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Federal Register

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## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 2

**RIN 3150–AG49**

### Changes to Adjudicatory Process; Correction

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Final rule: correction.

**SUMMARY:** This document corrects a final rule appearing in the **Federal Register** on January 14, 2004 (69 FR 2182) amending the NRC's regulations concerning its rules of practice for adjudications. This action is necessary to correct unintentional errors in the final rule, including the title of the Appendix, the omission of an entry in the table, and the formatting of the table.

**DATES:** Effective Date: February 13, 2004.

**FOR FURTHER INFORMATION CONTACT:** Geary S. Mizuno, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1639, e-mail *GSM@nrc.gov.*

**SUPPLEMENTARY INFORMATION:** This document corrects the title, formatting and the unintentional omission of an entry in Appendix D to Part 2 that was published as part of the final rule that amended its rules of practice on January 14, 2004 (69 FR 2182).

### List of Subjects in 10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

## PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

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

**Authority:** Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec. 191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552; sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note). Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933. 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f); Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(0); sec. 102, Pub. L 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Section 2.102, 2.103, 2.104, 2.105, 2.321 also issued under secs. 102, 163, 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b. i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Section 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Subpart C also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Section 2.700a also issued under 5 U.S.C. 554. Sections 2.343, 2.346, 2.754, 2.712, also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553, Section 2.809 also issued under 5 U.S.C. 553, and sec. 29, Pub, L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42. U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart N also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–550, 84 Stat. 1473 (42 U.S.C. 2135).

■ 2. Appendix D to part 2 is corrected to read as follows:

### Appendix D to Part 2—Schedule for the Proceeding on Consideration of Construction Authorization for a High-Level Waste Geologic Repository.

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| 30 | 2.309(b)(2) | Petition to intervene/request for hearing, w/contentions. |
| 30 | 2.309(b)(2) | Petition for status as interested government participant. |
| 55 | 2.315(c) | Answers to intervention & interested government participant Petitions. |
| 62 | 2.309(h)(1) | Petitioner's response to answers. |
| 70 | 2.1021 | First Prehearing conference. |
| 100 | 2.309(h)(2) | First Prehearing Conference Order identifying participants in proceeding, admitted contentions, and setting discovery and other schedules. |
| 110 | 2.1021 | Appeals from First Prehearing Conference Order. |
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| 150 | 2.1021, 2.329 | Commission ruling on appeals for First Prehearing Conference Order. |
| 548 | | NRC Staff issues SER. |
| 578 | 2.1022 | Second Prehearing Conference. |
| 608 | 2.1021, 2.1022 | Discovery complete; Second Prehearing Conference Order finalizes issues for hearing and sets schedule for prefiled testimony and hearing. |
| 618 | 2.1015(b) | Appeals from Second Prehearing Conference Order. |
| 628 | 2.1015(b), *c.f.* 2.710(a) | Briefs in opposition to appeals; last date for filing motions for summary disposition. |
| 648 | *c.f.* 2.710(a) | Last date for responses to summary disposition motions. |

| Day | Regulation (10 CFR) | Action |
|---|---|---|
| 658 | 2.710(a) | Commission ruling on appeals from Second Prehearing Conference Order; last date for party opposing summary disposition motion to file response to new facts and arguments in any response supporting summary disposition motion. |
| 698 | 2.1015(b) | Decision on summary disposition motions (may be determination to dismiss or to hold in abeyance). |
| 720 | *c.f.* 2.710(a) | Evidentiary hearing begins. |
| 810 | | Evidentiary hearing ends. |
| 840 | 2.712(a)(1) | Applicant's proposed findings. |
| 850 | 2.712(a)(2) | Other parties' proposed findings. |
| 855 | 2.712(a)(3) | Applicant's reply to other parties' proposed findings. |
| 955 | 2.713 | Initial decision. |
| 965 | 2.342(a), 2.345(a), 2.1015(c)(1) | Stay motion. Petition for reconsideration, notice of appeal. |
| 975 | 2.342(d), 2.345(b) | Other parties' responses to stay motion and Petitions for reconsideration. |
| 985 | | Commission ruling on stay motion. |
| 995 | 2.1015(c)(2) | Appellant's briefs. |
| 1015 | 2.1015(c)(3) | Appellee's briefs. |
| 1055 | 2.1023 Supp. Info | Completion of NMSS and Commission supervisory review; issuance of construction authorization; NWPA 3-year period tolled. |
| 1125 | | Commission decision. |

Dated at Rockville, Maryland, this 5th day of May, 2004.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Federal Register Liaison Officer.*

[FR Doc. 04–10615 Filed 5–10–04; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 23

**[Docket No. CE206; Special Conditions No. 23–146–SC]**

## Special Conditions: Cessna Aircraft Company; Cessna Model 182T/T182T Airplane; Installation of Electronic Flight Instrument System and the Protection of the System From High Intensity Radiated Fields (HIRF)

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final special conditions; request for comments.

**SUMMARY:** These special conditions are issued for the Cessna Aircraft Company, Model 182T/T182T airplane. This airplane, as modified by Cessna Aircraft Company, will have a novel or unusual design feature(s) associated with the installation of a Garmin G1000 electronic flight instrument system and the protection of this system from the effects of high intensity radiated field (HIRF) environments. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

**DATES:** The effective date of these special conditions is April 27, 2004. Comments must be received on or before June 10, 2004.

**ADDRESSES:** Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket CE206, 901 Locust, Room 506, Kansas City, Missouri 64106; or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: CE206. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

**FOR FURTHER INFORMATION CONTACT:** Mr. Wes Ryan, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4127, fax 816–329–4090.

**SUPPLEMENTARY INFORMATION:** The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

### Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or special condition number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to CE206.'' The postcard will be date stamped and returned to the commenter.

### Background

On April 7, 2003, Cessna Aircraft Company applied for an amended type certificate for their new Cessna Model 182T to install a Garmin G1000 electronic flight instrument system with a primary flight display on the pilot side and a multifunction display in the center instrument panel. The Cessna Model 182T is single engine, high wing airplane capable of carrying four passengers.

The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an EFIS that may be vulnerable to HIRF external to the airplane.

### Type Certification Basis

Under the provisions of 14 CFR 21.101, Cessna Aircraft Company must

show that the Cessna Model 182T meets the following provisions or the applicable provisions in effect on the date of application for type certification of the Cessna 182T and T182T:

For the 182 Series:

Part 3 of the Civil Air Regulations dated November 1, 1949, as amended by 3–1 through 3–12 and Paragraph 3.112, as amended October 1, 1959, for the Model 182E and on. In addition, effective S/N 18266591 through 18268586, 14 CFR, part 23, § 23.1559, effective March 1, 1978; 14 CFR part 36, dated December 1, 1969, plus Amendments 36–1 through 36–6 for Model 182Q and on. In addition, effective S/N 18268435 through 18268486, 14 CFR, part 23, § 23.1545(a), Amendment 23–23, dated December 1, 1978; exemptions, if any, and the special conditions adopted by this rulemaking action.

For the Model T182:

Part 3 of the Civil Air Regulations dated November 1, 1949, as amended by 3–1 through 3–12 and Paragraph 3.112 as amended October 1, 1959; and 14 CFR, part 23, §§ 23.901, 23.909, 23.1041, 23.1043, 23.1143, and 23.1305, dated February 1, 1965, as amended February 14, 1975; 14 CFR, part 23, § 23.1559, effective March 1, 1978; 14 CFR, part 36, dated December 1, 1969; plus Amendments 36–1 through 36–10. In addition, effective S/N 18268435 through 18268541, 14 CFR, part 23, § 23.1545(a); Amendment 23–23, dated December 1, 1978; exemptions, if any, and the special conditions adopted by this rulemaking action.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 23) do not contain adequate or appropriate safety standards for the Cessna Model 182T and T182T because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, as defined in § 11.19, are issued in accordance with § 11.38, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a).

**Novel or Unusual Design Features**

The Cessna Model 182T and Model T182T will incorporate the following novel or unusual design features:

A Garmin G1000 electronic flight instrument system (EFIS) and a primary flight display on the pilot side as well as a multifunction display in the center of the instrument panel.

*Protection of Systems From High Intensity Radiated Fields (HIRF)*

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid-state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined as follows:

| Frequency | Field strength (volts per meter) | |
|---|---|---|
| | Peak | Average |
| 10 kHz–100 kHz | 50 | 50 |
| 100 kHz–500 kHz | 50 | 50 |
| 500 kHz–2 MHz | 50 | 50 |
| 2 MHz–30 MHz | 100 | 100 |
| 30 MHz–70 MHz | 50 | 50 |
| 70 MHz–100 MHz | 50 | 50 |
| 100 MHz–200 MHz | 100 | 100 |
| 200 MHz–400 MHz | 100 | 100 |
| 400 MHz–700 MHz | 700 | 50 |
| 700 MHz–1 GHz | 700 | 100 |
| 1 GHz–2 GHz | 2000 | 200 |
| 2 GHz–4 GHz | 3000 | 200 |
| 4 GHz–6 GHz | 3000 | 200 |
| 6 GHz–8 GHz | 1000 | 200 |
| 8 GHz–12 GHz | 3000 | 300 |
| 12 GHz–18 GHz | 2000 | 200 |
| 18 GHz–40 GHz | 600 | 200 |

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, electrical field strength, from 10 kHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify either electrical or electronic systems that perform critical functions. The term ''critical'' means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not

acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

### Applicability

As discussed above, these special conditions are applicable to the Cessna 182T and T182T airplanes. Should Cessna Aircraft Company apply later for a change to the type certificate to include another model incorporating the same novel or unusual design feature on the same type certification data sheet, the special conditions would apply to that model as well under the provisions of § 21.101(a).

