035]**

## SPDR Trust, Series 1, et al.; Notice of Application

March 23, 2004.

**AGENCY:** Securities and Exchange Commission (''Commission'').

**ACTION:** Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 12(d)(1)(A) and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

**SUMMARY OF THE APPLICATION:** The order would permit certain registered management investment companies and unit investment trusts to acquire shares of certain registered unit investment trusts that operate as exchange-traded funds and are outside the same group of investment companies. The order also would amend three prior orders.

**APPLICANTS:** SPDR Trust, Series 1 (''SPDR Trust''), DIAMONDS Trust, Series 1 (''DIAMONDS Trust''), MidCap SPDR Trust, Series 1 (''MidCap SPDR Trust''), and PDR Services LLC (''PDR'').

**FILING DATES:** The application was filed on October 31, 2003, and amended on March 17, 2004. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

**HEARING OR NOTIFICATION OF HEARING:** An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 16, 2004, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

**ADDRESSES:** Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicants: SPDR Trust, Series 1, c/o State Street Bank and Trust Company, 225 Franklin Street, Boston, MA 02110; DIAMONDS Trust, Series 1, c/o State Street Bank and Trust Company, 225 Franklin Street, Boston, MA 02110; MidCap SPDR Trust, Series 1, c/o The Bank of New York, 101 Barclay Street, New York, NY 10286; and, PDR Services LLC, c/o American Stock Exchange LLC, 86 Trinity Place, New York, NY 10006.

**FOR FURTHER INFORMATION CONTACT:** Stacy L. Fuller, Senior Counsel, and Michael W. Mundt, Senior Special Counsel, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

### Applicants' Representations

1. SPDR Trust, DIAMONDS Trust and MidCap SPDR Trust (together, the ''Trusts'') are unit investment trusts organized under New York law and registered under the Act. The SPDR Trust, DIAMONDS Trust and MidCap SPDR Trust seek to provide investment results that closely track, respectively, the S&P 500 Composite Stock Price Index, Dow Jones Industrial Average and S&P MidCap 400 Index (each, an ''Underlying Index,'' and together, the ''Underlying Indices''). The Trusts operate as exchange-traded funds (''ETFs''). PDR is the sponsor of each Trust.

2. Applicants request relief to permit certain registered management investment companies and unit investment trusts to acquire shares of the Trusts (''Units'') beyond the limitations in section 12(d)(1)(A). To the extent that a Purchasing Fund (as defined below) owns 5% or more of the Units of a Trust, applicants further request relief from sections 17(a)(1) and (2) of the Act to permit the Trust, as an affiliated person of the Purchasing Fund, to sell Units to, and redeem Units from, the Purchasing Fund. Applicants request that the relief apply to (i) the Trusts, and (ii) registered management investment companies (''Purchasing Management Companies'') and unit investment trusts (''Purchasing Trusts'') that are not sponsored or advised by PDR or an entity controlling, controlled by, or under common control with PDR and that are not part of the same ''group of investment companies'' as the Trusts within the meaning of section 12(d)(1)(G)(ii) of the Act. Purchasing Management Companies and Purchasing Trusts are collectively referred to as ''Purchasing Funds.''[1] Purchasing Trusts do not include the Trusts. Each Purchasing Management Company will be advised by an investment adviser within the meaning of section 2(a)(20)(A) of the Act (''Advisor'') and may be advised by investment adviser(s) within the meaning of section 2(a)(20)(B) of the Act (each, a ''Subadvisor''). Any investment adviser to a Purchasing Management Company will be registered the Investment Advisers Act of 1940 or exempt from registration.

3. Applicants state that the Trusts will offer the Purchasing Funds simple and efficient vehicles to achieve asset allocation, diversification and other investment objectives, and to implement various investment strategies. Among other purposes, applicants assert that the Trusts provide instant and highly liquid exposure to the markets represented by each Underlying Index

[1] All entities that currently intend to rely on the requested order are named as applicants. Any other entity that relies on the order in the future will comply with the terms and conditions of the application. A Purchasing Fund may rely on the requested order only to invest in the Trusts and not in any other registered investment company.

and permit investors to achieve such exposure through a single transaction instead of the many transactions that might otherwise be needed to obtain comparable market exposure.

**Applicants' Legal Analysis**

*A. Section 12(d)(1)*

1. Section 12(d)(1)(A) of the Act prohibits a registered investment company from acquiring shares of an investment company if the securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the total assets of the acquiring company, or together with the securities of any other investment companies, more than 10% of the total assets of the acquiring company.

2. Section 12(d)(1)(J) of the Act provides that the Commission may exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision of section 12(d)(1) if the exemption is consistent with the public interest and the protection of investors. Applicants seek an exemption under section 12(d)(1)(J) to permit the Purchasing Funds to acquire Units beyond the limits set forth in section 12(d)(1)(A).

3. Applicants state that the proposed arrangement and conditions will adequately address the policy concerns underlying section 12(d)(1)(A), which include concerns about undue influence by a fund of funds over underlying funds, excessive layering of fees, and overly complex fund structures. Applicants believe that the requested exemption is consistent with the public interest and the protection of investors.

4. Applicants state that the proposed arrangement will not result in undue influence by a Purchasing Fund or its affiliates over the Trusts. To limit the influence that a Purchasing Fund may have over a Trust, applicants propose a condition that prohibits the Advisor or a sponsor to a Purchasing Trust (''Sponsor'') and certain affiliates from controlling (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. The condition also prohibits any Subadvisor and certain affiliates from controlling (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. To limit further the potential for undue influence by the Purchasing Funds over the Trusts, applicants propose conditions 2, 3 and 4, stated below, to preclude a Purchasing Fund and its affiliated entities from taking advantage of a Trust with respect to transactions between the entities and to ensure the transactions will be on an arm's length basis.

5. As an additional assurance that a Purchasing Fund understands the implications of an investment by it in a Trust under the requested order, each Purchasing Fund and Trust will execute an agreement (''Purchasing Fund Agreement'') stating that the board of directors or trustees (''Board'') of, and the Advisor and any Subadvisor to, a Purchasing Management Company, and the Sponsor and trustee of a Purchasing Trust (''Trustee''), as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order.

6. Applicants do not believe that the proposed arrangement will involve excessive layering of fees. Applicants state that because each Trust is a unit investment trust that does not charge any advisory fee, there will be no layered or duplicative advisory fees. Further, applicants note that Units are sold without sales charges, and applicants propose a condition that precludes any sales charges and/or service fees charged with respect to shares of a Purchasing Fund from exceeding the limits applicable to a fund of funds under Conduct Rule 2830 of the National Association of Securities Dealers, Inc. (''Rule 2830''). The Advisor, or Trustee or Sponsor, as applicable, of a Purchasing Fund also will waive fees otherwise payable to it by the Purchasing Fund in an amount at least equal to any compensation received by the Advisor, or Trustee or Sponsor, or an affiliated person of the Advisor, or Trustee or Sponsor, from a Trust in connection with the investment by the Purchasing Fund in the Trust. Any Subadvisor will waive fees otherwise payable to it by a Purchasing Management Company in an amount at least equal to any compensation received by the Subadvisor, or its affiliate, in connection with any investment by the Purchasing Management Company in the Trust that is made at the direction of the Subadvisor.

7. Applicants submit that the proposed arrangement will not create an overly complex fund structure. Applicants note that the Trusts will be prohibited from acquiring securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A). Applicants also represent that the Purchasing Fund Agreement will require a Purchasing Fund that exceeds the 5% or 10% limitation in section 12(d)(1)(A)(ii) or (iii), respectively, to disclose in its prospectus that it may invest in ETFs and to disclose, in ''plain English,'' in its prospectus the unique characteristics of doing so, including but not limited to the expense structure and any additional expenses of investing in ETFs.

*B. Section 17(a)*

1. Section 17(a) of the Act generally prohibits sales or purchases of securities between a registered investment company and any affiliated person of the company. Section 2(a)(3)(B) of the Act defines an ''affiliated person'' of another person to include any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person.

2. Applicants state that a Trust could become an affiliated person of a Purchasing Fund if the Purchasing Fund acquires 5% or more of the Trust's securities. Although applicants believe that most Purchasing Funds will purchase Units in the secondary market and not directly from a Trust, a Purchasing Fund might seek to transact directly with a Trust.[2] Section 17(a) could prevent a Trust from selling Units to, and redeeming Units from, a Purchasing Fund that owns 5% or more of the Trust.

3. Section 17(b) of the Act authorizes the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that (i) the terms of the proposed transaction are fair and reasonable and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policies of each registered investment company involved; and (iii) the proposed transaction is consistent with the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt any persons or transactions from any provision of the Act if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the proposed arrangement satisfies the standards for relief under sections 6(c) and 17(b) of the Act. Applicants state that the terms of the arrangement are fair and reasonable and do not involve overreaching. Applicants note that any consideration for the purchase or redemption of Units directly from a Trust will be based on the net asset

[2] Units are only purchased and redeemed directly from a Trust in large blocks (*e.g.*, 50,000 Units) called ''creation units.''

value (''NAV'') of the Trust in accordance with the policies and procedures set forth in the Trust's registration statement. Applicants state that the proposed arrangement will be consistent with the policies of each Purchasing Fund and Trust, and with the general purposes of the Act. Applicants also believe that the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

*C. Prior Orders*

1. Applicants seek to amend certain prior exemptive orders (''Prior Orders'').[3] Specifically, applicants seek to amend condition 3 to the Prior Order for the SPDR Trust and condition 2 to the Prior Orders for the DIAMONDS Trust and the MidCap SPDR Trust so that it is consistent with the relief being requested from section 12(d)(1). The condition currently provides that the prospectus and Product Description[4] of the relevant Trust will clearly disclose that, for purposes of the Act, Units are issued by the Trust and that the acquisition of Units by investment companies is subject to the restrictions of section 12(d)(1). Under the new condition, Purchasing Funds will instead be alerted that they may invest in the Trusts in excess of the limits of section 12(d)(1) to the extent that they comply with the terms and conditions of the requested order granting relief from section 12(d)(1), including the requirement that they enter into a Purchasing Fund Agreement with the relevant Trust regarding the terms of the investment. Applicants will replace the relevant condition in each of the Prior Orders with condition 9, as stated below. In addition, applicants will add conditions 10 and 11, as stated below, to each of the Prior Orders.

**Applicants' Conditions**

Applicants agree that the order granting the requested relief will be subject to the following conditions:

1. (a) The Advisor or Sponsor, (b) any person controlling, controlled by, or under common control with an Advisor or Sponsor, and (c) any investment company and any issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act that is advised by an Advisor or sponsored by a Sponsor, or any person controlling, controlled by, or under common control with an Advisor or Sponsor (together, the ''Purchasing Fund's Advisory Group'') will not control (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. (a) Any Subadvisor, (b) any person controlling, controlled by, or under common control with the Subadvisor, and (c) any investment company or issuer that would be an investment company but for section 3(c)(1) or 3(c)(7) of the Act (or portion of such investment company or issuer) that is advised by the Subadvisor or any person controlling, controlled by, or under common control with the Subadvisor (together, the ''Purchasing Fund's Subadvisory Group'') will not control (individually or in the aggregate) a Trust within the meaning of section 2(a)(9) of the Act. If, as a result of a decrease in the outstanding Units of a Trust, a Purchasing Fund's Advisory Group or a Purchasing Fund's Subadvisory Group, each in the aggregate, becomes a holder of more than 25 percent of the outstanding Units of a Trust, it will vote its Units in the same proportion as the vote of all other Unitholders.

2. A Purchasing Fund and its Advisor and any Subadvisor, Sponsor, promoter, and principal underwriter, and any person controlling, controlled by, or under common control with any of those entities (each, a ''Purchasing Fund Affiliate'') will not cause any existing or potential investment by the Purchasing Fund in a Trust to influence the terms of any services or transactions between the Purchasing Fund or Purchasing Fund Affiliate and the Trust or the promoter, sponsor or principal underwriter of a Trust, and any person controlling, controlled by, or under common control with any of those entities (each, a ''Trust Affiliate'').

3. The Board, including a majority of the disinterested directors or trustees, of a Purchasing Management Company, will adopt procedures reasonably designed to assure that the Advisor and any Subadvisor are conducting the investment program of the Purchasing Management Company without taking into account any consideration received by the Purchasing Management Company or a Purchasing Fund Affiliate from a Trust or a Trust Affiliate in connection with any services or transactions.

4. No Purchasing Fund or Purchasing Fund Affiliate will cause a Trust to purchase a security from any underwriting or selling syndicate in which a principal underwriter is an officer, director, member of an advisory board, Advisor, Subadvisor, employee or Sponsor of the Purchasing Fund, or a person of which any such officer, director, member of an advisory board, Advisor, Subadvisor, employee or Sponsor is an affiliated person.

5. Before investing in a Trust in excess of the limits in section 12(d)(1)(A), each Purchasing Fund and Trust will execute a Purchasing Fund Agreement stating, without limitation, that the Board of, and the Advisor and any Subadvisor to, a Purchasing Management Company, or the Trustee and Sponsor of a Purchasing Trust, as applicable, understand the terms and conditions of the order and agree to fulfill their responsibilities under the order. The relevant Trust and the Purchasing Fund will maintain and preserve a copy of the order and the agreement for a period of not less than six years from the end of the fiscal year in which any investment occurred, the first two years in an easily accessible place.

6. An Advisor, or a Trustee or Sponsor, as applicable, will waive fees otherwise payable to it by a Purchasing Fund in an amount at least equal to any compensation received by the Advisor, or Trustee or Sponsor, or an affiliated person of the Advisor, or Trustee or Sponsor, from a Trust in connection with the investment by the Purchasing Fund in the Trust. Any Subadvisor will waive fees otherwise payable to the Subadvisor, directly or indirectly, by the Purchasing Management Company in an amount at least equal to any compensation received by the Subadvisor, or an affiliated person of the Subadvisor, in connection with any investment by the Purchasing Management Company in the Trust made at the direction of the Subadvisor. In the event that the Subadvisor waives fees, the benefit of the waiver will be passed through to the Purchasing Management Company.

7. Any sales charges and/or service fees charged with respect to shares of a Purchasing Fund will not exceed the limits applicable to a fund of funds as set forth in Rule 2830.

8. No Trust will acquire securities of any investment company or company relying on section 3(c)(1) or 3(c)(7) of the Act in excess of the limits contained in section 12(d)(1)(A) of the Act.

**Amendments to the Prior Orders**

Applicants agree to replace condition 3 of the SPDR Order, condition 2 of the DIAMONDS Order and condition 2 of

[3] The Prior Orders are SPDR Trust, Series 1, *et al.*, Investment Company Act Release Nos. 18959 (Sept. 23, 1992) (notice) and 19055 (Oct. 26, 1992) (order) (''SPDR Order''), DIAMONDS Trust, Series 1, *et al.*, Investment Company Act Release Nos. 22927 (Dec. 5, 1997) (notice) and 22979 (Dec. 30, 1997) (order) (''DIAMONDS Order''), and MidCap SPDR Trust, Series 1, *et al.*, Investment Company Act Release Nos. 20797 (Jan. 3, 1995) (notice) and 20844 (Jan. 18, 1995) (order) (''MidCap SPDR Order'').

[4] A ''Product Description'' is a document that accompanies secondary market trades of Units and provides a plain English overview of a Trust.

the MidCap SPDR Order with the following condition:

9. The Trust's prospectus and Product Description will clearly disclose that, for purposes of the Act, the Units are issued by the Trust, which is a registered investment company, and the acquisition of Units by investment companies is subject to the restrictions of section 12(d)(1) of the Act, except as permitted by an exemptive order that permits registered investment companies to invest in a Trust beyond the limits in section 12(d)(1), subject to certain terms and conditions, including that the registered investment company enter into a Purchasing Fund Agreement with the Trust regarding the terms of the investment.

Applicants agree to add the following condition to each of the Prior Orders:

10. The website of the American Stock Exchange (''Amex''), which is and will be publicly accessible at no charge, will contain the following information, on a per Unit basis, for the Trust: (a) The prior business day's NAV and the midpoint of the bid/ask price on the Amex at the time NAV is calculated (''Bid/Ask Price''), and a calculation of the premium or discount of such Bid/Ask Price against such NAV; and (b) data in tabular, chart or graphical format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. In addition, the Product Description for the Trust will state that the Amex Web site has information about the premiums and discounts at which the Units have traded.

Applicants agree to add the following condition to each of the Prior Orders: [5]

11. The prospectus and annual report for the Trust will also include: (a) Data in tabular, chart or graphical form displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges (i) in the case of the prospectus, for the most recently completed calendar year (and the most recently completed calendar quarter or quarters, as applicable), and (ii) in the case of the annual report, for the immediately preceding five years, as applicable; and (b) the following data in tabular, chart or graphical form, calculated on a per Unit basis for one, five and ten year periods (or life of the Trust, if shorter), (i) the cumulative total return and the average annual total return based on NAV and Bid/Ask Price, and (ii) the cumulative total return of the Underlying Index.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6918 Filed 3–26–04; 8:45 am]

**BILLING CODE 8010–01–P**

[5] For purposes of this condition, for all dates prior to April 3, 2001, the term ''Bid/Ask Price'' shall mean the midpoint of the best bid and offer prices on the Amex at the closing time of the regular trading session for the Units, ordinarily 4:15 p.m., rather than at the time NAV was calculated.

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 35–27819]**

## Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 23, 2004.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provision of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 19, 2004, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any requet for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 19, 2004, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

### Northeast Utilities, et. al. (70–10184)

Northeast utilities (''NU''), 174 Brush Hill Avenue, West Springfield, Massachusetts 01090, a registered holding company under the Act; and its subsidiaries; The Connecticut Light and Power Company, a wholly-owned public utility subsidiary of NU, CL&P Receivables Corporation, NU Enterprises, Inc., Northeast Generation Services Company, Woods Network Services, Inc., NGS Mechanical, Inc., E.S. Boulos Company, Woods Electrical Co., Inc., Northeast Generation Company, Select Energy Inc., Select Energy New York, Inc., The Rocky River Realty Company, The Quinnehtuk Company, Charter Oak Energy, Inc., Mode 1 Communications, Inc., Northeast Utilities Service Company, Yankee Energy System, Inc., a wholly-owned public utility holding company subsidiary exempt under section 3(a)(1) of the Act, Yankee Gas Services Company, a gas public utility, Yankee Energy Financial Services Company, Northeast Nuclear Energy Company, a wholly-owned public utility subsidiary of NU, NorConn Properties, Inc., and Yankee Energy Services Company, each located at 107 Selden Street, Berlin, Connecticut, 06037; Public Service Company of New Hampshire, a wholly-owned public utility subsidiary of NU, Properties, Inc., North Atlantic Energy Corporation, a wholly-owned public utility subsidiary of NU, and North Atlantic Energy Services Corp., each located at Energy Park, 780 North Commercial Street, Manchester, New Hampshire, 03101; Select Energy Services, Inc., Reeds Ferry Supply Co., Inc., Select Energy Contracting, Inc., and HEC/Tobyhanna Energy Project, Inc., each located at 24 Prime Parkway, Natick, Massachusetts, 01760; Western Massachusetts Electric Company, a wholly-owned public utility subsidiary of NU, 174 Brush Hill Avenue, West Springfield, Massachusetts, 01090; and Holyoke Water Power Company, a wholly-owned public utility subsidiary of NU, and Holyoke Power and Electric Company, each located at One Canal Street, Holyoke, Maine, 01040 (together, ''Applicants'') have filed a declaration under section 12(b) and rules 45 and 54 under the Act.

The Applicants are seeking Commission approval to amend their tax allocation agreement so that NU will retain the benefit (in the form of the reduction in consolidated tax) that is attributable to tax losses incurred by NU in connection with the debt incurred to acquire Yankee Energy System, Inc. on March 1, 2000. In connection with the acquisition, NU borrowed $263 million under a bank term loan facility. That borrowing has been refinanced several times, and currently NU has outstanding $263 million of ten-year senior unsecured notes carrying a coupon rate of 7.25%, which mature on April 1, 2002 (as may be refinanced, ''Acquisition Debt''). The annual interest payment on this debt is approximately $19.1 million. At an

assumed rate of 35%, the tax benefit to NU is $6.650 million.

Under the proposed changes to the tax allocation agreement, the consolidated tax would generally be allocated among the Applicants in proportion to the separate return tax of each Applicant, provided that the tax apportioned to any subsidiary of NU will not exceed the tax the subsidiary would have paid if the tax had been computed separately for the subsidiary, with NU allocating the benefits of its own losses generally to its subsidiaries. However, NU would retain the benefit attributable to tax losses it incurs in connection with the Acquisition Debt, rather than reallocate the benefit to its subsidiaries, for the tax year beginning January 1, 2004 and ending when the Acquisition Debt has been paid off. In this respect, the proposed tax allocation agreement does not comply with all of the requirements of rule 45(c). The proposed changes would have the effect of assigning the tax benefit associated with the interest expense on the Acquisition Debt to NU, which is the entity legally obligated for its payment.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6890 Filed 3–26–04; 8:45 am]

**BILLING CODE 8010–01–M**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49447; File No. SR–ISE–2003–36]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the International Securities Exchange, Inc., Relating to Trading Options on the Morgan Stanley Technology Index

March 18, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 4, 2003, the International Securities Exchange, Inc. (''ISE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in items I and II below, which items have been prepared by the Exchange. On February 27, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

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

The ISE is proposing to trade options on the Morgan Stanley Technology Index (''MSH'' or ''Index''), a stock index developed by Morgan Stanley & Co. Incorporated (''Morgan Stanley'') and calculated and maintained by the American Stock Exchange LLC (''Amex''). The Index is comprised of technology sector stocks that currently trade on the New York Stock Exchange, Inc. (''NYSE'') or that are National Market securities traded through the Nasdaq Stock Market, Inc. (''Nasdaq''). The Commission has previously approved the listing of options on the Index,[4] and those options currently are traded on the Amex. In addition, the Exchange proposes to amend the Supplementary Material to ISE Rule 2001 to include the Index and the Reporting Authority in the disclaimer provisions of the rule. The text of the proposed rule change, as amended, is below. Proposed new language is in *italics*; proposed deletions are in [brackets].

* * * * *

**Rule 2001. Definitions**

**Supplementary Material to Rule 2001**

.01 The reporting authorities designated by the Exchange in respect of each index underlying an index options contract traded on the Exchange are as provided in the chart below.

| Underlying index | Reporting authority |
|---|---|
| S&P SmallCap 600 Index. | Standard & Poor's. |
| *Morgan Stanley Technology Index.* | *American Stock Exchange.* |

* * * * *

**Rule 2009. Terms of Index Options Contracts**

(a) General.

(4) ''European-Style Exercise.'' The following European-style index options, some of which may be A.M.-settled as provided in paragraph (a)(5), are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index..

*(ii) Morgan Stanley Technology Index.*

(5) A.M.-Settled Index Options. The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of an A.M.-settled index option shall be determined, for all purposes under these Rules and the Rules of the Clearing Corporation, on the last day of trading in the underlying securities prior to expiration, by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, except that:

(i) In the event that the primary market for an underlying security does not open for trading on that day, the price of that security shall be determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 2008(g), unless the current index value at expiration is fixed in accordance with the Rules and By-Laws of the Clearing Corporation; and

(ii) In the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading on that day, the price of that security, for the purposes of calculating the current index value at expiration, shall be the last reported sale price of the security.

The following A.M.-settled index options are approved for trading on the Exchange:

(i) S&P SmallCap 600 Index.

*(ii) Morgan Stanley Technology Index.*

(b) Long-Term Index Options Series.

(1) (No change).

(2) Reduced Value Long Term Options Series.

(i) Reduced-value long term options series on the following stock indices are approved for trading on the Exchange:

(A) S&P SmallCap 600 Index.

(B) *Morgan Stanley Technology Index*

(ii) Expiration Months. Reduced-value long term options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Joseph W. Ferraro, III, Assistant General Counsel, ISE to Nancy Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated February 26, 2004, enclosing Amendment No. 1, which replaces the original filing in its entirety.

[4] *See* Securities Exchange Act Release Nos. 41472 (June 2, 1999), 64 FR 31331 (June 10, 1999) (SR–Amex–99–14) (approving a reduction in the value of the Index); and 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995) (SR–Amex–95–26) (approving the listing of options on the Index on the Amex) (''Amex Approval'').

(c) Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 504, as amended by the following:

(1) The interval between strike prices will be no less than $5.00; provided, that in the case of the following classes of index options, the interval between strike prices will be no less than $2.50:

(i) S&P SmallCap 600, if the strike price is less then $200.00[.]

*(ii) Morgan Stanley Technology Index, if the strike price is less than $200.00.*

* * * * *

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

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item III below. The Exchange has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

The Exchange proposes to trade standardized options on the Index. The Index is an equal-dollar weighted index developed by Morgan Stanley, representing a portfolio of large, actively traded technology stocks. The Index comprises 35 U.S. public issuers drawn from 11 technology subsectors, including: Computer and Business Services; Data Networking/Internet Infrastructure; Electronics Manufacturing Services; Enterprise Software; Internet & PC Software; Server & Enterprise Hardware; PC Hardware & Data Storage; Semiconductor Capital Equipment; Semiconductors; Technical Software (CAD/CAM, EDA); Telecom Equipment-Wireline/Wireless.[5]

By way of background, MSH is a narrow-based index, the listing of which normally would not require prior Commission approval pursuant to Rule 19b–4 under the Act.[6] However, for the reasons discussed below, the listing of MSH options does not squarely fit within the procedures in place for the accelerated listing of derivative products, thus giving rise to the need for this filing. The Commission amended Rule 19b–4 in 1998 to eliminate the necessity for self-regulatory organizations (''SROs'') to obtain the Commission's permission to list and trade new derivative securities products if the Commission has approved, pursuant to Rule 19b–4(e), an SRO's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the SRO has a surveillance program for the product class.[7] Subsequent to the adoption of this amendment, the Commission approved trading rules, procedures and listing standards for the trading of narrow-based index options that allow the options exchanges to initiate trading in index options pursuant to Rule 19b–4(e). These trading rules, procedures and listing standards are uniform among the options exchanges and are contained in Chapter 20 of the ISE's rules and, in particular, ISE Rule 2002.

For a derivative product that meets the standards of an exchange's rules, an SRO need only complete Form 19b–4(e) at least five business days after commencement of trading the new product. However, the Commission approved the Amex's trading of options on the MSH in 1995, prior to adoption of the Form 19b–4(e) filing process. The Index meets all of the requirements of ISE Rule 2002(b), except the requirement that an equal dollar-weighted index be rebalanced at least once every calendar quarter. Thus, ISE may not list this product pursuant to Rule 19b–4(e) under the Act.

a. Index Qualification

ISE Rule 2002(b) contains specific qualification requirements for narrow-based index options. Except for the requirement relating to quarterly rebalancing of an equal dollar-weighted index (discussed below), MSH meets all of those requirements, namely: (1) The index is A.M. settled; (2) the index is equal-dollar weighted and has 35 component securities; (3) each of the component securities has a market capitalization of more than $75 million; (4) the trading volume of each component security has been over one million shares for each of the last six months; (5) each of the component securities represents less than 5% of the weight of the index, and the five highest weighted component securities in the aggregate account for less than 19% of the weight of the index; (6) all of the component securities satisfy the requirement of ISE Rule 502 (initial listing standards) applicable to individual underlying securities; (7) all component securities are ''reported securities'' as defined in Rule 11Aa3–1 under the Act;[8] (8) none of the components are non-U.S. securities that are not subject to comprehensive surveillance agreements; (9) the underlying index value is reported at least once every 15 seconds during the time the index options are traded; and (10) the index is calculated by the Amex in consultation with Morgan Stanley, which is a broker-dealer that has a ''Chinese Wall'' around its personnel who have access to information concerning changes in, and adjustments to, the Index.[9]

In addition, Morgan Stanley has included in the Index only those stocks that meet the following standards: (1) A minimum market capitalization of $75 million; (2) average monthly trading volume of at least one million shares during the preceding six months; (3) each component security must be traded on the Amex or the NYSE, or must be a National Market security traded through Nasdaq; and (4) upon annual rebalancing, at least 90% of the Index's numerical value and at least 80% of the total number of component securities must meet the then current criteria for standardized options trading set forth in Amex Rule 915.[10] Also, because the Index is equal-dollar weighted, no component security will represent more than 25% of the weight of the Index, nor will the five highest weighted component securities in the Index, in the aggregate, account for more than 60% of the weight of the Index at each annual rebalancing. Specifically, at each rebalancing, each component security will account for approximately 2.86% of the weight of the Index.[11] As of February 18, 2004, all of the Index

[5] The specific components of the Index are: Xilinx Inc.; Microsoft Corp.; Motorola Inc.; Computer Associates International Inc.; Accenture Ltd.; L.M. Ericsson Telephone Co.; Qualcomm Inc.; Electronic Data Systems Corp.; First Data Corp.; Veritas Software Corp.; Automatic Data Processing Inc.; Nokia Corp.; Juniper Networks Inc.; International Business Machines Corp.; Texas Instruments Inc.; Amazon.Com Inc.; Stmicroelectronics N.V.; Broadcom Corp.; Emc Corp.; Interactivecorp.; Micron Technology Inc.; Flextronics International Ltd.; Ebay Inc.; Yahoo! Inc.; Agilent Technologies Inc.; Intel Corp.; Hewlett-Packard Co.; Cisco Systems Inc.; Electronic Arts Inc.; Oracle Corp.; Intuit Inc.; Peoplesoft Inc.; Applied Materials Inc.; Dell Inc.; and Seagate Technology Inc.

[6] 17 CFR 240.19b–4.

[7] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98) (establishing the expedited listing and trading of certain derivative products pursuant to Rule 19b–4(e) under the Act).

[8] 17 CFR 240.11Aa3–1.

[9] *See* Amex Approval, *supra* note 4.

[10] Amex Rule 915 is substantively identical to ISE Rule 502.

[11] *See* Securities Exchange Act Release No. 35944 (July 7, 1995), 60 FR 36167 (July 13, 1995) (SR–Amex–95–26).

component securities had standardized options trading on them.

As of the close of trading on February 18, 2004, the Index was valued at 508.78. The market capitalizations of the individual stocks in the Index as of the close of trading on February 18, 2004, ranged from a high of $283.0 billion to a low of $8.0 billion, with the mean and median being $50.9 billion and $26.1 billion, respectively. The market capitalization of all the stocks in the Index on that date was approximately $1.8 trillion. The total number of shares outstanding for the stocks in the Index ranged from a high of 10.8 billion shares to a low of 198.5 million shares. In addition, the average daily trading volume of the stocks in the Index, for the six-month period from August 18, 2003, through February 18, 2004, ranged from a high of 64 million shares per day to a low of 1.8 million shares per day, with the mean and median being 13.6 million and 8.6 million shares, respectively. Lastly, as of the close on February 18, 2004, the highest weighted component security represents 4.54% of the Index, and the lowest weighted component security represents 1.79% of the index.

b. Index Calculation

The Index is calculated using an ''equal-dollar weighting'' methodology designed to ensure that each of the component securities is represented in an approximately ''equal'' dollar amount in the Index at each rebalancing. The Exchange believes that this method of calculation is important because even among the largest companies in the technology sector there is great disparity in market value. For example, although the stocks included in the Index represent many of the highly capitalized companies in the technology sector, the five most highly capitalized companies in the Index currently represent approximately 57% of the aggregate market value of the Index. Since the Index is equal dollar weighted, however (as opposed to market capitalization weighted), these five most highly capitalized companies have, on average, approximately the same weighting in the Index as the five least highly capitalized companies in the Index. It has been the Exchange's experience that options on market value or capitalization weighted indexes dominated by relatively few component stocks are less useful to investors because those indexes tend to represent those few companies and not the targeted industry as a whole.[12]

The following is a description of how the equal-dollar weighting calculating method works. As of the market close on December 16, 1994, a portfolio of technology stocks was established representing an investment of $300,000 in the stock (rounded to the nearest whole share) of each of the securities represented in the Index. The value of the Index equals the current market value (*i.e.*, based on U.S. primary market prices) of the sum of the assigned number of shares of each of the stocks in the Index divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 200.00 at the close of trading on December 16, 1994. Annually thereafter, following the close of trading on the third Friday of December, the Index is adjusted by changing the number of whole shares of each component stock so that each company is again represented in approximately ''equal'' dollar amounts. If necessary, a divisor adjustment is made at the rebalancing to ensure continuity of the Index's value.[13] The newly adjusted Index becomes the basis for the Index's value on the first trading day following the annual adjustment.

As noted above, the number of shares of each component stock in the Index remains fixed between annual reviews except in the event of certain types of corporate actions, such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the Index may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level at which it was represented immediately prior to the corporate action. In the event of a stock replacement, the average dollar value of the remaining Index components is calculated and that amount invested in the stock of the new component, rounded to the nearest whole share. In all cases, the divisor is adjusted, if necessary, to ensure continuity in the value of the Index.

The value of the Index is calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B and to the Options Price Reporting Authority.[14]

c. Maintenance of the Index

The one requirement for listing and trading of options on the Index pursuant to Rule 19b–4(e) under the Act[15] that the MSH does not currently meet is the requirement in ISE Rule 2002(b)(11) that an equal dollar-weighted index be rebalanced at least once every calendar quarter. The Amex calculates the Index, which is rebalanced annually. In its initial approval of the MSH for options trading, the Commission included certain specific requirements related to rebalancing of the Index in addition to the annual rebalancing.

The Index is calculated and maintained by the Amex in consultation with Morgan Stanley who may, from time to time, suggest changes in the technology industry categories represented in the Index or changes in the number of component stocks in an industry category to properly reflect the changing conditions in the technology sector. Specifically, the Amex must maintain the Index so that if at any time between annual rebalancings the top five component securities, by weight, account for more than one-third of the weight of the Index, the Index is rebalanced after the close of the trading on the third Friday (''Expiration Friday'') in the next month in the March cycle. The Amex also reviews the Index component securities on a quarterly basis and replaces component securities that fail to meet the following maintenance criteria: (1) A minimum market capitalization of $75 million; (2) average monthly trading volume in the component security of at least 500,000 shares during the preceding six month period; (3) a share price greater than $5.00 for a majority of the trading days during the preceding three month period; and (4) at least 90% of the component securities, by weight, must satisfy the Amex's options eligibility requirements. In addition, the Amex must seek approval from the Commission pursuant to Section 19(b) of the Act prior to increasing the number of components in the Index to more than 46 or decreasing the number of components to less than 24.[16]

At the beginning of each calendar quarter, Morgan Stanley will provide the Amex with a current list of replacement stocks on which to draw in

[12] *See supra* note 6.

[13] On April 13, 1999, Amex proposed to split the Index to one-third of its then current value by tripling the divisor used in calculating the Index. *See* Securities Exchange Act Release No. 41472 (June 2, 1999), 64 FR 31331 (June 10, 1999). However, the Index was split 2-for-1 on March 20, 2000. *See* the American Stock Exchange—The Morgan Stanley Technology Index Option Specifications on the Amex Web site at *www.amex.com*.

[14] *See supra* note 3.

[15] 17 CFR 240.19b–4(e).

[16] *See* Amex Approval, *supra* note 4, at fn 17.

the event that a component in the Index must be replaced due to merger, takeover, or other similar event. The stocks on the replacement list will be selected and ranked by Morgan Stanley based on a number of criteria, including conformity to Amex Rules 915 and 916, which set forth the criteria for the initial and continued listing of standardized options on equity securities, trading liquidity, market capitalization, ability to borrow shares, and share price. The replacement stocks will be categorized by industry within the technology sector and ranked within their category based on the aforementioned criteria. The replacement stock for a security being removed from the Index will be selected by the Amex from the replacement list based on industry category and liquidity.[17]

In addition, Morgan Stanley will advise Amex regarding the handling of unusual corporate actions which may arise from time to time. Routine corporate actions (*e.g.*, stock splits, routine spinoffs, etc.) which require straightforward index divisor adjustments will be handled by Amex staff without consultation with Morgan Stanley. All stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events such as dissolution, merger, bankruptcy, non-routine spin-offs, or extraordinary dividends will be made by Amex staff in consultation with Morgan Stanley. All stock replacements and the handling of non-routine corporate actions will be announced at least ten business days in advance of such effective change, whenever practicable. As with all options currently trading on the Exchange, the Exchange will make this information available to the public through the dissemination of an information circular.[18]

The Commission concluded in approving the Amex's trading of options on the MSH that the composition and maintenance criteria for the Index were appropriate to minimize the possibility that the Index could be manipulated, and options on the Index continue to trade on the Amex today under these standards. The Exchange believes that these standards continue to be adequate to protect investors. The Exchange shall notify the Market Regulation Division of the Commission immediately in the event Amex determines to cease maintaining or calculating the Index. In the event the Index ceases to be maintained or calculated, the Exchange may determine not to list any additional series for trading or limit all transactions in such options to closing transactions only for the purpose of maintaining a fair and orderly market and protecting investors.

d. Expiration and Settlement, Position and Exercise Limits; Margin Requirements, and Trading Halts

The product specifications of the options on the Index proposed to be traded on the Exchange will be identical to the product specifications of the options on the Index traded on Amex. Specifically, options on the Index are European-style[19] and cash-settled. The Exchange's standard trading hours for index options (9:30 a.m. to 4:15 p.m., New York time), as set forth in ISE Rule 2008(a), will apply to MSH options. MSH options listed on Amex also trade from 9:30 a.m. to 4:15 p.m., New York time. The options on the Index will expire on the Saturday following the third Friday of the expiration month (''Expiration Friday''). The last trading day in an expiring Index option series will normally be the second to last business day preceding the Saturday following Expiration Friday (normally a Thursday). Trading in expiring Index options will cease at the close of trading on the last trading day.

The Exchange plans to list Index options series with expirations in the three near-term calendar months and in two additional calendar months in the March cycle. In addition, longer term option series having up to thirty-six months to expiration may be traded. In lieu of such long-term options based on the full-value of the Index, the Exchange may instead list long-term, reduced-value put and call options based on one-tenth (1/10th) of the Index's full value. In either event, the interval between expiration months for either a full-value or reduced-value long-term Index option will not be less than six months. The trading of any long-term Index options will be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements, and trading rules.

Because the Index is a narrow-based index, position and exercise limits on full-value and reduced-value long-term Index options will be equivalent to the position and exercise limits for narrow-based indexes established pursuant to Exchange rules.[20] For aggregation purposes, ten contracts of a reduced-value index series will be equivalent to one full-value contract.[21] For example, since the position limit for the full-value options on the Index is 31,500 contracts on the same side of the market (as they currently are on Amex), then the position limit for the reduced-value options will be 315,000 contracts on the same side of the market.

Similarly, the margin requirement for the MSH options will be equivalent to those applied to narrow-based index options.[22] In addition, Exchange rules governing and trading halt procedures that are applicable to the trading of narrow-based index options will apply to options traded on the Index.[23]

The exercise settlement value for expiring Index options is calculated based upon the primary exchange regular way opening sale prices for the component stocks, except in the case of Nasdaq National Market System (''Nasdaq/NMS'') components of the Index. Amex revised the settlement value calculation methodology for Nasdaq/NMS component stocks in the Index.[24] Prior to that revision, the Index's settlement value was determined by using the regular-way opening sale price for each of the Index's component stocks in its primary market on the last trading day prior to expiration. Upon that revision, the Index's settlement value calculation is determined by using the volume weighted average price for each Nasdaq/NMS listed Index component, as calculated during the first five minutes of trading immediately following the first reported trade for such component. If no other trades are executed in a Nasdaq/NMS listed Index component during the five minutes following the first reported trade, Amex will use the price of the first reported trade in

[17] For a more complete discussion of the Replacement list, *see* Amex Approval, *supra* note 4.

[18] *See supra* note 4.

[19] European-style options may only be exercised during a specified time period immediately prior to expiration.

[20] Conversation between Joseph W. Ferraro, III, Assistant General Counsel, ISE, and Tim Fox, Attorney, Division, Commission on March 18, 2004. Pursuant to ISE Rules 2005 and 2007, the position and exercise limits for the MSH options will be 31,500 contracts on the same side of the market.

[21] *See* ISE Rule 2004(c).

[22] The ISE represents that the minimum customer margin for uncovered writers of Index contracts will be 100% of the market value of the option plus 20% of the aggregate Index value less any out-of-the-money amount, subject to a minimum of 100% of the market value of the option plus 10% of the aggregate Index value. *See* email from Joseph Ferraro, Assistant General Counsel, ISE to Tim Fox, Attorney, Commission, dated March 10, 2004.

[23] Trading on the Exchange MSH options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than ten percent of the index value is halted or suspended. *See* ISE Rule 2008(c). Conversation between Joseph Ferraro, Assistant General Counsel, ISE and Tim Fox, Attorney, ISE on March 18, 2004.

[24] *See* Securities Exchange Act Release No. 41775 (August 20, 1999), 64 FR 47206 (August 30, 1999) (SR–Amex–99–28).

calculating the settlement value for the Index.[25]

e. Exchange Rules Applicable to Stock Index Options

Exchange Rules 2000 through 2012 will apply to the trading of option contracts based on the Index. The Commission has approved ISE maintenance standards and trading rules applicable to narrow-based index options pursuant to which options on MSH will be traded. These rules, by virtue of their incorporation of other Exchange rules by reference, cover issues such as surveillance and exercise prices.

The Exchange believes that it has an adequate surveillance program in place for index options and intends to use those same program procedures that it applies to the Exchange's other index options (at present, options on the S&P SmallCap 600 Index). Additionally, the Exchange is a member of the Intermarket Surveillance Group (''ISG'') under the Intermarket Surveillance Group Agreement.[26]

The Exchange notes that the Commission's Order granting approval to Amex to trade options on the Index[27] provides that Morgan Stanley has also adopted special procedures to prevent the potential misuses of material, non-public information by the research, sales and trading divisions of the firm in connection with the maintenance of the Index. As discussed in that Order, the stocks on each Replacement List are not eligible to be added to the Index by Amex for a period of three months after receipt of the Replacement List by Amex. Moreover, the Amex publicly disseminates each Replacement List by issuing information circulars so that investors will know in advance which securities will be considered as replacements for the Index. In addition, Morgan Stanley will have a limited role in the stock replacement selection and substitution process. First, when a stock in the Index no longer meets the published criteria as determined following a quarterly review of the components by the Exchange, the Amex will determine, without consultation with Morgan Stanley, which security from the applicable Replacement List will be selected for addition to the Index. Second, the Amex will also make adjustments as a result of stock splits, spin-offs, and otherwise, without consultation with Morgan Stanley. Finally, even in those situations where the Amex consults with Morgan Stanley, upon the occurrence of certain events, the actual replacement stock will be selected solely by Amex from the 45 stocks on the replacement list.

The Index is a narrow-based index, as defined in Exchange Rule 2001(i). The Exchange proposes to set exercise (strike) prices at $5.00 intervals, bracketing the current value of the Index when the Index is above 200. If the Index is below 200, the interval will be $2.50. Pursuant to ISE Rule 2009(b), strike price interval, bid/ask differential and price continuity rules will not apply to the trading of LEAPS on the Index until their time to expiration is less than twelve months. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00. In addition, ISE Rule 2009(b) provides that full-value or reduced-value LEAPS on the Index will be issued at no less than six-month intervals and that new strike prices will either be near or bracketing the current Index value. These strike prices intervals are the same intervals used by Amex.[28]

2. Statutory Basis

The Exchange believes that the proposed rule change, as amended, is consistent with section 6(b) of the Act[29] in general, and furthers the objectives of section 6(b)(5),[30] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change, as amended, will impose any burden on competition.

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

The Exchange did not receive any written comments on the proposed rule change, as amended.

**III. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–ISE–2003–36. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to the File No. SR–ISE–2003–36 and should be submitted by April 19, 2004.

**IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change**

After careful consideration, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder, applicable to a national securities exchange,[31] and, in particular, with the requirements of Section 6(b) of the Act[32] and the rules and regulations thereunder. The Commission finds that the proposed rule change, as amended,

[25] *Id.*

[26] The ISE is a member of the Intermarket Surveillance Group (''ISG'') under the ISG Agreement, as amended. The members of the ISG include all of the U.S. registered stock and options markets: the Amex, the Boston Stock Exchange (''BSE''), the Chicago Board Options Exchange (''CBOE''), the Chicago Stock Exchange (''CHX''), the National Stock Exchange ''NSX''), National Association of Securities Dealers, Inc. (''NASD''), the NYSE, the Pacific Exchange (''PCX'') and the Philadelphia Stock Exchange (''Phlx''). The ISE members work together to coordinate surveillance and investigative information sharing in the stock and options markets. In addition, the major futures exchanges are affiliated members of the ISG, which allows for the sharing of surveillance information for potential intermarket trading abuses. *See* Securities Exchange Act Release No. 48587 (October 2, 2003), 68 FR 58514 (October 8, 2003) (SR–ISE–2003–18) (approval of trading options on the S&P Small Cap 600 Index on ISE).

[27] *See* Amex Approval, *supra* note 4.

[28] *See* Amex Web site at *www.amex.com.*

[29] 15 U.S.C. 78f(b).

[30] 15 U.S.C. 78f(b)(5).

[31] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[32] 15 U.S.C. 78f(b).

is consistent with Section 6(b)(5) of the Act,[33] which requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, protect investors and the public interest. Specifically, the Commission finds that the trading of options on the Index, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with an additional means to hedge exposure to market risk associated with stocks in the various high technology industries.

The trading of options on the Index and on a reduced-value Index, however, raises several issues relating to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the ISE adequately has addressed these issues.

*A. Index Design and Structure*

The Commission believes it is appropriate for the Exchange to designate the Index as a narrow-based index for purposes of index options trading. The Index is comprised of a limited number (35) of stocks intended to track a limited range of the technology sector of the stock market. Accordingly, the Commission believes it is appropriate for the ISE to apply its rules governing narrow-based index options to trading in the Index options. The Commission also believes that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the stocks that comprise the Index are actively traded, with a mean and median average monthly trading volume for the period between August 18, 2003, and February 18, 2004, of 13.6 million and 8.6 million shares, respectively. Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $283.0 billion to a low of $8.0 billion as of February 18, 2004, with the mean and median being $50.9 billion and $26.1 billion, respectively. Third, because the index is equal dollar-weighted, no one particular stock or group of stocks dominates the Index. Specifically, as of February 18, 2004, no one stock accounted for more than 4.54% of the Index's total value and the percentage weighting of the five highest weighted stocks in the Index accounted for less than 19% of the Index's value. Fourth, the Index will be maintained so that in addition to the other maintenance criteria discussed above, at each quarterly review and rebalancing (annual or otherwise), at least 90% of the weight of the Index will be composed of securities eligible for standardized options trading. Currently, all of the component stocks in the Index have standardized options trading on them. Fifth, Morgan Stanley and the Amex are required to ensure that each component of the Index is subject to last sale reporting requirements in the U.S. pursuant to Rule 11Aa3–1 under the Act.[34] The Commission believes that this further reduces the potential for manipulation of the value of the Index. Finally, the Commission believes that the existing mechanisms to monitor trading activity in the component stocks of the Index, or options on those stocks, will help deter as well as detect any illegal activity.

In addition, even though the Index is only scheduled to be rebalanced annually, the Commission believes that the Amex and Morgan Stanley have developed several composition and maintenance criteria for the Index that will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, if at any time during the year the top five components in the Index, by weight, account for more than one-third of the weight of the Index, the Exchange will rebalance the Index following the close of trading on Expiration Friday in the next month in the March cycle. These rebalancing requirements will serve to ensure that any ''overweight'' stock[35] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted in the Index. Second, after each quarterly review and each rebalancing (annual or otherwise), at least 90% of the weight of the Index will be comprised of stocks that are eligible for standardized options trading. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be easily manipulated by abusive trading in the smaller stocks contained in the Index. Third, at each quarterly review of the Index, a component may only remain in the Index if it satisfies the maintenance requirements discussed above.[36] These requirements are similar to the continued listing requirements for options on individual equity securities.[37] Lastly, because the Index is narrow-based, the applicable position and exercise limits[38], margin requirements,[39] and trading halts[40] will further reduce the susceptibility of the Index to manipulation.[41]

The Commission notes that certain concerns are raised when a broker-dealer, such as Morgan Stanley, is involved in the development and maintenance of a stock index that underlies an exchange-traded derivative product. For several reasons, however, the Commission believes that this concern has been adequately addressed with respect to options on the Index. First, the value of the Index is to be calculated and disseminated by the Amex so that unless a party independently calculates the Index value, neither Morgan Stanley nor any other party will be in receipt of the values prior to the public dissemination of the Index value. Second, routine corporate actions (*e.g.*, stock splits, routine spinoffs, etc.) will be handled by the Amex without consultation with Morgan Stanley. Third, although stock replacements and unusual divisor adjustments caused by the occurrence of extraordinary events, such as dissolution, merger, bankruptcy, non-routine spinoffs, or extraordinary dividends, will be made by Amex staff in consultation with Morgan Stanley, Amex alone ultimately will select the actual replacement stock from the Replacement List without Morgan Stanley's assistance. Such replacements will be announced publicly at least 10 business days in advance of the effective change by the Amex through the dissemination of an information circular, whenever practicable. Fourth, each Replacement List submitted to the Amex by Morgan Stanley will be published by the Amex and securities cannot be selected from a Replacement

[33] 15 U.S.C. 78f(b)(5).

[34] 17 CFR 240.11Aa3–1.

[35] A stock would be ''overweight'' if its weight in the Index were greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular quarter and prior to the rebalancing.

[36] *See supra* section II (A)(1)(c).

[37] *See* ISE Rule 2002(b).

[38] *See supra* note 20.

[39] *See supra* note 22.

[40] *See supra* note 23.

[41] The ISE represents that the minimum customer margin for uncovered writers is 100% of the market value of the option plus 20% of the aggregate Index value less any out-of-the-money amount, subject to a minimum of 100% of the market value of the option plus 10% of the aggregate Index value. *See* e-mail from Joseph Ferraro, Assistant General Counsel, ISE to Tim Fox, Attorney, Commission, dated March 10, 2004, *see also* ISE Rule 2005.

List for three months after receipt by the Amex. Fifth, the Commission believes that the procedures Morgan Stanley has established to detect and prevent material non-public information concerning the Index from being improperly used by the person or persons responsible for compiling the Replacement Lists, as well as other persons within Morgan Stanley, as discussed above, adequately serve to minimize the susceptibility to manipulation of the Index, the securities in the Index, and securities added to and deleted from any Replacement List. Finally the ISE's existing surveillance procedures for stock index options will apply to the options on the Index and should provide the ISE with adequate information to detect and deter trading abuses that may occur. In summary, the Commission believes that the procedures outlined above help to ensure that Morgan Stanley will not have any informational advantages concerning modifications to the composition of the Index due to its limited role in consulting with Amex on the maintenance of the Index under certain circumstances.

*B. Customer Protection*

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Index options, can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other index options currently traded on the ISE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in the Index options and full-value or reduced value Index LEAPS. Finally, the Amex has stated that it will distribute information circulars to members following rebalancings and prior to component changes to notify members of changes in the composition of the Index. Additionally, the Amex will publicly disseminate each Replacement List by means of information circulars. The Commission believes this should help to protect investors and avoid investor confusion.

*C. Surveillance*

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation. In this regard, the Amex, NYSE, and the NASD are all members of the ISG, which provides for the exchange of all necessary surveillance information.[42]

*D. Market Impact*

The Commission believes that the listing and trading of Index options, including full-value and reduced-value Index LEAPS on the ISE will not adversely impact the underlying securities markets. First, as described above, due to the ''equal dollar-weighting'' method, no one stock or group of stocks dominates the Index. Second, because at each quarterly review and each rebalancing of the Index, at least 90% of the weight of the Index must be accounted for by stocks that meet the Amex's options listing standards, the component stocks generally will be actively-traded, highly-capitalized stocks. Third, the currently applicable 31,500 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States. Lastly, the Commission believes that settling expiring Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for stocks underlying options on the Index.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[43] for approving the proposed rule change, as amended, prior to the 30th day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission previously addressed the issues raised by the trading of the Index on an exchange when the Commission approved this product for trading on the Amex,[44] and accelerated approval of the proposal will allow investors to begin trading the options promptly. Moreover, the index meets all of the requirements of ISE Rule 2002(b) except for quarterly rebalancing, which the Commission has previously determined was appropriate given the specific procedures in place for quarterly review and maintenance of the Index. Accordingly, the Commission finds that there is good cause, consistent with section 6(b)(5) and 19(b)(2) of the Act,[45] to approve the proposed rule change, as amended, on an accelerated basis.

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[46] that the proposed rule change (SR–ISE–2003–36), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[47]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04–6818 Filed 3–26–04; 8:45 am]

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[42] *See supra* note 26.

[43] 15 U.S.C. 78s(b)(2).

[44] *See* Amex Approval, *supra* note 4.

[45] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49451; File No. SR–PCX–2004–08]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Demutualization of the Pacific Exchange, Inc.

March 19, 2004.

Pursuant to Section 19(b)(1) of the Securities Act of 1934 (''Act'')[1] and PCX Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 2004, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to

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

[2] 17 CFR 240.19b–4.

solicit comments on the proposed rule change from interested persons.

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

PCX is proposing to convert the ownership of the existing Exchange from a non-stock, not-for-profit membership corporation into a for-profit stock corporation, and to convert the options trading rights of current PCX seats to Option Trading Permits (''OTPs'').[3] To effect this demutualization, a newly-formed Delaware stock corporation called PCX Holdings, Inc. (''PCX Holdings'' or ''Holding Member'') would become a holding company for a newly-created non-stock subsidiary (the ''reorganized PCX'' or ''reorganized Exchange'')[4] and its other operating subsidiaries. The proposal includes new governing documents and rules relating to the Board of Directors of PCX Holdings and the reorganized Exchange, proposed rule changes to the committee structure of the reorganized Exchange, and certain other proposed rules by the reorganized Exchange to regulate the business conduct and practices of persons and entities issued OTPs.

The proposed rule changes for implementing the demutualization, including: (A) The Rules for the reorganized Exchange; (B) the Certificate of Incorporation for PCX Holdings; (C) the Bylaws for PCX Holdings; (D) the Certificate of Incorporation for the reorganized Exchange; and (E) the Bylaws for the reorganized Exchange, are collectively referred to herein as the ''proposed rule change'' and are available for viewing on the Commission's Web site, *http://www.sec.gov,* and at PCX and the Commission.

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

In its filing with the Commission, PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

a. *Overview of the Proposed Plan of Demutualization.* The current PCX, a Delaware non-stock corporation, proposes a plan to ''demutualize,'' whereby it will be reorganized as a subsidiary of a for-profit stock corporation, the stockholders of which will initially be the current owners of the outstanding authorized memberships of the current Exchange. To effect the demutualization, a newly-formed Delaware stock corporation called PCX Holdings will become a holding company for the reorganized Exchange and its other operating subsidiaries. PCX Holdings has formed a wholly-owned subsidiary solely for the purpose of completing the merger, which will merge with and into the current PCX. This surviving entity, the reorganized Exchange, will be a wholly-owned subsidiary of PCX Holdings. The reorganized PCX, a non-stock corporation, will operate the options business of the current PCX and will have a separate Board of Directors. The reorganized PCX will retain the self-regulatory organization function for the options business as well as its equities business subsidiary, PCX Equities, Inc. (''PCX Equities'' or ''PCXE''). The proposed demutualization will not affect PCXE's operations, governance structure, or rules.

Prior to the merger, the current Exchange will undergo a recapitalization whereby it will convert each of its 552 outstanding authorized memberships into two separate components: (1) A Class A membership interest representing each member's ownership interest in the current Exchange; and (2) a Class B membership interest representing options trading privileges on the current Exchange. As a result of the demutualization, current PCX members will receive one thousand (1,000) shares of voting common stock in PCX Holdings in exchange for their Class A membership interest and, in addition, will receive a trading permit in the reorganized PCX in place of the Class B membership interest.

The common stock of PCX Holdings will represent an equity interest in the company and will have the traditional features of common stock, including dividend,[5] voting, and liquidation rights. Holders of common stock will be entitled to vote on all matters submitted to the stockholders for a vote, including the election of the Board of Directors of PCX Holdings, extraordinary transactions such as a merger, consolidation, dissolution or sale of all or substantially all of the assets of PCX Holdings, and certain changes to the Bylaws of PCX Holdings.

b. *Purpose of the Proposed Plan of Demutualization.* PCX believes that by restructuring its business as a stock corporation with business control and management vested in a Board of Directors, the entity will have greater flexibility to develop and execute strategies designed to improve its competitive position than it has under the current membership-cooperative structure. Furthermore, PCX anticipates that by restructuring as a stock corporation, PCX management will be better able to respond quickly to competitive pressures and to make changes to its operations as market conditions warrant, without diminishing the integrity of its regulatory programs.

Following the completion of the demutualization, the holders of common stock of PCX Holdings will retain, through their ownership of stock, their economic interest in its operating subsidiaries and ultimately will benefit from any improvement in the financial health of these entities resulting from the demutualization.

c. *Corporate Structure.* i. *PCX Holdings, Inc.* Following the completion of the demutualization, PCX Holdings will be a for-profit stock corporation and will act as a holding company for the reorganized Exchange and its operating subsidiaries. PCX Holdings will provide management and corporate support to its subsidiaries. PCX Holdings, as the sole member of the reorganized PCX, will have the right to elect the Board of Directors of the reorganized PCX[6] and will have the right to vote on any proposal to merge the reorganized PCX with a third party, to sell a significant amount of its assets to a third party, or to dissolve or liquidate the reorganized PCX. The proposed Certificate of Incorporation and Bylaws of PCX

[3] *See* proposed PCX Rule 1.1(p) (definition of Options Trading Permit (''OTP'')); *see also* proposed PCX Rule 1.1(q) (definition of ''OTP Holder'') and proposed PCX Rule 1.1(r) (definition of ''OTP Firm'').

[4] For purposes of this filing, where the context requires differentiation between PCX before the demutualization and PCX after the demutualization, the existing membership organization is referred to as the ''current PCX'' or ''current Exchange,'' and the new entity, which will be a wholly-owned subsidiary of PCX Holdings, is referred to as the ''reorganized PCX'' or the ''reorganized Exchange.''

[5] PCX notes that it does not currently anticipate that PCX Holdings will pay dividends on its common stock in the immediate future. In the event that a dividend is declared, any revenues received by PCX Holdings or the reorganized PCX from regulatory fees or regulatory penalties will be applied only to fund the legal, regulatory, and surveillance operations of the reorganized PCX, and will not be used to pay dividends to the holders of PCX Holdings common stock.

[6] This right is subject to Trading Permit Holders' right to nominate their candidates.

Holdings will govern the activities of PCX Holdings.

*A.* Board of Directors. The Board of Directors of PCX Holdings shall consist of not less than seven (7) nor more than twelve (12) members, with the Board of Directors currently contemplated to consist of initially of nine (9) members, including the Chief Executive Officer (''CEO'') of PCX Holdings and at least five (5) persons who shall not have any material business relationship with PCX Holdings or its affiliates, other than as an OTP Holder on the reorganized PCX. The authorized number of directors shall be as determined from time to time upon the majority approval of the full Board of Directors. The CEO of PCX Holdings may be designated Chairman of the Board.

The current PCX Nominating Committee has consulted with the CEO of the current PCX and proposed a slate of Directors for the initial Board. This slate was part of the demutualization package sent to the members for a vote and will be put in place once the demutualization becomes effective. The PCX Holdings Nominating Committee will nominate subsequent Directors to the Board of Directors. The Nominating Committee shall nominate Directors for election at the annual meeting of stockholders. Such nominations shall comply with the Bylaws of PCX Holdings. The Chairman of the Board of Directors of PCX Holdings shall appoint the members of the PCX Holdings Nominating Committee.

The Board of Directors of PCX Holdings shall appoint the Chairman of the Board by majority vote. The Board of Directors shall be divided into three classes and serve in staggered terms of three years, as set forth in the Certificate of Incorporation. Each Director shall hold office until the expiration of the Director's term. If, however, there remains a vacancy on the Board of Directors (for example, the Director is not re-elected and the Director's successor is not elected or qualified), the Director shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation or removal. A Director may serve for any number of terms, consecutive or otherwise. Directors need not be stockholders of PCX Holdings.

*B.* Committees of PCX Holdings Board of Directors. PCX Holdings shall have a Board Audit Committee, Compensation Committee, and Nominating Committee. The Board of Directors of PCX Holdings may, by resolution passed by a majority of the Directors in office, establish one or more additional committees (''PCX Holdings Board Committees''). Any such PCX Holdings Board Committee, to the extent provided in the resolution of the Board, shall have and may exercise all the power and authority of the Board of Directors for direction and supervision of the management of the business and affairs of PCX Holdings. No such PCX Holdings Board Committee, however, shall have power or authority to amend the Certificate of Incorporation or the Bylaws, adopt an agreement of merger or consolidation, recommend to the stockholders the sale, lease, or exchange of all or substantially all of PCX Holdings' property and assets, recommend to the stockholders a dissolution of PCX Holdings or a revocation of a dissolution, elect a Director or elect or remove an officer, and unless the resolution expressly so provides, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of stock.

*C.* Management. The officers of PCX Holdings shall include the Chairman of the Board of Directors, CEO, Secretary, and such other officers as are desirable for the conduct of the business of the corporation in the opinion of the CEO. The Chairman of the Board of Directors shall appoint officers of PCX Holdings, other than the Chairman of the Board of Directors and the CEO. The same person may hold any two or more offices. The officers of PCX Holdings will manage the business and affairs of PCX Holdings, subject to the oversight of the Board of Directors.

*D.* Shareholder Restrictions. The Certificate of Incorporation and Bylaws of PCX Holdings place certain restrictions on the ability to transfer and own the stock of PCX Holdings. For a period of 30 days following the effective date of the demutualization, PCX Holdings stockholders will not be permitted to sell their shares unless the Board of Directors of PCX Holdings waives the transfer restriction. Regardless of whether such transfer restriction is waived, PCX Holdings stockholders will remain subject to the ownership and voting concentration limits and minimum lot transfer provisions described below.

No person may own shares constituting more than forty percent (40%) of the outstanding shares of capital stock of PCX Holdings. This provision can be waived by an amendment to the Bylaws of PCX Holdings approved by the Board, subject to the Board having determined that such person is not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act),[7] and the amendment being approved by the Commission. No trading permit holder of the reorganized PCX or equities trading permit holder of PCX Equities may own shares constituting more than twenty percent (20%) of the outstanding shares of common stock of PCX Holdings. Any person that at any time owns five percent (5%) or more of then outstanding shares of capital stock, who has the right to vote in the election of the Board of Directors of PCX Holdings, shall, immediately upon so owning five percent (5%) or more of the then outstanding shares of such stock, give the Board of Directors of PCX Holdings written notice of such ownership.[8]

No person may possess the right to vote shares representing more than twenty percent (20%) of the issued and outstanding capital stock of PCX Holdings. This provision can be waived by an amendment to the Bylaws of PCX Holdings approved by the Board of Directors, subject to the Board of Directors having determined that such person is not subject to any applicable ''statutory disqualification'' (within the meaning of Section 3(a)(39) of the Act),[9] and the amendment being approved by the Commission.

Shares acquired in violation of the transfer restrictions and voting and ownership concentration limits shall be treated by PCX Holdings as owned by the transferor for all purposes, including, without limitation voting, payment of dividends, and distributions.[10] Shares acquired in violation of the transfer restrictions and voting and ownership concentration limits may be redeemed by PCX Holdings at a price equal to the par value thereof, upon the approval of the PCX Holdings Board of Directors.

Unless otherwise approved by the CEO of PCX Holdings, transfers of shares of the capital stock of PCX Holdings may be made only in minimum lots of 1,000 shares for a period of one year after the demutualization and thereafter in minimum lots of 100 shares. Holders of PCX Holdings capital stock will have no redemption or preemptive rights. However, PCX Holdings may redeem shares of its capital stock acquired in violation of the transfer restrictions and ownership and voting concentration limits contained in its Certificate of Incorporation for a price per share equal

[7] 15 U.S.C. 78c(a)(39).

[8] *See* PCX Holdings Certificate of Incorporation, Article IX, Section 1(b)(iii).

[9] 15 U.S.C. 78c(a)(39).

[10] *See* PCX Holdings Certificate of Incorporation, Article IX, Section 2.

to the par value thereof, upon the approval of the PCX Holdings Board of Directors and the Commission.

In the case of transactions relating to PCX Holdings, a merger, consolidation, sale of all or substantially all of the assets, or dissolution must be approved by an affirmative vote of at least a majority of the outstanding shares.

A merger, asset sale, or other business combination with a person who, together with affiliates and associates, owns or controls fifteen percent (15%) or more of the voting stock of PCX Holdings (''interested stockholder'') during the three-year period after the date that the person became an interested stockholder will require approval by at least two-thirds of the outstanding voting stock of PCX Holdings, which is not owned by the interested stockholder, and the prior approval of the Board of Directors of PCX Holdings,[11] unless upon consummation of the transaction which results in the person becoming an interested stockholder, such interested stockholder owned at least 85% of the voting stock of PCX Holdings outstanding at the time the transaction commences, excluding certain shares.[12]

PCX Holdings shall give due regard to the preservation of the independence of the self-regulatory function of the reorganized PCX and to its obligations to investors and the general public and shall not take any actions which would interfere with the effectuation of any decisions by the Board of Directors of the reorganized PCX relating to its regulatory functions or the structure of the market which it regulates or which would interfere with the ability of the reorganized PCX to carry out its responsibilities under the Act. All books and records and the information contained therein of the reorganized PCX reflecting confidential information pertaining to the self-regulatory function of the reorganized PCX, which shall come into the possession of PCX Holdings, shall be retained in confidence by PCX Holdings and its Board of Directors, officers, employees, and agents, and shall not be used for any non-regulatory purposes.[13]

ii. *Reorganized PCX.* The reorganized PCX will be a wholly-owned subsidiary of PCX Holdings that will continue to be a non-stock membership corporation with its own Board of Directors. PCX Holdings will be the sole member of, and, as such, will have one hundred percent (100%) voting control over the reorganized PCX. The reorganized PCX will retain the self-regulatory organization function with respect to the members of the current Exchange. PCX Equities will continue to be a wholly-owned subsidiary of the reorganized PCX. OTP Holders (as well as Exchange Trading Permit (''ETP'') Holders of PCX Equities) will have the right to representation on the Board of Directors of the reorganized PCX. The Board of Directors of the reorganized PCX will also have the right to amend the Bylaws of the reorganized PCX.

*A.* Governing Documents and PCX Rules. The proposed Certificate of Incorporation, Bylaws, and PCX Rules will govern the activities of the reorganized PCX. Proposed PCX Rules 1 through 3 relate to qualifications for OTPs and corporate governance. A detailed description of the proposed new rules for the reorganized PCX is provided in Section 5 of this notice. The proposed reorganized PCX Rules and Bylaws will reflect the status of the reorganized PCX as a wholly-owned subsidiary of PCX Holdings, under management of the reorganized PCX Board of Directors and its designated officers with self-regulation pursuant to PCX's registration under Section 6 of the Act.[14]

*B.* Board of Directors. The Board of Directors shall consist of not less than eight (8) or more than twelve (12) Directors, with the Board of Directors to consist initially of ten (10) Directors, including the CEO of PCX Holdings. The authorized number of Directors shall be as determined from time to time by the Board of Directors. At least fifty percent (50%) of the Directors will be persons from the public and will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the reorganized PCX or its affiliates (''Public Directors'').[15] At least twenty percent (20%) of the Directors shall consist of individuals nominated by the trading permit holders, with at least one Director nominated by the ETP Holders[16] of PCX Equities, Inc. and with at least one Director nominated by the OTP Holders of the reorganized PCX (collectively the ''Permit Holder Directors''). The exact number of Public Directors and Permit Holder Directors shall be determined from time to time by the Board of Directors, subject to the percentage restrictions described in proposed Article III, Section 3.02(a) of the reorganized PCX's Bylaws. The term of office of a Director shall not be affected by any decrease in the authorized number of Directors.

The initial Directors of the reorganized Exchange shall consist of individuals nominated by the Nominating Committee of the current PCX in consultation with the CEO and shall be approved by the Board of Governors of the current PCX. At the first annual meeting and at each subsequent annual meeting of the Holding Member,[17] except as otherwise provided by the reorganized PCX's Bylaws, the Holding Member shall elect Directors to serve until the next annual meeting or until their successors are elected and qualified. The Board of Directors shall appoint the Chairman of the Board by majority vote.

Each Director shall hold office for a term that expires at the annual meeting of the Holding Member following his or her election, provided that if he or she is not re-elected and his or her successor is not elected and qualified at the meeting and there remains a vacancy on the Board of Directors, he or she shall continue to serve until his or her successor is elected and qualified or until his or her earlier death, resignation, or removal. A Director may serve for any number of terms, consecutive or otherwise.

*C.* Committees of the Board of Directors. The reorganized PCX Board Committees shall consist of the following: (1) A Board Appeals Committee; (2) a Regulatory Oversight Committee; (3) an Audit Committee; and (4) Compensation Committee. The Board of Directors may, by resolution passed by a majority of the Directors in office, establish one or more additional committees (''Board Committees''), each committee to consist of one or more Directors. Each Board Committee shall be comprised of at least fifty percent (50%) Public Directors. Each Board Committee, to the extent provided in the resolution of the Board creating the committee, shall have and may exercise all of the power and authority of the Board of Directors for direction and supervision of the management of the business and affairs of the Exchange, and may authorize the seal of the Exchange to be affixed to all papers that may require it. No Board Committee, however, shall have power or authority to amend the Certification of

[11] *See* PCX Holdings Bylaws, Article 2, Section 6(b).

[12] PCX represents that this provision is consistent with Section 203 of Title 8 of the Delaware Code. Del. Code, Title 8, section 203. Telephone conversation between Mai Shiver, Acting Director and Senior Counsel, PCX, and Frank N. Genco, Attorney, Division, Commission, on March 3, 2004.

[13] *See* PCX Holdings Bylaws, Article 3, Section 15.

[14] 15 U.S.C. 78f.

[15] *See* PCX Bylaws, Article 3, Section 2(a).

[16] *See* PCXE PCX Rule 1.1(n) (definition of ''ETP Holder'').

[17] The reorganized PCX is a non-stock corporation consisting of a sole member, PCX Holdings.

Incorporation or the Bylaws, adopt an agreement of merger or consolidation, recommend to the Holding Member the sale, lease or exchange of all or substantially all of the Exchange's property and assets, recommend to the Holding Member a dissolution of the Exchange or a revocation of a dissolution, elect a Director, or elect or remove an officer; and unless the resolution expressly so provides, no Board Committee shall have the power or authority to declare a dividend or to authorize the issuance of membership interests.

*D.* Nominating Committee. After the formation of the initial Board of Directors, the Nominating Committee of the Board of Directors of PCX Holdings will nominate Directors for election to the Board of Directors of the reorganized PCX at the annual meeting of the Holding Member. Such nominations shall comply with the Bylaws and Rules of the reorganized PCX. The reorganized PCX Nominating Committee will nominate the OTP Holder nominee(s) to the Board of Directors. The selection process for the OTP Holder nominee(s) differs from the selection process for the ETP Holder nominee.[18] Specifically, after the nomination by petition period has closed, the Board of Directors of PCX Holdings shall have ten (10) business days to object to the nomination of any or all of the OTP Holder nominee(s). The Board of Directors of PCX Holdings may, in its sole discretion, object to the nomination of any or all of the OTP Holder nominee(s) if the nominee(s) have been disciplined by any securities self-regulatory organization or the nominee would be subject to statutory disqualification within the meaning of Section 3(a)(39) of the Act.[19] Any nominee who is objected to by the Board of Directors of PCX Holdings is not eligible to be considered as a nominee or petition candidate until the expiration of the current term of the Board of Directors. If the Board of Directors of PCX Holdings objects to all of the proposed nominees, the Nominating Committee shall publish the name of an eligible alternative nominee by the later of ten (10) business days after the Board of Directors of PCX Holdings notifies the Secretary of the reorganized Exchange of their objection to the proposed nominee(s) or sixty-five days prior to the expiration of the term of the Directors. If the Board of Directors of PCX Holdings objects to all of the original nominees, the above defined process shall continue with all of the same deadlines until the Nominating Committee nominates a nominee that is not objected to by the Board of Directors of PCX Holdings.

According to PCX, the purposes for allowing the Board of Directors of PCX Holdings to object to an OTP Holder nominee(s) are: (1) To accord PCX Holdings, as sole member of the reorganized PCX, the voting rights normally provided to a member of a membership organization; and (2) to provide the Board of Directors of PCX Holdings the ability to object to the nomination of particular individuals that, for various reasons, would be inappropriate as a director of a self-regulatory organization. PCX represents that, in both of the above circumstances, OTP Holders will still be afforded ''fair'' representation as required under the Act because, as a result of the process described above, a representative nominated by the OTP Holders will be selected.

*E.* Management. The Board of Directors shall elect such officers of the reorganized PCX, as it deems appropriate, which must include a Secretary, and which may include a President, a CEO, and, upon the recommendation of the CEO, any other officers as are desirable for the conduct of the business of the corporation. Any two or more offices may be held by the same person. The officers of the reorganized PCX will manage the business and affairs of the Exchange, subject to the oversight of the Board of Directors, and, in some cases, the approval of PCX Holdings as the sole member.[20]

*F.* Disciplinary Process. The reorganized PCX will retain the self-regulatory organization function for the options business of the PCX as well as its equities business subsidiary, PCX Equities. The proposed demutualization will not affect PCXE's current disciplinary process. The reorganized PCX's disciplinary process will be the same as the existing PCX disciplinary process and will be governed by an Ethics and Business Conduct Committee (''EBCC''). The reorganized PCX Board of Directors or a designee of the reorganized PCX will appoint the EBCC. The EBCC shall be made up primarily of OTP Holders and Allied Persons[21] of an OTP Firm. At least one member of the public shall serve on the EBCC.[22]

The Chief Regulatory Officer of the reorganized PCX or his or her staff will authorize the initiation of disciplinary actions and proceedings. As is presently the case, the EBCC will conduct hearings, render decisions, and impose sanctions. Decisions of the EBCC may be appealed for review to a Board Appeals Committee, which will be appointed by the reorganized PCX's Board of Directors and will include public members, the OTP representative(s), and the ETP representative(s) of the Board of Directors. Decisions of the Board Appeals Committee shall be subject to the review of the reorganized PCX's Board of Directors.

*G.* Other Committees. The proposed Bylaws and Rules of the reorganized PCX envision three Options committees—the Nominating Committee, the Ethics and Business Conduct Committee, and the OTP Advisory Committee.[23] However, the Board of Directors may, by resolution passed by a majority of directors in the office, establish other Options committees, if it deems it appropriate. Except for the Nominating Committee, the Board of Directors of the reorganized PCX will appoint the members of all Options Committees for terms of one year. The CEO of the reorganized PCX will appoint the Chair and Vice Chair of each Options Committee. OTP Holders and public representatives may be appointed to serve on Options Committees.

*H.* Options Listings and Delistings. The management of the reorganized PCX will make all decisions with respect to listing and delisting options and related products in accordance with rules and standards comparable to those set forth in the current PCX Rules and used by the Option Listing Committee of the current PCX.

*I.* Regulation/Disciplinary Process. Following the demutualization, the

[18] PCX represents that the ETP Nominee will be appointed to the reorganized PCX Board of Directors as required by the PCX/PCXE Shareholder Voting Agreement.

[19] 15 U.S.C. 78c(a)(39).

[20] According to the Exchange, under Delaware law events such as the sale of all or substantially all assets, a merger, or liquidation of the reorganized PCX may require the approval of the Board of Directors of PCX Holdings. Telephone conversation between Mai Shiver, Acting Director and Senior Counsel, and Steve Matlin, Senior Counsel, PCX, and Nancy J. Sanow, Assistant Director, and Frank N. Genco, Attorney, Division, Commission, on March 17, 2004 (''Telephone Conversation on March 17, 2004'').

[21] Allied Person is defined in proposed PCX Rule 1.1(b) as an individual, who is: (1) An employee of an OTP Firm who controls such firm; (2) an employee of an OTP Firm corporation who is a director or principal executive officer of such corporation; (3) an employee of an OTP Firm limited liability company who is a manager or a principal executive officer of such limited liability company; or (4) a general partner in an OTP Firm partnership.

[22] PCX represents that committees involved in the disciplinary process will remain unaffected by the demutualization.

[23] The OTP Advisory Committee shall act in an advisory capacity regarding rule changes related to disciplinary matters and trading rules. *See* proposed PCX Rule 3.2(b)(3).

reorganized PCX will operate as a national securities exchange registered under Section 6 of the Act.[24] For purposes of the Act, OTP Holders and OTP Firms will be deemed ''members'' of the reorganized PCX.

As a registered national securities exchange and self-regulatory organization, the reorganized PCX will continue to carry out its statutory responsibilities to enforce compliance by OTP Holders and OTP Firms (including ETP Holders of its equities business subsidiary, PCX Equities) with the provisions of the federal securities laws and the applicable Rules of the reorganized PCX and PCX Equities. As the registered self-regulatory organization, the reorganized PCX will continue to have ultimate responsibility for the administration and enforcement of rules governing the options and equities business operations.

The reorganized PCX will continue to be required to approve any changes to the Rules and governing documents of PCX Equities and to file any such changes with the Commission pursuant to section 19(b) of the Act[25] and Rule 19b–4 thereunder.[26]

*J.* National Market System Plans. PCX currently is a participant in various national market system (''NMS'') plans, including the Consolidated Tape Association (''CTA'') Plan, the Consolidated Quotation System (''CQS'') Plan, the Intermarket Trading System (''ITS'') Plan, the Options Price Reporting Authority (''OPRA''), the Options Intermarket Linkage (''Linkage'') Plan, and the Reporting Plan for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privileges Basis (''Nasdaq UTP'') Plan.[27] These plans are joint industry plans entered into by self-regulatory organizations for the purpose of addressing last sale reporting, quotation reporting, intermarket equities trading, options price reporting, and intermarket options trading, respectively. Following the completion of the demutualization, the reorganized PCX, in its continuing role as the self-regulatory organization, will continue to serve as the voting member of these NMS plans. For those plans that relate to equity trading (*i.e.*, the CTA Plan, the CQS Plan, the ITS Plan, and the Nasdaq UTP Plan) a PCX Equities representative will continue to serve as the reorganized PCX's representative with respect to dealing with these plans.[28] Similarly, the reorganized PCX expects that, a representative of the reorganized PCX will serve as its representative with respect to NMS plans that relate to options trading (*i.e.*, OPRA and Linkage).

iii. *PCX Equities.* PCX Equities will be a wholly-owned stock subsidiary of the reorganized PCX. The proposed demutualization will not affect PCXE's operations, governance structure, or rules.

*A.* Agreements Between the Current PCX and PCX Equities. Currently, the PCX options operations and equities operations share certain infrastructure and personnel. After the completion of the demutualization, these shared assets will continue to be owned by the reorganized PCX and the shared personnel will continue to be employed by the reorganized PCX. In each case, however, PCX Equities will have access to those resources through inter-company agreements with the reorganized PCX. In particular, the reorganized PCX will continue to provide PCX Equities with certain management and support services and staff. The services provided are for administration, membership, technology, finance, accounting, human resources, and legal services. PCX represents that the agreement between the reorganized PCX and PCX Equities will allocate charges for these services and staff between the reorganized PCX and PCX Equities.

d. *Option Trading Permits.*

i. *Privileges Conferred by OTPs.* The reorganized PCX will be authorized to issue OTPs that will entitle holders of the permits to trade options on the options trading facilities of the reorganized PCX, including the options trading floor, POETS,[29] PCX Plus,[30] or any other systems approved by the Board of Directors, as a Market Maker, Floor Broker or order-flow firm. OTP Holders may engage in trading of options in the same manner as currently practiced by PCX Members who trade on the options trading facility.[31]

An OTP does not grant its holder any right to trade securities on PCX Equities. Any OTP Holder that wishes to trade securities on PCX Equities must be approved for, and obtain an ETP pursuant to, the PCXE's application procedures.

OTP Holders will have limited voting rights and may nominate, through the Nominating Committee or by petition, at least one member to the reorganized PCX Board of Directors.

OTP Holders will hold six of the seven positions on the Nominating Committee. Subsequent nominations to the Nominating Committee will be made by the sitting Nominating Committee. The seventh position on the Nominating Committee will be a person from the public selected by the CEO of the reorganized PCX.

OTP Holders will not have any distribution or other ownership rights in reorganized PCX or PCX Holdings by virtue of their status as OTP Holders.

ii. *Number of OTPs.* There will be no limit on the number of OTPs issued by the reorganized PCX.

iii. *Qualification for OTPs.* The reorganized PCX will commence issuing OTPs once the demutualization is completed. Persons or entities that are registered broker-dealers and are not existing PCX members may be granted trading privileges on the reorganized PCX through an application process. OTP qualifications will be substantially the same as the current requirements for PCX membership.

The application process for applicants who are not current PCX members will be the same as is now required by PCX. The decision to grant or deny an application for trading privileges will be made by officers of the reorganized PCX (there will be no Membership Committee) and the denial of an application will be appealable to the reorganized PCX Board Appeals Committee.

iv. *Non-transferability of OTPs.* OTPs will not be transferable by sale or lease,

[24] 15 U.S.C. 78f.

[25] 15 U.S.C. 78s(b).

[26] 17 CFR 240.19b–4.

[27] Telephone conversation between Mai Shiver, Acting Director and Senior Counsel, PCX, and Frank N. Genco, Attorney, Division, Commission, on March 3, 2004, confirming that PCX is a participant in the Nasdaq UTP Plan.

[28] *Id.*

[29] Currently, PCX operates an electronic order routing and execution system called Pacific Options Exchange Trading System (''POETS''), and several other peripheral systems including the Pacific Options Processing System (''POPS'') and the Floor Broker Hand Held trading system, in conjunction with traditional open outcry trading with Floor Brokers and competing Market Makers.

[30] PCX Plus is the Exchange's electronic order delivery, execution, and reporting system for designated option issues through which orders and quotes with size of members are consolidated for execution and/or display. This trading system includes the electronic communications network that enables registered Market Makers to enter orders/quotes with size and execute transactions from remote locations or the trading floor. *See* Securities Act Release No. 47838 (May 13, 2003), 68 FR 27129 (May 19, 2003) (order approving File No. SR–PCX–2002–36).

[31] PCX intends to simplify its membership rules by eliminating Automated System Access Privileges (''ASAPs''). ASAPs refer to a permit issued by the Exchange for effecting option transactions principally over an electronic or automated system such as POETS. Under current PCX Rule 1.14, an ASAP member that wishes to obtain electronic access to the Options Floor must be a registered broker-dealer and approved by the Membership Committee. To date, the Exchange has issued no ASAPs. Because the reorganized PCX proposes to issue OTPs, there will no longer be a need for two separate membership categories. Therefore, PCX represents that the rules related to ASAPs will be rescinded.

but they may be transferred by a firm holding an OTP between individuals within the same firm in accordance with the Rules of the reorganized PCX.

v. *Cost of OTPs.* Pursuant to the requirements of Section 19 of the Act,[32] PCX intends to set forth in a separate rule filing the fees for an OTP that will be assessed.

e. *Proposed PCX Rules of the Reorganized PCX.* PCX represents that the majority of the rules proposed to regulate the business conduct and practices of its OTP Holders, OTP Firms, and associated persons are closely patterned on PCX's existing rules (with the exception of proposed PCX Rules 1 through 3). The proposed rules contain changes to reflect the new structure whereby trading permits will be issued to persons or entities conducting business on the reorganized PCX. Detailed descriptions are provided with respect to those rules that reflect a significant departure from the current PCX Rules. In addition, for those proposed rules that are closely patterned after existing PCX Rules, the PCX indicates which PCX Rules were the model and notes that only minor conforming word changes and clean-up corrections were made.

i. *Summary of Proposed PCX Rules.* Following the demutualization, the reorganized PCX will adopt, subject to certain revisions, the applicable trading rules and standards of the current PCX as they relate to the current options trading business. Proposed PCX Rules 1 through 3, which relate to definitions, qualifications for OTPs and corporate governance, reflect significant departures from existing PCX Rules. The remaining rules are substantially similar to the current rules, unless noted otherwise. A discussion of the proposed rules follows.

*A.* PCX Rule 1—Definitions. Proposed PCX Rule 1 defines certain terms and references (*e.g.,* OTP Holder) used throughout the rules, and is intended to ensure uniformity in the use of such terms. In conjunction with the demutualization and the issuance of the Option Trading Permits, the PCX has developed the following new terms and incorporated them into Proposed PCX Rule 1.

Proposed PCX Rule 1.1(h)—The term ''Exchange'' shall mean the reorganized PCX, a Delaware corporation as described in the company's Certificate of Incorporation and Bylaws. The reorganized Exchange is a national securities exchange as that term is defined by Section 6 of the Act.[33]

Proposed PCX Rule 1.1(n)—The term ''Nominee'' means an individual who is authorized by an OTP Firm, in accordance with proposed PCX Rule 2.4, to conduct business on the Exchange's Trading Facilities and to represent such OTP Firm in all matters relating to the Exchange. As long as a Nominee remains effective, the Nominee will have status as a ''member'' of the Pacific Exchange, as that term is defined in Section 3 of the Act.[34] A Nominee shall agree to be bound by the Bylaws and Rules of the Exchange, and by all applicable rules and regulations of the Commission.

Proposed PCX Rule 1.1(p)—The term ''OTP'' shall refer to an Options Trading Permit issued by the Exchange for effecting approved securities transactions on the Exchange's Trading Facilities. An OTP may be issued to a sole proprietor, partnership, corporation, limited liability company, or other organization which is a registered broker or dealer pursuant to Section 15 of the Act,[35] and which has been approved by the Exchange.

Proposed PCX Rule 1.1(q)—The term ''OTP Holder'' shall refer to a natural person, in good standing, who has been issued an OTP, or has been named as a Nominee. An OTP Holder must be a registered broker or dealer pursuant to Section 15 of the Act,[36] or a Nominee or an associated person of a registered broker or dealer that has been approved by the Exchange to conduct business on the Exchange's Trading Facilities. An OTP Holder shall agree to be bound by the Bylaws and Rules of the Exchange, and by all applicable rules and regulations of the Commission. An OTP Holder shall not have ownership or distribution rights in the Exchange. An OTP Holder will have limited voting rights to nominate an OTP Holder to the Exchange's Board of Directors pursuant to proposed PCX Rule 3.2(b)(2)(C). An OTP Holder will have status as a ''member'' of the Pacific Exchange, as that term is defined in Section 3 of the Act.[37]

Proposed PCX Rule 1.1(r)—The term ''OTP Firm'' shall refer to a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing who holds an OTP or upon whom an individual OTP Holder has conferred trading privileges on the Exchange's Trading Facilities pursuant to and in compliance with these rules. An OTP Firm must be a registered broker or dealer pursuant to Section 15 of the Act.[38] An OTP Firm shall agree to be bound by the Certificate of Incorporation, Bylaws, and PCX Rules of the Exchange, and by all applicable rules and regulations of the Commission. An OTP Firm shall not have ownership or distribution rights in the Exchange. An OTP Firm will have limited voting rights to nominate an OTP Holder to the Exchange's Board of Directors pursuant to proposed PCX Rule 3.2(b)(2)(C). An OTP Firm will have status as a ''member'' of the current PCX, as that term is defined in Section 3 of the Act.[39]

Proposed PCX Rule 1.1(y)—The terms ''self-regulatory organization'' and ''SRO'' shall have the same meaning as set forth in the provisions of the Act relating to national securities exchanges.

Proposed PCX Rule 1.1(aa)—The term ''Trading Facilities'' shall refer to the Exchange's facilities for the trading of options, office space provided by the Exchange to OTP Holders and OTP Firms in connection with their floor trading activities, and any and all electronic or automated order execution systems and reporting services provided by the Exchange to OTP Holders and OTP Firms.

*B.* PCX Rule 2—Option Trading Permits. Proposed PCX Rule 2, which describes the application process, the qualification requirements and other requirements for holding an OTP, are similar to the requirements and procedures now described in current PCX Rule 1 and certain sections of the current PCX Constitution. However, as we describe below, certain substantive changes have been made to reflect the characteristics of the new OTPs. These substantive changes include the following:

Proposed PCX Rule 2.2—In accordance with proposed PCX Rule 2.2, an OTP may be issued to an individual, partnership, corporation, limited liability company, or other organization that is a registered broker-dealer. As discussed under proposed Section 1.1(p) of PCX Rule 1, an OTP will authorize its holder to trade options on any facility of the reorganized PCX, including the options trading floor, POETS, or PCX Plus, as a registered Market Maker, Floor Broker, or order flow firm. An OTP will not confer any rights to trade on the Archipelago Exchange, the equities trading facility of PCX Equities. Any OTP Holder that wishes to trade securities on the Archipelago Exchange must be approved for and obtain a PCXE ETP

[32] 15 U.S.C. 78s.

[33] 15 U.S.C. 78f.

[34] 15 U.S.C. 78c.

[35] 15 U.S.C. 78o.

[36] 15 U.S.C. 78o.

[37] 15 U.S.C. 78c.

[38] 15 U.S.C. 78o.

[39] 15 U.S.C. 78c.

pursuant to PCXE's standard application procedures.

Proposed PCX Rule 2.3—In order to be consistent with the approach taken with respect to seat ownership, under proposed PCX Rule 2.3(b), all firms that directly own OTPs are required to designate a natural person to hold their OTPs (*i.e.,* the OTP Holder). Accordingly, whenever an OTP confers the right to vote (*e.g.,* election of the Nominating Committee, as discussed below), it is the OTP Holder, rather than the OTP Firm, which casts the vote. However, pursuant to proposed PCX Rule 2.21(c) (as discussed below), the OTP Firm retains the right to replace the OTP Holder with another qualified Nominee employed by the OTP Firm at any time. Therefore, since the reorganized PCX will use revocable proxies to conduct its votes, OTP Firms will be able to effectively control the voting process with respect to the OTPs that they own in the same manner as PCX member firms control the voting process with respect to Nominees today.

Proposed PCX Rules 2.4, 2.5, and 2.6—Proposed PCX Rules 2.4, 2.5, and 2.6 would alter PCX's existing member approval process by authorizing the reorganized PCX management—in place of a Membership Committee—to approve or reject OTP applicants. As described in proposed PCX Rule 2.4(g), in the event that the Exchange rejects an application, the applicant will have the opportunity to appeal the decision to the Exchange's Board Appeals Committee pursuant to proposed PCX Rule 10. Minor changes in terminology have been made to conform with the proposed restructuring.

Proposed PCX Rule 2.21—As described in proposed PCX Rule 2.21(a) and (b), unlike current PCX memberships, OTPs may not be purchased, sold or leased. Therefore, proposed PCX Rules 1.21 and 1.24 and sections of proposed PCX Rules 1.22 and 1.23 relating to the purchase, sale, or lease of memberships have been deleted from the reorganized PCX Rules. Under proposed PCX Rule 2.21(c), the only permissible transfers of OTPs are intra-firm transfers involving Nominees employed by the same firm. A new Nominee, unless he or she is a previously approved person or approved Allied Person of the OTP Firm, shall provide all information required for the Exchange to conduct an investigation of the Nominee prior to his or her approval as a Nominee.

Proposed PCX Rule 2.22—Pursuant to proposed PCX Rule 2.22, an OTP will terminate upon the occurrence of the permit holder's expulsion, suspension without reinstatement, death, declaration of incompetence, dissolution, winding up, or other cessation of business. An OTP Holder whose trading privileges are terminated must be current in all filings and payments of dues, fees, and charges. If the OTP Holder fails to be current as required, the Exchange retains jurisdiction over the permit holder until such time as the permit holder is current. In addition, an OTP that confers trading privileges on an OTP Firm will terminate when the named OTP Holder ceases to be an employee of the OTP Firm. In that event, the OTP Firm may nominate another employee as its Nominee OTP Holder. An OTP Firm upon which trading privileges are conferred shall continue to be responsible for all obligations, including, without limitation, dues, fees, and charges imposed by or due to the Exchange.

PCX represents that, other than the substantive changes discussed above and minor conforming word changes that reflect the demutualization, each section of proposed PCX Rule 2 (except PCX Rule 2.21 and PCX Rule 2.22) is substantially the same as a relevant corresponding PCX Rule or Article.

*C.* PCX Rule 3—Organization and Administration

Proposed PCX Rule 3 sets forth the organization and governance structure of the reorganized PCX. Proposed PCX Rules 3.1 through 3.3 regarding Options and Board Committees were drafted using current PCX and PCXE Rules as a starting point.[40] Under the proposed rules, the use of a ''member'' committee structure will be substantially reduced.

Proposed PCX Rule 3.1—Proposed PCX Rule 3.1 states that the Board of Directors may establish: (1) One or more Board committees consisting of one or more Directors of the Exchange; and (2) one or more Options committees consisting of people other than Directors. As discussed in more detail below, although the reorganized PCX Board may establish additional Options Committees under this proposed rule, the proposed Bylaws and Rules of the reorganized PCX currently envision only a Nominating Committee, Ethics and Business Conduct Committee, and OTP Advisory Committee. Similarly, although the Board may establish additional Board Committees, the proposed rules currently envision only a Board Appeals Committee, Regulatory Oversight Committee, Audit Committee, and Compensation Committee.

Proposed PCX Rule 3.2(a)—Proposed PCX Rule 3.2(a) establishes the substantive and procedural rules for an Options Committee conducting meetings and exercising its authority. In particular, proposed PCX Rule 3.2(a), which is similar to existing PCX and PCXE rules and procedures, discusses quorums, voting, conference call meetings, vacancies, the removal and resignation of committee members, and eligibility for and appointment to Options Committees, interested persons and subcommittees.

Under the proposed rule, OTP Holders and Allied Persons[41] of OTP Firms as well as public representatives may be appointed to serve on Options Committees. No more than one person affiliated with the same OTP Firm shall be eligible for service on the same Options Committee. Proposed PCX Rule 3.2(a) would vest authority in the Board of Directors or such other designee of the reorganized PCX to appoint the members of Options Committees (other than the Nominating Committee). The CEO or such other designee of the reorganized PCX shall appoint the Chair and Vice Chair of each Options Committee (other than the Nominating Committee).

Proposed PCX Rule 3.2(b)(1)—Proposed PCX Rule 3.2(b)(1) describes the functions and authority of the Ethics and Business Conduct Committee (''EBCC''). The reorganized PCX's disciplinary process will be similar to the existing PCX disciplinary process and will be governed by the EBCC. Pursuant to the proposed rule, the EBCC would have the following functions and authority to: (1) Examine the business conduct and financial condition of OTP Holders, OTP Firms, and associated persons; (2) conduct hearings and render decisions in summary disciplinary actions and proceedings; (3) impose appropriate sanctions of expulsion, suspension, fine, censure, or any other fitting sanctions where the Committee finds that a violation within the disciplinary jurisdiction of the Exchange has been committed; and (4) require the production of detailed financial reports of an OTP Holder or OTP Firm and such other operational reports as it may deem relevant.

In addition, under this proposed rule, the EBCC will have the authority to examine and subsequently suspend an OTP Firm or OTP Holder if the person or entity is in violation of proposed PCX Rule 4. Any such suspension is subject to review by the Board Appeals Committee. Such review shall not operate as a stay of the suspension

[40] *See* PCX Rules 11.1(a)–(b), 11.2(a)–(b), 11.3–11.5, 11.6(b); 11.8(d), PCX Constitution Articles II–IV, and PCXE PCX Rule 3.

[41] *See supra* note 18.

unless specifically allowed by the Board. A person or firm which experiences a reversal of the suspension imposed by the Committee shall be prohibited from instituting a lawsuit against the Exchange or the Committee members.

Finally, decisions of the EBCC or sanctions imposed by the regulatory staff relating to disciplinary proceedings may be appealed to the Board Appeals Committee in accordance with proposed PCX Rule 10.

Proposed PCX Rule 3.2(b)(2)—Proposed PCX Rule 3.2(b)(2) describes the characteristics and function of the Nominating Committee. Specifically, the Nominating Committee will have seven members consisting of six OTP Holders and one public representative. Members of the Nominating Committee will be nominated in accordance with the procedures set forth in proposed PCX Rule 3.2(b)(2). This proposed rule states that, prior to the expiration of its term, the Nominating Committee shall publish a slate of six eligible nominees for the committee. OTP Holders may submit a petition to the Exchange in writing to nominate additional eligible candidates to fill the OTP positions. Upon written petition of the lesser of thirty-five or ten percent (10%) of the OTP Holders in good standing, the additional candidates shall also be nominated by the Nominating Committee. The CEO shall appoint a person from the public to fill the public position on the Nominating Committee.

If there are more than six nominees to fill the OTP Holder positions on the Nominating Committee, the Nominating Committee shall submit the nominees to the OTP Holders for election. Each OTP Holder in good standing shall be permitted to vote for up to six nominees and the six nominees receiving the most votes shall fill the OTP positions. Tie votes shall be decided by the Board of Directors at its first meeting following the election. If there are only six nominees to fill the OTP Holder positions, those six nominees shall be deemed elected to the Nominating Committee.

This Nominating Committee will nominate at least one nominee for the reorganized PCX Board. Such nominee may be an OTP Holder or Allied Person of an OTP Firm. OTP Holders may submit a written petition to the Exchange to nominate additional eligible candidates to fill the OTP Holder position and, upon written petition of the lesser of thirty-five or ten percent (10%) of OTP Holders in good standing, the additional person(s) shall also be nominated by the Nominating Committee.

After the nomination by petition period has closed, the Board of Directors of PCX Holdings shall have ten (10) business days to object to the nomination of any or all of the OTP Holder nominee(s). The Board of Directors of PCX Holdings may in its sole discretion object to the nomination of any or all of the OTP Holder nominee(s) if the nominee(s) have been disciplined by any securities SRO or the nominee would be subject to statutory disqualification within the meaning of Section 3(a)(39) of the Act.[42] Any nominee who is objected to by the Board of Directors of PCX Holdings is not eligible to be considered as a nominee or petition candidate until the expiration of the current term of the Board of Directors. If the Board of Directors of PCX Holdings objects to all of the proposed nominees, the Nominating Committee shall publish the name of an eligible alternative nominee by the later of ten (10) business days after the Board of Directors of PCX Holdings notifies the Secretary of the reorganized Exchange of their objection to the proposed nominee(s) or sixty-five (65) days prior to the expiration of the term of the Directors. If the Board of Directors of PCX Holdings objects to all of the original nominees, the above defined process shall continue with all of the same deadlines until the Nominating Committee nominates a nominee that is not objected to by the Board of Directors of PCX Holdings.

If there are two or more OTP Holder nominees for the Board of Directors of the reorganized PCX, the Nominating Committee shall submit the contested nomination to the OTP Holders for selection. Each OTP Holder may select one nominee for the contested seat on the Board of Directors. With respect to the contested positions, the nominee for the Board of Directors selected by the OTP Holders, shall be submitted by the Nominating Committee to the Board of Directors. Similarly, the Nominating Committee shall submit an uncontested nominee to the Board of Directors. Tie votes shall be decided by the respective Board at its first meeting following the election.

Proposed PCX Rule 3.2(b)(3)—The proposed OTP Advisory Committee will be responsible for advising the management of the reorganized PCX regarding rule changes relating to disciplinary matters and trading rules. The OTP Advisory Committee shall be made up of OTP Holders. According to PCX, attempts shall be made to have diverse OTP Holder representation of different constituencies on the Committee.

Proposed PCX Rule 3.2(c)—Under this proposed rule, each Options Committee shall have such other powers and duties as delegated to it by the Board of Directors. Each Options Committee is subject to the control, review, and supervision of the Board of Directors.

Proposed PCX Rule 3.3(a)(1)—Proposed PCX Rule 3.3(a)(1) describes the functions and authority of the Board Appeals Committee. The Board Appeals Committee shall be made up of the OTP Director(s), the ETP Director(s), and all of the Public Directors of the reorganized PCX. Board Appeals Committee Panels (''Appeals Panels'') shall be made up of members of the Board Appeals Committee. An Appeals Panel shall be made up of no less than three (3), but no more than five (5) individuals.[43] The Appeals Panel will conduct reviews of matters subject to the applicable provisions of proposed PCX Rule 3.2(b)(1)(C) or 10. Each Appeals Panel will contain at least one Public Director and at least one Director that is an OTP Holder or Allied Person of an OTP Firm. Subject to proposed PCX Rule 10, decisions of the Board Appeals Committee shall be subject to the review of the Board of Directors. The decision of the Board of Directors shall constitute the final action of the Exchange, unless the Board remands the proceedings.

Proposed PCX Rule 3.3(a)(2)—Proposed PCX Rule 3.3(a)(2) describes the functions and authority of the Regulatory Oversight Committee (''ROC''). The ROC shall ensure: (1) The independence of Exchange regulation; (2) that the Exchange provides adequate resources to properly fulfill its SRO regulatory obligations; and (3) that Exchange management fully supports the execution of the regulatory process. The ROC shall be made up of all the Public Directors of the reorganized PCX.

Proposed PCX Rule 3.3(a)(3)—Proposed PCX Rule 3.3(a)(3) describes the functions and authority of the Audit Committee. The Audit Committee shall be made up of at least three (3) Directors of the reorganized PCX. All members of the Audit Committee shall be Public Directors and at least one member of the Audit Committee shall have accounting or related financial management expertise, as the reorganized PCX Board of Directors interprets such qualification in its business judgment. The Audit Committee shall conduct an annual

[42] 15 U.S.C. 78c(a)(39).

[43] The body conducting the review, either the Board Appeals Committee itself or the Appeals Panel, is also referred to in the proposed rules as the Review Board.

review with the independent auditors to determine the scope of their examination and the cost thereof. The Audit Committee shall periodically review with the independent auditors and the internal auditor, the Exchange's internal controls and the adequacy of the internal audit program. The Audit Committee shall review the annual reports submitted both internally and externally, and take such action with respect thereto as it may deem appropriate. The Audit Committee shall also recommend independent public accountants as auditors of the Exchange and its subsidiaries to the reorganized PCX Board of Directors.

Proposed PCX Rule 3.3(a)(4)—Proposed PCX Rule 3.3(a)(4) describes the functions and authority of the Compensation Committee. The Compensation Committee shall be made up of at least three (3) Directors of the reorganized PCX Board of Directors. Only one (1) non-Public Director may serve on the committee. The Compensation Committee shall review and approve corporate goals and objectives relevant to the CEO's Compensation, evaluate the CEO's performance in light of those goals and objectives, and set the CEO's compensation level based on this evaluation. The Compensation Committee shall also make recommendations to the Board of Directors of the reorganized PCX with respect to the design of incentive compensation and equity-based plans.

Proposed PCX Rule 3.6—Subject to minor word changes, proposed PCX Rule 3.6 regarding surveillance agreements is the same as existing PCX Rule 14.1.

Proposed PCX Rules 3.7–3.9—Other than minor conforming word changes, proposed PCX Rules 3.7 through 3.9 are the same as current PCX Constitution Article XIV, Section 1. Under these rules, the reorganized PCX Board may impose reasonable fees, assessments, charges, or fines to be paid by OTP Holders or OTP Firms. Prior to implementing the demutualization, PCX represents that it will file with the Commission a rule proposal to change its Schedule of Fees and Charges for services provided by the reorganized PCX.

*D.* PCX Rule 4—Capital Requirements, Financial Reports, and Margins. Proposed PCX Rule 4, which sets forth the net capital, financial reporting, and margin requirements for OTP Holders and OTP Firms, has been adapted from current PCX Rule 2. Only minor conforming changes in terminology and clean-up corrections have been made to the current PCX Rules.

*E.* PCX Rule 5—Listings. Proposed PCX Rule 5 is comprised of the General Provisions and Definitions, Underlying Securities, Stock Index Options, Flexible Exchange Options, Buy-Write Option Unitary Derivatives (BOUNDs), and Portfolio Depositary Receipts. This proposed rule has been adapted from current PCX Rules 3, 7, and 8. Only minor conforming changes in terminology and clean-up corrections have been made to the current PCX Rules.

*F.* PCX Rule 6—Options Trading. Other than the substantive changes discussed below and minor conforming word changes that reflect the demutualization, proposed PCX Rule 6 is the same as the current PCX Rule 6 governing options trading. Accordingly, the Exchange proposes to modify PCX Rule 6 in order to make two notable modifications to its options trading rules. First, the Exchange seeks to confer jurisdiction currently held by the Options Floor Trading Committee to the Exchange, and, second, the Exchange proposes to confer jurisdiction currently held by Floor Officials to either Trading Officials or the Exchange.[44]

*G.* PCX Rule 7—General Trading PCX Rules. Proposed PCX Rule 7, which pertains to general trading rules that address trading hours, access to trading facilities, etc., has been adapted from current PCX Rule 4. Only minor conforming changes in terminology have been made to the current PCX Rules.

*H.* PCX Rule 9—Conducting Business with the Public. Proposed PCX Rule 9, which governs how OTP Holders and OTP Firms must conduct business with the public, is patterned after existing PCX Rule 9. Except for minor changes in terminology and clean-up corrections, the proposed rule is substantially the same as the existing rule.

*I.* PCX Rule 10—Disciplinary Proceedings, Other Hearings, and Appeals. Proposed PCX Rule 10 describes the disciplinary process for the reorganized PCX. The reorganized PCX's disciplinary process will be similar to the existing PCX disciplinary process (including summary sanction procedures under the Minor PCX Rule Plan) and will be governed by the Ethics and Business Conduct Committee. Therefore, aside from conforming word changes and the substantive changes discussed below, proposed PCX Rule 10 will be closely modeled after existing PCX Rule 10.

Proposed PCX Rules 10.8(a)—Defines and clarifies the procedures and timetables for the respondent to follow when requesting the review of a decision by the Conduct Panel appointed by the Ethics and Business Conduct Committee.[45] The respondent may appeal to the Board at any time within fifteen (15) calendar days after the decision has been served.

Proposed PCX Rule 10.8(b)—Provides that the Board Appeals Committee may appoint an Appeals Panel to review the decision rendered by the Conduct Panel. The composition of the Appeals Panel will be determined by the Board Appeals Committee in accordance with proposed PCX Rule 3.3(a)(1)(A). Unless the Review Board shall decide to open the record for the introduction of new evidence or to hear argument, such review shall be based solely upon the record and the written exceptions filed by the parties. The standard of review shall be de novo.

PCX Rules 10.14(a)–(m)—Current PCX Rules 11.7(a)–(m) regarding appeals for non-disciplinary matters will be incorporated into proposed PCX Rule 10.14. Proposed PCX Rule 10.14 provides the procedures for persons aggrieved by any of the following actions taken by the reorganized Exchange to apply for an opportunity to be heard and to have the action reviewed. These actions are: (1) Denial of an OTP; (2) the barring of any person from becoming associated with an OTP Firm; (3) the suspension or cancellation of OTP trading privileges; (4) the prohibition or limitation with respect to access to services provided by the Exchange, or the access to services of any OTP Firm taken pursuant to the Bylaws, or Rules or procedures of the Exchange; (5) actions taken pursuant to proposed PCX Rules 6.37 (Obligations of Market Makers), 6.82(e) or (f) (regarding allocation or reallocation of option issues), and 6.82(g) (regarding qualification or disqualification of an LMM); or (6) the denial of an applicant for registration as a Market Maker, Lead Market Maker, or Floor Broker (proposed PCX Rules 6.33, 6.44 and

[44] Initially, Trading Officials will be acting as officials of the Exchange as opposed to members of the Options Floor Trading Committee. Over time, the Exchange expects that the PCX's regulatory staff will be primarily responsible for the general supervision of the conduct and dealings of OTP Holders, OTP Firms, and Associated Persons on the options trading facility. The Commission notes that the Exchange committed to file a proposed rule change under Section 19(b) of the Act with respect to any proposal to permit PCX's regulatory staff to assume responsibilities handled by Trading Officials. Telephone Conversation on March 17, 2004.

[45] The Exchange is proposing to make certain technical changes throughout the text of the proposed PCX Rule 10 for clarification purposes, *e.g.,* changing the reference to calendar days.

6.82(b)(1)). The provisions of this rule shall not apply to reviews of disciplinary action, for which review is already provided within proposed PCX Rule 10, and actions in Arbitration.

*J.* PCX Rule 11—Business Conduct. Proposed PCX Rule 11 consolidates various options-related rules that address business practices, ethical standards, and prohibited acts contained in the existing PCX Rules 2 and 4 and the PCX Constitution. Other than minor conforming word changes that reflect the demutualization, each section of proposed PCX Rule 11 is substantially the same as the relevant corresponding PCX Rule or Article.

*K.* Rule 12—Arbitration. Proposed PCX Rule 12, the arbitration rule, has been patterned closely after current PCX Rule 12. Only minor changes in terminology have been made to conform the proposed rule to the circumstances of the proposed demutualization.

*L.* PCX Rule 13—Expulsion, Suspension, and Reinstatement. Proposed PCX Rule 13 clarifies, restates, and reorganizes existing PCX Rules and procedures regarding certain suspensions, cancellations, bars, and prohibitions on access to the reorganized PCX services and facilities. The following describes the proposed rules and how they differ from existing rules, where applicable.

Proposed PCX Rules 13.1(a)–(b)—Proposed PCX Rules 13.1(a)–(b) incorporate a modified version of Article X, Sections 1(a) and (b) of the current PCX Constitution. This rule requires an OTP Holder or OTP Firm to give prompt written notice to the Exchange if it is expelled or suspended from any SRO, encounters financial difficulty or operating inadequacies, fails to perform contracts or becomes insolvent, or if any associated person of such OTP Firm is similarly expelled or suspended by an SRO.

Proposed PCX Rules 13.2(a)–(b)—PCX has reorganized and simplified its Rules relating to summary and non-summary disciplinary proceedings. The proposed PCX Rules have been adapted from NASD Rule 9510 Series and current PCX Constitution, Article X, Section 2 and Article XI, Section 3(c). These proposed sections are intended to eliminate any potential ambiguities in the procedures related to summary and non-summary suspensions by expressly identifying the grounds for imposing such suspensions.

Proposed PCX Rule 13.2(c)—Proposed PCX Rule 13.2(c) provides that action taken pursuant to PCX Rule 13.2(a) shall also be subject to the applicable provisions of proposed PCX Rule 10.14. Furthermore, under proposed Commentary .01, the Exchange will be required to notify the Commission in the event that it determines to take summary action pursuant to proposed PCX Rule 13.2.

Proposed PCX Rule 13.3—Proposed PCX Rule 13.3 states that an OTP Holder, OTP Firm, or associated person thereof loses all rights and trading privileges when those privileges are suspended or canceled by the Exchange. However, such person or organization shall remain subject to the disciplinary power of the Exchange.

Proposed PCX Rule 13.4—Proposed PCX Rule 13.4 states that an OTP Holder, OTP Firm, or associated person thereof whose trading privileges are suspended may be disciplined by the Exchange for any offense committed either before or after the announcement of the suspension.

Proposed PCX Rule 13.5—Other than minor word changes, proposed PCX Rule 13.5 is modeled closely after Article X, Section 3 of the current PCX Constitution. Proposed PCX Rule 13.5 states that a person or organization whose trading privileges have been suspended must immediately allow the reorganized Exchange to investigate its affairs.

Proposed PCX Rule 13.6—Other than minor word changes, proposed PCX Rule 13.6 is modeled closely after Article X, Section 4 of the current PCX Constitution. Proposed PCX Rule 13.6 describes the grounds for canceling trading privileges.

Proposed PCX Rule 13.7—Other than minor word changes, proposed PCX Rule 13.7 is modeled closely after Article X, Section 5 of the current PCX Constitution. Proposed PCX Rule 13.7 describes the reinstatement process after trading privileges have been suspended.

Proposed PCX Rule 13.8—Proposed PCX Rule 13.8 provides that if any OTP Holder, OTP Firm, or any other associated person is suspended and fails or is unable to apply for reinstatement or fails to obtain reinstatement, trading privileges conferred by an OTP will terminate.

*M.* PCX Rule 14—Liability of Directors and Exchange. Proposed PCX Rule 14 has been adapted from current PCX Rule 13. Only minor changes in terminology have been made to conform the rule to the proposed demutualization.

*N.* Option Floor Procedure Advices (''OFPA''). This section of the proposed rules contains the various options floor procedures and policies that have been adopted over time. These proposed rules have been adapted from the existing ones, which were previously approved by the Commission. These policies will apply to OTP Holders, OTP Firms, or associated persons thereof that conduct business on the options trading facilities. Minor conforming changes in terminology have been made to the existing floor procedures and policies. In addition, the Exchange proposes to delete OFPA B–4 (Market Maker Trading on PCX Equity Floors) and OFPA D–8a (Marking Orders to Reflect Split Transactions) because, according to PCX, they are obsolete and no longer applicable to the current trading environment.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[46] in general, and furthers the objectives of Sections 6(b)(5),[47] in particular, because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism for a free and open market and a national market system, and to protect investors and the public interest. In addition, the Exchange believes that the proposed rule change is consistent with the provisions of Section 11A(a)(1)(B)[48] of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments were neither solicited nor received with respect to the proposed rule change.

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

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

A. By order approve such proposed rule change, or

[46] 15 U.S.C. 78f(b).

[47] 15 U.S.C. 78f(b)(5).

[48] 15 U.S.C. 78kA(a)(1)(B).

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

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–PCX–2004–08. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should be submitted by April 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[49]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6817 Filed 3–26–04; 8:45 am]

**BILLING CODE 8010–01–P**

[49] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49455; File No. SR–PCX–2003–60]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Pacific Exchange, Inc. Relating to Rules for Trading Index Options

March 22, 2004

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 28, 2003, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 18, 2003, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On March 2, 2004, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On March 22, 2004, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule, as amended, from interested persons and is approving the proposed rule change, as amended, on an accelerated basis.

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

The PCX is proposing to amend the position and exercise limits with respect to broad-based index options, as well as a number of conforming changes in order to bring the PCX index option rules up to date with those of other Self-Regulatory Organizations (''SRO''). The proposed rule change is substantially similar to the proposed rules recently filed by the ISE, which were approved by the Commission.[6]

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

[2] 2 CFR 240.19b–4.

[3] *See* letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated December 17, 2003. Amendment No. 1 replaced the original rule filing in its entirety.

[4] *See* letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 1, 2004 (''Amendment No. 2''). In Amendment No. 2, the PCX made several changes to the proposed rule change to conform the proposed rule text to the existing Chicago Board Options Exchange, Inc. (''CBOE'') and International Securities Exchange, Inc. (''ISE'') rules. In addition, the Exchange clarified the classes of broad-based index options for which the CBOE Rules prescribe no position limits, and described that its proposed Rule 6.11(b) provided for the procedure that underwriters follow when requesting restrictions on uncovered opening writing transactions during public distributions.

[5] *See* letter from Tania J.C. Blanford, Staff Attorney, Regulatory Policy, PCX to Nancy J. Sanow, Assistant Director, Division, Commission, dated March 22, 2004 (''Amendment No. 3''). In Amendment No. 3, the PCX corrects certain typographical errors.

[6] *See* Securities Exchange Act Release No. 48405 (August 25, 2003), 68 FR 52257 (September 2, 2003) (SR–ISE–2003–05) (Order approving the ISE's proposed rules).

The text of the proposed rule change appears below. Additions are *italicized*; deletions are in [brackets].

* * * * *

**Rule 6 Options Trading**

**Rule 6.8 Position Limits**

(a) (No change.)

Commentary:

.01–.03—(No change.)

.04 The Exchange may establish higher position limits for Market Maker transactions than those applicable with respect to other accounts. Whenever a Market Maker reasonably anticipates that he or she may exceed such position limits in the performance of his or her function of assisting in the maintenance of a fair and orderly market, he or she must consult with and obtain the prior approval of an Options Floor Official. *An exemption will generally be granted only to a Market Maker who has requested an exemption, who is appointed to the options class in which the exemption is requested, whose positions are near the current position limit, and who is significant in terms of daily volume. The positions must generally be within ten percent (10%) of the limits contained in Rule 6.8, Commentary .05 for equity options and twenty percent (20%) of those limits for broad-based index options.*[7]

* * * * *

**Rule 6.11 Other Restrictions on Exchange Option Transactions and Exercises**

*(a)* The Exchange shall have the power to impose, from time to time in its discretion, such restrictions on Exchange option transactions or the exercise of option contracts in one or more series of options of any class dealt in on the Exchange as it deems advisable in the interests of maintaining a fair and orderly market in option contracts or in the underlying stocks or Exchange-Traded Fund Shares covered by such option contracts, or otherwise deems advisable in the public interest or for the protection of investors.

*(1)* During the effectiveness of any such restriction, no member organization shall effect any Exchange option transaction or exercise any option contract in contravention of such restriction.

*(2)* Notwithstanding the foregoing, during the ten (10) business days prior to the expiration date of a given series of options, *other than index options*, no restriction on the exercise of option contracts *under this Rule* shall remain in effect with respect to that series of

[7] *See supra* note 4.

options. *With respect to index options, restrictions on exercise may be in effect until the opening of business on the last business day before the expiration date.*

*(3) Exercises of American-style, cash-settled index options shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:*

*(A) The exercise of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the Rule of the Options Clearing Corporation while trading in the option is delayed, halted or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension;*

*(B) Exercises of expiring American-style, cash-settled index options shall not be prohibited on the last business day prior to their expiration;*

*(C) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 1:00 p.m. Pacific Time. In the event of such a trading halt, exercises may occur through 1:20 p.m. Pacific Time. In addition, if trading resumes following such a trading halt (such as by closing rotation), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subsection (a)(3)(C) are subject to the authority of the Board to impose restrictions on transactions and exercises pursuant to subsection (a) of this Rule; and*

*(D) An Exchange officer designated by the Board may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended. In the case of an American-style, cash-settled FLEX Index Option, the references in this paragraph (a)(3) to a trading delay, halt, suspension, resumption, or closing rotation shall mean the occurrence of the applicable condition in the standardized option on the index underlying the FLEX Index Option (rather than the occurrence of the applicable condition in the FLEX Index Option itself).*[8]

*(b) Except with respect to index options trading pursuant to Rule 7, whenever, the issuer of a security underlying a call option traded on the Exchange is engaged or proposes to engage in a public underwritten distribution (''public distribution'') of such underlying security or securities exchangeable for or convertible into such underlying security, the underwriters may request that the Exchange impose restrictions upon all opening writing transactions in such options at a ''discount'' where the resulting short position will be uncovered (''uncovered opening writing transactions''). Upon receipt of such a request, the Exchange shall impose the requested restrictions as promptly as possible but no earlier than 15 minutes after it has been announced on the floor of the Exchange and shall terminate such restrictions upon request of the underwriters or when the Exchange otherwise discovers that the stabilizing transaction by the underwriters has been terminated. In addition to a request, the following conditions are necessary for the imposition of restrictions:*

*(1) Less than a majority of the securities to be publicly distributed in such distribution are being sold by existing security holders;*

*(2) The underwriters agree to notify the Exchange upon the termination of their stabilization activities; and*

*(3) The underwriters initiate stabilization activities in such underlying security on a national securities exchange when the price of such security is either at a ''minus'' or ''zero minus'' tick.*

*(c) For purposes of subsection (b) above, an uncovered opening writing transaction in a call option will be deemed to be effected at a ''discount'' when the premium in such transaction is either:*

*(1) In the case of a distribution of the underlying security not involving the issuance of rights and in the case of a distribution of securities exchangeable for or convertible into the underlying security, less than the amount by which the underwriters' stabilization bid for the underlying security exceeds the exercise price of such option; or*

*(2) In the case of a distribution being offered pursuant to rights, less than the amount by which the underwriters' stabilization bid in the underlying security at the Subscription Price exceeds the exercise price of such option.*

* * * * *

**Rule 6.37 Obligation of Market Makers**

(a) (No change.)

(b)(1) (No change.)

(2) Bidding no more than $1 lower and/or offering no more than $1 higher than the last preceding transaction price for the particular option contract. However, this standard shall not ordinarily apply if the price per share (or other unit of trading) of the underlying security or Exchange-Traded Fund Share has changed since the last preceding transaction for the particular option contract, in which even a Market Maker may then bid no lower than or offer no more than $1 plus the aggregate change in the price per share (or other unit of trading) of the underlying security or Exchange-Traded Fund Share since the time of the last preceding transaction for the particular option contract. *This provision applies from one day's close to the next day's opening and from one transaction to the next in intra-day transactions. With respect to inter-day transactions, this provision applies if the closing transaction occurred within one hour of the close and the opening transaction occurred within one hour after the opening. With respect to intra-day transactions, this provision applies to transactions occurring within one hour of one another.*[9] *Two Floor Officials may waive the provisions of this paragraph in an index option when the primary underlying securities market for that index is not trading.* Nothing in this subparagraph (b)(2) shall alter the maximum bid/ask differentials established by subparagraph (b)(1) of Rule 6.37.

(3)–(4) (No change.)

(c)–(h) (No change.)

Commentary:

.01–.08 (No change.)

*.09 The Exchange or its authorized agent may calculate bids and asks for various indices for the sole purpose of determining permissible bid/ask differentials on options on these indices. These values will be calculated by determining the weighted average of the bids and asks for the components of the corresponding index. These bids and asks will be disseminated by the Exchange at least every fifteen (15) seconds during the trading day solely for the purpose of determining the permissible bid/ask differential that market-makers may quote on an in-the-money option on the indices. For in-the-money series in index options where the calculated bid/ask differential is wider than the applicable differential set out in subparagraph (b)(1) of this Rule, the bid/ask differential in the index option series may be as wide as the calculated bid/ask differential in the underlying index. The Exchange will not make a market in the basket of stock comprising the indices and is not guaranteeing the accuracy or the availability of the bid/ask values.*

* * * * *

[8] *See supra* note 4.

[9] *See supra* note 4.

**Rule 6.64 Trading Rotations**

(a)–(d) (No change.)

(e) Closing Rotations. Transactions may be effected in a class of options after 1:02 p.m. (Pacific Time) *or, 1:15 p.m. (Pacific Time) for certain index options*, if they occur during a trading rotation. Such a trading rotation may be employed in connection with the opening or reopening of trading in the underlying security or Exchange Traded Fund Share after 12:30 p.m. (Pacific Time) or due to the declaration of a ''fast market'' pursuant to Rule 6.28. The decision to employ a trading rotation after 12:30 p.m. will be publicly announced on the Trading Floor prior to the commencement of such rotation and Book Staff should notify Floor Brokers by 12:50 p.m., if possible, that a closing rotation may be necessary. The closing rotation should commence at least ten minutes after the Trading Floor has been notified. No more than one trading rotation may be commenced after 1:02 p.m. If a trading rotation is in progress and Floor Officials determine that a final trading rotation is needed to assure a fair and orderly close, the rotation in progress will be halted and a final rotation begun as promptly as possible after 1:02 p.m. Any trading rotation conducted after 1:02 p.m. may not begin until ten minutes after news of such rotation is disseminated. Only orders that have been entered before 1:02 p.m. are eligible for execution during the closing rotation.

(f)–(h) (No change.)

* * * * *

**Rule 7 Index Options**

Introduction

In general, the Rules of the PCX's Board of Governors applicable to the trading of stock options, in particular Rule 6, shall be applicable to the trading of index options as that term is defined below. Rule 7 supplements or replaces those rules relating to stock options where required by the nature of index options. In cases where Rule 7 is silent on an issue, the applicable section of the rules relating to stock options shall be read so as to apply to index option. *Where the rule in this section indicate that particular indices or requirements with respect to particular indices will be ''Specified,'' the Exchange shall file a proposed rule change with the Commission to specify such indices or requirements.*

* * * * *

**Rule 7.1 Definitions**

(a)–(b) (No change.)

(c) *The term ''A.M.-settled index option'' means an index option contract for which the current index value at expiration shall be determined as provided in Rule 7.9(a)(7).* [The term ''index'' shall mean the sum of the reported last sales on their primary market of those underlying securities which, as a group, have been designated by the Exchange as underlying an option contract, divided by the Divisor.]

(d)–(f) (No change.)

(g) The term ''index multiplier'' means the *amount specified in the contract by which the current index* value [designated by the Exchange by which the index] is *to be* multiplied *to arrive at the value required to be delivered to the holder of a call or by the holder of a put option valid exercise of the contract.*

(h) The term ''*current* index value'' [in] *with* respect to a particular index *option contract* [shall] means the *level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by the Exchange. The current index value with respect to a reduced-value LEAP is one-tenth of the current index value of the related index option. The ''closing index value'' shall be the last index value reported on a business day* [sum of the prices of the underlying securities divided by the Divisor, and as reported by the reporting authority for the index].

(i) *Reserved.* [The term ''closing index value'' shall be the last index value reported by the reporting authority on a business day. The reporting authority shall use the closing last sales of the underlying securities on their primary market to calculate the closing index value.]

(j) (No change.)

(k) The term ''underlying security'' or ''underlying securities'' with respect to an index option contract means *any of the securities* [all of the stocks] that are the basis for the calculation of the index.

(l) The term ''reporting authority'' [in] *with* respect [of] *to* a particular index means the institution or reporting service designated by the Exchange as the official source for *(1)* calculating *the level of the index from the reported prices of the underlying securities that are the basis of the index and (2) reporting such level.* [and disseminating the value of the index.] *The reporting authority for each index approved for options trading on the Exchange shall be specified in Rule 7.13.*

(m)–(u) (No change.)

(v) *The terms ''industry index'' and ''narrow-based index'' means an index designed to be representative of a particular industry or a group of related industries.*

*(w) The term ''market index'' and ''broad-based index'' mean an index designed to be representative of a stock market as a whole or of a range of companies in unrelated industries.*

* * * * *

[Index Multiplier]

[Rule 7.2 The index multiplier shall be 100 unless otherwise determined by the Exchange.]

* * * * *

Designation of the Index

**Rule 7.2[7.3] Broad-Based Index Options**

(a) (No change.)

* * * * *

Designation of the Index

**Rule 7.3 Narrow-Based Index Options**

[(b)–(c)] *(a)–(b)* (No substantive change to the rule text).[10]

* * * * *

**Rule 7.4 Dissemination of Information**

(a) The Exchange shall assure that the *current* index value is disseminated, [to the public] after the close of business and from time-to-time on days on which *transactions in* index options are *made* [traded] on the Exchange.

(b) The Exchange shall maintain, in files available to the public, information identifying the stocks whose prices are the basis for calculation of the index and the method used to determine the *current* index value.

* * * * *

[Adjustments in the Divisor

Rule 7.5. The Divisor ordinarily will be adjusted in the event of a stock dividend, stock distribution, stock split or reverse split, rights offering, distribution, reorganization, recapitalization or reclassification or similar event in respect of any component stock, or in the event a stock is added to or deleted from the index, or one stock is substituted for another. The purpose of adjusting the Divisor in the context of such events is to maintain continuity of index values; the Divisor will not be revised for any other purpose.]

* * * * *

*Rule 7.5 Position Limits for Broad-Based Index Options*

*(a) Rule 6.8 generally shall govern position limits for broad-based index options, as modified by this Rule 7.5. Except otherwise indicated below, the*

[10] Telephone conversation between Tania Blanford, Attorney, PCX, and Tim Fox, Attorney, Division, Commission on March 18, 2004.

*position limit for a broad-based index option shall be 25,000 contracts. There may be no position limit for certain Specified (as provided in Rule 7) broad-based index option contracts.*

*(b) Index option contracts shall not be aggregated with option contracts on any stocks whose price are the basis for calculation of the index.*

(*c) Positions in reduced-value index options shall be aggregated with positions in full-value index options. For such purposes, ten (10) reduced-value options shall equal one (1) full-value contract.*

*(d) Capped-style index options shall be aggregated with standard option contracts on the same stock index group.*

* * * * *

Position Limits for Index Options

**Rule 7.6 Narrow-Based Index Options**

(a)–(c) (No change.)

* * * * *

[Broad-Based Index Options

(d) The position limit for a broad based index option shall be 15,000 contracts, except as follows:

(1) The position limit for options on the Wilshire Small Cap Index shall be 37,500 contracts on the same side of the market, with no more than 22,500 of such contracts in the series with the nearest expiration date.

(2) Quarterly Index Expirations (QIXs) on the Wilshire Small Cap Index shall be excluded from the aggregation of options on such indexes for purposes of subsection (d)(1). In determining compliance with applicable position limits, QIXs on the Wilshire Small Cap Index shall be subject to a contract limitation fixed by the Exchange, which shall not be larger than 37,500 contracts on the same side of the market. For purposes of determining compliance with this subsection (d)(2), all Wilshire Small Cap Index options (including all QIXs on the Wilshire Small Cap Index) shall be aggregated. In no event shall the aggregate of all option contracts on the Wilshire Small Cap Index exceed 37,500 contracts on the same side of the market.

(3) The position limit for options on the PCX Technology Index shall be 37,500 contracts on the same side of the market, with no more than 22,500 of such contracts in the series with the nearest expiration date.

(4) The position limit for options on the Dow Jones & Co. Taiwan Index shall be 50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date.

(5) The position limit for options on the Morgan Stanley Emerging Growth Index shall be 37,500 contracts on the same side of the market, with no more than 22,500 contracts in the series with the nearest expiration date.

(e) Capped-style index options shall be aggregated with standard option contracts on the same stock index group.

Commentary:

.01. All members and member organizations acquiring positions of 200 contracts or more in index options shall report such information to the Department of Options Surveillance. The report shall be filed in accordance with the provisions of Rule 6.6(a).]

* * * * *

*Exemptions from Position Limits*

***Rule 7.7* [Broad-Based Index Hedge Exemption]**

*(a). Broad-based Index Hedge Exemptions.* [.02.] The broad-based index hedge exemption is in addition to the standard limit and other exemptions available under Exchange rules, interpretations and policies. The following procedures and criteria must be satisfied to qualify for a broad-based index hedge exemption:

*(1)* [(a)] The account in which the exempt option positions are held (the ''hedge exemption account'') *must* has received prior Exchange approval for the hedge exemption specifying the maximum number of contracts that may be exempt under this *Rule* [Commentary]. *The hedge exemption account must have provided all information required on Exchange-approved forms and must have kept such information current.* [The] Exchange [may grant]approval *may be granted* on the basis of verbal representations, in which *event* [case] the hedge exemption account must, within two business days (or such other time designated by the Exchange), furnish the Exchange with appropriate *forms and* documentation substantiating the basis for the exemption. *The* [A] hedge exemption account may apply from time to time for an increase in the maximum number of contracts exempt from the position limits.

[(b) The hedge exemption account has provided all information required on Exchange-approved forms and has kept such information current.]

*(2)* [(c)] A hedge exemption account that is not carried by an Exchange Member Organization must be carried by a member of a self-regulatory organization participating in the Intermarket Surveillance Group.

*(3)* [(d)] The hedge exemption account maintains a qualified portfolio, or will effect transactions necessary to obtain a qualified portfolio concurrent with or at or about the same time as the execution of the exempt options positions, of:

*(A)* [(1)] A net long or short position in common stocks in at least four industry groups and contains at least twenty *(20)* stocks, none of which accounts for more than fifteen percent *(15%)* of the value of the portfolio or in securities readily convertible, and additionally in the case of convertible bonds, economically convertible, into common stocks which would comprise a portfolio, [and/]or

*(B)* [(2)]—No change.

*(4)* [(e)] The exemption applies to positions in broad-based index options dealt in on the Exchange and is applicable to the unhedged value of the qualified portfolio. The unhedged value will be determined as follows:

*(A)* [(1)] The values of the net long or short positions of all qualifying products in the portfolio are totaled;

*(B)* [(2)] For positions in excess of the standard limit, the underlying market value *(i)*[(A)] of any economically equivalent opposite side of the market calls and puts in broad-based index options, and *(ii)*[(B)] of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and

*(C)* [(3)]–No change.

*(5)* [(f)] *Positions in broad-based index options that are traded on the Exchange are exempt from the standard limits to the extent specified in this subsection (a)(5).*

[The hedge exemption customer shall agree to, and any Member Organization carrying an account for the customer, shall

(1) liquidate and establish option and stock positions or their equivalent in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate a stock position or its equivalent with an equivalent index option position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option.

(2) liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.

(3) promptly notify the Exchange of any material change in the stock

portfolio or its equivalent or stock index futures positions which materially affects the unhedged value of the qualified portfolio.

(4) abide by prevailing exercise limits allowed pursuant to Rule 7.7, without regard to the exemption provision, except in expiring series from the last business day prior to expiration until expiration. ]

*(6)* [(g)] Only the following qualified hedging transactions and positions are eligible for purposes of hedging a qualified portfolio (*i.e.*, stocks, futures, options and warrants) pursuant to this *Rule* [Commentary]:

*(A)* [(1)] Long put(s) used to hedge the holding of a qualified portfolio;

*(B)* [(2)] Long call(s) used to hedge a short position in a qualified portfolio;

*(C)* [(3)] Short call(s) used to hedge the holding of a qualified portfolio; and

*(D)* [(4)] Short put(s) used to hedge a short position in a qualified portfolio. The following strategies may be effected only in conjunction with a qualified stock portfolio *for non-P.M. settled, European style index options only:*

(*i*) [(5) For non-P.M. settled, European-style index options only—a] *A* short call position accompanied by long put(s), where the short call(s) expire with the long put(s), and the strike price of the short call(s) equals or exceeds the strike price of the long put(s)(a ''collar''). Neither side of the collar transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rules 6.8*, 7.5* and 7.*7*[6], a collar position will be treated as one (1) contract;

(*ii*) [(6) For non-P.M. settled, European-style index options only—a] *A* long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expire with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s)(a ''debit put spread position''); and

(*iii*)[(7) For non-P.M. settled, European-style index options only—a] *A* short call position accompanied by a debit put spread position, where the short call(s) expire with the puts and the strike price of the short call(s) equals or exceeds the strike price of the long put(s). Neither side of the short call, long put transaction can be in-the-money at the time the position is established. For purposes of determining compliance with Rules 6.8*, 7.5* and 7.*7*[6], the short call and long put positions will be treated as one (1) contract.

(*7*) The hedge exemption account shall:

(*A*) *Liquidate and establish options, stock positions, their equivalent or other qualified portfolio products in an orderly fashion; not initiate or liquidate positions in a manner calculated to cause unreasonable price fluctuations or unwarranted price changes; and not initiate or liquidate a stock position or its equivalent with an equivalent index option position with a view toward taking advantage of any differential in price between a group of securities and an overlying stock index option;*

(*B*) *Liquidate any options prior to or contemporaneously with a decrease in the hedged value of the qualified portfolio which options would thereby be rendered excessive.*

(*C*) *Promptly notify the Exchange of any material change in the qualified portfolio which materially affects the unhedged value of the qualified portfolio.*

(*8*) *If an exemption is granted, it will be effective at the time the decision is communicated. Retroactive exemptions will not be granted.*

[(h) Compliance]

(*9*) [(1)] The hedge exemption account shall promptly provide to the Exchange any information requested concerning the qualified portfolio.

(*10*) [(2)] Positions included in a qualified portfolio that serve to secure an index hedge exemption may not also be used to secure any other position limit exemption granted by the Exchange or any other self regulatory organization or futures contract market.

(*11*) [(3)] Any member or member organization that maintains a broad-based index option position in such member's or member organization's own account or in a customer account, and has reason to believe that such position is in excess of the applicable limit, shall promptly take the action necessary to bring the position into compliance. Failure to abide by this provision shall be deemed to be a violation of Rules 6.8*, 7.5* and *this Rule* 7.*7*[6] by the member or member organization.

(*12*) [(4)] Violation of any of the provisions of this Rule [7.6 and the commentaries thereunder], absent reasonable justification or excuse, shall result in withdrawal of the index hedge exemption and may form the basis for subsequent denial of an application for an index hedge exemption hereunder.

(*13*) *Each member (other than Exchange market makers) that maintains a broad-based index options position on the same side of the market in excess of a Specified (as provided in Rule 7)*[11] *number of contracts for its own account or for the account of a customer, shall report information as to whether the positions are hedged and provide documentation as to how such contracts are hedged, in the manner and form required by the Exchange. The Exchange may impose other reporting requirements.*

(*14*) *Whenever the Exchange determines that additional margin is warranted in light of the risks associated with an under-hedged options position in Specified (as provided in Rule 7)*[12] *broad-based indices, the Exchange may impose additional margin upon the account maintaining such under-hedged position pursuant to its authority under Rule 7.16. The clearing firm carrying the account also will be subject to capital charges under Rule 15c3–1 under the Exchange Act to the extent of any margin deficiency resulting from the higher margin requirements.*

[Narrow-Based Index Hedge Exemption]

(*a*) *Industry (Narrow-Based) Index Hedge Exemptions.* [.03.]—(No substantive change to the rule text).

* * * * *

**Rule 7.*8* [7.7] Exercise Limits**

(a) In determining compliance with Rule 6.9, *exercise limits for* index option contracts shall be *equivalent to the position limits prescribed for option contracts with the nearest expiration date in Rule 7.5 and 7.6.* [subject to the same exercise limit as the established position limit for that particular index option contract.]

(*b*) *For a market maker granted an exemption to position limits pursuant to Rule 6.8(a), Commentary .04, the number of contracts that can be exercised over a five business day period shall equal the market maker's exempted position.*

(*c*) *In determining compliance with exercise limits applicable to stock index options, option contracts on a stock index group shall not be aggregated with options contracts on an underlying stock or stocks included in such group, and option contracts on one stock index group shall not be aggregated with option contracts on any other stock index group.*

(*d*) *With respect to index option contracts for which an exemption has been granted in accordance with the provisions of Rule 7.7, the exercise limit shall be equal to the amount of the exemption.*

(*e*) [(b)] Capped-style index options shall not be aggregated with standard

[11] *See supra* note 4.

[12] See supra note 4.

option contracts on the same stock index group.

* * * * *

**Rule 7.9[7.8] Terms of *Index* Option Contracts**

(a) *General.*

(*1*) *Meaning of Premium Bids and Offers. Bids and offers shall be expressed in terms of dollars and cents per unit of the index.*

(*2*) *Exercise Prices.* The Exchange shall determine fixed point intervals of exercise prices for call and put options.

(*3*) [(b)] *Expiration Months. Index Option contracts may expire at three (3) month intervals or in consecutive months. The Exchange may list up to six (6) months at any one time, but will not list index options that expire more than twelve (12) months out.*

(*4*) *''European-Style Exercise.'' Specified European-style index options, some of which may be A.M.-settled as provided in subsection (a)(7) below, may be approved for trading on the Exchange.*

(*5*) [(c)] Capped-style index options. [(1)] Capped-style index options *that are approved for trading on the Exchange shall be Specified in this subsection (a)(5).*[13] [on the following indexes are approved for trading on the Exchange:(A) Wilshire Small Cap Index. (B) PSE Technology Index.]

(*A*) [(2)] Unless modified by the Exchange, the cap interval shall be $20.

(*B*) [(3)] Initially, one at-the-money call and put will be listed with an expiration of up to one year in the future. Additional at-the-money series may be listed every two months with expirations up to one year in the future.

(*C*) [(4)] Series may be added to expiration months with three or more months remaining to their expiration, if there has been a move of ten or more points in the index value.

(*6*) [(d)] Quarterly Index Options (QIXs). The Exchange may open for trading up to eight near-term quarterly index expirations at any one time. The index multiplier for QIXs shall be 100. Unless otherwise specified, QIXs shall be p.m. settled. QIXs *that are approved for trading on the Exchange shall be Specified in this subsection (a)(6).* [on the following indexes are approved for trading on the Exchange: (1) Wilshire Small Cap Index.]

(*7*) [(e)] A.M.-Settled Index Options. [(1)(A)] The last day of trading for A.M.-settled index options shall be the business day preceding the last day of trading in the underlying securities prior to expiration. The current index value at the expiration of A.M.-settled index option shall be determined, *for all purposes under these Rules and the Rules of the Options Clearing Corporation*, on the last day of trading in the underlying securities prior to expiration,*[*. The current index value shall be determined ] by reference to the reported level of such index as derived from first reported sale (opening) prices of the underlying securities on such day, *except that [I]in the event* [in any case where the] *that the primary market for an underlying* security does not open for trading [on that day], *halts trading prematurely, or otherwise experiences a disruption of normal trading on that day, or in the event that the primary market for an underlying security is open for trading on that day, but that particular security does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on that day* the *last reported sale* price of that security shall be [used] *determined, for the purposes of calculating the current index value at expiration, as set forth in Rule 7.10(f).* [unless the exercise settlement amount is fixed in accordance with the Rules and By-Laws of the Options Clearing Corporation; and]

[(B) In any case where an exercise settlement amount is fixed for any series of index options pursuant to the Rules and By-Laws of The Options Clearing Corporation, the amount so fixed shall be the amount required to be paid upon exercise of options of that series notwithstanding any difference between the current index value used by The Options Clearing Corporation in fixing that amount and the index value determined pursuant to Exchange Rules or practices.]

(*A*)[(2)] The following A.M.-settled index options are approved for trading on the Exchange: [(A) PSE Technology Index. (B) Wilshire Small Cap Index (C) Dow Jones & Co. Taiwan Index (D) Morgan Stanley Emerging Growth Index]

(i) *Reserved.*[14]

(*b*) *Index LEAPS Options Series.*

(*1*) *Notwithstanding the provisions of subsection (a)(3) above, the Exchange may list index LEAPS options series that expire from twelve (12) to sixty (60) months from the date of issuance.*

(*A*) *Index LEAPS options series may be based on either the full or reduced value of the underlying index. There may be up to ten (10) expiration months, none further out than sixty (60) months. Strike price interval, bid/ask differential and continuity Rules shall not apply to such options series until the time to expiration is less than twelve (12) months.*

(*B*) *When a new Index LEAPS options series is listed, such series will be opened for trading either when there is buying or selling interest, or forty (40) minutes prior to the close, whichever occurs first. No quotations will be posted for such options series until they are open for trading.*

(*2*) *Reduced-Value LEAPS Options Series.*

(*A*) *Reduced-value LEAPS options series on the following stock indices are approved for trading on the Exchange:*

(*i*) *Reserved.*[15]

(*B*) *Expiration Months. Reduced-value LEAPS options series may expire at six-month intervals. When a new expiration month is listed, series may be near or bracketing the current index value. Additional series may be added when the value of the underlying index increases or decreases by ten (10) to fifteen (15) percent.*

(*c*) *Procedures for Adding and Deleting Strike Prices. The procedures for adding and deleting strike prices for index options are provided in Rule 6.4, as amended by the following:*

(*1*) *The interval between strike prices will be no less than $5.00; provided, that in the case of the certain specified classes of index options, the interval between strike prices will be no less than $2.50.*

(*2*) *New series of index option contracts may be added up to the fifth business day prior to expiration.*

(*3*) *When a new series of index options with a new expiration date are opened for trading, or when additional series of index options in an existing expiration date are opened for trading as the current value of the underlying index to which such series relate moves substantially from the exercise prices of series already opened, the exercise prices of such new or additional series shall be reasonably related to the current value of the underlying index at the time such series are first opened for trading. In the case of all classes of index options, the term ''reasonably related to the current value of the underlying index'' shall have the meaning set forth in subsection (c)(4) below.*

(*4*) *Notwithstanding any other provision of this subsection (c), the Exchange may open for trading additional series of the same class of index options as the current index value of the underlying index moves substantially from the exercise price of those index options that already have been opened for trading on the*

[13] *See supra* note 4.

[14] *See supra* note 4.

[15] *See supra* note 4.

*Exchange. The exercise price of each series of index options opened for trading on the Exchange shall be reasonably related to the current index value of the underlying index to which such series relates at or about the time such series of options is first opened for trading on the Exchange. The term ''reasonably related to the current value of the underlying index'' means that the exercise price is within thirty percent (30%) of the current index value. The Exchange may also open for trading additional series of index options that are more than thirty percent (30%) away from the current index value, provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate, or individual customers or their broker. Market makers trading for their own account shall not be considered when determining customer interest under this provision.*

(*d*) *Index Level on the Last Day of Trading. The reported level of the underlying index that is calculated by the reporting authority on the last day of trading in the underlying securities prior to expiration for purposes of determining the current index value at the expiration of an A.M.-settled index option may differ from the level of the index that is separately calculated and reported by the reporting authority and that reflects trading activity subsequent to the opening of trading in any of the underlying securities.*

(*e*) *Index Values for Settlement. The Rules of the Options Clearing Corporation specify that, unless the Rules of the Exchange provide otherwise, the current index value used to settle the exercise of an index option contract shall be the closing index for the day on which the index option contract is exercised in accordance with the Rules of the Options Clearing Corporation or, if such day is not a business day, for the most recent business day.*

* * * * *

[Meaning of Premium Bids and Offers

Rule 7.9 Bids and offers shall be expressed in terms of dollars and fractions per unit of the index.]

* * * * *

*Trading Sessions*

**Rule 7.10 [Trading Rotations]**

(*a*) *Days and Hours of Business. The Board of Governors has resolved that, except as otherwise provided in this Rule or under unusual conditions as may be determined by the Board or its designee, transactions in index options may be effected on the Exchange between the hours of 6:30 a.m. and 1:15 p.m. Pacific time. With respect to options on foreign indexes, the Board or its designee shall determine the days and hours of business.*

[Rule 7.10]

(*b*) *Trading Rotations.* The provisions of Rule 6.64 regarding trading rotations shall apply to index options, except as otherwise provided in Rule 7. [The Order Book Official shall open first those series of a class which have the nearest expiration. Thereafter the Order Book Official shall open the remaining series in a manner he deems appropriate under the circumstances. One and one-half hours after the opening rotation, trading shall become subject to Rule 7.11, unless the Exchange determines it is in the public interest to suspend trading at an earlier time.] *Two Floor Officials may delay the commencement of the opening rotation in an index options whenever in their judgment such action is appropriate in the interests of a fair and orderly market. Among the factors that may be considered in making these determinations are:*

(*1*) *Unusual conditions or circumstances in other markets;*

(*2*) *An influx of orders that has adversely affected the ability of the Lead Market Maker to provide and to maintain fair and orderly markets;*

(*3*) *Activation of opening price limits in stock index futures on one or more futures exchanges;*

(*4*) *Activation of daily price limits in stock index futures on one or more futures exchanges;*

(*5*) *The extent to which either there has been a delay in opening or trading is not occurring in stocks underlying the index; and*

(*6*) *Circumstances such as those which would result in the declaration of a fast market under Rule 6.28.*

* * * * *

[Trading Halts or Suspensions]

(*c*) [Rule 7.11.] *Instituting Trading Halts or Suspensions.* Trading on the Exchange in any index option shall be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20%, in the case of a broad based index, and 10% for all other indices, of the index value is halted or is suspended. Trading in an index option shall also be halted whenever *Two Floor Officials* or the Exchange deem[s] such action appropriate in the interests of a fair and orderly market or to protect investors. Among the factors that may be considered by the Exchange are the following:

(*1*) [(i)] All trading has been halted or suspended in the market that is the primary market for a plurality of the underlying stocks;

(*2*) [(ii)] The current calculation of the index derived from the current market prices of the stocks is not available; or

(*3*) *The extent to which the rotation has been completed or other factors regarding the status of the rotation.*

(*4*) [(iii)] Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present, *including, but not limited to the activation of price limits on futures exchanges.*

(*d*) *Resumption of Trading Following a Halt or Suspension.* Trading in index options of a class or series that has been the subject of a halt or suspension by the Exchange may resume if the Exchange determines that the conditions which led to the halt or suspension are no longer present, or that the interests of a fair and orderly market are best served by a resumption of trading. *Among the factors to be considered in making this determination are whether the conditions that led to the halt or suspension are no longer present, and the extent to which trading is occurring in stocks underlying the index. Upon reopening, a rotation shall be held in each class of index options unless Two Floor Officials conclude that a different method of reopening is appropriate under the circumstances, including, but not limited to, no rotation, an abbreviated rotation or any other variation in the manner of the rotation.*

(*e*) *Circuit Breakers. Rule 4.22 applies to index options trading with respect to the initation of a market-wide trading halt commonly known as a ''circuit breaker.''*

(*f*) *Special Provisions for Foreign Indices. When the hours of trading of the underlying primary securities market for an index option do not overlap or coincide with those of the Exchange, all of the provisions as described in subsections (b) through (d) above shall not apply except for (b)(4).*

(*g*) *Pricing When Primary Market Does Not Open. When the primary market for a security underlying the current index value of an index option does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day, or if a particular security underlying the current index value of an index option does not open for trading, halts trading prematurely, or otherwise experiences a disruption of normal trading on a given day in its primary market, the price of that security shall be determined, for the purposes of calculating the current*

*index value at expiration, in accordance with the Rules and By-Laws of the Options Clearing Corporation.*

* * * * *

**Rule 7.11 Reserved**

* * * * *

*Debit Put Spread Cash Account Transactions*

**Rule 7.12 [Reserved.]**

*Debit put spread positions in European-style, broad-based index options traded on the Exchange (hereinafter ''debit put spreads'') may be maintained in a cash account as defined by Federal Reserve Board Regulation T Section 220.8 by a public customer, provided that the following procedures and criteria are met:*

(*a*) *The customer has received Exchange approval to maintain debit put spreads in a cash account carried by an Exchange member organization. A customer so approved is hereinafter referred to as a ''spread exemption customer.''*

(*b*) *The spread exemption customer has provided all information required on Exchange-approved forms and has kept such information current.*

(*c*) *The customer holds a net long position in each of the stocks of a portfolio that has been previously established or in securities readily convertible, and additionally in the case of convertible bonds economically convertible, into common stocks would comprise a portfolio. The debit put spread position must be carried in an account with a member of a self-regulatory organization participating in the Intermarket Surveillance Group.*

*(d) The stock portfolio or its equivalent is composed of net long positions in common stocks in at least four industry groups and contains at least twenty (20) stocks, none of which accounts for more than fifteen percent (15%) of the value of the portfolio (hereinafter ''qualified portfolio''). To remain qualified, a portfolio must at all times meet these standards notwithstanding trading activity in the stocks.*

*(e) The exemption applies to European-style, broad-based index options dealt in on the Exchange to the extent the underlying value of such options positions does not exceed the unhedged value of the qualified portfolio. The unhedged value would be determined as follows:*

*(1) The values of the net long or short positions of all qualifying products in the portfolio are totaled;*

*(2) For positions in excess of the standard limit, the underlying market value (A) of any economically equivalent opposite side of the market calls and puts in broad-based index options, and (B) of any opposite side of the market positions in stock index futures, options on stock index futures, and any economically equivalent opposite side of the market positions, assuming no other hedges for these contracts exist, is subtracted from the qualified portfolio; and*

*(3)* The market value of the resulting unhedged portfolio is equated to the appropriate number of exempt contracts as follows: the unhedged qualified portfolio is divided by the correspondent closing index value and the quotient is then divided by the index multiplier or 100.

*(f) A debit put spread in Exchange-traded, broad-based index options with European-style exercises is defined as a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s). A debit put spread will be permitted in the cash account as long as it is continuously associated with a qualified portfolio of securities with a current market value at least to the underlying aggregate index value of the long side of the debit put spread.*

*(g) The qualified portfolio must be maintained with either a member, another broker-dealer, a bank, or securities depository.*

*(h) The spread exemption customer shall agree promptly to provide the Exchange any information requested concerning the dollar value and composition of the customer's stock portfolio, and the current debit put spread positions.*

*(1) The spread exemption customer shall agree to and any member carrying an account for the customer shall:*

*(A) Comply with all Exchange Rules and regulations;*

*(B) Liquidate any debit put spreads prior to or contemporaneously with a decrease in the market value of the qualified portfolio, which debit spreads would thereby be rendered excessive; and*

*(C) Promptly notify the Exchange of any change in the qualified portfolio or the debit put spread position which causes the debit put spreads maintained in the cash account to be rendered excessive.*

*(i) If any member carrying a cash account for a spread exemption customer with a debit put spread position dealt in on the Exchange has a reason to believe that as a result of an opening options transaction the customer would violate this spread exemption, and such opening transaction occurs, then the member has violated this Rule 7.12.*

*(j) Violation of any of these provisions, absent reasonable justification or excuse, shall result in withdrawal of the spread exemption and may form the basis for subsequent denial of an application for a spread exemption hereunder.*

* * * * *

*Disclaimers*

**Rule 7.13 [Limitation of Liability]**

(a). *Disclaimer. No reporting authority, no affiliate of a reporting authority (each such reporting authority, its affiliates, and any other entity identified in this Rule are referred to collectively as a ''Reporting Authority'') makes any warranty, express or implied, as to the results to be obtained by any person or entity from the use of such index, any opening, intra-day or closing value therefor, or any data included therein or relating thereto, in connection with the trading of any option contract based thereon or for any other purpose. The Reporting Authority shall obtain information for inclusion in, or for use in the calculation of such index from sources it believes to be reliable, but the Reporting Authority does not guarantee the accuracy or completeness of such index, any opening, intra-day or closing value therefor, or any date included therein or related thereto. The Reporting Authority hereby disclaims all warranties of merchantability or fitness for a particular purpose or use with respect to such index, any opening, intra-day, or closing value therefor, any data included therein or elating thereto, or any option contract based upon thereon. The Reporting Authority shall have no liability for any damages, claims, losses (including any indirect or consequential losses), expenses, or delays, whether direct or indirect, foreseen or unforeseen, suffered by any person arising out of any circumstance or occurrence relating to the person's use of such index, any opening, intra-day or closing value therefor, any data included therein or relating thereto, or any option contract based upon thereon, or arising out of any errors or delays in calculating or disseminating such index.*

[Each reporting authority with respect to any index underlying an option traded on the Exchange, and any affiliate of such reporting authority (together, the ''Reporting Authority'') does not guarantee the accuracy and/or completeness of such index or any data

included therein. The Reporting Authority makes no warranty, express or implied, as to the results to be obtained by any person or any entity from the use of such index or any data included therein. The Reporting Authority makes no express or implied warranties, and expressly disclaims all warranties of merchantability and fitness for a particular purpose or use with respect to such index or any data contained therein. Without limiting any of the foregoing, in no event shall the Reporting Authority have any liability for any direct, special, punitive, indirect, or consequential damages (including lost profits), even if notified of the possibility of such damages. In addition, the Reporting Authority shall have no liability for any damages, claims, losses or expenses caused by any errors or delays in calculating or disseminating such index.]

*(b) Applicability of Disclaimers. The disclaimers in subsection (a) shall apply to the reporting authorities identified in the Commentary to this Rule.*

[Commentary:

.01 The disclaimers set forth in Rule 7.13 shall apply to Dow Jones & Company, Inc. with respect to the Dow Jones Taiwan Stock Index and the Dow Jones Asia Pacific ex-Japan Stock Index, and Morgan Stanley & Co. Incorporated with respect to the Morgan Stanley Emerging Growth Index, the Exchange in respect to the indexes for which it is the designated reporting authority, and any other index reporting authority in respect to any index for which it acts as such.]

* * * * *

**Rule 7.14. [Reserved]**

*Exercise of American-Style Options*

*No member may prepare, time stamp or submit an ''exercise advice'' for an American-style index option series if the Member knows or has reason to know that the exercise instruction calls for the exercise of more contracts than the then ''net long position'' of the account for which the exercise instruction is to be tendered. For purposes of this rule: (i) the term ''net long position'' shall mean the net position of the account in such option at the opening of business of the day of such exercise instruction, plus the total number of such options purchased that day in opening purchase transactions up to the time of exercise, less the total number of such options sold that day in closing sale transactions up to the time of exercise; (ii) the ''account'' shall be the individual account of the particular customer, Market Maker or ''non-customer'' (as that term is defined in the By-Laws of the Clearing Corporation) who wishes to exercise; and (iii) every transaction in an options series effected by a Market Maker in a Market Maker's account shall be deemed to be a closing transaction in respect of the Market Maker's then positions in such options series. No Member may adjust the designation of an ''opening transaction'' in any such option to a ''closing transaction'' except to remedy mistakes or errors made in good faith.*[16]

* * * * *

**Rule 7.15 Exercise of Option Contracts**

(a) The provisions of Rule 6.24 shall apply to index options, except as follows:

(1) *Clearing Members must follow the procedures of the Options Clearing Corporation when exercising American-style cash-settled index option contracts issued or to be issued in any account at the Options Clearing Corporation.* [With respect to all index option contracts except European-style index option contracts, Clearing Members must follow the procedures of the Clearing Corporation for tendering exercise notices.] Members or Member Organizations also must follow the procedures set forth below *with respect to American-style, cash-settled index options:*

(A) *Or all contracts exercised by the member or by any customer of the member, an ''exercise advice'' must be delivered by the member in such form or manner prescribed by the Exchange no later than 1:20 p.m. Pacific time, or if trading hours are extended or modified in the applicable options class,* [a memorandum to exercise any contract issued or to be issued in a customer or Market-Maker account at the Clearing Corporation must be received or prepared by the Member Organization] no later than five (5) minutes after the close of trading on that day. [, and must be time-stamped at the time it is received or prepared. Member Organizations must accept exercise instructions until five (5) minutes after the close of trading on that day;]

(B) *Subsequent to the delivery of an ''exercise,'' should the member or a customer of the member determine not to exercise all or part of the advised contracts, the member must also deliver an ''advice cancel'' in such form or manner prescribed by the Exchange no later than 1:20 p.m. Pacific time, or if trading hours are extended or modified in the applicable options class,* [a memorandum to exercise any contract issue or to be issued in a firm account at the Clearing Corporation must be prepared by the Member Organization] no later than five (5) minutes after the close of trading on that day.[, and must be time-stamped at the time it is prepared;]

*(C) An Exchange official designated by the Board may determine to extend the applicable deadline for the delivery of ''exercise advice'' and ''advice cancel'' notifications pursuant to this Rule if unusual circumstances are present.*

*(D)* No Member may prepare, time stamp or submit an ''exercise advice'' prior to the purchase of the contracts to be exercised if the Member knew or had reason to know that the contracts had not yet been purchased.[17]

*(E)* [(C)] *The* failure of any member to follow the procedures *in this Rule may result in the assessment of a fine, which may include but is not limited to disgorgement of potential economic gain obtained or loss avoided by the subject exercise, as determined by the Exchange.* [and meet the deadlines in this Section 15 may result in the assessment of fines in an amount determined by the Exchange, and further disciplinary action as may be appropriate;]

*(F) Preparing or submitting an ''exercise advice'' or ''advice cancel'' after the applicable deadline on the basis of material information released after such deadline, in addition to constituting a violation of this Rule, is activity inconsistent with just and equitable principles of trade.*

[(D) all memoranda of exercise instructions are subject to SEC Rules 17a–3(a)(6) and 17a–4(b); and

(E) any member or member organization that intends to submit an exercise notice for 25 or more contracts in the same series on the same business day on behalf of an individual customer, market maker or firm account must deliver an ''exercise advice,'' on a form prescribed by the Exchange, to a place designated by the Exchange, no later than five (5) minutes after the close of trading on that day. For purposes of this rule, exercises for all accounts controlled by same individual must be aggregated.]

*(G)* [(F)] *The procedures set forth in subsections (A) and (B) of this Rule do not apply (i) on the business day prior to expiration in series expiring on a day other than a business day or (ii) on the expiration day in series expiring on a business day.* [The above provisions specified in Rule 6.24(a) through Rule 6.24(e) are not applicable to expiring series on the business day prior to expiration.]

[16] *See supra* note 4.

[17] *See supra* note 4.

*(H) Exercises of American-style, cash-settled index options (and the submission of corresponding ''exercise advice'' and ''advice cancel'' forms) shall be prohibited during any time when trading in such options is delayed, halted, or suspended, subject to the following exceptions:*

*(i) The exercises of an American-style, cash-settled index option may be processed and given effect in accordance with and subject to the rules of the Options Clearing Corporation while trading in the option is delayed, halted, or suspended if it can be documented, in a form prescribed by the Exchange, that the decision to exercise the option was made during allowable time frames prior to the delay, halt, or suspension.*

*(ii) Exercises of expiring American-styled, cash-settled index options shall not be prohibited on the last business day prior to their expiration.*

*(iii) Exercises of American-style, cash-settled index options shall not be prohibited during a trading halt that occurs at or after 1:00 p.m. Pacific Time. In the event of such a trading halt, exercises may occur through 1:20 p.m. Pacific Time. In addition, if trading resumes following such a trading halt (such as by closing rotation), exercises may occur during the resumption of trading and for five (5) minutes after the close of the resumption of trading. The provisions of this subparagraph (iii) are subject to the authority of the Board of Governors to impose restrictions on transactions and exercises pursuant to Rule 6.10.*

*(iv) An Exchange official designated by the Board of Governors may determine to permit the exercise of American-style, cash-settled index options while trading in such options is delayed, halted, or suspended.*

(2) (No changes).

* * * * *

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

In its filing with the Commission, the PCX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

a. *Position and Exercise Limits.* The PCX is proposing to amend PCX Rules 7.5 and 7.6 in order to increase the position and exercise limits for broad-based index options to the levels currently in place at the CBOE. Specifically, the Exchange proposes to amend the current broad-based position and exercise limits to 25,000.[18] In certain circumstances, however, there may be no position limits for certain specified broad-based option contracts.[19]

b. *Other Index Options Related Rules.* The Exchange is proposing to amend the following rules related to index options in order to bring the PCX rules up to date and consistent with other SROs. These changes also include several re-numbering and cosmetic changes.

(a) *Amendment to PCX Rules 7 and 7.1:* This proposed amendment is intended to clarify that the Exchange will file additional proposed rule changes with the Commission with respect to particular indices that are product specific. The proposed amendment also contains several updates to definitions with respect to index options.

(b) *Amendment to PCX Rule 7.7:* This proposed amendment outlines the exemptions for position limits for broad-based index options and the procedures for requesting such exemptions.

(c) *Amendment to PCX Rules 7.9 and 7.12:* The proposed amendment to PCX Rule 7.9 (currently PCX Rule 7.8(a)) outlines the terms of index options contracts, while proposed PCX Rule 7.12 applies to debit put spreads.

(d) *Amendment to PCX Rule 7.10:* The proposed amendments to PCX Rule 7.10 apply to trading sessions, trading rotations, and trading halts or suspensions for index options.

(e) *Amendment to PCX Rule 7.13:* This proposed amendment updates the provisions for liability for index reporting authorities.

(f) *Amendment to PCX Rules 6.11, 7.14 and 7.15:* These proposed amendments apply to the exercise of index options, exercise of American-style index options, and the procedure for underwriter requests for restrictions on uncovered opening writing transactions during public distributions.[20]

(g) *Amendment to PCX Rule 6.37:* This proposed amendment provides the Exchange with greater flexibility on applying market making obligations when the primary underlying securities market is not open for trading. The proposed amendment also addresses calculation of bid/ask differentials on options on indices.

(h) *Amendment to PCX Rule 6.8:* This proposed amendment adds broad-based index options to the market maker exemption from position limits.

(i) *Amendment to PCX Rule 6.64(e):* This proposed amendment includes index options to the closing rotation provision.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,[21] in general, and furthers the objectives of section 6(b)(5),[22] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition, and to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

## III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No.

[18] The 25,000 contract position and exercise limit for broad-based index options is derived from CBOE Rule 24.4. In CBOE Rule 24.4, 25,000 contracts serves as the base position limit for broad-based index options.

[19] For example, CBOE Rule 24.4 states that there are no position limits on DJX, OEX and SPX classes. *See supra* note 4.

[20] *See supra* note 4.

[21] 15 U.S.C. 78f(b).

[22] 15 U.S.C. 78f(b)(5).

SR-PCX–2003–60. The 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to the File No. SR–PCX–2003–60 and should be submitted by April 19, 2004.

## IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of section 6(b)(5) of the Act [23] and the rules and regulations thereunder applicable to a national securities exchange.[24] The Commission believes that the PCX's proposal to update its trading rules and certain standards related to index options strikes a reasonable balance between the Commission's mandates under section 6(b)(5) of the Act [25] to remove impediments to and perfect the mechanisms of a free and open market and a national market system while protecting investors and the public interest.

The proposed rule, among other things, updates the rules that govern the trading sessions of index options, including the days and hours of business, the rules governing trading rotations at the opening, and the rules related to the trading halts or suspensions.[26] The proposed rule change provides updated definitions for terms related to index options.[27] The proposed rule further updates the procedures PCX members must follow with respect to the exercise of American-style, cash settled index options.[28] The proposed rule also updates position limits for broad-based index options [29] and exercise limits for broad-based and narrow-based index options.[30] In addition, the proposed rule updates the hedge exemption standards from position and exercise limits and procedures for requesting exemptions from the proposed rule.[31] The Commission notes that the PCX has not amended its Rule 7.3 to provide for generic listing standards for narrow-based index options that would be eligible for streamlined listing and trading pursuant to Rule 19b–4(e) under the Act.[32] Because the PCX has not established generic listing standards for narrow-based index options, the Exchange would be required to submit a proposed rule change pursuant to section 19(b)(2) of the Act,[33] if it were to seek the listing and trading of a class of a new narrow-based index option,[34] notwithstanding the provision of PCX Rule 7.3(b), which suggests that the Exchange can list a class of certain narrow-based index options pursuant to section 19(b)(3)(A) of the Act.[35]

The Commission believes that trading options on an index of securities permits investors to participate in the price movements of indexes' underlying securities and allows investors holding positions in some or all of such securities to hedge the risks associated with their portfolios. The Commission further believes that trading options on an index provides investors with an important trading and hedging mechanism that is designed to reflect accurately the overall movement of the component stocks.

The Commission finds good cause, pursuant to section 19(b)(2) of the Act,[36] for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of the filing thereof in the **Federal Register**. The Commission believes that granting accelerated approval will provide PCX members with updated trading rules and standards that should serve to protect the interests of investors. In making this finding, the Commission notes that all of the proposed new Exchange Rules and changes to existing Exchange Rules are comparable to the existing rules of the other options exchanges.[37]

## V. Conclusion

*It is therefore ordered,* pursuant to section 19(b)(2) of the Act,[38] that the proposed rule change (SR–PCX–2003–60) is hereby approved, as amended, on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6892 Filed 3–26–04; 8:45 am]

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[23] 15 U.S.C. 78f(b)(5).

[24] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[25] *See* note 21 *supra.*

[26] *See* Proposed PCX Rule 7.10.

[27] *See* Proposed PCX Rule 7.1.

[28] *See* Proposed PCX Rule 6.11 and 7.15.

[29] *See* Proposed PCX Rule 7.5.

[30] *See* Proposed PCX Rule 7.8.

[31] *See* Proposed PCX Rule 7.7.

[32] 17 CFR 240.19b–4(e). Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by an SRO shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to section 19(b) of the Act, the SRO's trading rules, procedures, and listing standards for the product class that include the new derivative securities product and the SRO has a surveillance program for the product class. When relying on Rule 19b–4(e), the SRO must submit Form 19b–4(e) to the Commission within five business days after the SRO begins trading the new derivative securities products. *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998) (File No. S7–13–98) (''19b–4(e) Release'').

[33] 15 U.S.C. 78s(b)(2).

[34] *See* 19b–4(e) Release, *supra* note 32, at fn 135.

[35] 15 U.S.C. 78s(b)(3)(A).

[36] 15 U.S.C. 78s(b)(2).

[37] *See, e.g.,* CBOE Rules 4.11, 4.16, 6.2, 6.7, 8.7, 11.1, and 24.1 through 24.14; ISE Rules 413, 418, 701, 705, 803, 1100, and 2000 through 2012.

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

[1] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49417A; File No. SR–PCX–2004–07]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. To Amend PCX Rule 1.26 To Clarify and Update Its Registration Rule for Employees of Member Organizations; Correction

March 23, 2004.

In FR document No. 04–6452 beginning on page 13610 in the issue of Tuesday, March 23, 2004, the first sentence incorrectly describes the proposed rule change as having been filed by the Pacific Exchange, Inc. (''PCX'') through its subsidiary PCX Equities, Inc. The proposed rule change was filed only by the PCX.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6919 Filed 3–26–04; 8:45 am]

BILLING CODE 8010–01–P

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49435; File No. SR–Phlx–2003–68]**

## Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Options Transactions Resulting From Obvious Errors

March 17, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 29, 2003, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 25, 2003, Phlx filed Amendment No. 1 to the proposed rule change.[3] On January 15, 2004, Phlx filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation (''Division''), Commission, dated November 24, 2003 (''Amendment No. 1''). Amendment No. 1 replaced the original proposed rule change in its entirety.

[4] *See* Letter from Richard S. Rudolph, Director and Counsel, Phlx, to Susie Cho, Special Counsel, Division, Commission, dated January 14, 2004 (''Amendment No. 2''). In Amendment No. 2, Phlx amended the proposed rule change by: (1) Clarifying that proposed Phlx Rule 1092(c)(ii)(A) does not apply to a verifiable disruption or malfunction of an execution, dissemination, or communication system of a Specialized Quote Feed user; (2) clarifying that the term ''primary market,'' used in proposed Phlx Rule 1092(c)(ii)(D), means, in respect of an underlying stock or exchange-traded fund share, the principal market in which the underlying stock or exchange-traded fund share is traded; (3) amending proposed Phlx Rule 1092(e)(ii) to provide that, in the case of an obvious error determination, where at least one party to the transaction in which an obvious error occurred is not a specialist or ROT on the Exchange, two Floor Officials will nullify the transaction, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Surveillance of the obvious error; (4) amending proposed Phlx Rule 1092(f) to require that a request for review of Floor Official rulings under proposed Phlx Rule 1092 must be in writing; and (5) amending the paragraph numbering contained in Commentaries .02 and .03 of proposed Phlx Rule 1092.

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

The Exchange proposes to adopt new Phlx Rule 1092, which would permit the Exchange to nullify or adjust a transaction resulting from an obvious error. The Exchange further proposes to amend Phlx Rule 124 (Disputes) to provide that Phlx Rule 124(a) would not apply to options transactions that are the result of an obvious error (as defined in proposed Phlx Rule 1092). Options transactions that are the result of an obvious error would be subject to the provisions and procedures set forth in proposed Phlx Rule 1092. Below is the text of the proposed rule change. Proposed new language is *italicized.*

* * * * *

*Obvious Errors*[5]

*Rule 1092. The Exchange shall either nullify a transaction or adjust the execution price of a transaction that results in an Obvious Error as provided in this Rule. (a) Definition of Obvious Error. For purposes of this Rule only, an Obvious Error will be deemed to have occurred when:*

*(i) If the Theoretical Price of the option is less than $3.00:*

*(A) during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more; or,*

*(B) during unusual market conditions (i.e., the Exchange has declared an unusual market condition status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more.*

*(ii) If the Theoretical Price of the option is $3.00 or more:*

*(A) during regular market conditions (including rotations), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more; or*

*(B) during unusual market conditions i.e., the Exchange has declared an unusual market condition status for the option in question), the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more.*

*(b) Definition of Theoretical Price. For purposes of this Rule only, the Theoretical Price of an option is:*

*(i) if the series is traded on at least one other options exchange, the last bid or offer, just prior to the transaction, on the exchange that has the most total volume in that option over the most recent 60 calendar days; or*

*(ii) if there are no quotes for comparison purposes, as determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department.*

*(c) Absent Mutual Agreement as provided in Rule 1092(c)(iii) below, parties to a trade may have a trade nullified or its price adjusted if:*

*(i) any such party makes a documented request within the time specified in Rule 1092(e)(i); and*

*(ii) one of the conditions below is met:*

*(A) The trade resulted from a verifiable disruption or malfunction of an Exchange execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size* (*e.g.* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or

*(B) The trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order; or*

*(C) The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of this Rule, the average trade in the underlying security shall be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question); or*

*(D) The trade resulted from an erroneous quote in the Primary Market*

[5] The text of the proposed rule reflects a few technical corrections from the text contained in Amendment No. 2. Telephone conversation between Richard S. Rudolph, Director and Counsel, Phlx, and Frank N. Genco, Attorney, Division, Commission on February 12, 2004.