### Conclusion

This action affects only certain novel or unusual design features on the Model Cessna 182T and T182T airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of these special conditions has been subjected to the notice and comment period in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

### List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

### Citation

■ The authority citation for these special conditions is as follows:

**Authority:** 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101; and 14 CFR 11.38 and 11.19.

### The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Cessna 182T and T182T airplanes to include a Garmin G1000 EFIS system.

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane.

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

**Dorenda D. Baker,**

*Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10690 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–146–AD; Amendment 39–13626; AD 2004–09–35]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires removing the two direct current (DC) over-voltage/feeder-fault test switches from the Test 2 Panel of the generator control unit, and follow-on actions. This action is necessary to prevent loss of the DC generators, which could result in the loss of normal electrical power to the airplane and increased pilot workload. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on October 30, 2003 (68 FR 61774). That action proposed to require removing the two direct current (DC) over-voltage/feeder-fault test switches from the Test 2 Panel of the generator control unit, and follow-on actions.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

The commenter requests that a credit paragraph be added to the proposed AD for accomplishment of the specified actions per Saab Service Bulletin 340–24–023, Revision 01, dated August 24, 1995. (Revision 02 of the service bulletin was referenced in the proposed AD for accomplishment of the actions.) The FAA agrees with the commenter, as the procedures specified in Revision 01 are essentially the same as those in Revision 02. We have added a new paragraph (b) to this final rule to provide credit for actions accomplished previously per Revision 01 of the referenced service bulletin.

### Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the

adoption of the rule with the change described previously. We have determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Cost Impact

The FAA estimates that 251 airplanes of U.S. registry will be affected by this AD, that it will take about 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Required parts will cost about $107 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $92,117, or $367 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–35 Saab Aircraft AB:** Amendment 39–13626. Docket 2002–NM–146–AD.

*Applicability:* Model SAAB SF340A series airplanes having serial numbers 004 through 159 inclusive; and SAAB 340B series airplanes having serial numbers 160 through 379 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of the direct current (DC) generators, which could result in the loss of normal electrical power to the airplane and increased pilot workload, accomplish the following:

**Removal of DC Generator Test Switches**

(a) Within 5,000 flight hours or two years after the effective date of this AD, whichever occurs later: Remove the two DC over-voltage/feeder-fault test switches from the Test 2 Panel of the generator control unit and do all the follow-on actions specified in the Accomplishment Instructions of Saab Service Bulletin 340–24–023, Revision 02, dated November 15, 2001. Do the actions per the service bulletin.

**Credit for Previous Issue of Service Bulletin**

(b) Accomplishment of the specified actions before the effective date of this AD per Saab Service Bulletin 340–24–023, Revision 01, dated August 24, 1995; is acceptable for compliance with the corresponding actions required by paragraph (a) of this AD.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(d) Unless otherwise provided in this AD, the actions shall be done in accordance with Saab Service Bulletin 340–24–023, Revision 02, dated November 15, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives. gov/federal_ register/code_ of_federal_ regulations/ibr_ locations.html.*

**Note 1:** The subject of this AD is addressed in Swedish airworthiness directive 1–169, dated November 20, 2001.

**Effective Date**

(e) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 27, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10373 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–200–AD; Amendment 39–13630; AD 2004–09–39]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 340B Series Airplanes Equipped with Hamilton Sundstrand Propellers

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers. This amendment requires a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary. This action is necessary to ensure removal of 35-ampere (amp) RCCBs on a 50-amp electrical circuit. Incorrect RCCBs on an electrical circuit could result in erroneous tripping of the RCCBs (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication listed in the

regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers was published in the **Federal Register** on November 18, 2002 (67 FR 69491). That action proposed to require a one-time inspection of two remote controlled circuit breakers (RCCB), located in specific electrical compartments, to identify the part number, and replacement of the RCCBs with new RCCBs having a different part number if necessary.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

## Request To Clarify RCCBs in the ''Parts Installation'' Paragraph

The commenter requests that the RCCBs in the ''Parts Installation'' paragraph (paragraph (b) of the proposed AD) be clarified. The commenter notes that the referenced Saab service bulletin refers to two specific RCCBs while the proposed AD does not refer to any specific RCCBs. The commenter also states that the RCCBs are used in a number of different applications in SAAB Model 340B series airplanes. The commenter suggests the ''Parts Installation'' paragraph be revised to state: ''As of the effective date of this AD, no person shall install an RCCB 29KFC, P/N M83383–02–07, in electrical compartment 407VU or RCCB 30KFC, P/N M83383–02–07, in electrical compartment 408VU, on any airplane with Hamilton Sundstrand propeller installed.''

The FAA agrees that the RCCBs in ''Parts Installation'' paragraph (b) of the final rule be clarified for the reasons stated by the commenter. Accordingly we have revised paragraph (b) of the final rule to state: ''As of the effective date of this AD, no person shall install P/N M83383–02–07 at RCCB 29KFC in electrical compartment 407VU or RCCB 30KFC in electrical compartment 408VU, on any airplane equipped with Hamilton Sundstrand propellers.''

## Request To Clarify RCCBs in the ''Explanation of Relevant Service Information'' Paragraph

The commenter requests that the RCCBs in the ''Explanation of Relevant Service Information'' paragraph of the proposed AD be clarified for the reasons stated in the previous request (*i.e.* ''Request to Clarify RCCBs in the 'Parts Installation' Paragraph''). The commenter suggests that the ''Explanation of Relevant Service Information'' paragraph be revised to read ''* * * identify the part number of the RCCB 29KFC in the electrical compartment 407VU and RCCB 30KFC located in electrical compartment * * *''

We agree that the RCCBs in the ''Explanation of Relevant Service Information'' paragraph of the proposed AD be clarified for the reasons given by commenter. As suggested by the commenter, RCCB 29KFC and RCCB 30KFC should be specified in the ''Explanation of Relevant Service Information'' paragraph. However, because the preamble of the proposed AD is not repeated in the final rule, no change is necessary to the final rule.

## Request To Revise Applicable Number of Airplanes

The commenter also requests to revise the estimated number of U.S. airplanes listed in the ''Cost Impact'' paragraph of the proposed AD. The commenter states that the SAAB service bulletin is effective for airplanes equipped with Hamilton Sundstrand propellers only and suggests that the figure for airplanes of U.S. registry should be changed from 251 to 115 airplanes.

We agree to revise the estimated number of U.S. airplanes listed in the ''Cost Impact'' paragraph of the final rule. However, we do not agree that the number of airplanes be changed to 115 airplanes of U.S. registry. The total number of airplanes on the U.S. registry is 190 airplanes (128 airplanes in service and 62 airplanes out of service). We must include out of service airplanes in our estimate, as we do not know when the airplanes may be put back in service. Therefore, we have revised the estimated number of U.S. airplanes in the ''Cost Impact'' paragraph of the final rule to 190 airplanes of U.S. registry and have revised the cost impact figures.

## Conclusion

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

## Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, the FAA issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

## Change in Labor Rate

The FAA has recently reviewed the figures it has used over the past several years in calculating the economic impact of AD activity. In order to account for various inflationary costs in the airline industry, the FAA has determined that it is necessary to increase the labor rate used in these calculations from $60 per work hour to $65 per work hour. The cost impact information, below, has been revised to reflect this increase in the specified hourly labor rate.

## Cost Impact

The FAA estimates that 190 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $12,350, or $65 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish

those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2004–09–39 Saab Aircraft AB:** Amendment 39–13630. Docket 2002–NM–200–AD.

*Applicability:* Model SAAB 340B series airplanes equipped with Hamilton Sundstrand propellers, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent erroneous tripping of the remote controlled circuit breakers (RCCB) (even though an overload condition does not exist), premature failure of the RCCBs, loss of power to the feather pump system, and consequent reduced controllability of the airplane; accomplish the following:

**Inspection and Replacement, If Necessary**

(a) Within 6 months after the effective date of this AD, perform a one-time inspection of RCCB 29KFC located in electrical compartment 407VU, and RCCB 30KFC located in electrical compartment 408VU, to identify the part number (P/N), per the Accomplishment Instructions of Saab Service Bulletin 340–61–038, dated January 30, 2002.

(1) If both RCCBs are identified as P/N M83383–01–09, no further action is required by this paragraph.

(2) If any RCCB is identified as P/N M83383–02–07, prior to further flight, replace the RCCB with an RCCB having P/N M83383–01–09, per the service bulletin.

**Part Installation**

(b) As of the effective date of this AD, no person shall install P/N M83383–02–07 at RCCB 29KFC in electrical compartment 407VU, or RCCB 30KFC in electrical compartment 408VU, on any airplane equipped with Hamilton Sundstrand propellers.

**Alternative Methods of Compliance**

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

**Note 2:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

**Special Flight Permits**

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(e) The actions shall be done in accordance with Saab Service Bulletin 340–61–038, dated January 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 3:** The subject of this AD is addressed in Swedish airworthiness directive 1–172, dated January 31, 2002.

**Effective Date**

(f) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 29, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10372 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–259–AD; Amendment 39–13615; AD 2004–09–25]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires an inspection of roll and pitch disconnect handles for spring forces outside limits, and adjustment of the spring force of the handles, if necessary. This action is necessary to prevent the roll and pitch disconnect handles from being difficult to operate, which could result in an increase in pilot workload and subsequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on March 5, 2004 (69 FR 10370). That action proposed to require an inspection of roll and pitch disconnect handles for spring forces outside limits, and adjustment of the spring force of the handles, if necessary.

## Comments

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

## Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $780, or $260 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–25 Saab Aircraft AB:** Amendment 39–13615. Docket 2002–NM–259–AD.

*Applicability:* Model SAAB 2000 series airplanes, serial numbers –004 through –063 inclusive; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the roll and pitch disconnect handles from being difficult to operate, which could result in an increase in pilot workload and subsequent reduced controllability of the airplane, accomplish the following:

**Inspection and Modification**

(a) Within 400 flight hours after the effective date of this AD, perform an inspection of the roll and pitch disconnect handles for difficult operation, in accordance with the Accomplishment Instructions of Saab Service Bulletin 2000–27–047, dated August 30, 2002. If the force required to move any disconnect handle is found to be outside the limits specified in the service bulletin, before further flight, adjust the spring force of the handle in accordance with the Accomplishment Instructions of the service bulletin.

**Parts Installation**

(b) As of the effective date of this AD, no person may install on any airplane a roll disconnect handle, part number 7339056–503, or pitch disconnect handle, part number 7339056–504, unless it has been inspected and the spring force has been adjusted as applicable, per paragraph (a) of this AD.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(d) The actions shall be done in accordance with Saab Service Bulletin 2000–27–047, dated August 30, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 1:** The subject of this AD is addressed in Swedish airworthiness directive 1–177, dated August 30, 2002.

**Effective Date**

(e) This amendment becomes effective on June 15, 2004.

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

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10248 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2001–NM–402–AD; Amendment 39–13609; AD 2004–09–20]**

**RIN 2120–AA64**

## Airworthiness Directives; Gulfstream Aerospace LP Model 1125 Westwind Astra Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment supersedes an existing airworthiness directive (AD), applicable to certain Gulfstream Aerospace LP Model 1125 Westwind Astra series airplanes, that currently requires revising the airplane flight manual (AFM) to provide the flight crew with operational guidance under certain failure conditions and a limitation not to engage the long-range navigation system during takeoff, approach, or landing. This amendment requires replacing the low-voltage sensing relays with higher-accuracy relays, and replacing the circuit breakers of the directional gyros with circuit breakers with lower amps. After the replacements have been accomplished, this amendment also requires inserting a new temporary revision in the Limitations section of the AFM, or removing the revision to the AFM required by the previous AD. The actions specified by this AD are intended to prevent the loss of primary attitude and directional gyros, which relate position information to the flight crew. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication, as listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

The incorporation by reference of Temporary Revision No. 9, dated May 21, 2000, to the Israel Aircraft Industries, Ltd., Astra Airplane Flight Manual, as listed in the regulations, was approved previously by the Director of the Federal Register as of September 29, 2000 (65 FR 55450, September 14, 2000).

**ADDRESSES:** The service information referenced in this AD may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D25, Savannah, Georgia 31402. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 2000–18–11, amendment 39–11896 (65 FR 55450, September 14, 2000), which is applicable to certain Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.) Model 1125 Westwind Astra series airplanes, was published in the **Federal Register** on February 9, 2004 (69 FR 5936). The action proposed to require replacing the low-voltage sensing relays with higher-accuracy relays, and replacing the circuit breakers of the directional gyros with circuit breakers with lower amps. After the replacements have been accomplished, the action also proposed to require inserting a new temporary revision (TR) in the Limitations section of the AFM, or removing the revision to the AFM required by the previous AD (AD 2000–18–11).

### Comments

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

### Clarification of Document Citations in This Final Rule

Operators should note that the manufacturer of the subject airplanes, previously Israel Aircraft Industries, Ltd., is now Gulfstream Aerospace LP. In order to meet the Office of the Federal Register's (OFR) guidelines for materials incorporated by reference, document citations must include the name of the manufacturer. Therefore, we have revised certain document citations in this final rule to include the manufacturer's current name. However, we have not revised the citation for Temporary Revision No. 9, which was previously incorporated by reference in AD 2000–18–11. The OFR guidelines require documents previously incorporated by reference to be cited exactly as they were originally approved.

### Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

### Cost Impact

There are approximately 29 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 2000–18–11 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $1,885, or $65 per airplane.

The new actions that are required by this new AD will take approximately 24 work hours per airplane to accomplish for the replacements, and approximately 1 work hour per airplane to accomplish for the revision of the AFM. The average labor rate is $65 per work hour. Required parts will cost approximately $1,030 per airplane. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $76,995, or $2,655 per airplane.

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

### Regulatory Impact

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

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT

Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–11896 (65 FR 55450, September 14, 2000), and by adding a new airworthiness directive (AD), amendment 39–13609, to read as follows:

**2004–09–20 Gulfstream Aerospace LP (Formerly Israel Aircraft Industries, Ltd.):** Docket 2001–NM–402–AD: Amendment 39–13609. Supersedes AD 2000–18–11, Amendment 39–11896.

*Applicability:* Model 1125 Westwind Astra series airplanes, certificated in any category; serial numbers 004 through 029 inclusive, and 031 through 041 inclusive.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent the loss of primary attitude and directional gyros, which relate position information to the flight crew, accomplish the following:

#### Restatement of the Requirements of AD 2000–18–11

*AFM Revision*

(a) Within 10 days after September 29, 2000 (the effective date of AD 2000–18–11, amendment 39–11896), revise the Limitations and Abnormal Procedures Sections of the Israel Aircraft Industries, Ltd., Astra Airplane Flight Manual (AFM) by inserting a copy of Temporary Revision No. 9, dated May 21, 2000, into the AFM.

**Note 1:** When the temporary revision required by paragraph (a) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the temporary revision.

#### New Requirements of This AD

*Replacements*

(b) Within 50 flight hours after the effective date of this AD: Replace existing sensing relays with new higher-accuracy relays having new part number (P/N) 1350–X3042; and replace existing DIRECT GYRO 1 and 2 circuit breakers having P/N 7274–47–3 with new circuit breakers having new P/N 7274–47–0.5; in accordance with the Accomplishment Instructions of Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–24A–246, dated September 26, 2001.

*New AFM Revision*

(c) Before further flight following the actions required by paragraph (b) of this AD: Remove Temporary Revision No. 9, dated May 21, 2000, from the AFM; or revise the Limitations and Abnormal Procedures Sections of the Israel Aircraft Industries, Ltd. (Gulfstream Aerospace LP), Astra AFM by inserting a copy of Temporary Revision 13, dated October 31, 2001, into the AFM.

**Note 2:** When the temporary revision required by paragraph (c) of this AD has been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the temporary revision.

#### No Reporting Requirement

(d) Operators should note that, although the Accomplishment Instructions of the service bulletin referenced in paragraph (b) of this AD describe procedures for submitting a certificate of compliance to the manufacturer, this AD does not require those actions.

#### Alternative Methods of Compliance

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

#### Incorporation by Reference

(f) The actions shall be done in accordance with Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–24A–246, dated September 26, 2001; Temporary Revision No. 9, dated May 21, 2000, to the Israel Aircraft Industries, Ltd., Astra Airplane Flight Manual; and Temporary Revision 13, dated October 31, 2001, to the Israel Industries, Ltd. (Gulfstream Aerospace LP), Astra Airplane Flight Manual; as applicable.

(1) The incorporation by reference of Astra (Gulfstream Aerospace Corporation) Alert Service Bulletin 1125–24A–246, dated September 26, 2001; and Temporary Revision 13, dated October 31, 2001, to the Israel Aircraft Industries, Ltd. (Gulfstream Aerospace LP) Astra Airplane Flight Manual; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 522(1) and 1 CFR part 51.

(2) The incorporation by reference of Temporary Revision No. 9, dated May 21, 2000, to the Israel Aircraft Industries, Ltd., Astra Airplane Flight Manual, was approved previously by the Director of the Federal Register as of September 29, 2000 (65 FR 55450, September 14, 2000).

(3) Copies may be obtained from Gulfstream Aerospace Corporation, P.O. Box 2206, Mail Station D–25, Savannah, Georgia 31402. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 3:** The subject of this AD is addressed in Israeli airworthiness directive 24–01–06–04, dated November 13, 2001.

#### Effective Date

(g) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 21, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10249 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–261–AD; Amendment 39–13610; AD 2004–09–21]**

**RIN 2120–AA64**

## Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that requires repetitive inspections of the installation of the spoilers of the windshield wiper assemblies for discrepancies, and replacement with new spoilers if necessary. This amendment also requires eventual replacement of the spoilers of the windshield wiper assemblies with new spoilers. This action is necessary to prevent failure of the windshield wiper assembly, which could result in loss of visibility, damage to the propeller(s) and/or engine(s), or penetration of the fuselage skin and consequent rapid depressurization of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoäping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives an Records Administration (NARA). For information one the availibility of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

**FOR FURTHER INFORMATION CONTACT:** Rosanne Ryburn, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2139; fax (425) 227–1149.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB 2000 series airplanes was published in the **Federal Register** on January 22, 2004 (69 FR 3043). That action proposed to require repetitive inspections of the installation of the spoilers of the windshield wiper assemblies for discrepancies, and replacement with new spoilers if necessary. That action also proposed to require eventual replacement of the spoilers of the windshield wiper assemblies with new spoilers.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

The commenter states that the sentence in the ''Discussion'' section which states, ''One report indicated that, after excessive vibration and subsequent separation of a windshield wiper spoiler * * *'' is incorrect. The commenter asks that the sentence be changed to correctly state, ''One report indicated that, excessive vibration after separation of a windshield wiper spoiler * * *'' The FAA agrees with the commenter that the specified sentence was incorrect. However, the ''Discussion'' section is not restated in this final rule, and, therefore, no change to the final rule is necessary.

## Conclusion

After careful review of the available data, including the comment noted above, we have determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

The FAA estimates that 3 airplanes of U.S. registry will be affected by this AD.

It will take about 1 work hour per airplane to do the required inspection, at an average labor rate of $65 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $195, or $65 per airplane, per inspection cycle.

It will take about 6 work hours per airplane to do the required replacement, at an average labor rate of $65 per work hour. Required parts will be free of charge. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $1,170, or $390 per airplane.