*for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For the purposes of this rule, the average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question); or*

*(E) The trade resulted in an execution price in a series quoted no bid and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.*

*(F) The trade is automatically executed at a price where the specialist or ROT sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the Primary Market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the Primary Market at the time of the transaction.*

*(iii) Mutual Agreement. The determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. A trade may be nullified or adjusted on the terms that all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an Obvious Error as provided in this Rule.*

*(d) Adjustments. Where the execution price of a transaction executed as the result of an Obvious Error is adjusted, the adjusted price will be:*

*(i) the Theoretical Price of the option in the case where the erroneous price is displayed in the market and subsequently executed against quotes or orders that did not exist on the Exchange at the time the erroneous price was entered; or*

*(ii) the last bid or offer, just prior to the transaction, on the exchange that was disseminating the National Best Bid or Offer for the series at the time of the transaction that was the result of an Obvious Error in the case where an erroneous price executes against quotes or orders already existing on the Exchange at the time the erroneous price was entered.*

*(e) Obvious Error Procedure. Market Surveillance shall administer the application of this Rule as follows:*

*(i) Notification. If a specialist or Registered Options Trader (''ROT'') on the Exchange believes that he/she participated in a transaction that was the result of an Obvious Error, he/she must notify Market Surveillance within five minutes of the transaction. If a member or member organization that initiated the order from off the floor of the Exchange believes a transaction on the Exchange was the result of an Obvious Error, such member or member organization must notify Market Surveillance within fifteen minutes of the execution. Absent unusual circumstances, Market Surveillance will not grant relief under this Rule unless notification is made within the prescribed time period.*

*(ii) Adjust or Bust. A Floor Official will determine whether there is an Obvious Error as defined in this Rule. If it is determined that an Obvious Error has occurred: (A) where each party to the transaction is either a specialist or ROT on the Exchange, the execution price of the transaction will be adjusted by one Floor Official, unless both parties agree to nullify the transaction within ten minutes of being notified by Market Surveillance of the Obvious Error; or (B) where at least one party to the transaction in which an Obvious Error occurred is not a specialist or ROT on the Exchange, two Floor Officials will nullify the transaction, unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Surveillance of the Obvious Error. Upon final Floor Official action, Market Surveillance, in conjunction with the AUTOM Help Desk, where appropriate, shall promptly notify both parties to the trade.*

*(f) Request for Review. If a party affected by a determination made under this Rule so requests within the time permitted, a Review Panel of Floor Officials will review decisions made under this Rule in accordance with Exchange Rule 124(d). A request for review under this paragraph must be made within thirty minutes after a party receives verbal notification of a final determination by the Floor Official(s) under this Rule, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. Such a request for review must be in writing or otherwise documented. The Review Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.*

*Commentary.*

*.01. For purposes of paragraph (a) of this Rule, the maximum bid/ask spread shall be the maximum bid/ask spread allowed pursuant to Exchange Rule 1014(c)(i)(A), unless a wider spread has been allowed by the Exchange for the option because of unusual market conditions.*

*.02. The Theoretical Price will be determined under paragraph (b)(i) of this Rule as follows: (i) the bid price from the exchange providing the most total volume in the option over the most recent 60 calendar days will be used with respect to an erroneous bid price entered on the Exchange, and (ii) the offer price from the exchange providing the most total volume in the option over the most recent 60 calendar days will be used with respect to an erroneous offer price entered on the Exchange.*

*.03. The price to which a transaction is adjusted under paragraph (d)(ii) of this Rule will be determined as follows: (i) The bid price from the exchange disseminating the National Best Bid for the series at the time of the transaction that was the result of an obvious error will be used with respect to an erroneous offer price entered on the Exchange, and (ii) the offer price from the exchange disseminating the National Best Offer for the series at the time of the transaction that was the result of an obvious error will be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price will be determined by two Floor Officials and Market Surveillance.*

**Disputes**

Rule 124. (a) Disputes occurring on and relating to the trading floor, if not settled by agreement between the members interested, shall be settled, if practicable, by vote of the members knowing of the transaction in question; if not so settled, they shall be settled by a Floor Official summoned to the trading crowd.

In issuing decisions for the resolution of trading disputes, Floor Officials may institute the course of action deemed to be most fair to all parties under the circumstances at the time. A Floor Official may direct the execution of an order on the floor, or adjust the transaction terms or participants to an executed order on the floor. However, two Option Floor Officials may nullify a transaction if they determine the

transaction to have been in violation of Rules 1014 (Obligations and Restrictions Applicable to Specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers) or 1080 (AUTOM). Two Equity Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Rules 110 (Bids and Offers—Precedence), 111 (Bids and Offers—Binding), 118 (Bids and Offers Outside Best Bid and Offer), 119 (Precedence of Highest Bid), 120 (Precedence of Offers at Same Price), 126 (Crossing), 203 (Agreement of Specialists), 218 (Customer Order Receives Priority), 229 (PACE System), 232 (Handling Orders When the Primary Market is Not Open for Free Trading), or 455 (Short Sales). *This Rule 124(a) shall not apply to options transactions that are the result of an Obvious Error (as defined in Rule 1092). Options transactions that are the result of an Obvious Error shall be subject to the provisions and procedures set forth in Rule 1092.*

(b)–(d) No change.

* * * * *

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

In its filing with the Commission, Phlx 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 Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to adopt Exchange Rule 1092, which would allow the Exchange to either nullify or adjust a transaction in circumstances where a member or its customer has made an error and the terms of the trade execution are obviously not correct. The Exchange believes that it is inconsistent with just and equitable principles of trade to allow one market participant to receive a windfall at the expense of another market participant that made an obvious error; on the other hand, the Exchange does not believe that market participants should be permitted to reconsider poor trading decisions. Accordingly, the Exchange represents that the proposed rule includes objective criteria for determining when a transaction is clearly the result of an obvious error; under what circumstances a trade will be adjusted or nullified; and to what price a trade would be adjusted if appropriate.

*a. Notification*

Under proposed Phlx Rule 1092(e), when a member or member organization believes it has participated in a transaction that was the result of an obvious error, it must notify the Exchange's Market Surveillance Department (''Market Surveillance'') within a specified time of the execution in order to allow the transaction to be nullified or adjusted. Exchange specialists and Registered Options Traders (''ROTs''), who are located on the floor of the Exchange and continuously monitor their transactions, would be required to notify Market Surveillance within five minutes of the transaction. Off-floor members and member organizations, many of which handle customer orders on multiple exchanges simultaneously, and which may need to contact customers for instruction, would be required to notify Market Surveillance within 15 minutes of the transaction.

The purpose of the notification requirement is to provide reasonably prompt notice to Market Surveillance and to participants in a transaction subject to proposed Phlx Rule 1092 that such transaction may have been the result of an obvious error and that the process set forth in the proposed rule change has begun, and ultimately a decision concerning the transaction will be made.

*b. Theoretical Price*

Once Market Surveillance has been timely notified of a participant's belief that he or she has participated in a transaction that was the result of an obvious error, Market Surveillance would be required to determine the ''Theoretical Price'' of the option series in question, against which the price at which the trade was executed would be compared to determine if there was indeed an obvious error. For purposes of proposed Phlx Rule 1092 only, if the series is traded on at least one other options exchange, the Theoretical Price is the last bid or offer just prior to the trade found on the exchange that has the most total volume in that option over the most recent 60 calendar days. If there are no quotes for comparison purposes, the Theoretical Price would be determined by two Floor Officials and designated personnel in the Exchange's Market Surveillance Department.

Proposed Phlx Rule 1092, Commentary .02 provides that the Theoretical Price would be: (1) The bid price from the exchange providing the most total volume in the option over the most recent 60 calendar days with respect to an erroneous bid price entered on the Exchange; and (ii) the offer price from the exchange providing the most total volume in the option over the most recent 60 calendar days with respect to an erroneous offer price entered on the Exchange.

The purpose of the Theoretical Price is to establish an objective price against which transactions that may have been the result of an obvious error may be measured to determine whether nullification or adjustment of the transaction is warranted under the proposed rule.

*c. Definition of Obvious Error*

Proposed Phlx Rule 1092(a) would define ''obvious error'' based on the Theoretical Price of the option and market conditions. Specifically, if the Theoretical Price of the option is less than $3.00, during regular market conditions (including rotations), and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 35 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

During unusual market conditions (*i.e.,* the Exchange has declared an unusual market condition status for the option in question), if the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount of 50 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

If the Theoretical Price of the option is $3.00 or more, during regular market conditions (including rotations), if the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least two times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set

forth above, the transaction would be subject to nullification or adjustment.

During unusual market conditions (*i.e.,* the exchange has declared an unusual market condition status for the option in question), if the Theoretical Price of the option is $3.00 or more, and the execution price of a transaction is higher or lower than the Theoretical Price for the series by an amount equal to at least three times the maximum bid/ask spread allowed for the series, so long as such amount is 50 cents or more, such an execution price would be considered an obvious error and, if notification of the obvious error is made in accordance with the requirements set forth above, the transaction would be subject to nullification or adjustment.

*d. Trade Adjustment and Nullification*

Proposed Phlx Rule 1092(c) would allow a Floor Official(s) to adjust or nullify a transaction in the following circumstances:

- Verifiable System Disruption or Malfunction

The trade resulted from a verifiable disruption or malfunction of an Exchange's execution, dissemination, or communication system that caused a quote/order to trade in excess of its disseminated size (*e.g.,* a quote/order that is frozen, because of an Exchange system error, and repeatedly traded) in which case trades in excess of the disseminated size may be nullified; or the trade resulted from a verifiable disruption or malfunction of an Exchange dissemination or communication system that prevented a member from updating or canceling a quote/order for which the member is responsible where there is Exchange documentation providing that the member sought to update or cancel the quote/order.

- Erroneous Print in Underlying Market Which is Later Cancelled or Corrected

The trade resulted from an erroneous print disseminated by the underlying market which is later cancelled or corrected by the underlying market where such erroneous print resulted in a trade higher or lower than the average trade in the underlying security during the time period encompassing two minutes before and after the erroneous print, by an amount at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the erroneous print. For purposes of proposed Phlx Rule 1092, the average trade in the underlying security would be determined by adding the prices of each trade during the four minute time period referenced above (excluding the trade in question) and dividing by the number of trades during such time period (excluding the trade in question).

- Erroneous Quote in Underlying Market

The trade resulted from an erroneous quote in the primary market[6] for the underlying security that has a width of at least $1.00 and that width is at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. For purposes of proposed Phlx Rule 1092, the average quote width would be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

- Series Quoted No Bid

The trade resulted in an execution price in a series quoted no bid, and at least one strike price below (for calls) or above (for puts) in the same class were quoted no bid at the time of the erroneous execution.

- $0.10 or More Below Parity

The trade is automatically executed at a price where the specialist or ROT sells $0.10 or more below parity. Parity describes an option contract's total premium when that premium is equal to its intrinsic value. Parity for calls is measured by reference to the offer price of the underlying security in the primary market at the time of the transaction minus the strike price for the call. Parity for puts is measured by the strike price of an underlying security minus its bid price in the primary market at the time of the transaction.

In addition to the circumstances described above, the determination as to whether a trade was automatically executed at an erroneous price may be made by mutual agreement of the affected parties to a particular transaction. The trade may be nullified or adjusted on terms to which all parties to a particular transaction agree. In the absence of mutual agreement by the parties, a particular trade may only be nullified or adjusted when the transaction results from an obvious error as provided in proposed Phlx Rule 1092.

*e. Procedure*

If it is determined that a transaction is the result of an obvious error, Market Surveillance would take one of the following actions: (i) Where each party to the transaction is either a specialist or ROT on the Exchange, the execution price of the transaction would be adjusted by one Floor Official, unless both parties agree to nullify the transaction within ten minutes of being notified by Market Surveillance of the obvious error; or (ii) where at least one party to the transaction in which an obvious error occurred is not a specialist or ROT on the Exchange, two Floor Officials would nullify the transaction unless both parties agree to adjust the price of the transaction within 30 minutes of being notified by Market Surveillance of the obvious error. Upon final Floor Official action, Market Surveillance, in conjunction with the AUTOM Help Desk, where appropriate, would promptly notify both parties to the transaction. The purpose of this procedure is to provide Exchange staff and Floor Officials with a consistent, established course of action to be taken when a transaction has resulted from an obvious error, and to ensure prompt notification of an adjustment or nullification of such a transaction.

Where an adjustment is made to a transaction price, proposed Phlx Rule 1092, Commentary .03 would provide that the bid price from the exchange disseminating the national best bid for the series at the time of the transaction that was the result of an obvious error would be used with respect to an erroneous offer price entered on the Exchange, and the offer price from the exchange disseminating the national best offer for the series at the time of the transaction that was the result of an obvious error would be used with respect to an erroneous bid price entered on the Exchange. If there are no quotes for comparison purposes, the adjustment price would be determined by two Floor Officials and Market Surveillance.

*f. Review*

If a party affected by a determination made under proposed Phlx Rule 1092 so requests within the time permitted, a Review Panel of at least three Floor Officials would review Floor Official rulings made under this Rule in accordance with Phlx Rule 124(d).[7] A

[6] Phlx represents that the term ''primary market,'' as used in proposed Phlx Rule 1092(c)(ii)(D) and (F), means, in respect of an underlying stock or exchange-traded fund share, the principal market in which the underlying stock or exchange-traded fund share is traded. *See* Amendment No. 2, *supra* note 4; *see also* Phlx Rule 1000(a)(31).

[7] Phlx Rule 124 (Disputes) governs situations where trading disputes cannot be settled by agreement between the members interested. Phlx

request for review under this paragraph must be made within thirty minutes after a party receives verbal notification of a final determination by the Floor Official(s) under Phlx Rule 1092, except that if such notification is made after 3:30 p.m. Eastern Time, either party has until 9:30 a.m. Eastern Time on the next trading day to request a review. The Review Panel shall review the facts and render a decision on the day of the transaction, or the next trade day in the case where a request is properly made after 3:30 p.m. on the day of the transaction or where the request is properly made the next trade day.

As stated above, proposed Phlx Rule 1092 would allow Exchange Floor Officials to nullify certain transactions based on the stated objective criteria set forth in the proposed Rule. Current Phlx Rule 124(a) allows Exchange Floor Officials to nullify transactions in certain cases in which any of the specifically enumerated Exchange Rules listed in Phlx Rule 124(a) have been violated.[8] In order to provide clarity as to the application of each rule, the Exchange is proposing to amend Phlx Rule 124(a) to state that Phlx Rule 124(a) would not apply to options transactions that are the result of an obvious error (as defined in Phlx Rule 1092). Options transactions that are the result of an obvious error would be subject to the provisions and procedures set forth in Phlx Rule 1092.

*g. Conclusion*

The proposed rule change is intended to address the situation in which the price of an executed trade indicates that an obvious error exists, suggesting that it is unrealistic to expect that the parties to the transaction have come to a meeting of the minds regarding the terms of the transaction. The proposed rule change contemplates that the determination of whether such an obvious error has occurred should be based on objective criteria, and subject to specific objective procedures, including making an appeal process available to the parties to such transactions.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[9] in general, and Section 6(b)(5),[10] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Exchange believes that the proposed rule change will provide objective means for both on and off-floor participants on the Exchange to adjust or nullify transactions that result from an obvious error, and objective procedures and a process to be followed when a transaction results from an obvious error.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

No written comments were either solicited or received.

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

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

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

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

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2003–68. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 will also be available for inspection and copying at the principal offices of the Exchange. All comments should be submitted by April 19, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6816 Filed 3–26–04; 8:45 am]

BILLING CODE 8010–01–P

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49456; File No. SR–Phlx–2004–19]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by the Philadelphia Stock Exchange, Inc. Relating to the Execution of Market and Marketable Limit Orders in Certain Trust Shares and Trust Issued Receipts During a Locked Market

March 22, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2004, the Philadelphia Stock Exchange,

Rule 124(d) sets forth procedures to be followed for the appeal of Floor Official rulings.

[8] Under Phlx Rule 124(a), two Option Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Phlx Rules 1014 (Obligations and Restrictions Applicable to Specialist and ROTs), 1015 (Quotation Guarantees), 1017 (Priority and Parity at Openings in Options), 1033 (Bids and Offers), or 1080 (AUTOM). Two Equity Floor Officials may nullify a transaction if they determine the transaction to have been in violation of Phlx Rules 110 (Bids and Offers—Precedence), 111 (Bids and Offers—Binding), 118 (Bids and Offers Outside Best Bid and Offer), 119 (Precedence of Highest Bid), 120 (Precedence of Offers at Same Price), 126 (Crossing), 203 (Agreement of Specialists), 218 (Customer Order Receives Priority), 229 (PACE System), 232 (Handling Orders When the Primary Market is Not Open for Free Trading), or 455 (Short Sales).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

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

[2] 17 CFR 240.19b–4.

Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 19, 2004, the Phlx amended the proposal.[3] The Exchange filed the proposed rule change under Section 19(b)(3)(A) of the Act,[4] and Rule 19b–4(f)(6)[5] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The Exchange proposes to amend Phlx Rule 229, Supplementary Material .05 and .10, to modify the Philadelphia Stock Exchange Automated Communication and Execution (''PACE'') System[6] to provide for the automatic execution of eligible market and marketable limit orders in Trust Shares and Trust Issued Receipts, on a security-by-security basis, received when the PACE Quote is locked.[7] Such orders would be automatically executed at the PACE Quote. The text of the proposed rule change is below. Proposed additions are in italics.

Rule 229. Philadelphia Stock Exchange Automated Communication and Execution System (PACE)

Supplementary Material: * * *

.01–.04 No Change.

Execution of Market Orders

.05 Public Order Exposure System—Subject to Supplementary Material Section .07, all round-lot market orders up to 500 shares and PRL market orders up to 599 shares will be stopped at the PACE Quote at the time of entry into the system (''Stop Price'') and be subject to a delay of up to 30 seconds from being executed in order to receive an opportunity for price improvement. If such market order is not executed within the 30 second window, the order will be automatically executed at the Stop Price. If the PACE Quote at the time of order entry into the system reflects a point spread (the difference between the best bid and offer) of $.05 or less for equities trading in decimals, pursuant to Rule 134 or 125, that order will be executed immediately without the 30 second delay.

Subject to these procedures, the specialist may voluntarily agree to execute round-lot market orders of a size greater than 500 shares and PRL market orders of a size greater than 599 shares upon entry into the system.[7] Where the specialist has voluntarily agreed to automatically execute market orders greater than 599 shares and the market order size is greater than 599 shares, but less than or equal to the size of the PACE Quote, the order is automatically executable at the PACE Quote; if such order is greater than the size of the PACE Quote, the order shall receive an execution at the PACE Quote up to the size of the PACE Quote, either manually or automatically (once this feature is implemented) with the balance of the order receiving a professional execution, in accordance with Supplementary Material, .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee (regardless of the size of the PACE Quote).

*When the PACE Quote is locked, in a Trust Share or Trust Issued Receipt, automatically executable market orders entered after the opening will be automatically executed at the locked price, if the specialist determines to elect this feature for a particular security.*

.10(a) In the case of stocks for which the PACE quote bid is less than $1.00, the provisions of paragraph .10(b) shall apply.

In the case of stocks for which the PACE quote bid is $1.00 or more:

(i) Marketable Limit Orders—round-lot orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at the PACE Quote shall be executed at the PACE Quote. Such orders shall be executed automatically unless the member organization entering orders otherwise elects. Specialists may voluntarily agree to execute marketable limit orders greater than 599 shares. Where the specialist has voluntarily agreed to automatically execute marketable limit orders greater than 599 shares and the order size is greater than 599 shares, but less than or equal to the size of the PACE Quote, the marketable limit order is automatically executable at the PACE Quote; if the order size is greater than 599 shares and greater than the size of the PACE Quote, the marketable limit order shall manually receive an execution at the PACE Quote up to the size of the PACE Quote, with the balance of the order receiving a professional execution, in accordance with Supplementary Material, .10(b) below; provided that the specialist may guarantee an automatic execution at the PACE Quote up to the entire size of such specialist's automatic execution guarantee.

*When the PACE Quote is locked, in a Trust Share or Trust Issued Receipt, automatically executable marketable limit orders entered after the opening will be automatically executed at the locked price, if the specialist determines to elect this feature for a particular security.*

Marketable limit orders may be eligible for automatic price improvement or manual double-up/double-down price protection pursuant to Supplementary Material .07(c) above.

.10(a)(ii)–(iii) No Change.

.10(b) and (c) No Change.

.11–.22 No Change.

.07–.09 No Change.

* * * * *

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

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to increase the specialists' efficiency and turn-around time by allowing automatic executions during

[3] *See* March 18, 2004 letter from Angela Saccomandi Dunn, Counsel, Phlx, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission and attachments (''Amendment No. 1''). Amendment No. 1 replaces and supersedes the original filing in its entirety.

[4] 15 U.S.C. 78s(b)(3)(A).

[5] 17 CFR 240.19b–4(f)(6). The Phlx provided the Commission with written notice of its intention to file the proposed rule change on March 3, 2004. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on March 19, 2004, the day the Phlx filed Amendment No. 1.

[6] PACE is the Exchange's automated order routing, delivery, execution and reporting system for equities.

[7] The PACE Quote is the best bid/ask quote among the American, Boston, Cincinnati, Chicago, New York, Pacific, or Philadelphia Stock Exchange, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate. *See* Phlx Rule 229.

[7 See SR–Phlx–97–11.].

locked markets in certain securities [8] at the PACE Quote. Currently, during a locked market, market and marketable limit orders are not executed automatically, but rather, are handled manually by the specialist. This proposed rule change would increase the efficiency of order handling by eliminating the necessity to deal with orders manually.[9]

The proposed automatic procedure will enable PACE customers to automatically, without undue delay, receive prices that accurately reflect market conditions. For instance, an execution at the PACE Quote when it is locked reflects the current market price, notwithstanding that it is locked. The quality of the execution of these orders should be improved and enhanced, as execution time should be reduced while the orders continue to receive the best bid or offer.

Additionally, an unusual footnote that appears in the text of the rule is being deleted.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act [10] in general, and furthers the objectives of Section 6(b)(5) of the Act [11] in particular, in that it will promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest by increasing automated order handling.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

[8] The Exchange will provide notice as to which Trust Shares and Trust Issued Receipts will be subject to the new automation feature. This notice will be provided initially when the selection occurs, and subsequently each time the specialist selects or deselects this feature.

[9] This proposed rule change is similar to Securities Exchange Act Release No. 48995 (December 24, 2003), 68 FR 75670 (December 31, 2003) (SR–Amex–2003–102).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

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

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 [12] and Rule 19b–4(f)(6) thereunder.[13] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–Phlx–2004–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2004–19, and should be submitted by April 19, 2004.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

**Jill M. Peterson,**

*Assistant Secretary.*

[FR Doc. 04–6893 Filed 3–26–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49457; File No. SR–Phlx–2004–20]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Extension of Interpretation of PACE Guarantees in Securities Subject to ITS Plan Exemption

March 23, 2004.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1], and Rule 19b–4 [2] thereunder, notice is hereby given that on March 15, 2004, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II, below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval.

The proposal is intended to coincide with the Commission's extension of a *de minimis* exemption from the trade-through provisions of the Intermarket Trading System (''ITS'') Plan with respect to certain transactions in the Nasdaq-100 Index (''QQQs''), the Dow Jones Industrial Average (''DIAMONDs''), and the Standard & Poor's 500 Index (''SPDRs'').[3] The Commission's original exemption expired on June 4, 2003.[4] On May 30, 2003, the Commission issued an order extending the ITS Exemption from June 4, 2003 through March 4, 2004.[5] On March 3, 2004, the Commission issued another order extending the ITS Exemption for an additional nine

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

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 46428 (August 28, 2002), 67 FR 56607 (September 4, 2002) at 56607 (''ITS Exemption Order'').

[4] The Exchange Rule that mirrors the Commission's exemption similarly expired on June 4, 2003.

[5] *See* Securities Exchange Act Release No. 47950 (May 30, 2003), 68 FR 33748 (June 5, 2003)(order extending ITS Exemption Order).

months through December 4, 2004.[6] In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from March 4, 2004 until December 4, 2004.

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

The Phlx proposes to extend a limited exemption in transactions in certain exchange-traded fund (''ETFs'') shares from Supplementary Material Section .10(a)(iii) of Exchange Rule 229, Philadelphia Stock Exchange Automated Communication and Execution System (PACE'')[7] beyond March 4, 2004 until December 4, 2004. The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

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

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Phlx has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

The purpose of the proposed rule change is to extend the time period of a current limited exemption from Phlx Rule 229.10(a)(iii). The exemption applies to the ETFs tracking the QQQs, DIAMONDs and SPDRs,[8] and correlates with an exemption from the ITS Plan issued by the Commission (the ''ITS Exemption'').[9] The Commission's ITS Exemption exempted any transactions in the three ETFs that are effected at prices at or within three cents away from the best bid and offer quoted in the Consolidated Quote System from the trade-through provisions of the ITS Plan through June 4, 2003. On May 30, 2003, the Commission issued an order extending the ITS Exemption from June 4, 2003 through March 4, 2004.[10] On March 3, 2004, the Commission issued another order extending the ITS Exemption for an additional nine months through December 4, 2004.[11]

Phlx Rule 229.10(a)(iii) requires a Phlx specialist to execute certain orders that are traded-through by another market center. It provides generally that if 100 or more shares print through the limit price on any exchange(s) eligible to compose the PACE Quote[12] after the time of entry of any such order into PACE, the specialist shall execute all such orders at the limit price without waiting for an accumulation of 1000 shares to print at the limit price on the New York market.[13]

Prior to the Commission's issuance of the ITS Exemption, although the specialist had this obligation the specialist was, in turn, entitled to ''satisfaction'' of those orders pursuant to Section 8(d) of the ITS Plan. Now, where trading through is no longer prohibited by the ITS Plan, as enumerated in the ITS Exemption, the specialist does not have recourse to seek ''satisfaction'' for these orders and is responsible for those executions. Moreover, the Exchange believes that the provision now unduly burdens the specialist by requiring the specialist to execute orders in situations where the specialist does not have access to trading at that price. Thus, the Phlx believes that its provision guaranteeing an execution no longer makes sense.

The corresponding limited exemption contained in the last sentence of Exchange Rule 229.10(a)(iii) was initially put in effect on a pilot basis for the period September 4, 2002 to October 4, 2002.[14] The pilot was subsequently extended to November 3, 2002,[15] and was extended again to March 4, 2004.[16] The Exchange is now proposing to extend the limited exemption of Phlx Rule 229, Supplementary Material .10(a)(iii) through December 4, 2004, to coincide with the most recent extension of the ITS Exemption. In order to avoid a lapse in the effectiveness of the corresponding Exchange Rule, this order is approving the Exchange's proposal to extend the rule from March 4, 2004 through December 4, 2004.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of Section 6(b)(5) of the Act[18] in particular, in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market

[6] *See* Securities Exchange Act Release No. 49356 (March 3, 2004), 69 FR 11057 (March 9, 2004) (Order Pursuant to Section 11A of the Securities Exchange Act of 1934 and Rule 11Aa3–2(f) Thereunder Extending a De Minimis Exemption for Transactions in Certain Exchange Traded Funds from the Trade-Through Provisions of the Intermarket Trading System).

[7] PACE is the Exchange's Automated Communication and Execution System. PACE provides a system for the automatic execution of orders on the Exchange equity floor under predetermined conditions.

[8] The Exchange does not currently trade DIAMONDs or SPDRs but may determine to do so in the future. The Exchange does trade QQQs. The Nasdaq-100®, Nasdaq-100 Index®, Nasdaq®, The Nasdaq Stock Market®, Nasdaq-100 Shares℠, Nasdaq-100 Trust℠, Nasdaq-100 Index Tracking Stock℠, and QQQ℠ are trademarks or service marks of The Nasdaq Stock Market, Inc. (''Nasdaq'') and have been licensed for use for certain purposes by the Phlx pursuant to a License Agreement with Nasdaq. The Nasdaq-100 Index® (the ''Index'') is determined, composed, and calculated by Nasdaq without regard to the Licensee, the Nasdaq-100 Trust℠, or the beneficial owners of Nasdaq-100 Shares℠. Nasdaq has complete control and sole discretion in determining, comprising, or calculating the Index or in modifying in any way its method for determining, comprising, or calculating the Index in the future.

[9] *See* note 3, *supra*.

[10] *See* note 5, *supra*.

[11] *See* note 6, *supra*.

[12] PACE Quote is defined in Phlx Rule 229 as the best bid/ask quote among the American Stock Exchange LLC, Boston Stock Exchange, Inc., Cincinnati Stock Exchange, Inc., Chicago Stock Exchange, Inc., New York Stock Exchange, Inc., Pacific Exchange, Inc. and the Phlx, or the Intermarket Trading System/Computer Assisted Execution System (''ITS/CAES'') quote, as appropriate.

[13] To be understood, Section .10(a)(iii) must be read in conjunction with the preceding section of the PACE Rule. Supplementary Material Section .10(a)(ii) provides as follows:

Non-Marketable Limit Orders—Unless the member organization entering orders otherwise elects, round-lot limit orders up to 500 shares and the round-lot portion of PRL limit orders up to 599 shares which are entered at a price different than the PACE Quote will be executed in sequence at the limit price when an accumulative volume of 1000 shares of the security named in the order prints at the limit price or better on the New York market after the time of entry of any such order into PACE. For each accumulation of 1000 shares which have been executed at the limit price on the New York market, the specialist shall execute a single limit order of a participant up to a maximum of 500 shares for each round-lot limit order up to 500 shares or the round-lot portion of a PRL limit order up to 599 shares.

[14] *See* Securities Exchange Act Release No. 46481 (September 10, 2002), 67 FR 58669 (September 17, 2002) (notice of immediate effectiveness of pilot for the period September 4, 2002 to October 4, 2002).

[15] *See* Securities Exchange Act Release No. 46615 (October 8, 2002), 67 FR 63723 (October 15, 2002) (notice of immediate effectiveness of extension of pilot to November 3, 2002).

[16] *See* Securities Exchange Act Release No. 48163 (July 10, 2003), 68 FR 42450 (July 17, 2003) (Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Extension of Interpretation of PACE Guarantees in Securities Subject to ITS Plan Exemption).

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers. By adopting the extension of the current exemption, the Exchange avoids burdening specialists with the obligation to fill an order in circumstances where an external event triggered the execution obligation and the specialist could not access trading at that price.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

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

No written comments were either solicited or received.

**III. 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Comments may also be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR-Phlx-2004–20. 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, comments should be sent in hardcopy or by e-mail but not by both methods. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should be submitted by April 19, 2004.

**IV. Discussion**

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 6(b)(5) of the Act[20] because it is designed to facilitate transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

The Commission believes that by extending the Exchange's proposed exemption for its members, the Exchange would remove the specialist's obligation to provide trade-through protection in situations where it will not be permitted to seek satisfaction through ITS from the primary market. This obligation was one the Phlx assumed voluntarily in order to make its market more attractive to sources of order flow, not an obligation the Act imposes on a market. The Commission believes that the business decision to potentially forego order flow by no longer providing print protection is a judgment the Act allows the Phlx to make.[21]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of the publication of notice thereof in the **Federal Register**. The Commission is granting accelerated approval in order to prevent a lapse in the effectiveness of the Exchange's rules regarding a Phlx specialist's obligation to provide trade-through protection in certain securities.

**V. Conclusion**

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[22] that the proposed rule change (SR-Phlx-2004–20) is approved on an accelerated basis and is effective retroactively to March 4, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[23]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–6920 Filed 3–26–04; 8:45 am]

BILLING CODE 8010–01–P

[19] In approving this rule proposal, the Commission notes that it has also considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] The Commission notes that the Phlx's proposed rule change will remain in effect only until the expiration of the extension of Commission's ITS Exemption Order on December 4, 2004.

[22] 15 U.S.C. 78f(b)(2).

[23] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice 4674]**

### Fine Arts Committee Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Friday, April 23, 2004, at 1:30 p.m. in the Henry Clay Room of the Harry S. Truman Building, 2201 C Street NW., Washington, DC. The meeting will last until approximately 2:30 p.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting on January 23, 2004, and the announcement of gifts and loans of furnishings as well as financial contributions from January 1, 2003, through December 31, 2003.

Public access to the Department of State is strictly controlled and space is limited. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office at (202) 647–1990 or send an e-mail to *DuncanSM@state.gov* by April 20 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: March 23, 2004.

**Gail F. Serfaty,**

*Secretary, Fine Arts Committee, Department of State.*

[FR Doc. 04–6941 Filed 3–26–04; 8:45 am]

BILLING CODE 4710–38–P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket No. FMCSA–2004–17194]**

### Agency Information Collection Submission for OMB Review: Request for Revocation of Authority Granted

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice.

**SUMMARY:** The FMCSA is seeking public comments on our request for the Office

of Management and Budget's (OMB) approval to renew the currently approved information collection (IC) identified as ''Request for Revocation of Authority Granted.'' This information collection notifies the FMCSA of a voluntary request by a motor carrier, freight forwarder, or property broker to amend or revoke it's registration of authority granted by the FMCSA. The Paperwork Reduction Act requires the publication of this notice.

**DATES:** Please submit comments by April 28, 2004.

**ADDRESSES:** Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590, or submit electronically at *http://dmses.dot.gov/submit.* Be sure to include the docket number appearing in the heading of this document on your comment. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. If you would like to be notified when your comment is received, you must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically.

**FOR FURTHER INFORMATION CONTACT:** Ms. Marian Mills Lee, (202) 385–2423, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh St., SW., Washington, DC, 20590. Office hours are from 7:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** Title: Request for Revocation of Authority Granted.

*OMB Control Number:* 2126–0018.

*Background:* Title 49 of the United States Code (U.S.C.) authorizes the Secretary of Transportation (Secretary) to promulgate regulations governing the registration of for-hire motor carriers of regulated commodities (49 U.S.C. 13902), surface transportation freight forwarders (49 U.S.C. 13903), and property brokers (49 U.S.C. 13904). The FMCSA carries out this registration program under authority delegated by the Secretary.

Under 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary determines appropriate by regulation. Section 13905(c) grants the Secretary the authority to amend or revoke a registration at the registrant's request. On complaint or on the Secretary's own initiative, the Secretary may also suspend, amend, or revoke any part of the registration of a motor carrier, broker, or freight forwarder for willful failure to comply with the regulations, an order of the Secretary, or a condition of its registration.

Form OCE–46 is used by transportation entities to voluntarily apply for revocation of their registration authority in whole or in part. The form is used by the FMCSA to seek information on the registrant's docket number, name and address, and the reasons for the revocation request.

*Respondents:* Motor carriers, freight forwarders, and brokers.

*Average Burden Per Response:* 15 minutes.

*Estimated Total Annual Burden:* 250 hours (1,000 motor carriers × 15 minutes/60 minutes).

**Authority:** 49 U.S.C. 13902, 13903, 13904 and 13905; and 49 CFR 1.73.

Issued on: March 10, 2004.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 04–6900 Filed 3–26–04; 8:45 am]

BILLING CODE 4910–EX–P

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

**[FTA Docket No. FTA–2004–17372]**

### Agency Information Collection Activity Under OMB Review

**AGENCY:** Federal Transit Administration, DOT.

**ACTION:** Notice of request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the intention of the Federal Transit Administration (FTA) to request the Office of Management and Budget (OMB) to reinstate the following expired information collection: 49 U.S.C. 5310—Capital Assistance Program for Elderly Persons and Persons With Disabilities and Section 5311—Nonurbanized Area Formula Program

**DATES:** Comments must be submitted before April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Sylvia L. Marion, Office of Administration, Office of Management Planning, (202) 366–6680.

**SUPPLEMENTARY INFORMATION:** *Title:* 49 U.S.C. Section 5310–Capital Assistance Program for Elderly Persons and Persons with Disabilities and 49 U.S.C. Section 5311 Nonurbanized Area Formula Program (*OMB Number: 2132–0500*).

*Abstract:* The Capital Assistance Program for Elderly Persons and Persons with Disabilities provides financial assistance for the specialized transportation service needs of elderly persons and persons with disabilities. The program is administered by the States and may be used in all areas, urbanized, small urban, and rural. The Nonurbanized Area Formula Program provides financial assistance for the provision of public transportation services in nonurbanized areas and this program is also administered by the States. 49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements.

Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the nonurbanized areas and this program is also administered by the States. 49 U.S.C. 5310 and 5311 authorize FTA to review applications for federal financial assistance to determine eligibility and compliance with statutory and administrative requirements. Information collected during the application stage includes the project budget, which identifies funds requested for project implementation; a program of projects, which identifies subrecipients to be funded, the amount of funding that each will receive, and a description of the projects to be funded; the project implementation plan; the State management plan; a list of annual certifications and assurances; and public hearings notice, certification and transcript. The applications must contain sufficient information to enable FTA to make the findings required by law to enforce the program requirements.

Information collected during the project management stage includes an annual financial report, an annual program status report, and pre-award and post-delivery audits. The annual financial report and program status report provide a basis for monitoring approved projects to ensure timely and appropriate expenditure of federal funds by grant recipients.

*Estimated Total Annual Burden:* 11,775 hours.

**ADDRESSES:** All written comments must refer to the docket number that appears at the top of this document and be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: FTA Desk Officer.

*Comments are Invited On:* Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued: March 19, 2004.

**Rita L. Wells,**

*Associate Administrator for Administration.*

[FR Doc. 04–6966 Filed 3–26–04; 8:45 am]

**BILLING CODE 4910–57–M**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

### Denial of Motor Vehicle Defect Petition

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

**ACTION:** Denial of petition for a defect investigation.

**SUMMARY:** This notice sets forth the reasons for the denial of a petition submitted by Mr. Fernando De Leon on behalf of Mr. Robert Steele to NHTSA's Office of Defects Investigation (ODI), dated September 9, 2003, under 49 U.S.C. 30162, requesting that the agency commence a proceeding to determine the existence of a defect related to motor vehicle safety with respect to the front seat back performance on model year (MY) 1994 through 1997 Dodge Ram pickup trucks in low-speed, rear-end crashes. After a review of the petition and other information, NHTSA has concluded that further expenditure of the agency's investigative resources on the issues raised by the petition does not appear to be warranted. The agency accordingly has denied the petition. The petition is hereinafter identified as DP03–006.

**FOR FURTHER INFORMATION CONTACT:** Mr. Christopher J. Wiacek, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–7042.

**SUPPLEMENTARY INFORMATION:** By letter dated September 9, 2003, Mr. Fernando De Leon, on behalf of Mr. Robert Steele, submitted a petition requesting that the agency investigate the performance of the front seat back on MY 1994 through 1997 Dodge Ram pickup trucks (subject vehicles) in low-speed, rear-end crashes. The petitioner alleges that the front seat back can collapse rearward in a rear impact crash as a result of the design and improper manufacturing of the upper outer plate within the recliner mechanism causing the front occupant to sustain injury. The petitioner, an owner of a 1996 Dodge Ram, has not experienced this issue.

ODI requested information from DaimlerChrysler Corporation (DaimlerChrysler), pertaining to the front seatback performance on MY 1994 through 1997 Dodge Ram pickup trucks. The subject vehicles were redesigned for MY 1994 to use the T–300 split bench front seat. According to DaimlerChrysler, beginning with the MY 1998 Dodge Ram pickups, the front seats were significantly revised for the Club Cab model, but the standard cab pickup continued to use T–300 seat recliner design until MY 2002. However, in the standard cab vehicles, the relative position of the seat back to the back of the cab does not permit the seat to collapse completely rearward as in the Club Cab. DaimlerChrysler has produced for sale in the United States 1,193,279 MY 1994 through 1997 Dodge Ram pickups, including 188,097 MY 1994, 267,241 MY 1995, 362,880 MY 1996 and 375,061 MY 1997 vehicles.

ODI has identified a total of 30 incidents where it is alleged the seat back collapsed rearward in a rear impact crash. DaimlerChrysler submitted information about 29 incidents and ODI had received four reports, of which one was unique to ODI. All but two of the incidents occurred in vehicles with the Club Cab body style.

There have been 23 injuries and two deaths allegedly due to the collapse of the front seat back in a crash. The severity of the injuries ranged from minor cuts, bruises and sprains to severe head trauma allegedly due to the occupant striking the rear of the cab after the seat collapsed. There were six reported incidents where there was serious head trauma to the occupant that allegedly resulted in two fatalities. The two fatal incidents involved impacts by large vehicles, which might have contributed to the severity of the injuries.

The petition alleged that the seat backs collapsed during low-speed impacts. The data gathered by ODI show that one complaint had alleged that the subject vehicle was struck at a speed of 4 to 5 miles per hour (mph) and another at 8 mph while the subject vehicle was at rest. In the other few incidents where the striking speed was stated in the complaint, the speed ranged from 30 to 70 mph. For a majority of the complaints the striking speed was not stated. ODI was unable to determine the severity of the impact for the vehicles that were involved in crashes when photographs were available for review because of the propensity of the struck subject vehicle to roll forward after the impact, thus reducing the crush damage as the driver's foot tends to come off the brake pedal when struck from behind. Though crush damage might appear to be insignificant, this is not necessarily indicative of a low impact speed.

ODI reviewed the complaints it received with respect to comparable full-size pickup trucks built by General Motors (GM) and Ford Motor Company (Ford) in MY 1994 through 1997 in which it is stated the front seat collapsed in a crash. ODI has received one complaint on a GM pickup and none on a Ford, compared with four on the subject vehicles.

ODI also examined reports on the subject vehicles where it is alleged that the seat back collapsed other than in a rear impact. ODI identified a total of 51 such complaints. Of the 51 reports, 14 stated that the seat back collapsed while the vehicle was being driven and one stated that the seat back collapse caused the driver to hit a snow bank. The data show that the complaint count by calendar year for seat backs collapsing without a rear impact crash is steady and does not appear to be increasing with time.

There were approximately 1,300 warranty claims filed on the subject vehicle where the failure was coded as ''11–Broken Cracked'' and the part description was coded as ''recliner.'' This data is not very helpful because the claims pertain to the front seat recliner as a system and may not specifically relate to the alleged defect.

There was an Engineering Analysis, EA01–019, into an alleged defect with respect to the recliners in 200,000 MY 1992 through 1995 GM full size sport utility vehicles. ODI received reports of 103 incidents in which the recliner bolt allegedly failed, resulting in three crashes and nine injuries. At the closure of that investigation a recall was not ordered by the agency. The failure rate of 51 per 100,000 vehicles for seat back collapse without a rear impact in EA01–019 is significantly greater than the 4 per 100,000 for the subject vehicles.

DaimlerChrysler has advised ODI that Federal Motor Vehicle Safety Standard (FMVSS) No. 207, ''Seating Systems,'' compliance testing was conducted on the T–300 seats used on the subject vehicles. For all model years, the seats used in the Dodge Ram passed the Federal requirements for seat back strength. NHTSA's Office of Vehicle Safety Compliance did not conduct testing on the subject vehicles. DaimlerChrysler did conduct an FMVSS No. 301, ''Fuel System Integrity,'' rear impact test with instrumented anthropomorphic dummies in both front seat positions at 48 km/h on a Club Cab Dodge Ram. During the test, both front seats collapsed rearward. DaimlerChrysler has stated that this was part of the designed energy absorption capabilities of the T–300 seating system. The head injury criteria or HIC for the driver dummy was 116 and for the passenger dummy was 120. This is well below the HIC value of 1,000 which is the NHTSA benchmark for measuring serious head injury in other safety standards.

In view of the foregoing, it is unlikely that NHTSA would issue an order for the notification and remedy of the alleged defect as defined by the petitioner at the conclusion of the investigation requested in the petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

**Authority:** 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: March 23, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04–6902 Filed 3–26–04; 8:45 am]

**BILLING CODE 4910–59–P**

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–04–17375; Notice 1]**

### Pipeline Safety: Request for Waiver; GulfTerra Field Services LLC

**AGENCY:** Research and Special Programs Administration (RSPA); U.S. Department of Transportation (DOT).

**ACTION:** Notice of intent to consider waiver request.

**SUMMARY:** GulfTerra Field Services LLC (GTFS), requested a waiver of compliance with the regulatory requirements at 49 CFR 192.619(a)(2)(ii), 192.503, and 192.505 for certain offshore pipeline segments of the deepwater Phoenix Gas Gathering System (Phoenix). GTFS is requesting a waiver from the post-construction hydrotesting requirement for selected segments of the Phoenix system.

**DATES:** Persons interested in submitting written comments on the waiver request described in this Notice must do so by April 28, 2004. Late filed comments will be considered as far as practicable.

**ADDRESSES:** You may submit written comments by mailing or delivering an original and two copies to the Dockets Facility, U.S. Department of Transportation (DOT), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays when the facility is closed. Alternatively, you may submit written comments to the docket electronically at the following web address: *http://dms.dot.gov.*

All written comments should identify the docket and notice numbers stated in the heading of this notice. Anyone who wants confirmation of mailed comments must include a self-addressed stamped postcard. To file written comments electronically, after logging on to *http://dms.dot.gov,* click on ''Comment/Submissions.'' You can also read comments and other material in the docket. General information about the Federal pipeline safety program is available at *http://ops.dot.gov.*

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

**FOR FURTHER INFORMATION CONTACT:** James Reynolds by telephone at 202–366–2786, by fax at 202–366–4566, by mail at DOT, Research and Special Programs Administration (RSPA) Office of Pipeline Safety (OPS), 400 7th Street, SW., Washington, DC 20590, or by e-mail at *james.reynolds@rspa.dot.gov.*

**SUPPLEMENTARY INFORMATION:**

#### Background

GTFS, a wholly owned subsidiary of GulfTerra Energy Partners L.P., has entered into a gas gathering agreement with Kerr McGee Oil & Gas Corporation and the Devon Louisiana Corporation to design, build, own, and operate the Phoenix Gas Gathering System (Phoenix). GTFS will transport natural gas from the Red Hawk Spar, a deepwater production facility, to the Pioneer Platform, an existing downstream pipeline facility.

#### System Description

The GTFS pipeline will extend 76 miles through Federal waters on the Gulf of Mexico Outer Continental Shelf (OCS) and will cross one shipping channel, known as a ''fairway.'' The pipeline will include a subsea 'wye' and a subsea 'tee' for future interconnections to other pipelines. The planned maximum allowable operating pressure (MAOP) of this pipeline and the associated platform facilities is 2,875 pounds per square inch gauge (psig). The system will normally operate at pressures up to 2,500 psig.

The Phoenix system will consist of the following primary components, in order of occurrence from deep to shallow water:

1. A steel catenary riser (SCR) consisting of 16-inch outside diameter (O.D.) × 1.00-inch wall thickness (w.t.), API 5L X65 seamless pipe, on the Red Hawk Spar at a depth of 5,300 feet. The SCR will be coated with triple-layer polypropylene at the touchdown point and 14 to 16 mils of thin film fusion bonded epoxy (FBE) and 2 to 3 mils of rough coat FBE through the midsection. There will be 23 mils of thin film FBE in the vortex induced vibration (VIV) suppression strake section, and a 1-inch thick sleeve of Splashtron coating in the pull-tube;

2. A 76-mile pipeline from the Red Hawk platform to the Vermilion riser (VR). Beginning at the deepwater end, approximately 40 miles of pipe will be 18-inch O.D. × 0.791-inch w.t., API 5L X65 double submerged arch weld (DSAW) pipe, followed by approximately 36 miles of 18-inch O.D. × 750-inch w.t., API 5L DSAW pipe. All joints will be coated with 14 to 16 mils of thin film FBE with an additional 2 to 3 mils of FBE rough coating;

3. An 18-inch diverless, piggable 'wye' assembly downstream of the Red Hawk Spar in Garden Banks to accommodate future connection(s) to the pipeline;

4. An 18-inch O.D. × 16-inch diverless 'tee' assembly in Garden Banks to accommodate future connection(s) to the pipeline; and

5. Pipeline support facilities located on the VR 397 ''A'' platform, including a pig receiver and related piping and safety controls. The platform riser will be 18-inch O.D. × 0.875-inch w.t., API 5L X60 DSAW pipe coated with 14 to 16 mils of thin film FBE. In the wave (splash zone) area, the riser pipe will be

protected with a ½-inch thick sleeve of Splashtron coating.

**Need for Hydrotest**

GTFS contends it is unnecessary to hydrostatically test this pipeline. GTFS asserts that a hydrostatic test will not demonstrate the strength and integrity of the pipeline because the pipeline is designed of heavier wall pipe and it will never experience the wall stress intended to be produced by a hydrotest. The heavier wall pipe is used to prevent the collapse of the pipeline in the face of the huge external pressures exerted on it at a water depth of 5,300 feet.

**Proposed Alternative Risk Control Activities**

GTFS proposes the following alternative risk control activities to provide a margin of safety and environmental protection comparable to that required by the pressure-test regulations:

1. Utilize thick wall, high strength, and high quality DSAW pipe;
2. Perform a pipe mill hydrotest on each length of fabricated pipe equivalent to 95% specified minimum yield strength (SMYS) to detect defects in the seam weld and prevent the deployment of defective pipe joints;
3. Perform extensive inspection and quality control during the line pipe manufacture, transport, fabrication, and installation to prevent pipe damage;
4. Utilize Automated Ultrasonic Inspection (AUT) for inspection of offshore welds to improve defect detection in the girth weld and to improve the weld quality during the pipeline and SCR fabrication;
5. Subject all buckle arrestors to complete radiographic and magnetic particle inspection, including radiographic inspection of all buckle arrestor to line pipe welds;
6. Perform complete radiographic inspection and hydrotesting of all welds connecting subsea valves and assemblies to the pipeline;
7. Perform a leak test of the pipeline's subsea tie-in flange that connects to the VR 397 riser flange; and
8. Perform factory acceptance hydrotests of all subsea 'wye', 'tee', ball valve, and check valve assemblies.

**Intent To Consider Waiver**

Although performing an in situ hydrotest on this pipeline would comply with the plain language of the regulation, GTFS believes the intent of the regulations cannot be met by hydrostatic testing. Due to the heavier wall thickness requirements and external hydrostatic pressures in deep water, the traditional pipeline hydrostatic test generates stresses as a percentage of SMYS that are well below those typically experienced in a pipeline test. GTFS asserts that the hydrostatic test cannot demonstrate the strength or integrity of the system.

Therefore, RSPA/OPS will consider whether a hydrotest of this pipeline is necessary and whether the alternative risk control activities proposed by GTFS will yield an equivalent or greater degree of safety. This Notice is RSPA/OPS' only request for public comment before making its final decision in this matter. After considering any comments, RSPA/OPS will make a final determination to grant or deny the waiver as proposed or with modifications and conditions. If the waiver is granted and RSPA /OPS subsequently determines that the effect of the waiver is inconsistent with pipeline safety, RSPA/OPS may revoke the waiver at its sole discretion.

Issued in Washington, DC on March 23, 2004.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 04–6903 Filed 3–26–04; 8:45 am]

BILLING CODE 4910–60–P

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## DEPARTMENT OF TRANSPORTATION

### Research and Special Programs Administration

**[Docket No. RSPA–03–16841; Notice 2]**

### Pipeline Safety: Grant of Waiver; Columbia Gas Transmission

**AGENCY:** Research and Special Programs Administration (RSPA); Department of Transportation (DOT).

**ACTION:** Notice; grant of waiver.

**SUMMARY:** Columbia Gas Transmission requested a waiver of compliance with the regulatory requirements at 49 CFR 192.611(d) which require natural gas pipeline operators to confirm or revise the maximum allowable operating pressure (MAOP) of their natural gas pipelines within 18-months after a class location change.

**SUPPLEMENTARY INFORMATION:**

**Background**

Columbia Gas Transmission submitted a request to RSPA's Office of Pipeline Safety (RSPA/OPS) seeking a waiver of compliance with the regulatory requirements at 49 CFR 192.611(d) to confirm or revise the MAOP of its natural gas pipeline within 18-months after a class location change. Two segments of Columbia's Line MC pipeline changed from Class 2 to Class 3 locations. To maintain the current MAOP of 899 psig, Columbia elected to replace 9,500 feet of its pipeline with new, heavier wall pipe. The two segments of the pipeline, totaling approximately 1,700 feet, involve stream crossings or wetland areas. The two segments are 1,506 feet and 200 feet in length, respectively.

Columbia anticipated that 7,800 feet of its replacement project would be complete by October 31, 2003. However, due to unforeseen delays in obtaining joint State/Federal environmental permits for the pipe replacement in stream crossings and wetlands areas, Columbia was unable to complete the replacement of the remaining 1,700 feet of pipe prior to the expiration of the 18-month period allowed by § 192.611(d).

Columbia discontinued its pipe replacement project at the start of the winter heating season and intends to resume the project in May 2004. Colombia expects all 9,500 feet of its Line MC will be replaced not later than July 1, 2004. For this reason, Columbia requested a time extension until July 1, 2004, to comply with § 192.611(d).

Columbia provided the following justification for the waiver of their 30-inch Line MC pipeline:

- The 30-inch pipeline was internally inspected in 1999 using both geometry and high resolution magnetic flux leakage tools; no anomalies or dents were identified on the two pipeline segments in the stream crossing and wetland areas of Line MC.
- The cathodic protection test stations on these two segments of Line MC are above the minimum criteria.
- There have been no leaks on these two segments of Line MC.
- The existing pipe and coating on these two segments of Line MC appear in satisfactory condition.
- The existing Line MC was manufactured using a double submerged are welding process.
- The existing Line MC was pressure tested twice; in 1962 during construction and again in 1974. The pipeline was tested above 100% specified minimum yield strength during both pressure tests.

After reviewing the waiver request, RSPA/OPS published a notice inviting interested persons to comment on whether a waiver should be granted (Notice 1) (68 FR 66156; Jan. 9, 2004). No comments were received from the public in response to the notice.

For the reasons explained above and those explained in Notice 1, RSPA/OPS finds that the requested waiver is not inconsistent with pipeline safety. Therefore, Columbia Gas's request for a waiver is granted until July 1, 2004.

Issued in Washington, DC on March 23, 2004.

**Stacey L. Gerard,**

*Associate Administrator for Pipeline Safety.*

[FR Doc. 04–6904 Filed 3–26–04; 8:45 am]

**BILLING CODE 4910–60–P**

## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### Agency Information Collection Activities: Submission for OMB Review; Comment Request

**AGENCY:** Office of the Comptroller of the Currency (OCC), Treasury.

**ACTION:** Notice and request for comment.

**SUMMARY:** The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. An agency may not conduct or sponsor, and a respondent is not required to respond to, an information collection unless the information collection displays a currently valid OMB control number. The OCC is soliciting comment concerning its renewal, without change, of an information collection titled ''(MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.'' The OCC also gives notice that it has sent the information collection to OMB for review and approval.

**DATES:** You should submit your comments to the OCC and the OMB Desk Officer by April 28, 2004.

**ADDRESSES:** You should direct comments to: OCC: Communications Division, Office of the Comptroller of the Currency, Public Information Room, Mailstop 1–5, Attention: 1557–0184, 250 E Street, SW., Washington, DC 20219. Commenters are encouraged to submit comments by fax or e-mail. Comments may be sent by fax to (202) 874–4448, or by e-mail to *regs.comments@occ.treas.gov.* You can inspect and photocopy the comments at the OCC's Public Information Room, 250 E Street, SW., Washington, DC 20219. You can make an appointment to inspect the comments by calling (202) 874–5043.

OMB: Joseph F. Lackey, Jr., OMB Desk Officer for the OCC, 1557–0184, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** You can request additional information or a copy of the collection from John Ference, Acting OCC Clearance Officer, or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** The OCC is proposing to extend OMB approval of the following information collection:

*Title:* (MA)—Municipal Securities Dealers and Government Securities Brokers and Dealers Registration and Withdrawal.

*OMB Number:* 1557–0184.

*Description:* This submission covers existing forms and involves no change to the forms. The OCC requests only that OMB extend its approval of the information collection.

This information collection is required to satisfy the requirements of the Securities Act Amendments of 1975 and the Government Securities Act of 1986 which require that any national bank that acts as a government securities broker/dealer or a municipal securities dealer notify the OCC of its broker/dealer activities. The OCC uses this information to determine which national banks are government and municipal securities broker/dealers and to monitor institutions entry into and exit from government and municipal securities broker/dealer activities. The OCC also uses the information in planning bank examinations.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Businesses or other for-profit; individuals.

*Estimated Number of Respondents:* 100.

*Estimated Total Annual Responses:* 3,080.

*Estimated Total Annual Burden:* 2,706 hours.

*Frequency of Response:* On occasion.

**Comments**

The OCC has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments regarding any aspect of this collection of information. All comments will become a matter of public record.

Dated: March 11, 2004.

**Mark J. Tenhundfeld,**

*Assistant Director, Legislative and Regulatory Activities Division.*

[FR Doc. 04–6950 Filed 3–26–04; 8:45 am]

**BILLING CODE 4810–33–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Tuesday, April 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 (toll-free), or 718–488–3557 (non toll-free).

**SUPPLEMENTARY INFORMATION:** An open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, April 27, 2004 from 11 am EDT to 12 pm EDT via a telephone conference call. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write Marisa Knispel, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include: Various IRS issues.

Dated: March 23, 2004.

**Bernard E. Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–6962 Filed 3–26–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel

**AGENCY:** Internal Revenue Service (IRS) Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Small Business/Self Employed—Schedule C

Non-Filers Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The TAP will be discussing issues pertaining to increasing compliance and lessening the burden for Small Business/Self Employed individuals. Recommendations for IRS systemic changes will be developed.

**DATES:** The meeting will be held Thursday, April 22, 2004.

**FOR FURTHER INFORMATION CONTACT:** Marisa Knispel at 1–888–912–1227 or 718–488–3557.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Small Business/Self Employed—Schedule C Non-Filers Committee of the Taxpayer Advocacy Panel will be held Thursday, April 22, 2004 from 11 a.m. EDT to 12:30 p.m. EDT via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 718–488–3557, or write to Marisa Knispel, TAP Office, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY 11201. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Marisa Knispel. Ms. Knispel can be reached at 1–888–912–1227 or 718–488–3557, or post comments to the Web site: *http://www.improveirs.org.*

The agenda will include the following: Various IRS issues.

Dated: March 23, 2004.

**Bernard E. Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–6963 Filed 3–26–04; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
March 29, 2004

# Part II

# Department of Veterans Affairs

## 38 CFR Part 39
## State Cemetary Grants; Final Rule

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 39**

**RIN 2900–AH46**

## State Cemetery Grants

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) regulations governing grants to States to establish, expand, or improve State veterans' cemeteries. The final rule implements a statutory change effected by the Veterans Programs Enhancement Act of 1998, which changed the grant formula from a 50–50 Federal-State matching program to a program that authorizes up to 100 percent Federal funding of certain costs. Additionally, amendments to this rule are necessary to simplify the preapplication process and to establish a system of prioritizing grant applications. Finally, non-substantive changes are necessary for purposes of clarification.

**DATES:** *Effective Date:* April 28, 2004.

The incorporation by reference of certain publications in this rule is approved by the Director of the Office of the Federal Register as of April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** William Jayne, Director of State Cemetery Grants Service (SCGS), National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington DC 20420. Telephone: (202) 565–6152 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** On May 1, 2003, VA published a notice of proposed rulemaking in the **Federal Register** (68 FR 23249). We proposed to amend VA's regulations governing grants to States to establish, expand, or improve State veterans' cemeteries. We proposed to make numerous changes, which included implementing the statutory increase of up to 100 percent funding of certain costs related to the establishment, expansion, or improvement of a veterans' cemetery, as well as providing for purchase of initial operating equipment by the States for establishment grants. Additionally, we proposed to establish a system of prioritization at the preapplication stage, as VA anticipates increased participation by the States in the State Cemetery Grant Program (SCGP).

We provided a 60-day comment period that ended June 30, 2003. We received seven comments: four from State veterans' cemetery officials; one from a State department of veterans affairs official; one from the National Fire Protection Association, and one from the International Association of Plumbing and Mechanical Officials. These comments are discussed below.

Based on the rationale set forth in the proposed rule and in this document, we adopt the provisions of the proposed rule as a final rule with changes explained below.

### Master Plan

One commenter suggested that a Master Plan be submitted during the preapplication process for new and existing cemeteries to show the proposed layout of all facilities for a selected site.

To minimize the financial burden on States, the State Cemetery Grants Service does not require States to fund a Master Plan as part of the preapplication. This reduces the monetary outlay by the State prior to the approval of a preapplication. Office of Management and Budget (OMB) Circular A–102, *Grants and Cooperative Agreements with State and Local Governments,* requires a preapplication for construction grants to ''discourage any proposals that have little or no chance for Federal funding before applicants incur significant costs in preparing detailed applications.'' Therefore, VA will not change the criteria to require submission of a Master Plan with the preapplication.

### Funding

One commenter questioned how the States would obtain funding for the Environmental Assessment. The proposed regulation indicated that the Environmental Assessment was required under the preapplication requirements.

We have modified this section to provide that, as part of the preapplication requirements under § 39.6, the State must provide written assurances that it will prepare an Environmental Assessment and certify that funds are available to finance any costs related to the Environmental Assessment. A significant outlay of funds is not required by the State prior to approval of the preapplication. Although the actual Environmental Assessment is not required as part of the preapplication, under § 39.10(b), an Environmental Assessment will be required prior to submission of the application.

The same commenter voiced concern about how initial planning and design costs would be funded by the State and contended that there should be some source of Federal funding provided for project design.

States are required to commit funding to the planning and design of a project in order to demonstrate their commitment to building the facility and providing service to veterans. The State is required to supply the initial costs of meeting all requirements for grant award. Federal funds are awarded after all requirements have been met and the project is ready for construction. Following award of the grant, most of the initial costs incurred by the State are eligible for reimbursement.

### Priority List

We received several comments related to the priority list requirements in proposed § 39.7. First, two commenters from State veterans' cemeteries expressed their concern about initially funding projects or developing a proposal in the preapplication phase, when they have little assurance the site selected for a proposed new State veterans' cemetery will rank high enough for grant approval. They point out that States may be unwilling to risk dedicating funds to analyze and develop a particular site without a high probability that the State will be reimbursed under an approved grant. It should be noted once again that the preapplication phase does not require a large State investment. Technical assistance from the State Cemetery Grants Service is available to help determine how well the project can compete with other proposals, which is one of the purposes of requiring a preapplication (OMB Circular A–102).

Second, another commenter presented concerns that within Priorities 1, 2, and 3, a State's preapplication will be ranked based on the greatest number of veterans who will benefit from the project as determined by VA. The commenter was concerned that a project in a remote location with a reduced veteran population would be at a disadvantage compared to projects in more densely populated locations.

VA has completed three Congressionally mandated reports—in 1987, 1994, and 2002—which identified the areas of greatest need for new veteran cemeteries. These reports were mandated pursuant to section 412 of Public Law 99–576, Veterans' Benefits Improvement and Health-Care Authorization Act of 1986, and section 613 of Public Law 106–117, Veterans Millennium HealthCare and Benefits Act (1999). These reports were based on veteran demographic data. A goal of VA is to continue to increase the number of veterans residing in the United States who have a burial option in a national

or State veterans' cemetery within 75 miles of their residence. The prioritization system contained in these regulations is consistent with that goal.

Third, one commenter expressed concerns that projects categorized in Priority Group 4 (projects to improve existing facilities such as buildings and roads) may never receive a grant when new applications received in Priority Groups 1, 2, and 3 are reprioritized each year. While VA recognizes the importance of improvement projects, projects to provide more gravesites for veterans and their families or projects that are required to continue interment operations are considered a higher priority.

One commenter noted that a State's approved preapplication may remain low on the priority list when all preapplications are reprioritized annually if its veteran population is relatively low. Therefore, the commenter recommended that the SCGS should rank new preapplications behind the preapplications that were prioritized the previous year.

It should be noted that while SCGS ranks the preapplications on an annual basis, not all proposed State projects will be ready for funding during the following year since each project must meet specific requirements before the actual grant is awarded. For example, a preapplication for a project to establish a new cemetery in a significant population center may be submitted and placed high on the priority list, but the project would not be able to receive Federal funding until it was ready to award a construction contract. Such a project would not prevent funding for improvement projects that are ready to award a construction contract if sufficient funds are available.

One commenter recommended that VA develop a database that analyzes or ranks each county in the nation according to its priority for a grant. Implementing this recommendation would be extremely costly and resource intensive. VA already provides a database of the veteran population according to county at *http://www.va.gov/vetdata/census2000/index.htm.* To assist States, SCGS will provide a paper copy of a current priority list upon request. SCGS can also provide technical assistance to gauge the need for projects to establish new cemeteries prior to submittal of a preapplication.

**Facilities/Buildings**

One commenter questioned why, in § 39.15(b)(4), non-fixed equipment is precluded under the grant payment as part of an expansion or improvement grant.

By law, the cost of equipment necessary for operation of the State cemetery will be included in a grant only if it is part of a project to establish a new cemetery. *See* 38 U.S.C. 2408(b)(1)(A). For expansion and improvement grants, we are interpreting 38 U.S.C. 2408(b)(1)(B) as authorizing Federal funding for equipment only if that equipment is permanently affixed to a building or connected to the heating, ventilating, air conditioning, or other service distributed through a building via ducts, pipes, wires, or other connecting device, such as kitchen and intercommunication equipment, built-in cabinets, and equipment lifts.

Two commenters asked why a ''chapel'' or fully enclosed, climate-controlled, committal-service building is not included in the amount of grants, and why chapels cannot be combined with either an administrative building or an information center.

In operating 120 national cemeteries, VA has found enclosed committal-service facilities or ''chapels,'' including those combined within another building, to be costly to build, difficult to maintain, and not necessary for program operations because an open shelter is sufficient for a brief committal service, similar to a graveside service at a private cemetery. VA does not believe that enclosed committal-service facilities are the best use of limited funds. These types of facilities are not constructed at new national cemeteries. We have amended proposed § 39.15(c)(6) to clarify that a grant cannot be awarded for a freestanding chapel or a chapel that may be built as part of an administrative building or an information center.

One commenter asked that air conditioning be allowed in the maintenance/service building in geographical areas that require it. It was not the intent of VA to exclude air conditioning. Section 39.21 has been revised to clarify that air conditioning is not excluded in appropriate areas of a maintenance building.

Another commenter recommended that VA specify the approximate net square feet to be allowed for the committal service shelter and public information center in § 39.21(d) and (e), respectively.

The State Cemetery Grant Program will retain flexibility for these facilities since the requirements can be addressed in many different ways including consolidation within, adjacent to, or near other structures. Technical assistance may be obtained from SCGS staff as needed.

Another commenter noted that while the square footage requirements for specific rooms were removed from the space criteria requirements in § 39.21, the space criteria requirements for support facilities in general were still included. The commenter suggested that square footage standards for administrative buildings and maintenance buildings should be based on ten-year projections and that the standards in § 39.21(a) and (b) should be increased to 3,000 and 5,000 square feet, respectively.

To allow flexibility to the States, square footage for buildings is provided, but not for rooms. The criteria provided in § 39.21(a), (b) and (c), are to be used as a guide for planning. It is not reasonable to construct buildings that may be expanded every ten years. The larger-sized buildings are often not necessary, although the regulations allow enough flexibility to construct large facilities if the projected workload and staffing plans justify such development. If required, technical assistance may be obtained from SCGS staff.

One commenter asked that specific criteria be established in § 39.21(f) for the use of preplaced, outer burial receptacles or other support facilities such as columbaria, preplaced graveliners (or crypts), or garden niches.

VA's experience has shown that there are too many variables and unique features at each cemetery to establish strict criteria for interment structures. SCGS staff will provide technical assistance and respond to these requirements on an individual basis.

In response to a comment related to space criteria for support facilities, we have corrected an erroneous reference in proposed § 39.21(f).

**Administration**

One commenter indicated that information about the new electronic payment program through the Department of Health and Human Services (HHS) should be included in the rule. OMB, in accordance with section 6 of Public Law 106–107, Federal Financial Assistance Management Improvement Act of 1999, has directed that grant payment systems be consolidated to increase efficiency. To this end, SCGS has chosen the Department of Health and Human Services Payment Management System, an internet-based system that is efficient and user-friendly. Training is provided for this system; in addition, if required, specific information related to the electronic payment program may be obtained from SCGS staff. Thus, it is not

necessary to include this information in the rule.

One commenter requested that the forms included in § 39.26 be listed in chronological order of use, from preapplication through final grant application and construction. The current numerical order of the forms in § 39.26 will be retained, however, because many readers will be unfamiliar with the process and numerical order will facilitate the reader's ability to locate specific forms more readily.

**Clarifications**

We have modified § 39.5(a) by removing a reference to ''wives'' and ''husbands'' and replacing those terms with the term ''spouses.'' The term ''spouse'' is defined in 38 U.S.C. 101(31).

We have modified § 39.8, Plan Preparation, to clarify that the State can proceed with the process of receiving construction bids once plans and specifications have been reviewed and approved by the SCGS.

Additionally, in light of comments received from the National Fire Protection Association and the International Association of Plumbing and Mechanical Officials, we have modified § 39.22, Architectural Design Standards, to incorporate by reference the most current code references to include: the 2003 edition of the National Fire Protection Association Life Safety Code, NFPA 101; the 2003 edition of the Uniform Plumbing Code; the 2003 edition of the NFPA 5000, Building Construction and Safety Code; and the NFPA 70, National Electrical Code, 2002 edition (NEC 2002 Code). We have also added a reference to the 2003 edition of the Uniform Mechanical Code.

Finally, we are correcting a typographical error in the cross-reference found in paragraph (a)(2) of § 39.22.

**Paperwork Reduction Act**

Although this document contains provisions constituting a collection of information, at 38 CFR 39.6, 39.10, 39.16, 39.17, 39.25 and 39.26 under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with this final rule. The information collection requirements for §§ 39.6, 39.10, 39.16, 39.17, 39.25 and 39.26 are currently approved by the Office of Management and Budget (OMB) and have been assigned OMB control numbers 0348–0002, 0348–0043, 0348–0041, 0348–0042, and 2900–0559.

**Executive Order 12866**

This document has been reviewed by the Office of Management and Budget under Executive Order 12866.

**Regulatory Flexibility Act**

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only individual VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

**Unfunded Mandates**

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

**Catalog of Federal Domestic Assistance Program Number**

The Catalog of Federal Domestic Assistance Program Number for this document is 64.203.

**List of Subjects in 38 CFR Part 39**

Cemeteries, Grant programs—veterans, Incorporation by reference, Veterans.

Approved: January 20, 2004.

**Anthony J. Principi,**

*Secretary of Veterans Affairs.*

■ For the reasons set out in the preamble, 38 CFR part 39 is revised to read as follows:

## PART 39—AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS' CEMETERIES

### Subpart A—General Provisions

Sec.
39.1 Purpose.
39.2 Definitions.
39.3 Decisionmakers, notifications, and additional information.
39.4 Submissions of information and documents to VA.

### Subpart B—Grant Requirements and Procedures

39.5 General requirements for a grant.
39.6 Preapplication requirements.
39.7 Priority list.
39.8 Plan preparation.
39.9 Conferences.
39.10 Application requirements.
39.11 Final review and approval of application.
39.12 Hearings.
39.13 Amendments to application.
39.14 Withdrawal of application.

### Subpart C—Award of Grant

39.15 Amount of grant.
39.16 Line item adjustment to grant.
39.17 Payment of grant award.
39.18 Recapture provisions.

### Subpart D—Standards and Requirements for Project

39.19 General requirements for site selection and construction of veterans' cemeteries.
39.20 Site planning standards.
39.21 Space criteria for support facilities.
39.22 Architectural design standards.

### Subpart E—Responsibilities, Inspections, and Reports Following Project Completion

39.23 Responsibilities following project completion.
39.24 State to retain control of operations.
39.25 Inspections, audits, and reports.

### Subpart F—Forms

39.26 Forms.

**Authority:** 38 U.S.C. 101, 501, 2408.

## Subpart A—General Provisions

### § 39.1 Purpose.

This part sets forth the mechanism for a State to obtain a grant to establish, expand, or improve veterans' cemeteries that are or will be owned by the State.

(Authority: 38 U.S.C. 501, 2408.)

### § 39.2 Definitions.

For the purpose of this part:

(a) *Establishment* means the process of site selection, land acquisition, design and planning, earthmoving, landscaping, construction and provision of initial operating equipment necessary to convert a tract of land to an operational veterans' cemetery.

(b) *Expansion* means an increase in the burial capacity or acreage of an existing cemetery through the addition of gravesites and other cemeterial facilities.

(c) *Improvement* means the enhancement of a cemetery through landscaping, nonrecurring maintenance, or addition of other features appropriate to cemeteries.

(d) *Establishment, expansion and improvement* include the installation of facilities necessary for the functioning of the cemetery, such as committal-service shelters, crypts (preplaced grave liners), and columbaria.

(e) *Time-phased development plan* means a detailed, narrative description of the proposed site's characteristics, schedule for development, and

estimates of costs by phases of construction.

(f) *Project* means an undertaking to establish, expand, or improve a specific site for use as a State-owned veterans' cemetery.

(g) *State* means each of the States, Territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(h) *Veteran* means a person who served in the active military, naval, or air service and who died while in service or was discharged or released under conditions other than dishonorable.

(i) *Secretary* means the Secretary of the United States Department of Veterans Affairs.

(j) *VA* means the United States Department of Veterans Affairs.

(k) *State Cemetery Grants Service (SCGS)* means the State Cemetery Grants Service within VA's National Cemetery Administration.

(Authority: 38 U.S.C. 101, 501, 2408.)

**§ 39.3 Decisionmakers, notifications, and additional information.**

Decisions required under this part will be made by the Director, State Cemetery Grants Service, National Cemetery Administration, unless otherwise specified in this part. The VA decisionmaker will provide written notice to affected States of approvals, denials, or requests for additional information under this part.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.4 Submissions of information and documents to VA.**

All information and documents required to be submitted to VA must be submitted, unless otherwise specified under this part, to the Director of State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

(Authority: 38 U.S.C. 501, 2408.)

## Subpart B—Grant Requirements and Procedures

**§ 39.5 General requirements for a grant.**

(a) In order to qualify for a grant, a State veterans' cemetery must be operated solely for the interment of veterans, their spouses, surviving spouses, minor children, and unmarried adult children who were physically or mentally disabled and incapable of self-support.

(b) For a State to obtain a grant under this part for the establishment, expansion, or improvement of a State veterans' cemetery:

(1) Its preapplication for the grant must be approved under § 39.6;

(2) Its project must be ranked sufficiently high on the priority list in § 39.7 for the current fiscal year so that funds are available for the project;

(3) Its plans and specifications for the project must be approved under § 39.8;

(4) The State must meet the application requirements in § 39.10; and

(5) Other requirements specified in §§ 39.9 and 39.13 must be satisfied.

(c) VA may approve under § 39.11 any application up to the amount of the grant requested once the requirements under paragraph (b) of this section have been satisfied, provided that sufficient funds are available. In determining whether sufficient funds are available, VA shall consider the project's priority ranking, the total amount of funds available for cemetery grant awards during the applicable fiscal year, and the prospects of higher ranking projects being ready for the award of a grant before the end of the applicable fiscal year.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.6 Preapplication requirements.**

(a) A State seeking a grant for the establishment, expansion, or improvement of a veterans' cemetery must submit a preapplication if the State seeks more than $100,000.

(b) No detailed drawings, plans, or specifications are required with the preapplication. As a part of the preapplication, the State must submit each of the following:

(1) Standard Form 424 (''Face Sheet'') and Standard Form 424C (''Budget Information'') signed by the authorized representative of the State. These forms document the amount of the grant requested, which may not exceed 100 percent of the estimated cost of the project to be funded with the grant.

(2) A program narrative describing the objectives of the project, the need for a grant, the method of accomplishment, the projected interment rate, and the results or benefits expected to be obtained from the assistance requested.

(3) If a site has been selected, a description of the geographic location of the project (*i.e.*, a map showing the location of the project and all appropriate geographic boundaries, and any other supporting documentation, as needed).

(4) A design concept describing the major features of the project including the number and types of gravesites, such as columbarium niches.

(5) Any comments or recommendations made by the State's ''Single Point of Contact'' reviewing agency.

(c) In addition, the State must submit written assurance that:

(1) Any cemetery established, expanded, or improved through a grant will be used exclusively for the interment of eligible persons as set forth in § 39.5(a).

(2) Title to the site is or will be vested solely in the State.

(3) It possesses legal authority to apply for the grant, and to finance and construct the proposed facilities; *i.e.*, legislation or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the State to act in connection with the application and to provide such additional information as may be required.

(4) Any cemetery established, expanded, or improved through a grant will be maintained and operated in accordance with the operational standards and measures of the National Cemetery Administration.

(5) It will assist VA in assuring that the grant complies with section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), Executive Order 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 *et seq.*).

(6) It will obtain approval by VA of the final construction drawings and specifications before the project is advertised or placed on the market for bidding; it will construct the project, or cause it to be constructed, to completion in accordance with the application and approved plans and specifications; it will submit to the Director of the State Cemetery Grants Service, for prior approval, changes that alter the costs of the project, use of space, or functional layout; and it will not enter into a construction contract(s) for the project or undertake other activities until the conditions of the grant program have been met.

(7) It will comply with the Federal requirements in 38 CFR parts 43 and 44 and submit Standard Form 424D (''Assurances—Construction Programs'').

(8) It will prepare an Environmental Assessment to determine whether an Environmental Impact Statement is necessary, and certify that funds are available to finance any costs related to preparation of the Environmental Assessment.

(d) The State must submit a copy of the legislation, as enacted into law, authorizing the establishment, maintenance and operation of the facility as a veterans' cemetery in accordance with 38 CFR 39.5(a).

(e) Upon receipt of a preapplication for a grant, including all necessary assurances and all required supporting documentation, VA shall determine whether the preapplication conforms to all requirements listed in paragraphs (a) through (d) of this section, including whether it contains sufficient information necessary to establish the project's priority. VA will notify the State of any nonconformity. If the preapplication does conform, VA shall notify the State that the preapplication has been found to meet the preapplication requirements, and the proposed project will be included in the next scheduled ranking of projects, as indicated in § 39.7(d).

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 0348–0043, 0348–0041; 0348–0042.)

**§ 39.7 Priority list.**

(a) The priority groups, with Priority Group 1 having the highest priority and Priority Group 4 the lowest priority, are:

(1) Priority Group 1—Projects needed to avoid disruption in burial service that would otherwise occur at existing veterans' cemeteries within 4 years of the date of the preapplication. Such projects would include expansion projects as well as improvement projects (such as construction of additional or replacement facilities) when such improvements are required to continue interment operations.

(2) Priority Group 2—Projects for the establishment of new veterans' cemeteries.

(3) Priority Group 3—Expansion projects at existing veterans' cemeteries when a disruption in burial service due to the exhaustion of existing gravesites is not expected to occur within 4 years of the date of the preapplication.

(4) Priority Group 4—Other improvement projects to cemetery infrastructure such as building expansion and upgrades to roads and irrigation systems that are not directly related to the development of new gravesites.

(b) Within Priority Groups 1, 2, and 3, highest priority will be given to projects in geographical locations with the greatest number of veterans who will benefit from the project as determined by VA. This prioritization system, based on veteran population data, will assist VA in maintaining and improving access to burial in a veterans cemetery to more veterans and their eligible family members. Within Priority Group 1, at the discretion of VA, higher priority may be given to a project that must be funded that fiscal year to avoid disruption in burial service.

(c) Within Priority Group 4, projects will be ranked in priority order based upon VA's determination of the relative importance and necessity to operations of the proposed improvements.

(d) By August 15 of each year, VA will make a list prioritizing the preapplications that were received on or before July 1 of that year and that were approved under § 39.6, ranking them in their order of priority for funding during the fiscal year that begins the following October 1. Preapplications from previous years will be re-prioritized each year.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.8 Plan preparation.**

The State must prepare plans and specifications in accordance with the requirements of this section for review by the SCGS. The plans and specifications must be approved by the SCGS prior to the State's solicitation for construction bids. Once SCGS grants approval, the State must obtain construction bids and determine the successful bidder prior to submission of the application. The State must establish procedures for determining that costs are reasonable, necessary and allocable in accordance with the provisions of Office of Management and Budget (OMB) Circular No. A–87. Once the preapplication and the project's plans and specifications have been approved, an application for assistance must be submitted in compliance with the uniform requirements for grants-in-aid to State and local governments prescribed by Office of Management and Budget Circular No. A–102, Revised.

(a) *General.* These requirements have been established for the guidance of the State agency and the design team to provide a standard for preparation of drawings, specifications and estimates.

(b) *Technical requirements.* The State should meet these technical requirements as soon as possible after VA approves the preapplication.

(1) *Boundary and site survey.* The State agency shall provide a survey of the site and furnish a legal description of the site. A boundary and site survey need not be submitted if one was submitted for a previously approved project and there have been no changes. Relevant information may then be shown on the site plan. If required, the survey shall show:

(i) The outline and location referenced to boundaries, of all existing buildings, streets, alleys (whether public or private), block boundaries, easements, encroachments, the names of streets, railroads and streams, and other information as specified. If there is nothing of this character affecting the property, the Surveyor shall so state on the drawings.

(ii) The point of beginning, bearing, distances, and interior angles. Closure computations shall be furnished with the survey and error of closure shall not exceed 1 foot for each 10,000 feet of lineal traverse. Boundaries of an unusual nature (curvilinear, off-set, or having other change or direction between corners) shall be referenced with curve data (including measurement chord) and other data sufficient for replacement and such information shall be shown on the map. For boundaries of such nature, coordinates shall be given for all angles and other pertinent points.

(iii) The area of the parcel in acres or in square feet.

(iv) The location of all monuments.

(v) Delineation of 100–year floodplain and source.

(vi) The signature and certification of the Surveyor.

(2) *Soil investigation.* The State shall provide a soil investigation of the scope necessary to ascertain site characteristics for construction and burial or to determine foundation requirements and utility service connections. A new soil investigation is not required if one was done for a previously approved project on the same site and information contained is adequate and unchanged. Soil investigation, when done, shall be documented in a signed report. Adequate investigation shall be made to determine the subsoil conditions. The investigation shall include a sufficient number of test pits or test borings as will determine, in the judgment of the architect, the true conditions. The following information will be covered in the report:

(i) Thickness, consistency, character, and estimated safe bearing value where needed for structural foundation design of the various strata encountered in each pit or boring.

(ii) Amount and elevation of ground water encountered in each pit or boring, its probable variation with the seasons, and effect on the subsoil.

(iii) The elevation of rock, if known, and the probability of encountering quicksand.

(iv) If the site is under laid with mines, the elevations and location of the tops of the mine workings relative to the

site, or old workings located in the vicinity.

(3) *Topographical survey.* A topographical survey in 1–foot contour intervals shall be prepared for projects establishing new cemeteries and for significant expansion projects in previously undeveloped land.

(c) *Master plan.* A master plan showing the proposed layout of all facilities—including buildings, roadways and burial sections—on the selected site shall be prepared for all new cemetery establishment projects for approval by the SCGS. If the project is to be phased into different year programs, the phasing shall be indicated. The master plan shall analyze all factors affecting the design, including climate, soil conditions, site boundaries, topography, views, hydrology, environmental constraints, transportation access, etc. It should provide a discussion of alternate designs that were considered. In the case of an expansion or improvement project, the work contemplated should be consistent with the VA-approved master plan or a justification for the deviation should be provided.

(d) *Preliminary or ''design development'' drawings.* Following VA approval of the master plan, the State must submit design development drawings that show all current phase construction elements to be funded by the grant. The drawings must comply with the following requirements:

(1) Site development and environmental plans must include locations of structures, demolition, parking, roads, service areas, walks, plazas, memorial paths, other paved areas, landscape buffer and major groupings, interment areas (including quantity of gravesites in each area). A grading plan including existing and proposed contours at 1–foot intervals of the entire area affected by the site work must be submitted. A site plan of the immediate area around each building shall be drawn to a convenient scale and shall show the building floor plan, utility connections, walks, gates, walls or fences, flagpoles, drives, parking areas, indication of handicapped provisions, landscaping, north arrow and any other appropriate items.

(2) Floor plans of all levels at a convenient scale shall be double line drawings and shall show overall dimensions, construction materials, door swings, names and square feet for each space, toilet room fixtures and interior finish schedule.

(3) Elevations of the exteriors of all buildings shall be drawn to the same scale as the plan and shall include all material indications.

(4) Preliminary mechanical and electrical layout plans shall be drawn at a convenient scale and shall have an equipment and plumbing fixture schedule.

(e) *Final construction drawings and specifications.* Funds for the construction of any project being assisted under this program will not be released until VA approves the final construction drawings and specifications. If VA approves them, VA shall send the State a written letter of approval indicating the project complies with the terms and conditions as prescribed by VA, but this does not constitute approval of the contract documents. It is the responsibility of the State to ascertain that all State and Federal requirements have been met and that the drawings and specifications are acceptable for bid purposes.

(1) The State shall prepare final working drawings so that clear and distinct prints may be obtained. These drawings must be accurately dimensioned to include all necessary explanatory notes, schedules and legends. Working drawings shall be complete and adequate for VA review and comment. The State shall prepare separate drawings for each of the following types of work: architectural, equipment, layout, structural, heating and ventilating, plumbing, and electrical.

(2) *Architectural drawings.* The State shall submit drawings which include: All structures and other work to be removed; all floor plans if any new work is involved; all elevations, which are affected by the alterations; building sections; demolition drawings; all details to complete the proposed work and finish schedules; and fully dimensioned floor plans at ⅛″ or ¼″ scale.

(3) *Equipment drawings.* The State shall submit a list of all equipment to be provided under terms of the grant in the case of an establishment project. Large-scale drawings of typical special rooms indicating all fixed equipment and major items of furniture and moveable equipment shall be included.

(4) *Layout drawings.* The State shall submit a layout plan that shows:

(i) All proposed features such as roads, buildings, walks, utility lines, burial layout, etc.

(ii) Contours, scale, north arrow, legend showing existing trees.

(iii) A graphic or keyed method of showing plant types as well as quantities of each plant.

(iv) Plant list with the following: Key, quantity, botanical name, common name, size and remarks.

(v) Typical tree and shrub planting details.

(vi) Areas to be seeded or sodded.

(vii) Areas to be mulched.

(viii) Gravesite section layout with permanent section monument markers and lettering system.

(ix) Individual gravesite layout and numbering system. If the cemetery is existing and the project is expansion or renovation, show available, occupied, obstructed and reserved gravesites.

(x) Direction the headstone faces.

(5) *Structural drawings.* The State shall submit complete foundation and framing plans and details, with general notes to include: Governing code, material strengths, live loads, wind loads, foundation design values, and seismic zone.

(6) *Mechanical drawings.* The State shall submit:

(i) Heating and ventilation drawings showing complete systems and details of air conditioning, heating, ventilation and exhaust; and

(ii) Plumbing drawings showing sizes and elevations of soil and waste systems, sizes of all hot and cold water piping, drainage and vent systems, plumbing fixtures, and riser diagrams.

(7) *Electrical drawings.* The State shall submit separate drawings for lighting and power, including drawings of:

(i) Service entrance, feeders and all characteristics;

(ii) All panel, breaker, switchboard and fixture schedules;

(iii) All lighting outlets, receptacles, switches, power outlets and circuits; and

(iv) Telephone layout, fire alarm systems and emergency lighting.

(8) Final specifications (to be used for bid purposes) shall be in completed format. Specifications shall include the invitations for bids, cover or title sheet, index, general requirements, form of bid bond, form of agreement, performance and payment bond forms, and sections describing materials and workmanship in detail for each class of work.

(9) The State shall show in convenient form and detail the estimated total cost of the work to be performed under the contract including provisions of fixed equipment shown by the plans and specifications, if applicable, to reflect the changes of the approved financial plan. Estimates shall be summarized and totaled under each trade or type of work. Estimates shall also be provided for each building structure and other important features such as the assembly area and include burial facilities.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.9 Conferences.**

(a) *Predesign conference.* A predesign conference is required for all major construction projects primarily to ensure that the State agency becomes oriented to VA procedures and requirements plus any technical comments pertaining to the project. These conferences will take place at an appropriate location near the proposed site and should include a site visit to ensure that all parties to the process, including NCA staff, are familiar with the site and its characteristics.

(b) *Additional conferences.* At any time, VA may recommend an additional conference (such as a design development conference) be held in VA Central Office in Washington, DC, to provide an opportunity for the State and its architects to discuss requirements for a grant with VA officials.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.10 Application requirements.**

(a) For a project to be considered for grant funding under this part, the State must submit an application (as opposed to a preapplication) consisting of the following:

(1) Standard Form 424 (''Face Sheet'') with the box labeled ''application'' marked;

(2) Standard Form 424C (''Budget Information''), which documents the amount of funds requested based on the construction costs as estimated by the successful construction bid;

(3) A copy of itemized bid tabulations (If there are non-VA participating areas, these shall be itemized separately.); and

(4) Standard Form 424D (''Assurances—Construction Program'').