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

## Regulatory Impact

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

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

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–21 Saab Aircraft AB:** Amendment 39–13610. Docket 2002–NM–261–AD.

*Applicability:* Model SAAB 2000 series airplanes, as listed in Saab Service Bulletin 2000–56–003, dated August 12, 2002, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of the windshield wiper assembly, which could result in loss of visibility, damage to the propeller(s) and/or engine(s), or penetration of the fuselage skin and consequent rapid depressurization of the airplane, accomplish the following:

**Repetitive Inspections**

(a) Within 400 flight hours after the effective date of this AD: Do a detailed inspection for discrepancies (including cracks, loose parts, deformation, general deterioration) of the installation of the spoilers of the windshield wiper assemblies (including doing an operational test), by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–56–003, dated August 12, 2002.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If no discrepancies are found, repeat the inspection thereafter at intervals not to exceed 400 flight hours, until the replacement required by paragraph (b) of this AD is done.

(2) If any discrepancies are found, before further flight, do the replacement required by paragraph (b) of this AD.

**Replacement**

(b) Except as required by paragraph (a)(2) of this AD: Within 2,000 flight cycles after the effective date of this AD; replace the spoilers of the windshield wiper assemblies (including doing an operational test) by doing all the actions per the Accomplishment Instructions of Saab Service Bulletin 2000–56–002, Revision 01, dated August 12, 2002. Such replacement ends the repetitive inspections required by this AD.

**Replacements Done Per Previous Issue of Service Bulletin**

(c) Replacements done before the effective date of this AD per Saab Service Bulletin 2000–56–002, dated November 28, 1996, are considered acceptable for compliance with the corresponding action specified in this AD.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with Saab Service Bulletin 2000–56–002, Revision 01, dated August 12, 2002; and Saab Service Bulletin 2000–56–003, dated August 12, 2002; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linkoäping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives an Records Administration (NARA). For information on the availibility of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 2:** The subject of this AD is addressed in Swedish airworthiness directive 1–178, dated August 15, 2002.

**Effective Date**

(f) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 22, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10242 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–277–AD; Amendment 39–13616; AD 2004–09–26]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Raytheon Model Hawker 800XP airplanes, that requires replacement of certain existing pitot probes with new probes. This action is necessary to prevent loss or fluctuation of indicated airspeed, which could result in hazardously misleading information being provided to the flightcrew. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Chris B. Morgan, Aerospace Engineer, Systems and Propulsion Branch, ACE–116W, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4154; fax (316) 946–4407.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Raytheon Model Hawker 800XP airplanes was published in the **Federal Register** on October 14, 2003 (68 FR 59138). That action proposed to require replacement of certain existing pitot probes with new probes.

**Comments**

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from a single commenter.

**Request To Restrict Flight in Known Icing Conditions**

The commenter states that a 6-month compliance time for replacement of the pitot probes, as specified in the proposed AD, seems inadequate if flight in known icing remains permissible. The commenter asks that consideration be given to restricting flight in known icing conditions until the proposed AD is complied with, in order to avoid atmospheric conditions that may cause the problem.

The FAA does not agree with the commenter. In consideration of the commenter's request, we have taken into account the early release of a Raytheon Safety Communique and the referenced service bulletin, in addition to the degree of urgency associated with the unsafe condition. The loss of airspeed indication, mach trim warning at high altitudes in the vicinity of clouds, and autopilot disconnect, indicate that there was insufficient heating energy inside the pitot probes. The loss of airspeed indication occurred at high altitude, with high moisture content, and lasted for a short period of time. The Safety Communique that was sent to all owners of Raytheon Model Hawker 800XP airplanes outlined the problem and corrective actions to take if it occurs; which include no abrupt power or altitude changes until the condition clears. We have determined that, in light of the preventive procedures that have been issued, allowing continued flight until the affected pitot probes are replaced will not adversely affect safety. No change to the final rule is necessary in this regard.

**Request To Change Statement of Unsafe Condition**

The commenter states that the proposed AD uses the term ''seriously misleading information'' to describe the consequences following the loss of the Captain and First Officer's airspeed information. The commenter asks that the term be changed to ''hazardously misleading information,'' which is the

generally understood description in certification terms. The commenter adds that loss of airspeed indication on both sides can be catastrophic.

We agree that the term ''hazardously misleading information'' is generally used throughout the aircraft industry, and that the loss of airspeed indication for both the pilot and co-pilot could present a hazard to continued safe flight, depending on when it occurs during the flight. Therefore, we have changed the statement of the unsafe condition throughout this final rule accordingly.

### Other Airplane Models With Rosemount Pitot Probes

The commenter does not ask for a specific change to the final rule, but states that the referenced service bulletin specifies replacement of certain Rosemount pitot probes, yet the proposed AD is model specific. The commenter adds that it is not clear why the proposed AD does not cover installations on other models having the same pitot probes. The commenter notes that vulnerability to a potentially catastrophic condition could exist, and asks if the pitot probes are exclusive to airplane model.

The unsafe condition found on Raytheon Hawker Model 800XP airplanes has not been reported by owners/operators of other airplane models. The loss of airspeed indication is airplane model specific, due to different operational environments, airplane limitations, and installation locations.

### Conclusion

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

### Cost Impact

There are about 224 airplanes of the affected design in the worldwide fleet. The FAA estimates that 155 airplanes of U.S. registry will be affected by this AD, that it will take about 50 work hours per airplane to do the actions, and that the average labor rate is $65 per work hour. Required parts will cost about $11,425 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,274,625, or $14,675 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–26 Raytheon Aircraft Company:** Amendment 39–13616. Docket 2002–NM–277–AD.

*Applicability:* Model Hawker 800XP airplanes having serial number 258266 and serial numbers 258277 through 258500 inclusive, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loss or fluctuation of indicated airspeed, which could result in hazardously misleading information being provided to the flightcrew, accomplish the following:

**Replacement**

(a) At the next scheduled 24-month inspection, but no later than 6 months after the effective date of this AD: Replace the existing Rosemount Aerospace 853JF pitot probes with new Rosemount Aerospace 853JF1 pitot probes (includes installing a new ammeter, two new shunts, and improved electrical writing), by doing all the actions in paragraph 3.A. of the Accomplishment Instructions of Raytheon Service Bulletin SB 34–3412, dated March 2001. Do the actions per the service bulletin.

**Parts Installation**

(b) As of the effective date of this AD, no person shall install a Rosemount Aerospace 853JF pitot probe, or an ammeter having P/N 2132–01–0017, on any airplane.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(d) The actions shall be done per Raytheon Service Bulletin SB 34–3412, dated March 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Raytheon Aircraft Company, Department 62, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Effective Date**

(e) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 27, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10247 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

**[Docket No. 2004–NM–38–AD; Amendment 39–13623; AD 2004–03–14 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–102, −103, −106, −201, −202, −301, −311, and −315 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–102, −103, −106, −201, −202, −301, −311, and −315 series airplanes, that currently requires repetitive inspections for discrepancies of certain rear spar fittings between the flex shaft of the flap secondary drive and the wing-to-fuselage structure, and corrective action if necessary. That AD also provides for an optional modification of the flex shaft installation, which terminates the repetitive inspections. This amendment requires that the actions be done per approved service information. The actions specified in this AD are intended to find and fix damage and prevent subsequent failure of the rear spar fittings, which could result in loss of the wing. This action is intended to address the identified unsafe condition.

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

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 26, 2004.

Comments for inclusion in the Rules Docket must be received on or before June 10, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2004–NM–38–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2004–NM–38–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html*.

**FOR FURTHER INFORMATION CONTACT:** Jon Hjelm, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7323; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** On January 29, 2004, the FAA issued AD 2004–03–14, amendment 39–13458 (69 FR 6139, February 10, 2004), applicable to certain Bombardier Model DHC–8–102, −103, −106, −201, −202, −301, −311, and −315 series airplanes, to require repetitive inspections for discrepancies of certain rear spar fittings between the flex shaft of the flap secondary drive and the wing-to-fuselage structure, and corrective action if necessary. That action also provides for an optional modification of the flex shaft installation, which terminates the repetitive inspections. That action was prompted by reports of discrepancies of the rear spar fittings located between the flex shaft of the flap secondary drive and the wing-to-fuselage structure. The requirements of that AD are intended to find and fix damage and prevent subsequent failure of the rear spar fittings, which could result in loss of the wing.

### Actions Since Issuance of Previous Rule

Since the issuance of AD 2004–03–14, we have been advised that Bombardier Service Bulletin 8–27–83, Revision 'A', dated February 8, 2002, which was referenced as the appropriate source of service information for the actions specified in the existing AD, was not approved by Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada. Subsequently, Bombardier has issued Service Bulletin 8–27–83, Revision 'A', dated May 29, 2002; which was approved by TCCA. The procedures described in the approved service bulletin are almost identical to those described in the earlier version of the service bulletin, with the exception of minor editorial changes.

### FAA's Findings

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

### Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD revises AD 2004–03–14 to continue to require repetitive inspections for discrepancies of certain rear spar fittings between the flex shaft of the flap secondary drive and the wing-to-fuselage structure, and corrective action if necessary. This AD also continues to provide for an optional modification of the flex shaft installation, which terminates the repetitive inspections. This AD requires that the actions be done per the approved service bulletin described previously.

### Determination of Rule's Effective Date

Since this AD action does not contain a substantive change, and because we provided notice and opportunity for prior public comment in AD 2004–03–14, there would be no interest on the part of the public in additional opportunity for comment. Further, this AD has no adverse economic impact and imposes no additional burden on any person. Therefore, prior notice and public procedures hereon are unnecessary, and the amendment may be made effective in less than 30 days.

### Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are

invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2004–NM–38–AD.'' The postcard will be date stamped and returned to the commenter.

## Regulatory Impact

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. Section 39.13 is amended by removing amendment 39–13458 (69 FR 6139, February 10, 2004), and by adding a new airworthiness directive (AD), amendment 39–13623, to read as follows:

**2004–03–14 R1 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–13623. Docket 2004–NM–38–AD. Revises AD 2004–03–14, Amendment 39–13458.

*Applicability:* Model DHC–8–102, −103, −106, −201, −202, −301, −311, and −315 series airplanes; certificated in any category; as listed in Bombardier Service Bulletin 8–27–83, Revision 'A', dated May 29, 2002.

*Compliance:* Required as indicated, unless accomplished previously.

To find and fix damage and prevent subsequent failure of the rear spar fittings between the flex shaft of the flap secondary drive and the wing-to-fuselage structure, which could result in loss of the wing, accomplish the following:

**Repetitive Inspections/Corrective Action**

(a) For airplanes with rear spar fittings having part number (P/N) 85320053, 85322060, or 85334180: Within 12 months after March 16, 2004 (the effective date of AD 2004–03–14, amendment 39–13458), do a detailed inspection for discrepancies (chafing, wear damage, cracking) of the rear spar fittings located between the flex shaft of the flap secondary drive and the wing-to-fuselage structure. Do the inspection as defined in Parts III.A., III.B., and III.D. of the Accomplishment Instructions of Bombardier Service Bulletin 8–27–83, Revision 'A', dated May 29, 2002, except where the service bulletin specifies to report inspection findings, this AD does not require such reporting. Do the inspection per the service bulletin, and repeat the inspection thereafter at the applicable time specified in Part I.D. 'Compliance' of the service bulletin. Any applicable corrective action (high frequency eddy current inspection for cracking, blending out wear damage, replacement of rear spar fittings) must be done at the applicable time specified in Part I.D. 'Compliance' of the service bulletin.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

**Optional Terminating Modification**

(b) Modification of the flex shaft of the flap secondary drive per Part III.C. of the Accomplishment Instructions of Bombardier Service Bulletin 8–27–83, Revision 'A', dated May 29, 2002, terminates the repetitive inspections required by paragraph (a) of this AD.

**Actions Done per Previous Issue of Service Bulletins**

(c) Accomplishment of the inspections or the modification before the effective date of this AD in accordance with Bombardier Service Bulletin 8–27–83, dated October 19, 2001, is considered acceptable for compliance with the applicable actions specified in this AD.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(e) Unless otherwise provided in this AD, the actions shall be done in accordance with Bombardier Service Bulletin 8–27–83, Revision 'A', dated May 29, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/*

*code_of_federal_regulations/ ibr_locations.html.*

**Note 2:** The subject of this AD is addressed in Canadian airworthiness directive CF–2001–42, dated November 23, 2001.

**Effective Date**

(f) This amendment becomes effective on May 26, 2004.

Issued in Renton, Washington, on April 23, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10250 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–93–AD; Amendment 39–13624; AD 2004–09–33]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 747–400 and 747–400D Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–400 and 747–400D series airplanes, that requires a detailed inspection of the fire extinguishing system tube and clamp for correct installation or a repetitive pressure test of the fire extinguishing system tube for leakage, and corrective action, if necessary. This action is necessary to prevent a chafed hole in the fire extinguishing system tube of the aft cargo compartment, which could result in a lack of fire extinguishing agent and consequent uncontained fire in the aft cargo compartment. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/ federal_register/ code_of_federal_regulations/ ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Barbara Mudrovich, Aerospace Engineer, Cabin Safety & Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6477; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–400 and 747–400D series airplanes was published in the **Federal Register** on December 3, 2003 (68 FR 67616). That action proposed to require a detailed inspection of the fire extinguishing system tube and clamp for correct installation or a repetitive pressure test of the fire extinguishing system tube for leakage, and corrective action, if necessary.

### Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

### Request To Reference Latest Service Bulletin

One commenter requests that the notice of proposed rulemaking (NPRM) be revised to reference Boeing Service Bulletin 747–26A2270, Revision 2, dated June 26, 2003. The commenter notes that the NPRM refers to Revision 1 of that service bulletin as the appropriate source of service information for the proposed actions.

The FAA agrees. Since the issuance of the NPRM, we have reviewed and approved Revision 2 of the service bulletin. The inspection and corrective actions if necessary are essentially identical to those in Revision 1. Revision 2 revises the minimum tubing clearance in the Accomplishment Instructions for ''Part 2—Tube removal and installation instructions'' and Figure 3. No more work is necessary on airplanes changed by Revision 1. Therefore, we have revised this final rule to reference Revision 2 as the appropriate source of service information and revised paragraph (e) of this final rule to provide credit for accomplishing the required actions per Revision 1 before the effective date of this AD.

### Conclusion

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

### Cost Impact

There are approximately 416 airplanes of the affected design in the worldwide fleet. The FAA estimates that 44 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection or pressure test, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,860, or $65 per airplane.

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

### Regulatory Impact

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

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

contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2004–09–33 Boeing:** Amendment 39–13624. Docket 2003–NM–93–AD.

*Applicability:* Model 747–400 and 747–400D series airplanes, as listed in Boeing Service Bulletin 747–26A2270, Revision 2, dated June 26, 2003; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent a chafed hole in the fire extinguishing system tube of the aft cargo compartment, which could result in a lack of fire extinguishing agent and consequent uncontained fire in the aft cargo compartment, accomplish the following:

**Service Bulletin References**

(a) The term ''service bulletin,'' as used in this AD, means the Accomplishment Instructions of Boeing Service Bulletin 747–26A2270, Revision 2, dated June 26, 2003.

**Inspection/Pressure Test**

(b) Within 6,500 flight hours or 18 months after the effective date of this AD, whichever occurs first, perform the detailed inspection specified in paragraph (b)(1) of this AD or the pressure test specified in paragraph (b)(2) of this AD.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) Perform a detailed inspection of the fire extinguishing system tube and clamps for correct installation, either using an inspection hole and boroscope or with the floor panel removed, per the service bulletin.

(i) If the fire extinguishing system tube is installed correctly, no further action is required by this AD.

(ii) If the fire extinguishing system tube is installed incorrectly, prior to further flight, do the actions specified in paragraph (c) of this AD.

(2) Perform a pressure test of the fire extinguishing system tube to check for leakage of the fire extinguishing agent per the service bulletin.

(i) If leakage is not found, repeat the pressure test thereafter at intervals not to exceed 6,500 flight hours or 18 months, whichever occurs first, until the actions specified in paragraph (b)(1) or (c) of this AD have been done.

(ii) If any leakage is found, prior to further flight, do the actions specified in paragraph (c) of this AD.

**Removal and Installation/Repair/Replace**

(c) Remove the fire extinguishing system tube and do the actions in paragraph (c)(1) or (c)(2) of this AD, as applicable.

(1) If, during the detailed inspection specified in paragraph (b)(1) of this AD, the fire extinguishing system tube was found to be installed incorrectly: Prior to further flight, perform a detailed inspection of the fire extinguishing system tube for chafing/damage per the service bulletin.

(i) If no chafing/damage is found, prior to further flight, install the existing fire extinguishing system tube per Figure 3 of the service bulletin.

(ii) If any chafing/damage is found, prior to further flight, replace the fire extinguishing system tube with a new tube or repair the fire extinguishing system tube, per the service bulletin, and install the new or repaired tube per Figure 3 of the service bulletin.

(2) If, during the pressure test required by paragraph (b)(2) of this AD, leakage was found: Prior to further flight, replace the fire extinguishing system tube with a new tube or repair the fire extinguishing system tube, per the service bulletin, and install the new or repaired tube per Figure 3 of the service bulletin.

**Terminating Action**

(d) Accomplishment of the actions specified in paragraph (b)(1) or (c) of this AD constitutes terminating action for the requirements of this AD.

**Actions Accomplished Per Previous Issue of Service Bulletin**

(e) Inspections, repetitive tests and corrective actions accomplished before the effective date of this AD per Boeing Alert Service Bulletin 747–26A2270, dated May 8, 2002; or Revision 1, dated January 16, 2003; are considered acceptable for compliance with the corresponding action specified in this AD.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(g) Unless otherwise specified in this AD, the actions shall be done in accordance with Boeing Service Bulletin 747–26A2270, Revision 2, dated June 26, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/ federal_register/ code_of_ federal_ regulations/ibr_ locations.html.*

**Effective Date**

(h) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 23, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10251 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–222–AD; Amendment 39–13621; AD 2004–09–31]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 Airplanes on Which Engine Oil Coolers Have Been Installed Per LORI, Inc., Supplemental Type Certificate (STC) SA8937SW

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes on which engine oil coolers have been installed per LORI, Inc., STC SA8937SW. This amendment requires an inspection or a review of the airplane maintenance records to determine the part number and serial number of each engine oil cooler, and replacement of certain engine oil coolers with reworked engine oil coolers. This action is necessary to prevent oil leakage from the engine oil coolers, consequent in-

flight engine shutdown due to low oil pressure, and reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Honeywell Engines, Systems & Services, LORI, Inc., 6930 N. Lakewood, Tulsa, Oklahoma 74117. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Jim Rankin, Aerospace Engineer, Special Certification Office, ASW–190, 2601 Meacham Boulevard, Fort Worth, Texas 76193; telephone (817) 222–5138; fax (817) 222–5785.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes on which engine oil coolers have been installed per LORI, Inc., STC SA8937SW, was published in the **Federal Register** on January 26, 2004 (69 FR 3533). That action proposed to require an inspection or a review of the airplane maintenance records to determine the part number and serial number of each engine oil cooler, and replacement of certain engine oil coolers with reworked engine oil coolers.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the one comment received.