(Authority: 38 U.S.C. 501, 2408)

(b) Prior to submission of the application, the State must submit a copy of an Environmental Assessment to determine if an Environmental Impact Statement is necessary for compliance with section 102(2)(C) of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4332). The Environmental Assessment must briefly describe the project's possible beneficial and harmful effects on the following impact categories:

(1) Transportation,

(2) Air quality,

(3) Noise,

(4) Solid waste,

(5) Utilities,

(6) Geology (Soils/Hydrology/Floodplains),

(7) Water quality,

(8) Land use,

(9) Vegetation, Wildlife, Aquatic, Ecology/Wetlands, etc.,

(10) Economic activities,

(11) Cultural resources,

(12) Aesthetics,

(13) Residential population,

(14) Community services and facilities,

(15) Community plans and projects, and

(16) Other.

(c) If an adverse environmental impact is anticipated, the State must explain what action will be taken to minimize the impact. The assessment shall comply with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

(The Office of Management and Budget has approved the information collection requirements in this section under control numbers 0348–0043; 0348–0041; 0348–0042.)

**§ 39.11 Final review and approval of application.**

Following VA approval of bid tabulations and cost estimates, the complete grant application will be reviewed for approval in accordance with the requirements of § 39.5. If the application is approved, the grant will be awarded by a Notification of Award of Federal Grant Funds.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.12 Hearings.**

(a) No application for a grant to establish, expand, or improve a State veterans' cemetery shall be disapproved until the applicant has been afforded an opportunity for a hearing.

(b) Whenever a hearing is requested under this section, notice of the hearing, procedure for the conduct of such hearing, and procedures relating to decisions and notices shall accord with the provisions of §§ 18.9 and 18.10 of this chapter. Failure of an applicant to request a hearing under this section or to appear at a hearing for which a date has been set shall be deemed to be a waiver of the right to be heard and constitutes consent to the making of a decision on the basis of such information as is available.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.13 Amendments to application.**

Any amendment of an application that changes the scope of the application or increases the cost of the grant requested, whether or not the application has already been approved, shall be subject to approval in the same manner as an original application.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.14 Withdrawal of application.**

A State representative may withdraw an application by submitting to VA a written document requesting withdrawal.

(Authority: 38 U.S.C. 501, 2408.)

## Subpart C—Award of Grant

**§ 39.15 Amount of grant.**

(a) The amount of a grant awarded under this part may not exceed 100 percent of the total cost of the project, but may be less than that amount.

(b) The total cost of a project under this part may include:

(1) Administration and design costs, *e.g.*, architectural and engineering fees, inspection fees, and printing and advertising cost.

(2) The cost of cemetery features, *e.g.*, entry features, flag plaza and assembly areas, columbarium, preplaced liners or crypts, irrigation, committal-service shelters, and administration/maintenance buildings.

(3) In the case of an establishment grant, the cost of equipment necessary for the operation of the State cemetery. This may include the cost of non-fixed equipment such as grounds maintenance equipment, burial equipment, and office equipment.

(4) In the case of an improvement or expansion grant, the cost of equipment necessary for operation of the State cemetery, but only if:

(i) Included in the construction contract;

(ii) Installed during construction; and

(iii) Permanently affixed to a building or connected to the heating, ventilating, air conditioning, or other service distributed through a building via ducts, pipes, wires, or other connecting device, such as kitchen and intercommunication equipment, built-in cabinets, and equipment lifts.

(5) A contingency allowance not to exceed five percent of the total cost of the project for new construction or eight percent for renovation projects.

(c) The total cost of a project under this part may not include the cost of:

(1) Land acquisition;

(2) Building space that exceeds the space guidelines specified in this part;

(3) Improvements not on cemetery land, such as access roads or utilities;

(4) Maintenance or repair work;

(5) Office supplies or consumable goods (such as fuel and fertilizer) which are routinely used in a cemetery; or

(6) Fully enclosed, climate-controlled, committal-service facilities, freestanding chapels or chapels that are part of an administrative building or information center.

(d) VA shall certify approved applications to the Secretary of the Treasury in the amount of the grant, and shall designate the appropriation from

which it shall be paid. Funds paid for the establishment, expansion, or improvement of a veterans' cemetery must be used solely for carrying out approved projects.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.16 Line item adjustment to grant.**

After a grant has been awarded, upon request from the State representative, VA may approve a change in a line item (line items are identified in Standard Form 424C, which is set forth in § 39.26(c)) of up to 10 percent (increase or decrease) of the cost of the line item if the change would be within the scope or objective of the project and would not change the amount of the grant.

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0041.)

**§ 39.17 Payment of grant award.**

The amount of the grant award will be paid to the State or, if designated by the State representative, the State veterans' cemetery for which such project is being carried out, or any other State agency or instrumentality. Such amount shall be paid by way of reimbursement, and in such installments consistent with the progress of the project, as the Director of State Cemetery Grants Service may determine and certify for payment to the appropriate Federal institution. Funds paid under this section for an approved project shall be used solely for carrying out such project as so approved. As a condition for the final payment, the State representative must submit to VA the following:

(a) Standard Form 271 (''Outlay Report and Request for Reimbursement for Construction Programs'') (The form is set forth at § 39.26(a)).

(b) A request in writing for the final architectural/engineering inspection, including the name and telephone number of the local point of contact for the project;

(c) The written statement ''It is hereby agreed that the monetary commitment of the federal government will have been met and the project will be considered terminated upon payment of this voucher,'' and

(d) Evidence that the State has met its responsibility for an audit under the Single Audit Act of 1984 (31 U.S.C. 7501 *et seq.*) and § 39.19, if applicable.

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0002.)

**§ 39.18 Recapture provisions.**

(a) If a State which has received a grant to establish, expand, or improve a veterans' cemetery ceases to own such cemetery, ceases to operate such cemetery as a veterans' cemetery in accordance with § 39.5(a), or uses any part of the funds provided through such grant for a purpose other than that for which the grant was made, the United States shall be entitled to recover from the State the total of all grants made to the State in connection with the establishment, expansion or improvement of such cemetery.

(b) If all funds from a grant have not been used by a State for the purpose for which the grant was made within 3 years after the VA has certified the approved application for such grant to the Department of the Treasury, the United States shall be entitled to recover any unused grant funds from the State.

(Authority: 38 U.S.C. 501, 2408.)

## Subpart D—Standards and Requirements for Project

**§ 39.19 General requirements for site selection and construction of veterans' cemeteries.**

(a) The various codes, requirements, and recommendations of State and local authorities or technical and professional organizations, to the extent and manner in which those codes, requirements, and recommendations are referenced in this subpart, are applicable to grants for construction of veterans' cemeteries. Additional information concerning these codes, requirements, and recommendations may be obtained from the Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue, NW., Washington, DC 20420.

(b) The standards in §§ 39.19 through 39.22 constitute general design and construction criteria and shall apply to all projects for which Federal assistance is requested under 38 U.S.C. 2408.

(c) In developing these standards, no attempt has been made to comply with all of the various State and local codes and regulations. The standards contained in §§ 39.19 through 39.22 shall be followed where they exceed State or local codes and regulations. Departure will be permitted, however, when alternate standards are demonstrated to provide equivalent or better design criteria than the standards in these sections. Conversely, compliance is required with State and local codes where such requirements provide a standard higher than those in these sections. The additional cost, if any, in using standards that are higher than those of VA should be documented and justified in the application.

(d) The space criteria and area requirements referred to in these standards shall be used as a guide in planning. Additional area and facilities beyond those specified as basic may be included if found to be necessary to meet the functional requirements of the project but are subject to approval by VA. Substantial deviation from the space or area standards shall be carefully considered and justified. Failing to meet the standards or exceeding them by more than 10 percent in the completed plan would be regarded as evidence of inferior design or as exceeding the boundaries of professional requirements. In those projects that unjustifiably exceed maximum space or area criteria, VA funding may be subject to proportionate reduction in proportion to the amount by which the space or area of the cemetery exceeds the maximum specified in these standards.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.20 Site planning standards.**

(a) *Site selection*—(1) *Location.* The land should be located as close as possible to the densest veteran population in the area under consideration.

(2) *Size.* Sufficient acreage shall be available to provide gravesites for estimated needs for at least 20 years. More acreage should be provided where feasible. Acreage could vary depending on the State veteran population and national cemetery availability.

(3) *Accessibility.* The site should be readily accessible by highway. Offsite improvements shall not be funded by the grant.

(4) *Topography.* The land should range from comparatively level to rolling and moderately hilly terrain. Natural rugged contours are suitable only if development and maintenance costs would not be excessive and burial areas would be accessible to elderly or infirm visitors. The land shall not be subject to flooding.

(5) *Water table.* The water table should be lower than the maximum proposed depth of burial.

(6) *Soil requirements.* The soil should be free from rock, muck, unstable composition, and other materials that would hamper the economical excavation of graves by normal methods. In general, the soil should meet the standards of good agricultural land that is capable of supporting turf and trees, with normal care and without the addition of topsoil.

(7) *Utilities.* Electricity and gas, if required, should be available. Offsite

improvements shall not be funded by the grant.

(8) *Water supply.* An adequate supply of water should be available. Offsite improvements shall not be funded by the grant.

(9) *Sewerage.* An approved means to dispose of storm flow and sewage from the facility should be available. Offsite improvements shall not be funded by the grant.

(b) *Site development requirements*—(1) *General.* The development plan shall provide for adequate hard surfaced roads, walks, parking areas, public rest rooms, flag circle, and a main gate.

(2) *Parking.* All parking facilities shall include provisions to accommodate the physically handicapped. A minimum of one space shall be set aside and identified with signage in each parking area with additional spaces provided in the ratio of 1 handicapped space to every 20 regular spaces. Handicapped spaces shall not be placed between two conventional diagonal or head-on parking spaces. Each of the handicapped parking spaces shall not be less than 9 feet wide; in addition, a clear space 4 feet wide shall be provided between the adjacent conventional parking spaces and also on the outside of the end spaces. Parking is not provided for large numbers of people attending ceremonial events such as Memorial Day services.

(3) *Roads.* Roads should generally follow the topography of the cemetery, and allow pedestrian access to burial sections on both sides. Roads should generally not be used as ''boundaries'' outlining burial sections. Extensive bridging should be avoided. The grant program funding cannot be used to build access roads on property that is not part of the cemetery. Road widths shall be compatible with proposed traffic flows and volumes. Primary roads are generally 24 feet wide.

(4) *Pavement design.* The pavement section of all roads, service areas and parking areas shall be designed for the maximum anticipated traffic loads and existing soil conditions and in accordance with local and State design criteria.

(5) *Curbs.* Bituminous roads may be provided with integral curbs and gutters constructed of portland cement concrete. Freestanding curbs may be substituted when the advantage of using them is clearly indicated. All curbs shall have a ''roll-type'' cross section for vehicle and equipment access to lawn areas except as may be necessary for traffic control. The radii of curbs at road intersections shall not be less than 20 feet–0 inches. Curb ramps shall be provided to accommodate the physically handicapped and maintenance equipment. Curb ramps shall be provided at all intersections of roads and walks. The curb ramps shall not be less than 4 feet wide; they shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The vertical angle between the surface of a curb ramp and the surface of a road or gutter shall not be less than 176 degrees; the transition between the two surfaces shall be smooth. Curb ramps shall have nonskid surfaces.

(6) *Walks.* Walks shall be designed with consideration for the physically handicapped and elderly. Walks and ramps designed on an incline shall have periodic level platforms. All walks, ramps and platforms shall have nonskid surfaces. Any walk shall be ramped if the slope exceeds 3 percent. Walks that have gradients from 2 to 3 percent shall be provided with level platforms at 200-foot intervals and at intersections with other walks. Ramps shall not have a slope greater than 8 percent, and preferably not greater than 5 percent. The ramps shall have handrails on both sides unless other protective devices are provided; every handrail shall have clearance of not less than 1½ inches between the back of the handrail and the wall or any other vertical surface behind it. Ramps shall not be less than 4 feet wide between curbs; curbs shall be provided on both sides. The curbs shall not be less than 4 inches high and 4 inches wide. A level platform in a ramp shall not be less than the full width of the ramp and not less than 5 feet long. Entrance platforms and ramps shall be provided with protective weather barriers to shield them against hazardous conditions resulting from inclement weather.

(7) *Steps.* Exterior steps may be included in the site development as long as provisions are also provided for use by physically handicapped persons.

(8) *Grading.* Minimum lawn slopes shall be 2 percent; critical spot grade elevations shall be shown on the contract drawings. Insofar as practicable, lawn areas shall be designed without steep slopes.

(9) *Landscaping.* The landscaping plan should provide for a park-like setting of harmonious open spaces balanced with groves of indigenous and cultivated deciduous and evergreen trees. Shrubbery should be kept to a minimum. Steep slopes that are unsuitable for interment areas should be kept in their natural state.

(10) *Surface drainage.* Surface grades shall be determined in coordination with the architectural, structural and mechanical design of buildings and facilities so as to provide proper surface drainage.

(11) *Burial areas.* A site plan of the cemetery shall include a burial layout. If appropriate, the burial layout should reflect the phases of development in the various sections. The first phase of construction should contain sufficient burial sites to meet the foreseeable demand for at least 10 years. All applicable dimensions to roadways, fences, utilities or other structures shall be indicated on the layout.

(12) *Gravesites.* Gravesites shall be laid out in uniform pattern. There shall be a minimum of 10 feet from the edge of roads and drives and a minimum of 20 feet from the boundaries or fence lines. Maximum distance from the edge of a permanent road to any gravesite shall not be over 275 feet. Temporary roads may be provided to serve areas in phase developments.

(13) *Monumentation.* Each grave shall be marked with an appropriate marker and each cemetery shall maintain a register of burials setting forth the name of each person buried and the designation of the grave in which he/she is buried. Permanent gravesite control markers shall be installed based on a grid system throughout the burial area unless otherwise specified. This will facilitate the gravesite layout, placement of utility lines, and alignment of headstones.

(14) *Entrance.* The entrance should be an architectural or landscape feature that creates a sense of arrival.

(15) *Memorial walkway.* Each cemetery should have an area for the display of memorials donated by veterans groups and others. Such areas may take the form of a path or walkway and should provide a contemplative setting for visitors.

(16) *Donation items.* Family members and others often wish to donate items such as benches and trees. Acceptable items of donation should be specified in the cemetery plan. The plan should also designate appropriate locations for such items.

(17) *Flag/assembly area.* There shall be one primary flagpole for the United States flag. This flag shall be lighted. A turf assembly area should be developed for major gatherings such as Memorial Day. The assembly area may be focused on the flag. The area may also incorporate an architectural or a landscape feature that functions as a platform or backdrop for speakers.

(18) *Site furnishings.* Site furnishings include signage, trash receptacles, benches, and flower containers. These items should be coordinated and complement each other, the architectural design and the cemetery as

a whole. They should be simple, durable, standardized and properly scaled.

(19) *Carillons.* The cemetery development plan should include a location for a carillon tower. Carillons are normally donated. They are not provided for in the grant.

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.21 Space criteria for support facilities.**

These criteria are based on a projected average burial rate of one to six per day, staffing by position, and a defined complement of maintenance and service equipment. For cemeteries with less than one or more than six burials per day, support facilities are considered on an individual basis in accordance with § 39.19(d). In converting Net Square Feet (NSF) to Gross Square Feet (GSF), a conversion factor of 1.5 is the maximum allowed. The applicant shall, in support of the design, include the following as an attachment to the application: a list of all grounds maintenance supplies and equipment and the number of Full Time Employees (FTE) by job assignment for the next 10 years.

(a) *Administrative building.* The administrative building should be approximately 1,600 NSF in total, providing space, as needed, for the following functions:

(1) Cemetery director's office;

(2) Other offices (as needed);

(3) Administrative staff (lobby/office area);

(4) Operations (file/office/equipment/work area);

(5) Family/conference room;

(6) Military honors team;

(7) Refreshment unit;

(8) Housekeeping aide's closet; and

(9) Restroom facilities.

(b) *Maintenance/service building.* The maintenance/service building may be combined with the administrative building. The maintenance/service building should be approximately 2,200 NSF in total, providing heated and air conditioned space, as needed, for the following functions:

(1) Foreman's office;

(2) Lunch room;

(3) Kitchen unit;

(4) Toilet and locker room facilities;

(5) Housekeeping aide's closet; and

(6) Vehicle and equipment maintenance and storage.

(c) *Vehicle and equipment storage.* Approximately 275 NSF/Bay as needed. Not all types of vehicles and equipment require storage in heated space. Based on climatic conditions, it may be justified to rely completely on open structures rather than heated structures to protect the following types of vehicles and equipment: Dump Trucks, Pickup Trucks, Cemetery Automobiles, Gang and Circular Mowers.

(d) *Interment/committal service shelter.* One permanent shelter is authorized for every five interments per day. The shelter may include a covered area to provide seating for approximately 20 people and an uncovered paved area to provide space for approximately 50 additional people. The shelter may also include a small, enclosed equipment/storage area. Provisions must be made for the playing of Taps by recorded means.

(e) *Public Information Center.* One permanent Public Information Center is authorized per facility. A Public Information Center is used to provide orientation to visitors and funeral corteges. It should include the gravesite locator. The public restrooms may also be combined with this structure. Space determinations for separate structures for public restrooms shall be considered on an individual basis. The Public Information Center, including public restrooms, may be combined with the administrative building.

(f) *Other interment structures.* Space determinations for other support facilities such as columbaria, preplaced graveliners (or crypts), garden niches, etc., will be considered on an individual basis in accordance with § 39.19(d).

(Authority: 38 U.S.C. 501, 2408.)

**§ 39.22 Architectural design standards.**

The publications listed in this section are incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of these publications may be inspected at the office of the State Cemetery Grants Service, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. Copies of the 2003 edition of the National Fire Protection Association Life Safety Code and Errata (NFPA 101), the 2003 edition of the NFPA 5000, Building Construction and Safety Code, and the 2002 edition of the National Electrical Code, NFPA 70, may be obtained from the National Fire Protection Association, Inc. (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101. Copies of the 2003 edition of the Uniform Mechanical Code, and the 2003 edition of the Uniform Plumbing Code, may be obtained from the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia Street, Ontario, CA 91761–2816.

(a) *Architectural and structural requirements*—(1) *Life Safety Code.* Standards must be in accordance with the 2003 edition of the National Fire Protection Association Life Safety Code, NFPA 101. Fire safety construction features not included in NFPA 101 shall be designed in accordance with the requirements of the 2003 edition of the NFPA 5000, Building Construction and Safety Code. Where the adopted codes state conflicting requirements, the NFPA National Fire Codes shall govern.

(2) *State and local codes.* In addition to compliance with the standards set forth in this section, all applicable local and State building codes and regulations must be observed. In areas not subject to local or State building codes, the recommendations contained in the 2003 edition of the NFPA 5000, Building Construction and Safety Code shall apply.

(3) *Occupational safety and health standards.* Applicable standards as contained in the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) must be observed.

(b) *Mechanical requirements.* The heating system, boilers, steam system, ventilation system and air-conditioning system shall be furnished and installed to meet all requirements of the local and State codes and regulations. Where no local or State codes are in force, the 2003 edition of the Uniform Mechanical Code shall apply.

(c) *Plumbing requirements.* Plumbing systems shall comply with all applicable local and State codes, the requirements of the State Department of Health, and the minimum general standards as set forth in this part. Where no local or State codes are in force, the 2003 edition of the Uniform Plumbing Code shall apply.

(d) *Electrical requirements.* The installation of electrical work and equipment shall comply with all local and State codes and laws applicable to electrical installations and the minimum general standards, as set forth in the NFPA 70, National Electrical Code, 2002 edition (NEC 2002 Code). The regulations of the local utility company shall govern service connections. Aluminum bus ways shall not be used as a conducting medium in the electrical distribution system.

(Authority: 38 U.S.C. 501, 2408.)

## Subpart E—Responsibilities, Inspections, and Reports Following Project Completion

### § 39.23 Responsibilities following project completion.

(a) States shall monitor use of the cemetery by various subgroups and minority groups, including women veterans. To the extent that under-utilization by any of these groups is determined to exist, a program shall be established to inform members of these groups about benefits available to them. The information regarding the benefits shall be available in a language other than English where a significant number or portion of the population eligible to be served or likely to be directly affected by the grant program needs such service or information.

(b) State veterans' cemeteries established, expanded, or improved with assistance under the grant program shall be operated and maintained as follows:

(1) Buildings, grounds, roads, walks, and other structures shall be kept in reasonable repair to prevent undue deterioration and hazards to users.

(2) The cemetery shall be kept open for public use at reasonable hours based on the time of the year.

(c) VA, in coordination with the State, shall inspect the project at completion for compliance with the standards set forth in §§ 39.19 through 39.22 and at least once in every 3-year period following completion of the project throughout the period the facility is operated as a State veterans' cemetery. A copy of the inspection report shall be forwarded to the Director, State Cemetery Grants Service, giving the date and location the inspection was made and citing any deficiencies and corrective action taken or proposed.

(d) Failure of a State to comply with any of paragraphs (a) through (c) of this section shall be considered cause for the Department of Veterans Affairs to suspend any payments due the State on any or all projects until the situation involved is corrected.

(Authority: 38 U.S.C. 501, 2408; and issued under authority of the President by E.O. 13166, 65 FR 50121)

### § 39.24 State to retain control of operations.

Neither the Secretary nor any employee of the Department of Veterans Affairs shall exercise any supervision or control over the administration, personnel, maintenance, or operation of any State veterans' cemetery established, expanded, or improved with assistance received under this program except as prescribed in this part.

(Authority: 38 U.S.C. 501, 2408.)

### § 39.25 Inspections, audits, and reports.

(a) A State will allow VA inspectors and auditors to conduct inspections as necessary to ensure compliance with the provisions of this part. The State will provide to VA evidence that it has met its responsibility under the Single Audit Act of 1984 (see part 41 of this chapter).

(b) A State will make an annual report on VA Form 40–0241 (''State Cemetery Data'') signed by the authorized representative of the State. These forms document current burial activity at the cemetery, use of gravesites, remaining gravesites, and additional operational information intended to answer questions about the status of the grant program.

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559.)

## Subpart F—Forms

### § 39.26 Forms.

All forms set forth in this part are available on the Internet at *http://www.va.gov/forms.*

BILLING CODE 8320–01–P

(a) Standard Form 271—Outlay Report and Request for Reimbursement for Construction Programs

**OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS**

*(See instructions on back)*

**OMB APPROVAL NO. 0348-0002**

PAGE OF PAGES

1. TYPE OF REQUEST ☐ FINAL ☐ PARTIAL

2. BASIS OF REQUEST ☐ CASH ☐ ACCRUAL

3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED

4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY

5. PARTIAL PAYMENT REQUEST NO

6. EMPLOYER IDENTIFICATION NUMBER

7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER

**PERIOD COVERED BY THIS REQUEST**

FROM *(Month, day, year)* TO *(Month, day, year)*

9. RECIPIENT ORGANIZATION

*Name:*

*No. and Street:*

*City, State and ZIP Code:*

10. PAYEE *(Where check is to be sent if different than item 9)*

*Name:*

*No. and Street:*

*City, State and ZIP Code:*

11. **STATUS OF FUNDS**

| CLASSIFICATION | PROGRAMS -- FUNCTIONS -- ACTIVITIES (a) | (b) | (c) | TOTAL |
|---|---|---|---|---|
| a. Administrative expense | $ | $ | $ | $ 0.00 |
| b. Preliminary expense | | | | 0.00 |
| c. Land, structures, right-of-way | | | | 0.00 |
| d. Architectural engineering basic fees | | | | 0.00 |
| e. Other architectural engineering fee | | | | 0.00 |
| f. Project inspection fees | | | | 0.00 |
| g. Land development | | | | 0.00 |
| h. Relocation expense | | | | 0.00 |
| i. Relocation payments to individuals and businesses | | | | 0.00 |
| j. Demolition and removal | | | | 0.00 |
| k. Construction and project improvement cost | | | | 0.00 |
| l. Equipment | | | | 0.00 |
| m. Miscellaneous cost | | | | 0.00 |
| n. Total cumulative to date *(sum of lines a thru m)* | 0.00 | 0.00 | 0.00 | 0.00 |
| o. Deductions for program income | | | | 0.00 |
| p. Net cumulative to date *(line n minus line o)* | 0.00 | 0.00 | 0.00 | 0.00 |
| q. Federal share to date | | | | 0.00 |
| r. Rehabilitation grants (100% reimbursement) | | | | 0.00 |
| s. Total Federal share *(sum of lines q and r)* | 0.00 | 0.00 | 0.00 | 0.00 |
| t. Federal payments previously requested | | | | 0.00 |
| u. Amount requested for reimbursement | $ | $ | $ | $ 0.00 |
| v. Percentage of physical completion of project | % | % | % | % |

12. CERTIFICATION

I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.

a. RECIPIENT

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL — DATE REPORT SUBMITTED

TYPED OR PRINTED NAME AND TITLE — TELEPHONE *(Area code, number, and extension)*

b. REPRESENTATIVE CERTIFYING TO LINE 11V

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL — DATE SIGNED

TYPED OR PRINTED NAME AND TITLE — TELEPHONE *(Area code, number, and extension)*

AUTHORIZED FOR LOCAL REPRODUCTION
PREVIOUS EDITION USABLE
271-103

**STANDARD FORM 271** (Rev. 7-97)
Prescribed by OMB Circular A-102 and A-110

## INSTRUCTIONS

Public reporting burden for this collection of information is estimated to average 60 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 (0348-0004), 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.**

Please type or print legibly. Items 3, 4, 5, 8, 9, 10, 11s and 11v are self explanatory; specific instructions for other items are as follows:

| *Item* | *Entry* |
|---|---|
| 1 | Mark the appropriate box. If the request is final, the amounts billed should represent the final cost of the project. |
| 2 | Show whether amounts are computed on an accrued expenditure or cash disbursement basis. |
| 6 | Enter the Employer Identification Number (EIN) assigned by the U.S. Internal Revenue Service or FICE (institution) code if requested by the Federal agency. |
| 7 | This space is reserved for an account number or other identifying number that may be assigned by the recipient. |
| 11 | The purpose of vertical columns (a) through (c) is to provide space for separate cost breakdowns when a large project has been planned and budgeted by program, function or activity. If additional columns are needed, use as many additional forms as needed and indicate page number in space provided in upper right; however, the summary totals of all programs, functions, or activities should be shown in the "total" column on the first page. All amounts are reported on a cumulative basis. |
| 11a | Enter amounts expended for such items as travel, legal fees, rental of vehicles and any other administrative expenses. Include the amount of interest expense when authorized by program legislation. Also show the amount of interest expense on a separate sheet. |
| 11b | Enter amounts pertaining to the work of locating and designing, making surveys and maps, sinking test holes, and all other work required prior to actual construction. |
| 11c | Enter all amounts directly associated with the acquisition of land, existing structures and related right-of-way. |
| 11d | Enter basic fees for services of architectural engineers. |
| 11e | Enter other architectural engineering services. Do not include any amounts shown on line d. |
| 11f | Enter inspection and audit fees of construction and related programs. |
| 11g | Enter all amounts associated with the development of land where the primary purpose of the grant is land improvement. The amount pertaining to land development normally associated with major construction should be excluded from this category and entered on line k. |
| 11h | Enter the dollar amounts used to provide relocation advisory assistance and net costs of replacement housing (last resort). Do not include amounts needed for relocation administrative expenses; these amounts should be included in amounts shown on line a. |
| 11i | Enter the amount of relocation payments made by the recipient to displaced persons, farms, business concerns, and nonprofit organizations. |
| 11j | Enter gross salaries and wages of employees of the recipient and payments to third party contractors directly engaged in performing demolition or removal of structures from developed land. All proceeds from the sale of salvage or the removal of structures should be credited to this account; thereby reflecting net amounts if required by the Federal agency. |
| 11k | Enter those amounts associated with the actual construction of, addition to, or restoration of a facility. Also, include in this category, the amounts for project improvements such as sewers, streets, landscaping, and lighting. |
| 11l | Enter amounts for all equipment, both fixed and movable, exclusive of equipment used for construction. For example, permanently attached laboratory tables, built-in audio visual systems, movable desks, chairs, and laboratory equipment. |
| 11m | Enter the amounts of all items not specifically mentioned above. |
| 11n | Enter the total cumulative amount to date which should be the sum of lines a through m. |
| 11o | Enter the total amount of program income applied to the grant or contract agreement except income included on line j. Identify on a separate sheet of paper the sources and types of the income. |
| 11p | Enter the net cumulative amount to date which should be the amount shown on line n minus the amount on line o. |
| 11q | Enter the Federal share of the amount shown on line p. |
| 11r | Enter the amount of rehabilitation grant payments made to individuals when program legislation provides 100 percent payment by the Federal agency. |
| 11t | Enter the total amount of Federal payments previously requested, if this form is used for requesting reimbursement. |
| 11u | Enter the amount now being requested for reimbursement. This amount should be the difference between the amounts shown on lines s and t. If different, explain on a separate sheet. |
| 12a | To be completed by the official recipient official who is responsible for the operation of the program. The date should be the actual date the form is submitted to the Federal agency. |
| 12b | To be completed by the official representative who is certifying to the percent of project completion as provided for in the terms of the grant or agreement. |

STANDARD FORM 271 (Rev 7-97) Back

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0002.)

**BILLING CODE 8320–01–C**

(b) Standard Form 424—Application for Federal Assistance.

**APPLICATION FOR FEDERAL ASSISTANCE**

OMB Approval No. 0348-0043

| | | |
|---|---|---|
| **2. DATE SUBMITTED** October 28, 2003 | Applicant Identifier | |
| **3. DATE RECEIVED BY STATE** | State Application Identifier | |
| **4. DATE RECEIVED BY FEDERAL AGENCY** | Federal Identifier | |

**1. TYPE OF SUBMISSION:**

Application: ☐ Construction ☐ Non-Construction

Preapplication: ☐ Construction ☐ Non-Construction

**5. APPLICANT INFORMATION**

Legal Name:

Organizational Unit:

Address *(give city, county, State, and zip code):*

Name and telephone number of person to be contacted on matters involving this application *(give area code)*

**6. EMPLOYER IDENTIFICATION NUMBER** *(EIN):*

☐☐ — ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:**

☐☐ — ☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(Cities, Counties, States, etc.):*

| **13. PROPOSED PROJECT** | | **14. CONGRESSIONAL DISTRICTS OF:** | |
|---|---|---|---|
| Start Date | Ending Date | a. Applicant | b. Project |

**15. ESTIMATED FUNDING:**

| | |
|---|---|
| a. Federal | $ .00 |
| b. Applicant | $ .00 |
| c. State | $ .00 |
| d. Local | $ .00 |
| e. Other | $ .00 |
| f. Program Income | $ .00 |
| g. TOTAL | $ 0.00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ **Yes** **If "Yes," attach an explanation.** ☐ **No**

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.**

| | | |
|---|---|---|
| a. Type Name of Authorized Representative | b. Title | c. Telephone Number |
| d. Signature of Authorized Representative | | e. Date Signed |

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

## INSTRUCTIONS FOR THE SF-424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

| Item: | Entry: |
|---|---|
| 1. | Self-explanatory. |
| 2. | Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable). |
| 3. | State use only (if applicable). |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. |
| 7. | Enter the appropriate letter in the space provided. |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:<br>-- "New" means a new assistance award.<br>-- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.<br>-- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. |
| 9. | Name of Federal agency from which assistance is being requested with this application. |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. |
| 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 13. | Self-explanatory. |
| 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |

SF-424 (Rev. 7-97) Back

(Authority: 38 U.S.C. 501, 2408)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0041.)

**BILLING CODE 8320–01–C**

(c) Standard Form 424C—Instructions for the SF–424C.

OMB Approval No. 0348-0041

## BUDGET INFORMATION - Construction Programs

*NOTE: Certain Federal assistance programs require additional computations to arrive at the Federal share of project costs eligible for participation. If such is the case, you will be notified.*

| COST CLASSIFICATION | a. Total Cost | b. Costs Not Allowable for Participation | c. Total Allowable Costs (Columns a-b) |
|---|---|---|---|
| 1. Administrative and legal expenses | $ .00 | $ .00 | $ 0.00 |
| 2. Land, structures, rights-of-way, appraisals, etc. | $ .00 | $ .00 | $ 0.00 |
| 3. Relocation expenses and payments | $ .00 | $ .00 | $ 0.00 |
| 4. Architectural and engineering fees | $ .00 | $ .00 | $ 0.00 |
| 5. Other architectural and engineering fees | $ .00 | $ .00 | $ 0.00 |
| 6. Project inspection fees | $ .00 | $ .00 | $ 0.00 |
| 7. Site work | $ .00 | $ .00 | $ 0.00 |
| 8. Demolition and removal | $ .00 | $ .00 | $ 0.00 |
| 9. Construction | $ .00 | $ .00 | $ 0.00 |
| 10. Equipment | $ .00 | $ .00 | $ 0.00 |
| 11. Miscellaneous | $ .00 | $ .00 | $ 0.00 |
| 12. SUBTOTAL *(sum of lines 1-11)* | $ 0.00 | $ 0.00 | $ 0.00 |
| 13. Contingencies | $ .00 | $ .00 | $ 0.00 |
| 14. SUBTOTAL | $ 0.00 | $ 0.00 | $ 0.00 |
| 15. Project (program) income | $ .00 | $ .00 | $ 0.00 |
| 16. TOTAL PROJECT COSTS *(subtract #15 from #14)* | $ 0.00 | $ 0.00 | $ 0.00 |
| FEDERAL FUNDING | | | |
| 17. Federal assistance requested, calculate as follows: (Consult Federal agency for Federal percentage share.) Enter the resulting Federal share. | Enter eligible costs from line 16c Multiply X _____% | | $ 0.00 |

**Previous Edition Usable** **Authorized for Local Reproduction** **Standard Form 424C (Rev. 7-97)**
**Prescribed by OMB Circular A-102**

## INSTRUCTIONS FOR THE SF-424C

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0041), 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 sheet is to be used for the following types of applications: (1) "New" (means a new [previously unfunded] assistance award); (2) "Continuation" (means funding in a succeeding budget period which stemmed from a prior agreement to fund); and (3) "Revised" (means any changes in the Federal Government's financial obligations or contingent liability from an existing obligation). If there is no change in the award amount, there is no need to complete this form. Certain Federal agencies may require only an explanatory letter to effect minor (no cost) changes. If you have questions, please contact the Federal agency.

*Column* a. - If this is an application for a "New" project, enter the total estimated cost of each of the items listed on lines 1 through 16 (as applicable) under "COST CLASSIFICATION."

If this application entails a change to an existing award, enter the eligible amounts *approved under the previous award* for the items under "COST CLASSIFICATION."

*Column* b. - If this is an application for a "New" project, enter that portion of the cost of each item in Column a. which is *not* allowable for Federal assistance. Contact the Federal agency for assistance in determining the allowability of specific costs.

If this application entails a change to an existing award, enter the adjustment [+ or (-)] to the previously approved costs (from column a.) reflected in this application.

*Column*. - This is the net of lines 1 through 16 in columns "a." and "b."

---

Line 1 - Enter estimated amounts needed to cover administrative expenses. Do not include costs which are related to the normal functions of government. Allowable legal costs are generally only those associated with the purchases of land which is allowable for Federal participation and certain services in support of construction of the project.

Line 2 - Enter estimated site and right(s)-of-way acquisition costs (this includes purchase, lease, and/or easements).

Line 3 - Enter estimated costs related to relocation advisory assistance, replacement housing, relocation payments to displaced persons and businesses, etc.

Line 4 - Enter estimated basic engineering fees related to construction (this includes start-up services and preparation of project performance work plan).

Line 5 - Enter estimated engineering costs, such as surveys, tests, soil borings, etc.

Line 6 - Enter estimated engineering inspection costs.

Line 7 - Enter estimated costs of site preparation and restoration which are not included in the basic construction contract.

Line 9 - Enter estimated cost of the construction contract.

Line 10 - Enter estimated cost of office, shop, laboratory, safety equipment, etc. to be used at the facility, if such costs are not included in the construction contract.

Line 11 - Enter estimated miscellaneous costs.

Line 12 - Total of items 1 through 11.

Line 13 - Enter estimated contingency costs. (Consult the Federal agency for the percentage of the estimated construction cost to use.)

Line 14 - Enter the total of lines 12 and 13.

Line 15 - Enter estimated program income to be earned during the grant period, e.g., salvaged materials, etc.

Line 16 - Subtract line 15 from line 14.

Line 17 - This block is for the computation of the Federal share. Multiply the total allowable project costs from line 16, column "c." by the Federal percentage share (this may be up to 100 percent; consult Federal agency for Federal percentage share) and enter the product on line 17.

**SF-424C (Rev. 7-97) Back**

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0041.)

**BILLING CODE 8320–01–C**

(d) Standard Form 424D—Assurances—Construction Programs.

OMB Approval No. 0348-0042

## ASSURANCES - CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0042), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the Awarding Agency. Further, certain Federal assistance awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the assistance; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from the awarding agency. Will record the Federal interest in the title of real property in accordance with awarding agency directives and will include a covenant in the title of real property aquired in whole or in part with Federal assistance funds to assure non-discrimination during the useful life of the project.

4. Will comply with the requirements of the assistance awarding agency with regard to the drafting, review and approval of construction plans and specifications.

5. Will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms with the approved plans and specifications and will furnish progress reports and such other information as may be required by the assistance awarding agency or State.

6. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

7. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

8. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

9. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

10. Will comply with all Federal statutes relating to non-discrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681 1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

11. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

12. Will comply with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

13. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333) regarding labor standards for federally-assisted construction subagreements.

14. Will comply with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

15. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

16. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

17. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

18. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

19. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

**SF-424D (Rev. 7-97) Back**

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 0348–0042.)

**BILLING CODE 8320–01–C**

(e) VA Form 10–0148c—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.

Department of Veterans Affairs

## Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 38 CFR Part 44, Section 44.510, Participants' responsibilities

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local ) transaction or contract under a public transaction; violation of Federal or State antitrust statues or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name | PR/Award Number of Project Name

Name and Title of Authorized Representative

Signature | Date

VA FROM MAR 2001 **10-0148c**

## Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered tranaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted it at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal" "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtain a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lwer tier covered transactions and in all solications for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

(Authority: 38 U.S.C. 501, 2408.)

(f) VA Form 40–0241—State Cemetery Data.

FORM APPROVED OMB NO. 2900-0559
RESPONDENT BURDEN: ONE HOUR

**Department of Veterans Affairs** | **STATE CEMETERY DATA** | FISCAL YEAR ENDING *(State)*

**RESPONDENT BURDEN:** Public reporting burden for this collection of information is estimated to average 60 minutes per response. Statutory authority for the State Cemetery Grants Program is 38 U.S.C., subchapter 2408. This form is approved under OMB No. 2900-0559, and when form is completed it provides VA with data regarding the number of interments conducted at states veterans cemeteries each year.

VA may not conduct or sponsor, and you are not required to respond to, this collection of information unless it displays a valid OMB Control Number. Responding to this information collection is voluntary. Send comments regarding this burden estimate or any other aspects of this collection of information, including suggestions for reducing this burden, to VA Clearance Officer (045A4), 810 Vermont Avenue, NW, Washington, DC 20420. *Please do not send applications for benefits to this address.*

| NAME OF CEMETERY | STATUS OF CEMETERY | NAME OF DIRECTOR | | AREA CODE AND PHONE NO. |
|---|---|---|---|---|
| | ☐ OPEN<br>☐ CLOSED | | | FAX NO |
| MAILING ADDRESS | DATE ESTABLISHED | DATE OPENED | DATE OF FIRST BURIAL | DATE OF ESTIMATED CLOSURE |
| | AUTHORITY | | | |

NAME OF STATE AGENCY RESPONSIBLE *(Organizationally)* FOR CEMETERY *(For example: Department of Veterans Affairs. Please include Director's name, telephone no., and fax no.)*

| TOTAL ACREAGE *(Usable/unusable)* | TOTAL BURIAL ACREAGE | BURIAL ACREAGE DEVELOPED | COLUMBARIA NICHES | TOTAL COLUMBARIA NICHES AVAIL. |
|---|---|---|---|---|
| SIZE OF GRAVESITE *(e.g. 5' x 10')* | GRAVESITES PER ACRE | GRAVESITES AVAILABLE | TOTAL IN-GROUND NICHES | TOTAL IN-GROUND NICHES AVAIL. |

COMMENTS *(i.e., The acreage developed is almost full and additional funds (estimated amount) for expansion in a particular year/month to develop the remaining acreage is requested. If additional space is needed please provide your comments on plain paper and attach to form.)*

| NUMBER OF CUMULATIVE INTERMENTS | | | | NUMBER OF INTERMENTS | | | TYPE OF HEADSTONE/MARKER *(Check applicable boxes))* |
|---|---|---|---|---|---|---|---|
| | FULL CASKET | CREMATIONS | | | VETERAN | DEPENDENT | |
| | | IN-GROUND | COLUMBARIA | | | | |
| VETERAN | | | | FY PRIOR | | | ☐ FLAT BRONZE<br>☐ BRONZE NICHE |
| NON-VETERAN | | | | FY CURRENT | | | ☐ FLAT GRANITE<br>☐ UPRIGHT GRANITE |
| GRAVESITES MAINTAINED | | | | FY FUTURE *(Estimated)* | | | ☐ FLAT MARBLE<br>☐ UPRIGHT MARBLE |

| PERSONNEL | | OPERATING COSTS | | |
|---|---|---|---|---|
| NO. OF ADMINISTRATIVE | NO. OF GROUNDS MAINTENANCE | PRIOR YEAR<br>$ | CURRENT YEAR<br>$ | FUTURE YEAR<br>$ |

| NO. OF OTHER *(Specify)* | AMOUNT CHARGED TO VETERAN FOR INTERMENT ***(Do not include burial plot allowance)*** | AMOUNT CHARGED TO DEPENDENT FOR INTERMENT |
|---|---|---|
| | $ | $ |

COST COMMENTS *(Use this area to list total costs associated with operating your cemetery. For example if the Superintendent of the cemetery is also in charge of the adjacent Vets Home and their salary is paid by them, then please reflect their salary in this space with a brief explanation. If convicts are used for labor then please note in above block and explain here. If additional space is required, please provide your comments on plain paper and attach to form.)*

LOCATION AND GENERAL DESCRIPTION OF CEMETERY *(Please include precise directions from the nearest large airport to cemetery. Please provide comments on historical matters relating to the cemetery. For example, cemetery is located near an old civil war battlefield or is part of the state veterans home. Also, describe your facilities. e.g., the cemetery has a separate maintenance facility with three, heated maintenance bays, a separate administrative building and a chapel. In sum, tell us what you want a visitor to know about your cemetery. What makes your cemetery unique. If additional space is require please provide your comments on plain paper and attach to form.)*

DESCRIBE ELIGIBILITY REQUIREMENTS AND FACTS OF SPECIAL INTEREST OR HISTORICAL SIGNIFICANCE *(Are there state residency requirements, if so, how many years? Who is your first interment? Are there any Medal of Honor veterans buried in your cemetery, or other highly decorated or well-known soldiers? If additional space is required please provide your comments on plain paper and attach to form.)*

VA FORM MAY 1997(RS) **40-0241** NATIONAL CEMETERY SYSTEM (VACO) COPY - 1

(Authority: 38 U.S.C. 501, 2408.)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0559.)

[FR Doc. 04–6532 Filed 3–26–04; 8:45 am]

BILLING CODE 8320–01–C

Federal Register

Monday,
March 29, 2004

# Part III

# Federal Trade Commission

## 16 CFR Part 310
## Telemarketing Sales Rule; Final Rule

**FEDERAL TRADE COMMISSION**

**16 CFR Part 310**

**RIN 3084–0098**

## Telemarketing Sales Rule

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Trade Commission (''FTC'' or ''Commission''), pursuant to a directive in the Consolidated Appropriations Act of 2004, issues its Statement of Basis and Purpose (''SBP'') and final amended Telemarketing Sales Rule (''TSR'' or ''Rule'') Section 310.4(b)(3)(iv). This amended section of the TSR now requires sellers and telemarketers, in complying with the do-not-call provisions of the TSR, to use a version of the National Do Not Call Registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, rather than three (3) months prior to the date any call is made, as is allowed under the current TSR.

**EFFECTIVE DATE:** The amended Section 310.4(b)(3)(iv) of the TSR will become effective on January 1, 2005.

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

**FOR FURTHER INFORMATION CONTACT:** Catherine Harrington-McBride, (202) 326–2452, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

**SUPPLEMENTARY INFORMATION:** The amended Rule now requires sellers and telemarketers, in complying with the Do Not Call provisions of the TSR, to use a version of the National Do Not Call Registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made.

### Statement of Basis and Purpose

### I. Background

On February 13, 2004, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking (''NPRM'') [1] to amend the TSR's Do Not Call safe harbor provision, 16 CFR 310.4(b)(3)(iv), to substitute the phrase ''no more than thirty (30) days prior to the date any call is made'' for the phrase that originally appeared in that provision, ''no more than three (3) months prior to the date any call is made.'' The proposed amendment would have changed, from quarterly to every thirty (30) days, the frequency with which telemarketers and sellers would have to obtain and purge from their calling lists numbers appearing on the National Do Not Call Registry. It also would have reduced, from three (3) months to thirty (30) days, the amount of time a consumer must wait after entering his or her number on the Registry to assert a valid Do Not Call complaint. The proposed amendment was mandated by the Consolidated Appropriations Act of 2004, which, inter alia, directs that ''not later than 60 days after the date of enactment of this Act, the Federal Trade Commission shall amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the 'do-not-call' registry once a month.'' [2]

In the NPRM, the Commission sought comment on two specific issues relating to the proposed amendment: (1) The use of the phrase ''thirty (30) days,'' rather than the term used in the statute, ''once a month;'' and (2) the appropriate effective date for the proposed amendment. The Commission received 186 comments in response to its NPRM. Virtually all consumers and consumer groups favored both reducing the amount of time a consumer must wait to receive the benefits of inclusion on the National Do Not Call Registry, and using the phrase ''thirty (30) days,'' rather than ''monthly'' in the amended Rule.[3] On the other hand, most business and industry commenters stated that shortening the time interval at which they must scrub their calling lists was burdensome and unnecessary.[4] Business and industry commenters were divided, however, about whether they endorsed the Commission's proposal to use a ''thirty (30) day'' standard rather than a ''monthly'' standard, with some agreeing that such a standard was clearer, while others argued that a monthly standard is preferable because it provides greater flexibility for businesses to determine the schedule on which they could most conveniently scrub their lists within the parameters of the new time frame set forth in the Appropriations Act. All commenters generally recommended an effective date of anywhere from three (3) months to a year or longer after adoption. The comments and the basis for the Commission's decision on the various recommendations are analyzed in detail below.

### II. The Amended Rule

Based on the mandate of the Appropriations Act to amend the Rule, and on careful review of the record developed in this rulemaking proceeding, the Commission has determined to modify the TSR safe harbor provision regarding the interval at which businesses must obtain Registry data. Under the amended Rule provision adopted herein, a seller or telemarketer must obtain Registry data and purge registered numbers from their call lists no more than thirty-one (31) days prior to making a telemarketing call. Recognizing, however, that it may take time for all businesses to implement procedures for effecting this more frequent ''scrub'' schedule, the Commission has set the effective date for this amended provision of the Rule as January 1, 2005, allowing businesses more than nine (9) months to ready their systems and procedures. This time frame will also enable the Commission

[1] 69 FR 7329 (Feb. 13, 2004). The Commission also issued and posted on its Web site a press release including a copy of the text of the complete NPRM on February 10th, in recognition of the fact that the extra three days could benefit potential commenters faced with a necessarily short comment period (the FTC had only 60 days from the enactment of the Appropriations Act of 2004 to issue a final amended Rule). *See* ''FTC Seeks Public Comment on Proposed Amendment of Telemarketing Sales Rule,'' Feb. 10, 2004 (available electronically at: *http://www.ftc.gov/opa/2004/02/040210tsrnpr.htm).*

[2] Consolidated Appropriations Act of 2004, Public Law 108–199, 188 Stat 3. The requirement is in Division B, Title V.

[3] *See, e.g.,* Traylor at 1 (continues to get calls from telemarketers and would like to see time for scrubbing shortened); Davis at 1; Mitchell at 1 (''Three months allows for a lot of unwanted calls.''); Strang at 1 (''Such action would bring the TSR into line with the FCC's requirement that company specific do-not-call requests be honored no later than 30-days after the request is made. It would also limit consumers' potential exposure to unwanted calls after entry of their number into the database.''); Mey at 1 (''Reducing this interval will clearly benefit consumers by enabling them to assert a valid Do-Not-Call complaint thirty (30) days after entering their numbers on the registry, rather than having to wait three months.''); Sachau at 1; Hurlburt at 1; *But see* Rice-Williams at 1 (unnecessary and not worth insignificant result).

[4] Advertiser at 1; Hawkins at 1; Heroy at 1; Skinner at 1; Sprecher at 1; Cage at 1; D&D Air at 1; Meltzer at 1; Rice at 1 (stating monthly scrubbing would be too burdensome); Beach at 1 (too soon to implement any changes to a relatively new federal regulatory scheme); McGarry (small businesses will be particularly burdened by the proposed amendment); Hometown News (monthly scrubbing too expensive); McMullin at 1 (too expensive especially for small businesses); Mitchell at 1 (''cost prohibitive and unnecessarily time consuming''); Green Banner at 1 (will triple costs). *But see* Clapsaddle at 1; Willoughby at 1; TCIM Services at 1.

and the vendor that operates the National Do Not Call Registry to implement modifications to Registry systems necessitated by the anticipated increase in usage resulting from this Rule amendment.

## III. Discussion of the Issues on Which Comment Was Specifically Solicited

The Commission requested comment on two specific issues relating to the proposed amendment. The first was whether the use of the phrase ''thirty (30) days,'' rather than the term used in the statute, ''once a month,'' was appropriate. The second was what the appropriate effective date for the proposed amendment should be. The major themes that emerged from the record are summarized below.

*1. Thirty (30) Days*

In the NPRM, the Commission stated that it ''believes that the term 'thirty (30) days' achieves greater clarity and precision in effectuating Congress's twofold intent in the Appropriations Act—to shorten from quarterly to monthly the interval for telemarketers and sellers to purge registered telephone numbers from their calling lists, and to enable consumers to assert valid Do Not Call complaints thirty (30) days after entering their numbers on the Registry rather than having to wait three months.'' [5] Further, the Commission noted that the term ''thirty (30) days'' provides an unambiguous standard that would make ''compliance easier to effectuate.''

Based on the record in this proceeding, the Commission has determined that an interval of thirty-one (31) days is preferable to the thirty (30) day standard, which had been proposed in the NPRM. Therefore, the TSR do-not-call safe harbor, Section 310.4(b)(3)(iv)—which provides that a seller or telemarketer will not be liable for violating the Do Not Call Registry provisions if it meets certain criteria—is amended to specify the thirty-one (31) day requirement, as follows:

> The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or § 310.4(b)(1)(iii)(B), employing a version of the ''do-not-call'' registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.

The Commission believes that such a modification fully effectuates the intent of the statute while not unduly constraining businesses. As discussed below, the record shows that many businesses were opposed to the ''thirty (30) day'' standard because they believed it would not allow sufficient flexibility for businesses, particularly small businesses.

Consumers and consumer groups nearly universally supported the Commission's proposal to use a ''thirty (30) days'' rather than monthly standard, noting that such a standard not only would be less ambiguous,[6] thus creating a brighter line for businesses to heed in complying with the Rule, but also would remove the possibility that a telemarketer could thwart Congressional intent that scrubbing be done at a monthly interval while still technically complying—for example, by accessing the Registry at 11 p.m. on the last day of one calendar month and again at 12:01 a.m. on the first day of the next, effectively scrubbing bi-monthly.[7]

Business and industry groups' views varied as to whether a ''thirty (30) day'' standard is preferable to a ''monthly'' one.[8] Some businesses supported the thirty (30) day standard as less ambiguous, and therefore advantageous to those that need to comply with the Rule.[9] ATA stated that it ''takes no position whether a monthly or 30-day requirement is preferable,'' but recommended that if ''the thirtieth day falls on a weekend or holiday, the update need not be implemented until the following business day.'' [10] Still others critiqued the standard as unnecessarily inflexible, with many suggesting alternative approaches. These approaches are discussed below.

Relatively few individual businesses commented on the merits of the Commission's proposal to substitute the phrase ''thirty (30) days'' for the term ''once a month,'' which was used in the statute.[11] One such commenter, DialAmerica, stated that the Commission's proposed approach ''could present confusion and allow for inadvertent mistakes by companies. Having a set monthly schedule is more beneficial than having to count days between downloads. Businesses are primarily run on a calendar cycle basis and not a thirty-day basis.'' Another commenter, NNA, stated that '' '30 days' is a more precise term than 'monthly,' * * * but that ''the term monthly provides greater flexibility, especially for the smallest of its members.'' [12] NASUCA made a similar point, noting that the thirty (30) day standard could be problematic for telemarketers who wish to access the registry the same day every month, and suggested that the final rule substitute the phrase ''on the same day each month or no more than 30 days prior to the date any call is made.'' [13]

In addition to comments about the interval at which telemarketers must scrub their call lists, some commenters raised related concerns. NASUCA argued that the Appropriations Act language is mandatory, thus the ''scrub'' provision should be an affirmative requirement under the Rule, rather than an element in the do-not-call safe harbor.[14] This argument is based on the statutory language that the Rule be amended ''to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the ''do-not-call'' registry'' (emphasis added). ACLI took the argument further, asserting that because the Appropriations Act does not mention the safe harbor provision, this language must be read to require a new affirmative obligation to ''scrub.'' This argument fails to take into account that the obligation to ''scrub'' never has been

[5] 69 FR 7329, 7330 (Feb. 13, 2004).

[6] AARP at 2 (noting that such a standard ''will provide industry, government and consumers with clearly defined parameters for updating''); Heinemann at 1 (agreeing ''that the wording should be 'thirty (30) days' as opposed to 'monthly.' This leaves no ambiguity as to how often the list should be acquired.''); Mey at 1 (' '[T]hirty (30) days' provides much greater clarity than the term 'monthly.' '); NCL at 1 (agrees that the term ''monthly'' could be ambiguous); NMHC/NAA at 1—(''every 'thirty (30) days' more accurately describes the regular time period in which telemarketers must scrub from their call lists new additions to the National Do Not Call Registry. Thirty days is a precise term that will reduce potential confusion, * * *''). *But see,* NASUCA at 13 (noting that a thirty (30) day standard could be a problem for telemarketers who wish to access the registry the same day every month).

[7] AARP at 2 (''[The thirty (30) day standard] prevents telemarketers from accessing on Jan. 1 and Feb. 29, which would flout Congressional intent.'').

[8] Numerous business commenters criticized generally the requirement to scrub more frequently; however, as the Commission noted in the NPRM, the mandate of the Appropriations Act of 2004 is clear, and the question of whether to require monthly scrubbing is not at issue in this proceeding. *See* 69 FR 7329, 7331 (Feb. 13, 2004).

[9] *See, e.g.,* MAR at 1 (''a thirty day standard is clearer'').

[10] ATA at 3, n.5 (noting that ''[t]his next-day business approach conforms to that found elsewhere in the Commission's rules'' (citing 16 CFR 1.14(c)), 4.3(a)). *See also* NRF at 3–4.). The Commission declines to adopt this recommendation. The thirty-one (31) day standard adopted in the amended Rule will provide businesses the maximum flexibility allowable under the Appropriations Act mandate.

[11] Out of 186 comments, only about fourteen (14) individual businesses commented specifically on the issue of whether the amended provision should require telemarketers to obtain the Registry on a monthly basis or every 30 days.

[12] NNA at 1–2 (stating that it ''would be very easy for a small firm to lose track of a month with 31 days, and update their list a day late.''). See also, D&D Air at 1 (every 30 days ''would result in a nightmare'').

[13] NASUCA at 5. *See also* Skinner/In-Home Lenders at 1.

[14] NASUCA at 2–3.

cast as an affirmative requirement; rather, it has always been framed in the context of a provision in the safe harbor. No commenters argued that the current format and structure of the Rule are unworkable or problematic. The Commission believes the manner in which the provision is incorporated in the Rule works well. Moreover, because Congress is presumed to know the content and structure of the regulation it amends,[15] it is reasonable to believe, absent explicit guidance to the contrary, that lawmakers intended that their amendment to this specific provision in the Rule's safe harbor would remain in the safe harbor. Therefore, the Commission declines to adopt an affirmative obligation that sellers and telemarketers scrub their lists each month.

Three alternatives to the thirty (30) day approach proposed in the NPRM emerged from the comments; the ''range of dates'' approach, the ''business days'' approach, and the ''grace period'' approach. These alternative suggestions are discussed in the following paragraphs.

*The ''Range of Dates'' Approach.* First, some commenters urged that, rather than requiring that a seller or telemarketer obtain information from the National Do Not Call Registry at an interval of a fixed number of days, the Rule should allow a business to obtain such information within a range of dates, such as between the 25th and 35th days prior to a call being made,[16] between the 1st and 15th of every month,[17] or ''no more frequently than every 28 calendar days, but no less frequently than every 31 calendar days,''[18] to take into consideration the different number of days in each month.

The suggestion that the Commission require scrubbing within a numerical range, such as between the 25th and 35th days prior to a call being made, would obviate the bi-monthly download problem detailed in the NPRM, but would not comport with Congress' mandate that telemarketers and sellers scrub their lists ''once a month'' (*i.e.,* no month has more than 31 days). A numerical range with an upper limit of 31 days would meet the Congressional mandate, but the lower limit would serve no purpose; it would only reduce flexibility for firms who have to comply. The suggestion that the Commission employ a date range (*i.e.,* the Registry must be accessed between the 1st and 15th of each month) would comport with the Congressional mandate for ''once a month'' purging and would solve the bi-monthly download problem, but it would place needless strain on the Registry by crowding all access into a limited time period and reduce flexibility for firms whose business cycle would be better suited to downloads outside the prescribed time frame. The final range suggested—no more frequently than every 28 calendar days, but no less frequently than every 31 calendar days—also would comport with the Congressional mandate and would resolve the bi-monthly download problem. Preventing access more frequently than every 28 days, however, would serve no discernable purpose while denying telemarketers and sellers the ability to keep from alienating consumers who have registered during the preceding 27 days. The Commission, therefore, declines to adopt any of the range proposals suggested by commenters.

*The ''Business Days'' Approach.* The second alternative to the proposed thirty (30) day standard was advanced by NRF. Under this alternative, the interval at which companies would be required to scrub would be based on the number of business days in a month—*i.e.*, not counting weekends or national holidays. ''For instance, companies could be required to update their lists every 22 business days (to take into account the average number of business days each month).''[19]

The Commission believes that from a variety of perspectives such a ''business day'' standard would be unnecessarily complicated. From the standpoint of compliance, businesses—particularly small businesses—would have difficulty determining with certainty just when they would be required to access the Registry and purge their lists before undertaking a telemarketing campaign. From the standpoint of consumers wishing to file a Do Not Call complaint, it would be unnecessarily difficult to determine the point in time when a complaint would be accepted by the Registry system. The burden would be on consumers to calculate the number of business days since their registration. Finally, from the enforcement standpoint, it would be unnecessarily complicated under a ''business day'' regime to program the Registry systems so that they could easily identify when a violation has occurred. Therefore, the Commission declines to adopt this recommendation.

*The ''Grace Period'' Approach.* Finally, some commenters argued that the statute mandates only that the Commission require that sellers and telemarketers obtain information from the National Do Not Call Registry every thirty (30) days (or once a month), but does not necessarily require that they cease calling consumers at the time they obtain the Registry information.[20] One such commenter, SBC, urged that the final Rule include a grace period by which calls to numbers on such list must actually cease.[21] The Commission believes there is no support for this interpretation of the Appropriations Act. Indeed, the plain language of the statute requires that the Commission amend the Rule to ''require telemarketers * * * to obtain from the Federal Trade Commission the list of telephone numbers on the ''do-not-call'' registry once a month.''[22] No mention is made in the statute of any grace period for effectuating consumer's requests not to be called, nor is such a model

[15] *See Hall* v. *EPA,* 273 F.3d 1146, 1158 (9th Cir. 2001) (''[w]hen Congress incorporates the text of past interpretations, Congress' repetition of a well-established term carries the implication that Congress intended the term to be construed in accordance with pre-existing * * * interpretations''), *citing, Bragdon* v. *Abbott,* 524 U.S. 624, 631 (1998). *See also Ford* v. *Schering-Plough Corp.,* 145 F.3d 601, 611 (3d Cir. 1998) (''Where Congress adopts a new law incorporating sections of prior law, Congress normally can be presumed to have had knowledge of interpretation given to incorporated law, at least insofar as it affects new statute.'') (*citing Lorillard* v. *Pons,* 434 U.S. 575, 581 (1978).

[16] MBNA at 1–2 (noting that this approach would ''allow telemarketers to avoid overtime and other expenses resulting from having to perform downloading on weekends or holidays, and to avoid the possibility of having to perform more than 12 down loadings in a year.'')

[17] Dial America at 1 (recommending ''a requirement that companies must download and implement an updated version of the Registry between the first and fifteenth of every month. This will allow companies two weeks time to comply as well as give companies a consistent set schedule to incorporate as a regular business practice. At the same time, utilizing a 15-day window to download and implement the Registry will help to reduce any constraints on the systems since not every company will need to download on the same date.'')

[18] NRF at 3 (''Alternatively, companies could be required to update their lists no more frequently than every 28 calendar days, but no less frequently than every 31 calendar days, to take into consideration the different number of days in each month.'')

[19] NRF at 3–4.

[20] DMA at 4; SBC at 2; ACLI at 2; Sterling at 1; Stonebridge at 2; Verizon at 2.

[21] *See, e.g.,* SBC at 2 (''the statutory mandate does not require a seller or telemarketer to use a version of the Registry updated no more than thirty (30) days prior to the date a call is made.'') Although SBC suggested including a grace period, neither SBC nor any other commenter provided any factual support for the notion that any sort of grace period is needed by industry to be able to scrub effectively without undue burden.

[22] The exact language in the Act is: ''Provided further, That, not later than 60 days after the date of enactment of this Act, the Federal Trade Commission shall amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the 'do-not-call' registry once a month.'' Consolidated Appropriations Act of 2004, Pub. L. 108–199, 188 Stat 3. The language is in Division B, Title V.

contemplated by the existing Rule. The legislative history also provides no support for this argument. In fact, the legislative history suggests that the sole purpose behind shortening the interval for purging call lists is to reduce the amount of a time consumers need to wait to see a reduction in unwanted telemarketing calls, and to be able to file a valid complaint.[23] Without some explicit indication that Congress intended to provide a grace period—or at least viewed a grace period as consistent with the imperative to shorten the Rule's time frame for purging call lists and accepting complaints—the Commission will not incorporate a grace period into the Rule. Therefore, the Commission declines to adopt this recommendation.

## IV. The Final Rule: The 31-Day Standard

Although the recommendations of several of the commenters, discussed above, would require purging lists within the statutorily-mandated ''once a month'' time period, the Commission believes that the best and simplest resolution is to amend the Rule to require that telemarketers and sellers obtain data from the National Do Not Call Registry and purge registered numbers from their call lists no more than thirty-one (31) days prior to making a telemarketing call. This approach retains all of the advantages of the proposals allowing a range of acceptable dates, yet provides a simpler, more straightforward, and more easily understandable standard for businesses, consumers, and law enforcement.

The thirty-one (31) day interval ensures that telemarketers and sellers have a set interval at which they must access the data in the registry, avoiding the concern articulated in the NPRM that otherwise, a business could literally be in compliance while only obtaining data at roughly bi-monthly intervals. It also provides businesses the maximum flexibility allowable by the statute, by providing an interval that mirrors the length of the most frequently occurring and longest month, rather than that of the less frequently occurring month (*i.e.*, thirty (30) days). This longer interval will enable a business to choose any of a number of possible options in scheduling its access to the Registry, including, but not limited to: accessing on the first day of every month,[24] the third Friday of every month, or at thirty-one (31) day intervals, regardless of the day or date.

Therefore, based on the record in this proceeding and the statutory mandate in the Appropriations Act, the Commission modifies § 310.4(b)(3)(iv) of the do-not-call safe harbor to read: ''The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the ''do-not-call'' registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process.''

## V. Effective Date

The second issue on which the Commission sought comment in the NPRM is the appropriate effective date for this amendment. As the Commission acknowledged in the NPRM, ''[m]odifying the Commission's established Registry system to account for increased download traffic and logic changes will take some time,'' and sellers and telemarketers ''similarly may need an extended period to make the necessary modifications in their systems and procedures to be able to comply with this amended provision.''[25] The Commission requested that business and industry commenters ''provide factual information regarding the amount of time it reasonably will take sellers and telemarketers to modify their business procedures and systems to be able to comply with the amended provision.''[26]

The few individuals and consumer groups that responded to this question suggested an effective date of three (3) to six (6) months,[27] or ''as soon as is practicable so that the benefits to consumers who use the registry will not be unduly delayed.''[28] Industry members recommended an effective date anywhere from six (6) months to longer than a year.[29] Despite the varied suggestions as to a specific appropriate effective date, business and industry commenters reasoned that an effective date should be postponed to allow businesses, particularly small businesses, to implement systems and procedures to comply with the amended Rule.

Based on its experience in establishing and maintaining the National Do Not Call Registry, and on a review of the record in this proceeding, the Commission has determined to set the effective date for this amended provision as January 1, 2005. This time period is virtually the same as that allowed to prepare for the rollout of the National Do Not Call Registry in 2003.[30] In its comment, which recommended this effective date, ATA also noted that, ''by allowing substantial lead time for business to come into compliance with the new rule,'' the Commission could ''moderate the impact of the rule change.''

Some commenters called for effective dates even further in the future. One, NRF, stated that an effective date of ten (10) to twelve (12) months following publication of the final amended Rule provision is desirable because of the ''problem of efficiently and quickly downloading a list that contains tens of millions of phone numbers each and every month—especially for those involved in national sales and ongoing campaigns.''[31] NRF further commented that because ''the current practice of many retailers involved in telemarketing campaigns is to 'pull' the list of customers that they intend to contact several weeks in advance of a calling campaign that may itself last several weeks,'' that this amendment will require logistical change in the way retailers conduct their business.[32]

Other commenters noted that an effective date of one year following the Rule amendment publication would be appropriate to enable businesses, particularly small businesses, to adjust their business practices to accommodate

[23] U.S. House of Representatives, 108th Cong., 1st Sess. Conference Report to Accompany H.R. 2673. Report No. 108–401 (Nov. 25, 2003) p. 641 (''To improve responsiveness to an individual's decision to enroll in the Do-Not-Call program, the conference report includes bill language requiring telemarketers who are subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the Do-Not-Call Registry once a month.'')

[24] This option—to allow for updating on the same day each month—was recommended by D&D Air at 1.

[25] 69 FR 7329 (Feb. 13, 2004).

[26] *Id.*

[27] Heinemann at 1 (''I feel that the effective date should be somewhere between 3 to 6 months from the enactment of the new rules. I find no reason why it shold take longer than 3 months for a person or company to update their systems to download the list every 30 days. In fact I believe that most people would be able to accomplish this task within a month. By making the effective date 3 months from the enactment of the rules, you would be placing no undue burden on businesses but you would be increasing the effectiveness of the law for new consumers that sign up.'').

[28] NCL at 2 (noting that the FTC and marketers will need time to retool their systems, and that NCL and other organizations will need time to revise their educational materials).

[29] *See, e.g.,* SBC at 5 (6 months); NRF at 2–3 (10–12 months); Mastercard (12 months); Sterling at 2 (18 months). Although most of the comments received lacked detailed support for the assertion that additional time was necessary, many commenters noted that due to the necessarily short comment period, it would be impossible to provide more detailed and meaningful data in support of their assertions.

[30] The final amended TSR was announced in December, 2002, (although published in the **Federal Register** on January 29, 2003), and businesses were required to begin downloading in September 2003).

[31] NRF at 2–3.

[32] *Id.*

the more frequent ''scrubbing'' required by the amended safe harbor provision.[33] MBNA noted that ''[u]sing past effective dates as a guideline, and given that enactment of the new requirement was totally unexpected by telemarketers,'' a year is ''reasonable and appropriate.''[34] MidFirst agreed, and noted that, in addition to allowing businesses necessary time to ''modify systems and procedures,'' an effective date of at least one year from the adoption of the amended Rule would ''ensure the FTC can handle the increased frequency of Web site hits and downloads and other procedural requirements.''[35]

Indeed, modifying the Commission's established Registry system to account for increased download traffic and logic changes will take some time, as noted in the NPRM. The Commission believes, however, that its system will be ready by January 1, 2005.[36] Although the Commission is sympathetic to arguments that the amendment comes at a time when many businesses, particularly small businesses, are still grappling with the initial implementation of procedures and systems for downloading data from the Registry,[37] an effective date of January 1, 2005, will enable most sellers and telemarketers to complete a full year of quarterly downloads prior to switching to downloading every thirty-one (31) days. Further, the Commission notes that the National Do Not Call Registry includes a feature whereby businesses returning to the Registry after an initial download may request only a list of changes to their previous list (newly added and newly removed numbers), rather than a completely new list. The Commission believes that this feature, designed to minimize the burden on businesses, particularly small businesses, should alleviate some of the burden on business of scrubbing their lists more frequently under the amended Rule.

## VI. Other Issues Raised in the Comments

NADA requested that the Commission clarify that a small seller or telemarketer would be deemed to be in compliance if it registered and paid the annual fee (as may be required), even though it only obtains numbers by use of the single-number lookup feature in the National Do Not Call Registry. The Commission agrees that such sellers or telemarketers would be in compliance, noting that this would constitute no change from the existing Rule.

Another commenter requested confirmation that ''the Commission will update the list at least as frequently as telemarketers must download the list.'' Indeed, the registration database is updated on a daily basis, and is always available to sellers and telemarketers, should any choose to purge their call lists that frequently.

## VII. Paperwork Reduction Act

The information collection requirements contained in the TSR were reviewed by OMB under the Paperwork Reduction Act and cleared on July 24, 2003, under OMB Control Number 3084–0097. The rule amendment, as discussed above, changes the interval at which entities covered by the TSR must obtain data from the National Do Not Call Registry from every three (3) months to every thirty-one (31) days. Thus, the rule amendment does not impose any new, or affect any existing, record submission, recordkeeping, or public disclosure requirement that would be subject to review and approval by the Office of Management and Budget pursuant to the Paperwork Reduction Act, 44 U.S.C. 3501–3520.

## VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), 5 U.S.C. 601–612, requires an agency to provide an Initial Regulatory Flexibility Analysis (''IRFA'') with a proposed rule and a Final Regulatory Flexibility Analysis (''FRFA'') with the final rule, if any, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. See 5 U.S.C. 603–605.

As discussed in the NPRM, the Appropriations Act expressly mandates the modification, and, therefore, any associated economic impact. Nonetheless, the Commission determined that it was appropriate to publish an IRFA in order to inquire into the impact of the proposed rule on small entities, and is also publishing a FRFA with its final amended Section 310.4(b)(3)(iv). Therefore, the Commission has prepared the following analysis.

### 1. Need for and Objectives of the Rule

The modification of the TSR, discussed above, is pursuant to the directive of the Appropriations Act of 2004, which mandates that ''not later than 60 days after the date of enactment of th[at] Act, the Federal Trade Commission shall amend the Telemarketing Sales Rule to require telemarketers subject to the Telemarketing Sales Rule to obtain from the Federal Trade Commission the list of telephone numbers on the ''do-not-call'' registry once a month.''[38]

*2. Objectives and Legal Basis.*

The objectives of the amended rule provision are discussed above. The legal basis for the amended rule provision is the Appropriations Act of 2004, as discussed above.

*3. Description and Estimate of Number of Small Entities Subject to the Final Rule or Explanation of Why No Estimate Is Available.*

This proposed rule will primarily impact sellers that make interstate telephone calls to consumers (outbound calls) in an attempt to sell their products or services. Also affected may be firms that provide telemarketing services to others on a contract basis. As noted in the NPRM, during the proceedings to amend the TSR to include National Do Not Call Registry provisions, the Commission sought public comment and information on the number of small business sellers and telemarketers that would be impacted by those amendments.[39] In its requests, the Commission noted the lack of publicly available data regarding the number of small entities. As the Commission received no further information in response to the NPRM issued in this proceeding, the number of firms making outbound calls cannot be reliably estimated.[40]

[33] CAR at 1; NMHC/NAA at 1–2; ARDA at 5 (also noting the ''burdensom regulatory schedule looming ahead'' [referencing the CAN–SPAM rulemakings] as a reason to allow a delayed implementation of this provision).

[34] MBNA at 3.

[35] Midfirst at 1; NNA at 2 (recommending an effective date of April 1, 2005).

[36] As noted by some commenters, the Appropriations Act language only directs the FTC, not the Federal Communications Commission (FCC), which regulates both inter- and intrastate telemarketing, to amend its rules. *See, e.g.,* Countrywide at 1–2; NRF at 4; NASUCA at 7–8. The FCC is considering a change to bring their rules in line with the TSR. *See* ''FCC Seeks Comment on Rules To Eliminate Spam From Mobile Phones; Commission Also Asks for Comments on Possible 'Safe Harbor' for Telemarketing Calls to Mobile Phones,'' Mar. 11, 2004 (containing reference to the FCC's impending NPRM on a thirty (30) day scrub interval). The January 1st effective date will also allow for interagency coordination necessary to implement the statutory mandate.

[37] ATA at 2 (only a few months' experience with the rules); Cage at 1 (forced to changed before law is six months old); NAA at 2 (companies have only had to scrub their lists twice since the Do-Not-Call List went into effect). *See also* Countywide at 5; Maine at 1.

[38] Consolidated Appropriations Act of 2004, Pub. L. 108–199, 188 Stat 3. The requirement is in Division B, Title V.

[39] *See* 68 FR 4580, 4667 (Jan. 29, 2003); 68 FR 45134, 45143 (July 31, 2003) (noting, in the final amended rules, that comment was requested, but not received, regarding the number of small entities subject to the National Do Not Call Registry provisions of the amended TSR).

[40] 68 FR 4580, 4667 (Jan. 29, 2003) (noting that Census data on small entities conducting

Nevertheless, the Commission believes that, to the extent that this amendment has an economic effect on small business, the Commission has adopted an approach that minimizes the impact to ensure that it is not substantial, while fulfilling the mandate of the Appropriations Act that all businesses obtain data from the National Do Not Call Registry on a monthly basis.

As discussed above in detail, based on the record, the Commission has extended the interval at which businesses must access Registry data and purge their calling lists of numbers contained on the Registry to thirty-one (31) days, the maximum allowable pursuant to the Appropriations Act mandate. And, in recognition of the need for businesses, particularly small businesses, to modify their procedures and systems to accommodate this amendment, the Commission has set the effective date for this amended Rule provision as January 1, 2005, allowing more than nine months time for necessary preparations.

*4. Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement of Obtaining Data From the National Do Not Call Registry Every Thirty (30) Days and the Type of Professional Skills That Will Be Necessary To Comply.*

As discussed in the NPRM, this amendment does not impose any new, or affect any existing, reporting, disclosure, or specific recordkeeping requirements within the meaning of the Paperwork Reduction Act. The Commission further posited in the NPRM that it did not ''believe that the modification requiring sellers and telemarketers to obtain data from the National Registry at a more frequent interval will create a significant burden on sellers or telemarketers that have already established systems to comply with the requirement in the existing TSR that requires accessing the Registry database on a quarterly basis.'' But, the Commission recognized that ''[t]here will likely be additional costs* * * incurred to access the Registry every thirty days (effectively twelve (12) times per year) versus the current requirement of every three months (effectively four (4) times per year).[41]

Many commenters argued that the amended Rule provision will be burdensome on businesses, particularly small businesses. NADA noted that ''dealers and other small businesses can expect a corresponding increase in the personnel costs necessary to download the data and perform the scrub. Because small businesses may lack available personnel to perform this additional function, they may find it necessary to outsource the function to a vendor,'' which would further increase costs associated with the more frequent scrub requirement.[42] However, as described below, in response to Question 5, the Commission has taken steps to minimize the impact of the amended Rule provision on small businesses, to the extent possible while still effectuating the mandate of the Appropriations Act.

*5. Steps the Agency Has Taken To Minimize Any Significant Economic Impact on Small Entities, Consistent With the Stated Objectives of the Appropriations Act, Including the Factual, Policy, and Legal Reasons For Selecting the Alternative Finally Adopted, and Why Each of the Significant Alternatives Was Rejected.*

As noted in the NPRM, the Appropriations Act of 2004 provides the Commission no discretion in the matter of whether to amend the TSR.'' The Commission, however, included in the NPRM a request for factual information about the amount of time it will take for ''sellers and telemarketers, including small businesses, to modify their business procedures and systems to be able to comply with the amended provision.'' Based on the record, the Commission has determined to set the effective date for this amendment as January 1, 2005. This time frame will, as noted above, provide businesses, especially small businesses,[43] adequate time to modify their systems and procedures to comply with the amended provision. In addition, the Commission has extended the interval at which businesses must access Registry data and purge their calling lists of numbers contained on the Registry to thirty-one (31) days, the maximum allowable pursuant to the Appropriations Act mandate.

Thus, while the Commission considered more burdensome alternatives (*i.e.*, choosing an interval of thirty (30), rather than thirty-one (31) days, the Commission rejected those alternatives, as discussed above, in favor of a regulatory approach that was the least burdensome to all regulated entities, including small entities, if any.

## IX. Amended Rule

■ Accordingly, the Commission amends title 16, Code of Federal Regulations, as follows:

## PART 310—TELEMARKETING SALES RULE

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

**Authority:** 15 U.S.C. 6101–6108.

■ 2. Amend § 310.4 by revising paragraph (b)(3)(iv) to read as follows:

### § 310.4 Abusive telemarketing acts or practices.

* * *

(b) * * *

(iv) The seller or a telemarketer uses a process to prevent telemarketing to any telephone number on any list established pursuant to § 310.4(b)(3)(iii) or 310.4(b)(1)(iii)(B), employing a version of the ''do-not-call'' registry obtained from the Commission no more than thirty-one (31) days prior to the date any call is made, and maintains records documenting this process;

* * * * *

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

**Note:** This appendix will not appear in the Code of Federal Regulations.

telemarketing does not distinguish between those entities that conduct exempt calling, such as survey calling, those that receive inbound calls, and those that conduct outbound calling campaigns. Moreover, sellers who act as their own telemarketers are not accounted for in the Census data).

[41] Based on data obtained during the TSR amendment finalized in 2003, the Commission estimated that ''the cost of accessing the National Do Not Call Registry to purge the numbers it contains from a company's calling list (separate from the fee paid to obtain the list) is around $100. Given this estimate, sellers and telemarketers seeking to comply with the proposed rule modification would pay $1200 per year ($100 per scrub x 12 scrubs per year) rather than $400 per year ($100 per scrub x 4 scrubs per year).''

[42] NADA at 2 (recommending a January 1, 2005 effective date). *See also* Ziskind at 1 (noting that the more frequent scrub interval will ''add an additional burden to REALTORS,'' and cost ''cost us time and money''); NRF at 2 (''for smaller businesses, in particular, the extra hours they may be forced to spend each month in order to prepare to contact their customers is subtracted from the time they could spend serving those customers'').

[43] The Commission notes that the TSR applies only to interstate telemarketing campaigns, and thus, is likely to exempt numerous small business entities that only conduct their telemarketing within a single state. The FCC, which regulates intrastate calling, while not mandated by the Appropriations Act to modify its telemarketing rules, is considering a change to bring them in line with the TSR. *See* ''FCC Seeks Comment on Rules to Eliminate Spam From Mobile Phones; Commission Also Asks for Comments on Possible ''Safe Harbor'' for Telemarketing Calls to Mobile Phones,'' Mar. 11, 2004 (containing reference to the FCC's impending NPRM on a thirty (30) day scrub interval).

## Appendix A

List of Acronyms for Commenters

AARP—AARP
ACLI—American Council of Life Insurers
Adler, Jeff
Advertiser—The Advertiser of Polk County
ARDA—American Resort Development Association
ATA—American Teleservices Association
Anderson, Melissa
Aubee, Arnold
Bauder, Christine
Beach, Kerry
Bergmann, Ken
Black, Michelle
Blum, Charles
Boyer, Donna
Breen, Wynn
Bressler, Marque
Byrnes, Theresa M
Cage, Chris
CAR—California Association of Realtors
Campbell, Tricia
CapAR—Capital Area Association of Realtors
Carruba, Guy
Cartwright, Douglas
Cartwright, Iris
Castaldo, Carol
Castle, Bill
Ciesielski, Ronald
Clapsaddle, Mel
Classified—Classified Technologies
Constandinou, Sophia
Cordner, Maria
Country—Country Peddler
Countrywide—Countrywide Financial Services
Couto, Manuel
Covington—The Covington Group
Cueman, Robert
D& D—D&D Air Conditioning
Davidson, Scott
Davis, Donald R.
Davis, Richard
DeCarlo, Dennis
DePalma, Larry
DeVose II, Leon
DialAmerica
DiGiulio, James
DiSabato, Joseph
DMA—Direct Marketing Association
Dobson, Liane
Elliott, Lori
Engle, Susan
Evertsen, Karen
Farello, Marsha
Ferreira, Armando
Ferrigno, James
Ferriss, Theresa
Gale, Willian
Gatchalian, Paz
Gawel, Dorothy
Gonyea, B.
Green Banner—Green Banner Publications
Hanna, Gary
Hanson, Catherine
Hargrave, David
Hartman, Eileen
Hasselbring, David
Hawkins, Dee
Heinemann, Michael
Henderson, Cameron
Heroy, David
Hirsch, Andrew
Hometown—Hometown News
Hurlburt, Kris
Ieradi, Robert
Jackson, Dorothy
Jacobson, Kathryn
Kachar, Mehmet
Kahn, Robert
Kamel, Felicia
Kelly, Robert
Kelly, Sharon
Kidney, Alice
Kowol, Michael
Kraus, Elizabeth
Kumar, Bhupendra
Kwasniewski, Jan
Labrum, Carole
Lavin, Louis
Lee, James
Legg, Michelle
Leonardo, Rosemarie
Levandoski, Michael
Lubeck, Robert
Mack, Brendon
Madden, Mike
ME–AR—Maine Association of Realtors
Mancuso, Daniel
MD–AR—Maryland Association of Realtors
Massengill, Lisa
Mastercard
Matson, Sandra
MBNA
McGarry, Dennis
McMullin, Craig
Meany, Michael
Meltzer,
Mendoza, Jimmy
Mey, Diana
Michaud, Robert
Midfirst Bank
Mitchell, Jeffrey
Mitchell, Robert
Mogano, Louis
Mongeon, Kenneth
Morano, Valli
Mraz, Lawrence
Musser, Linda
NASUCA—National Association of State Utility Consumer Advocates
NADA—National Automobile Dealers Association
NCL—National Consumers League
NNA—National Newspaper Association
National Penn—National Penn Bank
NRF—National Retail Federation
NJ–AR—New Jersey Association of Realtors
NYCPB—New York State Consumer Protection Board
Nicholson, Walter
Nuzzo, Michael
NMHC/NAA—National Multi Housing Council/National Apartment Association
O'Neal, James
O'Neill (TCIM Services)
Othman, Wafa
Paraiso, Geraldine
Pattisall, Jr., Richard C.
Picardo, Kathleen
Polio, Erick
Popp, Dianne
Port, Linda
Private Citizen
Rafferty, Catherine
Rhame, Susanne
Rice, Prestelene
Rice-Williams, Lisa
Riehl, Mary
Rodriguez, Anthony
Rose-Valente, Judith
Runyon, Jennifer
Ryan, Christopher
Rzempoluch, John
Sachau, Barb
Sadlon, Carolyn
Sanderson, Harvey
SBC—SBC Communications
Schleuter, Christian
Schmidt, Mark
Schneider, Diane
Schueler, Deborah
Sciacca, Lydia
Skinner, David
SC–AR—South Carolina Association of Realtors
Sprecher, Steve
Stanley, Kenneth
Sterling Jewelers
Stonebridge—Stonebridge Life Insurance Co.
Strang, Wayne
Tekula, Joseph
Thomas, William
Titchell, Sharon
Traylor—Traylor Communications
Trentacosta, Theresa
Trimble, Robert
Van Diver, Karen
Venegas, Pedro
Verbel, Joshua
Verizon
Vosgerichian, Gary
Waite, Rachel
Walker, Marti
Wankel, Janice
Warchol, Robert
Weber, Cathy
Weisinger, Mimi
Wessel, Mary Ann
Willoughby, David
Wine, Randolph
Wojciechowicz, David
Wojciechowicz, Laura
Ziskind, Ross

[FR Doc. 04–6830 Filed 3–26–04; 8:45 am]

BILLING CODE 6750–01–P

Federal Register

Monday,
March 29, 2004

# Part IV

# Department of Labor

## Office of Labor-Management Standards

**29 CFR Part 470**

**Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees; Final Rule**

**DEPARTMENT OF LABOR**

**Office of Labor-Management Standards**

**29 CFR Part 470**

**RIN 1215–AB33**

## Obligations of Federal Contractors and Subcontractors; Notice of Employee Rights Concerning Payment of Union Dues or Fees

**AGENCY:** Office of Labor-Management Standards, Employment Standards Administration, Labor.

**ACTION:** Final rule.

**SUMMARY:** The Office of Labor-Management Standards (''OLMS'') is publishing this final rule to implement Executive Order 13201, which was signed by President George W. Bush on February 17, 2001. The final rule contains minor changes made as a result of comments received regarding the notice of proposed rule-making (''proposed rule'' or ''NPRM'') published on October 1, 2001. *See* 66 FR 50010.

Executive Order 13201 (''the Executive Order,'' ''the Order,'' or ''EO 13201'') requires non-exempt government contractors and subcontractors to post notices informing their employees that under Federal law, those employees have certain rights related to union membership and use of union dues and fees. The Order also provides the text of contractual provisions that Federal Government contracting departments and agencies must include in every government contract, except for collective bargaining agreements and contracts for purchases under the Simplified Acquisition Threshold. These provisions include the language of the required notices, and explain the sanctions, penalties, and remedies that may be imposed if the contractor or subcontractor fails to comply with its obligations under the Order. Covered government contractors and subcontractors must include these same provisions in their nonexempt subcontracts and purchase orders, so that the provisions will be binding upon each subcontractor or vendor.

The final rule provides the text of the required contractual provisions, explains exemptions, and sets forth procedures for ensuring compliance with the Order; it also contains other related requirements.

**EFFECTIVE DATE:** April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Don Todd, Deputy Assistant Secretary for Labor-Management Programs, Office of Labor-Management Standards, Employment Standards Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, 202–693–0122 (voice) (this is not a toll-free number) or 800–877–8339 (TTY/TDD). Copies of this final rule, including copies in alternative formats, may be obtained by calling OLMS at 202–693–0123 (voice) or 800–877–8339 (TTY/TDD).