## Request To Revise ''AD Title''

The commenter, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, requests changing the ''AD title'' of the proposed AD from ''Bombardier, Inc. (Formerly de Havilland, Inc.)'' to ''LORI, Inc.,'' to clarify that the proposed AD is written against supplemental type certificate (STC) SA8937SW, issued to LORI, Inc., and is not written against Bombardier airplanes.

During a teleconference between the commenter and the FAA on February 6, 2004, the commenter also expressed concern regarding the applicability of the proposed AD. The commenter stated that the proposed AD, as written, would compel the issuance of a Canadian airworthiness directive because the applicability of our proposed AD identifies an airplane with a Canadian State of Design. The commenter mentioned that the applicability section may be misleading because the intent of the proposed AD is to address an unsafe condition created by the installation of the STC; the unsafe condition is not directly related to the Bombardier Model DHC–8 airplanes. The United States is the State of Design for the STC and Canada is the State of Design for the Bombardier airplanes.

We concur with the commenter's statement that the intent of this final rule is to address an unsafe condition created by STC SA8937SW, issued to LORI, Inc. We do not concur with the commenter's request to change the product identification line (''AD title'') of this final rule from ''Bombardier, Inc. (Formerly de Havilland, Inc.)'' to ''LORI, Inc.'' The FAA's practice regarding unsafe conditions that result from the installation of a particular component in only one particular make and model of airplane, in this case Bombardier Model DHC–8 airplanes, is to issue an AD that applies to the affected airplane model. In doing so, U.S. operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While we assume that operators can identify the airplane models they operate, they may not be aware of specific items installed on those airplanes. Therefore, specifying the airplane models in the applicability as the subject of the AD prevents an operator's ''unknowing failure to comply'' with the AD.

We also recognize that an unsafe condition may exist in an item that is installed in many different airplane models. In that case, we consider it impractical to issue an AD against each airplane model; in fact, many times, the exact models and numbers of airplanes on which the item is installed may be unknown. Therefore, in those situations, we would issue an AD that would apply to the item and would indicate that the item is known to be ''installed on, but not limited to,'' various airplane models.

During the teleconference on February 6, 2004, we mentioned that the proposed AD, specifically the applicability section, was written per our normal practice. We also advised TCCA that the issuance of the proposed AD would not compel them to issue a Canadian airworthiness directive, but that they may choose to issue an airworthiness directive at their own discretion. We notified TCCA that we will distribute this final rule to other civil airworthiness authorities, which eliminates the need for issuance of a corresponding Canadian airworthiness directive. No change is made to this final rule regarding this issue.

## Conclusion

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

## Cost Impact

The FAA estimates that 19 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required inspection or review of the airplane maintenance records, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $1,235, or $65 per airplane.

Should an operator have to replace an engine oil cooler, it will take approximately 3 work hours at an average labor rate of $65 per work hour. Required parts will be provided at no charge by the part manufacturer. Based on these figures, the cost impact of the replacement on U.S. operators is estimated to be $195 per engine oil cooler.

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

## Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various

levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–31 Bombardier, Inc.** (Formerly de Havilland, Inc.): Amendment 39–13621. Docket 2003–NM–222–AD.

*Applicability:* Model DHC–8–101, –102, –103, –106, –201, –202, –301, –311, and –315 airplanes on which engine oil coolers have been installed per LORI, Inc., Supplemental Type Certificate SA8937SW; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent oil leakage from the engine oil coolers, consequent in-flight engine shutdown due to low oil pressure, and reduced controllability of the airplane, accomplish the following:

#### Identification of Part Number and Serial Number and Corrective Actions

(a) Within 7 days after the effective date of this AD, do a review of airplane maintenance records, or a detailed inspection in accordance with the Accomplishment Instructions of Honeywell Service Bulletin 28E99–79–2036, dated September 23, 2002, to positively determine the part numbers (P/N) and serial numbers (S/N) of the engine oil coolers.

**Note 1:** For the purposes of this AD, a detailed inspection is defined as: ''An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required.''

(1) If neither engine oil cooler has a S/N as listed in Table 1 of the service bulletin: No further action is required by this paragraph.

(2) If only one engine oil cooler has a S/N as listed in Table 1 of the service bulletin: Within 90 days after the effective date of this AD, remove the affected part and install a part that has been reworked per the service bulletin.

(3) If both engine oil coolers have S/Ns as listed in Table 1 of the service bulletin: Before further flight, remove at least one of the affected parts and install a part that has been reworked per the service bulletin. If only one affected part is replaced with a part that has been reworked, within 90 days after the effective date of this AD, remove the remaining affected part and install a part that has been reworked per the service bulletin.

#### Parts Installation

(b) As of the effective date of this AD, no person shall install an engine oil cooler having a S/N as listed in Table 1 of Honeywell Service Bulletin 28E99–79–2036, dated September 23, 2002.

#### Special Flight Permit

(c) Special flight permits with a limitation may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. The special flight permits would have a limitation of one affected engine oil cooler per airplane.

#### Alternative Methods of Compliance

(d) In accordance with 14 CFR 39.19, the Manager, Special Certification Office, Rotorcraft Directorate, FAA, is authorized to approve alternative methods of compliance for this AD.

#### Incorporation by Reference

(e) Unless otherwise specified in this AD, the actions shall be done in accordance with Honeywell Service Bulletin 28E99–79–2036, dated September 23, 2002. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Engines, Systems & Services, LORI, Inc., 6930 N. Lakewood, Tulsa, Oklahoma 74117. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Rotorcraft Directorate, 2601 Meacham Boulevard, Fort Worth, Texas; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

#### Effective Date

(f) This amendment becomes effective on June 15, 2004.

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

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10252 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2002–NM–273–AD; Amendment 39–13627; AD 2004–09–36]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 727 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that requires an inspection of the bolts used to attach the forward cone bolt to the engine flange to determine if the attachment bolts are either H–11 steel bolts or cadmium-plated bolts. This action also requires replacement of either H–11 steel bolts or cadmium-plated bolts with new corrosion-resistant steel bolts. This action is necessary to prevent undetected cracking of the H–11 bolts or excessive wear of the cadmium-plated bolts, which would compromise the primary load path of the engine support and could result in separation of the engine from the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport

Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Daniel F. Kutz, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6456; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727 airplanes was published in the **Federal Register** on November 4, 2003 (68 FR 62408). That action proposed to require an inspection of the bolts used to attach the forward cone bolt to the engine flange to determine if the attachment bolts are either H–11 steel bolts or cadmium-plated bolts. That action also proposed to require replacement of either H–11 steel bolts or cadmium-plated bolts with new corrosion-resistant steel bolts.

## Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

### Request To Allow Use of Alternative Part

One commenter requests that the FAA revise the proposed AD to allow operators to use an alternative attachment bolt, part number (P/N) B27–53–031–111. The commenter states that, in accordance with Supplemental Type Certificates (STC) SA5839NM and ST00350AT, some airplane engines are modified with a heavyweight hush kit, which uses bolts made with corrosion resistant Inconel 718. The commenter considers these bolts to satisfy the intent of the proposed AD.

The FAA agrees. The AD does not specify what action should be taken if corrosion resistant bolts, P/N B27–53–031–111, are used to attach the forward cone bolt to the engine flange. Although these attachment bolts are not part of the original type design, allowing use of these attachment bolts in accordance with STC SA5839NM and ST00350AT will eliminate the need for an alternative method of compliance to the benefit of operators and the FAA. We have revised paragraph (a) of this AD accordingly.

### Request To Extend Compliance Time

The same commenter also requests that the we revise the proposed AD to extend the proposed compliance time for the inspection from ''18 months or 3,000 cycles, whichever is earlier,'' to 24 months to allow affected operators sufficient time to perform the inspection and parts replacement during a regularly scheduled maintenance interval. The commenter states that the compliance time of the proposed AD presents an operational hardship in ensuring adequate time for the parts replacement, if necessary, during a regularly scheduled maintenance check. The commenter considers that the adoption of the proposed compliance time of 18 months would require operators to schedule special times to do the inspection, at additional expense and downtime.

We do not agree with the commenter's request to extend the compliance time. In developing an appropriate compliance time for this action, we considered the safety implications and normal maintenance schedules for the timely accomplishment of the inspection and parts replacement. In consideration of these items, as well as the unpredictable nature of stress corrosion, we have determined that an 18-month interval will ensure an acceptable level of safety and allow the inspection and parts replacement to be done during scheduled maintenance intervals for most affected operators.

### Request To Withdraw the Proposed AD

One commenter, on behalf of its members, requests that we withdraw the proposed AD. The commenter states that there are no reported failures of H–11 bolts, and that Stage 3 hushkits and the retirement of some Boeing Model 727 airplanes have significantly reduced the number of affected H–11 bolts. The commenter asserts that a maintenance program for inspection of the affected bolts would be sufficient for detecting cracking.

We do not agree. Although we have not yet received any report of cracked H–11 bolts found on Boeing Model 727 airplanes, we have received a report that an operator found one cracked and two fractured H–11 bolts in the side load underwing fittings of a Model 767–200 series airplane, as stated in AD 2002–10–51. We also point out that the nature of stress corrosion is unpredictable. Furthermore, we have determined that continued service for an unsafe condition for an unknown period of time conflicts with the intent of this AD. Thus we have not changed the final rule regarding this issue.

### Request To Allow Repetitive Inspections Instead of Parts Replacement

Another commenter requests that we revise the proposed AD to allow operators to perform repetitive inspections for cracking of H–11 bolts, instead of replacement of the H–11 bolts. The commenter states that, according to the proposed AD and the referenced service bulletin, there are no reported failures of H–11 bolts. The commenter also states that Stage 3 noise requirements and the retirement of some Boeing Model 727 airplanes have significantly reduced the number of affected H–11 bolts. The commenter asserts that the replacement of H–11 bolts should not be a mandatory replacement, and that a revision to the maintenance program for inspection of the affected bolts would be sufficient for detecting cracking.