**SUPPLEMENTARY INFORMATION:** The preamble to the final rule is organized as follows:

I. Background—provides a brief description of the development of the final rule, including a list of documents connected to the rule that OLMS has published

II. Authority—cites the legal authority supporting the final rule, Departmental redelegation authority, and interagency coordination authority

III. Overview of the Rule—summarizes pertinent aspects of the regulatory text, including a section-by-section analysis that discusses any comments received about each section and explains any changes made to the text as a result of those comments.

IV. Regulatory Procedure—sets forth the applicable regulatory requirements.

### I. Background

As described in detail in the preamble to the NPRM, Executive Order 13201 (66 FR 11221, February 22, 2001) is designed to promote economy and efficiency in government procurement by requiring government contractors to inform their workers that Federal labor laws give those workers certain rights related to union membership and use of union dues and fees. The Order provides the text of a contract clause that government contracting departments and agencies must include in all nonexempt government contracts and subcontracts. That clause requires contractors to post a notice, the exact language of which is included in the clause. The clause also requires contractors to include the same clause in their nonexempt subcontracts and purchase orders, and describes generally the sanctions, penalties, and remedies that may be imposed if the contractor fails to satisfy its obligations under the Order and the clause.

The text of the notice informs employees that they cannot be required to join, or maintain membership in, a union in order to keep their jobs; that under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay dues and fees to the union; and that, even where such union-security agreements exist, employees who are not union members can only be required to pay their share of union costs relating to certain specific activities. The notice also provides a general description of the remedies to which employees may be entitled if these rights have been violated, and provides contact information for further information about those rights and remedies.

In April 2001, the Department of Labor (''DOL'' or ''the Department'') issued an Interim Procedural Notice (''IPN'') to provide guidance to contractors and subcontractors about how to comply with Executive Order 13201 pending the publication of a final rule implementing the Order. 66 FR 19988 (April 18, 2001). The IPN authorized covered contractors to fulfill their posting obligations under the Order by replicating the text of the notice set forth in the Order and posting it in conspicuous places in and about their plants and offices, including all places where notices to employees are customarily posted.

As noted above, OLMS published an NPRM on October 1, 2001, proposing regulations to implement Executive Order 13201. *See* 66 FR 50010. The NPRM set a deadline of November 30, 2001, for receipt of public comments about the proposed rule. However, because of anthrax-related problems with mail delivery, OLMS published a notice in the **Federal Register** on December 18, 2001, listing the six commenters from whom comments had been received by the deadline, and asking any other commenters who might have submitted comments via U.S. mail before the deadline to supply duplicate copies of such comments. 66 FR 65163. The notice set a deadline of January 2, 2002, for receipt of such duplicate copies. Two additional sets of comments were received. However, neither set appeared to be a duplicate copy of comments submitted before the original deadline; rather, both sets appeared to be new comments. As a result, the Department determined that these comments would not be analyzed and considered in the development of this final rule. The six timely comments that were analyzed and considered came from various nonprofit, public policy, and trade association groups, as well as a group of Members of Congress. No comments were received from labor unions.

As described in detail in the NPRM, Executive Order 13201 contains requirements similar, but not identical, to those included in Executive Order 12800, issued on April 13, 1992, by then-President George H. W. Bush. *See* 57 FR 12985 (April 14, 1992); 57 FR 13413 (April 16, 1992). Executive Order

12800 was revoked on February 1, 1993, by Executive Order 12836. 58 FR 7045 (published February 3, 1993). Both Executive Orders were, and the provisions of this final rule are, intended to inform employees of their rights under the decisions of the United States Supreme Court in *Communications Workers of America* v. *Beck*, 487 U.S. 735 (1988), and related cases. As a result, the final rule is sometimes referred to as the *Beck* rule, and the rights articulated in the decision are referred to as *Beck* rights.

In *Beck*, the Court held that a union may not use fees and dues that it collects from bargaining unit employees who have not joined the union to finance activities that are not ''germane'' to the union's representational purposes over the objection of such employees. Examples of activities the Court considered ''germane'' include collective bargaining, contract administration, and grievance adjustment. *Beck*, 487 U.S. at 745, 760.

Soon after it was signed into law, Executive Order 13201 was challenged in court on two grounds: first, that it was preempted by the National Labor Relations Act, and second, that the President lacked sufficient authority to issue the Order. *See UAW–Labor Employment and Training Corp.*, et. al. v. *Chao*, 2002 WL 21720, 145 Lab. Cas. P. 11,166 (D. D.C. 2002). Although the U.S. District Court for the District of Columbia found that the Order was preempted by the National Labor Relations Act and issued a permanent injunction barring enforcement of the Order, that decision was appealed to the U.S. Court of Appeals for the District of Columbia, which reversed the District Court. *See UAW–Labor Employment and Training Corp.*, et. al. v. *Chao*, 325 F. 3d 360 (D.C. Cir. 2003), *reh'g denied*, No. 02–5080 (Sept. 11, 2003).

## II. Authority

### *A. Legal Authority*

The legal authority for this final rule is Executive Order 13201, issued pursuant to the Constitution and laws of the United States, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, now codified as amended at 40 U.S.C. 101 *et seq.*

### *B. Departmental Authorization*

Section 1(b) of Executive Order 13201 delegates responsibility for the administration and enforcement of the Order to the Secretary of Labor, and directs the Secretary to adopt rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of the Order. Section 9 of the Order authorizes the Secretary to delegate any function or duty under the Order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

Pursuant to that delegation authority, Secretary's Order 4–2001, effective May 24, 2001, and published in the **Federal Register** on May 31, 2001 (66 FR 29656), delegates and assigns responsibility for the administration and enforcement of E.O. 13201 to the Assistant Secretary for Employment Standards. The Assistant Secretary, in turn, has delegated general responsibility for the administration and enforcement of the Executive Order to the Deputy Assistant Secretary for Labor-Management Programs. Under this delegation, the Deputy Assistant Secretary for Labor-Management Programs has specific responsibility for granting and withdrawing exemptions and waivers under this part, and for referring for administrative enforcement cases against contractors that have been found to have violated the provisions of the Order or this part.

The Assistant Secretary has conveyed responsibility for conducting compliance evaluations and complaint investigations under the Order and this part to the Deputy Assistant Secretary for Federal Contract Compliance.

### *C. Interagency Coordination*

DOL is coordinating with the Civilian Agency Acquisition Council regarding the amendment of the Federal Acquisition Regulation (FAR) at 48 CFR parts 22 and 55 to include language implementing the Executive Order.

## III. Overview of the Rule

The final rule is divided into three subparts. Subpart A, ''Preliminary Matters,'' contains definitions, the employee notice clause, and exemptions. Subpart B, ''Compliance Evaluations, Complaint Investigations, and Enforcement Procedures,'' addresses the three topics listed in the subpart's title. Subpart C, ''Ancillary Matters,'' addresses miscellaneous matters, such as which authority the Secretary of Labor is able to delegate under the Order and the rule, and which official will make rulings and interpretations under the rule.

All six commenters who submitted timely comments regarding the NPRM expressed general support for the Executive Order and the rule. One commenter called the rule ''an important and necessary step in rectifying unlawful practices and advising employees of their rights under Supreme Court decisions.''

The following section discusses the timely comments received regarding the NPRM, and explains the differences between the NPRM and this final rule.

### *Section-by-Section Analysis of Comments and Revisions*

Subpart A—Preliminary Matters

#### *Section 470.1 What Definitions Apply to This Part?*

One commenter suggested that to improve clarity, each of the definitions within this section should have an identifying letter. We concur that each definition should be identified. Accordingly, we are accepting this comment, and designating each definition in this section by letter.

*Definition of ''collective bargaining agreement'':* Section 470.2(a) states that only certain contracts, including certain collective bargaining agreements as defined in section 470.1, are exempt from the requirements of the final rule. Section 2(a) of Executive Order 13201 refers to the specific statutory definition of collective bargaining agreement as found in the Federal Labor Management Relations Act, 5 U.S.C. 7101 *et seq.* (*see, e.g.*, 5 U.S.C. 7103(a)(8): ''collective bargaining agreement means an agreement entered into as a result of collective bargaining pursuant to this chapter''). The proposal attempted to list the key elements of the collective bargaining process by summarizing the relevant provisions of the Federal Labor Management Relations Act, specifically those found in 5 U.S.C. 7114, Representative Rights and Duties. While this summary provides a general framework for this process, it is not all-inclusive. Therefore, in order to avoid any possible confusion which may result from only a partial listing of the steps involved in the development of a collective bargaining agreement, and in order to maintain consistency with section 2(a) of the Executive Order, we are striking the definition of the term in § 470.1 and amending § 470.2(a) so that it references the same definition cited in the Executive Order. Accordingly, the definition of ''collective bargaining agreement'' in § 470.1 has been deleted, and § 470.2(a) has been amended to reference the definition of ''collective bargaining agreement'' in 5 U.S.C. 7103(a)(8) rather than § 470.1.

*Definition of ''subcontractor'':* No change has been made to this definition. This note is intended to clarify that in the Department's view, the term includes the ''vendors'' referred to in section 4 of the employee notice clause set forth in section 470.2.

*Definition of ''union-security agreement'':* Two commenters submitted comments regarding this definition. One commenter suggested that, to avoid any unnecessary confusion, the phrase ''and/or fees'' be added to the definition following the phrase ''uniform periodic dues.'' We agree that the suggested addition would clarify the definition, and have added the suggested phrase.

Another commenter suggested that the definition be revised to define the term as ''an agreement entered into between a contractor and a labor organization, whether written, oral, or understood, which requires certain employees of the contractor to acquire union membership or any incident of union membership, or to provide any union any financial support, as a condition of employment.'' However, the definition of the term that was included in the proposed rule more closely tracks the description of union security agreements in section 2(a) of the Executive Order. We therefore decline to adopt the suggested revision.

*Definition of ''United States'':* One commenter suggested that this definition be broadened by adding the clause ''and all other territories or possessions belonging to the United States of America.'' Such a definition would be inconsistent with the definition of the term used in other Department regulations. *See, e.g.*, Department of Labor, Office of Federal Contract Compliance Programs, Obligations of Contractors and Subcontractors, 41 CFR 60–1.3 (August 19, 1997) (definition of ''United States''). We have retained the definition used in the NPRM.

*Section 470.2 Under the Executive Order, What Employee Notice Clause Must Be Included in Government Contracts?*

*Paragraph 470.2(a), required employee notice poster:* One commenter suggested that DOL add a pull-off pamphlet to the bottom of the required poster, and that both the poster and the pamphlet should contain the Internet address of a new Web page that DOL should create. According to the commenter, both the pamphlet and the Web page should contain basic legal advice to help employees navigate their way through the *Beck* rights-related procedures of unions and the National Labor Relations Board (NLRB). The commenter further suggested that the new DOL Web page should include form letters, requests, and similar documents that could be downloaded and used by employees seeking to enforce their *Beck* rights, and that the required employee notice poster should be downloadable in Adobe Acrobat ''PDF'' format from the page.

We agree that a special Web page, devoted to Executive Order 13201 and the rights of employees under the Order and the final rule, is a good idea. We intend to create such a page on the Office of Labor-Management Standards Web site at *www.olms.dol.gov,* and will provide downloadable versions of the employee notice poster on the page. However, the addition of a pull-off pamphlet to the poster, which will be printed and distributed by DOL, would greatly add to the cost and difficulty of production of the poster. In addition, the purpose of the Executive Order is not to encourage or assist workers in exercising rights they have under the Supreme Court's decision in *Beck*, but to inform them of the existence of such rights. The employee notice poster will provide the headquarters and Web site address for the National Labor Relations Board, the agency entrusted with the enforcement of these rights, for the benefit of workers who need such assistance. The employee notice poster will also include a toll-free general information number recently announced by the General Counsel of the National Labor Relations Board.

*Paragraph 470.2(a), language of poster and of required contract clause:* The same commenter suggested a number of changes to the language of the required employee notice poster and contract clause. In our view, however, the wording of both the poster and the contract clause, as specified in the Executive Order itself, adequately reflect the President's intentions in issuing the Order. Therefore, we decline to make the changes requested by the commenter.

*Paragraph 470.2(a), pass-through requirement:* One commenter opposed the requirement that contractors pass on to their subcontractors the requirement of including the employee notice clause in subcontracts and purchase orders. This commenter was concerned about the expense a contractor will allegedly be required to incur in making changes to forms for supplier agreements, purchase orders, and other contracts, and suggested that section 3 of the Executive Order authorizes the Secretary of Labor to issue regulations exempting contractors from the pass-through requirement.

We disagree with the commenter's interpretation of the language of section 3. The intent of the Order was clearly that the clause be passed to subcontractors below the first tier; otherwise, there would be no reason for the provision in section 3(b)(v) of the Order that authorizes the Secretary to exempt from the provisions of section 2 ''subcontracts below an appropriate tier set by the Secretary.'' Further, such a blanket exemption would be inconsistent with procedures of Executive Order 11246, upon which these regulations are based. Like E.O. 13201, E.O. 11246 authorizes exemption for contractors below a specified tier; however, that authority has not been incorporated in regulations. The Department's experience with this regulatory framework has demonstrated the absence of a tier-based exemption is not unduly burdensome and best achieves the purpose of the Executive Order. In addition, a contractor need not incur the expenses cited by the commenter; nothing in the Order or the regulations precludes a contractor from simply adding a page that contains the required contract clause to supplier agreements, purchase orders, and other similar documents. The expense of adding such a page would be nominal. We therefore decline to adopt the commenter's suggestion.

*Section 470.3 What Contracts Are Exempt From the Employee Notice Clause Requirement?*

*Paragraph 470.3(c), exemption of specific contracts when special circumstances in the national interest so require:* One commenter suggested that a sentence be added to this paragraph specifying that ''[r]equests for such exemptions are strongly discouraged, and there is a high burden on the requester to demonstrate that such special circumstances exist.'' The same commenter suggested that the phrase ''special circumstances in the national interest so require'' is overly vague, and suggested that a ''narrow definition'' of the phrase or an example of its operation be added to the paragraph. We believe that the language from the proposed rule provides the Deputy Assistant Secretary with the necessary flexibility to make case-by-case determinations regarding whether such an exemption should be granted in a particular instance, and therefore decline to adopt the suggested amendment.

*Section 470.4 What Contractors or Facilities Are Exempt From the Posting Requirements?*

*Paragraph 470.4(a), number of employees:* One commenter suggested that the exemption in this paragraph of the proposed regulations for contractors with fewer than fifteen (15) employees be eliminated. Another commenter suggested that the exemption be limited to contractors with two (2) employees,

the minimum number of employees that the National Labor Relations Board would certify as a bargaining unit to be represented by a labor organization.

As indicated in the preamble to the NPRM implementing Executive Order 13201, the proposed and final rules implementing the predecessor order, Executive Order 12800, provided an exemption for contractors with fewer than fifteen (15) employees. *See* 57 FR 33406 (July 24, 1992), 57 FR 49596 (November 2, 1992). The preamble to the 1992 NPRM explained that the exemption threshold of fifteen employees was ''consistent with that under Title VII of the Civil Rights Act of 1964, as amended, and the eventual threshold under Title I of the Americans with Disabilities Act.'' *See* 57 FR 33404.

Section 3(b) of Executive Order 13201 authorizes the same exemption for ''numbers of workers below appropriate thresholds set by the Secretary'' as did section 3(b) of Executive Order 12800. In the absence of any indication to the contrary in Executive Order 13201, or any significant change in the law since 1992, we believe that it is consistent with the intention of Executive Order 13201 to provide the same exemption as was provided by the final rule implementing Executive Order 12800. In addition, as noted in the preamble to the 1992 NPRM, the fifteen-employee threshold is consistent with that of other significant Federal laws governing the workplace. Therefore, we have decided to retain the exemption for contractors with fewer than fifteen (15) employees.

*Paragraph 470.4(b), union representation:* One commenter noted that in situations (particularly construction projects) involving a prime contractor and a number of subcontractors, ''the prime contractor typically posts the notices to employees required by law on construction sites at a central location, rather [than] have each subcontractor establish its own [posting] system.'' The same commenter noted that ''mixed'' worksites are also common in the construction industry. On these sites, both union shop and open shop contractors perform work at the same time; such situations arise, according to the commenter, when the prime contract is awarded to an open shop prime contractor that then subcontracts to union shop firms, or vice versa. The commenter suggested that the language of this paragraph be amended to clarify the responsibilities of prime contractors and subcontractors in such situations, as follows: ''The posting requirement does not apply to contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees.'' We agree with the commenter's concerns and have adopted this suggestion.

*Paragraph 470.4(c), State law:* This paragraph provides that the posting requirement does not apply to contractor establishments or construction work sites in jurisdictions where State law forbids enforcement of union-security agreements. One commenter suggested that the paragraph be amended to clarify whether this exemption applies in facilities located in areas considered to be Federal enclaves. Upon consideration, we have concluded that amending the regulatory language to discuss each of the various types of Federal enclaves is not appropriate because the critical question here is not whether or not an entity is a Federal enclave, but whether or not State law applies to that entity. We note that we do not intend the exemption in this paragraph to apply to facilities located in Federal enclaves, or portions thereof, that fall entirely under Federal jurisdiction. By contrast, the exemption will apply to any facilities located in Federal enclaves, or portions thereof, that fall under concurrent Federal and State jurisdiction in States that have prohibited union-security agreements. Whether or not State law applies to a particular Federal enclave depends on a number of factors, including the extent of authority ceded by the State to the Federal government over that jurisdiction, and therefore is a question to be considered on a case-by-case basis. *See, e.g., Department of Labor and Industries of the State of Washington* v. *Dirt & Aggregate, Inc.,* 837 P.2d 1018, 1020–21 (Wash. 1992) (scope of Federal jurisdiction over land ceded by State to Federal government is governed by terms of cession agreement); *cf. Goodyear Atomic Corp.* v. *Miller*, 108 S. Ct. 1704 (1988) (application of State law to government owned, contractor operated facility not permitted unless Congress has clearly authorized such regulation).

Another commenter suggested that the same paragraph should be expanded to include non-State jurisdictions such as Guam, which recently enacted a right-to-work law. This commenter proposed that the phrase ''or local'' be inserted in the regulatory language after the word ''State.'' The proposed revision, however, would exempt a far broader spectrum of employers than the commenter apparently intends, including those located in municipal jurisdictions that preclude enforcement of union-security agreements. As a result, we have addressed the issue by adding a clarification of the meaning of the term ''State,'' as applied in this paragraph, to the end of the paragraph.

*Paragraph 470.4(d), work not performed under government contracts:* Two commenters asked that the exemption in this paragraph for work not performed under a government contract be eliminated. One of these commenters argued that ''[s]uch discrimination against employees is unconscionable.'' It is important to understand, however, that the employee notice does not confer *Beck* rights on employees; all employees subject to the National Labor Relations Act who are covered by a union security agreement have such rights. The notice is merely intended to ensure that employees of government contractors are informed about those rights.

The other commenter advocating for elimination of the exemption contended that the Department had underestimated the cost of requesting an exemption in writing for work not performed under a government contract, and that the economic impact of the proposed waiver provision would increase the cost burden on employers and the public so much that the costs of the provision would greatly exceed the benefits. A third commenter also believed that the Department had underestimated the cost of preparing a written request for an exemption, but asked only that the requirement of the written request be removed, so that the provision would be self-executing. This commenter noted that the preamble to the NPRM contained no explanation of the rationale for imposing the requirement.

In response to these comments, we have recalculated the cost of preparing such written requests. The results of this recalculation are described below in the ''Paperwork Reduction Act'' discussion in section IV. Despite this recalculation, we have concluded that the exemption should be retained. Government contractors are already required, under at least three other Federal laws administered by the Deputy Assistant Secretary for Federal Contract Compliance, to submit written requests for exemptions from the application of such laws for facilities that are separate and distinct from activities of the contractor related to the performance of a contract. *See* 41 CFR 60–1.7(b)(2) (applying the same exemption under Executive Order 11246); 41 CFR 60–741.4(b)(3) (applying the same exemption under section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793); 41 CFR 60–250.4(b)(3) (applying the same exemption under the Vietnam Era Veterans' Readjustment

Assistance Act, 38 U.S.C. 4212). Eliminating the requirement of a written request for an exemption would result in inconsistent obligations for government contractors, and inconsistent enforcement of laws applying to government contractors.

Subpart B—Compliance Evaluations, Complaint Investigations, and Enforcement Procedures

*Section 470.10 How Will the Department Determine Whether a Contractor Is In Compliance With the Executive Order and This Part?*

*Paragraph 470.10(a), compliance evaluations:* This paragraph provides that the Deputy Assistant Secretary for Federal Contract Compliance may conduct a compliance evaluation to determine whether a contractor holding a nonexempt contract is in compliance with the requirements of part 470. One commenter asked that the language of this paragraph be amended to replace ''may'' with ''will,'' in effect requiring the Deputy Assistant Secretary to conduct a compliance evaluation of all covered contractors and subcontractors in all cases. Section 4 of the Order, however, provides that the Secretary ''may investigate'' any government contractor, subcontractor, or vendor to determine whether the Order has been violated. Thus, the Executive Order confers discretion on the Secretary to make the determination whether a particular investigation is the best course of action under all the circumstances. The Department seeks to retain this discretion in the regulations and as such, we decline to adopt this suggested change.

*Paragraph 470.10(b), contents of compliance evaluations:* This paragraph describes the determinations that the Office of Federal Contract Compliance Programs (''OFCCP'') will make during compliance evaluations. The same commenter who asked for the change to the previous paragraph proposed that the language of subparagraph (b)(1) of this paragraph be amended. The proposed amendment would require OFCCP to determine that the contractor has posted ''accurate, correct, and unmarred'' employee notices in ''many'' conspicuous places. This comment addresses the notices contractors must post and the locations where they must be posted; those matters are governed not by this subparagraph, but by the mandatory contract clause set forth in section 470.2(a). The purpose of a compliance evaluation is simply to determine whether a contractor or subcontractor is complying with its legal obligations, not to impose additional obligations. Moreover, even assuming that this subparagraph were the appropriate place to make the suggested amendments, those amendments would impose requirements regarding the employee notice poster that extend well beyond the requirements imposed by laws enforced by DOL regarding other mandatory posters. We therefore decline to adopt the suggested amendment.

The same commenter suggested that, for clarity, the phrase ''under 470.2(a)'' be added to the same subparagraph, following the word ''notice.'' We concur with the commenter's suggestion that additional language referring to 470.2(a) would clarify the subparagraph, and have added such language.

Finally, the same commenter suggested that the subparagraph be amended to require that the notice be posted in ''all'' of the contractor's establishments and/or worksites. We decline to adopt this change, for the reasons set forth in the above discussion of section 470.4(d) regarding the elimination of the requirement to request an exemption in writing for work not performed under government contracts. Under other laws enforced by DOL, government contractors are not required to post notices in facilities that are exempt from the application of the law because the work performed at the facility is not related to the performance of a Federal contract. Therefore, adopting the suggested amendment for this rule would result in inconsistent obligations for government contractors, and inconsistent enforcement of laws applying to government contractors.

*Paragraph 470.10(c), results of compliance evaluation:* This subparagraph lists the required contents of the evaluation record. The same commenter suggested that, for clarity, the phrase ''under Section 470.13'' be added at the end of the subparagraph, following the phrase ''enforcement recommended.'' We agree that the suggested phrase would improve the clarity of the sentence, and have adopted the suggestion.

*Section 470.11 What Are the Procedures for Filing and Processing a Complaint?*

*Paragraph 470.11(a), filing complaints:* This paragraph explains who is entitled to file complaints alleging violations of the Executive Order and/or part 470, and where such complaints should be filed. One commenter suggested that the word ''complainant'' be added in parentheses after the word ''employee'' in the paragraph. We agree with the commenter that the regulatory language should be amended to clarify that an employee who files a complaint is called a ''complainant,'' but we have elected to make that clarification by amending the language of paragraph 470.11(b) instead of this paragraph.

*Paragraph 470.11(c), referrals:* This paragraph as drafted in the Notice of Proposed Rulemaking carried over a Departmental practice from the 1992 ''Beck final rule'' to refer complaints alleging use of union dues or fees for purposes unrelated to a collective bargaining agreement, and/or seeking a refund or future adjustment of such dues or fees, to the National Labor Relations Board or other appropriate agency. *See* 57 FR 49588, 49594 (Nov. 2, 1992). We are striking this section in its entirety to ensure that unfair labor practice charges will reach the NLRB in a timely manner.

The National Labor Relations Board requires complainants to file unfair labor practice charges with it directly and within 6 months of the alleged unfair labor practice. The referral of information regarding an alleged misuse of union dues from the Department of Labor, however, does not fulfill the NLRB's filing requirements. In order to avoid potential confusion regarding the proper procedures for filing unfair labor practice charges, and to ensure that complainants are able to file such charges in advance of the expiration of the statute of limitations, we are striking any reference to referrals by the Department of Labor to the NLRB.

One commenter suggested that in addition to making such referrals, DOL should use a special E.O. 13201-related Web page, referred to above in the discussion of paragraph 470.2(a), to provide employees with detailed step-by-step information about how to obtain refunds of union dues and/or fees under Beck. The purpose of the Executive Order is not to encourage or assist workers in exercising rights they have under the Supreme Court's decision in Beck, but to inform them of the existence of such rights. Accordingly, the employee notice poster will provide the headquarters and Web site address for the National Labor Relations Board, the agency entrusted with the enforcement of these rights, for the benefit of workers who need such assistance. Paragraph 470.11(d) has been redesignated as paragraph 470.11(c).

*Sec. 470.12 What Are the Procedures To Be Followed When a Violation Is Found During a Complaint Investigation or Compliance Evaluation?*

One commenter suggested that both this section and the following section be amended to require that the time period

for the Department's efforts to seek compliance with E.O. 13201 and part 470 through conciliation be limited to ten days, not including weekends and Federal holidays. We decline to adopt the proposed amendments. The length of time devoted to conciliation should be based on the facts of each case and the likelihood that a voluntary agreement may be achieved. Conciliation efforts that last for ten days may nevertheless result in compliance through continued efforts. The Department does not want to impose an artificial deadline that would preclude successful conciliation. Further, a mandatory deadline is not necessary to ensure expeditious resolution of violations. The Department is authorized to suspend unproductive conciliation efforts at any time and institute enforcement proceedings. The Department declines to impose a mandatory deadline for termination of conciliation efforts but will, however, attempt to resolve violations as expeditiously as possible.

*§ 470.13 Under What Circumstances, and How, Will Enforcement Proceedings Under the Executive Order Be Conducted?*

*Paragraph 470.13(a), general provisions:* One commenter asked that subparagraph (1) of this paragraph, which provides that ''[v]iolations of the Executive Order may result in administrative proceedings to enforce the Order,'' be amended to require that such violations ''will'' result in such proceedings. Enforcement agencies are generally vested with broad prosecutorial discretion in determining which matters are litigation worthy. Such determinations are based on a complicated balancing of a number of factors, including considerations of available resources, likelihood of success on the merits, whether violations are technical or substantial, the number, and the merits of, cases with similar or more egregious violations, overall agency policies, and competing Department-wide priorities. Although the Department will vigorously enforce the Executive Order,the proposed amendment would inappropriately eliminate the Department's prosecutorial discretion to determine whether administrative proceedings are suitable in a given case. We therefore decline to adopt the proposed amendment.

*Paragraph 470.13(b)(2), administrative enforcement proceedings:* This subparagraph as written in the NPRM provided that proceedings would be conducted in accordance with the rules for expedited proceedings at 29 CFR 18.42 unless otherwise provided by the Office of the Solicitor in its complaint. As a general matter, hearings in Departmental programs are not automatically subjected to expedited proceedings. Accordingly, we are amending this procedural rule to eliminate this ''presumption'' of expedited proceedings. *See, e.g.*, procedures for administrative proceedings to enforce Executive Order 11246 at 41 CFR part 60–30. We are deleting paragraph (b)(2), the effect being that non-expedited hearing procedures will be followed unless otherwise elected in accordance with the rules for expedited proceedings at 29 CFR 18.42.

As a result of this action, paragraph (b)(3) is redesignated as paragraph (b)(2); paragraph (b)(4) is redesignated as paragraph (b)(3); and paragraph (b)(5) is redesignated as paragraph (b)(4).

*Paragraph 470.13(b)(4), administrative enforcement proceedings:* This subparagraph explains the circumstances under which the Assistant Secretary for Employment Standards will issue a final administrative order in proceedings under section 470.13, and provides that where the Assistant Secretary has found violations, the final administrative order ''may'' order several specific actions. The same commenter that suggested an amendment to paragraph 470.13(a), as discussed above, also proposed that the word ''may'' in this subparagraph be replaced by ''will.'' The Department is persuaded that once it is established that a violation has occurred, appropriate relief should be ordered. The Department does not believe that it would ever be appropriate to not issue an order upon a finding of a violation. Further, the number and kinds of orders that may be imposed is sufficiently great that the Assistant Secretary will have the flexibility needed to ensure that there will be a suitable resolution for each violation, despite the variations in facts that may be presented in these cases. In light of this change, the paragraph has also been amended to phrase the list of appropriate orders in the disjunctive, so as to avoid the impression that all possible orders, sanctions, and remedies must be imposed upon the finding of a violation. The paragraph has also been amended to clarify that the Assistant Secretary may impose one or more kinds of orders.

*Section 470.14 What Sanctions and Penalties May Be Imposed for Noncompliance, and What Procedures Will the Department Follow in Imposing Such Sanctions and Penalties?*

This paragraph requires the Department to consult with the affected contracting agencies. Pursuant to DOL practice, that consultation would take place after a decision on the merits has been issued and before the Department imposes sanctions or penalties. We have amended the regulatory text in this paragraph to clarify that procedural point.

*Paragraph 470.14(c):* This paragraph lists the circumstances under which sanctions and penalties will not be imposed on a contractor that has violated the Order or part 470. The commenter suggested that the word ''will'' in this paragraph be replaced by ''may.'' This amendment would permit the Assistant Secretary to impose sanctions and penalties even in the listed situations. However, sections 5(b) and 6(a) and (b) of E.O. 13201 preclude the Department from imposing sanctions and penalties in these situations. The proposed amendment therefore exceeds our authority, and is not adopted.

*Paragraph 470.14(d):* This paragraph and its subparagraphs (1) and (2) list possible actions that the Assistant Secretary may take in enforcing the Executive Order and part 470. The commenter suggested that the word ''may'' in the paragraph be replaced by ''will,'' in effect requiring the Assistant Secretary to take all of the actions listed in subparagraphs (1) and (2) in every case. Section 6 of the Executive Order vests the Secretary with discretion to impose or not impose a number of different sanctions, and that authority has been delegated to the Assistant Secretary. The commenter's suggestion would require the Assistant Secretary to treat willful violations the same as inadvertent violations, egregious violations the same as minor ones, and repeat offenders like first-time offenders. This inflexibility would not result in fair and evenhanded disposition of cases, and would thus not further the purposes of the Executive Order. Requiring that the Assistant Secretary take one or all of these actions would circumscribe her discretion in a manner inconsistent with the Executive Order. Therefore, we decline to adopt the proposed amendment.

*Subparagraph 470.14(d)(2):* This subparagraph permits the Assistant Secretary to issue an order of debarment providing that ''one or more'' agencies must refrain from entering into further

contracts, or extensions or other modification of existing contracts, with any noncomplying contractor. The commenter proposed that the language of the subparagraph be amended to require the Assistant Secretary to order ''all'' contracting agencies to refrain from contracting with a contractor. However, the ''one or more'' language is taken directly from section 6(b) of the Executive Order. We therefore decline to adopt the proposed amendment.

*Paragraph 470.14(f):* This paragraph requires the Assistant Secretary to publish and distribute to all executive agencies a list of contractors that are ineligible for future contracts and subcontracts because they have failed to comply with E.O. 13201 or part 470. The language of the paragraph requires the Assistant Secretary to publish and distribute the list ''[p]eriodically.'' The commenter proposed that the paragraph be revised to require that the list be published and distributed ''monthly,'' and that a new paragraph (g) be added to require the Assistant Secretary to publish the list in the **Federal Register**. We decline to adopt the proposed revisions. Use of the term ''periodically'' permits the Assistant Secretary to use his or her discretion to publish the list as often as he or she deems necessary, whether weekly, monthly, or less often. Similarly, the language of paragraph 470.14(f) permits the Assistant Secretary to publish the list in the **Federal Register** if he or she believes that such publication is necessary or appropriate.

Subpart C—Ancillary Matters

*Section 470.22 What Actions May the Assistant Secretary Take in the Case of Intimidation and Interference?*

One commenter suggested that we amend this section to ensure that the phrase ''no person intimidates, threatens, or coerces any individual'' is ''given the broadest definition possible.'' To accomplish this goal, the commenter suggested two changes to the section: first, that a ''very broad definition or example'' be added to explain the phrase, and second, that language be added to the section that would require the Department to ''give the broadest meaning possible to this phrase.'' We decline to adopt either of these suggestions. The Department intends to follow applicable caselaw in interpreting the relevant language; it is therefore unnecessary to address the matter in further detail in these regulations.

General Issues

One commenter raised the concern that the posting requirement for contractors and subcontractors covered by the Railway Labor Act (''RLA'') appears duplicative of a posting requirement imposed by the National Mediation Board, which, according to the commenter, advises employees of their rights to join or refrain from joining a union. This commenter acknowledged that the Executive Order does not appear to exempt RLA employers from the posting requirement, even if they have similar posters in place. Nonetheless, the commenter urged the Department to ''consider the apparently duplicative posting requirement, especially in any compliance and enforcement proceedings.''

The language of the Executive Order clearly contemplates that contractors and subcontractors governed by the RLA will be subject to the requirement of posting the employee notice poster set forth in section 2(a) of the Order. Given the President's clear intent to include such employers, the Department has no authority to exempt them, on the basis of RLA coverage alone, from the posting requirements, or from sanctions and penalties resulting from noncompliance. Moreover, the National Mediation Board posting referenced by the commenter is not duplicative of the notice at issue in these regulations. The National Mediation Board posting requires employers to post a notice to employees when an application for representation has been filed with the National Mediation Board. That notice to employees excerpts a portion of the Railway Labor Act discussing employees' right to select representatives without influence or interference, and includes a short statement concerning employees' rights to choose or not to choose union representation. It does not discuss, as the notice at issue here does, union security agreements and non-union members' rights to object to the use of their agency fees for certain purposes.

## IV. Regulatory Procedures

*Executive Order 12866*

As noted in the preamble to the NPRM, this rule constitutes an ''other significant regulatory action'' within the meaning of Executive Order 12866. As such, this rule is subject to review by the Office of Management and Budget. However, the Department has determined that this rule will not have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Therefore, the Department has concluded that this final rule is not ''economically significant'' as defined in section 3(f)(1) of E.O. 12866. As a result, the cost-benefit analysis called for under section 6(a)(3)(C) of the order is not required.

No commenter disagreed with the Department's ultimate determination that the implementation of the rule would not have an annual effect on the economy of $100 million or more. However, two commenters disagreed with the cost-benefit analysis published in the NPRM. As a result, the Department recalculated the analysis, using the highest figures suggested by the commenters, to determine whether the annual effect on the economy could exceed $100 million if all of the commenters' assumptions were correct. The recalculated cost of the rule remained significantly below the $100 million threshold requirement for a formal cost-benefit analysis. Therefore, the recalculation affirms the Department's conclusion that this final rule is not ''economically significant'' as defined in section 3(f)(1) of Executive Order 12866, and that consequently, a formal regulatory economic analysis, as described under section 6(a)(3)(C) of Executive Order 12866, is unnecessary.

Executive Order 12866 requires agencies to assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating and, to the extent feasible, to specify performance objectives, rather than specifying the behavior or manner of compliance. Executive Order 13201 speaks with great specificity. The Order makes the Secretary responsible to implement the Order, and requires the Secretary to adopt rules and regulations deemed necessary and appropriate to achieve the purpose of the Order. The Order contains specific language that must be included in nonexempt contracts, and provides the Secretary with authority to exempt an agency from the Order if special circumstances require an exemption to serve the public interest. The Order provides that the Secretary may exempt certain classes of contracts that fall in five enumerated categories, and to exempt ''separate and distinct'' facilities. The Secretary is authorized to conduct investigations, receive complaints, hold hearings, and impose sanctions. Upon a finding of a violation, the Order permits the Secretary to direct that an agency cancel, terminate or suspend a contract, or continue a contract conditioned upon future compliance. The Secretary may provide that an agency refrain from entering into contracts with noncomplying contractors, and publish

a list of contractors that have failed to comply with the Order. In light of the great specificity with which the Order sets forth both substantive and procedural requirements, the Order affords little in the way of alternatives to compliance directed rulemaking.

The Office of Management and Budget (OMB) has reviewed this final rule for consistency with the President's priorities and the principles set forth in E.O. 12866.

*Regulatory Flexibility Act*

This final rule will not substantially change existing obligations for Federal contractors; it will merely require certain contractors to post notices informing their employees of certain rights those employees already hold under Federal law, and to include clauses in contracts with subcontractors and vendors, requiring those subcontractors and vendors to post the same employee notices. Accordingly, we conclude that the final rule will not have a significant economic impact on a substantial number of small business entities. The Secretary of Labor has certified this conclusion to the Chief Counsel for Advocacy at the Small Business Administration. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), a regulatory flexibility analysis is not required.

*Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, Enhancing the Intergovernmental Partnership, this final rule does not include any Federal mandate that will result in increased expenditures by State, local, and tribal governments, or in increased expenditures by the private sector of more than $100 million in any one year.

*Paperwork Reduction Act*

Certain sections of this final rule, including §§ 470.2(b), 470.4(d), and 470.11(a) and (b), contain information collection requirements. As required by the Paperwork Reduction Act (PRA), the Department has submitted a copy of these sections to OMB for its review.

The final rule also requires contractors and subcontractors to post notices, investigate complaints, and, where appropriate, file requests for waivers. The application of the PRA to those requirements is discussed below.

The final rule imposes certain minimal burdens associated with the posting of the employee notice poster required by the Executive Order and § 470.2(a) of the rule. As noted in section 470.2(d), the Department will supply the poster, and contractors will be permitted to make and post exact duplicate copies thereof. Under the regulations implementing the PRA, ''[t]he public disclosure of information originally supplied by the Federal government to [a] recipient for the purpose of disclosure to the public'' is not considered a ''collection of information'' under the Act. 5 CFR 1320.3(c)(2). Therefore, the posting requirement is not subject to the PRA.

The final rule also imposes certain burdens associated with the filing and processing of a complaint on both the complainant and the contractor. We estimate, based on OFCCP's experience administering other laws applicable to Federal contractors, that it will take an average of 1.28 hours for a complainant to compose a complaint containing the necessary information, and to send that complaint to DOL. No comments were received that challenged this estimate of 1.28 hours in the Paperwork Package submitted to the Office of Management and Budget in 2001. We have used data from the Bureau of Labor Statistics National Compensation Survey: Occupation Wages in the United States (NCS), 2001 (Summary 02–05), the most recent survey available, to calculate the cost of these burden hours. The NCS Summary indicates that the average hourly wage for union workers during 2001 was $19.50 per hour. We therefore estimate that the cost to a complainant of filing a complaint under EO 13201 and this final rule will be $25.36, or $24.96 ($19.50 × 1.28) + .40 postage and envelope. We further estimate that 1,046 individual complaints will be filed each year under the Executive Order and this final rule. No comments were received that challenged this estimate of 1,046 complaints in the Paperwork Package submitted to the Office of Management and Budget in 2001. Therefore, we project that this collection of information will impose on employees who file complaints a total cost burden of $26,526.56 ($25.36 per complaint × 1,046 complaints).

With regard to the burdens for the contractor, the regulations implementing the PRA exempt from the requirements of the Act any information collection requirements imposed by an administrative agency during the conduct of an administrative action against specific individuals or entities. *See* 5 CFR 1320.4(a)(2). Once the agency opens a case file or equivalent about a particular party, this exception applies during the entire course of the investigation, before or after formal charges or complaints are filed or formal administrative action is initiated. 5 CFR 1320.4(c). Therefore, this exemption will apply to the Department's investigation of complaints alleging violations of the Order or this final rule.

Finally, § 470.4(d) of this final rule will permit a contractor to apply in writing for a waiver from the requirement to post the employee notice contained in § 470.2(a). Our analysis of the burdens that will be imposed on contractors as a result of this requirement is based upon several factors discussed in the cost-benefit analysis in the preamble to the NPRM. Various commenters submitted comments regarding each of these factors. The following is a review of each of the factors, the comments submitted on each factor, and the Department's reconsideration of that factor.

(a) The first factor considered in the analysis was the estimated number of yearly requests that OFCCP would receive from contractors seeking waivers from the obligations of E.O. 13201 for facilities not involved in performing work on a Federal contract. The Department developed its estimates for the NPRM based on estimates regarding the number of waiver requests received by OFCCP under Executive Order 11246, section 503 of the Rehabilitation Act of 1973, and section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act. These laws were selected because they apply to the same Federal contractors and subcontractors as does E.O. 13201, and because the regulations implementing these laws require the same written requests for exemption under the same circumstances as were provided in § 470.4(d) of the NPRM. 41 CFR 60–1.5(b)(2), 60–741.4(b)(3), 60–250.4(b)(3); *see* discussion above regarding paragraph 470.4(d).

In the NPRM, the Department estimated that one-tenth of one percent (.1%) of Federal contractors annually would be likely to submit requests for waivers under E.O. 13201. Based on an estimate that 200,000 supply, service, and construction contractors would be subject to the proposed rule, the Department estimated that 200 contractors per year (.1% of 200,000) would be likely to request a waiver under the rule. Two commenters objected to these estimates. Both commenters suggested that a far higher percentage of contractors and subcontractors would request waivers under E.O. 13201 than under the other laws administered by OFCCP, because labor organizations would be likely to pressure the contractors and subcontractors to submit such requests. One commenter estimated that at least nine percent of Federal contractors ''operate some facilities where union

organizations are present,'' and, based on that estimate, suggested that 18,000 contractors would submit requests in the first year of implementation of the Order.

Based on the concerns expressed by these commenters, the Department reviewed the statistics used in the preamble to the NPRM and the data underlying those statistics. Review of that data, including data obtained from E.E.O. 1 reports filed with the Equal Employment Opportunity Commission, indicated that the figure of 200,000 actually represents the number of separate contractor establishments, not the number of contractors and that there are approximately 16,000 separate supply-and-service contractors and 10,000 construction contractors that hold Federal contracts. No reliable records are available that indicate how many, or what percentage, of those contractors have formally recognized a union or have had a union certified as the exclusive bargaining representative of its employees.

The Department also reviewed the requests for separate-facility waivers OFCCP received from Federal contractors and subcontractors, under the three laws listed above, from January 1999 through December 2001. OFCCP's records indicate that during that period, the agency received only 16 individual letters from contractors requesting separate-facility waivers, or an average of 5.3 requests per year. Even if that number were increased tenfold as a result of pressure from labor organizations, the number of requests received per year would total only 53, approximately a quarter of the number estimated by the Department in the NPRM. Moreover, the estimate of 18,000 requests per year, suggested by the commenter mentioned above, is based not only on the incorrect estimate of the number of Federal contractors provided in the preamble to the NPRM, but also on the assumption that every Federal contractor and subcontractor that operates ''some facilities where labor organizations are present'' would submit a waiver request. We view the latter assumption as unreasonable. As a result, we believe that the Department's estimate that 200 contractors a year will request separate-facility waivers is reasonable, and decline to adopt the commenter's estimates.

(b) The second factor in the analysis was the estimated time that would be required for a contractor to develop a letter requesting a waiver from the obligations of E.O. 13201 for facilities not involved in performing work on a Federal contract. In the NPRM, the Department estimated that it would take an average of one hour to prepare and mail each waiver request, using 12 minutes of managerial time and 48 minutes of administrative time. Two commenters objected, contending that this estimate was too low. One commenter noted that applying for a waiver is likely to involve the use of in-house or outside counsel, and that some labor organizations are likely to demand to bargain over whether the employer should apply for such a waiver. The other commenter surveyed contractors that submitted waiver requests between 1990 and 1992, and estimated that those contractors expended an average of 15 hours per request, 90 percent of which was managerial/professional time and 10 percent of which was administrative/clerical time.

As a result of the concerns expressed by these commenters, the Department reviewed the records of those contractors that requested separate-facility waivers from OFCCP between 1999 and 2001. We also reviewed guidance developed by OFCCP on the criteria that would be considered by the Deputy Assistant Secretary in deciding whether to grant separate facility exemptions/waivers from the requirements of Executive Order 11246 (E.O. 11246) and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (VEVRAA). Guidance provided with respect to the appropriateness of an exemption under those provisions is also relevant here. That guidance is contained in OFCCP ADM Notice 260, dated September 13, 2002 (''Directive''). Based on this review, we have accepted the second commenter's estimate of 15 hours as the average amount of time contractors will need to complete a waiver request. We have also accepted the commenter's estimate that 90 percent of this time will be managerial/professional and 10 percent administrative/clerical.

The test that a contractor must meet for obtaining a separate facility exemption under E.O. 11246 and the affirmative action provisions of VEVRAA is identical to the test for obtaining an exemption under this regulation. This test requires a two-part showing: (1) The facility for which an exemption is sought is in all respects separate and distinct from activities of the contractor related to the performance of a government contract; and (2) such an exemption will not interfere with or impede the effectuation of the relevant statutory or regulatory requirements, Directive p.2. The Directive explains how these standards are met by requiring that a showing be made under the following factors:

Separate and Distinct

(i) Whether any work at the facility directly or indirectly supports or contributes to the satisfaction of the work performed on a government contract;

(ii) The extent to which the contractor derives benefits from a government contract, directly or indirectly, at the facility to be exempted;

(iii) Whether any costs associated with operating the facility are charged to a government contract;

(iv) Whether working at the facility for which an exemption/waiver is sought is a prerequisite for advancement in job responsibility or pay at facilities connected to a government contract; and whether working at facilities connected to a government contract is a prerequisite for advancement in job responsibility or pay at the facility for which an exemption/waiver is sought;

(v) Whether employees who normally work at the facility are required to perform work related to a government contract at another facility;

(vi) Whether the facility regularly or substantially transfers employees to or from facilities at which a government contract is performed;

(vii) Such other factors that the Deputy Assistant Secretary deems are necessary or appropriate for considering whether the facility is in all respects separate and distinct from the activities of the contractor related to the performance of a contract.

Other factors could include the number of facilities connected to the contractor's government contracts and the nature of the contractor's contractual relationship with the government.

Interfere With or Impede

(i) Whether the waiver will be used as a subterfuge to circumvent the contractor's obligations under Federal, State, or local equal employment opportunity laws;

(ii) The contractor's record of compliance with Federal, State or local equal employment opportunity laws; and

(iii) Such other factors that the Deputy Assistant Secretary deems are necessary or appropriate for considering whether the granting of the exemption/waiver would interfere with or impede the effectuation of either the Executive Order or the affirmative action provisions of VEVRAA.

A contractor must submit proof under these criteria sufficient to demonstrate that its facility is separate and distinct and that the waiver will not be used to interfere with or impede the contractor's compliance with this Executive Order.

Because the showing required for obtaining a waiver/exemption under E.O. 11246 and VEVRAA is identical to that required under E.O. 13201, a contractor who has obtained a waiver under E.O. 11246 or VEVRAA will be entitled to a waiver pursuant to this regulation provided it would not impede the effectuation of E.O. 13201.

If this information is reasonably accessible to the contractor, it may take him an average of 90 minutes to prepare a response under each of the stated criteria, for a total preparation time of 15 hours. Contractors with few facilities may require less time; contractors with many facilities may require more. Similarly, the preparation time may vary depending on the accessibility of the required documentation. Fifteen hours is only predictive as an average; it may be more or less at the extremes.

(c) The third factor in this analysis was the estimated average hourly compensation rate for managerial and administrative employees. In the NPRM, the Department based its estimates of this compensation on the information contained in the 1999 version of the Bureau of Labor Statistics (BLS) publication ''Employer Costs for Employee Compensation'' (USDL 99–173). One commenter pointed out that the Department should have used BLS's estimated hourly compensation rates from 2001. We interpret this comment as requesting that the most current data be used, which in this case is contained in the BLS December 2002 edition of the Employee Compensation publication (USDL 03–130). This edition lists the average compensation for executive, administrative, and managerial positions as $42.56 per hour, and for administrative support as $18.74 per hour.

*Total Time Expended:* 200 waivers a year × 15 hours = 3000 hours.

*Executive, Administrative, and Managerial Time:* .90 × 3000 hours = 2700 hours.

*Executive, Administrative, and Managerial Cost:* 2700 hours × $42.56 = $114,912.

*Administrative Support Time:* .10 × 3000 hours = 300 hours.

*Administrative Support Cost:* 300 hours × $18.74 = $5,622.

*Postage and Envelope:* 200 × .40 = $80.00.

*Total Annualized Cost Estimate:* $120,614.

Dividing the total annualized cost estimate of $120,614 by the estimated number of waivers (200), we calculate that the estimated average cost of separate-waiver requests per Federal contractor establishment will be $603.07.

(d) One commenter pointed out that the cost-benefit analysis in the NPRM failed to take into consideration the time burden for contractors and subcontractors to familiarize themselves with the waiver requirement and to determine whether it is applicable to their circumstances. For purposes of this calculation only, we assume that this factor should be taken into consideration under the Paperwork Reduction Act of 1995, and accept the commenter's estimate that such a review will require approximately 40 minutes—66 percent of one hour—of total managerial time per contractor. Based on a Federal contractor universe of 26,000, we have estimated the costs of such a review as follows:

*Executive, Administrative, and Managerial Time:* .66 hour × 26,000 contractors = 17,160 hours.

*Executive, Administrative, and Managerial Cost:* 17,160 hours × $42.56 = $730,329.60.

*Total Annualized Estimate of Familiarization Cost:* $730,329.60.

Dividing the total annualized familiarization cost estimate of $730,329.60 by the estimated Federal contractor universe of 26,000, we calculate that the average cost for each Federal contractor to familiarize itself with the waiver requirement will be $28.09.

(e) A commenter also pointed out that in the cost-benefit analysis in the NPRM, we failed to take into consideration the cost to the Federal government for processing waiver requests. However, the regulations implementing the PRA define the term ''burden,'' in pertinent part, as ''the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency.'' 5 CFR 1320.3(b)(1). The definition of the term ''person'' in the same regulations includes ''an individual, partnership, association, corporation (including operations of government-owned contractor-operated facilities), business trust, or legal representative, an organized group of individuals, a State, territorial, tribal, or local government or branch thereof, or a political subdivision of a State, territory, tribal, or local government or a branch of a political subdivision.'' 5 CFR 1320.3(k). It does not include the Federal government or any branch, political subdivision, or employee thereof. Therefore, the cost to the Federal government for processing waiver requests need not be taken into consideration.

(f) Finally, one commenter contended that the cost-benefit analysis in the NPRM failed to take into consideration the cost associated with adding the employee notice clause to subcontractor contracts, subcontracts, purchase orders, and supplier agreements, and asserted that the cost of rewriting and printing all of these documents will be one of the most significant contractor costs associated with the Executive Order. However, § 470.2(b) of the rule explicitly permits contractors and subcontractors to incorporate the employee notice clause by reference, rather than by quoting the text of the clause verbatim. This option permits contractors and subcontractors to comply with the regulations simply by having their staff type a single sentence onto already-existing form documents, rather than by discarding and reprinting such already-existing forms. Moreover, even if the contractor or subcontractor wishes to incorporate the entire text of the employee notice clause in its documents, such incorporation may be accomplished merely by appending an addendum page to each document and ensuring that all parties signing the document are aware of the addendum. Therefore, the burdens that will be imposed upon contractors as a result of the requirement will be minimal.

*Executive Order 13132 (Federalism)*

We have reviewed this final rule in accordance with Executive Order 13132 regarding federalism, and have determined that the rule does not have ''federalism implications.'' Some States do hold Federal contracts as defined in this rule. However, as described above in the discussion of other regulatory procedures, we have concluded that the impact of the requirements of posting notices, and requesting waivers, that the rule will impose on those States will be negligible. Therefore, the rule 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.''

*Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

The Department certifies that this final rule does not impose substantial direct compliance costs on Indian tribal governments.

*Executive Order 13045 (Protection of Children From Environmental Health Risks and Safety Risks)*

In accordance with Executive Order 13045, the Department has evaluated the environmental safety and health effects of the final rule on children. The

Department has determined that the final rule will have no effect on children.

*Executive Order 12630 (Governmental Actions and Interference With Constitutionally Protected Property Rights)*

This final rule is not subject to Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, because it does not involve implementation of a policy with takings implications.

*Executive Order 12988 (Civil Justice Reform)*

This final rule has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the Federal court system. The final rule has been written so as to minimize litigation and provide a clear legal standard for affected conduct, and has been reviewed carefully to eliminate drafting errors and ambiguities.

*Environmental Impact Assessment*

The Department has reviewed the final rule in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (40 CFR part 1500), and the Department's NEPA procedures (29 CFR part 11). The final rule will not have a significant impact on the quality of the human environment, and thus, the Department has not conducted an environmental assessment or prepared an environmental impact statement.

*Executive Order 13211 (Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use)*

This final rule is not subject to Executive Order 13211, because it will not have a significant adverse effect on the supply, distribution, or use of energy.

**List of Subjects in 29 CFR Part 470**

Administrative practice and procedure, Government contracts, Union dues, Labor unions.

Signed in Washington, DC this 22 day of March, 2004.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards.*

**Don Todd,**

*Deputy Assistant Secretary for Labor-Management Programs.*

**Charles E. James, Sr.,**

*Deputy Assistant Secretary for Federal Contract Compliance.*

■ Accordingly, a new subchapter C, consisting of part 470, is added to 29 CFR chapter IV to read as follows:

## SUBCHAPTER C—EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

## PART 470—OBLIGATIONS OF FEDERAL CONTRACTORS AND SUBCONTRACTORS; NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

### Subpart A—Preliminary Matters

Sec.
470.1 What definitions apply to this part?
470.2 Under the Executive Order, what employee notice clause must be included in Government contracts?
470.3 What contracts are exempt from the employee notice clause requirement?
470.4 What contractors or facilities are exempt from the posting requirements?

### Subpart B—Compliance Evaluations, Complaint Investigations, and Enforcement Procedures

Sec.
470.10 How will the Department determine whether a contractor is in compliance with the Executive Order and this part?
470.11 What are the procedures for filing and processing a complaint?
470.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?
470.13 Under what circumstances, and how, will enforcement proceedings under the Executive Order be conducted?
470.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?
470.15 Under what circumstances must a contractor be provided the opportunity for a hearing?
470.16 Under what circumstances may a contractor be reinstated?

### Subpart C—Ancillary Matters

470.20 What authority under this Rule or the Executive Order may the Secretary delegate, and under what circumstances?
470.21 Who will make rulings and interpretations under the Executive Order and this part?
470.22 What actions may the Assistant Secretary take in the case of intimidation and interference?
470.23 What other provisions apply to this part?

**Authority:** E.O. 13201, 3 CFR, 2001 Comp., p.754, (66 FR 11221), issued pursuant to the Constitution and laws of the United States, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 *et seq.*, now codified as amended at 40 U.S.C. 101 *et seq.*

## Subpart A—Preliminary Matters

### § 470.1 What definitions apply to this part?

(a) Assistant Secretary means the Assistant Secretary for Employment Standards, United States Department of Labor, or his or her designee.

(b) Construction means the construction, rehabilitation, alteration, conversion, extension, demolition, or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term construction also includes the supervision, inspection, and other on-site functions incidental to the actual construction.

(c) Construction work site means the general physical location of any building, highway, or other change or improvement to real property which is undergoing construction, rehabilitation, alteration, conversion, extension, demolition, or repair, and any temporary location or facility at which a contractor or subcontractor meets a demand or performs a function relating to the contract or subcontract.

(d) Contract means, unless otherwise indicated, any Government contract or subcontract.

(e) Contracting agency means any department, agency, establishment, or instrumentality in the executive branch of the Government, including any wholly owned Government corporation, which enters into contracts.

(f) Contractor means, unless otherwise indicated, a prime contractor or subcontractor, at any tier.

(g) Department means the U.S. Department of Labor.

(h) Employee notice clause means the contract clause that Government contracting departments and agencies must include in all nonexempt Government contracts and subcontracts pursuant to Executive Order 13201.

(i) Government means the Government of the United States of America.

(j) Government contract means any agreement or modification thereof between any contracting agency and any person for the purchase, sale, or use of personal property or nonpersonal services. The term ''personal property,'' as used in this section, includes supplies, and contracts for the use of real property (such as lease

arrangements), unless the contract for the use of real property itself constitutes real property (such as easements). The term ''nonpersonal services'' as used in this section includes, but is not limited to, the following services: utilities, construction, transportation, research, insurance, and fund depository. The term Government contract does not include:

(1) Agreements in which the parties stand in the relationship of employer and employee; and

(2) Federally assisted contracts.

(k) Labor organization means any organization of any kind in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment.

(l) Modification of a contract means any alteration in the terms and conditions of that contract, including amendments, renegotiations, and renewals.

(m) Order or Executive Order means Executive Order 13201 (66 FR 11221, February 22, 2001).

(n) Person means any natural person, corporation, partnership, unincorporated association, State or local government, and any agency, instrumentality, or subdivision of such a government.

(o) Prime contractor means any person holding a contract with a contracting agency, and, for the purposes of subparts B and C of this part, includes any person who has held a contract subject to the Executive Order.

(p) Related rules, regulations, and orders of the Secretary of Labor, as used in section 470.2 of this part, means rules, regulations, and relevant orders of the Assistant Secretary for Employment Standards, or his or her designee, issued pursuant to the Executive Order or this part.

(q) Secretary means the Secretary of Labor, U.S. Department of Labor, or his or her designee.

(r) Subcontract means any agreement or arrangement between a contractor and any person (in which the parties do not stand in the relationship of an employer and an employee):

(1) For the purchase, sale or use of personal property or nonpersonal services which, in whole or in part, is necessary to the performance of any one or more contracts; or

(2) Under which any portion of the contractor's obligation under any one or more contracts is performed, undertaken or assumed.

(s) Subcontractor means any person holding a subcontract and, for the purposes of subparts B and C of this part, any person who has held a subcontract subject to the Executive Order.

(t) Union means a labor organization as defined in paragraph (k) of this section.

(u) Union-security agreement means an agreement entered into between a contractor and a labor organization which requires certain employees of the contractor to pay uniform periodic dues and/or fees, initiation fees, or other payments to that labor organization as a condition of employment.

(v) United States, as used herein, shall include the several States, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Wake Island.

**§ 470.2 Under the Executive Order, what employee notice clause must be included in Government contracts?**

(a) *Government contracts.* Except in contracts exempted in accordance with Section 470.3 and collective bargaining agreements as defined in 5 U.S.C. 7103(a)(8), all Government contracting agencies must, to the extent consistent with law, include the following provisions in Government contracts entered into on or after April 28, 2004, that resulted from solicitations issued on or after April 18, 2001:

''1. During the term of this contract, the contractor agrees to post a notice, of such size and in such form as the Secretary of Labor will prescribe, in conspicuous places in and about its plants and offices, including all places where notices to employees are customarily posted. The notice must include the following information (except that the last two sentences must not be included in notices posted in the plants or offices of carriers subject to the Railway Labor Act, as amended (45 U.S.C. 151–188)).

''NOTICE TO EMPLOYEES

''Under Federal law, employees cannot be required to join a union or maintain membership in a union in order to retain their jobs. Under certain conditions, the law permits a union and an employer to enter into a union-security agreement requiring employees to pay uniform periodic dues and initiation fees. However, employees who are not union members can object to the use of their payments for certain purposes and can only be required to pay their share of union costs relating to collective bargaining, contract administration, and grievance adjustment.

''If you do not want to pay that portion of dues or fees used to support activities not related to collective bargaining, contract administration, or grievance adjustment, you are entitled to an appropriate reduction in your payment. If you believe that you have been required to pay dues or fees used in part to support activities not related to collective bargaining, contract administration, or grievance adjustment, you may be entitled to a refund and to an appropriate reduction in future payments.

''For further information concerning your rights, you may wish to contact the National Labor Relations Board (NLRB) either at one of its Regional offices or at the following address or toll-free number: National Labor Relations Board, Division of Information, 1099 14th Street, NW., Washington, D.C. 20570, 1–866–667–6572, 1–866–315–6572 (TTY).

''To locate the nearest NLRB office, see NLRB's website at *http://www.nlrb.gov.*''

''2. The contractor will comply with all provisions of Executive Order 13201 of February 17, 2001, and related rules, regulations, and orders of the Secretary of Labor.

''3. In the event that the contractor does not comply with any of the requirements set forth in paragraphs (1) or (2) above, this contract may be cancelled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in or adopted pursuant to Executive Order 13201 of February 17, 2001. Such other sanctions or remedies may be imposed as are provided in Executive Order 13201 of February 17, 2001, or by rule, regulation, or order of the Secretary of Labor, or as are otherwise provided by law.

''4. The contractor will include the provisions of paragraphs (1) through (4) herein in every subcontract or purchase order entered into in connection with this contract unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 3 of Executive Order 13201 of February 17, 2001, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any such subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions, including the imposition of sanctions for noncompliance: However, if the contractor becomes involved in

litigation with a subcontractor or vendor, or is threatened with such involvement, as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.''

(b) *Inclusion by reference.* The employee notice clause need not be quoted verbatim in a contract, subcontract, or purchase order. The clause may be made part of the contract, subcontract, or purchase order by citation to 29 CFR part 470.

(c) *Adaptation of language.* The Assistant Secretary may make such changes in the contractual provisions of the Executive Order as may be necessary to reflect Acts of Congress, clarifications in the law by the courts, or otherwise to fully and accurately inform employees of their rights under the Executive Order.

(d) *Obtaining employee notice poster.* The required employee notice poster, printed by the Department, will be provided by the Federal contracting agency or may be obtained from the Division of Interpretations and Standards, Office of Labor-Management Standards, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC 20210, or from any field office of the Department's Office of Labor-Management Standards or Office of Federal Contract Compliance Programs. A copy of the poster may also be downloaded from the Office of Labor-Management Standards Web site at *www.olms.dol.gov.* Additionally, contractors may reproduce and use exact duplicate copies of the Department's official poster.

### § 470.3 What contracts are exempt from the employee notice clause requirement?

(a) *Transactions below the Simplified Acquisition Threshold.* The requirements of this part do not apply to Government contracts for purchases that fall below the Simplified Acquisition Threshold, as that threshold is defined in the Office of Federal Procurement Policy Act, 41 U.S.C. 403. Therefore, the employee notice clause need not be included in contracts for purchases below that threshold, *provided that*—

(1) No agency, contractor, or subcontractor is permitted to procure supplies or services in a way designed to avoid the applicability of the Order and this part; and

(2) The employee notice clause must be included in contracts and subcontracts for indefinite quantities, unless the contracting agency or contractor has reason to believe that the amount to be ordered in any year under such a contract or subcontract will be less than the Simplified Acquisition Threshold.

(b) *Government contracts resulting from solicitations issued before April 18, 2001.* Pursuant to section 14 of the Order, the requirements of this part do not apply to Government contracts that result from solicitations issued before April 18, 2001, the effective date of the Order.

(c) *Specific contracts.* The Deputy Assistant Secretary for Labor-Management Programs may exempt a contracting agency or any person from requiring the inclusion of any or all of the employee notice clause in any specific contract, subcontract, or purchase order when the Deputy Assistant Secretary deems that special circumstances in the national interest so require. Requests for such exemptions must be in writing, and must be directed to the Deputy Assistant Secretary for Labor-Management Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Room N–5605, Washington, DC, 20210.

(d) *Withdrawal of exemption.* When any contract or subcontract is of a class exempted under this section, the Deputy Assistant Secretary for Labor-Management Programs may withdraw the exemption for a specific contract or subcontract or group of contracts or subcontracts when, in the Deputy Assistant Secretary's judgment, such action is necessary or appropriate to achieve the purposes of the Order.

### § 470.4 What contractors or facilities are exempt from the posting requirements?

(a) *Number of employees.* The requirement to post the employee notice given in § 470.2(a) (hereafter, posting requirement) does not apply to contractors and subcontractors that employ fewer than 15 persons.

(b) *Union representation.* The posting requirement does not apply to contractor establishments or construction work sites where no union has been formally recognized by the prime contractor or certified as the exclusive bargaining representative of the prime contractor's employees.

(c) *State law.* The posting requirement does not apply to contractor establishments or construction work sites in jurisdictions where state law forbids enforcement of union-security agreements. For purposes of this paragraph, the term ''state'' is intended to include any of the entities identified as comprising the United States, as defined in § 470.1(2).

(d) *Work not performed under Government contracts.* Upon the written request of the contractor, the Deputy Assistant Secretary for Labor-Management Programs may waive the posting requirements with respect to any of a contractor's facilities if the Deputy Assistant Secretary finds that the contractor has demonstrated that:

(1) The facility is in all respects separate and distinct from activities of the contractor related to the performance of a contract; and

(2) Such a waiver will not interfere with or impede the effectuation of the Executive Order.

(e) *Work outside the United States.* The posting requirement does not apply to work performed outside the United States that does not involve the recruitment or employment of workers within the United States.

## Subpart B—Compliance Evaluations, Complaint Investigations and Enforcement Procedures

### § 470.10 How will the Department determine whether a contractor is in compliance with the Executive Order and this part?

(a) The Deputy Assistant Secretary for Federal Contract Compliance may conduct a compliance evaluation to determine whether a contractor holding a nonexempt contract is in compliance with the requirements of this part. Such an evaluation may be limited to compliance with this part or may be included in a compliance evaluation conducted under other laws, Executive Orders, and/or regulations enforced by the Department.

(b) During such an evaluation, a determination will be made whether:

(1) The employee notice required by Section 470.2(a) is posted in conspicuous places in and about each of the contractor's establishments and/or construction work sites not exempted under section 470.4 of this part, including all places where notices to employees are customarily posted; and

(2) The provisions of the employee notice clause are included in nonexempt Government contracts entered into on or after April 28, 2004, that resulted from solicitations issued on or after April 18, 2001.

(c) The results of the evaluation will be documented in the evaluation record, which will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part and, as applicable, conciliation efforts made, corrective action taken and/or enforcement recommended under Section 470.13.

**§ 470.11 What are the procedures for filing and processing a complaint?**

(a) *Filing complaints.* An employee of a covered contractor may file a complaint alleging that the contractor has failed to post the employee notice as required by the Executive Order and this part; and/or has failed to include the employee notice clause in nonexempt subcontracts or purchase orders. Complaints may be filed with the Office of Labor-Management Standards (OLMS) or the Office of Federal Contract Compliance Programs (OFCCP) at 200 Constitution Avenue, NW., Washington, DC 20210, or with any OLMS or OFCCP field office.

(b) *Contents of complaints.* The complaint must be in writing and must include the name, address, and telephone number of the employee who filed the complaint (the complainant), the name and address of the contractor alleged to have violated the Executive Order, an identification of the alleged violation and the establishment or construction work site where it is alleged to have occurred, and any other pertinent information that will assist in the investigation and resolution of the complaint. The complainant must sign the complaint.

(c) *Complaint investigations.* In investigating complaints filed with the Department under paragraph (a) of this section, the Deputy Assistant Secretary for Federal Contract Compliance will evaluate the allegations of the complaint and develop a case record. The record will include findings regarding the contractor's compliance with the requirements of the Executive Order and this part, and, as applicable, a description of conciliation efforts made, corrective action taken, and/or enforcement recommended.

**§ 470.12 What are the procedures to be followed when a violation is found during a complaint investigation or compliance evaluation?**

(a) If any complaint investigation or compliance evaluation indicates a violation of the Executive Order or this part, the Department will make reasonable efforts to secure compliance through conciliation.

(b) The contractor must correct the violation found by the Department (for example, by posting the required employee notice, and/or by amending its subcontracts or purchase orders with nonexempt subcontractors and vendors to include the employee notice clause), and must commit, in writing, not to repeat the violation, before the contractor may be found to be in compliance with the Executive Order or this part.

(c) If a violation cannot be resolved through conciliation efforts, the Deputy Assistant Secretary for Labor-Management Programs may proceed in accordance with Section 470.13.

(d) For reasonable cause shown, the Deputy Assistant Secretary for Labor-Management Programs may reconsider, or cause to be reconsidered, any matter on his or her own motion or pursuant to a request.

**§ 470.13 Under what circumstances, and how, will enforcement proceedings under the Executive Order be conducted?**

(a) *General.* (1) Violations of the Executive Order may result in administrative proceedings to enforce the Order. The bases for a finding of a violation may include, but are not limited to:

(i) The results of a compliance evaluation;

(ii) The results of a complaint investigation;

(iii) A contractor's refusal to allow a compliance evaluation or complaint investigation to be conducted; or

(iv) A contractor's refusal to provide information as required by the Executive Order and the regulations in this part.

(2) If a determination is made that the Executive Order or the regulations in this part have been violated, and the violation has not been corrected through conciliation, the Deputy Assistant Secretary for Labor-Management Programs may refer the matter to the Solicitor of Labor for institution of administrative enforcement proceedings.

(b) *Administrative enforcement proceedings.* (1) Administrative enforcement proceedings will be conducted under the control and supervision of the Solicitor of Labor, under the hearing procedures set forth in 29 CFR part 18, Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges.

(2) The administrative law judge will certify his or her recommended decision issued pursuant to 29 CFR 18.57 to the Assistant Secretary. The decision will be served on all parties and amici.

(3) Within 25 days (10 days in the event that the proceeding is expedited) after receipt of the administrative law judge's recommended decision, either party may file exceptions to the decision. Exceptions may be responded to by the other parties within 25 days (7 days if the proceeding is expedited) after receipt. All exceptions and responses must be filed with the Assistant Secretary.

(4) After the expiration of time for filing exceptions, the Assistant Secretary may issue a final administrative order, or may make such other disposition of the matter as he or she finds appropriate. In an expedited proceeding, unless the Assistant Secretary issues a final administrative order within 30 days after the expiration of time for filing exceptions, the administrative law judge's recommended decision will become the final administrative order. If the Assistant Secretary determines that the contractor has violated the Executive Order or the regulations in this part, the final administrative order will order the contractor to cease and desist from the violations, require the contractor to provide appropriate remedies, or, subject to the procedures in Section 470.14, impose appropriate sanctions and penalties, or any combination thereof.

**§ 470.14 What sanctions and penalties may be imposed for noncompliance, and what procedures will the Department follow in imposing such sanctions and penalties?**

(a) After a final decision on the merits has issued and before imposing the sanctions and penalties described in paragraph (d) of this section, the Assistant Secretary will consult with the affected contracting agencies, and provide the heads of those agencies the opportunity to respond and provide written objections.

(b) If the contracting agency provides written objections, those objections must include a complete statement of reasons for the objections, among which reasons must be a finding that, as applicable, the completion of the contract, or further contracts or extensions or modifications of existing contracts, is essential to the agency's mission.

(c) The sanctions and penalties described in this section, however, will not be imposed if:

(1) The head of the contracting agency continues personally to object to the imposition of such sanctions and penalties, or

(2) The contractor has not been afforded an opportunity for a hearing.

(d) In enforcing the Order and this part, the Assistant Secretary may:

(1) Direct a contracting agency to cancel, terminate, suspend, or cause to be canceled, terminated or suspended, any contract or any portions thereof, for failure of the contractor to comply with its contractual provisions as required by section 2 of the Executive Order and the regulations in this part. Contracts may be canceled, terminated, or suspended absolutely, or continuance of contracts may be conditioned upon compliance.

(2) Issue an order of debarment under section 6(b) of the Order providing that one or more contracting agencies must refrain from entering into further contracts, or extensions or other modification of existing contracts, with any noncomplying contractor.

(e) Whenever the Assistant Secretary has exercised his or her authority pursuant to paragraph (d) of this section, the contracting agency must report the actions it has taken to the Assistant Secretary within such time as the Assistant Secretary will specify.

(f) Periodically, the Assistant Secretary will publish and distribute, or cause to be published and distributed, to all executive agencies a list of the names of contractors that have, in the judgment of the Assistant Secretary under section 470.13(b)(4) of this part, failed to comply with the provisions of the Executive Order and this part, or of related rules, regulations, and orders of the Secretary of Labor, and as a result have been declared ineligible for future contracts or subcontracts under the Executive Order and the regulations in this part.

### § 470.15 Under what circumstances must a contractor be provided the opportunity for a hearing?

Before the Assistant Secretary takes the following action, a contractor must be given the opportunity for a hearing before the Assistant Secretary:

(a) Issues an order debarring the contractor from further Government contracts under section 6(b) of the Executive Order and § 470.14(d)(2) of this part; or

(b) Includes the contractor on a published list of noncomplying contractors under section 6(c) of the Executive Order and § 470.14(f) of this part.

### § 470.16 Under what circumstances may a contractor be reinstated?

Any contractor or subcontractor debarred from or declared ineligible for further contracts or subcontracts under the Executive Order may request reinstatement in a letter to the Assistant Secretary. If the Assistant Secretary finds that the contractor or subcontractor has come into compliance with the Order and this part and has shown that it will carry out the Order and this part, the contractor or subcontractor may be reinstated.

## Subpart C—Ancillary Matters

### § 470.20 What authority under this part or the Executive Order may the Secretary delegate, and under what circumstances?

Section 9 of the Executive Order grants the Secretary the right to delegate any of his/her functions or duties under the Order to any officer in the Department of Labor or to any other officer in the executive branch of the Government, with the consent of the head of the department or agency in which that officer serves.

### § 470.21 Who will make rulings and interpretations under the Executive Order and this part?

Rulings under or interpretations of the Executive Order or the regulations contained in this part will be made by the Assistant Secretary or his or her designee.

### § 470.22 What actions may the Assistant Secretary take in the case of intimidation and interference?

The sanctions and penalties contained in Section 470.14 of this part may be exercised by the Assistant Secretary against any contractor or subcontractor who fails to take all necessary steps to ensure that no person intimidates, threatens, or coerces any individual for the purpose of interfering with the filing of a complaint, furnishing information, or assisting or participating in any manner in a compliance evaluation, complaint investigation, hearing, or any other activity related to the administration of the Executive Order or the regulations in this part.

### § 470.23 What other provisions apply to this part?

(a) The regulations in this part implement Executive Order 13201 only, and do not modify or affect the interpretation of any other Department of Labor regulations or policy.

(b) Consistent with section 8 of the Executive Order, each contracting department and agency must cooperate with the Assistant Secretary, the Deputy Assistant Secretary for Labor-Management Programs, and/or the Deputy Assistant Secretary for Federal Contract Compliance, and must provide such information and assistance as the Assistant Secretary or Deputy Assistant Secretary may require, in the performance of his or her functions under the Executive Order and the regulations in this part.

(c) Consistent with section 13 of the Executive Order, nothing contained in the Executive Order or this part, or promulgated pursuant to the Executive Order or this part, is intended to confer any substantive or procedural right, benefit, or privilege enforceable at law by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

[FR Doc. 04–6823 Filed 3–26–04; 8:45 am]

BILLING CODE 4510–CP–P

Federal Register

Monday,
March 29, 2004

# Part V

# Department of Agriculture

## Commodity Credit Corporation
## National Resources Conservation Service

## 7 CFR Part 1466
## Conservation Innovation Grants; Interim Final Rule and Notice

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### 7 CFR Part 1466

### Conservation Innovation Grants

**AGENCY:** Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This interim final rule amends the Environmental Quality Incentives Program (EQIP) final rule, published in the **Federal Register** on May 30, 2003, to describe how the Natural Resources Conservation Service (NRCS) intends to implement Conservation Innovation Grants (CIG) for eligible governmental or non-governmental organizations or individuals on a competitive basis as authorized by the Farm Security and Rural Investment Act of 2002. CIG will be available to applicants who submit proposals for projects that involve EQIP-eligible farmers and ranchers. This interim final rule also solicits public comments for consideration in developing a final rule.

**DATES:** Effective date: March 29, 2004. Comments must be received by May 28, 2004.

**ADDRESSES:** NRCS invites interested persons to submit comments on this interim final rule. Comments may be submitted by any of the following methods:

- Mail: Send comments to: Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705.
- E-Mail: Send comments to *cig@usda.gov.*
- Fax: Submit comments by facsimile transmission to: (301) 504–2264.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

You may access this interim final rule via the Internet through the NRCS home page at *http://www.nrcs.gov.* Select ''Farm Bill.''

**FOR FURTHER INFORMATION CONTACT:** Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705. Phone: (301) 504–2222; facsimile: (301) 504–2264. Send e-mail to: *cig@usda.gov.* Persons with disabilities who require alternative means for communication (Braille, large print, audio tape, *etc.*) should contact the USDA TARGET Center at (202) 720–2600.

**SUPPLEMENTARY INFORMATION:**

#### Executive Order 12866

The CIG program was authorized as part of EQIP, with an unspecified annual funding level from FY2003 through FY2007. This interim final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. The Office of Management and Budget (OMB) has determined that this interim final rule is not a significant rule making action. Therefore, completion of a benefit-cost assessment of potential impacts is not necessary. An economic evaluation was completed, however, because of the aid that such an evaluation provides to the rulemaking process. A copy of this document is available upon request from: Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705. Phone: (301) 504–2222; facsimile: (301) 504–2264; or on the Internet at *http://www.nrcs.usda.gov/programs/cig.*

#### Regulatory Flexibility Act

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule. The 2002 Farm Bill states that a regulation may be promulgated as an interim final rule effective on publication with an opportunity for notice and comment if determined to be appropriate by the Secretary of Agriculture or the Commodity Credit Corporation. Since its inclusion as a discretionary provision under EQIP in the 2002 Farm Bill, CIG has generated a great deal of interest from both the agricultural and environmental communities. Implementation of CIG was delayed, however, while regulations for mandatory NRCS conservation programs were promulgated. With funds available for CIG in FY 2004, a determination was made to issue this interim final rule with request for public comments in order to implement CIG without further delay. The public comments, together with the experience gained from implementing CIG in this fiscal year, will be considered during the drafting of the final rule, which NRCS intends to issue prior to publication of a CIG request for proposals in FY 2005.

#### Environmental Evaluation

Promulgation of this rule does not authorize any activities that will affect the human environment. This rule establishes the policies and procedures that will be used to award Conservation Innovation Grants. The grants awarded under this regulation are for innovative projects; therefore, NRCS has a limited ability to predict the types of actions that may be carried out during a CIG project. Any attempt to analyze the effects of proposed actions would be speculative. Accordingly, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared at this time. Instead, the environmental effects of each CIG proposal will be evaluated on a case-by-case. As a part of the evaluation, CIG applicants are required to submit an environmental profile as part of their application. These profiles will be used to determine whether an EA or EIS is needed for any given project, prior to the awarding of grant funds.

#### Paperwork Reduction Act

Section 2702(b)(1)(A) of the 2002 Act provides that the promulgation of regulations and the administration of title II of the Act shall be made without regard to chapter 35 of title 44 of the United States Code, the Paperwork Reduction Act. Accordingly, these regulations and the forms, and other information collection activities needed to administer the program authorized by these regulations, are not subject to provisions of the Paperwork Reduction Act, including review by the Office of Management and Budget.

#### Government Paperwork Elimination Act

NRCS is committed to compliance with the Government Paperwork Elimination Act (GPEA) and with the Freedom to E-File Act, which require Government agencies in general and NRCS in particular to provide the public the option of submitting information or transacting business electronically to the maximum extent possible.

#### Executive Order 12998

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

#### Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994

Pursuant to Section 304 of the Federal Crop Insurance Reform and Department

of Agriculture Reorganization Act of 1994 (Pub. L. 104–354), NRCS did not classify this interim final rule as major and, therefore, NRCS did not conduct a risk analysis. A risk analysis was completed on the EQIP program, establishing that EQIP will produce benefits and reduce risks to human health, human safety, and the environment in a cost-effective manner. A copy of the EQIP risk analysis is available on request from Jose Acevedo, Deputy Chief for Programs, Natural Resources Conservation Service, 14th and Independence Ave., SW., Room 5109–S, Washington, DC 20250, and electronically at *http://www.nrcs.usda.gov/programs/Env_Assess/EQIP/EQIP_RA_121002.pdf.*

**Unfunded Mandates Reform Act of 1995**

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

**Summary of Conservation Innovation Grants**

Of the nearly 1.4 billion acres of private land in the United States, 931 million acres, or roughly 70 percent, are in agricultural use. The activities on these lands have a direct effect on soil, water, air, plant, and animal resources, as well as the social, cultural, and economic condition of U.S. communities, towns, and counties. Regional and local differences in farm structure, farm practices, and farm products make delivering innovative agricultural conservation technical assistance a challenge. National agricultural research and development may not always have the capacity to develop, test, and transfer new or innovative conservation technologies and approaches rapidly or effectively to account for regional variances in the agricultural industry. Consequently, there is a need to expediently develop, test, implement, and transfer innovative farm and ranch conservation technologies and approaches for adoption in the largest applicable market available.

To address this need, Section 1240H of the Food Security Act of 1985 was added by section 2301 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171), and established CIG as part of the Environmental Quality Incentives Program (EQIP) [16 U.S.C. 3839aa-8]. Through CIG, the Secretary of Agriculture may pay the costs of competitive grants to carry out projects that stimulate innovative approaches to leveraging the Federal investment in environmental enhancement and protection in conjunction with agricultural production. The Secretary of Agriculture delegated the authority for the administration of EQIP, including CIG, to the Chief of NRCS, who is a vice president of the Commodity Credit Corporation (CCC). EQIP is administered under the authorities of the CCC.

The Chief may designate an amount of funds available for CIG. NRCS is proposing to award these funds on a competitive basis through a two-tiered process. A nationwide grants competition will be announced in the **Federal Register** through a Request for Proposals (RFP). In addition, the Chief may provide each State Conservationist with the discretion to implement a separate State-level component of CIG. Funding availability for these distinct State-level competitions will be announced through public notices, separately from the national program.

CIG funds for the national component will be designated from the national EQIP allocation. Applications will be requested from eligible governmental or non-governmental organizations or individuals for competitive consideration of grant awards for single or multi-year projects.

Selection will be based on the proposal evaluation criteria published in the RFP. Selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of total project cost) may be from in-kind contributions. An exception allows grantees who are either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities, to derive up to 75 percent of their matching funds from in-kind contributions.

**Summary of Provisions and Request for Comments**

The following discussion summarizes the provisions in each paragraph of the interim final rule, explains the alternatives that NRCS considered, describes NRCS's preferred approach, and requests public comment on specific issues. In addition, NRCS welcomes comments on all aspects of this interim final rule and the following broad issues:

- What type of innovative approaches and technologies should CIG address?
- What should the geographic scope be for innovative approaches and technologies addressed through CIG?
- What level of funding is appropriate to meet the objectives of CIG?
- Should NRCS provide special consideration for under-represented individuals or entities through CIG?
- Should CIG be driven by natural resource conservation concerns?
- What natural resource conservation concerns should CIG address, both initially and in future years?
- What criteria should be used to evaluate CIG proposals?

(a) *Definitions.* This paragraph sets forth definitions for terms used throughout the CIG interim final rule that are additions to the EQIP rule. Most definitions are derived from the statute, NRCS technical guidance documents, or regulations for other programs administered by NRCS.

(b) *Purpose and Scope.*

(1) *Purpose.* This paragraph states the purpose of CIG.

(2) *Geographic scope.* Listed in this paragraph are the locations from which NRCS will accept applications for CIG.

(3) *Program Scope.* NRCS welcomes comments on the scope and program design of CIG. NRCS determined that CIG will be implemented using a two-tiered approach. A nationwide grants competition will be announced in the **Federal Register**. The national grants competition will emphasize projects that have a goal of providing benefits over a large geographic area. These projects may be watershed-based, regional, multi-State, or nationwide in scope.

In addition, the Chief may provide each State Conservationist with the discretion to implement a separate State component of CIG. The Chief may decide, in any given year, to implement the national component only. The size of the EQIP application backlog and State staff workload are two examples of factors that may influence the Chief's decision.

(4) *Program Focus.* Applications for CIG should demonstrate the use of innovative approaches to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. NRCS deliberated on two critical issues related to this statutory charge and program implementation. NRCS welcomes comments on both issues.

First, NRCS considered what types of projects should be allowed under CIG. The statute provides the examples of ''market systems for pollution

reduction'' and ''innovative conservation practices, including the storing of carbon in the soil.'' Further, the Conference Report for Public Law 107–171 encourages awarding CIG grants ''* * * for practices that foster markets for nutrient trading and for the continued implementation and acceleration of programs for demonstrating innovative nutrient management technology systems for animal feeding operations'' (House Report 107–424, page 496). Thus, NRCS has interpreted the statute as allowing two broad types of projects to be funded under CIG—approaches and technologies (either individually or used in combination). Following are two general examples of projects that would be eligible for funding under CIG. These examples do not represent any bias on the part of NRCS in soliciting for, or making awards to, any particular type of project:

• Market-based environmental credit trading projects addressing one or more natural resource concern; and,

• Community-based solutions to watershed-based or regional natural resource concerns that cannot be addressed by a single producer, or by a group of producers taking individual on-farm actions.

Second, it was determined that CIG is not a research program. Instead, it is a vehicle to stimulate the adoption of conservation approaches or technologies that have been studied sufficiently to indicate a likelihood of success and to be candidates for eventual technology transfer. The statute indicates that the innovative approaches funded under CIG should be developed in conjunction with agricultural production. Thus, CIG will fund projects targeting innovative on-the-ground conservation, including pilot projects and field demonstrations. NRCS recognizes, however, that by targeting on-the-ground conservation, there is a risk of attracting applications for projects that are not truly innovative or that qualify for funding through EQIP. Therefore, technologies and approaches that are eligible for funding in the project geographic area through EQIP are ineligible for CIG funding. Applicants should reference each State's *EQIP Eligible Practices List* by contacting the NRCS State office, or by visiting the EQIP web site: *http://www.nrcs.usda.gov/programs/eqip/EQIP_signup/2004_EQIP/2004_EQIP.html.*

NRCS believes that the prospect for transfer of approaches or technologies developed under the program is a critical component of any CIG project; its importance is reflected in the proposal evaluation criteria described in paragraph (g) of this preamble. NRCS anticipates that, when appropriate, innovative approaches or technologies validated through the use of CIG funds will be incorporated into NRCS conservation practice standards, technical notes, field handbooks, or other references.

(5) *Innovative Conservation Projects and Activities.* NRCS developed the description of innovative conservation projects and activities for use in CIG. Proposed CIG projects must adhere to this description, as it is a critical component of the proposal evaluation criteria. NRCS welcomes comments on this description.

(c) *Availability of Funding.*

(1) CIG funding will be available for single- or multi-year projects. Availability of CIG funds will be announced through a RFP. The CIG statute provides no guidance as to the level of funding that should be provided. NRCS has deliberated on the issue of setting the funding levels for CIG. NRCS considered three options:

• Have the Chief determine funding for CIG annually;

• Establish a permanent percentage of the total EQIP funding that would be made available for grants at the National or State level; and,

• Establish a minimum threshold for CIG funding (minimum for CIG to be a viable program).

The first option (Chief determination) was chosen. A number of factors may influence the annual funding level of CIG. For example, in Fiscal Year 2003, CIG was not implemented because of the late passage of appropriations, an existing backlog in applications to the EQIP program, and the statutory direction to use EQIP dollars to fund the technical assistance for certain other Farm Bill conservation programs. Similar factors may influence CIG in any given future year. Determining the CIG funding level annually provides the Chief with maximum flexibility to adjust to changing levels of available funds and program conditions. Funds for CIG are designated by the Chief from funds made available for EQIP.

NRCS welcomes comments on the issue of funding levels for CIG.

NRCS is proposing to establish funding limits and ranges for CIG projects, to be published in the RFP. The Chief may revisit these funding limits and ranges and adjust them annually. A maximum funding limit for individual projects would ensure that a greater number of projects receive funding. Establishing anticipated funding ranges would provide potential applicants with reasonable funding expectations. NRCS is proposing to establish a maximum funding limit of $1 million per project for the national component. The anticipated range for most national awards is $75,000 to $500,000.

(2) According to the statute, the cost-share rate for CIG shall not exceed 50 percent of the cost of the proposed project. Based on an informal survey of comparable federal grant programs, NRCS decided that in-kind contributions should be allowed to comprise a portion of the applicant's matching funds. Up to 50 percent of the applicant's match (up to 25 percent of the total project cost) may derive from in-kind contributions. NRCS established an exception regarding matching funds for grants that are awarded to either a Beginning or Limited Resource Farmer or Rancher, or Indian tribe, or a community-based organization comprised of or representing these entities. Up to 75 percent of the required matching funds for such projects may derive from in-kind contributions. This exception is intended to help these under-represented groups meet the CIG statutory requirement of a minimum 50 percent non-federal contribution. NRCS welcomes comments on this exception.

(3) This paragraph describes the technical assistance and oversight responsibilities of NRCS and the grantee. While the grantee is responsible for the technical assistance for CIG projects, NRCS retains responsibility for technical oversight of grant projects, and will designate a Federal Grant Representative for each grant award. This NRCS employee will provide technical oversight to grantees. Technical oversight may include review of project designs or approaches, technical review, and on-site visits.

(4) This paragraph describes CIG funding restrictions. NRCS established funding restrictions to ensure that CIG funds are used solely to advance program objectives. A detailed list of unallowable costs will be published in the RFP. NRCS welcomes comments on this issue.

(d) *Natural Resource Conservation Concerns.*

NRCS determined that grants should be awarded based on a set of natural resource conservation concerns. These natural resource concerns will be identified in the RFP that solicits grant applications, and applicants will be evaluated on how well their proposed projects address one or more of the concerns. The other alternative considered by NRCS was to solicit for grant applications based on specific technologies or approaches (*e.g.*, market-based approaches, animal waste management technologies). This option

was rejected for two primary reasons: (1) Soliciting for specific technologies or approaches would not provide enough flexibility to applicants, and would likely result in certain technologies or approaches being overlooked; and (2) soliciting through natural resource concerns is consistent with the approach used for EQIP, under which CIG was authorized. It is USDA's intention to provide flexibility to applicants in order to obtain the greatest degree of creativity and innovation possible in addressing natural resource concerns, consistent with the overall program objective. NRCS welcomes comments on this approach of using natural resource concerns to drive the CIG program.

NRCS considered using EQIP national priorities to guide CIG (EQIP national priorities are listed in the EQIP rule, 7 CFR part 1466). Instead, NRCS designed a protocol for soliciting input on natural resource concerns. State Conservationists were asked to identify the top three natural resource concerns in their States. Briefings also were held in Washington, DC with other Federal agencies, conservation organizations, environmental stakeholder groups, and agricultural stakeholder groups. Each group was asked to submit its top three natural resource conservation concerns. This input from States, Federal agencies, and stakeholder groups was compiled and analyzed to identify the natural resource concerns that should appear in the CIG RFP. NRCS anticipates using this protocol, or a similar protocol, to identify natural resource concerns each year before developing the RFP. NRCS welcomes comments on this solicitation protocol.

NRCS considered whether the concerns should be narrowly drawn into priorities or described more broadly. It was decided that the descriptions of the concerns in the RFP initially should be broad and inclusive, with potential for prioritizing a narrower set of natural resource concerns in future years. NRCS decided to group the natural resource concerns under five topic headings, with subtopics that provide more detailed guidance to applicants.

Following are the five initial natural resource conservation concerns for CIG. The natural resource concerns may be reviewed and updated each year to ensure that CIG continues to address critical resource conservation needs. NRCS intends to receive input from State Conservationists, the Agricultural Research Service, the Cooperative State Research, Extension, and Education Service, and other federal agencies when reviewing and updating the natural resource concerns. NRCS welcomes comments on these natural resource concerns.

(1) *Water Resources.* The objective of this natural resource concern is to implement new technologies and approaches to maintain, restore, or enhance water quality or quantity in watersheds with predominantly agricultural land uses while sustaining productivity. Subtopics include:

(i) Nutrient, pesticide, and pathogen transport to surface water and groundwater;

(ii) Sediment transport to surface water;

(iii) Irrigation management for water conservation;

(iv) Aquifer recharge/maintenance of groundwater supplies; and

(v) Increased water supplies/availability through alternative treatment or reuse strategies.

(2) *Soil Resources.* The objective of this natural resource concern is to implement new technologies or approaches to maintain, restore, or enhance soil resources associated with agricultural and forest land uses while sustaining productivity. Subtopics include:

(i) Erosion reduction;

(ii) Accumulation of harmful constituents in soils, including nutrients, metals, salts; and

(iii) Overall soil quality and productivity.

(3) *Atmospheric Resources.* The objective of this natural resource concern is to implement new technologies or approaches to maintain, restore, or enhance air quality and atmospheric resources through agricultural and forest practices while sustaining productivity. Subtopics include:

(i) Agricultural emissions of particulates, odors, volatile organic compounds, and greenhouse gases;

(ii) Carbon sequestration in soil and through other mechanisms; and

(iii) Bio-based energy opportunities.

(4) *Grazing Land and Forest Health.* The objective of this natural resource concern is to implement new technologies or approaches to maintain, restore, or enhance grazing land and forest health while sustaining productivity. Subtopics include:

(i) Invasive species management on grazing and forest land;

(ii) Effects of pests, diseases, and fragmentation on forest and grazing land quality/health; and

(iii) Systems or practices to minimize overgrazing and restore lands suffering effects of overgrazing.

(5) *Wildlife Habitat.* The objective of this natural resource concern is to implement new technologies or approaches for environmentally sound wildlife habitat management while sustaining agricultural productivity. Subtopics include:

(i) Riparian area management and restoration;

(ii) Invasive species management;

(iii) Biodiversity; and

(iv) Wetland function and health.

(e) *Eligibility Information.*

(1) *Organization or Individual Eligibility.* This paragraph describes the requirements for CIG eligibility. The CIG provision of the EQIP statute authorizes the Secretary to provide grants to governmental and nongovernmental organizations and persons, on a competitive basis, to carry out projects that involve producers that are eligible for payments or technical assistance under EQIP. NRCS has determined that the CIG statutory language warrants the exclusion of Federal agencies as grant recipients. This is because the statutory language calls for leveraging of the Federal investment, requiring that matching funds come from non-Federal sources. Note that while Federal agencies may not be a grant recipient, they are not barred from participating in a CIG project as a partner or cooperator, as long as their contribution is not counted as part of the CIG non-Federal match requirement.

USDA wishes to inform potential applicants about the applicability of EQIP payment limitations to CIG grant funds. Section 1240G of the Food Security Act of 1985 (as amended by the Farm Security and Rural Investment Act of 2002), 16 U.S.C. 3839aa–7, imposes a $450,000 limitation for all cost-share or incentive payments disbursed to individuals or entities under an EQIP contract between 2002 and 2007. Because CIG is a provision under EQIP, NRCS deliberated on whether the payment limitation also applies to CIG. NRCS determined that the limitation applies in the following manner:

- CIG funds are awarded through grant agreements and it was determined that these grant agreements are not EQIP contracts; thus, CIG awards are not limited by the payment limitation; and,
- Grant funds that are provided to a producer or entity to carry out structural, vegetative, or management practices count toward each producer's or entity's EQIP payment limitation. The procedures and policies of this part will be followed to implement this payment limitation for CIG. NRCS will work with CIG grantees to ensure that the payment limitation is followed for all CIG projects.

Following are three examples of how the $450,000 EQIP payment limitation applies to CIG projects:

• A $500,000 CIG grant is awarded to a State environmental agency to demonstrate an innovative, market-based, water quality trading program. The money is used to finance the development of the market infrastructure, and none of the funds are used to implement structural, vegetative, or management practices. Producers in the trading market demonstration area may indirectly benefit from their eventual participation in the market, but there is no direct or indirect transfer of CIG dollars. If, on the other hand, part of the CIG award were used to provide funds to producers who implement a conservation practice on their land as part of a trading program, those funds would count towards each producer's $450,000 EQIP payment limitation.

• A $1,000,000 CIG grant is awarded to a Conservation District to pilot a community-based animal waste treatment technology innovation. EQIP-eligible producers in the area transport their animal waste to a central treatment location. Because producers are not directly or indirectly receiving CIG funds, the payment limitation does not apply. If, however, the technology were to be installed on five producers' property for demonstration purposes, the CIG funds would count toward each producer's $450,000 EQIP payment limitation. Similarly, if the producers were paid for their waste, or for transporting their waste to the central treatment location, out of CIG funds, the payments would be subject to each producer's EQIP payment limitation.

• An individual producer applying for a $500,000 CIG grant already has an EQIP contract for $100,000. The producer is awarded a grant to implement an innovative management practice, but the amount would be reduced to $350,000 in order to comply with the EQIP payment limitation.

(2) *Project Eligibility*. The CIG statute mandates that projects involve producers eligible for payments or technical assistance under EQIP. While the statute does not elaborate on the nature or extent of EQIP eligible producer involvement, NRCS has determined that because CIG was authorized under EQIP, projects must substantially involve and benefit EQIP eligible producers. Applicants must describe how the proposed project will substantially involve and benefit EQIP eligible producers. Further, NRCS has determined that all producers involved in a CIG project must be EQIP eligible. This determination was based on the fact that CIG is a component of EQIP. To be EQIP eligible, an individual must meet the eligibility requirements of § 1466.8(b)(1)–(3) of the EQIP rule (7 CFR 1466). Producers participating in a CIG project are not required to have an EQIP contract. NRCS welcomes comments on these determinations.

(3) *Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes*. NRCS recognizes the need to provide special consideration to underrepresented or historically underserved producers or groups of producers. This interim final rule includes two programmatic exceptions for Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes. These exceptions are designed to encourage the participation of Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes in CIG.

The first exception regarding matching funds and in-kind contributions is described in section (c) of this notice and applies to both the national and the State component of CIG. The second exception applies to the national component only. Two options were considered for this exception: (1) Set-aside up to 10 percent of the total funds available for CIG for applicants who are Beginning or Limited Resource Farmers or Ranchers, or Indian Tribes, or community-based organizations comprised of or representing these entities. Funds not used in the set-aside pool would revert back into the general CIG funding pool; and, (2) include special consideration for these under-represented groups in the proposal evaluation criteria. NRCS chose the first option. A set-aside sends a clear, explicit signal that NRCS supports the equitable distribution of grants. Moreover, a set-aside provides strong incentive for the inclusion of under-represented groups in CIG projects.

NRCS welcomes comments on the special consideration provided to Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes.

(f) *Application and Submission Information*. This paragraph describes the application and submission procedures for CIG. Detailed instructions will be published in the RFP.

NRCS will accept only paper application submissions for CIG until such time that NRCS elects to receive grant applications electronically through the Federal e-grants portal, *grants.gov.* When this internet portal becomes operational for CIG, information on submitting grant applications electronically will be provided in the RFP. This is consistent with the *Grants.gov* Initiative of the President's Management Agenda.

(g) *Application Review and Grant Awards*. This paragraph describes the application review and grant award process for CIG. The statute explicitly states that CIG is a competitive grants program. NRCS analyzed comparable Federal grants programs to help identify an effective and objective process for awarding grants. The proposal review and award process for CIG consists of three steps:

• Peer Review Panels—groups of Federal and non-Federal subject matter experts will evaluate proposals against the evaluation criteria described below. Proposals will be ranked and forwarded to a Grant Review Board.

• Grant Review Board—a five-member NRCS board consisting of the Deputy Chief for Programs, Deputy Chief for Science and Technology, Deputy Chief for Soil Survey and Resource Assessment, one Regional Assistant Chief, and one State Conservationist. The Grant Review Board will certify the rankings from the peer review panels, and ensure that the proposal evaluations are consistent with program objectives. The Board then makes recommendations for awards to the Chief.

• Chief—Final award selections will be made by the Chief.

NRCS welcomes comments on this proposal review and award process.

NRCS has developed proposal evaluation criteria for use by CIG peer review panels. Applications will be evaluated and ranked according to how well they adhere to the following four evaluation criteria:

(1) *Purpose and goals*.

(i) The purpose and goals of the project are clearly stated;

(ii) The project adheres to the CIG natural resource conservation concerns identified in the RFP; and,

(iii) There is clear and significant potential for a positive and measurable outcome.

(2) *Soundness of approach or design*.

(i) The project adheres to the description of innovative projects or activities found in paragraph (b)(5) of this section;

(ii) Technical design and implementation strategy are based on sound science;

(iii) There is a strong likelihood of project success;

(iv) The project involves EQIP eligible producers in a substantive way; and,

(v) The project promotes environmental enhancement and protection in conjunction with agricultural production.

(3) *Project management*.

(i) The proposal has clear milestones and timelines, designated staff as

applicable, and demonstrates collaboration;

(ii) The project staff has the technical expertise needed to do the work;

(iii) The budget is reasonable and adequately justified; and,

(iv) The project leverages non-federal matching funds of at least 50 percent of the total project cost, of which up to one-half (25 percent of total project cost) may be in-kind contributions (except in the case of Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes).

(4) *Transferability*.

(i) There is strong potential to transfer the approach or technology to others or to other geographical areas; and,

(ii) The project will result in the development of technical or related materials(e.g., technical standards, technical notes, manuals, handbooks, software, *etc.*) that will help foster adoption of the innovative technology or approach by other producers, and in other geographic areas.

Each of the four criterion carries an equal weight of 25 percent. In addition, NRCS considered increasing the score of projects that:

- Have a broader geographic scope;
- Address more than one natural resource concern;
- Include larger numbers of partners; or,
- Provide more than a 50 percent funding match, further leveraging Federal funds.

NRCS rejected the first three additional criteria because the quality of a project may not necessarily be improved by meeting one or more of these criteria. For example, applicants should not be encouraged to recruit extraneous project partners for the sole purpose of trying to improve a proposal's evaluation. Likewise, a high-quality proposal should not be penalized because it is focused on only a single watershed. NRCS rejected the fourth additional criterion because it would run counter to our effort to promote an equitable distribution of grant awards. NRCS welcomes comments on these issues.

(h) *State Component*. This paragraph describes the CIG State component. In addition to the national component, the Chief may provide discretion to each State Conservationist to implement a State component of CIG. For the most part, the State component will use the requirements and procedures established for the national component, except as noted in this paragraph. Funding availability and detailed application and submission information for these distinct State-level competitions will be announced through public notices, separately from the national program. The intent of the State component is to provide flexibility to State Conservationists to target CIG funds to individual producers and smaller organizations that may possess promising innovations, but could not compete well on the larger scale of the national grants competition. The State component will emphasize projects that have a goal of providing benefits within a limited geographic area. Projects may be farm-based, multi-county, small watershed, or State-wide in scope. For the purposes of soliciting applications, the State Conservationist may choose to adhere to the CIG national natural resource concerns, or may select a subset of those concerns that more closely match the natural resource concerns in his or her State.

For the State component, grant awards must be less than $75,000. This limit is established to allow for streamlining of grants administration. It is anticipated that the range of funding for the State component will be between $5,000 and $50,000, largely because of the difficulty that producers and smaller organizations, who are most likely to apply for a State-level grant, may have in providing the 50 percent cost-share match.

Members of the State Technical Committee (or a subcommittee thereof) in each participating State will evaluate the proposals based on the Criteria for Proposal Evaluation identified in section g of this preamble. Proposal rankings will be forwarded to the State Conservationist, who will make the final award decisions.

In addition to abiding by the in-kind contribution exception for Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes, the State Conservationist in each participating State will determine if and how to provide additional special consideration to these underserved groups.

NRCS intends to limit the opportunity for duplication of efforts between State competitions, or between the State and the national components. To do this, prior to making the final award decisions the State Conservationist in each participating State will submit a project description of the intended awards to the NRCS National Office for review. If this national review identifies a potential for a duplication of efforts, the respective State Conservationist will be informed.

NRCS welcomes comments on the design of the CIG State component.

(i) *Grant Agreement*. This paragraph describes the legal instrument that reflects the relationship between NRCS and the CIG grantee.

(j) *Patents and Inventions*. This paragraph describes the allocation of rights to any patents and inventions developed using CIG funds.

(k) *Violations*. This paragraph describes the result when a CIG grantee violates the terms of the grant agreement. For this paragraph, CIG follows the provisions contained in 7 CFR 3015 and related Departmental regulations.

**List of Subjects in 7 CFR Part 1466**

Conservation, Grant Review Board, Grants, Innovation, Natural Resources, Peer Review Panel.

■ For the reasons stated in the preamble, the Commodity Credit Corporation amends part 1466 as set forth below:

## PART 1466—ENVIRONMENTAL QUALITY INCENTIVES PROGRAM

■ 1. The authority citation for Part 1466 continues to read as follows:

**Authority:** 15 U.S.C. 714b and 714c; 16 U.S.C. 3839aa–3839aa–8.

■ 2. A new § 1466.27 is added to read as follows:

### § 1466.27 Conservation Innovation Grants (CIG).

(a) *Definitions*. In addition to the terms defined in § 1466.3 of this part, the following definitions shall be applicable to this section:

(1) *EQIP eligible* means any farming entity, land, and practice that meets the definitions of EQIP as defined in 7 CFR 1466.

(2) *Grant agreement* means a document describing a relationship between NRCS and a State or local government, or other recipient whenever the principal purpose of the relationship is the transfer of a thing of value to a recipient in order to accomplish a public purpose of support or stimulation authorized by Federal law, and substantial Federal involvement is not anticipated.

(3) *Grant Review Board* consists of the NRCS Deputy Chief for Programs, Deputy Chief for Science and Technology, Deputy Chief for Soil Survey and Resource Assessment, one Regional Assistant Chief, and one State Conservationist. The Review Board makes recommendations for grant awards to the Chief.

(4) *Peer Review Panel* means a panel consisting of Federal and non-Federal technical advisors who possess expertise in a discipline or disciplines deemed important to provide a technical evaluation of project proposals submitted under this notice.

(5) *Project* means the activities as defined within the scope of the grant agreement.

(6) *Project Director* means the individual responsible for the technical direction and management of the project as designated in the application.

(b) *Purpose and scope*. (1) *Purpose*. The purpose of CIG is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. Notwithstanding any limitation of this part, NRCS will administer CIG in accordance with this section. Unless otherwise provided for in this section, the provisions of 7 CFR 3015 and related Departmental regulations will be used to administer grants under CIG.

(2) *Geographic scope*. Applications for CIG are accepted from the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(3) *Program scope*. Grants will be awarded using a two-tiered process. A nationwide grants competition will be announced in the **Federal Register**. In addition, at the Chief's discretion, each State Conservationist may implement a separate State-level component of CIG.

(4) *Program focus*. Applications for CIG should demonstrate the use of innovative approaches to leverage Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG will fund projects that promote innovative on-the-ground conservation, including pilot projects and field demonstrations of promising approaches or technologies. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals and guides, or to the private sector. Technologies and approaches that are eligible for funding in the project's geographic area through EQIP are not eligible for CIG funding.

(5) *Innovative conservation projects or activities*. For the purposes of CIG, the proposed innovative project or activity must encompass the development and field testing, evaluation, and implementation of:

(i) Conservation adoption incentive systems, including market-based systems; or,

(ii) Promising conservation technologies, practices, systems, procedures, and approaches.

To be given priority consideration, the innovative project or activity:

(iii) Will have been studied sufficiently to indicate a good probability for success;

(iv) Demonstrates, tests, evaluates, or verifies environmental (soil, water, air, plants, and animal) effectiveness, utility, affordability, and usability in the field;

(v) Adapts conservation technologies, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption;

(vi) Introduces conservation systems, approaches, and procedures from another geographic area or agricultural sector; and

(vii) Adapts conservation technology, management, or incentive systems to improve performance.

(c) *Availability of funding*. (1) CIG funding will be available for single-or multi-year projects. Funding for CIG will be announced in the **Federal Register** through a Request for Proposals (RFP). The Chief will determine the funding level for CIG on an annual basis. Funds for CIG are derived from funds made available for EQIP. The Chief may establish funding limits for individual grants.

(2) Selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of total project cost) may be from in-kind contributions. An exception regarding matching funds may be made for grants that are awarded to either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Up to 75 percent of the required matching funds for these projects may derive from in-kind contributions.

(3) CIG is designed to provide financial assistance to grantees. Procurement of any technical assistance required to carry out a project is the responsibility of the grantee. Technical oversight for grant projects will be provided by a Federal grant representative, who will be designated by NRCS.

(4) There are some costs that grantees may not cover using CIG funds, such as costs incurred prior to the effective date of the grant, entertainment costs, or renovation or refurbishment of buildings or facilities. A detailed list of costs not allowed will be published in the RFP.

(d) *Natural resource conservation concerns*. CIG applications must describe the use of innovative approaches or technologies to address a natural resource conservation concern or concerns. The natural resource concerns for CIG will be identified by the Chief, and may change each year. The natural resource concerns will be published in the RFP.

(e) *Eligibility information*. (1) *Organization or individual eligibility*. To be eligible, CIG applicants must be an Indian Tribe; State or local unit of government; non-governmental organization; or individual.

(2) *Project eligibility*. To be eligible, projects must involve landowners who meet the eligibility requirements of § 1466.8(b)(1) through (3) of this part. Further, all agricultural producers participating in a CIG project must meet those eligibility requirements.

(3) *Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes*. Up to 10 percent of the total funds available for CIG may be set-aside for applications from either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities. Funds not awarded from the set-aside pool will revert back into the general CIG funding pool.

(f) *Application and submission information*. The CIG RFP will contain guidance on how to apply for the grants competition. CIG will be advertised through the **Federal Register**, the NRCS Web site, and *grants.gov*. Grant applications will be available on the NRCS Web site, or by contacting NRCS at the address provided in the RFP. CIG grant applications will consist of standard cover sheet and budget forms, in addition to a narrative project description and required legal declarations and certifications.

(g) *Application review and grant awards*. Complete applications will be evaluated by a peer review panel and scored based on the Criteria for Proposal Evaluation identified in the RFP. Scored applications will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for awards to the Chief. Final award selections will be made by the Chief. Grant awards will be made by the NRCS National Office after selection of the grantees is made and after the grantee agrees to the terms and conditions of the NRCS Grant document.

(h) *State component*. (1) At the discretion of the Chief, each State Conservationist has the option of

implementing a State-level CIG component. A State program will follow the requirements of this section, except for those features described in this paragraph (h).

(2) Funding availability, application, and submission information for State competitions will be announced through public notices (and on the State NRCS Web site), separately from the national program. The State component will emphasize projects that cover limited geographic areas, including individual farms, multi-county areas, or small watersheds.

(3) The State Conservationist will determine the funding level for the grants competition, with individual grants not to exceed $75,000.

(4) The State Conservationist may choose to adhere to the CIG national natural resource concerns, or may select a subset of those concerns that more closely match the natural resource concerns in his or her State.

(5) Applications will be scored by the State Technical Committee, or a sub-committee thereof, based on the national Criteria for Proposal Evaluation published in the CIG RFP. Scored applications will be forwarded to the State Conservationist, who will make the award selections.

(6) In addition to abiding by the in-kind contribution exception for Limited Resource and Beginning Farmers and Ranchers, and Indian Tribes in paragraph (c)(2) of this section, the State Conservationist in each participating State will determine if and how to provide additional special consideration to underserved groups.

(i) *Grant agreement.* The CCC, through NRCS, will use a grant agreement with selected grantees to document participation in CIG.

(j) *Patents and inventions.* Allocation of rights to patents and inventions shall be in accordance with USDA regulation 7 CFR 3019.36. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. In accordance with 7 CFR 3019.2, this provision will also apply to commercial organizations for the purposes of CIG. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

(k) *Violations.* A person found in violation of this section is subject to the provisions contained in 7 CFR part 3015 and related Departmental regulations.

Signed in Washington, DC, on March 19, 2004.

**Bruce I. Knight,**

*Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.*

[FR Doc. 04–6934 Filed 3–26–04; 8:45 am]

BILLING CODE 3410–16–P

## DEPARTMENT OF AGRICULTURE

### Commodity Credit Corporation

### Natural Resources Conservation Service

### Conservation Innovation Grants

**AGENCY:** Commodity Credit Corporation, Natural Resources Conservation Service, Department of Agriculture (USDA).

**ACTION:** Notice of request for proposals.

**SUMMARY:** Section 1240H of the Food Security Act of 1985, as added by section 2301 of the Farm Security and Rural Investment Act of 2002 (Pub. L. 107–171) established Conservation Innovation Grants (CIG) as part of the Environmental Quality Incentives Program (EQIP) (16 U.S.C. 3839aa–8). Through CIG, the Secretary of Agriculture may pay the cost of competitive grants to carry out projects that stimulate innovative approaches to leveraging Federal investment in environmental enhancement and protection in conjunction with agricultural production. The Secretary of Agriculture delegated the authority for the administration of EQIP and CIG to the Chief of the Natural Resources Conservation Service (NRCS), who is a vice president of the Commodity Credit Corporation (CCC). EQIP is administered by NRCS under the authorities of the CCC.

This notice announces the availability of up to $15 million of CCC funds for Conservation Innovation Grants in Fiscal Year 2004. The funds will be awarded through a nationwide competitive grants process. Applications are requested from eligible government or non-government organizations or individuals for competitive consideration of grant awards for single or multi-year projects. This notice sets forth the applicant and project eligibility requirements, application procedures, and grant award criteria for proposed projects.

**DATES:** Applications must be received in the NRCS National Office by May 28, 2004.

**ADDRESSES:** Written applications should be sent to Sheila Leonard, Grants and Agreements Specialist, Natural Resources Conservation Service, 14th and Independence Ave., SW., Room 5226–S, Washington, DC 20250.

**FOR FURTHER INFORMATION CONTACT:** Carl Lucero, Natural Resources Conservation Service, 5601 Sunnyside Avenue, Mail Stop 5473, Beltsville, MD 20705. Phone: (301) 504–2222; facsimile: (301) 504–2264; e-mail: *cig@usda.gov;* Subject: Conservation Innovation Grants RFP; or consult the NRCS Web site at *http://www.nrcs.usda.gov/programs/farmbill/2002.*

Catalog of Federal Domestic Assistance (CFDA) Number: 10.912.

**SUPPLEMENTARY INFORMATION:**

## I. Funding Opportunity Description

### *A. Background*

Of the nearly 1.4 billion acres of private land in the United States, 931 million, or roughly 70%, are in agriculture. The activities on these lands have a direct effect on the soil, water, air, plant, and animal resources, as well as the social, cultural, and economic condition of U.S. communities, towns, and counties. Regional and local differences in farm structure, farm practices, and farm products make delivering innovative agricultural conservation technical assistance a challenge. National agricultural research and development may not always have the capacity to develop, test, and transfer new or innovative conservation technologies and approaches rapidly or effectively to account for regional variances in the agricultural industry. Consequently, there is a need to expediently develop, test, implement, and transfer innovative farm and ranch conservation technologies and approaches for adoption in the largest applicable market available. Conservation Innovation Grants are awarded, in part, to stimulate this purpose.

### *B. Availability of Funding*

Effective on the publication date of this notice, the CCC announces the availability of up to $15 million for CIG. The CCC, acting through NRCS, must receive applications for participation by May 28, 2004. Funds will be awarded through a nationwide competitive grants process. CIG will emphasize projects that have a goal of providing benefits over a large geographic area. These projects may be watershed-based, regional, multi-State, or nationwide in scope.

State, tribal, and local governmental entities, non-governmental organizations, and individuals may apply. Selection will be based on the criteria established in this notice, and selected applicants may receive grants of up to 50 percent of the total project cost. Applicants must provide non-Federal funding for at least 50 percent of the project cost, of which up to one-half (25 percent of the total project cost) may be from in-kind contributions. The remainder must be a cash match.

The CIG interim final rule published simultaneously with this Request for Proposals (RFP) describes the potential for implementing a State component of CIG. The intent of the State component is to provide flexibility to NRCS State Conservationists to target CIG funds to individual producers and smaller organizations that may possess promising innovations, but could not compete well on the larger scale of the national grants competition. The State component of CIG, however, will not be implemented in Fiscal Year (FY) 2004 because of continued EQIP application backlogs, the lateness of Congressional appropriations, and workload demands at the State level. The Chief retains the option of providing each State Conservationist with the discretion to implement a CIG State program in future fiscal years.

### *C. Overview of Conservation Innovation Grants*

The CCC will accept applications for single-or multi-year projects, not to exceed three years, submitted to NRCS from eligible entities, including Federally-recognized Indian Tribes, State and local governments, and non-governmental organizations and individuals. The purpose of CIG is to stimulate the development and adoption of innovative conservation approaches and technologies while leveraging Federal investment in environmental enhancement and protection, in conjunction with agricultural production. CIG projects are expected to lead to the transfer of conservation technologies, management systems, and innovative approaches (such as market-based systems) into NRCS technical manuals or guides, or to the private sector.

Applications are solicited for the full range of natural resource conservation concerns detailed in this notice. Applications are accepted from all 50 States, the Caribbean Area (Puerto Rico and the Virgin Islands), and the Pacific Basin Area (Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands).

Complete applications will be evaluated by a technical peer review panel and scored based on the Criteria for Proposal Evaluation identified in this RFP. Scored applications will be forwarded to a Grant Review Board. The Grant Review Board will make recommendations for project approval to the Chief. Final award selections will be made by the Chief.

Grant awards will be made from the NRCS National Office after the grantee agrees to the terms and conditions of the NRCS grant agreement.

## II. Natural Resource Conservation Concerns

Applications should demonstrate the use of innovative technologies or innovative approaches, or both, to address a natural resource concern or concerns. It is NRCS' intention to provide flexibility to obtain the greatest degree of creativity and innovation possible in addressing natural resource concerns, consistent with the overall program objective.

The five natural resource concerns for possible funding through Conservation Innovation Grants for Fiscal Year 2004 are:

*A. Water Resources*

The objective of this natural resource concern is to implement new technologies and/or approaches to maintain, restore, or enhance water quality and/or quantity in watersheds with predominantly agricultural land uses while sustaining productivity. Subtopics include:

1. Nutrient, pesticide, and pathogen transport to surface water and groundwater;
2. Sediment transport to surface water;
3. Irrigation management for water conservation;
4. Aquifer recharge/maintenance of groundwater supplies; and,
5. Increased water supplies/availability through alternative treatment or reuse strategies.

*B. Soil Resources*

The objective of this conservation concern is to implement new technologies and/or approaches to maintain, restore, or enhance soil resources associated with agricultural and forest land uses while sustaining productivity. Subtopics include:

1. Erosion reduction;
2. Accumulation of harmful constituents in soils, including nutrients, metals, salts; and,
3. Overall soil quality and productivity.

*C. Atmospheric Resources*

The objective of this conservation concern is to implement new technologies and/or approaches to maintain, restore, or enhance air quality and atmospheric resources through agricultural and forest practices while sustaining productivity. Subtopics include:

1. Agricultural emissions of particulates, odors, volatile organic compounds, and greenhouse gases;
2. Carbon sequestration in soil and through other mechanisms; and,
3. Bio-based energy opportunities.

*D. Grazing Land and Forest Health*

The objective of this conservation concern is to implement new technologies and/or approaches to maintain, restore, or enhance grazing land and forest health while sustaining productivity. Subtopics include:

1. Invasive species management on grazing and forest land;
2. Effects of pests, diseases, and fragmentation on forest and grazing land quality/health; and,
3. Systems or practices to minimize overgrazing and restore lands suffering effects of overgrazing.

*E. Wildlife Habitat*

The objective of this conservation concern is to implement new technologies and/or approaches for environmentally sound wildlife habitat management while sustaining agricultural productivity. Subtopics include:

1. Riparian area management and restoration;
2. Invasive species management;
3. Biodiversity; and,
4. Wetland function and health.

## III. Eligibility

*A. Organization or Individual Eligibility*

CIG applicants must be a Federally-recognized Indian Tribe; State or local unit of government; non-governmental organization; or individual.

1. Payment Limitation—Section 1240G of the Food Security Act of 1985 (as amended by the Farm Security and Rural Investment Act of 2002), 16 U.S.C. 3839aa-7, imposes a $450,000 limitation for all cost-share or incentive payments disbursed to individuals or entities under an EQIP contract between 2002 and 2007. The limitation applies to CIG in the following manner:

a. CIG funds are awarded through grant agreements; these grant agreements are not EQIP contracts. Thus, CIG awards are not limited by the payment limitation.

b. Grant funds that are provided to an individual or entity to carry out structural, vegetative, or management practices count toward each individual's or entity's EQIP payment limitation. The procedures and policies of the EQIP (7 CFR 1466) will be followed to implement this payment limitation for CIG. NRCS will work with CIG grantees to ensure that the payment limitation is followed for all CIG projects.

2. Payment Limitation Examples—Following are three examples of how the $450,000 EQIP payment limitation applies to CIG projects:

a. A $500,000 CIG grant is awarded to a State environmental agency to demonstrate an innovative, market-based, water quality trading program. The money is used to finance the development of a market infrastructure, and none of the funds are used to implement structural, vegetative, or management practices. Producers in the trading market demonstration area may indirectly benefit from their eventual participation in the market, but there is no direct or indirect transfer of CIG dollars. If, on the other hand, part of the CIG award were used to provide funds to producers who implement a conservation practice on their land as part of a trading program, those payments would count towards each producer's $450,000 EQIP payment limitation.

b. A $1,000,000 CIG grant is awarded to a Conservation District to pilot a community-based animal waste treatment technology innovation. EQIP-eligible producers in the area transport their animal waste to a central treatment location. Because producers are not directly or indirectly receiving CIG funds, the payment limitation does not apply. If, however, the technology were to be installed on five producers' property for demonstration purposes, the CIG funds would count toward each producer's $450,000 EQIP payment limitation. Similarly, if the producers were paid for their waste, or for transporting their waste to the central treatment location, out of CIG funds, the payments would be subject to each producer's EQIP payment limitation.

c. An individual producer applying for a $500,000 CIG grant already has an EQIP contract for $100,000. The producer is awarded a grant to implement an innovative management practice, but the amount would be reduced to $350,000 maximum in order to comply with the EQIP payment limitation.

*B. Project Eligibility*

To be eligible, projects must involve landowners who meet the EQIP eligibility requirements of 16 U.S.C. 3839aa–1. Refer to *http://www.nrcs.usda.gov/programs/eqip/* for more information on EQIP and eligibility requirements. Further, all agricultural producers participating in a CIG project must meet the EQIP eligibility requirements, but are not required to have an EQIP contract. Applications must describe the extent of participation of EQIP eligible producers.

Technologies and approaches that are eligible for funding in the project's geographic area through EQIP are ineligible for CIG funding. Applicants should reference each State's EQIP Eligible Practices List by contacting the

NRCS State office, or by visiting the EQIP Web site: *http://www.nrcs.usda.gov/programs/eqip/EQIP_signup/2004_EQIP/2004_EQIP.html.* If an applicant believes a practice is innovative and should be eligible for funding through CIG, a justification describing the unique features of the practice should be included in the application.

Individual projects funded through CIG in Fiscal Year 2004 may not receive more than $1 million from NRCS. NRCS anticipates that the funding range for most projects will be between $75,000 and $500,000.

CIG will fund single- and multi-year projects, not to exceed three years. At the discretion of the Chief, a project may be allowed to extend up to a total of five years if special conditions exist. All requests and justifications for prolonging the duration of a project beyond three years must be included in the CIG application. The Chief will make decisions on such requests on a case-by-case basis.

The grantee is responsible for providing the technical assistance required to successfully implement and complete the project. NRCS will provide technical oversight for each project receiving an award.

*C. Beginning and Limited Resource Farmers and Ranchers, and Indian Tribes*

For the FY 2004 grant award process, up to 10 percent of the total funds available for CIG may be set-aside for applications from Beginning and Limited Resource Farmers and Ranchers, Indian Tribes, or community-based organizations comprised of or representing these entities. To compete for these set-aside funds, the applicant must make a declaration in the application as described in paragraph V.A.6. of this notice. Applications that are unsuccessful in the set-aside competition will be placed automatically in the general application pool for consideration. Funds not used in the set-aside pool will revert back into the general funding pool.

An exception regarding matching funds is made for projects funded out of the set-aside. Seventy-five percent of the required matching funds for such projects may derive from in-kind contributions. This exception is intended to help Beginning and Limited Resource Farmers or Ranchers and Indian Tribes meet the statutory requirements for receiving a Conservation Innovation Grant.

## IV. Innovative Conservation Projects or Activities

For the purposes of CIG, the proposed innovative project or activity must encompass the development and field testing, evaluation, and implementation of:

- Conservation adoption incentive systems, including market-based systems; or,
- Promising conservation technologies, practices, systems, procedures, and approaches.

To be given priority consideration, the innovative project or activity:

- Will have been studied sufficiently to indicate a good probability for success;
- Demonstrates, tests, evaluates, or verifies environmental (soil, water, air, plants, and animal) effectiveness, utility, affordability, and usability in the field;
- Adapts conservation technologies, practices, systems, procedures, approaches, and incentive systems to improve performance, and encourage adoption;
- Introduces conservation systems, approaches, and procedures from another geographic area or agricultural sector; and,
- Adapts conservation technology, management, or incentive systems to improve performance.

## V. Application and Submission Information

*A. Application Materials*

Applications must contain the information set forth below in order to receive consideration for a grant. Applicants should not assume prior knowledge on the part of NRCS or others as to the relative merits of the project described in the application. Applications must be submitted in the following format:

1. *Cover Sheet:* Applications must use Standard Form 424 as the cover sheet for each project proposal. Standard Form 424 can be downloaded from *http://www.whitehouse.gov/omb/grants/sf424.pdf*, or obtained from a NRCS State Office (a list of NRCS State Offices is provided in the appendix of this announcement).

2. *Project Abstract:* Each proposal must contain a summary of not more than one page that provides the following:

a. Project title;

b. Project duration (beginning and ending dates);

c. Name, address, telephone, e-mail, and other contact information for the project director;

d. Names and affiliations of project collaborators;

e. Estimated number of EQIP eligible producers involved in the project;

f. Project objectives;

g. Summary of the work to be performed;

h. Total project cost; and,

i. Total Federal funds requested.

3. *Project Description:* Each project must be completely and accurately described in no more than 10 typewritten, double-spaced pages, which must include the following:

a. *Project background:* Describe the history of, and need for, the proposed innovation. Provide evidence that the proposed innovation has been studied sufficiently to indicate a good probability for success of the project;

b. *Project objectives:* Be specific, using qualitative and quantitative measures, if possible, to describe the project's purpose and goals. Describe how, based on the description of innovative conservation projects and activities provided in section IV, the project is innovative;

c. *Project methods:* Describe clearly the methodology of the project and the tools or processes that will be used to implement the project;

d. *Location and size of project or project area:* Describe the location of the project and the relative size and scope (*e.g.,* acres, farm types and demographics, etc.) of the project area. Provide a map, if possible;

e. *Producer participation:* Estimate the number of producers involved in the project, and describe the extent of their involvement;

f. *Project action plan and timeline:* Provide a table listing project actions, timeframes, and associated milestones through project completion. If the applicant is requesting a project extension beyond three years (to a total of five years), include a justification for the extension;

g. *Project management:* Give a detailed description of how the project will be organized and managed. Include a list of key project personnel, their relevant education or experience, and their anticipated contributions to the project. Explain the level of participation required in the project by government and non-government entities. Identify who will participate in monitoring and evaluating the project;

h. *Benefits or results expected and transferability:* Identify the results and benefits to be derived from the proposed project activities, and explain how the results will be measured. Be as specific and quantitative as possible. Identify project beneficiaries—for example, agricultural producers by type or region or sector; rural communities; municipalities. Explain how these

entities will benefit. In addition, describe how results will be communicated to others via outreach activities; and,

i. *Project evaluation:* Describe the methodology or procedures to be followed to evaluate the project, determine technical feasibility, and quantify the results of the project for the final report. Grant recipients will be required to provide a quarterly report of progress and a final project report to NRCS. Instructions for submitting quarterly reports will be detailed in the grant agreement.

4. *Budget Information:* Use Standard Form 424A to document budget needs and provide a detailed narrative in support of the budget for the project. Standard Form 424A can be found at *http://www.whitehouse.gov/omb/grants/sf424a.pdf*, or obtained from a NRCS State Office. Itemize the costs necessary for successful completion of the proposed project. Indicate the total amount (both cash and in-kind) of non-Federal matching support that will be provided to the proposed project. In the budget narrative, identify the source, the amount, and the nature (cash or in-kind) of the matching funds. In-kind costs of equipment or project personnel cannot exceed 25 percent of the total project budget (except in the case of projects carried out by either a Beginning or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities—see paragraph III.C.). The remainder of the match must be provided in cash.

CIG funds may not be used to pay any of the following costs unless otherwise permitted by law, or approved in writing by the Authorized Departmental Officer in advance of incurring such costs:

a. Costs above the amount of funds authorized for the project;

b. Costs incurred prior to the effective date of the grant;

c. Costs incurred after the expiration date of the grant (including any approved no-cost extensions of time). However, grant funds may be expended after the expiration date to liquidate legitimate obligations incurred by the grantee on or before the expiration date;

d. Costs which lie outside the scope of the approved project and any amendments thereto;

e. Indirect costs of the grantee;

f. Entertainment costs, regardless of their apparent relationship to project objectives;

g. Compensation for injuries to persons, or damage to property arising out of project activities;

h. Consulting services performed by a Federal employee during official duty hours when such consulting services result in the payment of additional compensation to the employee; and,

i. Renovation or refurbishment of research or related spaces; the purchase or installation of fixed equipment in such spaces; and the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

This list is not exhaustive. Questions regarding the allowances of particular items of cost should be directed to the contact person above.

5. *Declaration of EQIP Eligibility:* Applicants must make a declaration in writing that they, or parties involved in the project, are eligible for EQIP.

6. Declaration of Beginning Farmer or Rancher or Limited Resource Farmer or Rancher, or Indian Tribe: If an applicant wishes to compete in the 10 percent set-aside funding pool (*see* paragraph III.C. that describes the provision of a set-aside pool of funding for Beginning and Limited Resource Farmers or Ranchers, and Indian Tribes) and avail themselves of the in-kind contribution exception, applicants must make a declaration in writing of their status as a Beginning Farmer or Rancher or Limited Resource Farmer or Rancher, or Indian Tribe, or a community-based organization comprised of or representing these entities.

7. *Environmental Evaluation:* Each application must be accompanied by a completed environmental profile describing the anticipated environmental effects of the proposal. The required form is available at *http://www.nrcs.usda.gov/programs/cig*. Applicants may also request a form in writing or by e-mail. These profiles will be used to determine whether an Environmental Assessment (EA) or Environmental Impact Statement (EIS) is needed for any given project, prior to the awarding of grant funds. The applicant is responsible for the cost of an EA or EIS, should one be required. This cost may be counted as part of the grantee's in-kind contribution.

8. *Supporting Documentation:* At the applicant's option, provide any additional information necessary or useful to describe the project. The applicant may present any information that would emphasize the value of the project, its merits, and its contribution toward innovation within the stated natural resource concerns identified in this notice.

9. *Certifications:* All applications must include a signed Standard Form (SF) 424B—Assurances, Non-construction Programs. SF 424B may be found at: *http://www.whitehouse.gov/omb/grants/sf424b.pdf*, or contact a State NRCS office;

Applicants, by signing and submitting an application, assure and certify that they are in compliance with the following from 7 Code of Federal Register (CFR):

a. Part 3017, Governmentwide Debarment and Suspension (Nonprocurement) (*http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3017_04.html*);

b. Part 3018, New Restrictions on Lobbying (*http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3018_04.html*); and,

c. Part 3021, Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) (*http://www.access.gpo.gov/nara/cfr/waisidx_04/7cfr3021_04.html*).

*B. Submission of Proposal*

Applications for project grants must be complete; incomplete applications will not be considered. If submitting proposals for more than one project, submit a separate, complete application package for each project. Applications are to be typewritten on 8½″ × 11″ white paper, double spaced, and on one side only. The text of the proposal must be typewritten in a font no smaller than 12-point, with one-inch margins. Applicants must submit one signed original and one copy of each project application. Each copy of the proposal must be stapled securely in the upper left hand corner. Hard copies must be accompanied by an electronic copy on a 3½-inch diskette or compact disc (CD). Electronic files must be either Microsoft Word or Acrobat (pdf) files. Applications submitted via facsimile or e-mail will not be accepted. Applications must be received at the address noted above by 5 p.m. EST on May 28, 2004. If that day falls on a Saturday, Sunday, or Federal holiday, applications will be accepted until the close of the next business day. A proposal's postmark date is not a factor in whether an application is received on time. The applicant assumes the risk of any delays in proposal delivery. Applicants are strongly encouraged to submit completed applications via overnight mail or delivery service to ensure timely receipt by NRCS. Receipt of all applications will be acknowledged by e-mail. Therefore, applicants are strongly encouraged to provide accurate e-mail addresses. If the applicant's e-mail address is not indicated, NRCS will acknowledge receipt of the application by letter. If the applicant does not receive an acknowledgment within 60 days of the submission deadline, please contact the program manager.

## VI. Application Review Information

*A. Proposal Review and Selection Process*

Prior to technical review, each application will be screened for completeness. Incomplete applications, including those that do not meet eligibility requirements, will be eliminated from competition, and notification of elimination will be e-mailed or mailed to the applicant.

Applications meeting the requirements of this notice will be scored by a Peer Review Panel against the Criteria for Proposal Evaluation identified below. Scored applications will be forwarded to a Grant Review Board, which will certify the rankings from the peer review panels, and ensure that the proposal evaluations are consistent with program objectives. The Grant Review Board will make recommendations to the Chief for final selection and funding decisions. Applicants who have been selected will be notified by mail within ten business days of the final selection. Applicants whose proposals have not been selected will be notified within 15 business days of the final selection.

*B. Criteria for Proposal Evaluation*

Peer review panels will use the following criteria to evaluate project proposals. Each of the four criterion carries an equal weight of 25 percent.

1. Purpose and goals:

a. The purpose and goals of the project are clearly stated;

b. The project adheres to the natural resource conservation concerns for FY 2004 stated in this notice; and,

c. There is clear and significant potential for a positive and measurable outcome.

2. Soundness of approach or design:

a. The project adheres to the description of innovative projects or activities found in section IV of this notice;

b. Technical design and implementation strategy is based on sound science;

c. There is a good likelihood of project success;

d. The project substantively involves EQIP eligible producers; and,

e. The project promotes environmental enhancement and protection in conjunction with agricultural production.

3. Project management:

a. The proposal has clear milestones and timelines, designated staff, and demonstrates collaboration;

b. The project staff has the technical expertise needed to do the work;

c. The budget is reasonable and adequately justified; and,

d. The project leverages non-Federal matching funds of at least 50 percent, of which up to one-half (25 percent of total match) may be in-kind contributions (see paragraph III.C. regarding an exception to this guidance for Beginning and Limited Resource Farmers or Ranchers and Indian Tribes).

4. Transferability:

a. There is great potential to transfer the approach or technology to others and/or to other geographical areas; and,

b. The project will result in the development of technical or related materials (e.g., technical standards, technical notes, manuals, handbooks, software) that will help foster adoption of the innovative technology or approach by other producers, and in other geographic areas.

## VII. Grant Agreement

The CCC, through NRCS, will use a grant agreement with selected applicants to document participation in the CIG component of EQIP. The grant agreement will include:

- The final project plan listing cooperators in the project, and identifying the grant applicant and the project manager;
- The project timelines and expected project completion date;
- The project progress and budget reporting requirements;
- Award amount and budget information;
- Requests for advance of funds or reimbursement;
- The role of NRCS technical oversight in the project;
- Reporting requirements;
- Changes in project plans; and
- Other requirements and terms deemed necessary by the CCC to protect the interests of the United States.

Neither the approval of any application nor the award of any grant agreement commits or obligates the United States to provide further support of a project or any portion thereof or implies any endorsement.

## VIII. Patents and Inventions

Allocation of rights to patents and inventions shall be in accordance with USDA regulation 7 CFR 3019.36. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support. In accordance with 7 CFR 3019.2, this provision will also apply to commercial organizations for the purposes of CIG. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must normally manufacture it domestically.

Signed in Washington, DC, on March 19, 2004.

**Bruce I. Knight,**

*Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.*

## Appendix

**Natural Resources Conservation Service State Conservationists**

*Alabama:* Robert N. Jones, 3381 Skyway Drive, Post Office Box 311, Auburn, AL 36830; phone: (334) 887–4500; fax: (334) 887–4552; *robert.jones@al.usda.gov.*

*Alaska:* Shirley Gammon, Atrium Building, Suite 100, 800 West Evergreen, Atrium Building, Suite 100, Palmer, AK 99645–6539; phone: (907) 761–7760; fax: (907) 761–7790; *sgammon@ak.nrcs.usda.gov.*

*Arizona:* Michael Somerville, Suite 800, 3003 North Central Avenue, Phoenix, AZ 85012–2945; phone: (602) 280–8808; fax: (602) 280–8809 or 8805; *msomervi@az.nrcs.usda.gov.*

*Arkansas:* Kalven L. Trice, Federal Building, Room 3416, 700 West Capitol Avenue, Little Rock, AR 72201–3228; phone: (501) 301–3100; fax: (501) 301–3194; *kalven.trice@ar.usda.gov.*

*California:* Charles W. Bell, Suite 4164, 430 G Street, Davis, California 95616–4164; phone: (530) 792–5600; fax: (530) 792–5790; *charles.bell@ca.usda.gov.*

*Colorado:* James Allen Green, Room E200C, 655 Parfet Street, Lakewood, CO 80215–5521; phone: (720) 544–2810; fax: (720) 544–2965; *allen.green@co.usda.gov.*

*Connecticut:* Margo L. Wallace, 344 Merrow Road, Tolland, Connecticut 06084; phone: (860) 871–4011; fax: (860) 871–4054; *margo.wallace@ct.usda.gov.*

*Delaware:* Ginger Murphy, Suite 101, 1203 College Park Drive, Suite 101, Dover, DE 19904–8713; phone: (302) 678–4160; fax: (302) 678–0843; *ginger.murphy@de.usda.gov.*

*Florida:* T. Niles Glasgow, 2614 NW. 43rd Street, Gainesville, FL 32606–6611, or Post Office Box 141510, Gainesville, FL 32606–6611; phone: (352) 338–9500; fax: (352) 338–9574; *niles.glasgow@fl.usda.gov.*

*Georgia:* Leonard Jordan, Federal Building, Stop 200, 355 East Hancock Avenue, Athens, GA 30601–2769; phone: (706) 546–2272; fax: (706) 546–2120; *leonard.jordan@ga.usda.gov.*

*Guam:* Joan B. Perry, Director, Pacific Basin Area, Suite 301, FHB Building, Suite 301 400 Route 8, Mongmong, G U 96910; phone: (671) 472–7490; fax: (671) 472–7288; *joan.perry@pb.usda.gov.*

*Hawaii:* Lawrence Yamamoto, Acting, Room 4–118, 300 Ala Moana Boulevard, Post Office Box 50004, Honolulu, HI 96850–0002; phone: (808) 541–2600; fax: (808) 541–1335; *lyamamoto@hi.nrcs.usda.gov.*

*Idaho:* Richard W. Sims, Suite C, 9173 West Barnes Drive, Boise, ID 83709; phone: (208) 378–5700; fax: (208) 378–5735; *richard.sims@id.usda.gov.*

*Illinois:* William J. Gradle, 2118 W. Park Court, Champaign, IL 61821; phone: (217) 353–6600; fax: (217) 353–6676; *bill.gradle@il.usda.gov.*

*Indiana:* Jane E. Hardisty, 6013 Lakeside Boulevard, Indianapolis, IN 46278–2933; phone: (317) 290–3200; fax: (317) 290–3225; *jane.hardisty@in.usda.gov.*

*Iowa:* Leroy Brown, 693 Federal Building, Suite 693, 210 Walnut Street, Des Moines, IA 50309–2180; phone: (515) 284–6655; fax: (515) 284–4394; *leroy.brown@ia.usda.gov.*

*Kansas:* Harold Klaege, 760 South Broadway, Salina, KS 67401–4642; phone: (785) 823–4565; fax: (785) 823–4540; *harold.klaege@ks.usda.gov.*

*Kentucky:* David G. Sawyer, Suite 110, 771 Corporate Drive, Lexington, KY 40503–5479; phone: (859) 224–7350; fax: (859) 224–7399; *dsawyer@ky.usda.gov.*

*Louisiana:* Donald W. Gohmert, 3737 Government Street, Alexandria, LA 71302; phone: (318) 473–7751; fax: (318) 473–7626; *don.gohmert@la.usda.gov.*

*Maine:* Joyce Swartzendruber, Suite 3, 967 Illinois Avenue, Bangor, ME 04401; phone: (207) 990–9100, ext. 3; fax: (207) 990–9599; *joyce.swartzendruber@me.usda.gov.*

*Maryland:* David P. Doss, John Hanson Business Center, Suite 301, 339 Busch's Frontage Road, Annapolis, MD 21401–5534; phone: (410) 757–0861; fax: (410) 757–0687; *david.doss@md.usda.gov.*

*Massachusetts:* Cecil B. Currin, 451 West Street, Amherst, MA 01002–2995; phone: (413) 253–4351; fax: (413) 253–4375; *cecil.currin@ma.usda.gov.*

*Michigan:* Ronald C. Williams, Suite 250, 3001 Coolidge Road, East Lansing, MI 48823–6350; phone: (517) 324–5270; fax: (517) 324–5171; *ron.williams@mi.usda.gov.*

*Minnesota:* William Hunt, Suite 600, 375 Jackson Street, St. Paul, MN 55101–1854; phone: (651) 602–7900; fax: (651) 602–7913 or 7914; *william.hunt@mn.usda.gov.*

*Mississippi:* Homer L. Wilkes, Suite 1321, Federal Building, 100 West Capitol Street, Jackson, MS 39269–1399; phone: (601) 965–5205; fax: (601) 965–4940; *hwilkes@ms.nrcs.usda.gov.*

*Missouri:* Roger A. Hansen, Parkade Center, Suite 250, 601 Business Loop 70, West Columbia, MO 65203–2546; phone: (573) 876–0901; fax: (573) 876–0913; *roger.hansen@mo.usda.gov.*

*Montana:* David White, Federal Building, Room 443, 10 East Babcock Street, Bozeman, MT 59715–4704; phone: (406) 587–6811; fax: (406) 587–6761; *dwhite@mt.nrcs.usda.gov.*

*Nebraska:* Stephen K. Chick, Federal Building, Room 152, 100 Centennial Mall, North Lincoln, NE 68508–3866 phone: (402) 437–5300; fax: (402) 437–5327; *steve.chick@ne.usda.gov.*

*Nevada:* Livia Marques, Building F, Suite 201, 5301 Longley Lane, Reno, NV 89511–1805; phone: (775) 784–5863; fax: (775) 784–5939; *livia.marques@nv.usda.gov.*

*New Hampshire:* Richard D. Babcock, Federal Building, 2 Madbury Road, Durham, NH 03824–2043; phone: (603) 868–7581; fax: (603) 868–5301; *richard.babcock@nh.nrcs.usda.gov.*

*New Jersey:* Anthony J. Kramer, 220 Davidson Avenue, 4th Floor, Somerset, NJ 08873–3157; phone: (732) 537–6040; fax: (732) 537–6095; *tkramer@nj.nrcs.usda.gov.*

*New Mexico:* Rosendo Trevino III, Suite 305, 6200 Jefferson Street, NE., Albuquerque, NM 87109–3734; phone: (505) 761–4400; fax: (505) 761–4462; *rosendo.trevino@nm.usda.gov.*

*New York:* Joseph R. DelVecchio, Suite 354, 441 South Salina Street, Syracuse, NY 13202–2450; phone: (315) 477–6504; fax: (315) 477–6550; *joseph.delvecchio@ny.usda.gov.*

*North Carolina:* Mary K. Combs, Suite 205, 4405 Bland Road, Raleigh, NC 27609–6293; phone: (919) 873–2101; fax: (919) 873–2156; *mary.combs@nc.usda.gov.*

*North Dakota:* Serapio Flores, Jr., Room 278, 220 E. Rosser Avenue, Post Office Box 1458, Bismarck, ND 58502–1458; phone: (701) 530–2000; fax: (701) 530–2110; *serapio.flores@nd.usda.gov.*

*Ohio:* J. Kevin Brown, Room 522, 200 North High Street, Columbus, OH 43215–2478; phone: (614) 255–2500; fax: (614) 255–2548; *kevin.brown@oh.usda.gov.*

*Oklahoma:* M. Darrel Dominick, USDA Agri-Center Building, Suite 206, 100 USDA, Stillwater, Oklahoma 74074–2655; phone: (405) 742–1204; fax: (405) 742–1126; *darrel.dominick@ok.usda.gov.*

*Oregon:* Robert Graham, Suite 1300, 101 SW Main Street, Portland, OR 97204–3221; phone: (503) 414–3200; fax: (503) 414–3103; *bob.graham@or.usda.gov.*

*Pennsylvania:* Robin E. Heard, Suite 340, 1 Credit Union Place, Harrisburg, PA 17110–2993; phone: (717) 237–2202; fax: (717) 237–2238; *robin.heard@pa.usda.gov.*

*Puerto Rico:* Juan A. Martinez, Director, Caribbean Area, IBM Building, Suite 604, 654 Munoz Rivera Avenue, Hato Rey, PR 00918–4123; phone: (787) 766–5206; fax: (787) 766–5987; *juan.martinez@pr.usda.gov.*

*Rhode Island:* Judith Doerner, Suite 46, 60 Quaker Lane, Warwick, RI 02886–0111; phone: (401) 828–1300; fax: (401) 828–0433; *judith.doerner@ri.usda.gov.*

*South Carolina:* Walter W. Douglas, Strom Thurmond Federal Building, Room 950, 1835 Assembly Street, Columbia, SC 29201–2489; phone: (803) 253–3935; fax: (803) 253–3670; *walt.douglas@sc.usda.gov.*

*South Dakota:* Janet L. Oertly, Federal Building, Room 203, 200 Fourth Street, SW., Huron, SD 57350–2475; phone: (605) 352–1200; fax: (605) 352–1288; *janet.oertly@sd.nrcs.usda.gov.*

*Tennessee:* James W. Ford, 675 U.S. Courthouse, 801 Broadway, Nashville, TN 37203–3878; phone: (615) 277–2531; fax: (615) 277–2578; *jford@tn.nrcs.usda.gov.*

*Texas:* Lawrence Butler, W.R. Poage Building, 101 South Main Street, Temple, TX 76501–7602; phone: (254) 742–9800; fax: (254) 742–9819; *larry.butler@tx.usda.gov.*

*Utah:* Harry Slawter, Acting, W.F. Bennett Federal Building, Room 4402, 125 South State Street, Salt Lake City, UT 84138, Post Office Box 11350, Salt Lake City, UT 84147–0350, phone: (801) 524–4550, fax: (801) 524–4403; *harry.slawter@ut.usda.gov.*

*Vermont:* Francis M. Keeler, 356 Mountain View Drive, Suite 105, Colchester, VT 05446; phone: (802) 951–6795; fax: (802) 951–6327; *fran.keeler@vt.usda.gov.*

*Virginia:* M. Denise Doetzer, Culpeper Building, Suite 209, 1606 Santa Rosa Road, Richmond, VA 23229–5014; phone: (804) 287–1691; fax: (804) 287–1737; *denise.doetzer@va.usda.gov.*

*Washington:* Raymond L. ''Gus'' Hughbanks, Rock Pointe Tower II, Suite 450, W. 316 Boone Avenue, Spokane, WA 99201–2348; phone: (509) 323–2900; fax: (509) 323–2909; *raymond.hughbanks@wa.usda.gov.*

*West Virginia:* Lillian V. Woods, Room 301, 75 High Street, Morgantown, WV 26505; phone: (304) 284–7540; fax: (304) 284–4839; *lillian.woods@wv.usda.gov.*

*Wisconsin:* Patricia S. Leavenworth, 8030 Excelsior Drive, Suite 200, Madison, WI 53717; phone: (608) 662–4422; fax: (608) 662–4430; *pat.leavenworth@wi.usda.gov.*

*Wyoming:* Lincoln E. Burton, Federal Building, Room 3124, 100 East B Street, Casper, WY 82601–1911; phone: (307) 261–6453; fax: (307) 261–6490; *ed.burton@wy.usda.gov.*

[FR Doc. 04–6935 Filed 3–26–04; 8:45 am]

BILLING CODE 3410–16–P

Federal Register

Monday,
March 29, 2004

# Part VI

# Department of Transportation

## FTA Fiscal Year 2004 Apportionments, Allocations and Program Information; Notice of Supplemental Information, Changes, and Corrections; Notice

## DEPARTMENT OF TRANSPORTATION

### Federal Transit Administration

### FTA Fiscal Year 2004 Apportionments, Allocations and Program Information; Notice of Supplemental Information, Changes, and Corrections

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice.

**SUMMARY:** This notice makes fiscal year (FY) 2004 transit funds available for obligation based on program funding levels authorized by the Surface Transportation Extension Act of 2004 (Pub. L. 108–202), and notes changes and corrections to the FTA notice entitled ''FTA Fiscal Year 2004 Apportionments, Allocations and Program Information; Notice,'' which was published in the **Federal Register** on February 11, 2004 (69 FR 6726).

**FOR FURTHER INFORMATION CONTACT:** The appropriate FTA Regional Administrator or Mary Martha Churchman, Director, Office of Resource Management and State Programs, (202) 366–2053.

### I. Funds Available for Obligation

The ''Surface Transportation Extension Act of 2004'' (Pub. L. 108–202) was signed into law by President Bush on February 29, 2004. The Act provides an extension of programs funded from the Highway Trust Fund, pending enactment of a law reauthorizing the Transportation Equity Act for the 21st Century (TEA–21), and provides contract authority for transit programs from October 1, 2003 through April 30, 2004.

FTA has revised the apportionment and allocation tables published in the February 11, 2004, **Federal Register** notice to reflect the amount of FY 2004 funding that is currently available for obligation by grantees for the respective FTA program, in accordance with the Surface Transportation Extension Act of 2004, and the Consolidated Appropriations Act, 2004 (Pub. L. 108–199, Division F). The revised tables are attached at the end of this notice.

A column labeled ''Apportionment'' or ''Allocation'' in the revised tables includes both trust funds (contract authority) and general funds, and reflects the total dollar amount of obligation limitation and appropriations in the Consolidated Appropriations Act, 2004, once full year contract authority is made available. This amount does not represent the amount that is actually available for obligation at this time. The amount shown in a column labeled ''Available Apportionment'' or ''Available Allocation'' is currently available for obligation.

### II. Changes to FY 2004 Bus and Bus-Related Project Allocations

Subsequent to publication of the February 11, 2004, **Federal Register** notice, the Secretary of the Department of Transportation received correspondence from Congress that clarified technical errors for FTA Bus and Bus-Related projects contained in the FY 2004 Conference Report accompanying the Consolidated Appropriations Act, 2004. The clarifications are as follows:

1. Of the $1,000,000 provided for Allegan County Transportations Services, Michigan, the conferees agree that the intended allocation for this project was $40,000. In addition, the conferees agree that $940,000 shall be made available to Kalamazoo Metro Transit, Michigan. The Consolidated Appropriations Act, 2004 provides $80,000 to Berrian County Public Transportation, Michigan. It is the intention of the conferees that a total of $100,000 shall be made available for Berrien County, Michigan.

2. Of the $765,000 allocated for the Berkshire Regional Transit Authority (BRTA) Buses and Fare Boxes, Massachusetts, the conferees would like $600,000 to go to Broome County Hybrid Buses, New York.

3. The conferees indicate that the state identifier should be Missouri for the Kansas project designation ''KCATA buses and bus facilities, Kansas.''

4. For the project designation that reads ''Los Angeles County, Circulator Buses, California,'' the conferees have indicated that the funds designated to Los Angeles County for this purpose should instead go to South Whittier, CA.

5. Of the $2,500,000 designated to the ''Pioneer Valley Transit Authority (PVTA) buses, Massachusetts,'' project, the conferees would like $100,000 to go to the ''Yamill County buses and bus facilities, Oregon'' project.

In addition, FTA has corrected an error in the Table 9 list of Bus and Bus-Related projects, in the February 11, 2004, **Federal Register** notice, to correctly show the ''Capital Metro Hybrid Electric Buses, Texas,'' project under TX (Texas) instead of MI (Michigan).

FTA has incorporated the clarifications and correction. They are reflected in the revision to Table 9 included with this notice.

### III. FTA Corrections

The following corrections are noted to information in the February 11, 2004, **Federal Register** notice.

- Page 6731, the heading on the table under paragraph F should read ''Small urbanized area included in TMA planning boundary.''
- Page 6768, the FY 2002 carryover allocation for the ''NY Tompkins Consolidated Area transit center'' project should be $57,778 instead of $617,778. The remaining unobligated balance of $560,000 was allocated to the ''NY City of Kingston buses'' project in the amount of $240,000, and to ''NY City of Middletown buses and bus facilities'' project in the amount of $320,000, in accordance with clarification provided in the FY 2003 Conference Report accompanying the FY 2003 DOT Appropriations Act. See pages 11955 and 11957 of the FTA Fiscal Year 2003 Apportionments, Allocations and Program Information Notice, dated March 12, 2003.
- Page 6774, the descriptions for the following projects are amended to add the fiscal year of the funds:
- NY Bronx Zoo intermodal transportation facility, 2001
- VT Vermont Agency of Transportation buses and bus facilities, 2001.

Issued on: March 24, 2004.

**Jennifer L. Dorn,**

*Administrator.*

BILLING CODE 4910–57–P

## FEDERAL TRANSIT ADMINISTRATION

### TABLE 1

(Appropriation amounts include a .59 percent reduction directed by Section 168 of Division H of the Consolidated Appropriations Act, 2004, Pub. L. 108-199)

### REVISED FY 2004 APPROPRIATIONS, APPORTIONMENTS, AND AVAILABLE FUNDING FOR GRANT PROGRAMS

| SOURCE OF FUNDS | APPROPRIATION & APPORTIONMENT | AVAILABLE FUNDING |
|---|---|---|
| TRANSIT PLANNING AND RESEARCH PROGRAMS | | |
| Section 5303 Metropolitan Planning Program | $60,029,325 | $35,017,106 |
| Reapportioned Funds Added | 1,426,868 | 1,426,868 |
| Total Apportioned | $61,456,193 | $36,443,974 |
| Section 5313(b) State Planning and Research Program | $12,539,975 | $7,314,985 |
| Reapportioned Funds Added | 719,074 | 719,074 |
| Total Apportioned | $13,259,049 | $8,034,059 |
| Section 5311(b)(2) Rural Transit Assistance Program (RTAP) | $5,219,025 | $3,044,431 |
| Reapportioned Funds Added | 79 | 79 |
| Total Apportioned | $5,219,104 | $3,044,510 |
| Section 5314 National Planning and Research Program | $35,290,550 | $20,586,154 |
| FORMULA PROGRAMS | $3,766,644,900 a/ | $2,197,209,525 a/ |
| Alaska Railroad (Section 5307) | 4,821,335 | 2,812,446 |
| Less Oversight (one-half percent) | (24,107) | (14,062) |
| Total Available | 4,797,228 | 2,798,384 |
| Section 5308 Clean Fuels Formula Program | 0 a/ | 0 a/ |
| Over-the-Road Bus Accessibility Program | 6,908,995 | 4,030,247 |
| Section 5307 Urbanized Area Formula Program | | |
| 91.23% of Total Available for Sections 5307, 5311, and 5310 | $3,425,608,562 | $1,998,271,661 |
| Less Oversight (one-half percent) | (17,128,043) | (9,991,358) |
| Reapportioned Funds Added | 3,039,008 | 3,039,008 |
| Total Apportioned | $3,411,519,527 | $1,991,319,311 |
| Section 5311 Nonurbanized Area Formula Program | | |
| 6.37% of Total Available for Sections 5307, 5311, and 5310 | $239,188,058 | $139,526,367 |
| Less Oversight (one-half percent) | (1,195,940) | (697,632) |
| Reapportioned Funds Added | 508,944 | 508,944 |
| Total Apportioned | $238,501,062 | $139,337,679 |
| Section 5310 Elderly and Persons with Disabilities Formula Program | | |
| 2.4% of Total Available for Sections 5307, 5311, and 5310 | $90,117,950 | $52,568,804 |
| Reapportioned Funds Added | 243,077 | 243,077 |
| Total Apportioned | $90,361,027 | $52,811,881 |
| CAPITAL INVESTMENT PROGRAM | $3,193,090,232 | $1,864,517,003 |
| Section 5309 Fixed Guideway Modernization | $1,199,387,615 | $699,642,775 |
| Less Oversight (one percent) | (11,993,876) | (6,996,428) |
| Total Apportioned | $1,187,393,739 | $692,646,347 |
| Section 5309 New Starts | $1,320,498,097 b/ | $772,171,591 b/ |
| Less Oversight (one percent) | (13,204,981) | (7,721,716) |
| Reallocated Funds Added | 5 | 5 |
| Total Allocated | $1,307,293,121 | $764,449,880 |
| Section 5309 Bus and Bus-Related | $673,204,520 c/ | $392,702,637 c/ |
| Less Oversight (one percent) | (6,732,045) | (3,927,026) |
| Reallocated Funds Added | 2,188,112 d/ | 2,188,112 d/ |
| Total Allocated | $668,660,587 | $390,963,723 |
| JOB ACCESS AND REVERSE COMMUTE PROGRAM (Section 3037, TEA-21) | $104,380,500 | $60,888,625 |
| **TOTAL APPROPRIATION (Above Grant Programs) .....** | **$7,177,194,507** | **$4,188,577,829** |
| **TOTAL APPORTIONMENT/ALLOCATION (Above Grant Programs) .....** | **$7,135,040,682** | **$4,167,354,774** |

a/ The Consolidated Appropriations Act, 2004 transfers funds appropriated for the Cleans Fuels Formula Program to the Section 5309 Bus and Bus-Related category.

b/ Includes $4,514,482 in FY 2000 and FY 2001 funds transferred from the Job Access and Reverse Commute Program.

c/ Includes funds transferred from the Clean Fuels Program and the Job Access and Reverse Commute Program in the Consolidated Appropriations Act, 2004 (Pub. L. 108-199).

d/ FY 2004 Conference Report supplements Bus funds with reallocated funds made available from projects included in previous Appropriations Acts.

## FEDERAL TRANSIT ADMINISTRATION

### TABLE 2

REVISED FY 2004 SECTION 5303 METROPOLITAN PLANNING PROGRAM AND SECTION 5313(b) STATE PLANNING AND RESEARCH PROGRAM APPORTIONMENTS

| STATE | SECTION 5303 APPORTIONMENT | SECTION 5313(b) APPORTIONMENT | AVAILABLE SECTION 5303 APPORTIONMENT | AVAILABLE SECTION 5313(b) APPORTIONMENT |
|---|---|---|---|---|
| Alabama | $465,199 | $125,457 | $275,866 | $76,018 |
| Alaska | 245,825 | 66,295 | 145,776 | 40,170 |
| Arizona | 1,229,061 | 252,578 | 728,842 | 153,045 |
| Arkansas | 245,825 | 66,295 | 145,776 | 40,170 |
| California | 9,668,139 | 1,940,124 | 5,733,277 | 1,175,585 |
| Colorado | 921,026 | 207,649 | 546,175 | 125,821 |
| Connecticut | 682,662 | 184,094 | 404,823 | 111,548 |
| Delaware | 245,825 | 66,295 | 145,776 | 40,170 |
| District of Columbia | 245,825 | 66,295 | 145,776 | 40,170 |
| Florida | 4,016,192 | 870,551 | 2,381,631 | 527,493 |
| Georgia | 1,584,057 | 323,796 | 939,357 | 196,198 |
| Hawaii | 245,825 | 66,295 | 145,776 | 40,170 |
| Idaho | 245,825 | 66,295 | 145,776 | 40,170 |
| Illinois | 3,408,148 | 629,317 | 2,021,057 | 381,322 |
| Indiana | 925,878 | 220,443 | 549,052 | 133,573 |
| Iowa | 267,153 | 72,047 | 158,423 | 43,655 |
| Kansas | 312,366 | 78,060 | 185,235 | 47,299 |
| Kentucky | 389,858 | 101,257 | 231,189 | 61,355 |
| Louisiana | 609,068 | 163,873 | 361,182 | 99,295 |
| Maine | 245,825 | 66,295 | 145,776 | 40,170 |
| Maryland | 1,377,570 | 277,738 | 816,909 | 168,290 |
| Massachusetts | 1,809,959 | 364,189 | 1,073,319 | 220,673 |
| Michigan | 2,021,821 | 425,163 | 1,198,955 | 257,619 |
| Minnesota | 862,830 | 175,256 | 511,664 | 106,193 |
| Mississippi | 245,825 | 66,295 | 145,776 | 40,170 |
| Missouri | 910,075 | 199,743 | 539,681 | 121,030 |
| Montana | 245,825 | 66,295 | 145,776 | 40,170 |
| Nebraska | 245,825 | 66,295 | 145,776 | 40,170 |
| Nevada | 449,932 | 108,337 | 266,813 | 65,645 |
| New Hampshire | 245,825 | 66,295 | 145,776 | 40,170 |
| New Jersey | 2,850,946 | 501,115 | 1,690,632 | 303,641 |
| New Mexico | 245,825 | 66,295 | 145,776 | 40,170 |
| New York | 5,433,989 | 1,002,038 | 3,222,396 | 607,165 |
| North Carolina | 901,270 | 243,059 | 534,460 | 147,277 |
| North Dakota | 245,825 | 66,295 | 145,776 | 40,170 |
| Ohio | 1,955,748 | 472,517 | 1,159,773 | 286,312 |
| Oklahoma | 355,545 | 95,885 | 210,841 | 58,100 |
| Oregon | 546,935 | 127,714 | 324,337 | 77,386 |
| Pennsylvania | 2,524,886 | 530,664 | 1,497,276 | 321,545 |
| Puerto Rico | 1,019,766 | 224,693 | 604,729 | 136,148 |
| Rhode Island | 254,006 | 66,295 | 150,627 | 40,170 |
| South Carolina | 449,050 | 121,102 | 266,290 | 73,379 |
| South Dakota | 245,825 | 66,295 | 145,776 | 40,170 |
| Tennessee | 710,478 | 191,605 | 421,318 | 116,099 |
| Texas | 4,511,344 | 956,232 | 2,675,260 | 579,410 |
| Utah | 418,917 | 112,976 | 248,421 | 68,455 |
| Vermont | 245,825 | 66,295 | 145,776 | 40,170 |
| Virginia | 1,394,669 | 304,613 | 827,053 | 184,574 |
| Washington | 1,310,059 | 278,148 | 776,874 | 168,538 |
| West Virginia | 245,825 | 66,295 | 145,776 | 40,170 |
| Wisconsin | 728,566 | 183,706 | 432,045 | 111,313 |
| Wyoming | 245,825 | 66,295 | 145,776 | 40,170 |
| **TOTAL** | **$61,456,193** | **$13,259,049** | **$36,443,974** | **$8,034,059** |

## FEDERAL HIGHWAY ADMINISTRATION

### TABLE 3

### REVISED FY 2004 METROPOLITAN PLANNING PROGRAM (PL) AVAILABLE APPORTIONMENTS

| STATE | AVAILABLE APPORTIONMENT |
|---|---|
| Alabama | $1,878,841 |
| Alaska | 974,083 |
| Arizona | 3,782,601 |
| Arkansas | 974,083 |
| California | 29,055,175 |
| Colorado | 3,109,748 |
| Connecticut | 2,756,980 |
| Delaware | 974,083 |
| District of Columbia | 974,083 |
| Florida | 13,037,336 |
| Georgia | 4,849,152 |
| Hawaii | 974,083 |
| Idaho | 974,083 |
| Illinois | 9,424,627 |
| Indiana | 3,301,346 |
| Iowa | 1,078,974 |
| Kansas | 1,169,027 |
| Kentucky | 1,516,423 |
| Louisiana | 2,454,150 |
| Maine | 974,083 |
| Maryland | 4,111,510 |
| Massachusetts | 5,454,084 |
| Michigan | 6,367,220 |
| Minnesota | 2,624,627 |
| Mississippi | 974,083 |
| Missouri | 2,991,348 |
| Montana | 974,083 |
| Nebraska | 974,083 |
| Nevada | 1,622,453 |
| New Hampshire | 974,083 |
| New Jersey | 7,504,678 |
| New Mexico | 974,083 |
| New York | 15,006,486 |
| North Carolina | 3,640,042 |
| North Dakota | 974,083 |
| Ohio | 7,076,396 |
| Oklahoma | 1,435,972 |
| Oregon | 1,912,635 |
| Pennsylvania | 7,947,182 |
| Rhode Island | 974,083 |
| South Carolina | 1,813,619 |
| South Dakota | 974,083 |
| Tennessee | 2,869,471 |
| Texas | 14,320,500 |
| Utah | 1,691,918 |
| Vermont | 974,083 |
| Virginia | 4,561,873 |
| Washington | 4,165,530 |
| West Virginia | 974,083 |
| Wisconsin | 2,751,170 |
| Wyoming | 974,083 |
| **TOTAL** | **$194,816,588** |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | ONE PERCENT TRANSIT ENHANCEMENT | APPORTIONMENT | AVAILABLE ONE PERCENT TRANSIT ENHANCEMENT | AVAILABLE APPORTIONMENT |
|---|---|---|---|---|
| OVER 1,000,000 IN POPULATION | $24,977,943 | $2,497,794,566 | $14,579,740 | $1,457,973,945 |
| 200,000-1,000,000 IN POPULATION | 5,862,158 | 586,216,201 | 3,421,772 | 342,177,038 |
| 50,000-200,000 IN POPULATION | 0 | 327,508,760 | 0 | 191,168,328 |
| NATIONAL TOTAL | $30,840,101 | $3,411,519,527 | $18,001,512 | $1,991,319,311 |
| *Amounts Apportioned to Urbanized Areas 1,000,000 and Over in Population:* | | | | |
| Atlanta, GA | $539,570 | $53,956,958 | $314,949 | $31,494,919 |
| Baltimore, MD | 363,771 | 36,377,097 | 212,335 | 21,233,476 |
| Boston, MA--NH--RI | 969,602 | 96,960,241 | 565,961 | 56,596,129 |
| Chicago, IL--IN | 2,061,992 | 206,199,235 | 1,203,594 | 120,359,422 |
| Cincinnati, OH--KY--IN | 164,726 | 16,472,576 | 96,151 | 9,615,117 |
| Cleveland, OH | 242,230 | 24,222,979 | 141,391 | 14,139,062 |
| Columbus, OH | 103,099 | 10,309,896 | 60,179 | 6,017,933 |
| Dallas--Fort Worth--Arlington, TX | 528,374 | 52,837,426 | 308,414 | 30,841,444 |
| Denver--Aurora, CO | 337,821 | 33,782,121 | 197,188 | 19,718,776 |
| Detroit, MI | 358,710 | 35,871,006 | 209,381 | 20,938,068 |
| Houston, TX | 563,171 | 56,317,082 | 328,725 | 32,872,534 |
| Indianapolis, IN | 95,237 | 9,523,671 | 55,590 | 5,559,010 |
| Kansas City, MO--KS | 113,196 | 11,319,594 | 66,073 | 6,607,298 |
| Las Vegas, NV | 189,567 | 18,956,657 | 110,651 | 11,065,086 |
| Los Angeles--Long Beach--Santa Ana, CA | 2,247,375 | 224,737,462 | 1,311,803 | 131,180,269 |
| Miami, FL | 779,292 | 77,929,192 | 454,876 | 45,487,621 |
| Milwaukee, WI | 192,390 | 19,239,020 | 112,299 | 11,229,903 |
| Minneapolis--St. Paul, MN | 390,175 | 39,017,542 | 227,747 | 22,774,715 |
| New Orleans, LA | 153,573 | 15,357,307 | 89,641 | 8,964,129 |
| New York--Newark, NY--NJ--CT | 6,729,760 | 672,976,004 | 3,928,191 | 392,819,131 |
| Orlando, FL | 156,923 | 15,692,302 | 91,597 | 9,159,667 |
| Philadelphia, PA--NJ--DE--MD | 1,132,554 | 113,255,430 | 661,077 | 66,107,705 |
| Phoenix--Mesa, AZ | 323,399 | 32,339,948 | 188,770 | 18,876,973 |
| Pittsburgh, PA | 323,809 | 32,380,871 | 189,009 | 18,900,860 |
| Portland, OR--WA | 307,691 | 30,769,103 | 179,601 | 17,960,064 |
| Providence, RI--MA | 183,144 | 18,314,441 | 106,902 | 10,690,222 |
| Riverside--San Bernardino, CA | 215,742 | 21,574,245 | 125,930 | 12,592,984 |
| Sacramento, CA | 160,695 | 16,069,533 | 93,799 | 9,379,859 |
| San Antonio, TX | 205,438 | 20,543,786 | 119,915 | 11,991,500 |
| San Diego, CA | 468,844 | 46,884,404 | 273,666 | 27,366,638 |
| San Francisco--Oakland, CA | 1,162,813 | 116,281,286 | 678,739 | 67,873,910 |
| San Jose, CA | 370,860 | 37,085,993 | 216,473 | 21,647,261 |
| San Juan, PR | 313,477 | 31,347,743 | 182,978 | 18,297,819 |
| Seattle, WA | 744,768 | 74,476,846 | 434,725 | 43,472,470 |
| St. Louis, MO--IL | 271,698 | 27,169,797 | 158,591 | 15,859,133 |
| Tampa--St. Petersburg, FL | 178,826 | 17,882,598 | 104,382 | 10,438,153 |
| Virginia Beach, VA | 145,080 | 14,508,026 | 84,684 | 8,468,400 |
| Washington, DC--VA--MD | 1,188,551 | 118,855,148 | 693,763 | 69,376,285 |
| **TOTAL** | **$24,977,943** | **$2,497,794,566** | **$14,579,740** | **$1,457,973,945** |

Note: The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | ONE PERCENT TRANSIT ENHANCEMENT | APPORTIONMENT | AVAILABLE ONE PERCENT TRANSIT ENHANCEMENT | AVAILABLE APPORTIONMENT |
|---|---|---|---|---|
| *Amounts Apportioned to Urbanized Areas 200,000 to 1,000,000 in population* | | | | |
| Aguadilla--Isabela--San Sebastian, PR | $12,237 | $1,223,678 | $7,143 | $714,266 |
| Akron, OH | 62,596 | 6,259,587 | 36,537 | 3,653,749 |
| Albany, NY | 69,524 | 6,952,397 | 40,581 | 4,058,146 |
| Albuquerque, NM | 66,326 | 6,632,594 | 38,715 | 3,871,475 |
| Allentown--Bethlehem, PA--NJ | 60,002 | 6,000,239 | 35,024 | 3,502,367 |
| Anchorage, AK | 32,188 | 3,218,842 | 18,789 | 1,878,853 |
| Ann Arbor, MI | 41,068 | 4,106,806 | 23,972 | 2,397,161 |
| Antioch, CA | 46,018 | 4,601,783 | 26,861 | 2,686,082 |
| Asheville, NC | 13,196 | 1,319,640 | 7,703 | 770,280 |
| Atlantic City, NJ | 67,792 | 6,779,233 | 39,571 | 3,957,069 |
| Augusta-Richmond County, GA--SC | 18,609 | 1,860,902 | 10,862 | 1,086,217 |
| Austin, TX | 156,061 | 15,606,146 | 91,094 | 9,109,378 |
| Bakersfield, CA | 51,072 | 5,107,242 | 29,811 | 2,981,120 |
| Barnstable Town, MA | 31,992 | 3,199,170 | 18,674 | 1,867,370 |
| Baton Rouge, LA | 41,504 | 4,150,405 | 24,226 | 2,422,610 |
| Birmingham, AL | 47,059 | 4,705,932 | 27,469 | 2,746,874 |
| Boise City, ID | 21,385 | 2,138,519 | 12,483 | 1,248,263 |
| Bonita Springs--Naples, FL | 10,605 | 1,060,500 | 6,190 | 619,019 |
| Bridgeport--Stamford, CT--NY | 160,305 | 16,030,494 | 93,571 | 9,357,071 |
| Buffalo, NY | 114,035 | 11,403,465 | 66,563 | 6,656,254 |
| Canton, OH | 28,022 | 2,802,247 | 16,357 | 1,635,684 |
| Cape Coral, FL | 32,916 | 3,291,557 | 19,213 | 1,921,296 |
| Charleston--North Charleston, SC | 36,535 | 3,653,463 | 21,325 | 2,132,543 |
| Charlotte, NC--SC | 97,243 | 9,724,277 | 56,761 | 5,676,104 |
| Chattanooga, TN--GA | 25,820 | 2,581,967 | 15,071 | 1,507,106 |
| Colorado Springs, CO | 47,089 | 4,708,893 | 27,486 | 2,748,602 |
| Columbia, SC | 30,985 | 3,098,455 | 18,086 | 1,808,582 |
| Columbus, GA--AL | 17,401 | 1,740,136 | 10,157 | 1,015,725 |
| Concord, CA | 191,519 | 19,151,899 | 111,791 | 11,179,050 |
| Corpus Christi, TX | 40,255 | 4,025,455 | 23,497 | 2,349,676 |
| Davenport, IA--IL | 34,267 | 3,426,676 | 20,002 | 2,000,166 |
| Dayton, OH | 134,488 | 13,448,774 | 78,501 | 7,850,110 |
| Daytona Beach--Port Orange, FL | 35,212 | 3,521,155 | 20,553 | 2,055,314 |
| Denton--Lewisville, TX | 18,488 | 1,848,831 | 10,792 | 1,079,171 |
| Des Moines, IA | 46,148 | 4,614,848 | 26,937 | 2,693,708 |
| Durham, NC | 47,409 | 4,740,914 | 27,673 | 2,767,293 |
| El Paso, TX--NM | 92,161 | 9,216,062 | 53,795 | 5,379,457 |
| Eugene, OR | 38,868 | 3,886,795 | 22,687 | 2,268,740 |
| Evansville, IN--KY | 17,394 | 1,739,423 | 10,153 | 1,015,309 |
| Fayetteville, NC | 19,920 | 1,991,994 | 11,627 | 1,162,736 |
| Flint, MI | 53,198 | 5,319,760 | 31,052 | 3,105,168 |
| Fort Collins, CO | 17,582 | 1,758,249 | 10,263 | 1,026,298 |
| Fort Wayne, IN | 23,194 | 2,319,382 | 13,538 | 1,353,833 |
| Fresno, CA | 69,061 | 6,906,069 | 40,311 | 4,031,104 |
| Grand Rapids, MI | 60,843 | 6,084,327 | 35,514 | 3,551,449 |
| Greensboro, NC | 25,285 | 2,528,499 | 14,759 | 1,475,896 |
| Greenville, SC | 16,805 | 1,680,497 | 9,809 | 980,914 |
| Gulfport--Biloxi, MS | 16,279 | 1,627,879 | 9,502 | 950,200 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | ONE PERCENT TRANSIT ENHANCEMENT | APPORTIONMENT | AVAILABLE ONE PERCENT TRANSIT ENHANCEMENT | AVAILABLE APPORTIONMENT |
|---|---|---|---|---|
| Harrisburg, PA | 43,079 | 4,307,925 | 25,146 | 2,514,555 |
| Hartford, CT | 121,074 | 12,107,440 | 70,672 | 7,067,167 |
| Honolulu, HI | 246,313 | 24,631,302 | 143,774 | 14,377,402 |
| Huntsville, AL | 14,261 | 1,426,114 | 8,324 | 832,429 |
| Indio--Cathedral City--Palm Springs, CA | 27,449 | 2,744,904 | 16,022 | 1,602,213 |
| Jackson, MS | 20,494 | 2,049,446 | 11,963 | 1,196,271 |
| Jacksonville, FL | 122,749 | 12,274,855 | 71,649 | 7,164,888 |
| Knoxville, TN | 32,671 | 3,267,112 | 19,070 | 1,907,028 |
| Lancaster, PA | 30,273 | 3,027,310 | 17,671 | 1,767,055 |
| Lancaster--Palmdale, CA | 60,538 | 6,053,757 | 35,336 | 3,533,605 |
| Lansing, MI | 41,907 | 4,190,673 | 24,461 | 2,446,115 |
| Lexington-Fayette, KY | 30,155 | 3,015,525 | 17,602 | 1,760,176 |
| Lincoln, NE | 23,123 | 2,312,321 | 13,497 | 1,349,712 |
| Little Rock, AR | 32,572 | 3,257,167 | 19,012 | 1,901,223 |
| Louisville, KY--IN | 105,242 | 10,524,221 | 61,430 | 6,143,035 |
| Lubbock, TX | 22,380 | 2,238,000 | 13,063 | 1,306,330 |
| Madison, WI | 58,592 | 5,859,205 | 34,200 | 3,420,044 |
| McAllen, TX | 26,236 | 2,623,640 | 15,314 | 1,531,430 |
| Memphis, TN--MS--AR | 110,760 | 11,076,012 | 64,651 | 6,465,118 |
| Mission Viejo, CA | 77,289 | 7,728,924 | 45,114 | 4,511,408 |
| Mobile, AL | 23,329 | 2,332,944 | 13,618 | 1,361,750 |
| Modesto, CA | 33,622 | 3,362,181 | 19,625 | 1,962,520 |
| Nashville-Davidson, TN | 62,718 | 6,271,816 | 36,609 | 3,660,888 |
| New Haven, CT | 143,597 | 14,359,665 | 83,818 | 8,381,801 |
| Ogden--Layton, UT | 47,402 | 4,740,190 | 27,669 | 2,766,870 |
| Oklahoma City, OK | 64,694 | 6,469,410 | 37,762 | 3,776,224 |
| Omaha, NE--IA | 60,521 | 6,052,122 | 35,327 | 3,532,651 |
| Oxnard, CA | 63,149 | 6,314,895 | 36,860 | 3,686,032 |
| Palm Bay--Melbourne, FL | 41,931 | 4,193,130 | 24,475 | 2,447,549 |
| Pensacola, FL--AL | 24,598 | 2,459,781 | 14,358 | 1,435,785 |
| Peoria, IL | 23,872 | 2,387,242 | 13,934 | 1,393,444 |
| Port St. Lucie, FL | 17,659 | 1,765,914 | 10,308 | 1,030,772 |
| Poughkeepsie--Newburgh, NY | 32,204 | 3,220,389 | 18,798 | 1,879,756 |
| Provo--Orem, UT | 40,600 | 4,060,015 | 23,698 | 2,369,849 |
| Raleigh, NC | 45,593 | 4,559,296 | 26,613 | 2,661,282 |
| Reading, PA | 23,197 | 2,319,723 | 13,540 | 1,354,033 |
| Reno, NV | 43,306 | 4,330,597 | 25,278 | 2,527,789 |
| Richmond, VA | 85,083 | 8,508,312 | 49,663 | 4,966,340 |
| Rochester, NY | 76,002 | 7,600,193 | 44,363 | 4,436,267 |
| Rockford, IL | 21,633 | 2,163,283 | 12,627 | 1,262,718 |
| Round Lake Beach--McHenry--Grayslake, IL--WI | 35,780 | 3,577,960 | 20,885 | 2,088,471 |
| Salem, OR | 27,934 | 2,793,398 | 16,305 | 1,630,519 |
| Salt Lake City, UT | 183,451 | 18,345,130 | 107,081 | 10,708,135 |
| Santa Rosa, CA | 29,646 | 2,964,610 | 17,305 | 1,730,456 |
| Sarasota--Bradenton, FL | 54,335 | 5,433,497 | 31,716 | 3,171,557 |
| Savannah, GA | 26,565 | 2,656,479 | 15,506 | 1,550,599 |
| Scranton, PA | 33,615 | 3,361,523 | 19,621 | 1,962,136 |
| Shreveport, LA | 27,368 | 2,736,827 | 15,975 | 1,597,498 |
| South Bend, IN--MI | 34,350 | 3,435,040 | 20,050 | 2,005,048 |
| Spokane, WA--ID | 59,479 | 5,947,903 | 34,718 | 3,471,818 |
| Springfield, MA--CT | 81,643 | 8,164,328 | 47,656 | 4,765,555 |
| Springfield, MO | 17,571 | 1,757,091 | 10,256 | 1,025,622 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | ONE PERCENT TRANSIT ENHANCEMENT | APPORTIONMENT | AVAILABLE ONE PERCENT TRANSIT ENHANCEMENT | AVAILABLE APPORTIONMENT |
|---|---|---|---|---|
| Stockton, CA | 72,576 | 7,257,571 | 42,363 | 4,236,277 |
| Syracuse, NY | 46,320 | 4,631,991 | 27,037 | 2,703,714 |
| Tallahassee, FL | 20,959 | 2,095,927 | 12,234 | 1,223,402 |
| Temecula--Murrieta, CA | 14,710 | 1,471,032 | 8,586 | 858,648 |
| Thousand Oaks, CA | 23,659 | 2,365,881 | 13,810 | 1,380,975 |
| Toledo, OH--MI | 54,439 | 5,443,891 | 31,776 | 3,177,624 |
| Trenton, NJ | 45,132 | 4,513,234 | 26,344 | 2,634,395 |
| Tucson, AZ | 89,910 | 8,991,046 | 52,481 | 5,248,114 |
| Tulsa, OK | 58,961 | 5,896,120 | 34,416 | 3,441,592 |
| Victorville--Hesperia--Apple Valley, CA | 18,534 | 1,853,434 | 10,819 | 1,081,858 |
| Wichita, KS | 42,105 | 4,210,514 | 24,577 | 2,457,696 |
| Winston-Salem, NC | 22,871 | 2,287,103 | 13,350 | 1,334,992 |
| Worcester, MA--CT | 53,210 | 5,320,977 | 31,059 | 3,105,878 |
| Youngstown, OH--PA | 27,207 | 2,720,686 | 15,881 | 1,588,077 |
| **TOTAL** | **$5,862,158** | **$586,216,201** | **$3,421,772** | **$342,177,038** |

Note: The amount listed for transit enhancement is included in the apportionment amount for the urbanized area.