We do not agree for the same reasons as stated above.

## Conclusion

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

## Cost Impact

There are approximately 1,148 Model 727 airplanes of the affected design in the worldwide fleet. The FAA estimates that 715 Model 727 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required inspection, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $139,425, or $195 per airplane.

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

planning time, or time necessitated by other administrative actions.

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**2004–09–36 Boeing:** Amendment 39–13627. Docket 2002–NM–273–AD.

*Applicability:* All Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent undetected cracking of the H–11 bolts or excessive wear of the cadmium-plated bolts, which would compromise the primary load path of the engine support and could result in separation of the engine from the airplane, accomplish the following:

**Inspection and Replacement**

(a) Within 18 months or 3,000 flight cycles from the effective date of this AD, whichever is earlier, inspect the bolts that are used to attach the forward cone bolt to the engine flange to determine if they are H–11 steel bolts (part number (P/N) BACB30GU12–64), cadmium-plated bolts (P/N BACB30LM12–64), or corrosion-resistant bolts (P/N NAS6712E64 or P/N B27–53–031–111, not listed in the service bulletin), per the Accomplishment Instructions of Boeing Alert Service Bulletin 727–71A0402, dated January 18, 2001.

(1) If corrosion-resistant bolts (P/N NAS6712E64 or P/N B27–53–031–111) are installed, no further action is required by this paragraph.

(2) If any H–11 steel bolt or cadmium-plated bolt is found, before further flight, replace the bolt with a new corrosion-resistant bolt (P/N NAS6712E64), according to the Accomplishment Instructions in the service bulletin.

**Parts Installation**

(b) As of the effective date of this AD, no person may install an H–11 steel bolt (P/N BACB30GU12–64) or a cadmium-plated bolt (P/N BACB30LM12–64) to attach the forward cone bolt to the engine flange on any airplane.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(d) The actions shall be done in accordance with Boeing Alert Service Bulletin 727–71A0402, dated January 18, 2001. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Effective Date**

(e) This amendment becomes effective on June 15, 2004.

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

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10374 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–121–AD Amendment 39–13629; AD 2004–09–38]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to all Dornier Model 328–300 series airplanes, that requires various one-time inspections for discrepancies of the ground spoiler assemblies and the flap of each wing, and related investigative and corrective actions. This action is necessary to prevent failure of certain ground spoiler support arms due to interference between the ground spoiler assemblies and the wing flaps, which could result in loss of function of affected ground spoiler assemblies and consequent reduced controllability of the airplane. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD)

that is applicable to all Dornier Model 328–300 series airplanes was published in the **Federal Register** on March 17, 2004 (69 FR 12594). That action proposed to require various one-time inspections for discrepancies of the ground spoiler assemblies and the flap of each wing, and related investigative and corrective actions.

### Comments

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

### Conclusion

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

### Cost Impact

We estimate that 48 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,240, or $130 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–38 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH):** Amendment 39–13629. Docket 2003–NM–121–AD.

*Applicability:* All Model 328–300 airplanes, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent failure of certain ground spoiler support arms due to interference between the ground spoiler assemblies and the wing flaps, which could result in loss of function of affected ground spoiler assemblies and consequent reduced controllability of the airplane, accomplish the following:

**General Visual, Contour, and Clearance Inspections of Ground Spoilers, and Related Investigative/Corrective Actions**

(a) Within 400 flight cycles after the effective date of this AD: Do one-time general visual, contour, and clearance inspections for discrepancies of the ground spoiler assemblies and the wing flaps by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328J–57–180, Revision 1, dated March 10, 2003. Any applicable related investigative and corrective actions must be done before further flight per the service bulletin.

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

**Submission of Inspection Results Not Required**

(b) Although the service bulletin referenced in this AD specifies to submit information to the manufacturer, this AD does not include such a requirement.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(d) The actions shall be done in accordance with Dornier Service Bulletin SB–328J–57–180, Revision 1, dated March 10, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 2:** The subject of this AD is addressed in German airworthiness directive 2003–120/2, dated July 24, 2003.

**Effective Date**

(e) This amendment becomes effective on June 15, 2004.

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

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10376 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NE–34–AD; Amendment 39–13631; AD 2004–10–01]**

**RIN 2120–AA64**

## Airworthiness Directives; Pratt & Whitney JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J turbofan engines. This AD clarifies a life limit for certain part numbers of 6th stage low pressure turbine (LPT) air seals, and requires their removal from service before accumulating 15,000 cycles-since-new (CSN). This AD results from reports of certain 6th stage LPT air seals possibly not being life tracked due to confusion from updates to the engine manuals. We are issuing this AD to prevent failure of the 6th stage LPT air seal, which could cause LPT damage resulting in an uncontained engine failure.

**DATES:** This AD becomes effective June 15, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 15, 2004.

**ADDRESSES:** You can get the service information identified in this AD from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503.

You may examine the AD docket at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743; fax (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR Part 39 with a proposed AD. The proposed AD applies to PW JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J turbofan engines. We published the proposed AD in the **Federal Register** on September 5, 2003 (68 FR 52720). That action proposed to clarify a life limit for certain part numbers of 6th stage LPT air seals, and require their removal from service before accumulating 15,000 CSN.

## Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the proposal or on the determination of the cost to the public.

## Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

## Costs of Compliance

There are about 1,024 engines of the affected design in the worldwide fleet. We estimate that 367 engines installed on airplanes of U.S. registry will be affected by this AD. We also estimate that it will take approximately 0.5 work hour per engine to calculate the 6th stage LPT air seal part life, and that the average labor rate is $65 per work hour. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $11,928.

## Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–34–AD'' in your request.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–10–01 Pratt & Whitney:** Amendment 39–13631. Docket No. 2003–NE–34–AD.

**Effective Date**

(a) This AD becomes effective June 15, 2004.

**Affected ADs**

(b) None.

**Applicability**

(c) This AD applies to Pratt & Whitney (PW) JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, and –20J turbofan engines. These engines are installed on, but not limited to, Boeing 747–100, 747–200, 747SR, 747SP, and DC10–40 series airplanes.

**Unsafe Condition**

(d) This AD results from reports of certain 6th stage low pressure turbine (LPT) air seals possibly not being life tracked due to confusion from updates to the engine manuals. Chapter 5 of Engine Manuals, part numbers (P/Ns) 646028, 770407, and 770408 will be revised to show a life limit of 15,000 cycles-since-new (CSN) for 6th stage LPT air seals P/Ns 808846, 809171, 811260 and 811261. We are issuing this AD to prevent failure of the 6th stage LPT air seal which could cause LPT damage, resulting in an uncontained engine failure.

**Compliance**

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

**Determine Service Life**

(f) For 6th stage LPT air seals, P/Ns 808846, 809171, 811260, and 811261, with an unknown number of cycles since installed, calculate the service life within 60 days after the effective date of this AD.

(1) Use Method 1 of the Accomplishment Instructions of PW Service Bulletin (SB) No. JT9D 6448, dated June 10, 2003, for when all service records are available for the specific air seal, to calculate the service life.

(2) Use Method 2 of the Accomplishment Instructions of PW SB No. JT9D 6448, dated June 10, 2003, for when any or all service records are not available for a specific air seal, to calculate the service life. If the worst-case daily utilization rate is unknown, use the fleet worst-case daily utilization rate of 2.9 cycles/day.

**Removal From Service**

(g) Remove 6th stage LPT air seals, P/Ns 808846, 809171, 811260, and 811261, from service at or before accumulating the CSN in the following Table 1.

TABLE 1.—PART NUMBER AND ENGINE APPLICABILITY

| Part number | Engine applicability | Life limit CSN |
|---|---|---|
| 808846 (old) | JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, –20J | 15,000 |
| 811260 (new) | JT9D–3A, –7, –7A, –7AH, –7H, –7F, –7J, –20, –20J | 15,000 |
| 809171 (old) | JT9D–3A, –7, –7A, –7AH, –7H, –7F, –20 | 15,000 |
| 811261 (new) | JT9D–3A, –7, –7A, –7AH, –7H, –7F, –20 | 15,000 |

(h) If the service life cannot be determined as specified in paragraph (f) of this AD, remove the 6th stage LPT air seal before accumulating 2,500 cycles-in-service after the effective date of this AD.

(i) After the effective date of this AD, do not install any 6th stage LPT air seal, P/N 808846, 809171, 811260, or 811261, that exceeds 15,000 CSN, or that was removed to comply with paragraph (h) of this AD because its service life could not be determined.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Material Incorporated by Reference**

(k) You must use Pratt & Whitney Service Bulletin No. JT9D 6448, dated June 10, 2003, to perform the service life calculations required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8770; fax (860) 565–4503. You can review copies at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Related Information**

(l) None.

Issued in Burlington, Massachusetts, on April 30, 2004.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04–10428 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–CE–27–AD; Amendment 39–13620; AD 2004–09–30]**

**RIN 2120–AA64**

## Airworthiness Directives; Raytheon Aircraft Company Model 1900C Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA adopts a new airworthiness directive (AD) for certain Raytheon Model 1900C airplanes. This AD requires you to replace the 200-amp electrical power current limiter in the landing gear with a 60-amp electrical power circuit breaker. This AD is the result of reports about the inability to automatically lower the landing gear and the inability to operate other related electrical systems. We are issuing this AD to prevent heat damage to the electrical wiring in and around the landing gear electrical systems components, which could result in the inability to operate critical control systems. This failure could lead to loss of control of the airplane.

**DATES:** This AD becomes effective on June 18, 2004.

As of June 18, 2004, the Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation.