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| *Amounts Apportioned to State Governors for Urbanized Areas 50,000 to 200,000 in Population* | | |
| ALABAMA | $6,538,715 | $3,816,679 |
| Anniston, AL | 599,830 | 350,124 |
| Auburn, AL | 561,078 | 327,504 |
| Decatur, AL | 536,775 | 313,318 |
| Dothan, AL | 507,886 | 296,456 |
| Florence, AL | 641,595 | 374,502 |
| Gadsden, AL | 498,535 | 290,997 |
| Montgomery, AL | 2,092,226 | 1,221,242 |
| Tuscaloosa, AL | 1,100,790 | 642,536 |
| ALASKA | $443,175 | $258,684 |
| Fairbanks, AK | 443,175 | 258,684 |
| ARIZONA | $3,076,034 | $1,795,496 |
| Avondale, AZ | 777,394 | 453,769 |
| Flagstaff, AZ | 570,538 | 333,026 |
| Prescott, AZ | 592,381 | 345,775 |
| Yuma, AZ--CA | 1,135,721 | 662,926 |
| ARKANSAS | $4,413,910 | $2,576,419 |
| Fayetteville--Springdale, AR | 1,647,275 | 961,522 |
| Fort Smith, AR--OK | 1,091,673 | 637,214 |
| Hot Springs, AR | 433,140 | 252,826 |
| Jonesboro, AR | 454,905 | 265,530 |
| Pine Bluff, AR | 569,262 | 332,281 |
| Texarkana, TX--Texarkana, AR | 217,655 | 127,046 |
| CALIFORNIA | $45,205,607 | $26,386,716 |
| Atascadero--El Paso de Robles (Paso Robles), CA | 550,705 | 321,449 |
| Camarillo, CA | 825,618 | 481,917 |
| Chico, CA | 1,080,532 | 630,711 |
| Davis, CA | 1,200,531 | 700,755 |
| El Centro, CA | 733,256 | 428,005 |
| Fairfield, CA | 1,898,936 | 1,108,418 |
| Gilroy--Morgan Hill, CA | 947,646 | 553,145 |
| Hanford, CA | 876,607 | 511,680 |
| Hemet, CA | 1,496,737 | 873,652 |
| Livermore, CA | 1,119,868 | 653,672 |
| Lodi, CA | 1,236,948 | 722,012 |
| Lompoc, CA | 433,934 | 253,289 |
| Madera, CA | 704,595 | 411,275 |
| Manteca, CA | 783,384 | 457,265 |
| Merced, CA | 1,489,738 | 869,567 |
| Napa, CA | 1,145,300 | 668,517 |
| Petaluma, CA | 836,121 | 488,048 |
| Porterville, CA | 778,207 | 454,243 |
| Redding, CA | 977,956 | 570,837 |
| Salinas, CA | 2,852,431 | 1,664,977 |
| San Luis Obispo, CA | 797,231 | 465,347 |
| Santa Barbara, CA | 2,756,159 | 1,608,782 |
| Santa Clarita, CA | 2,328,569 | 1,359,196 |
| Santa Cruz, CA | 2,035,736 | 1,188,268 |
| Santa Maria, CA | 1,721,562 | 1,004,883 |
| Seaside--Monterey--Marina, CA | 1,697,589 | 990,890 |
| Simi Valley, CA | 1,835,584 | 1,071,439 |
| Tracy, CA | 1,038,319 | 606,071 |
| Turlock, CA | 1,057,539 | 617,291 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| Vacaville, CA | 1,334,831 | 779,147 |
| Vallejo, CA | 2,821,937 | 1,647,177 |
| Visalia, CA | 1,598,291 | 932,930 |
| Watsonville, CA | 968,423 | 565,273 |
| Yuba City, CA | 1,236,132 | 721,536 |
| Yuma, AZ--CA | 8,655 | 5,052 |
| COLORADO | $6,760,726 | $3,946,266 |
| Boulder, CO | 1,616,629 | 943,633 |
| Grand Junction, CO | 896,749 | 523,437 |
| Greeley, CO | 1,193,932 | 696,903 |
| Lafayette--Louisville, CO | 631,603 | 368,670 |
| Longmont, CO | 1,011,977 | 590,695 |
| Pueblo, CO | 1,409,836 | 822,928 |
| CONNECTICUT | $14,399,987 | $8,405,337 |
| Danbury, CT--NY | 6,074,747 | 3,545,857 |
| Norwich--New London, CT | 1,570,599 | 916,766 |
| Waterbury, CT | 6,754,641 | 3,942,714 |
| DELAWARE | $624,206 | $364,352 |
| Dover, DE | 605,654 | 353,523 |
| Salisbury, MD--DE | 18,552 | 10,829 |
| FLORIDA | $17,807,805 | $10,394,497 |
| Brooksville, FL | 876,526 | 511,632 |
| Deltona, FL | 1,434,939 | 837,581 |
| Fort Walton Beach, FL | 1,456,250 | 850,020 |
| Gainesville, FL | 1,722,458 | 1,005,406 |
| Kissimmee, FL | 1,878,670 | 1,096,588 |
| Lady Lake, FL | 407,345 | 237,769 |
| Lakeland, FL | 1,940,006 | 1,132,391 |
| Leesburg--Eustis, FL | 875,532 | 511,052 |
| North Port--Punta Gorda, FL | 1,098,378 | 641,128 |
| Ocala, FL | 907,332 | 529,614 |
| Panama City, FL | 1,164,212 | 679,556 |
| St. Augustine, FL | 505,149 | 294,858 |
| Titusville, FL | 518,172 | 302,460 |
| Vero Beach--Sebastian, FL | 1,122,163 | 655,011 |
| Winter Haven, FL | 1,425,094 | 831,834 |
| Zephyrhills, FL | 475,579 | 277,597 |
| GEORGIA | $7,104,592 | $4,146,982 |
| Albany, GA | 876,379 | 511,547 |
| Athens-Clarke County, GA | 946,339 | 552,382 |
| Brunswick, GA | 440,298 | 257,004 |
| Dalton, GA | 470,000 | 274,341 |
| Gainesville, GA | 704,205 | 411,047 |
| Hinesville, GA | 516,449 | 301,454 |
| Macon, GA | 1,323,483 | 772,523 |
| Rome, GA | 531,766 | 310,394 |
| Valdosta, GA | 540,139 | 315,281 |
| Warner Robins, GA | 755,534 | 441,009 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| HAWAII | $1,755,356 | $1,024,609 |
| Kailua (Honolulu County)--Kaneohe, HI | 1,755,356 | 1,024,609 |
| IDAHO | $3,533,870 | $2,062,737 |
| Coeur d'Alene, ID | 751,420 | 438,608 |
| Idaho Falls, ID | 741,498 | 432,816 |
| Lewiston, ID--WA | 319,223 | 186,332 |
| Nampa, ID | 1,042,036 | 608,241 |
| Pocatello, ID | 679,693 | 396,740 |
| ILLINOIS | $8,717,262 | $5,088,304 |
| Alton, IL | 823,268 | 480,545 |
| Beloit, WI--IL | 127,829 | 74,614 |
| Bloomington--Normal, IL | 1,501,485 | 876,424 |
| Champaign, IL | 1,654,079 | 965,493 |
| Danville, IL | 527,045 | 307,639 |
| Decatur, IL | 1,006,792 | 587,669 |
| DeKalb, IL | 759,716 | 443,449 |
| Dubuque, IA--IL | 25,886 | 15,110 |
| Kankakee, IL | 754,272 | 440,272 |
| Springfield, IL | 1,536,890 | 897,089 |
| INDIANA | $8,314,702 | $4,853,328 |
| Anderson, IN | 912,310 | 532,519 |
| Bloomington, IN | 1,020,695 | 595,784 |
| Columbus, IN | 526,802 | 307,497 |
| Elkhart, IN--MI | 1,273,063 | 743,093 |
| Kokomo, IN | 644,022 | 375,918 |
| Lafayette, IN | 1,437,785 | 839,241 |
| Michigan City, IN--MI | 698,644 | 407,802 |
| Muncie, IN | 991,156 | 578,542 |
| Terre Haute, IN | 810,225 | 472,932 |
| IOWA | $6,390,477 | $3,730,150 |
| Ames, IA | 702,808 | 410,232 |
| Cedar Rapids, IA | 1,907,561 | 1,113,452 |
| Dubuque, IA--IL | 696,028 | 406,275 |
| Iowa City, IA | 993,988 | 580,195 |
| Sioux City, IA--NE--SD | 922,351 | 538,381 |
| Waterloo, IA | 1,167,741 | 681,615 |
| KANSAS | $2,702,007 | $1,577,173 |
| Lawrence, KS | 1,166,003 | 680,601 |
| St. Joseph, MO--KS | 9,495 | 5,542 |
| Topeka, KS | 1,526,509 | 891,030 |
| KENTUCKY | $2,577,879 | $1,504,719 |
| Bowling Green, KY | 558,755 | 326,148 |
| Clarksville, TN--KY | 244,201 | 142,541 |
| Huntington, WV--KY--OH | 500,526 | 292,159 |
| Owensboro, KY | 676,336 | 394,780 |
| Radcliff--Elizabethtown, KY | 598,061 | 349,091 |
| LOUISIANA | $7,101,087 | $4,144,936 |
| Alexandria, LA | 699,354 | 408,216 |
| Houma, LA | 1,218,982 | 711,525 |
| Lafayette, LA | 1,625,601 | 948,871 |
| Lake Charles, LA | 1,221,641 | 713,077 |
| Mandeville--Covington, LA | 561,543 | 327,775 |
| Monroe, LA | 1,045,630 | 610,339 |
| Slidell, LA | 728,336 | 425,133 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| MAINE | $3,046,639 | $1,778,336 |
| Bangor, ME | 553,126 | 322,862 |
| Dover--Rochester, NH--ME | 58,026 | 33,870 |
| Lewiston, ME | 598,463 | 349,325 |
| Portland, ME | 1,761,767 | 1,028,351 |
| Portsmouth, NH--ME | 75,257 | 43,928 |
| MARYLAND | $5,976,323 | $3,488,406 |
| Aberdeen--Havre de Grace--Bel Air, MD | 1,724,343 | 1,006,507 |
| Cumberland, MD-WV-PA | 477,973 | 278,995 |
| Frederick, MD | 1,114,772 | 650,697 |
| Hagerstown, MD--WV--PA | 865,332 | 505,098 |
| Salisbury, MD--DE | 516,832 | 301,677 |
| St. Charles, MD | 719,953 | 420,240 |
| Westminster, MD | 557,118 | 325,192 |
| MASSACHUSETTS | $3,339,753 | $1,949,428 |
| Leominster--Fitchburg, MA | 1,142,978 | 667,161 |
| Nashua, NH--MA | 225 | 131 |
| New Bedford, MA | 1,696,493 | 990,251 |
| Pittsfield, MA | 500,057 | 291,885 |
| MICHIGAN | $10,948,727 | $6,390,819 |
| Battle Creek, MI | 747,140 | 436,109 |
| Bay City, MI | 760,747 | 444,051 |
| Benton Harbor--St. Joseph, MI | 552,348 | 322,408 |
| Elkhart, IN--MI | 16,673 | 9,732 |
| Holland, MI | 958,014 | 559,197 |
| Jackson, MI | 868,421 | 506,901 |
| Kalamazoo, MI | 1,873,258 | 1,093,429 |
| Michigan City, IN--MI | 4,453 | 2,599 |
| Monroe, MI | 536,919 | 313,402 |
| Muskegon, MI | 1,463,310 | 854,140 |
| Port Huron, MI | 818,836 | 477,958 |
| Saginaw, MI | 1,467,498 | 856,585 |
| South Lyon--Howell--Brighton, MI | 881,110 | 514,308 |
| MINNESOTA | $3,580,024 | $2,089,676 |
| Duluth, MN--WI | 898,587 | 524,509 |
| Fargo, ND--MN | 447,803 | 261,385 |
| Grand Forks, ND--MN | 95,770 | 55,901 |
| La Crosse, WI--MN | 54,504 | 31,815 |
| Rochester, MN | 1,035,920 | 604,671 |
| St. Cloud, MN | 1,047,440 | 611,395 |
| MISSISSIPPI | $1,103,147 | $643,912 |
| Hattiesburg, MS | 585,200 | 341,584 |
| Pascagoula, MS | 517,947 | 302,328 |
| MISSOURI | $3,605,824 | $2,104,737 |
| Columbia, MO | 1,029,489 | 600,918 |
| Jefferson City, MO | 487,340 | 284,463 |
| Joplin, MO | 625,390 | 365,043 |
| Lee's Summit, MO | 651,809 | 380,464 |
| St. Joseph, MO--KS | 811,796 | 473,849 |
| MONTANA | $2,568,467 | $1,499,226 |
| Billings, MT | 1,118,648 | 652,960 |
| Great Falls, MT | 726,863 | 424,273 |
| Missoula, MT | 722,956 | 421,993 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| N. MARIANA ISLANDS | $672,596 | $392,597 |
| Saipan, MP | 672,596 | 392,597 |
| NEBRASKA | $180,026 | $105,082 |
| Sioux City, IA--NE--SD | 180,026 | 105,082 |
| NEVADA | $631,628 | $368,684 |
| Carson City, NV | 631,628 | 368,684 |
| NEW HAMPSHIRE | $4,334,932 | $2,530,319 |
| Dover--Rochester, NH--ME | 641,869 | 374,662 |
| Manchester, NH | 1,535,283 | 896,152 |
| Nashua, NH--MA | 1,801,080 | 1,051,298 |
| Portsmouth, NH--ME | 356,700 | 208,207 |
| NEW JERSEY | $2,089,730 | $1,219,785 |
| Hightstown, NJ | 807,591 | 471,394 |
| Vineland, NJ | 812,743 | 474,402 |
| Wildwood--North Wildwood--Cape May, NJ | 469,396 | 273,989 |
| NEW MEXICO | $2,270,689 | $1,325,411 |
| Farmington, NM | 459,513 | 268,220 |
| Las Cruces, NM | 1,005,197 | 586,738 |
| Santa Fe, NM | 805,979 | 470,453 |
| NEW YORK | $6,234,420 | $3,639,059 |
| Binghamton, NY--PA | 1,691,034 | 987,064 |
| Danbury, CT--NY | 39,482 | 23,046 |
| Elmira, NY | 704,214 | 411,053 |
| Glens Falls, NY | 556,755 | 324,980 |
| Ithaca, NY | 541,559 | 316,110 |
| Kingston, NY | 510,525 | 297,996 |
| Middletown, NY | 503,265 | 293,758 |
| Saratoga Springs, NY | 461,428 | 269,338 |
| Utica, NY | 1,226,158 | 715,714 |
| NORTH CAROLINA | $10,002,546 | $5,838,530 |
| Burlington, NC | 867,092 | 506,126 |
| Concord, NC | 999,368 | 583,335 |
| Gastonia, NC | 1,201,251 | 701,175 |
| Goldsboro, NC | 512,559 | 299,183 |
| Greenville, NC | 865,825 | 505,386 |
| Hickory, NC | 1,446,570 | 844,369 |
| High Point, NC | 1,206,685 | 704,347 |
| Jacksonville, NC | 887,348 | 517,949 |
| Rocky Mount, NC | 576,404 | 336,450 |
| Wilmington, NC | 1,439,444 | 840,210 |
| NORTH DAKOTA | $3,040,342 | $1,774,662 |
| Bismarck, ND | 840,011 | 490,318 |
| Fargo, ND--MN | 1,487,689 | 868,371 |
| Grand Forks, ND--MN | 712,642 | 415,973 |
| OHIO | $8,095,234 | $4,725,226 |
| Huntington, WV--KY--OH | 332,098 | 193,847 |
| Lima, OH | 709,539 | 414,161 |
| Lorain--Elyria, OH | 2,167,939 | 1,265,436 |
| Mansfield, OH | 757,737 | 442,295 |
| Middletown, OH | 995,137 | 580,866 |
| Newark, OH | 740,694 | 432,347 |
| Parkersburg, WV--OH | 234,693 | 136,991 |
| Sandusky, OH | 503,335 | 293,799 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| Springfield, OH | 965,130 | 563,351 |
| Weirton, WV--Steubenville, OH--PA | 399,899 | 233,423 |
| Wheeling, WV--OH | 289,033 | 168,710 |
| OKLAHOMA | $2,001,543 | $1,168,310 |
| Fort Smith, AR--OK | 20,513 | 11,974 |
| Lawton, OK | 863,571 | 504,070 |
| Norman, OK | 1,117,459 | 652,266 |
| OREGON | $2,620,730 | $1,529,731 |
| Bend, OR | 548,298 | 320,044 |
| Corvallis, OR | 621,072 | 362,522 |
| Longview, WA--OR | 14,635 | 8,542 |
| Medford, OR | 1,436,725 | 838,623 |
| PENNSYLVANIA | $10,500,620 | $6,129,258 |
| Altoona, PA | 921,066 | 537,630 |
| Binghamton, NY--PA | 33,109 | 19,326 |
| Cumberland, MD-WV-PA | 122 | 71 |
| Erie, PA | 2,316,875 | 1,352,370 |
| Hagerstown, MD--WV--PA | 11,215 | 6,547 |
| Hazleton, PA | 522,158 | 304,786 |
| Johnstown, PA | 765,418 | 446,778 |
| Lebanon, PA | 700,662 | 408,979 |
| Monessen, PA | 533,511 | 311,413 |
| Pottstown, PA | 654,275 | 381,903 |
| State College, PA | 1,010,555 | 589,865 |
| Uniontown--Connellsville, PA | 515,055 | 300,640 |
| Weirton, WV--Steubenville, OH--PA | 2,424 | 1,415 |
| Williamsport, PA | 652,004 | 380,578 |
| York, PA | 1,862,171 | 1,086,957 |
| PUERTO RICO | $10,256,699 | $5,986,881 |
| Arecibo, PR | 1,397,071 | 815,477 |
| Fajardo, PR | 798,294 | 465,968 |
| Florida--Barceloneta--Bajadero, PR | 621,577 | 362,817 |
| Guayama, PR | 811,817 | 473,861 |
| Juana Diaz, PR | 545,334 | 318,314 |
| Mayaguez, PR | 1,263,499 | 737,510 |
| Ponce, PR | 2,780,303 | 1,622,875 |
| San German--Cabo Rojo--Sabana Grande, PR | 977,678 | 570,675 |
| Yauco, PR | 1,061,126 | 619,384 |
| RHODE ISLAND | 0 | 0 |
| SOUTH CAROLINA | $5,231,300 | $3,053,533 |
| Anderson, SC | 567,172 | 331,061 |
| Florence, SC | 551,490 | 321,907 |
| Mauldin--Simpsonville, SC | 703,056 | 410,377 |
| Myrtle Beach, SC | 1,054,202 | 615,342 |
| Rock Hill, SC | 586,172 | 342,151 |
| Spartanburg, SC | 1,180,355 | 688,979 |
| Sumter, SC | 588,853 | 343,716 |
| SOUTH DAKOTA | $2,336,117 | $1,363,603 |
| Rapid City, SD | 745,734 | 435,289 |
| Sioux City, IA--NE--SD | 30,053 | 17,542 |
| Sioux Falls, SD | 1,560,330 | 910,772 |
| TENNESSEE | $5,688,024 | $3,320,125 |
| Bristol, TN--Bristol, VA | 308,326 | 179,972 |
| Clarksville, TN--KY | 904,550 | 527,990 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| Cleveland, TN | 496,808 | 289,989 |
| Jackson, TN | 637,273 | 371,979 |
| Johnson City, TN | 853,252 | 498,047 |
| Kingsport, TN--VA | 745,395 | 435,090 |
| Morristown, TN | 463,008 | 270,260 |
| Murfreesboro, TN | 1,279,412 | 746,798 |
| TEXAS | $30,160,283 | $17,604,693 |
| Abilene, TX | 1,210,369 | 706,498 |
| Amarillo, TX | 2,108,381 | 1,230,671 |
| Beaumont, TX | 1,375,777 | 803,047 |
| Brownsville, TX | 2,156,201 | 1,258,584 |
| College Station--Bryan, TX | 1,654,547 | 965,767 |
| Galveston, TX | 949,903 | 554,462 |
| Harlingen, TX | 1,141,541 | 666,323 |
| Killeen, TX | 2,064,591 | 1,205,111 |
| Lake Jackson--Angleton, TX | 814,584 | 475,477 |
| Laredo, TX | 2,860,024 | 1,669,409 |
| Longview, TX | 736,257 | 429,757 |
| McKinney, TX | 581,710 | 339,546 |
| Midland, TX | 1,106,426 | 645,826 |
| Odessa, TX | 1,212,651 | 707,830 |
| Port Arthur, TX | 1,372,156 | 800,933 |
| San Angelo, TX | 919,624 | 536,789 |
| Sherman, TX | 562,313 | 328,225 |
| Temple, TX | 715,985 | 417,924 |
| Texarkana, TX--Texarkana, AR | 407,162 | 237,662 |
| Texas City, TX | 935,864 | 546,268 |
| The Woodlands, TX | 986,269 | 575,689 |
| Tyler, TX | 1,017,160 | 593,721 |
| Victoria, TX | 525,298 | 306,619 |
| Waco, TX | 1,710,361 | 998,345 |
| Wichita Falls, TX | 1,035,129 | 604,210 |
| UTAH | $1,451,741 | $847,388 |
| Logan, UT | 807,967 | 471,614 |
| St. George, UT | 643,774 | 375,774 |
| VERMONT | $1,038,637 | $606,257 |
| Burlington, VT | 1,038,637 | 606,257 |
| VIRGINIA | $7,041,958 | $4,110,421 |
| Blacksburg, VA | 635,667 | 371,041 |
| Bristol, TN--Bristol, VA | 181,418 | 105,894 |
| Charlottesville, VA | 904,362 | 527,880 |
| Danville, VA | 482,472 | 281,621 |
| Fredericksburg, VA | 901,071 | 525,959 |
| Harrisonburg, VA | 556,371 | 324,756 |
| Kingsport, TN--VA | 14,064 | 8,209 |
| Lynchburg, VA | 873,900 | 510,100 |
| Roanoke, VA | 1,977,168 | 1,154,082 |
| Winchester, VA | 515,465 | 300,879 |
| WASHINGTON | $9,881,675 | $5,767,976 |
| Bellingham, WA | 981,437 | 572,869 |
| Bremerton, WA | 1,670,330 | 974,979 |
| Kennewick--Richland, WA | 1,561,859 | 911,664 |
| Lewiston, ID--WA | 186,515 | 108,869 |
| Longview, WA--OR | 668,666 | 390,303 |
| Marysville, WA | 1,082,250 | 631,714 |
| Mount Vernon, WA | 492,104 | 287,243 |
| Olympia--Lacey, WA | 1,364,391 | 796,401 |

FEDERAL TRANSIT ADMINISTRATION



TABLE 4

REVISED FY 2004 SECTION 5307 URBANIZED AREA FORMULA APPORTIONMENTS

| URBANIZED AREA/STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| Wenatchee, WA | 601,743 | 351,240 |
| Yakima, WA | 1,272,380 | 742,694 |
| WEST VIRGINIA | $4,925,078 | $2,874,789 |
| Charleston, WV | 1,760,180 | 1,027,425 |
| Cumberland, MD-WV-PA | 20,295 | 11,846 |
| Hagerstown, MD--WV--PA | 266,189 | 155,376 |
| Huntington, WV--KY--OH | 898,282 | 524,331 |
| Morgantown, WV | 542,640 | 316,741 |
| Parkersburg, WV--OH | 607,572 | 354,642 |
| Weirton, WV--Steubenville, OH--PA | 276,209 | 161,224 |
| Wheeling, WV--OH | 553,711 | 323,204 |
| WISCONSIN | $13,811,177 | $8,061,646 |
| Appleton, WI | 2,280,441 | 1,331,104 |
| Beloit, WI--IL | 477,090 | 278,480 |
| Duluth, MN--WI | 292,606 | 170,796 |
| Eau Claire, WI | 873,290 | 509,743 |
| Fond du Lac, WI | 593,633 | 346,506 |
| Green Bay, WI | 2,132,977 | 1,245,028 |
| Janesville, WI | 746,506 | 435,739 |
| Kenosha, WI | 1,366,528 | 797,648 |
| La Crosse, WI--MN | 957,303 | 558,782 |
| Oshkosh, WI | 883,505 | 515,706 |
| Racine, WI | 1,661,947 | 970,086 |
| Sheboygan, WI | 850,618 | 496,509 |
| Wausau, WI | 694,733 | 405,519 |
| WYOMING | $1,374,734 | $802,438 |
| Casper, WY | 646,386 | 377,298 |
| Cheyenne, WY | 728,348 | 425,140 |
| **TOTAL** | **$327,508,760** | **$191,168,328** |

FEDERAL TRANSIT ADMINISTRATION

TABLE 5

REVISED FY 2004 SECTION 5311 NONURBANIZED AREA FORMULA APPORTIONMENTS, AND SECTION 5311(b)(2) RURAL TRANSIT ASSISTANCE PROGRAM (RTAP) APPORTIONMENTS

| STATE | SECTION 5311 APPORTIONMENT | SECTION 5311(b)(2) APPORTIONMENT | AVAILABLE SECTION 5311 APPORTIONMENT | AVAILABLE SECTION 5311(b)(2) APPORTIONMENT |
|---|---|---|---|---|
| Alabama | $6,667,593 | $117,113 | $3,895,358 | $68,317 |
| Alaska | 929,305 | 72,263 | 542,921 | 42,154 |
| American Samoa | 152,438 | 11,191 | 89,058 | 6,528 |
| Arizona | 3,252,704 | 90,423 | 1,900,303 | 52,747 |
| Arkansas | 4,823,046 | 102,697 | 2,817,732 | 59,907 |
| California | 10,249,275 | 145,107 | 5,987,857 | 84,647 |
| Colorado | 2,895,675 | 87,632 | 1,691,718 | 51,119 |
| Connecticut | 1,482,228 | 76,585 | 865,951 | 44,675 |
| Delaware | 672,024 | 70,252 | 392,612 | 40,981 |
| Florida | 6,684,574 | 117,246 | 3,905,278 | 68,394 |
| Georgia | 8,451,488 | 131,056 | 4,937,549 | 76,450 |
| Guam | 411,900 | 13,219 | 240,641 | 7,711 |
| Hawaii | 999,450 | 72,812 | 583,901 | 42,474 |
| Idaho | 1,836,315 | 79,352 | 1,072,816 | 46,289 |
| Illinois | 7,135,696 | 120,772 | 4,168,834 | 70,451 |
| Indiana | 7,103,057 | 120,517 | 4,149,765 | 70,302 |
| Iowa | 4,820,069 | 102,673 | 2,815,992 | 59,893 |
| Kansas | 3,939,493 | 95,791 | 2,301,541 | 55,879 |
| Kentucky | 6,585,421 | 116,471 | 3,847,351 | 67,942 |
| Louisiana | 5,144,225 | 105,207 | 3,005,372 | 61,371 |
| Maine | 2,556,919 | 84,985 | 1,493,810 | 49,575 |
| Maryland | 2,658,175 | 85,776 | 1,552,965 | 50,037 |
| Massachusetts | 1,899,702 | 79,848 | 1,109,849 | 46,578 |
| Michigan | 8,939,821 | 134,873 | 5,222,844 | 78,677 |
| Minnesota | 5,874,251 | 110,913 | 3,431,869 | 64,700 |
| Mississippi | 5,759,841 | 110,018 | 3,365,028 | 64,178 |
| Missouri | 6,664,068 | 117,086 | 3,893,298 | 68,301 |
| Montana | 1,777,392 | 78,892 | 1,038,392 | 46,021 |
| N. Mariana Islands | 20,025 | 10,157 | 11,699 | 5,924 |
| Nebraska | 2,411,059 | 83,845 | 1,408,595 | 48,910 |
| Nevada | 856,628 | 71,695 | 500,462 | 41,823 |
| New Hampshire | 1,819,852 | 79,224 | 1,063,199 | 46,214 |
| New Jersey | 1,757,590 | 78,737 | 1,026,824 | 45,930 |
| New Mexico | 2,545,560 | 84,896 | 1,487,174 | 49,523 |
| New York | 9,237,750 | 137,201 | 5,396,901 | 80,035 |
| North Carolina | 11,410,542 | 154,184 | 6,666,295 | 89,942 |
| North Dakota | 1,094,647 | 73,556 | 639,518 | 42,908 |
| Ohio | 10,754,410 | 149,056 | 6,282,968 | 86,950 |
| Oklahoma | 5,233,770 | 105,907 | 3,057,686 | 61,780 |
| Oregon | 3,845,539 | 95,056 | 2,246,650 | 55,450 |
| Pennsylvania | 10,829,460 | 149,642 | 6,326,814 | 87,292 |
| Puerto Rico | 883,159 | 71,903 | 515,961 | 41,944 |
| Rhode Island | 319,824 | 67,500 | 186,848 | 39,375 |
| South Carolina | 5,689,227 | 109,467 | 3,323,774 | 63,856 |
| South Dakota | 1,490,721 | 76,651 | 870,913 | 44,714 |
| Tennessee | 7,249,420 | 121,661 | 4,235,274 | 70,970 |
| Texas | 16,113,490 | 190,941 | 9,413,863 | 111,386 |
| Utah | 1,290,708 | 75,088 | 754,061 | 43,802 |
| Vermont | 1,339,595 | 75,470 | 782,621 | 44,025 |
| Virgin Islands | 288,991 | 12,259 | 168,835 | 7,151 |
| Virginia | 6,293,279 | 114,188 | 3,676,675 | 66,610 |
| Washington | 4,231,465 | 98,073 | 2,472,117 | 57,210 |
| West Virginia | 3,441,140 | 91,896 | 2,010,391 | 53,606 |
| Wisconsin | 6,708,274 | 117,431 | 3,919,124 | 68,502 |
| Wyoming | 978,792 | 72,650 | 571,832 | 42,380 |
| **TOTAL** | **$238,501,062** | **$5,219,104** | **$139,337,679** | **$3,044,510** |

FEDERAL TRANSIT ADMINISTRATION

TABLE 6

REVISED FY 2004 SECTION 5310 ELDERLY AND PERSONS WITH DISABILITIES APPORTIONMENTS

| STATE | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|
| Alabama | $1,577,848 | $924,603 |
| Alaska | 239,902 | 188,238 |
| American Samoa | 60,053 | 55,533 |
| Arizona | 1,647,527 | 962,952 |
| Arkansas | 1,026,721 | 621,279 |
| California | 9,456,317 | 5,260,666 |
| Colorado | 1,156,406 | 692,654 |
| Connecticut | 1,125,150 | 675,452 |
| Delaware | 352,200 | 250,044 |
| District of Columbia | 308,401 | 225,938 |
| Florida | 6,044,201 | 3,382,745 |
| Georgia | 2,288,079 | 1,315,492 |
| Guam | 157,115 | 142,675 |
| Hawaii | 474,925 | 317,588 |
| Idaho | 454,617 | 306,411 |
| Illinois | 3,514,414 | 1,990,428 |
| Indiana | 1,865,436 | 1,082,882 |
| Iowa | 977,883 | 594,400 |
| Kansas | 880,015 | 540,537 |
| Kentucky | 1,457,184 | 858,193 |
| Louisiana | 1,450,921 | 854,746 |
| Maine | 531,663 | 348,815 |
| Maryland | 1,540,533 | 904,065 |
| Massachusetts | 2,034,741 | 1,176,062 |
| Michigan | 2,929,051 | 1,668,263 |
| Minnesota | 1,361,686 | 805,634 |
| Mississippi | 1,029,560 | 622,842 |
| Missouri | 1,783,015 | 1,037,520 |
| Montana | 383,581 | 267,315 |
| N. Mariana Islands | 60,959 | 56,032 |
| Nebraska | 594,868 | 383,601 |
| Nevada | 719,862 | 452,393 |
| New Hampshire | 456,694 | 307,554 |
| New Jersey | 2,579,198 | 1,475,715 |
| New Mexico | 653,360 | 415,793 |
| New York | 6,070,348 | 3,397,135 |
| North Carolina | 2,555,231 | 1,462,524 |
| North Dakota | 310,078 | 226,861 |
| Ohio | 3,419,683 | 1,938,292 |
| Oklahoma | 1,204,626 | 719,193 |
| Oregon | 1,119,039 | 672,088 |
| Pennsylvania | 4,030,787 | 2,274,624 |
| Puerto Rico | 1,395,270 | 824,117 |
| Rhode Island | 461,827 | 310,379 |
| South Carolina | 1,378,880 | 815,097 |
| South Dakota | 338,559 | 242,536 |
| Tennessee | 1,908,598 | 1,106,637 |
| Texas | 5,625,331 | 3,152,212 |
| Utah | 590,694 | 381,303 |
| Vermont | 293,836 | 217,922 |
| Virgin Islands | 150,682 | 139,135 |
| Virginia | 2,011,109 | 1,163,056 |
| Washington | 1,715,373 | 1,000,292 |
| West Virginia | 782,034 | 486,611 |
| Wisconsin | 1,569,358 | 919,930 |
| Wyoming | 255,598 | 196,877 |
| **TOTAL** | **$90,361,027** | **$52,811,881** |

FEDERAL TRANSIT ADMINISTRATION
TABLE 7

REVISED FY 2004 SECTION 5309 FIXED GUIDEWAY MODERNIZATION APPORTIONMENTS

| STATE | AREA | APPORTIONMENT | AVAILABLE APPORTIONMENT |
|---|---|---|---|
| AK | Anchorage, AK - Alaska Railroad | $2,039,405 | $1,189,653 |
| AZ | Phoenix--Mesa, AZ | 2,300,373 | 1,341,884 |
| CA | Concord, CA | 7,497,530 | 4,373,559 |
| CA | Lancaster--Palmdale, CA | 1,816,912 | 1,059,866 |
| CA | Los Angeles--Long Beach--Santa Ana, CA | 33,716,101 | 19,667,725 |
| CA | Mission Viejo, CA | 1,244,800 | 726,133 |
| CA | Oxnard, CA | 1,054,392 | 615,062 |
| CA | Riverside--San Bernardino, CA | 3,504,777 | 2,044,453 |
| CA | Sacramento, CA | 3,116,717 | 1,818,085 |
| CA | San Diego, CA | 13,193,789 | 7,696,377 |
| CA | San Francisco--Oakland, CA | 66,233,207 | 38,636,037 |
| CA | San Jose, CA | 12,981,956 | 7,572,808 |
| CA | Thousand Oaks, CA | 578,794 | 337,630 |
| CO | Denver--Aurora, CO | 3,041,909 | 1,774,447 |
| CT | Hartford, CT | 1,568,213 | 914,791 |
| CT | Southwestern Connecticut | 39,099,565 | 22,808,080 |
| DC | Washington, DC--VA--MD | 63,862,240 | 37,252,973 |
| FL | Jacksonville, FL | 106,587 | 62,176 |
| FL | Miami, FL | 17,521,309 | 10,220,764 |
| FL | Tampa--St. Petersburg, FL | 118,403 | 69,068 |
| GA | Atlanta, GA | 26,718,394 | 15,585,730 |
| HI | Honolulu, HI | 1,118,490 | 652,453 |
| IL | Chicago, IL--IN | 139,271,688 | 81,241,818 |
| IL | Round Lake Beach--McHenry--Grayslake, IL-WI | 2,090,455 | 1,219,432 |
| IN | South Bend, IN--MI | 703,817 | 410,560 |
| LA | New Orleans, LA | 2,843,412 | 1,658,657 |
| MA | Boston, MA-NH-RI | 70,481,969 | 41,114,482 |
| MA | Worcester, MA--CT | 920,125 | 536,739 |
| MD | Baltimore Commuter Rail | 18,648,081 | 10,878,047 |
| MD | Baltimore, MD | 9,180,255 | 5,355,149 |
| MI | Detroit, MI | 591,335 | 344,945 |
| MN | Minneapolis--St. Paul, MN | 5,993,572 | 3,496,250 |
| MO | Kansas City, MO--KS | 29,842 | 17,408 |
| MO | St. Louis, MO--IL | 4,191,569 | 2,445,082 |
| NJ | Atlantic City, NJ | 1,509,365 | 880,463 |
| NJ | Northeastern New Jersey | 85,710,342 | 49,997,699 |
| NJ | Trenton, NJ | 1,377,322 | 803,438 |
| NY | Buffalo, NY | 1,292,578 | 754,004 |
| NY | New York | 363,875,535 | 212,260,727 |
| OH | Cleveland, OH | 12,773,513 | 7,451,216 |
| OH | Dayton, OH | 4,884,526 | 2,849,307 |
| OR | Portland, OR--WA | 4,181,173 | 2,439,018 |
| PA | Harrisburg, PA | 722,617 | 421,527 |
| PA | Philadelphia, PA-NJ-DE-MD | 19,671,814 | 11,475,224 |
| PA | Philadelphia/Southern New Jersey | 74,243,371 | 43,308,634 |
| PA | Pittsburgh, PA | 20,436,444 | 11,921,259 |
| PR | San Juan, PR | 2,252,934 | 1,314,212 |
| RI | Providence, RI--MA | 2,713,999 | 1,583,166 |
| TN | Chattanooga, TN--GA | 83,841 | 48,907 |
| TN | Memphis, TN--MS--AR | 200,995 | 117,247 |
| TX | Dallas--Fort Worth--Arlington, TX | 3,135,228 | 1,828,883 |
| TX | Houston, TX | 6,847,000 | 3,994,083 |
| VA | Virginia Beach, VA | 1,235,828 | 720,900 |
| WA | Seattle, WA | 22,120,743 | 12,903,767 |
| WI | Madison, WI | 744,588 | 434,343 |
| | **TOTAL** | **$1,187,393,739** | **$692,646,347** |

FEDERAL TRANSIT ADMINISTRATION

TABLE 8

REVISED FY 2004 SECTION 5309 NEW STARTS ALLOCATIONS

| STATE | PROJECT LOCATION AND DESCRIPTION | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| AK/HI | Hawaii and Alaska Ferry Boats | 10,133,105 | 5,925,414 |
| AL | Birmingham Transit Corridor, Alabama | 3,444,626 | 2,014,273 |
| AR | Little Rock, Arkansas, River Rail Streetcar Project | 2,952,537 | 1,726,520 |
| AZ | Phoenix, Arizona, Central Phoenix/East Valley Light Rail Transit Project | 12,794,325 | 7,481,584 |
| CA | BART San Francisco Airport (SFO), California, Extension Project | 98,417,890 | 57,550,517 |
| CA | Phase II, LA to Pasadena Metro Gold Line Light Rail Project | 3,936,715 | 2,302,026 |
| CA | San Diego, California, Mission Valley East Light Rail Transit Extension | 63,971,625 | 37,407,919 |
| CA | San Diego, California, Oceanside - Escondido Rail Project | 47,240,585 | 27,624,310 |
| CA | San Francisco, California, Muni Third Street Light Rail Project | 8,857,610 | 5,179,558 |
| CA | San Jose, California, Silicon Valley Rapid Transit Corridor | 1,968,358 | 1,151,013 |
| CO | Denver, Colorado, Southeast Corridor LRT (T-REX) | 78,734,308 | 46,040,415 |
| CT | Stamford, Connecticut, Urban Transitway & Intermodal Transportation Center Improvements | 3,936,715 | 2,302,026 |
| DC | Washington, DC/VA Dulles Corridor Rapid Transit Project | 19,683,577 | 11,510,129 |
| DE | Wilmington, Delaware, Train Station Improvements | 1,476,268 | 863,260 |
| FL | Fort Lauderdale, Florida, Tri-Rail Commuter Project | 18,118,733 | 10,595,074 |
| GA | Atlanta, Georgia, Northwest Corridor BRT | 2,115,407 | 1,237,001 |
| IL | Chicago, Illinois, Metra Commuter Rail Expansions and Extensions | 51,177,300 | 29,926,336 |
| IL | Chicago, Illinois Transit Authority, Douglas Branch Reconstruction | 83,655,202 | 48,918,049 |
| IL | Chicago, Illinois, Ravenswood Reconstruction | 9,841,789 | 5,755,065 |
| IN | South Shore Commuter Rail Service Capacity Enhancement, Indiana | 984,179 | 575,507 |
| LA | New Orleans, Louisiana, Canal Street Streetcar Project | 22,922,877 | 13,404,336 |
| MA | Boston, Massachusetts, Silver Line Phase III | 1,968,358 | 1,151,013 |
| MD | Baltimore, Maryland, Central Light Rail Double Track Project | 39,367,154 | 23,020,258 |
| MD | Washington, DC/MD, Largo Extension | 63,971,625 | 37,407,919 |
| ME | Maine Marine Highway | 1,525,477 | 892,035 |
| ME | Yarmouth to Auburn Line, Maine | 984,179 | 575,507 |
| MN | Minneapolis, Minnesota, Hiawatha Corridor Light Rail Transit (LRT) | 73,793,730 | 43,151,474 |
| MN | Minneapolis, Minnesota, Northstar Corridor Rail Project | 5,659,028 | 3,309,162 |
| NC | Charlotte, North Carolina, South Corridor Light Rail Project | 11,810,146 | 6,906,077 |
| NC | Raleigh, North Carolina, Triangle Transit Regional Rail Project | 5,412,984 | 3,165,286 |
| NC | Western North Carolina Rail Passenger Service | 984,179 | 575,507 |
| NJ | Newark-Elizabeth, New Jersey, Rail Link (NERL) MOS-1 | 22,209,000 | 12,986,890 |
| NJ | Northern, New Jersey Hudson - Bergen Light Rail MOS-2 | 98,417,885 | 57,550,646 |
| NV | Las Vegas, Nevada, Resort Corridor Fixed Guideway, MOS | 19,683,577 | 11,510,129 |
| NY | Eastside Access Project, New York, Phase I | 73,813,414 | 43,162,984 |
| NY | New York, Second Avenue Subway | 1,968,358 | 1,151,013 |
| OH | Cleveland, Ohio, Euclid Corridor Transportation Project | 10,825,967 | 6,330,571 |
| OK | Northern Oklahoma Regional Multimodal Transportation System | 2,952,537 | 1,726,520 |
| OR | Portland, Oregon, Interstate MAX Light Rail Extension | 76,273,861 | 44,601,750 |
| OR | Wilsonville to Beaverton, Oregon, Commuter Rail | 3,198,581 | 1,870,396 |
| PA | Philadelphia, Pennsylvania, Schuylkill Valley Metro | 13,778,504 | 8,057,090 |
| PA | Pittsburgh, Pennsylvania, North Shore Connector | 9,841,789 | 5,755,065 |
| PA | Pittsburgh, Pennsylvania, Stage II Light Rail Transit Reconstruction | 31,733,314 | 18,556,309 |
| PA | Scranton, Pennsylvania, New York City Rail Service | 2,460,447 | 1,438,766 |
| PR | Tren Urbano Rapid Transit System, San Juan, Puerto Rico | 19,683,577 | 11,510,129 |
| RI | Integrated Intermodal Project, Rhode Island | 2,952,537 | 1,726,520 |
| TN | Memphis, Tennessee, Medical Center Rail Extension | 9,101,281 a/ | 5,322,047 |
| TX | Dallas, Texas, North Central Light Rail Extension | 29,684,097 | 17,358,013 |
| TX | Houston Advanced Metro Transit Plan, Texas | 7,873,431 | 4,604,052 |
| UT | Regional Commuter Rail (Weber County to Salt Lake City), Utah | 8,857,610 | 5,179,558 |
| UT | Salt Lake City, Utah, Medical Center LRT Extension | 30,178,231 | 17,646,962 |
| VA | VRE Parking Improvements, Virginia | 2,952,537 | 1,726,520 |
| WA | Seattle, Washington, South Transit Central Link Initial Segment | 73,813,414 | 43,162,984 |
| WI | Kenosha-Racine-Milwaukee Commuter Rail Extension, Wisconsin | 3,198,581 | 1,870,396 |
| | TOTAL ALLOCATION | $1,307,293,121 | $764,449,880 |

a/ SEC. 174 of the Consolidated Appropriations Act, 2004 provides that to the extent that funds provided by the Congress for the Memphis Medical Center light rail extension project through the Section 5309 new fixed guideway systems program remain available upon the closeout of the project, Federal Transit Administration is directed to permit the Memphis Area Transit Authority to use all of those funds for planning, engineering, design, construction or acquisition projects pertaining to the Memphis Regional Rail Plan. Such funds shall remain available until expended.

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| AK | Alaska Mobility Coalition Bus Replacement | $491,130 | $287,162 |
| AK | Anchorage Ship Creek Intermodal Facility, Alaska | 1,964,520 | 1,148,649 |
| AK | Arctic Winter Games buses and bus facilities, Alaska | 1,473,390 | 861,486 |
| AK | Coffman-Cove Inner Island Ferry/Bus Terminal, Alaska | 1,473,390 | 861,486 |
| AK | Girdwood Transportation Center, Alaska | 982,260 | 574,324 |
| AK | Port McKenzie Intermodal Facility, Alaska | 982,260 | 574,324 |
| AK | Port of Anchorage Intermodal Facility, Alaska | 2,946,779 | 1,722,972 |
| AK | Sawmill Creek Intermodal Facility, Alaska | 1,964,520 | 1,148,649 |
| AL | Alabama A&M University Transit Loop, Alabama | 1,473,390 | 861,486 |
| AL | Alabama Area Agencies on Aging Senior Van Replacement | 982,260 | 574,324 |
| AL | Alabama State Docks Intermodal Facility | 9,331,468 | 5,456,080 |
| AL | Birmingham Downtown Intermodal Facility phase II, Alabama | 3,437,909 | 2,010,134 |
| AL | Cummings Research Park Commercial Center Intermodal Facility, Alabama | 1,964,520 | 1,148,649 |
| AL | Huntsville Airport Phase III Intermodal Facility, Alabama | 3,437,909 | 2,010,134 |
| AL | Jasper Bus Replacement, Alabama | 39,290 | 22,973 |
| AL | Mobile Waterfront Terminal and Maritime Center of the Gulf, Alabama | 4,420,169 | 2,584,459 |
| AL | Northwest Shoals Community College Transportation Modernization, Alabama | 442,017 | 258,446 |
| AL | Orange Beach Senior Activity Center buses, Alabama | 98,226 | 57,432 |
| AL | Troy State University Bus Shuttle Program, Troy, Alabama | 1,473,390 | 861,486 |
| AR | Arkansas Statewide buses and bus facilities | 4,665,734 | 2,728,040 |
| AR | Fort Smith Transit Facility, Arkansas | 736,695 | 430,743 |
| AR | Southeast Arkansas Area Agencies on Aging buses and bus facilities, Arkansas | 314,323 | 183,784 |
| AZ | Alternative Fuel Replacement Buses for Sun Tran, Arizona | 491,130 | 287,162 |
| AZ | Coconino County buses and bus facilities, Arizona | 1,375,164 | 804,054 |
| AZ | Mesa Operating Facility, Arizona | 1,964,520 | 1,148,649 |
| AZ | Phoenix/Glendale West Valley Operating Facility, Arizona | 4,911,299 | 2,871,621 |
| AZ | Phoenix/Regional Heavy Maintenance Facility, Arizona | 982,260 | 574,324 |
| AZ | Ronstadt Transit Center Modifications, Arizona | 2,946,779 | 1,722,972 |
| AZ | Tempe Downtown Transit Center, Arizona | 491,130 | 287,162 |
| AZ | Tempe/Scottsdale East Valley Facilities, Arizona | 3,929,039 | 2,297,297 |
| AZ | Tucson Alternative Fuel Replacement Buses, Arizona | 3,536,135 | 2,067,567 |
| CA | AC Transit Expansion Buses, California | 982,260 | 574,324 |
| CA | Access Enhancements to Sierra Madre Villa Gold Line Station, California | 589,356 | 344,595 |
| CA | Alameda Point Areil Transit Project, California | 491,130 | 287,162 |
| CA | Anaheim Resort Transit (ART), California | 491,130 | 287,162 |
| CA | Antelope Valley Transit Authority Operations and Maintenance Facility, California | 1,227,825 | 717,905 |
| CA | Baldwin Park Downtown/Metrolink Parking Improvements, California | 245,565 | 143,581 |
| CA | Burbank Empire Area Transit Center, California | 736,695 | 430,743 |
| CA | Calexico Transit System, California | 294,678 | 172,297 |
| CA | Cerone Operating Complex Improvements, California | 491,130 | 287,162 |
| CA | Cerritos Circulator Buses, California | 294,678 | 172,297 |
| CA | Claremont Intermodal Transit Village Expansion Project, California | 1,227,825 | 717,905 |
| CA | Collegian Busway Improvements, California | 196,452 | 114,865 |
| CA | Corona Transit Center, California | 687,582 | 402,027 |
| CA | Davis Intermodal Facility, California | 196,452 | 114,865 |
| CA | Eastern Contra Costa County Park and Ride Lots, California | 589,356 | 344,595 |
| CA | Ed Roberts Campus transit center, California | 392,904 | 229,730 |
| CA | El Garces Intermodal Station, Needles, California | 1,866,294 | 1,091,216 |
| CA | Escondido Bus Maintenance Facility, California | 491,130 | 287,162 |
| CA | Eureka Intermodal Depot, California | 245,565 | 143,581 |
| CA | Foothill Transit Transit Oriented Neighborhood Program, California | 2,455,649 | 1,435,810 |
| CA | Fresno FAX Buses, Equipment, and Facilities, California | 1,178,712 | 689,189 |
| CA | Golden Empire Transit Traffic Signal Priority, California | 245,565 | 143,581 |
| CA | Hemet Transit Center/Bus Facility, California | 306,465 | 179,189 |
| CA | Interstate 15 Managed Lanes BRT Capital Purchase, California | 982,260 | 574,324 |
| CA | Long Beach Transit buses and bus facilities, California | 982,260 | 574,324 |
| CA | South Whittier Circulator Buses, California | 392,904 | 229,730 *a/* |
| CA | Los Angeles MTA buses, California | 3,929,039 | 2,297,297 |
| CA | Mammoth Lakes Bus Purchase, California | 785,808 | 459,459 |
| CA | Modesto Bus Facility, California | 982,260 | 574,324 |
| CA | Monterey-Salinas Transit Buses, California | 1,473,390 | 861,486 |

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 9

### REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| CA | Omnitrans - Paratransit Vehicles, California | 294,678 | 172,297 |
| CA | Orange County Transit Center Improvements, California | 319,234 | 186,655 |
| CA | Orange County Bus Rapid Transit, California | 2,210,085 | 1,292,230 |
| CA | Orange County Fare Collection System, California | 982,260 | 574,324 |
| CA | Orange County Inter-County Express Bus Service, California | 1,080,486 | 631,757 |
| CA | Palmdale Intermodal Facility Parking Lot Expansion, California | 294,678 | 172,297 |
| CA | Palo Alto Intermodal Transit Center, California | 736,695 | 430,743 |
| CA | Redondo Beach Catalina Transit Terminal, California | 785,808 | 459,459 |
| CA | Reseda Boulevard Bus Rapid Transit Project Capital Improvement, California | 245,565 | 143,581 |
| CA | Riverside Transit Agency, Automatic Traveler Information System (ATIS), California | 73,669 | 43,074 |
| CA | Riverside Transit Agency, Bus Rapid Transit Investment, California | 491,130 | 287,162 |
| CA | Riverside Transit Agency, Transit Center, California | 982,260 | 574,324 |
| CA | Roseville Multitransit Center, California | 491,130 | 287,162 |
| CA | Sacramento Regional Bus Expansion, Enhancement, and Coordination Program, City of Auburn, California | 98,226 | 57,432 |
| CA | Sacramento Regional Bus Expansion, Enhancement, and Coordination Program, City of Lincoln, California | 491,130 | 287,162 |
| CA | Sacramento Regional Transit District, Bus Maintenance Facility, California | 491,130 | 287,162 |
| CA | San Fernando Local Transit System, California | 294,678 | 172,297 |
| CA | San Francisco Muni buses and bus facilities, California | 3,929,039 | 2,297,297 |
| CA | San Joaquin RTD buses and bus facilities, California | 245,565 | 143,581 |
| CA | San Mateo County Transit District Zero-Emission buses, California | 884,034 | 516,892 |
| CA | Santa Barbara Metropolitan Transit District Electric Bus Investment, California | 294,678 | 172,297 |
| CA | Santa Clara Valley Transportation Authority Zero-Emission Buses, California | 294,678 | 172,297 |
| CA | Sonoma County Transit CNG Buses, California | 491,130 | 287,162 |
| CA | South San Fernando Valley Park and Ride facility expansion, California | 294,678 | 172,297 |
| CA | Spring Valley Multi-Modal Center, California | 589,356 | 344,595 |
| CA | SunLine Transit Agency Clean Fuels Mall Facility and Hydrogen Infrastructure Expansion, California | 442,017 | 258,446 |
| CA | Temecula Transit Center, California | 785,808 | 459,459 |
| CA | Transit First Implementation, Chula Vista, California | 392,904 | 229,730 |
| CA | Truckee Replacement Buses, California | 73,669 | 43,074 |
| CA | Ventura County CNG Fueling Station and Facility Pavement Replacement, California | 392,904 | 229,730 |
| CA | Visalia Bus Operations and Maintenance Facility, California | 982,260 | 574,324 |
| CO | Colorado Transit Coalition buses and bus facilities, Colorado | 13,751,621 | 8,040,529 |
| CT | Bridgeport Intermodal Transport Center, Connecticut | 3,929,039 | 2,297,297 |
| CT | Connecticut Statewide buses and bus facilities | 2,946,779 | 1,722,972 |
| CT | East Haddam Mobility Improvement Project, Connecticut | 2,946,779 | 1,722,972 |
| CT | Greater New Haven Transit District Fuel Cell and Electric Bus Funding, Connecticut | 1,473,390 | 861,486 |
| CT | Hartford Downtown Circulator, Connecticut | 1,350,607 | 789,696 |
| CT | Pulse Point Joint Development and Safety Improvements, Norwalk, Connecticut | 491,130 | 287,162 |
| DC | WMATA Bus Fleet, Washington, DC | 736,695 | 430,743 |
| DE | Delaware Statewide bus and bus facilities | 982,260 | 574,324 |
| DE | University of Delaware Fuel Cell Bus Project, Delaware | 1,718,955 | 1,005,068 |
| FL | Citrus County Enhancement Project for the Transportation Disadvantaged, Florida | 122,782 | 71,790 |
| FL | Flagler Senior Services Transit Coaches, Florida | 122,782 | 71,790 |
| FL | Florida International University/University of Miami University Transportation Center, Florida | 392,904 | 229,730 |
| FL | Fort Lauderdale Tri-County Transit Authority fare collection system, Florida | 785,808 | 459,459 |
| FL | HART Bus Purchase, Florida | 491,130 | 287,162 |
| FL | Jacksonville Transportation Authority, Bus and Bus Facilities, Florida | 982,260 | 574,324 |
| FL | Key West bus and bus facilities, Florida | 1,080,486 | 631,757 |
| FL | Lakeland Area Mass Transit District Citrus Connection, Florida | 540,243 | 315,878 |
| FL | Lee County LeeTran Bus Replacement, Florida | 196,452 | 114,865 |
| FL | Levy County Improvement Project for the Transportation Disadvantaged, Florida | 196,452 | 114,865 |
| FL | Miami Dade County System Enhancements, Florida | 982,260 | 574,324 |
| FL | Miami-Dade County buses, Florida | 982,260 | 574,324 |
| FL | North Florida and West Coast Bus Procurement, Florida | 3,929,039 | 2,297,297 |
| FL | NW 7th Avenue Transit HUB Improvements, Florida | 982,260 | 574,324 |
| FL | Palm Beach County and Broward County Regional Buses, Florida | 982,260 | 574,324 |
| FL | Palm Beach Gardens Mass Transit Bus Shelters, Florida | 19,645 | 11,486 |
| FL | Putnam County Transit Coaches for Ride Solutions, Florida | 1,178,712 | 689,189 |
| FL | St. Augustine Intermodal Transportation and Parking Facility, Florida | 540,243 | 315,878 |
| FL | St. Johns County Council on Aging Administrative Facility, Florida | 196,452 | 114,865 |
| FL | St. Johns County Council on Aging Passenger Amenities, Florida | 39,290 | 22,973 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| FL | St. Johns County Council on Aging Transit Coaches, Florida | 343,791 | 201,014 |
| FL | TalTran buses and bus facilities, Florida | 687,582 | 402,027 |
| FL | TalTran Intermodal Facility, Florida | 491,130 | 287,162 |
| FL | VOTRAN Public Transit System Buses, Florida | 736,695 | 430,743 |
| FL | West Palm Beach Trolley Buses, Florida | 785,808 | 459,459 |
| FL | Winter Haven Transit Terminal, Florida | 343,791 | 201,014 |
| GA | Athens Clarke County Park Ride Project, Georgia | 2,701,214 | 1,579,391 |
| GA | Chatham Area Transit Authority buses and bus facilities, Georgia | 5,893,559 | 3,445,945 |
| GA | City of Macon Alternative Fuel Vehicle Purchase, Georgia | 294,678 | 172,297 |
| GA | Dekalb County BRT Improvements, Georgia | 1,473,390 | 861,486 |
| GA | Georgia Statewide buses and bus facilities, Albany & Rome | 982,260 | 574,324 |
| GA | GRTA buses and bus facilities, Georgia | 4,911,299 | 2,871,621 |
| GA | Hamilton Clean Fuels Bus Facility, Georgia | 982,260 | 574,324 |
| GA | Leesburg Train Depot Renovation and Restoration, Georgia | 294,678 | 172,297 |
| GA | Macon and Athens Multimodal Station, Georgia | 1,571,616 | 918,919 |
| GA | Macon Multi-Modal Terminal Station, Georgia | 1,473,390 | 861,486 |
| GA | MARTA Automated Fare Collection/Smart Card System, Georgia | 3,929,039 | 2,297,297 |
| GA | MARTA Buses, Georgia | 5,893,559 | 3,445,945 |
| GA | Regional Transit Project for Quitman, Clay, Randolph and Stewart Counties, Georgia | 491,130 | 287,162 |
| GA | Terminal Station Multi-Modal Roof Rehabilitation, Georgia | 332,004 | 194,122 |
| HI | Hawaii Statewide Rural Bus Program | 3,929,039 | 2,297,297 |
| HI | Honolulu Bus and Paratransit Replacement Program, Hawaii | 9,822,598 | 5,743,242 |
| HI | Honolulu Middle Street Intermodal Center, Hawaii | 2,946,779 | 1,722,972 |
| IA | Ames Maintenance Facility improvement, Iowa | 982,260 | 574,324 |
| IA | Coralville Intermodal Facility, Iowa | 491,130 | 287,162 |
| IA | Iowa Statewide buses and bus facilities | 6,482,915 | 3,790,540 |
| IA | UNI Multimodal Project, Iowa | 3,437,909 | 2,010,134 |
| ID | Idaho Transit Coalition buses and bus facilities | 3,929,039 | 2,297,297 |
| IL | Illinois Statewide buses and bus facilities | 6,875,819 | 4,020,270 |
| IL | Lincoln Park Museum Trolleys, Illinois | 589,356 | 344,595 |
| IL | Normal Multimodal Transportation Center and public facilities, Illinois | 736,695 | 430,743 |
| IL | Peoria Bus Purchase, Illinois | 294,678 | 172,297 |
| IL | Rock Island County Mass Transit District (Metrolink) transit facility, Illinois | 491,130 | 287,162 |
| IL | Springfield Bus Purchase, Illinois | 294,678 | 172,297 |
| IN | Bloomington Transit, Bloomington, Indiana | 707,227 | 413,513 |
| IN | Cherry Street Multi-Modal Facility, Terre Haute, Indiana | 1,866,294 | 1,091,216 |
| IN | Fort Wayne Citilink Bus Purchase, Indiana | 392,904 | 229,730 |
| IN | Indiana University Bloomington, Indiana | 785,808 | 459,459 |
| IN | Indianapolis Downtown Transit Center, Indiana | 3,437,909 | 2,010,134 |
| IN | Muncie Transit System, Indiana | 687,582 | 402,027 |
| IN | South Bend TRANSPO Bus Facilities, Indiana | 982,260 | 574,324 |
| KS | City of Wichita Transit Authority System Upgrades, Kansas | 245,565 | 143,581 |
| KS | Johnson County Nolte Transit Center, Kansas | 245,565 | 143,581 |
| KS | Johnson County Transit Equipment and Transit Coach Improvement, Kansas | 98,226 | 57,432 |
| KS | Kansas City Area Transit Authority buses and bus facilities, Kansas | 1,669,842 | 976,351 |
| KS | Kansas Statewide buses and bus facilities | 2,946,779 | 1,722,972 |
| KS | Topeka Transit buses and bus facilities, Kansas | 491,130 | 287,162 |
| KS | Unified Government of Kansas City bus replacement, Kansas | 343,791 | 201,014 |
| KY | Audubon Area Community Services, Kentucky | 98,226 | 57,432 |
| KY | Danville Hub-Gilcher Transit Facility / Parking Structure, Kentucky | 1,718,955 | 1,005,068 |
| KY | Daviess County Parking Garage and Intra-County Transit Facility, Kentucky | 1,964,520 | 1,148,649 |
| KY | Fulton County Transit Authority, Kentucky | 147,339 | 86,149 |
| KY | Henderson Area Rapid Transit Authority, Kentucky | 14,734 | 8,615 |
| KY | Kentucky Transportation Cabinet/Community Action Groups | 392,904 | 229,730 |
| KY | Paducah Area Transit Authority, Kentucky | 39,290 | 22,973 |
| KY | Perry County Intermodal Facility, Kentucky | 1,964,520 | 1,148,649 |
| KY | Red Cross Wheels, Kentucky | 78,581 | 45,946 |
| KY | Senior Services of Northern Kentucky buses and bus facilities, Kentucky | 245,565 | 143,581 |
| KY | Southern and Eastern Kentucky buses and bus facilities | 1,522,503 | 890,203 |
| KY | Transit Authority of Northern Kentucky Bus Replacement, Kentucky | 1,964,520 | 1,148,649 |
| KY | Transit Authority of River City buses and bus facilities, Kentucky | 2,455,649 | 1,435,810 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| KY | Transportation Authority of the River City (TARC) bus/trolley replacement, Kentucky | 2,455,649 | 1,435,810 |
| KY | Transportation Authority of the River City (TARC) expansion facility, Kentucky | 785,808 | 459,459 |
| KY | Western Kentucky University Bus Shuttle System, Kentucky | 2,455,649 | 1,435,810 |
| LA | Greater Ouachita Port and Intermodal Facility, Louisiana | 1,227,825 | 717,905 |
| LA | Intermodal Transit Facility for ULM, Louisiana | 982,260 | 574,324 |
| LA | Louisiana Statewide buses and bus facilities | 5,402,429 | 3,158,783 |
| LA | Shreveport Intermodal Bus Facility, Louisiana | 687,582 | 402,027 |
| LA | St. Bernard Parish Intermodal Facilities, Louisiana | 491,130 | 287,162 |
| LA | St. Tammany Park and Ride, Louisiana | 392,904 | 229,730 |
| MA | Berkshire Regional Transit Authority (BRTA) Buses and Fare Boxes, Massachusetts | 162,073 | 94,764 b/ |
| MA | Brockton Intermodal Transportation Centre, Massachusetts | 982,260 | 574,324 |
| MA | Bus Replacement, Brockton Area Transit Authority, Massachusetts | 1,964,520 | 1,148,649 |
| MA | Franklin Regional Transit Authority (FRTA) Bus, Massachusetts | 147,339 | 86,149 |
| MA | Lowell Regional Transit Authority Gallagher Intermodal Transportation Center, Massachusetts | 982,260 | 574,324 |
| MA | Montachusett Area Regional Transit (MART) buses and bus facilities, Massachusetts | 1,964,520 | 1,148,649 |
| MA | Newton Rapid Transit Handicap Access Improvements, Massachusetts | 294,678 | 172,297 |
| MA | Pioneer Valley Transit Authority (PVTA) buses, Massachusetts | 2,357,423 | 1,378,378 c/ |
| MA | Pittsfield Intermodal Transportation Center, Massachusetts | 604,090 | 353,210 |
| MA | Springfield Union Station Intermodal facility redevelopment, Massachusetts | 4,420,169 | 2,584,459 |
| MD | Baltimore Center Plaza, Maryland | 589,356 | 344,595 |
| MD | Maryland Statewide buses and bus facility | 7,366,948 | 4,307,431 |
| MD | Southern Maryland Commuter Bus Initiative | 4,420,169 | 2,584,459 |
| MD | WMATA Buses, Maryland | 589,356 | 344,595 |
| ME | Cranberry Isles Intermodal Transportation Facility, Maine | 245,565 | 143,581 |
| ME | Curtis Ferry, Maine | 736,695 | 430,743 |
| ME | Maine Statewide buses and bus facilities | 1,227,825 | 717,905 |
| ME | Portland Bayside Parking Garage / Intermodal Facility, Maine | 245,565 | 143,581 |
| MI | Allegan County Transportation Services, Michigan | 39,290 | 22,973 d/ |
| MI | Ann Arbor Fuel Cell Bus Project, Michigan | 1,964,520 | 1,148,649 |
| MI | Ann Arbor Transit Authority Transit Center, Michigan | 736,695 | 430,743 |
| MI | Barry County Transit replacement maintenance equipment, Michigan | 19,645 | 11,486 |
| MI | Bay Area Metropolitan Transportation Authority New and Replacement Buses, Michigan | 245,565 | 143,581 |
| MI | Bay Area Transportation Authority Downtown Transfer Center Construction and Bus Purchase, Grand Traverse County, Michigan | 982,260 | 574,324 |
| MI | Belding bus replacement and communication equipment, Michigan | 39,290 | 22,973 |
| MI | Berrien County Public Transportation, Michigan | 98,226 | 57,432 e/ |
| MI | Cadillac/Wexford Transit Authority buses, Michigan | 73,669 | 43,074 |
| MI | Cadillac/Wexford Transit Authority Intermodal Facility, Michigan | 589,356 | 344,595 |
| MI | CATA, Lansing, Michigan | 982,260 | 574,324 |
| MI | Clare County Transit Corporation Replacement Buses, Michigan | 98,226 | 57,432 |
| MI | Clinton Transit Bus Purchase, Michigan | 39,290 | 22,973 |
| MI | County Connection L.L.C., Midland County, Michigan | 73,669 | 43,074 |
| MI | Detroit Bus Replacement, Michigan | 2,455,649 | 1,435,810 |
| MI | Detroit Downtown Transit Center, Michigan | 6,875,819 | 4,020,270 |
| MI | Detroit Timed Transfer Center Phase II, Michigan | 982,260 | 574,324 |
| MI | Flint buses and bus facilities, Michigan | 2,455,649 | 1,435,810 |
| MI | Grand Rapids Metropolitan Area multimodal surface transportation center, Michigan | 1,522,503 | 890,203 |
| MI | Harbor Transit Bus Replacement, Michigan | 196,452 | 114,865 |
| MI | Holland Macatawa Area Express (MAX), Michigan | 589,356 | 344,595 |
| MI | Intelligent Transportation System for ITP The Rapid, Michigan | 589,356 | 344,595 |
| MI | Isabella County Transportation Commission Vehicle Replacement, Michigan | 245,565 | 143,581 |
| MI | Kalamazoo County Human Services Care-A-Van, Michigan | 73,669 | 43,074 |
| MI | Kalamazoo Metro Transit, Michigan | 923,325 | 539,865 f/ |
| MI | Lake Erie Transit Bus Storage Facility and Maintenance Facility Expansion, Michigan | 982,260 | 574,324 |
| MI | Lansing Fixed Route Bus Replacement, ADA Para transit Small Bus Replacement, Maintenance, Administration and Storage Facility Renovation and Expansion, CATA/MSU Bus Way, Rural Small Bus Replacement, Michigan | 1,473,390 | 861,486 |
| MI | LETS Bus Replacement, Michigan | 88,403 | 51,689 |
| MI | Ludinton Mass Transportation Authority Bus Facility, Michigan | 245,565 | 143,581 |
| MI | Manistee County Transportation, Inc. Replacement Buses, Michigan | 29,468 | 17,230 |
| MI | Marquette County, Phase II - Transit Administrative, Operations, Maintenance & Storage Facility, Michigan | 982,260 | 574,324 |
| MI | Mecosta Osceola County Area Transit Vehicle Replacement, Michigan | 196,452 | 114,865 |
| MI | Michigan Statewide buses and bus facilities | 982,260 | 574,324 |
| MI | Northern Michigan buses and bus facilities | 491,130 | 287,162 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| MI | Sanilac County bus facility, Michigan | 98,226 | 57,432 |
| MI | Shiawassee Transportation Center and replacement buses, Michigan | 39,290 | 22,973 |
| MI | St. Joseph County Transit, Michigan | 34,379 | 20,101 |
| MI | Suburban Mobility Authority for Regional Transportation (SMART) buses and bus facilities, Michigan | 4,420,169 | 2,584,459 |
| MI | VanBuren Public Transit, Michigan | 17,681 | 10,338 |
| MN | Metro Transit buses and bus facilities, Minnesota | 4,321,943 | 2,527,026 |
| MN | Minnesota District 8 Transit Vehicles and Transit Bus Facilities | 785,808 | 459,459 |
| MN | Minnesota Transit buses and bus facilities, Minnesota | 1,642,338 | 960,270 |
| MN | Northwest Corridor Busway, Minnesota | 2,946,779 | 1,722,972 |
| MN | Southern Minnesota Transit Facilities | 29,468 | 17,230 |
| MN | Southern Minnesota Transit Vehicles | 368,347 | 215,371 |
| MN | St. Cloud Buses, Minnesota | 98,226 | 57,432 |
| MN | Union Depot Multi-modal Transportation Hub, Minnesota | 736,695 | 430,743 |
| MO | City of Columbia Transit Replacement, Missouri | 98,226 | 57,432 |
| MO | Clinton Transit Office, Missouri | 245,565 | 143,581 |
| MO | Jefferson City Transit System, Missouri | 294,678 | 172,297 |
| MO | KCATA buses and bus facilities, Missouri | 2,946,779 | 1,722,972 g/ |
| MO | Missouri Bus & Paratransit Vehicles- Rolling Stock | 785,808 | 459,459 |
| MO | Missouri Statewide buses and bus facilities | 7,858,078 | 4,594,593 |
| MO | OATS buses and bus facilities, Missouri | 1,473,390 | 861,486 |
| MO | Oats Transportation Service of Southwest Missouri | 68,758 | 40,203 |
| MO | Ray County Transportation vehicle replacement, Missouri | 78,581 | 45,946 |
| MO | Southeast Missouri Bus Service Capital Improvements | 1,473,390 | 861,486 |
| MO | Southwest Missouri State University Transfer Facility, Missouri | 2,455,649 | 1,435,810 |
| MO | St. Louis Downtown Shuttle/Trolley Equipment, Missouri | 245,565 | 143,581 |
| MO | St. Louis METRO buses and bus facilities, Missouri | 1,227,825 | 717,905 |
| MS | Coast Transit Authority, Mississippi | 491,130 | 287,162 |
| MS | Harrison County multi-modal facilities and shuttle service, Mississippi | 982,260 | 574,324 |
| MS | Hattiesburg Intermodal Facility, Mississippi | 2,946,779 | 1,722,972 |
| MS | Intermodal Facility, JIA, Mississippi | 1,964,520 | 1,148,649 |
| MS | JATRAN vehicles for disabled and elderly, Mississippi | 245,565 | 143,581 |
| MT | Billings Downtown Bus Transfer Facility, Montana | 1,473,390 | 861,486 |
| MT | Great Falls Transit Authority Bus Replacement and Facility Improvement, Montana | 294,678 | 172,297 |
| MT | Helena Transit Facility, Montana | 491,130 | 287,162 |
| MT | Liberty County COA Bus Facility, Montana | 49,113 | 28,716 |
| MT | Mountain Line Bus Replacement and Facility Improvements, Montana | 196,452 | 114,865 |
| NC | Asheville Transit System Fleet Replacement, North Carolina | 294,678 | 172,297 |
| NC | Chapel Hill Bus Maintenance Facility, North Carolina | 982,260 | 574,324 |
| NC | Charlotte Area Transit System Transit Maintenance and Operations Center, North Carolina | 4,911,299 | 2,871,621 |
| NC | Durham Multimodal Transportation Facility, North Carolina | 1,473,390 | 861,486 |
| NC | High Point Project Terminals, North Carolina | 785,808 | 459,459 |
| NC | Intermodal Transportation Hub Project, North Carolina | 147,339 | 86,149 |
| NC | North Carolina Statewide buses and bus facilities | 6,139,124 | 3,589,526 |
| NC | Piedmont Authority for Regional Transportation (PART) multimodal transportation center, North Carolina | 1,080,486 | 631,757 |
| NC | Winston-Salem Union Station, North Carolina | 1,276,938 | 746,622 |
| ND | North Dakota Statewide buses and bus facilities | 2,946,779 | 1,722,972 |
| ND | Small Urban and Rural Transit Center, North Dakota | 392,904 | 229,730 |
| NE | Kearney RYDE Transit, Nebraska | 982,260 | 574,324 |
| NE | Metro Area Transit (MAT) buses and bus facilities, Omaha, Nebraska | 1,964,520 | 1,148,649 |
| NE | Nebraska Statewide Rural Automatic Vehicle Locating & Comms. System | 736,695 | 430,743 |
| NH | New Hampshire Statewide buses and bus facilities | 4,420,169 | 2,584,459 |
| NJ | Harrison Intermodal Project, New Jersey | 736,695 | 430,743 |
| NJ | Howard Boulevard Intermodal Park & Ride, New Jersey | 2,160,972 | 1,263,513 |
| NJ | Hunterdon County Intermodel Stations and Park & Rides, New Jersey | 392,904 | 229,730 |
| NJ | Montclair State University Campus and Community Bus System, New Jersey | 687,582 | 402,027 |
| NJ | Morris County Intermodal Facilities and Park & Rides, New Jersey | 2,946,779 | 1,722,972 |
| NJ | Newark Penn Station Intermodal Improvements, New Jersey | 2,946,779 | 1,722,972 |
| NJ | Old Bridge Intermodal Stations and Park & Rides, New Jersey | 491,130 | 287,162 |
| NJ | South Amboy Regional Intermodal Transportation Initiative, New Jersey | 982,260 | 574,324 |
| NJ | Trenton Intermodal Station, New Jersey | 736,695 | 430,743 |
| NM | Farmington buses and bus facilities, New Mexico | 98,226 | 57,432 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| NM | Las Cruces buses and bus facilities, New Mexico | 368,347 | 215,371 |
| NM | West Side Transit Facility Albuquerque Transit Department, New Mexico | 1,964,520 | 1,148,649 |
| NV | Bus Rapid Transit Project, Virginia Street, Reno, Nevada | 982,260 | 574,324 |
| NV | Construction of new Intermodal Terminals in Downtown Reno and Sparks, Nevada | 5,893,559 | 3,445,945 |
| NV | Nevada Rural Transit Vehicles and Facilities | 491,130 | 287,162 |
| NV | RTC Central City Intermodal Transportation Terminal, Las Vegas, Nevada | 491,130 | 287,162 |
| NV | Sparks and Reno Bus and Bus Facilities, Nevada | 147,339 | 86,149 |
| NY | Broome County Hybrid Buses, New York | 589,356 | 344,595 h/ |
| NY | Capital District Transportation Authority (CDTA), Rensselaer Intermodal Station, New York | 245,565 | 143,581 |
| NY | Central New York Regional Transportation Authority | 2,259,198 | 1,320,946 |
| NY | Fort Edward Intermodal Station Interior Restoration/Rehabilitation Project, New York | 294,678 | 172,297 |
| NY | Jacobi Transportation Facility, New York | 785,808 | 459,459 |
| NY | Jamaica Intermodal Facilities, Queens, New York | 392,904 | 229,730 |
| NY | Livingston County Transportation Center, New York | 392,904 | 229,730 |
| NY | Main Street project for downtown Buffalo, New York | 638,469 | 373,311 |
| NY | Montgomery Buses, New York | 39,290 | 22,973 |
| NY | MTA/Long Island Bus clean fuel cell bus purchase, New York | 982,260 | 574,324 |
| NY | Myrtle Avenue Business Improvement District's Myrtle/Wyckoff/Palmetto Transit Hub Enhancement, New York | 491,130 | 287,162 |
| NY | Nassau County, Hub Enhancements, New York | 1,178,712 | 689,189 |
| NY | Niagra Frontier Transportation Authority Metro buses and bus facilities, New York | 1,571,616 | 918,919 |
| NY | Oneont Bus Replacement, New York | 196,452 | 114,865 |
| NY | Orange County Bus Replacement, New York | 1,227,825 | 717,905 |
| NY | Over the Road Bus Accessibility, Intercity Bus Accessibility Consortium, New York | 2,946,779 | 1,722,972 |
| NY | Rochester Central Bus Terminal, New York | 5,402,429 | 3,158,783 |
| NY | Rome Intermodal Station Restoration, New York | 1,227,825 | 717,905 |
| NY | Smithtown Senior Citizen Center Bus Replacement, New York | 196,452 | 114,865 |
| NY | St. George Ferry Terminal Reconstruction, New York | 2,210,085 | 1,292,230 |
| NY | Suffolk County Transit Buses, New York | 1,866,294 | 1,091,216 |
| NY | Tompkins County Bus Facilities, New York | 392,904 | 229,730 |
| NY | Ulster County Area Transit Buses, New York | 39,290 | 22,973 |
| NY | Union Station Renovations, Utica, New York | 736,695 | 430,743 |
| NY | Village of Pleasantville, Handicapped Ramp, New York | 47,148 | 27,567 |
| NY | Village of Pleasantville, Memorial Plaza, New York | 196,452 | 114,865 |
| NY | Westchester County Bee Line Bus Replacement, New York | 2,701,214 | 1,579,391 |
| NY | Western Gateway Transportation Center Intermodal Facility, Schenectady, New York | 392,904 | 229,730 |
| NY | Whitehall Inter-Modal Terminal of the Staten Island Ferry Reconstruction, New York | 785,808 | 459,459 |
| NY | Wyandanch Intermodal Transit Facility, New York | 392,905 | 229,730 |
| OH | Central Ohio Transit Authority Facility | 442,017 | 258,446 |
| OH | East Side Transit Center, Cleveland, Ohio | 982,260 | 574,324 |
| OH | Greater Dayton Regional Transit Authority, Ohio | 736,695 | 430,743 |
| OH | Kent State University Intermodal Facility, Ohio | 368,347 | 215,371 |
| OH | Lorain Port Authority Lighthouse Shuttle and Black River Water Taxi Project, Ohio | 196,452 | 114,865 |
| OH | Ohio Statewide buses and bus facilities | 4,911,299 | 2,871,621 |
| OH | The Banks Intermodal Facility, Cincinnati, Ohio | 3,437,909 | 2,010,134 |
| OH | Wright Stop Plaza, Dayton, Ohio | 1,473,390 | 861,486 |
| OH | Zanesville Bus System Improvements, Ohio | 19,645 | 11,486 |
| OK | Central Oklahoma Transportation and Parking Authority | 1,787,713 | 1,045,270 |
| OK | Kibios Area Transit System (KATS) maintenance facility and vehicles, Oklahoma | 638,469 | 373,311 |
| OK | Multi-Modal Transportation Facility and Transit System at Oklahoma State University, Oklahoma | 2,210,085 | 1,292,230 |
| OK | Norman buses and bus facilities, Oklahoma | 2,946,779 | 1,722,972 |
| OK | Northern Oklahoma Regional Multimodal Transportation System | 2,455,649 | 1,435,810 |
| OK | Oklahoma City Buses, Oklahoma | 2,210,085 | 1,292,230 |
| OK | Oklahoma Department of Transportation Transit Programs Division | 6,139,124 | 3,589,526 |
| OK | Tulsa Transit Bus Replacement Program, Oklahoma | 4,420,169 | 2,584,459 |
| OK | Tulsa Transit Paratransit Buses, Oklahoma | 736,695 | 430,743 |
| OR | City of Canby Transit Center, Oregon | 147,339 | 86,149 |
| OR | City of Corvallis Bus Replacement, Oregon | 245,565 | 143,581 |
| OR | Lane Transit District, BRT Phase II, Coburg Road Phase III, Oregon | 1,964,520 | 1,148,649 |
| OR | Lincoln County Transportation, Bus Garage Facility, Oregon | 196,452 | 114,865 |
| OR | Salem Area Transit, Bus Replacement, Oregon | 589,356 | 344,595 |
| OR | South Clackamas Transit, Molalla, Oregon | 98,226 | 57,432 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| OR | Springfield Station, Oregon | 3,929,039 | 2,297,297 |
| OR | Tillamook County Transit, Maintenance Facility, Oregon | 196,452 | 114,865 |
| OR | Tri-Met Regional Bus Replacement, Oregon | 638,469 | 373,311 |
| OR | Wilsonville Park and Ride, Oregon | 294,678 | 172,297 |
| OR | Yamill County buses and bus facilities, Oregon | 98,226 | 57,432 1/ |
| PA | Adams County Transit Authority (ACTA) buses and bus facilities, Pennsylvania | 19,645 | 11,486 |
| PA | Allentown Intermodal Facility, Pennsylvania | 2,455,649 | 1,435,810 |
| PA | AMTRAN Buses and Transit System Improvements, Pennsylvania | 196,452 | 114,865 |
| PA | Area Transit Authority buses and bus equipment, Pennsylvania | 2,455,649 | 1,435,810 |
| PA | BARTA Fixed Route Bus and Paratransit Vehicle Replacement, Pennsylvania | 2,553,875 | 1,493,243 |
| PA | BARTA Transit Facilities, Pennsylvania | 638,469 | 373,311 |
| PA | Beaver County Transit Authority replacement buses and equipment, Pennsylvania | 245,565 | 143,581 |
| PA | Butler Multi-Modal Transit Center, Pennsylvania | 982,260 | 574,324 |
| PA | Cambria County Transit buses and facilities, Pennsylvania | 884,034 | 516,892 |
| PA | Capital Area Transit Buses, Pennsylvania | 1,571,616 | 918,919 |
| PA | Centre Area Transit Authority, Advanced Public Transportation Systems Initiative, Pennsylvania | 589,356 | 344,595 |
| PA | Church Street Transportation Center, Williamsport, Lycoming County, Pennsylvania | 245,565 | 143,581 |
| PA | City Bus, Williamsport Bureau of Transportation, Lycoming County, Pennsylvania | 982,260 | 574,324 |
| PA | Endless Mountain Transportation Authority, Bradford County, Pennsylvania | 9,823 | 5,743 |
| PA | Erie Metropolitan Transit Authority Bus Acquisition, Pennsylvania | 98,226 | 57,432 |
| PA | Fayette County Intermodal Transit Facility, Pennsylvania | 392,904 | 229,730 |
| PA | Harrisburg CorridorONE, Pennsylvania | 1,964,520 | 1,148,649 |
| PA | Harrisburg Intermodal Airport Multi-Modal Transportation Facility, Pennsylvania | 982,260 | 574,324 |
| PA | Hazleton Intermodal Public Transit Center, Pennsylvania | 1,718,955 | 1,005,068 |
| PA | Indiana County Transit Authority/Bus Facility Expansion and Renovation, Pennsylvania | 392,904 | 229,730 |
| PA | Lebanon County Transit Authority, buses and bus related facilities, Pennsylvania | 442,017 | 258,446 |
| PA | Mid County Transit Authority Kittanning, Pennsylvania | 392,904 | 229,730 |
| PA | Mid Mon Valley Transit Authority, Charleroi, Pennsylvania | 589,356 | 344,595 |
| PA | New Castle Transit Authority replacement buses, Pennsylvania | 98,226 | 57,432 |
| PA | Paoli Transportation Center, Pennsylvania | 491,130 | 287,162 |
| PA | Pittsburgh Water Taxi, Pennsylvania | 982,260 | 574,324 |
| PA | Port Authority of Allegheny County Buses, Pennsylvania | 2,701,214 | 1,579,391 |
| PA | Port Authority of Allegheny County Clean Fuel Buses, Pennsylvania | 2,239,552 | 1,309,459 |
| PA | Schlow Library Bus Depot, State College, Pennsylvania | 785,808 | 459,459 |
| PA | Schuylkill Transportation System, buses and bus facilities, Pennsylvania | 982,260 | 574,324 |
| PA | SEPTA Bucks County Intermodal Facility Improvements, Pennsylvania | 3,437,909 | 2,010,134 |
| PA | SEPTA Hybrid Buses, Pennsylvania | 785,808 | 459,459 |
| PA | SEPTA Norristown Intermodal Facility, Pennsylvania | 2,946,779 | 1,722,972 |
| PA | Somerset County Transportation System Maintenance Facility, Pennsylvania | 157,162 | 91,892 |
| PA | Transit Authority of Warren County Intermodal Bus Facility, Pennsylvania | 1,473,390 | 861,486 |
| PA | Union County Union/Snyder Transportation Alliance (USTA), Pennsylvania | 491,130 | 287,162 |
| PA | Westmoreland County Transit Authority (WCTA) Bus Replacement, Pennsylvania | 884,034 | 516,892 |
| PA | York County Transit Authority (YCTA) buses and bus facilities, Pennsylvania | 98,226 | 57,432 |
| PR | Puerto Rico Metropolitan Bus Authority Replacement | 491,130 | 287,162 |
| RI | RIPTA Buses and Vans, Rhode Island | 3,929,039 | 2,297,297 |
| RI | RIPTA Facilities Upgrade, Rhode Island | 392,904 | 229,730 |
| SC | City of Greenville Multimodal Transportation Center Improvements, South Carolina | 196,452 | 114,865 |
| SC | Lowcountry Regional Transit Authority, South Carolina | 294,678 | 172,297 |
| SC | Medical University of South Carolina Intermodal Facility, South Carolina | 3,929,039 | 2,297,297 |
| SC | Myrtle Beach Regional Multimodal Transit Center, South Carolina | 196,452 | 114,865 |
| SC | North Charleston Regional Intermodal Transportation Center, South Carolina | 1,227,825 | 717,905 |
| SC | South Carolina Statewide Transit Facilities Construction Project | 982,260 | 574,324 |
| SC | South Carolina Statewide Transit Vehicles | 3,929,039 | 2,297,297 |
| SD | Cheyenne River Sioux Tribe public buses and bus facilities, South Dakota | 2,210,085 | 1,292,230 |
| SD | South Dakota Statewide buses and bus facilities | 1,964,520 | 1,148,649 |
| TN | Downtown Transit Center, Nashville, Tennessee | 1,964,520 | 1,148,649 |
| TN | Knoxville Electric Transit Intermodal Center, Tennessee | 1,964,520 | 1,148,649 |
| TN | Memphis International Airport Intermodal Facility, Tennessee | 2,701,214 | 1,579,391 |
| TN | Nashville replacement of aged buses, Tennessee | 491,130 | 287,162 |
| TN | Tennessee Statewide buses and bus facilities | 6,384,689 | 3,733,107 |
| TN | UCHRA Capital Improvements, Tennessee | 589,356 | 344,595 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 9

REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| TX | Austin Capital Metro buses and bus facilities, Texas | 2,946,779 | 1,722,972 |
| TX | Brazos County Bus Replacement Program, Texas | 196,452 | 114,865 |
| TX | Capital Metro Hybrid Electric Buses, Texas | 491,130 | 287,162 j/ |
| TX | CityLink van and technology replacement, Abiline, Texas | 491,130 | 287,162 |
| TX | Corpus Christi buses and bus facilities, Texas | 1,964,520 | 1,148,649 |
| TX | El Paso Sun Metro Bus Replacement, Texas | 982,260 | 574,324 |
| TX | Ft. Worth Transportation Authority Fleet Modernization and Bus Transfer Centers, Texas | 1,473,390 | 861,486 |
| TX | Galveston Maintenance Facility Renovations, Texas | 785,808 | 459,459 |
| TX | Grapevine Bus Purchase, Texas | 157,162 | 91,892 |
| TX | Hunt County Committee on Aging Transportation Facility, Texas | 392,904 | 229,730 |
| TX | Laredo Bus Facility, Texas | 834,921 | 488,176 |
| TX | Lubbock/Citibus Buses, Texas | 1,473,390 | 861,486 |
| TX | Nacogdoches Vehicle Replacement, Texas | 785,808 | 459,459 |
| TX | North Side Transfer Center Brownsville Urban System (BUS), Texas | 343,791 | 201,014 |
| TX | Public Transportation Management, Tyler/Longview, Texas | 343,791 | 201,014 |
| TX | San Antonio VIA Metropolitan Transit buses and bus facilities, Texas | 4,911,299 | 2,871,621 |
| TX | South East Texas Transit Facility Improvements and Bus Replacements | 245,565 | 143,581 |
| TX | The District-Bryan Intermodal Transit Terminal/Parking Facility & Pedestrian Improvements, Texas | 392,904 | 229,730 |
| TX | The Woodlands Capital Costs, Texas | 343,791 | 201,014 |
| TX | The Woodlands Park and Ride Expansion, Texas | 270,121 | 157,939 |
| UT | UTA Transit ITS, Upgrades, Utah | 245,565 | 143,581 |
| UT | Utah Statewide buses and bus facilities | 5,893,559 | 3,445,945 |
| UT | Utah Statewide Intermodal Centers | 3,929,039 | 2,297,297 |
| VA | Alexandria After School Bus program, Virginia | 73,669 | 43,074 |
| VA | Clean Fleet Bus Purchase and Facilities, Virginia | 982,260 | 574,324 |
| VA | Danville Trolley Buses, Virginia | 171,895 | 100,506 |
| VA | Fairfax County, Richmond Highway Transit Improvements, Virginia | 687,582 | 402,027 |
| VA | Hampton Roads Transit Southside Bus Facility, Virginia | 1,964,520 | 1,148,649 |
| VA | Main Street Station Multimodal Transportation Center, Virginia | 1,473,390 | 861,486 |
| VA | Potomac and Rappahannock Transportation Commission, Virginia | 491,130 | 287,162 |
| VA | Richmond Highway Public Transportation Initiative, Virginia | 2,946,779 | 1,722,972 |
| VI | Virgin Islands Transit (VITRAN) Buses | 491,130 | 287,162 |
| VT | Brattleboro Multimodal, Vermont | 1,964,520 | 1,148,649 |
| VT | Burlington Transit Facilities, Vermont | 2,455,649 | 1,435,810 |
| VT | Vermont Alternative Fuel Station and Buses, Vermont | 491,130 | 287,162 |
| VT | Vermont, Bus Upgrades | 785,808 | 459,459 |
| WA | Clallam Transit Buses, Washington | 245,565 | 143,581 |
| WA | Clark County Transit, Bus Replacement Project, Washington | 2,946,779 | 1,722,972 |
| WA | Community Transit Bus and Van Replacement, Washington | 982,260 | 574,324 |
| WA | Edmonds Crossing Multimodal Transportation Terminal, Washington | 1,964,520 | 1,148,649 |
| WA | Everett Transit, Bus Replacement, Washington | 982,260 | 574,324 |
| WA | Grant Transit Authority, Bus Facility, Washington | 491,130 | 287,162 |
| WA | Grays Harbor Transportation Authority Capital Improvement, Washington | 73,669 | 43,074 |
| WA | Intercity Transit Bus Expansion and Replacement, Washington | 982,260 | 574,324 |
| WA | Jefferson Transit bus purchase, Washington | 196,452 | 114,865 |
| WA | Jefferson Transit Facilities, Washington | 982,260 | 574,324 |
| WA | King County Metro Clean Air Buses, Washington | 4,911,299 | 2,871,621 |
| WA | Kitsap Transit Bus Replacement, Washington | 982,260 | 574,324 |
| WA | Link Transit Vehicle Replacement, Wenatchee, Washington | 785,808 | 459,459 |
| WA | Mason County Transportation Authority Capital Improvements, Washington | 196,452 | 114,865 |
| WA | Metro Transit Turn Around at Taylor Landing Park, Washington | 39,290 | 22,973 |
| WA | Mukilteo Lane Park and Ride, Washington | 982,260 | 574,324 |
| WA | North Bend Park and Ride, Washington | 589,356 | 344,595 |
| WA | Pierce Transit Maintenance and Operations facility, Washington | 982,260 | 574,324 |
| WA | Snohomish County Community Transit Park and Ride Lot Expansion Program, Washington | 1,964,520 | 1,148,649 |
| WA | Sound Transit Regional Express Transit Hubs, Washington | 1,964,520 | 1,148,649 |
| WA | Washington State Small Bus System Program of Projects | | |
| WA | Clallam Transit | 670,500 | 392,039 |
| WA | Columbia County Public Transportation (CCPT) | 100,380 | 58,692 |
| WA | Grays Harbor Transportation Authority | 140,337 | 82,055 |
| WA | Island Transit | 1,066,172 | 623,387 |

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 9

### REVISED FY 2004 SECTION 5309 BUS AND BUS-RELATED ALLOCATIONS

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| WA | Jefferson Transit | 405,419 | 237,047 |
| WA | Mason County Transportation Authority | 467,791 | 273,516 |
| WA | Pullman Transit | 85,762 | 50,145 |
| WA | Twin Transit | 105,253 | 61,541 |
| WA | Valley Transit | 589,991 | 403,436 |
| WI | Wisconsin, Statewide buses and bus facilities | 14,733,883 | 8,614,885 |
| WV | West Virginia Statewide buses and bus facilities | 3,929,039 | 2,297,297 |
| WY | Wyoming Statewide buses and bus facilities | 1,964,520 | 1,148,649 |
| | **TOTAL ALLOCATION** | **$668,660,587** | **$390,963,723** |

a/ Conferees clarification stipulates that the project designation be changed from "Los Angles County, Circulator Buses, California" to "South Whittier Circulator Buses, California."

b/ Conferees clarification stipulates that $600,000 of the amount initially provided for the project should go to the "Broome County Hybrid Buses, New York" project.

c/ Conferees clarification stipulates that $100,000 of the amount initially provided for the project should go to the "Yamill County buses and bus facilities, Oregon" project.

d/ Conferees clarification resulted in redistribution of funds initially made available to the project to other projects.

e/ Conferees clarification resulted in additional funding being made available for this project.

f/ Conferees clarification resulted in addition of this project. Funds were derived from a portion of the funding previously identified for the "Allergan County Transportation Services, Michigan" project.

g/ Conferees clarification changed the State designation for this project from Kansas to Missouri.

h/ Conferees clarification resulted in addition of this project. Funds were derived from a portion of the funding previously identified for the "Berkshire Regional Transit Authority (BRTA) Buses and Fare Boxes, Massachusetts"' project.

i/ Conferees clarification resulted in addition of this project. Funds were derived from a portion of the funding previously identified for the "Pioneer Valley Transit Authority (PVTA) buses, Massachusetts"' project.

j/ State designation corrected to reflect TX (Texas) rather than MI (Michigan) as noted in the original Table 9 list of projects.

## FEDERAL TRANSIT ADMINISTRATION

### Table 10

**REVISED FY 2004 NATIONAL PLANNING AND RESEARCH PROGRAM ALLOCATIONS**

| STATE | PROJECT | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| AL | Center for Composite Manufacturing, Alabama | $968,254 | $564,815 |
| AL | JSU Bus Technology Research Center | 994,100 | 579,892 |
| CA | CALSTART/Weststart Bus Rapid Transit; Clean Mobility and Transit Enhancements | 2,112,462 | 1,232,269 |
| DC | Community Transportation Association of America's National Joblinks Program | 994,100 | 579,892 |
| DC | Project ACTION (TEA-21) | 2,982,300 | 1,739,675 |
| FL | Center for Intermodal Transportation, Florida A&M University | 745,575 | 434,919 |
| FL | State University System of Florida Intermodal Transportation Safety Initiative | 6,958,700 | 4,059,242 |
| MD | Transit Technology Career Ladder Partnership Training Program | 497,050 | 289,946 |
| MN | Hennepin County community transportation, Minnesota | 1,192,920 | 695,870 |
| NC | North Carolina State University Center for Transportation and the Environment | 99,410 | 57,989 |
| ND | NDSU Transit Center for small urban areas, North Dakota | 397,640 | 231,957 |
| NY | NYU-Wagner Rudin Center Americas Mega City Project, NY | 74,558 | 43,492 |
| OK | Fischer-Tropsch clean diesel technology demonstration, Oklahoma | 994,100 | 579,892 |
| OK | Oklahoma Transportation Center | 1,491,150 | 869,837 |
| PA | National Bio-Terrorism Civilian Medical Response Center, Pennsylvania | 994,100 | 579,892 |
| TN | Advanced Transportation Technology Institute, Tennessee | 994,100 | 579,892 |
| VA | Interior Air Quality Industrial Engine Control Demonstration, Bristol, Virginia | 844,985 | 492,908 |
| WA | Vashon Island Passenger-Only Ferry Initiative, Washington | 994,100 | 579,892 |
| WV | WVU exhaust emissions testing, West Virginia | 1,355,555 | 790,740 |
| | **TOTAL ALLOCATION** | **$25,685,159** | **$14,983,011** |

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 11

### REVISED FY 2004 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

| STATE | PROJECT AND DESCRIPTION | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| AK | Craig Transit Service JARC Program | $49,563 | $28,912 |
| AK | MASCOT Matanuska-Susitna Valley JARC Project | 198,252 | 115,647 |
| AK | Mobility Coalition | 495,630 | 289,118 |
| AK | North Pole Transit System JARC Program | 74,344 | 43,367 |
| AK | Seward Transit Service JARC Program | 198,252 | 115,647 |
| AK | Sitka Community RIDE | 594,756 | 346,941 |
| AL | Alabama Disabilities Advocacy Program [ADA] Rural Transportation Services | 495,630 | 289,118 |
| AL | Easter Seals West Alabama JARC Program | 991,260 | 578,235 |
| AL | Jefferson County Job Access Reverse Commute Projects | 2,973,779 | 1,734,704 |
| AR | Fort Smith Transit Job Access Reverse Commute Program | 198,252 | 115,647 |
| AR | West Memphis Transit Services | 247,815 | 144,559 |
| AZ | Maricopa Association of Governments JARC Projects | 1,734,705 | 1,011,911 |
| CA | AC Transit CalWORKS Welfare to Work | 1,485,898 | 866,774 |
| CA | City of Irwindale Senior Transportation Services | 64,432 | 37,585 |
| CA | Guaranteed Ride Home, Santa Clarita | 396,504 | 231,294 |
| CA | Mendocino Transit Authority Job Access Reverse Commute | 99,126 | 57,824 |
| CA | Metro Link San Bernadino Platform Extension | 991,260 | 578,235 |
| CA | Sacramento Region Job Access Reverse Commute Project | 1,486,890 | 867,353 |
| CA | Ways to Work | 991,260 | 578,235 |
| CT | Connecticut Statewide | 3,221,594 | 1,879,263 |
| DC | Georgetown, Washington DC - Metro Connection | 991,260 | 578,235 |
| DC | Washington Metropolitan Area Transit Authority | 991,260 | 578,235 |
| DE | Delaware Statewide Welfare to Work | 743,445 | 433,676 |
| FL | Jacksonville, FL Transportation Authority, Community Transportation Coordinator Program | 2,973,779 | 1,734,704 |
| FL | Key West, Florida Job Access Reverse Commute | 495,630 | 289,118 |
| GA | Chatham Area Transit Job Access Reverse Commute (JARC) | 991,260 | 578,235 |
| IA | Iowa Statewide JARC | 991,260 | 578,235 |
| IL | Illinois Statewide JARC | 198,252 | 115,647 |
| IL | Operation Ride DuPage | 495,630 | 289,118 |
| IL | Ray Graham Association for People With Disabilities | 123,907 | 72,279 |
| IN | IndyGo IndyFlex Job Access Reverse Commute Program | 743,445 | 433,676 |
| KS | ADA Mobility Planning | 361,810 | 211,056 |
| KS | JARC Program, MidAmerica Regional Council Kansas City | 495,630 | 289,118 |
| KS | Topeka Metropolitan Transit Authority JARC | 693,882 | 404,765 |
| KS | Unified Government of Wyandotte County JARC | 1,362,982 | 795,073 |
| KY | Bowling Green KY Housing Authority Reverse Access Commute | 297,378 | 173,471 |
| MA | Holyoke Community Access to Employment and Adult Education | 74,344 | 43,367 |
| MA | Pioneer Valley Access to Jobs and Reverse Commute Program | 451,023 | 263,097 |
| MA | Worcester Regional Transit Authority JARC Projects | 148,689 | 86,735 |
| MD | Maryland Statewide JARC | 3,965,039 | 2,312,939 |
| MD | VoxLinx Voice-Enabled Transit Trip Planner | 1,288,638 | 751,706 |
| ME | Maine Statewide JARC | 489,682 | 285,648 |
| MI | Detroit Job Access Reverse Commute | 1,586,016 | 925,176 |
| MI | Flint Transit Job Access Reverse Commute Program | 743,445 | 433,676 |
| MI | Grand Rapids/Kent County JARC | 1,189,512 | 693,882 |
| MI | North Oakland Transportation Authority | 148,689 | 86,735 |
| MN | Metropolitan Council Job Access | 495,630 | 289,118 |
| MO | Kansas City Job Access Partnership | 495,630 | 289,118 |
| MO | Missouri Statewide JARC | 3,965,039 | 2,312,939 |
| ND-MN | Metropolitan Access to Jobs Initiative Fargo, North Dakota & Moorehead Minnesota | 99,126 | 57,824 |
| NJ | New Jersey Community Development Corporation Transportation Opportunity Center | 297,378 | 173,471 |

FEDERAL TRANSIT ADMINISTRATION

TABLE 11

REVISED FY 2004 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

| STATE | PROJECT AND DESCRIPTION | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| NJ | New Jersey Statewide JARC | 4,708,484 | 2,746,616 |
| NM | New Mexico Statewide JARC | 594,756 | 346,941 |
| NV | Lake Tahoe Public Transit Services JARC Project | 99,126 | 57,824 |
| NV | Nevada Statewide small urban and rural Job Access Reverse Commute | 396,504 | 231,294 |
| NY | Broome County Transit JARC | 99,126 | 57,824 |
| NY | Capital District Transportation Authority JARC | 495,630 | 289,118 |
| NY | Central New York Regional Transportation Authority JARC | 396,504 | 231,294 |
| NY | Chautauqua County Job Access/Reverse Commute Project | 99,126 | 57,824 |
| NY | City of Hornell Job Access Reverse Commute Program | 99,126 | 57,824 |
| NY | City of Poughkeepsie Underserved Population Bus Service | 99,126 | 57,824 |
| NY | Essex County Job Access Reverse Commute Project | 99,126 | 57,824 |
| NY | Franklin County Job Access Reverse Commute Project | 198,252 | 115,647 |
| NY | MTA Long Island Bus Job Access Reverse Commute Project | 247,815 | 144,559 |
| NY | New York Statewide JARC | 991,260 | 578,235 |
| NY | North Country County Consortium | 4,956,299 | 2,891,174 |
| NY | Oneida/Herkimer County JARC Project | 99,126 | 57,824 |
| NY | Orange County JARC Project | 99,126 | 57,824 |
| NY | Rochester-Genesee Regional Transportation Authority JARC | 743,445 | 433,676 |
| NY | Tompkins Consolidated Area Transit | 74,344 | 43,367 |
| NY | Ulster County Area Transit Rural Feeder Service | 49,563 | 28,912 |
| OH | Akron Metro Regional Transit Authority Job Access and Reverse Commute Program | 297,378 | 173,471 |
| OH | Central Ohio Transit Authority's [COTA] Job Access & Mobility Management Program | 495,630 | 289,118 |
| OH | Greater Cleveland Regional Transit Authority JARC Program | 743,445 | 433,676 |
| OH | Nile/Trumbull Transit | 198,252 | 115,647 |
| OH | Toledo Job Access Reverse Commute | 346,941 | 202,382 |
| OK | Oklahoma Statewide JARC | 5,947,550 | 3,469,392 |
| OR | Jackson-Josephine County JARC | 198,252 | 115,647 |
| OR | Portland Region Job Access Reverse Commute | 495,630 | 289,118 |
| OR | Salem Area Transit Reverse Commute Project | 396,504 | 231,294 |
| PA | Port Authority of Allegheny County JARC Program | 3,612,150 | 2,107,088 |
| PA | SEPTA JARC Program | 4,460,669 | 2,602,057 |
| RI | Rhode Island Statewide JARC | 1,399,659 | 816,468 |
| SD | Cheyenne River Sioux Tribe Public Bus System | 247,815 | 144,559 |
| TN | Access to Healthcare for Children-Children's Health Fund | 371,722 | 216,838 |
| TN | Knox County Community Action Committee Transportation Program | 396,504 | 231,294 |
| TN | Knoxville Area Transit Job Access | 545,193 | 318,029 |
| TN | Monroe County TN Job Access Reverse Commute Program | 99,126 | 57,824 |
| TN | Tennessee Statewide JARC | 5,699,743 | 3,324,850 |
| TX | CityLink public transportation services | 99,126 | 57,824 |
| TX | Corpus Christi Welfare to Work Project | 372,714 | 217,417 |
| TX | El Paso Sun Metro Job Access Program | 768,226 | 448,132 |
| TX | Galveston Job Access Reverse Commute Program | 470,848 | 274,661 |
| TX | Lubbock Citibus Job Access Reverse Commute Program | 227,990 | 132,994 |
| TX | San Antonio VIA Metropolitan Transit JARC Program | 545,193 | 318,029 |
| TX | South East Texas Transit Facility Improvements and Bus Replacements | 297,378 | 173,471 |
| TX | Texas Colonias JARC Initiative | 2,379,023 | 1,387,763 |
| TX | Ways to Work, Tarrant County | 297,378 | 173,471 |
| VA | Bay Area Transit | 198,252 | 115,647 |
| VA | Bedford Ride | 59,476 | 34,694 |
| VA | Statewide Ways to Work | 991,260 | 578,235 |
| VA | Virginia Beach Paratransit Services | 198,252 | 115,647 |

## FEDERAL TRANSIT ADMINISTRATION

## TABLE 11

### REVISED FY 2004 JOB ACCESS AND REVERSE COMMUTE PROGRAM ALLOCATIONS

| STATE | PROJECT AND DESCRIPTION | ALLOCATION | AVAILABLE ALLOCATION |
|---|---|---|---|
| VA | Virginia Regional Transportation Association | 198,252 | 115,647 |
| VT | Chittenden County Transportation Authority JARC Program | 247,815 | 144,559 |
| WA | I-405 Congestion Relief Project | 1,982,519 | 1,156,469 |
| WA | Link Transit JARC Program | 495,630 | 289,118 |
| WA | Vanpooling Enhancement and Expansion Project | 743,445 | 433,676 |
| WA | Vehicle Trip Reduction Incentives | 991,260 | 578,235 |
| WA | Washington State Transit car-sharing Job Access | 495,630 | 289,118 |
| WI | Wisconsin Statewide JARC | 2,577,275 | 1,503,410 |
| WV | West Virginia Statewide JARC | 991,260 | 578,235 |
| --- | Community Transportation Association of America's National Joblinks program | 2,478,149 | 1,445,587 |
| DC | Technical Assistance Support & Performance Reviews of the JARC Grants Program | 298,230 | 173,968 |
| | **TOTAL ALLOCATIONS** | **$104,380,500** | **$60,888,625** |

FEDERAL TRANSIT ADMINISTRATION

TABLE 14

REVISED FISCAL YEAR 2004 FORMULA GRANT APPORTIONMENTS - UNIT VALUES OF DATA

| | APPORTIONMENT UNIT VALUE | AVAILABLE APPORTIONMENT UNIT VALUE |
|---|---|---|
| Section 5307 Urbanized Area Formula Program - Bus Tier | | |
| Urbanized Areas Over 1,000,000: | | |
| Population | $2.88676808 | $1.68501953 |
| Population x Density | $0.00073247 | $0.00042754 |
| Bus Revenue Vehicle Mile | $0.39234655 | $0.22901445 |
| Urbanized Areas Under 1,000,000: | | |
| Population | $2.64560930 | $1.54425406 |
| Population x Density | $0.00115755 | $0.00067567 |
| Bus Revenue Vehicle Mile | $0.52282496 | $0.30517528 |
| Bus Incentive (PM denotes Passenger Mile): | | |
| Bus PM x Bus PM = Operating Cost | $0.00630992 | $0.00368313 |
| Section 5307 Urbanized Area Formula Program - Fixed Guideway Tier | | |
| Fixed Guideway Revenue Vehicle Mile | $0.59368549 | $0.34653690 |
| Fixed Guideway Route Mile | $32,973 | $19,247 |
| Commuter Rail Floor | $7,384,783 | $4,310,531 |
| Fixed Guideway Incentive: | | |
| Fixed Guideway PM x Fixed Guideway PM = Operating Cost | $0.00056456 | $0.00032954 |
| Commuter Rail Incentive Floor | $339,077 | $197,921 |
| Section 5307 Urbanized Area Formula Program - Areas Under 200,000 | | |
| Population | $5.34049101 | $3.11726865 |
| Population x Density | $0.00265084 | $0.00154731 |
| Section 5311 Nonurbanized Area Formula Program | | |
| Areas Under 50,000 | | |
| Population | $2.66076635 | $1.55447949 |

**Section 5309 Capital Program - Fixed Guideway Modernization**

**Apportionment Unit Values**

| | Tier 2 | Tier 3 | Tier 4 | Tier 5 | Tier 6 | Tier 7 |
|---|---|---|---|---|---|---|
| Legislatively Specified Areas: | | | | | | |
| Revenue Vehicle Mile | $0.03043443 | ------- | $0.13683131 | $0.03651184 | $0.02407374 | $0.12333530 |
| Route Mile | $2,122.43 | ------- | $7,832.52 | $2,723.57 | $1,795.76 | $9,200.10 |
| Other Urbanized Areas: | | | | | | |
| Revenue Vehicle Mile | $0.16377360 | $0.00579309 | $0.13683131 | $0.08794439 | $0.07179134 | $0.55170519 |
| Route Mile | $4,772.78 | $168.83 | $7,832.52 | $2,635.90 | $2,151.75 | $16,535.88 |

**Available Apportionment Unit Values**

| | Tier 2 | Tier 3 | Tier 4 | Tier 5 | Tier 6 | Tier 7 |
|---|---|---|---|---|---|---|
| Legislatively Specified Areas: | | | | | | |
| Revenue Vehicle Mile | $0.01775342 | ------- | $0.07981826 | $0.02129858 | $0.01404302 | $0.07194559 |
| Route Mile | $1,238.08 | ------- | $4,568.97 | $1,588.75 | $1,047.53 | $5,366.72 |
| Other Urbanized Areas: | | | | | | |
| Revenue Vehicle Mile | $0.09553460 | $0.00337930 | $0.07981826 | $0.05130089 | $0.04187828 | $0.32182802 |
| Route Mile | $2,784.12 | $98.48 | $4,568.97 | $1,537.61 | $1,255.19 | $9,645.93 |

## FEDERAL TRANSIT ADMINISTRATION

### TABLE 15

### REVISED 2000 CENSUS URBANIZED AREAS WITH POPULATION 200,000 OR GREATER ELIGIBLE TO USE FY 2004 SECTION 5307 FUNDS FOR OPERATING ASSISTANCE

| State | Urbanized Area Description | Population | FY 2002 Apportionment | FY 2004 Apportionment Operating Limitation a/ | FY 2004 Available Operating Limitation b/ |
|---|---|---|---|---|---|
| AL | Huntsville, AL | 213,253 | $1,677,473 | $1,677,473 | $832,429 |
| CA | Antioch, CA | 217,591 | $1,914,688 | $1,914,688 | $1,914,688 |
| CA | Indio--Cathedral City--Palm Springs | 254,856 | $1,849,608 | $1,849,608 | $1,602,213 |
| | (Indio-Coachella, CA -- $621,797) | | | | |
| | (Palm Springs, CA -- $1,227,811) | | | | |
| CA | Lancaster--Palmdale, CA | 263,532 | $2,206,544 | $2,206,544 | $2,206,544 |
| CA | Santa Rosa, CA | 285,408 | $2,636,339 | $2,636,339 | $1,730,456 |
| CA | Victorville--Hesperia--Apple Valley, | 200,436 | $1,311,837 | $1,311,837 | $1,081,858 |
| CA | Temecula--Murrieta, CA | 229,810 | ---------- | $1,247,633 | $858,648 |
| CO | Fort Collins, CO | 206,757 | $1,156,197 | $1,156,197 | $1,026,298 |
| CT | Bridgeport--Stamford, CT--NY | 888,890 | $9,676,425 | $9,676,425 | $9,357,071 |
| | (Stamford, CT-NY -- $5,332,860) | | | | |
| | (Norwalk, CT -- $4,343,565) | | | | |
| CT | Hartford, CT | 851,535 | $2,824,453 | $2,824,453 | $2,824,453 |
| | (Bristol, CT -- $983,277) | | | | |
| | (New Britain, CT -- $1,841,176) | | | | |
| FL | Port St. Lucie, FL | 270,774 | $1,982,206 | $1,982,206 | $1,030,772 |
| | (Fort Pierce, FL -- $1,142,501) | | | | |
| | (Stuart, FL -- $839,705) | | | | |
| FL | Bonita Springs--Naples, FL | 221,251 | $954,953 | $954,953 | $619,019 |
| FL | Tallahassee, FL | 204,260 | $1,617,975 | $1,617,975 | $1,223,402 |
| GA | Savannah, GA | 208,886 | $1,824,225 | $1,824,225 | $1,550,599 |
| ID | Boise City, ID | 272,625 | $2,021,464 | $2,021,464 | $1,248,263 |
| IL | Round Lake Beach--McHenry--Gra | 226,848 | $1,088,609 | $1,088,609 | $1,088,609 |
| IL | Chicago, IL--IN | 8,307,904 | $6,599,240 | $6,599,240 | $6,599,240 |
| | (Aurora, IL -- $2,290,318) | | | | |
| | (Crystal Lake, IL -- $746,464) | | | | |
| | (Elgin, IL -- $1,652,124) | | | | |
| | (Joliet, IL -- $1,910,334) | | | | |
| IN | Evansville, IN--KY | 211,989 | $2,251,898 | $2,251,898 | $1,015,309 |
| MA | Barnstable Town, MA | 243,667 | $538,120 | $538,120 | $538,120 |
| MA | Boston, MA--NH--RI | 4,032,484 | $4,760,673 | $4,760,673 | $4,760,673 |
| | (Brockton, MA -- $1,906,558) | | | | |
| | (Lowell, MA-NH -- $2,366,926) | | | | |
| | (Taunton, MA -- $487,189) | | | | |
| MD | Baltimore, MD | 2,076,354 | $858,335 | $858,335 | $858,335 |
| | (Annapolis, MD -- $858,335) | | | | |
| MO | Springfield, MO | 215,004 | $1,748,930 | $1,748,930 | $1,025,622 |
| MS | Gulfport--Biloxi, MS | 205,754 | $1,687,127 | $1,687,127 | $950,200 |
| NC | Winston-Salem, NC | 299,290 | $1,811,413 | $1,811,413 | $1,334,992 |
| NC | Asheville, NC | 221,570 | $968,044 | $968,044 | $770,280 |
| NC | Greensboro, NC | 267,884 | $2,211,540 | $2,211,540 | $1,475,896 |
| NE | Lincoln, NE | 226,582 | $2,658,761 | $2,658,761 | $1,349,712 |
| NJ | Atlantic City, NJ | 227,180 | $1,842,968 | $1,842,968 | $1,842,968 |
| NY | Poughkeepsie--Newburgh, NY | 351,982 | $2,225,147 | $2,225,147 | $1,879,756 |
| | (Poughkeepsie, NY -- $1,507,504) | | | | |
| | (Newburgh, NY -- $717,643) | | | | |
| OH | Youngstown, OH--PA | 417,437 | $465,043 | $465,043 | $465,043 |
| | (Sharon, PA-OH -- $465,043) | | | | |
| OH | Cincinnati, OH--KY--IN | 1,503,262 | $1,384,842 | $1,384,842 | $1,384,842 |
| | (Hamilton, OH -- $1,384,842) | | | | |
| OR | Eugene, OR | 224,049 | $2,559,936 | $2,559,936 | $2,268,740 |
| OR | Salem, OR | 207,229 | $2,070,221 | $2,070,221 | $1,630,519 |
| PA | Reading, PA | 240,264 | $2,636,837 | $2,636,837 | $1,354,033 |
| PA | Lancaster, PA | 323,554 | $2,258,871 | $2,258,871 | $1,767,055 |
| PR | Aguadilla--Isabela--San Sebastian, | 299,086 | $1,148,984 | $1,148,984 | $714,266 |

## FEDERAL TRANSIT ADMINISTRATION

### TABLE 15

### REVISED 2000 CENSUS URBANIZED AREAS WITH POPULATION 200,000 OR GREATER ELIGIBLE TO USE FY 2004 SECTION 5307 FUNDS FOR OPERATING ASSISTANCE

| State | Urbanized Area Description | Population | FY 2002 Apportionment | FY 2004 Apportionment Operating Limitation a/ | FY 2004 Available Operating Limitation b/ |
|---|---|---|---|---|---|
| PR | San Juan, PR | 2,216,616 | $5,925,223 | $5,925,223 | $5,925,223 |
| | (Caguas, PR -- $2,811,557) | | | | |
| | (Cayey, PR -- $831,273) | | | | |
| | (Humacao, PR -- $719,451) | | | | |
| | (Vega Baja-Manati, PR -- $1,562,942) | | | | |
| RI | Providence, RI--MA | 1,174,548 | $2,695,482 | $2,695,482 | $2,695,482 |
| | (Newport, RI -- $644,329) | | | | |
| | (Fall River, MA-RI -- $2,051,153) | | | | |
| TX | Lubbock, TX | 202,225 | $1,939,424 | $1,939,424 | $1,306,330 |
| TX | Denton--Lewisville, TX | 299,823 | $1,291,722 | $1,291,722 | $1,079,171 |
| | (Denton, TX -- $599,570) | | | | |
| | (Lewisville, TX -- $692,152) | | | | |
| VA | Richmond, VA | 818,836 | $1,016,957 | $1,016,957 | $1,016,957 |
| | (Petersburg, VA -- $1,016,957) | | | | |

a/ The amount shown represents the maximum amount allowable (in accordance with Pub L. 107-232 and the Surface Transportation Extension Act of 2003 (Pub. L. 108-88)) based on funding provided in the FY 2004 DOT Appropriations Act. In cases where an urbanized area's FY 2004 apportionment is less than the maximum, FTA will set the operating assistance budget, in TEAM-Web, at an amount not to exceed the FY 2004 apportionment. Funds are subject to the one percent set-aside required for Transit Enhancements and will be adjusted accordingly.

b/ The amount shown represents funds currently availability for obligation for operating assistance. Funds are subject to the one percent set-aside required for Transit Enhancements and will be adjusted accordingly.

Note: For informational purposes, the affected 1990 census small urbanized areas (less than 200,000 population) that were merged into an existing urbanized area of at least 200,000 population are shown in parentheses immediately below the eligible 2000 census urbanized area. FTA is unable to identify the urbanized areas which now incorporate rural areas that received Section 5311 in FY 2002 and they are not included in this table.

[FR Doc. 04–6965 Filed 3–26–04; 8:45 am]

BILLING CODE 4910–57–C

Federal Register

Monday,
March 29, 2004

# Part VII

# Department of Labor

## Office of Federal Contract Compliance Programs

## 41 CFR Part 60–1

## Obligation to Solicit Race and Gender Data for Agency Enforcement Purposes; Proposed Rule

## DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

### 41 CFR Part 60–1

**RIN 1215–AB45**

## Obligation To Solicit Race and Gender Data for Agency Enforcement Purposes

**AGENCY:** Office of Federal Contract Compliance Programs, DOL.

**ACTION:** Notice of proposed rulemaking; request for comments.

**SUMMARY:** The Office of Federal Contract Compliance Programs (OFCCP) has promulgated regulations requiring covered federal contractors to maintain certain employment records for OFCCP compliance monitoring and other enforcement purposes. These regulations were amended on November 13, 2000, to require employers to be able to identify, where possible, the gender, race and ethnicity of each applicant for employment. OFCCP promulgated this regulatory requirement to govern OFCCP compliance monitoring and enforcement purposes (*e.g.,* to allow OFCCP to verify EEO data), consistent with the Uniform Guidelines on Employee Selection Procedures.

The Uniform Guidelines on Employee Selection Procedures were issued in 1978 by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the predecessor to the Office of Personnel Management (''UGESP agencies''). The Uniform Guidelines on Employee Selection Procedures require employers to keep certain kinds of information and detail methods for validating tests and selection procedures that are found to have a disparate impact.

In 2000, the Office of Management and Budget instructed the Equal Employment Opportunity Commission to consult with the Department of Labor, the Department of Justice, and the Office of Personnel Management and ''evaluate the need for changes to the Questions and Answers accompanying the Uniform Guidelines necessitated by the growth of the Internet as a job search mechanism.''

The UGESP agencies recently have promulgated interpretive guidelines in question and answer format to clarify how the Uniform Guidelines on Employee Selection Procedures apply in the context of the Internet and related technologies. The recent interpretive guidelines expressly contemplate that ''[e]ach agency may provide further information, as appropriate, through the issuance of additional guidance or regulations that will allow each agency to carry out its specific enforcement responsibilities.'' The rule proposed today would amend OFCCP recordkeeping requirements for OFCCP compliance monitoring and other enforcement purposes to conform to the new interpretive guidance promulgated by the UGESP agencies.

**DATES:** Submit written comments on or before May 28, 2004.

**ADDRESSES:** Comments should be submitted to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP.

Electronic mail is the preferred method for submittal of comments. Comments by electronic mail must be clearly identified as pertaining to the proposed amendment to 41 CFR Part 60–1, and sent to *ofccp-public@dol.gov.*

As a convenience to commenters, public comments transmitted by facsimile (FAX) machine will be accepted. The telephone number of the FAX receiver is (202) 693–1304. To assure access to the FAX equipment, only public comments of six or fewer pages will be accepted via FAX transmittal.

Where necessary, hard copies of comments, clearly identified as pertaining to the proposed amendment to 41 CFR Part 60–1, may also be delivered to Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Because of delays in mail delivery, OFCCP suggests that commenters planning to submit comments via U.S. Mail place those comments in the mail well before the deadline by which comments must be received.

Receipt of submissions will not be acknowledged, except that the sender may request confirmation of receipt by calling OFCCP at (202) 693–0102 (voice), or (202) 693–1308 (TTY).

**FOR FURTHER INFORMATION CONTACT:** Joseph DuBray, Jr., Director, Division of Policy, Planning and Program Development, OFCCP, Room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 693–0102 (voice), or (202) 693–1308 (TTY). Copies of this proposed rule in alternative formats may be obtained by calling (202) 693–0102 (voice), or (202) 693–1308 (TTY). The alternative formats available are large print, electronic file on computer disk, and audiotape. The proposed rule is available on the Internet at *http://www.dol.gov/esa.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

OFCCP requires covered federal contractors to obtain, where possible, gender, race and ethnicity data on applicants and employees. *See* 41 CFR 60–1.12(c). OFCCP requires this data collection activity for several purposes relating to contractors' administration of required affirmative action plans and OFCCP's role in monitoring compliance with OFCCP requirements. *See* 65 FR 68023 (November 13, 2000); 65 FR 26091 (May 4, 2000). Contractors must supply this information to OFCCP upon request. *See* 41 CFR 60–1.12(c)(2).

OFCCP regulations require covered contractors to develop affirmative action programs (AAPs). *See* 41 CFR 60–2.1 One component of an AAP is a ''job group analysis'' in which the contractor is required to group various jobs that are similar with respect to job content, pay and promotional opportunities. *See* 41 CFR 60–2.12. Contractors must collect gender, race and ethnicity data and keep track of such data as to applicants and hires by job title or AAP job group. Many contractors use ''applicant flow logs'' for this purpose. *See* OFCCP's Federal Contract Compliance Manual at Section 2H01(b). OFCCP regulations require contractors to conduct self-analyses of their hiring practices to ensure against unlawful discrimination. *See* 41 CFR 60–2.17(b)(2).

OFCCP ''selects'' contractors for compliance audits based on statistical analyses of gender, race and ethnicity data contractors submit to OFCCP. Since the mid-1980s, OFCCP has used the Equal Employment Data System (EEDS), which analyzes data contractors submit on EEO–1 reports, to identify contractor-establishments for audits. In regulations adopted on November 13, 2000, OFCCP implemented an Equal Opportunity (EO) Survey that requires contractors to submit gender, race and ethnicity data for applicants and hires by EEO–1 job category or AAP job group. *See* 41 CFR 60–2.18. One of the purposes of the EO Survey is to collect data that OFCCP could use to select contractors' establishments for compliance audits. 65 FR 26100 (May 4, 2000). (An extensive study is underway regarding the validity of the EO Survey.) OFCCP has resources to conduct approximately 1,500 on-site compliance audits annually. This constitutes less than two percent of the universe of establishments operated by federal supply and service contractors within OFCCP's jurisdiction. Because of these factors, OFCCP must make accurate decisions about which workplaces to investigate, at peril of misdirecting

agency investigation resources. In general, OFCCP seeks to maximize the likelihood that agency investigation resources are committed to workplaces where systemic employment discrimination exists and to minimize commitment of resources to workplaces where such systemic discrimination is absent.

OFCCP initiates a compliance audit of a contractor's establishment by sending the contractor a ''scheduling letter.'' OFCCP's Federal Contract Compliance Manual at Section 2B03 and Figure 2–2. The scheduling letter asks the contractor to provide, among other things, gender, race and ethnicity data on applicants and hires, by AAP job group or job title. Id. OFCCP determines whether to conduct an on-site audit of a contractor's workplace based in part on statistical analysis of applicants and hires information contractors submit to OFCCP.

Although the Department of Labor is a signatory to the Uniform Guidelines on Employee Selection Procedures, OFCCP regulations did not expressly require contractors to maintain and submit to OFCCP information about the gender, race and ethnicity of applicants and employees, prior to the November 13, 2000 amendments. *See* 65 FR 26091 [NPRM May 4, 2000]. The Uniform Guidelines on Employee Selection Procedures were issued in 1978 by the Equal Employment Opportunity Commission, the Department of Labor, the Department of Justice, and the predecessor to the Office of Personnel Management (''UGESP agencies''). In 2000, the Office of Management and Budget instructed the Equal Employment Opportunity Commission to consult with the Department of Labor, the Department of Justice, and the Office of Personnel Management and address the ''issue of how use of the Internet by employers to fill jobs affects employer recordkeeping obligations'' under the Uniform Guidelines on Employee Selection Procedures. *See* Notice of OMB Action, OMB No. 3046–0017 (July 31, 2000). In particular, the Office of Management and Budget instructed the agencies to ''evaluate the need for changes to the Questions and Answers accompanying the Uniform Guidelines necessitated by the growth of the Internet as a job search mechanism.'' Id.

The UGESP agencies recently issued a Notice in the **Federal Register** seeking comments under the Paperwork Reduction Act about the burdens and utility of interpretive guidance intended to clarify how the Uniform Guidelines on Employee Selection Procedures apply in the context of the Internet and related technologies. 69 FR 10152 (March 4, 2004). The preamble to the new interpretive guidance discusses the need for clarification of UGESP obligations in the context of the Internet and related electronic technologies. *See,* especially, 69 FR 10154–10155. The UGESP agencies expressly contemplate that ''[e]ach agency may provide further information, as appropriate, through the issuance of additional guidance or regulations that will allow each agency to carry out its specific enforcement responsibilities.'' 69 FR 10153. Because of OFCCP's unique use of applicant data for compliance monitoring and other enforcement purposes, OFCCP has determined that additional regulations are required to clarify how contractors must comply with OFCCP recordkeeping requirements. Therefore, the rule proposed today would amend OFCCP recordkeeping requirements for OFCCP compliance monitoring and other enforcement purposes, in light of this recent interpretive guidance issued by the UGESP agencies.

## II. Analysis

The rule proposed today would implement, for OFCCP compliance monitoring and other enforcement purposes, the new interpretive guidance promulgated by the UGESP agencies. The proposed rule would amend § 60–1.3 to add a definition of ''Internet Applicant.'' The proposed rule would also amend § 60–1.12 to require contractors to retain Internet submissions of interest and to collect gender, race, and ethnicity information from Internet Applicants.

The proposed definition of ''Internet Applicant'' provides sufficient specificity for OFCCP to enforce this data collection requirement and for contractors to understand how to comply. Under the proposed definition, ''Internet Applicant'' involves four criteria: (1) The job seeker has submitted an expression of interest in employment through the Internet or related electronic technologies; (2) the employer considers the job seeker for employment in a particular open position; (3) the job seeker's expression of interest indicates the individual possesses the advertised, basic qualifications for the position; and, (4) the job seeker does not indicate that he or she is no longer interested in employment in the position for which the employer has considered the individual.

The proposed definition provides that ''advertised, basic qualifications'' are qualifications that the employer advertises to potential applicants that they must possess in order to be considered for the position. The proposed definition further provides that ''advertised, basic qualifications'' must be noncomparative features of a job seeker. Under this standard, the employer cannot compare the relative qualifications of job seekers to determine which candidates have the best qualifications. In addition, the ''advertised, basic qualifications'' must be objective. They cannot depend on the employer's subjective judgment. Rather, a third-party, unfamiliar with the employer's decision process, would be able to evaluate whether the job seeker possesses the qualification without more information about the employer's judgment. Lastly, the ''advertised, basic qualifications'' must be job-related. They must be relevant to performance of the job at hand and enable the employer to accomplish business-related goals.

The proposed rule also would amend § 60–1.12(a) to require contractors to retain records of all submissions of interest through the Internet or related electronic technologies. OFCCP requires these records to evaluate whether the contractor has complied with the definition of Internet Applicant.

Section 60–1.12(c)(1)(ii) requires contractors to obtain information, where possible, on the gender, race, and ethnicity of applicants. The proposed rule would amend § 60–1.12(c)(1)(ii) to incorporate the new category of ''Internet Applicant,'' as defined in the amendment to § 60–1.3 and to distinguish between ''applicants,'' *i.e.*, submissions of interest that are not submitted through the Internet and related electronic technologies, and ''Internet Applicants.''

Finally, the proposed rule would delete § 60–1.12(e), which provided that the requirements of § 60–1.12 ''apply only to records made or kept on or after December 22, 1997.'' Because OFCCP requires employment records to be retained for two years, 41 CFR 60–1.12(a), this provision is now superfluous. Of course, the deletion of this provision does not affect a contractor's ongoing obligation to retain relevant employment records during the pendency of an OFCCP complaint investigation or compliance review.

The new interpretive guidelines promulgated by the UGESP agencies apply only to the Internet and related technologies. Because OFCCP relies on applicant data to determine whether to conduct an on-site audit of a contractor's workplace, OFCCP is concerned that the data allow for meaningful analysis. The proposed rule creates differing standards for data collection for traditional applicants versus Internet Applicants for the same job. Accordingly, if an employer's

recruitment processes for a particular job involve both electronic data technologies, such as the Internet, and traditional want ads and mailed, paper submissions, the proposed rule would treat these submissions differently for that particular job. We are unsure whether this dual standard will provide OFCCP with meaningful contractor data to assess in determining whether to commit agency resources into an investigation of a contractor's employment practices. Therefore, OFCCP expressly solicits comments on this issue.

Under the proposed rule, the agency will rely on labor force statistics or other relevant data for enforcing E.O. 11246 with respect to recruitment processes that occur prior to collection of gender, race and ethnicity data. This approach is consistent with the longstanding approval of such statistics in hiring discrimination litigation and is especially appropriate because the proposed definition of ''Internet Applicant'' relates to ''advertised, basic qualifications.'' *See, e.g.*, *Griggs* v. *Duke Power Co.,* 401 U.S. 424, 430 n.6, 431 (1971) (relying on Census data about the general population to find that a high school degree requirement had a disparate impact on African-Americans); *Dothard* v. *Rawlinson,* 433 U.S. 321, 329–330 (1977) (''The application process itself might not adequately reflect the actual potential applicant pool, since otherwise qualified people might be discouraged from applying because of a self-recognized inability to meet the very standards challenged as being discriminatory.''); *Int'l Brotherhood of Teamsters* v. *U.S.,* 431 U.S. 324, 341–343 (1977) (use of population statistics to prove hiring discrimination); *see also*, *E.E.O.C.* v. *Joint Apprenticeship Committee of Joint Industry Bd. of Elec. Industry,* 186 F.3d 110, 119 (2d Cir. 1999) (General population and qualified labor market data ''often form the initial basis of a disparate impact claim, especially in cases such as this one in which the actual applicant pool might not reflect the potential applicant pool, due to a self-recognized inability on the part of potential applicants to meet the very standards challenged as being discriminatory.'').

Thus, OFCCP will compare the proportion of women and minorities in the contractor's relevant applicant pool with labor force statistics or other data on the percentage of women and minorities in the relevant labor force. If there is a significant difference between these figures, OFCCP will investigate further as to whether the contractor's recruitment and hiring practices conform with E.O. 11246 standards. OFCCP routinely utilizes labor force statistics in order to assess contractors' compliance with the requirement to develop an ''availability analysis'' as part of their affirmative action programs. *See* 41 CFR 60–2.14. Specifically, OFCCP regulations require contractors to create an ''availability analysis,'' defined as ''an estimate of the number of qualified minorities or women available for employment in a given job group * * *'' *See* 41 CFR 60–2.14(a). The availability analysis is required to be based on ''the most current and discrete statistical information available.'' *See* 41 CFR 60–2.14(d). Among the most current and discrete data currently available is data derived from the 2000 U.S. Census, to which OFCCP has access for use in assessing contractors' compliance with these requirements.

## III. Regulatory Procedures

### *Executive Order 12866*

The Office of Management and Budget (OMB) has determined that this proposed rule would be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action under the Order). Accordingly, OMB reviewed this proposed rule under the Order.

### *Regulatory Flexibility Act*

If promulgated in final, this Proposed Rule would help clarify applicant recordkeeping requirements for Federal contractors in the context of the Internet and related technologies. Therefore, the Proposed Rule neither increases nor decreases burdens. The Rule would benefit smaller businesses just as much as larger businesses, by helping employers to understand what their applicant recordkeeping obligations are with respect to the Internet. The Proposed Rule would not have a significant economic impact on a substantial number of small business entities. The head of OFCCP has certified to the Chief Counsel for Advocacy of the Small Business Administration to that effect. Therefore, under the Regulatory Flexibility Act, 5 U.S.C. 605(b), a regulatory flexibility analysis is not required.

### *Unfunded Mandates Reform*

For purposes of the Unfunded Mandates Reform Act of 1995, as well as EO 12875, Enhancing the Intergovernmental Partnership, the Rule proposed in this NPRM would not include any Federal mandate that might result in increased expenditures by State, local, and tribal governments, or increased expenditures by the private sector of more than $100 million in any one year.

### *Paperwork Reduction Act*

The paperwork burden associated with OFCCP's proposed rule is covered by OMB Number 3046–0017, Collection Title, ''Recordkeeping Requirements of the Uniform Guidelines on Employee Selection Procedures, 29 CFR Part 1607, 41 CFR Part 60–3, 28 CFR Part 50, 5 CFR Part 300.'' OFCCP repeats verbatim the Paperwork Reduction Act statement submitted by EEOC in support of the above-referenced collection:

*Type of Respondent:* Businesses or other institutions; Federal government; State or local governments and farms.

*North American Industry Classification System (NAICS) Code:* Multiple.

*Standard Industrial Classification Code (SIC):* Multiple.

*Description of Affected Public:* Any employer, government contractor, labor organization, or employment agency covered by the Federal equal employment opportunity laws.

*Respondents:* 827,962 firms are included in the affected public, according to U.S. Census statistics.

*Responses:* 827,962.

*Reporting Hours:* 2,588,285.

*Number of Forms:* None.

*Form Number:* None.

*Frequency of Report:* None.

*Abstract:* The recordkeeping issues addressed by UGESP are used by respondents to assure that they are complying with Title VII and E.O. 11246; by the federal agencies that enforce Title VII and/or E.O. 11246 to investigate, conciliate and litigate charges of employment discrimination; and by complainants to establish violations of federal equal employment opportunity laws.

*Burden Statement:* There are no reporting requirements associated with UGESP. The only paperwork burden derives from the recordkeeping. With respect to paperwork burden, the proposed additional Questions and Answers would present a solution to problems employers currently face in applying the Guidelines on Employee Selection Procedures in the context of the Internet and related technologies. Therefore, the proposed additional Questions and Answers would not involve an increase in paperwork burdens associated with attempts to apply existing guidelines to the context of the Internet and related technologies.

Only employers covered under Title VII and E.O. 11246 are subject to UGESP. For the purpose of burden

calculation, employers with 15 or more employees are counted. Based on examination of the latest available U.S. Census Bureau firm data, the number of firms in this category is approximately 827,962. According to figures based on statistics from the U.S. Census Bureau, the total number of employees employed by firms in this category is 115,886,025. Assuming one record per employee, this results in 115,886,025 records. Additionally, statistics from the Bureau of Labor Statistics indicate that the number of individuals, both employed and unemployed, actively seeking employment from all employers, total 15 million. Assuming that each of these individuals submits on average five applications, this results in 75 million potential records from a recordkeeping perspective. Therefore, the total number of records reflecting employees employed by firms and all job seekers is 190,886,025.

From the private employer survey the Commission conducts, it determined that 80 percent of the private employers file their employment reports electronically. From this same survey the Commission also learned that when records are computerized, the burden hours for reporting, and thus for recordkeeping, are about one-fifth of the burden hours associated with non-computerized records. Further, the proposed additional Questions and Answers apply to the Internet and related electronic data processing technologies, which involves computerized recordkeeping.

The proposed additional Questions and Answers would clarify how employers should address applicant recordkeeping in the context of the Internet and related technologies. In the absence of such clarification, employers would be faced with significant, additional paperwork burdens based on the rapid expansion of the Internet and related technologies for recruiting. The Commission is unaware of any systematic data to accurately quantify the burdens associated with how employers were attempting to address applicant recordkeeping in the Internet context prior to this clarification. The Commission will be in a better position to assess these issues after the additional Questions and Answers have been implemented. At this time, the Commission assumes that, with this clarification, the basis for the estimate of the cost per record has not changed since the initial burden calculations in 1979. Inflation adjustments would derive a current cost per record (manual recordkeeping) of $0.56 and current cost per record (computerized recordkeeping) of $0.11.

The number of burden hours can be obtained by dividing the total cost of recordkeeping by the hourly cost of labor needed to collect and compile such data. The current cost per hour of personnel for UGESP recordkeeping is $14.75/hr (hourly rate for personnel clerks from BLS compensation survey).

Computerized recordkeepers = (.80) × (190,886,025) × ($0.11) = $16,797,970.20

Manual recordkeepers = (.20) × (190,886,025) × ($0.56) = $21,379,234.80

Total recordkeeping cost = $38,177,205

$$\text{Total hours} = \frac{\text{Total recordkeeping cost}}{\text{Cost per hour}} = \frac{\$38{,}177{,}205}{\$14.75/\text{hour}} = 2{,}588{,}285 \text{ hours}$$

*Executive Order 13132 (Federalism)*

OFCCP has reviewed this Proposed Rule in accordance with Executive Order 13132 regarding federalism, and has determined that the rule does not have ''federalism implications.'' OFCCP has concluded that the Proposed Rule would not increase any recordkeeping burdens currently imposed by UGESP on the States. Therefore, the rule 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,'' and the requirements of section 6 of Executive Order 13132 do not apply to this rule.

*Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

OFCCP certifies that this Proposed Rule does not impose substantial direct compliance costs on Indian tribal governments.

*Request for Comments*

OFCCP invites comments about the NPRM from all interested parties.

**List of Subjects in 41 CFR Part 60–1**

Affirmative action plans, Civil rights, Discrimination in employment, Employment, Labor.

Signed at Washington, DC on March 24, 2004.

**Victoria A. Lipnic,**

*Assistant Secretary for Employment Standards Administration.*

**Charles E. James, Sr.,**

*Assistant Secretary for Federal Contract Compliance.*

Accordingly, part 60–1 of Title 41 of the Code of Federal Regulations is proposed to be amended as follows:

## PART 60–1—Obligations of Contractors and Subcontractors

1. The authority citation for part 60–1 continues to read as follows:

**Authority:** Section 201, E.O. 11246, 30 FR 12319, 3 CFR, 1964–1965 Comp., p. 399, as amended by E.O. 11375, 32 FR 14303, 3 CFR, 1966–1970 Comp., p. 684, E.O. 12086, 43 FR 46501, 3 CFR, 1978 Comp., p. 230 and E.O. 13279, 67 FR 77141, 3 CFR, 2002 Comp., p. 258.

2. In § 60–1.3, a new definition is added below ''government contract'' and above ''minority group'' to read as follows:

**§ 60–1.3 Definitions.**

* * * * *

*Internet Applicant.*

(1) Internet applicant means any individual who:

(i) Submits an expression of interest in employment through the Internet or related electronic data technologies;

(ii) The employer considers the individual for employment in a particular open position;

(iii) The individual's expression of interest indicates the individual possesses the advertised, basic qualifications for the position; and,

(iv) The individual does not indicate that he or she is no longer interested in employment in the position for which the employer has considered the individual.

(2) For purposes of this definition, ''advertised, basic qualifications'' means qualifications that the employer advertises (*e.g.,* posts a description of the job and necessary qualifications on its Web site) to potential applicants that they must possess in order to be considered for the position and that meet all of the following three conditions:

(i) The qualifications must be noncomparative features of a job seeker. For example, a qualification of three

years' experience in a particular position is a noncomparative qualification; a qualification that an individual have one of the top five number of years' experience among a pool of job seekers is a comparative qualification.

(ii) The qualifications must be objective; they do not depend on the employer's subjective judgment. For example, ''a Bachelor's degree in Accounting'' is objective, while ''a technical degree from a good school'' is not. One way to tell an advertised, basic qualification is objective is that a third-party, unfamiliar with the employer's operation, would be able to evaluate whether the job seeker possesses the qualification without more information about the employer's judgment.

(iii) The qualifications must be job-related; in other words, they are relevant to performance of the job at hand and enable the employer to accomplish business-related goals.

* * * * *

3. In § 60–1.12, the third sentence in paragraph (a), and paragraph (c)(1)(ii), are revised to read as follows; paragraph (e) is removed in its entirety.

**§ 60–1.12 Record retention.**

(a) General requirements. * * * Such records include, but are not necessarily limited to, records pertaining to hiring, assignment, promotion, demotion, transfer, lay off or termination, rates of pay or other terms of compensation, and selection for training or apprenticeship, and other records having to do with requests for reasonable accommodation, the results of any physical examination, job advertisements and postings, applications, resumes, and any and all employment submissions through the Internet or related electronic technologies, such as on-line resumes or resume databases (regardless of whether an individual qualifies as an Internet Applicant under 41 CFR 60–1.3), tests and test results, and interview notes.

* * *

* * * * *

(c) * * *

(1) * * *

(ii) Where possible, the gender, race, and ethnicity of each applicant (*i.e.,* submissions that are not through the Internet and related electronic technologies) and Internet Applicant as defined in 41 CFR 60–1.3.

* * * * *

[FR Doc. 04–6972 Filed 3–25–04; 10:10 am]

BILLING CODE 4510–CM–P

Federal Register

Monday,
March 29, 2004

## Part VIII

# The President

**Proclamation 7764—Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2004**

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# Presidential Documents

**Title 3—**

**The President**

**Proclamation 7764 of March 25, 2004**

## Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2004

**By the President of the United States of America**

**A Proclamation**

The love of liberty that helped shape our Constitution has deep roots in the spirit of ancient Greece. As we observe Greek Independence Day, we celebrate the timeless democratic principles that all freedom-loving people cherish.

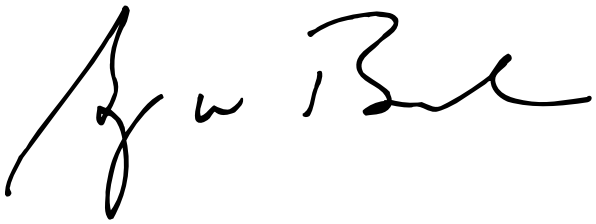
To continue to strengthen and spread liberty around the world, the values and traditions of democracy must be passed on to each new generation. In 1821, our Nation supported the cause of Greek independence when the brave men and women of Greece began their long struggle for liberty. This struggle continued through the end of World War II. On the anniversary of the Greek Declaration of Independence, we honor the courage of these proud patriots and celebrate our nations' shared commitment to democracy.

Today, Greece and America are strong allies and strategic partners in the great struggles for liberty and the global war on terror. We are working together to bring a fair and lasting settlement to Cyprus. We look forward to a future of continued friendship and collaboration between our two great nations as we advance peace and democracy in the world.

In celebrating Greek Independence Day, we are also grateful for the many ways Greek Americans have enriched our communities and strengthened our country.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 25, 2004, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fifth day of March, in the year of our Lord two thousand four, and of the Independence of the United States of America the two hundred and twenty-eighth.



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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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## LIST OF PUBLIC LAWS

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| 210–299 | (869–050–00010–5) | 59.00 | Jan. 1, 2003 |
| 300–399 | (869–050–00011–3) | 43.00 | Jan. 1, 2003 |
| 400–699 | (869–052–00013–2) | 42.00 | Jan. 1, 2004 |
| 700–899 | (869–050–00013–0) | 42.00 | Jan. 1, 2003 |
| 900–999 | (869–050–00014–8) | 57.00 | Jan. 1, 2003 |
| 1000–1199 | (869–052–00016–7) | 22.00 | Jan. 1, 2004 |
| *1200–1599 | (869–052–00017–5) | 61.00 | Jan. 1, 2004 |
| 1600–1899 | (869–050–00017–2) | 61.00 | Jan. 1, 2003 |
| 1900–1939 | (869–050–00018–1) | 29.00 | [4] Jan. 1, 2003 |
| 1940–1949 | (869–050–00019–9) | 47.00 | Jan. 1, 2003 |
| 1950–1999 | (869–052–00021–3) | 46.00 | Jan. 1, 2004 |
| 2000–End | (869–052–00022–1) | 50.00 | Jan. 1, 2004 |
| ***8** | (869–052–00023–0) | 63.00 | Jan. 1, 2004 |
| **9 Parts:** | | | |
| 1–199 | (869–050–00023–7) | 58.00 | Jan. 1, 2003 |
| 200–End | (869–052–00025–6) | 58.00 | Jan. 1, 2004 |
| **10 Parts:** | | | |
| 1–50 | (869–052–00026–4) | 61.00 | Jan. 1, 2004 |
| 51–199 | (869–050–00026–1) | 56.00 | Jan. 1, 2003 |
| 200–499 | (869–052–00028–1) | 46.00 | Jan. 1, 2004 |
| 500–End | (869–052–00029–9) | 62.00 | Jan. 1, 2004 |
| **11** | (869–050–00029–6) | 38.00 | Feb. 3, 2003 |
| **12 Parts:** | | | |
| 1–199 | (869–052–00031–1) | 34.00 | Jan. 1, 2004 |
| 200–219 | (869–050–00031–8) | 38.00 | Jan. 1, 2003 |
| 220–299 | (869–052–00033–7) | 61.00 | Jan. 1, 2004 |
| *300–499 | (869–052–00034–5) | 47.00 | Jan. 1, 2004 |
| *500–599 | (869–052–00035–3) | 39.00 | Jan. 1, 2004 |
| 600–899 | (869–050–00035–1) | 54.00 | Jan. 1, 2003 |
| *900–End | (869–052–00037–0) | 50.00 | Jan. 1, 2004 |
| ***13** | (869–052–00038–8) | 55.00 | Jan. 1, 2004 |
| **14 Parts:** | | | |
| 1–59 | (869–052–00039–6) | 63.00 | Jan. 1, 2004 |
| 60–139 | (869–050–00039–3) | 58.00 | Jan. 1, 2003 |
| *140–199 | (869–052–00041–8) | 30.00 | Jan. 1, 2004 |
| 200–1199 | (869–052–00042–6) | 50.00 | Jan. 1, 2004 |
| *1200–End | (869–052–00043–4) | 45.00 | Jan. 1, 2004 |
| **15 Parts:** | | | |
| *0–299 | (869–052–00044–2) | 40.00 | Jan. 1, 2004 |
| 300–799 | (869–050–00044–0) | 57.00 | Jan. 1, 2003 |
| 800–End | (869–050–00045–8) | 40.00 | Jan. 1, 2003 |
| **16 Parts:** | | | |
| 0–999 | (869–050–00046–6) | 47.00 | Jan. 1, 2003 |
| 1000–End | (869–052–00048–5) | 60.00 | Jan. 1, 2004 |
| **17 Parts:** | | | |
| 1–199 | (869–050–00049–1) | 50.00 | Apr. 1, 2003 |
| 200–239 | (869–050–00050–4) | 58.00 | Apr. 1, 2003 |
| 240–End | (869–050–00051–2) | 62.00 | Apr. 1, 2003 |
| **18 Parts:** | | | |
| 1–399 | (869–050–00052–1) | 62.00 | Apr. 1, 2003 |
| 400–End | (869–050–00053–9) | 25.00 | Apr. 1, 2003 |
| **19 Parts:** | | | |
| 1–140 | (869–050–00054–7) | 60.00 | Apr. 1, 2003 |
| 141–199 | (869–050–00055–5) | 58.00 | Apr. 1, 2003 |
| 200–End | (869–050–00056–3) | 30.00 | Apr. 1, 2003 |
| **20 Parts:** | | | |
| 1–399 | (869–050–00057–1) | 50.00 | Apr. 1, 2003 |
| 400–499 | (869–050–00058–0) | 63.00 | Apr. 1, 2003 |
| 500–End | (869–050–00059–8) | 63.00 | Apr. 1, 2003 |
| **21 Parts:** | | | |
| 1–99 | (869–050–00060–1) | 40.00 | Apr. 1, 2003 |
| 100–169 | (869–050–00061–0) | 47.00 | Apr. 1, 2003 |
| 170–199 | (869–050–00062–8) | 50.00 | Apr. 1, 2003 |
| 200–299 | (869–050–00063–6) | 17.00 | Apr. 1, 2003 |
| 300–499 | (869–050–00064–4) | 29.00 | Apr. 1, 2003 |
| 500–599 | (869–050–00065–2) | 47.00 | Apr. 1, 2003 |
| 600–799 | (869–050–00066–1) | 15.00 | Apr. 1, 2003 |
| 800–1299 | (869–050–00067–9) | 58.00 | Apr. 1, 2003 |
| 1300–End | (869–050–00068–7) | 22.00 | Apr. 1, 2003 |
| **22 Parts:** | | | |
| 1–299 | (869–050–00069–5) | 62.00 | Apr. 1, 2003 |
| 300–End | (869–050–00070–9) | 44.00 | Apr. 1, 2003 |
| **23** | (869–050–00071–7) | 44.00 | Apr. 1, 2003 |
| **24 Parts:** | | | |
| 0–199 | (869–050–00072–5) | 58.00 | Apr. 1, 2003 |
| 200–499 | (869–050–00073–3) | 50.00 | Apr. 1, 2003 |
| 500–699 | (869–050–00074–1) | 30.00 | Apr. 1, 2003 |
| 700–1699 | (869–050–00075–0) | 61.00 | Apr. 1, 2003 |
| 1700–End | (869–050–00076–8) | 30.00 | Apr. 1, 2003 |
| **25** | (869–050–00077–6) | 63.00 | Apr. 1, 2003 |
| **26 Parts:** | | | |
| §§ 1.0–1–1.60 | (869–050–00078–4) | 49.00 | Apr. 1, 2003 |
| §§ 1.61–1.169 | (869–050–00079–2) | 63.00 | Apr. 1, 2003 |
| §§ 1.170–1.300 | (869–050–00080–6) | 57.00 | Apr. 1, 2003 |
| §§ 1.301–1.400 | (869–050–00081–4) | 46.00 | Apr. 1, 2003 |
| §§ 1.401–1.440 | (869–050–00082–2) | 61.00 | Apr. 1, 2003 |
| §§ 1.441–1.500 | (869–050–00083–1) | 50.00 | Apr. 1, 2003 |
| §§ 1.501–1.640 | (869–050–00084–9) | 49.00 | Apr. 1, 2003 |
| §§ 1.641–1.850 | (869–050–00085–7) | 60.00 | Apr. 1, 2003 |
| §§ 1.851–1.907 | (869–050–00086–5) | 60.00 | Apr. 1, 2003 |
| §§ 1.908–1.1000 | (869–050–00087–3) | 60.00 | Apr. 1, 2003 |
| §§ 1.1001–1.1400 | (869–050–00088–1) | 61.00 | Apr. 1, 2003 |
| §§ 1.1401–1.1503–2A | (869–050–00089–0) | 50.00 | Apr. 1, 2003 |
| §§ 1.1551–End | (869–050–00090–3) | 50.00 | Apr. 1, 2003 |
| 2–29 | (869–050–00091–1) | 60.00 | Apr. 1, 2003 |
| 30–39 | (869–050–00092–0) | 41.00 | Apr. 1, 2003 |
| 40–49 | (869–050–00093–8) | 26.00 | Apr. 1, 2003 |
| 50–299 | (869–050–00094–6) | 41.00 | Apr. 1, 2003 |
| 300–499 | (869–050–00095–4) | 61.00 | Apr. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 500–599 | (869–050–00096–2) | 12.00 | [5]Apr. 1, 2003 |
| 600–End | (869–050–00097–1) | 17.00 | Apr. 1, 2003 |
| **27 Parts:** | | | |
| 1–199 | (869–050–00098–9) | 63.00 | Apr. 1, 2003 |
| 200–End | (869–050–00099–7) | 25.00 | Apr. 1, 2003 |
| **28 Parts:** | | | |
| 0–42 | (869–050–00100–4) | 61.00 | July 1, 2003 |
| 43–End | (869–050–00101–2) | 58.00 | July 1, 2003 |
| **29 Parts:** | | | |
| 0–99 | (869–050–00102–1) | 50.00 | July 1, 2003 |
| 100–499 | (869–050–00103–9) | 22.00 | July 1, 2003 |
| 500–899 | (869–050–00104–7) | 61.00 | July 1, 2003 |
| 900–1899 | (869–050–00105–5) | 35.00 | July 1, 2003 |
| 1900–1910 (§§ 1900 to 1910.999) | (869–050–00106–3) | 61.00 | July 1, 2003 |
| 1910 (§§ 1910.1000 to end) | (869–050–00107–1) | 46.00 | July 1, 2003 |
| 1911–1925 | (869–050–00108–0) | 30.00 | July 1, 2003 |
| 1926 | (869–050–00109–8) | 50.00 | July 1, 2003 |
| 1927–End | (869–050–00110–1) | 62.00 | July 1, 2003 |
| **30 Parts:** | | | |
| 1–199 | (869–050–00111–0) | 57.00 | July 1, 2003 |
| 200–699 | (869–050–00112–8) | 50.00 | July 1, 2003 |
| 700–End | (869–050–00113–6) | 57.00 | July 1, 2003 |
| **31 Parts:** | | | |
| 0–199 | (869–050–00114–4) | 40.00 | July 1, 2003 |
| 200–End | (869–050–00115–2) | 64.00 | July 1, 2003 |
| **32 Parts:** | | | |
| 1–39, Vol. I | | 15.00 | [2]July 1, 1984 |
| 1–39, Vol. II | | 19.00 | [2]July 1, 1984 |
| 1–39, Vol. III | | 18.00 | [2]July 1, 1984 |
| 1–190 | (869–050–00116–1) | 60.00 | July 1, 2003 |
| 191–399 | (869–050–00117–9) | 63.00 | July 1, 2003 |
| 400–629 | (869–050–00118–7) | 50.00 | July 1, 2003 |
| 630–699 | (869–050–00119–5) | 37.00 | [7]July 1, 2003 |
| 700–799 | (869–050–00120–9) | 46.00 | July 1, 2003 |
| 800–End | (869–050–00121–7) | 47.00 | July 1, 2003 |
| **33 Parts:** | | | |
| 1–124 | (869–050–00122–5) | 55.00 | July 1, 2003 |
| 125–199 | (869–050–00123–3) | 61.00 | July 1, 2003 |
| 200–End | (869–050–00124–1) | 50.00 | July 1, 2003 |
| **34 Parts:** | | | |
| 1–299 | (869–050–00125–0) | 49.00 | July 1, 2003 |
| 300–399 | (869–050–00126–8) | 43.00 | [7]July 1, 2003 |
| 400–End | (869–050–00127–6) | 61.00 | July 1, 2003 |
| **35** | (869–050–00128–4) | 10.00 | [6]July 1, 2003 |
| **36 Parts** | | | |
| 1–199 | (869–050–00129–2) | 37.00 | July 1, 2003 |
| 200–299 | (869–050–00130–6) | 37.00 | July 1, 2003 |
| 300–End | (869–050–00131–4) | 61.00 | July 1, 2003 |
| **37** | (869–050–00132–2) | 50.00 | July 1, 2003 |
| **38 Parts:** | | | |
| 0–17 | (869–050–00133–1) | 58.00 | July 1, 2003 |
| 18–End | (869–050–00134–9) | 62.00 | July 1, 2003 |
| **39** | (869–050–00135–7) | 41.00 | July 1, 2003 |
| **40 Parts:** | | | |
| 1–49 | (869–050–00136–5) | 60.00 | July 1, 2003 |
| 50–51 | (869–050–00137–3) | 44.00 | July 1, 2003 |
| 52 (52.01–52.1018) | (869–050–00138–1) | 58.00 | July 1, 2003 |
| 52 (52.1019–End) | (869–050–00139–0) | 61.00 | July 1, 2003 |
| 53–59 | (869–050–00140–3) | 31.00 | July 1, 2003 |
| 60 (60.1–End) | (869–050–00141–1) | 58.00 | July 1, 2003 |
| 60 (Apps) | (869–050–00142–0) | 51.00 | [8]July 1, 2003 |
| 61–62 | (869–050–00143–8) | 43.00 | July 1, 2003 |
| 63 (63.1–63.599) | (869–050–00144–6) | 58.00 | July 1, 2003 |
| 63 (63.600–63.1199) | (869–050–00145–4) | 50.00 | July 1, 2003 |
| 63 (63.1200–63.1439) | (869–050–00146–2) | 50.00 | July 1, 2003 |
| 63 (63.1440–End) | (869–050–00147–1) | 64.00 | July 1, 2003 |
| 64–71 | (869–050–00148–9) | 29.00 | July 1, 2003 |
| 72–80 | (869–050–00149–7) | 61.00 | July 1, 2003 |
| 81–85 | (869–050–00150–1) | 50.00 | July 1, 2003 |
| 86 (86.1–86.599–99) | (869–050–00151–9) | 57.00 | July 1, 2003 |
| 86 (86.600–1–End) | (869–050–00152–7) | 50.00 | July 1, 2003 |
| 87–99 | (869–050–00153–5) | 60.00 | July 1, 2003 |
| 100–135 | (869–050–00154–3) | 43.00 | July 1, 2003 |
| 136–149 | (869–150–00155–1) | 61.00 | July 1, 2003 |
| 150–189 | (869–050–00156–0) | 49.00 | July 1, 2003 |
| 190–259 | (869–050–00157–8) | 39.00 | July 1, 2003 |
| 260–265 | (869–050–00158–6) | 50.00 | July 1, 2003 |
| 266–299 | (869–050–00159–4) | 50.00 | July 1, 2003 |
| 300–399 | (869–050–00160–8) | 42.00 | July 1, 2003 |
| 400–424 | (869–050–00161–6) | 56.00 | July 1, 2003 |
| 425–699 | (869–050–00162–4) | 61.00 | July 1, 2003 |
| 700–789 | (869–050–00163–2) | 61.00 | July 1, 2003 |
| 790–End | (869–050–00164–1) | 58.00 | July 1, 2003 |
| **41 Chapters:** | | | |
| 1, 1–1 to 1–10 | | 13.00 | [3]July 1, 1984 |
| 1, 1–11 to Appendix, 2 (2 Reserved) | | 13.00 | [3]July 1, 1984 |
| 3–6 | | 14.00 | [3]July 1, 1984 |
| 7 | | 6.00 | [3]July 1, 1984 |
| 8 | | 4.50 | [3]July 1, 1984 |
| 9 | | 13.00 | [3]July 1, 1984 |
| 10–17 | | 9.50 | [3]July 1, 1984 |
| 18, Vol. I, Parts 1–5 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. II, Parts 6–19 | | 13.00 | [3]July 1, 1984 |
| 18, Vol. III, Parts 20–52 | | 13.00 | [3]July 1, 1984 |
| 19–100 | | 13.00 | [3]July 1, 1984 |
| 1–100 | (869–050–00165–9) | 23.00 | [7]July 1, 2003 |
| 101 | (869–050–00166–7) | 24.00 | July 1, 2003 |
| 102–200 | (869–050–00167–5) | 50.00 | July 1, 2003 |
| 201–End | (869–050–00168–3) | 22.00 | July 1, 2003 |
| **42 Parts:** | | | |
| 1–399 | (869–050–00169–1) | 60.00 | Oct. 1, 2003 |
| 400–429 | (869–050–00170–5) | 62.00 | Oct. 1, 2003 |
| 430–End | (869–050–00171–3) | 64.00 | Oct. 1, 2003 |
| **43 Parts:** | | | |
| 1–999 | (869–050–00172–1) | 55.00 | Oct. 1, 2003 |
| 1000–end | (869–050–00173–0) | 62.00 | Oct. 1, 2003 |
| **44** | (869–050–00174–8) | 50.00 | Oct. 1, 2003 |
| **45 Parts:** | | | |
| 1–199 | (869–050–00175–6) | 60.00 | Oct. 1, 2003 |
| 200–499 | (869–050–00176–4) | 33.00 | [9]Oct. 1, 2003 |
| 500–1199 | (869–050–00177–2) | 50.00 | Oct. 1, 2003 |
| 1200–End | (869–050–00178–1) | 60.00 | Oct. 1, 2003 |
| **46 Parts:** | | | |
| 1–40 | (869–050–00179–9) | 46.00 | Oct. 1, 2003 |
| 41–69 | (869–050–00180–2) | 39.00 | Oct. 1, 2003 |
| 70–89 | (869–050–00181–1) | 14.00 | Oct. 1, 2003 |
| 90–139 | (869–050–00182–9) | 44.00 | Oct. 1, 2003 |
| 140–155 | (869–050–00183–7) | 25.00 | [9]Oct. 1, 2003 |
| 156–165 | (869–050–00184–5) | 34.00 | [9]Oct. 1, 2003 |
| 166–199 | (869–050–00185–3) | 46.00 | Oct. 1, 2003 |
| 200–499 | (869–050–00186–1) | 39.00 | Oct. 1, 2003 |
| 500–End | (869–050–00187–0) | 25.00 | Oct. 1, 2003 |
| **47 Parts:** | | | |
| 0–19 | (869–050–00188–8) | 61.00 | Oct. 1, 2003 |
| 20–39 | (869–050–00189–6) | 45.00 | Oct. 1, 2003 |
| 40–69 | (869–050–00190–0) | 39.00 | Oct. 1, 2003 |
| 70–79 | (869–050–00191–8) | 61.00 | Oct. 1, 2003 |
| 80–End | (869–050–00192–6) | 61.00 | Oct. 1, 2003 |
| **48 Chapters:** | | | |
| 1 (Parts 1–51) | (869–050–00193–4) | 63.00 | Oct. 1, 2003 |
| 1 (Parts 52–99) | (869–050–00194–2) | 50.00 | Oct. 1, 2003 |
| 2 (Parts 201–299) | (869–050–00195–1) | 55.00 | Oct. 1, 2003 |
| 3–6 | (869–050–00196–9) | 33.00 | Oct. 1, 2003 |
| 7–14 | (869–050–00197–7) | 61.00 | Oct. 1, 2003 |
| 15–28 | (869–050–00198–5) | 57.00 | Oct. 1, 2003 |
| 29–End | (869–050–00199–3) | 38.00 | [9]Oct. 1, 2003 |
| **49 Parts:** | | | |
| 1–99 | (869–050–00200–1) | 60.00 | Oct. 1, 2003 |

| Title | Stock Number | Price | Revision Date |
|---|---|---|---|
| 100–185 | (869–050–00201–9) | 63.00 | Oct. 1, 2003 |
| 186–199 | (869–050–00202–7) | 20.00 | Oct. 1, 2003 |
| 200–399 | (869–050–00203–5) | 64.00 | Oct. 1, 2003 |
| 400–599 | (869–050–00204–3) | 63.00 | Oct. 1, 2003 |
| 600–999 | (869–050–00205–1) | 22.00 | Oct. 1, 2003 |
| 1000–1199 | (869–050–00206–0) | 26.00 | Oct. 1, 2003 |
| 1200–End | (869–048–00207–8) | 33.00 | Oct. 1, 2003 |
| **50 Parts:** | | | |
| 1–16 | (869–050–00208–6) | 11.00 | Oct. 1, 2003 |
| 17.1–17.95 | (869–050–00209–4) | 62.00 | Oct. 1, 2003 |
| 17.96–17.99(h) | (869–050–00210–8) | 61.00 | Oct. 1, 2003 |
| 17.99(i)–end | (869–050–00211–6) | 50.00 | Oct. 1, 2003 |
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2003, through January 1, 2004. The CFR volume issued as of January 1, 2002 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2003. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2003. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period July 1, 2002, through July 1, 2003. The CFR volume issued as of July 1, 2002 should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 2001, through July 1, 2003. The CFR volume issued as of July 1, 2001 should be retained.

[9] No amendments to this volume were promulgated during the period October 1, 2001, through October 1, 2003. The CFR volume issued as of October 1, 2001 should be retained.