**ADDRESSES:** You may get the service information identified in this AD from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140.

You may view the AD docket at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2003–CE–27–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Office hours are 8 a.m. to 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Bryan Easterwood, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4132; facsimile: (316) 946–4107.

**SUPPLEMENTARY INFORMATION:**

### Discussion

*What events have caused this AD?* We have received a report where the landing gear would not extend using normal operations and another report where certain electrical system components on the left generator and the center bus became inoperable.

The 200-amp current limiter, which protects the landing gear power wiring, did not operate correctly. This caused heat damage to the wiring in the landing gear power relay and surrounding electrical systems components.

The electrical system components that this condition potentially could affect include prop deice, surface deice, flaps, and left-hand windshield anti-ice.

Installing a 60-amp circuit breaker will protect the landing gear motor and associated circuitry from welding of the landing gear power relay contacts and sticking.

*What is the potential impact if FAA took no action?* If not corrected, this condition could cause heat damage to the electrical wiring in and around the landing gear electrical systems components. This condition could lead to loss of control of the airplane.

*Has FAA taken any action to this point?* We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Model 1900C airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 5, 2003 (68 FR 62544). The NPRM proposed to require you to replace the 200-amp electrical power current limiter in the landing gear with a 60-amp electrical power circuit breaker.

### Comments

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

## Conclusion

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

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

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

## Changes to 14 CFR Part 39—Effect on the AD

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

## Costs of Compliance

*How many airplanes does this AD impact?* We estimate that this AD affects 25 airplanes in the U.S. registry.

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

| Labor cost | Parts cost | Total cost per airplane | Total cost on U.S. operators |
|---|---|---|---|
| 12 workhours × $65 per hour = $780 | $672 | $780 + $672 = $1,452 | $1,452 × 25 = $36,300 |

## Regulatory Findings

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

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

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–CE–27–AD'' in your request.

## List of Subjects in 14 CFR Part 39

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

## Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–30 Raytheon Aircraft Company:** Amendment 39–13620; Docket No. 2003–CE–27–AD.

**When Does This AD Become Effective?**

(a) This AD becomes effective on June 18, 2004.

**What Other ADs Are Affected by This Action?**

(b) None.

**What Airplanes Are Affected by This AD?**

(c) This AD affects Model 1900C airplanes, serial numbers UB–1 through UB–35, that are certificated in any category.

**What Is the Unsafe Condition Presented in This AD?**

(d) This AD is the result of reports about the inability to automatically lower the landing gear and the inability to operate other related electrical systems. The actions specified in this AD are intended to prevent heat damage to the electrical wiring in and around the landing gear electrical systems components, which could result in the inability to operate critical control systems. This failure could lead to loss of control of the airplane.

**What Must I Do To Address This Problem?**

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

| Actions | Compliance | Procedures |
|---|---|---|
| Incorporate Kit No. 114–3036–1, which replaces the 200-amp landing gear electrical power current limiter with a 60-amp circuit breaker. | Within the next 600 hours time-in-service (TIS) after June 18, 2004 (the effective date of this AD), unless already done. | Following the procedures in Raytheon Mandatory Service Bulletin SB 24–2616, Rev. 1, Revised: April, 2002. |

**May I Request an Alternative Method of Compliance?**

(f) You may request a different method of compliance or a different compliance time for this AD by following the procedures in 14 CFR 39.19. Unless FAA authorizes otherwise, send your request to your principal inspector. The principal inspector may add comments and will send your request to the Manager, Wichita Aircraft Certification Office (ACO), FAA. For information on any already approved alternative methods of compliance, contact Bryan Easterwood, Aerospace Engineer, Wichita ACO, FAA, 1801 Airport Road, Wichita, Kansas 67209; telephone: (316) 946–4132; facsimile: (316) 946–4107.

**Does This AD Incorporate Any Material by Reference?**

(g) You must do the actions required by this AD following the instructions in Raytheon Aircraft Mandatory Service Bulletin SB 24–2616, Rev. 1, Revised: April, 2002. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may get a copy from Raytheon Aircraft Company, 9709 E. Central, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may review copies at FAA, Central Region, Office of the Regional

Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

**Scott L. Sedgwick,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10179 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NE–02–AD; Amendment 39–13619; AD 2004–09–29]**

**RIN 2120–AA64**

## Airworthiness Directives; Honeywell International Inc. (Formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) TPE331–10 and –11 Series Turboprop Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona) (Honeywell) TPE331–10 and –11 series turboprop engines with certain part numbers (P/Ns) and serial numbers (SNs) of first stage turbine disks. This AD requires initial and repetitive fluorescent penetrant inspections (FPIs) and eddy current inspections (ECIs) of the affected first stage turbine disks. This AD results from a report of a first stage turbine disk found cracked at the disk bore. The crack originated from a localized; melt related, low-alloy area of the disk. We are issuing this AD to prevent cracked first stage turbine disks from causing uncontained disk separation, resulting in engine damage and shutdown and damage to the airplane.

**DATES:** This AD becomes effective June 15, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 15, 2004.

**ADDRESSES:** You can get the service information identified in this proposed AD from Honeywell Engines, Systems & Services, Technical Data Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170; telephone: (602) 365–2493 (General Aviation); (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial).

You may examine the AD docket, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood CA 90712–4137; telephone: (562) 627–5246; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:** The FAA proposed to amend 14 CFR Part 39 with a proposed airworthiness directive (AD). The proposed AD applies to Honeywell TPE331–10 and –11 series turboprop engines with certain P/Ns and SNs of first stage turbine disks. We published the proposed AD in the **Federal Register** on August 8, 2003 (68 FR 47267). That action proposed to require:

- Initial and repetitive FPIs of the SNs of first stage turbine disks P/N 3101520–1, and
- Repetitive FPIs only of the disks P/N 3107079–1 listed in Table 1 of the Honeywell Alert Service Bulletin (ASB) TPE331–A72–2102, dated March 28, 2002, and
- An ECI on disks that pass the FPI.

### Comments

We provided the public the opportunity to participate in the development of this AD. We have considered the comments received.

### Request To Clarify Relevant Service Information Section

One commenter recommends that we clarify the Relevant Service Information Section of the NPRM to state that Honeywell ASB TPE331–A72–2102, dated March 28, 2002, requires an initial FPI on disk P/Ns 3101520–1 and 3107079–1 that are not installed in engines. The commenter believes that clarification of the Relevant Service Information is required to accurately reflect the Service Bulletin information. We agree. The section that the commenter is requesting us to change is not included in a final rule so there will not be any change to that section. However, we have changed the regulatory requirements to require performing an FPI before installation into the engine.

### Question About Definition of Next Access

The same commenter asks if the definition of next access includes parts before installation into the engine. The commenter states that disks that have already had an FPI and ECI may have been removed from another engine and may have accumulated substantial numbers of cycles before installation into an engine. We partially agree. We have changed the regulatory requirements to require performing an FPI of the disk before installation into an engine.

### Addition of a Terminating Action

We inadvertently left out a terminating action to the repetitive inspection requirements specified in this AD. We added the terminating action to the Regulatory text of the final rule.

### Editorial Change To Clarify the Summary Section

We made an editorial change to the Summary Section to the starting location of the crack in the disk bore. In addition, we added ''and damage to the airplane'' to the unsafe condition statement in the Summary and in the regulatory text.

### Conclusion

We have carefully reviewed the available data, including the comment[s] received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We have determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

### Changes to 14 CFR Part 39—Effect on the AD

On July 10, 2002, the FAA published a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs the FAA's AD system. That regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance. The material previously was included in each individual AD. Since the material

is included in 14 CFR part 39, we will not include it in future AD actions.

### Costs of Compliance

There are approximately 72 TPE331–10 and –11 series turboprop engines of the affected design in the worldwide fleet. We estimate that 36 engines installed on airplanes of U.S. registry will be affected by this AD. We estimate that it will take approximately 5 work hours per engine to perform the disk inspections during a scheduled disassembly, and 40 work hours per engine to perform the proposed disk inspections for an unscheduled disassembly. The average labor rate is $65 per work hour. Required parts would cost approximately $5,000 per engine. Based on these figures, we estimate the total cost of this AD to U.S. operators for disassembly, inspections, and part replacement to be $105,300.

### Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2003–NE–02–AD'' in your request.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–29 Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company, and AiResearch Manufacturing Company of Arizona):** Amendment 39–13619. Docket No. 2003–NE–02–AD.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective June 15, 2004.

#### Affected ADs

(b) None.

#### Applicability

(c) This AD applies to Honeywell International Inc. (formerly AlliedSignal Inc., Garrett Turbine Engine Company and AiResearch Manufacturing Company of Arizona) TPE331–10–501C, –10–511C, –10–501K, –10–511K, –10–501M, –10–511M, –10AV–511B, –10AV–511M, –10GP–511D, –10GT–511D, –10N–511S, –10N–512S, –10N–513S, –10N–514S, –10N–515S, –10N–531S, –10N–532S, –10N–533S, –10N–534S, –10N–535S, –10P–511D, –10R–501C, –10R–502C, –10R–511C, –10R–512C, –10R–513C, –10T–511D, –10T–511K, –10T–511M, –10T–512K, –10T–513K, –10T–515K, –10T–516K, –10T–517K, –10U–501G, –10U–502G, –10U–511G, –10U–512G, –10U–503G, –10U–513G, –10UA–511G, –10UF–501H, –10UF–511H, –10UF–512H,–10UF–513H, –10UF–514H, –10UF–515H, –10UF–516H, –10UG–513H, –10UG–514H, –10UG–515H, –10UG–516H, –10UGR–513H, –10UGR–514H, –10UGR–516H, –10UR–513H, –10UR–516H, –11U–601G, –11U–602G, –11U–611G, and –11U–612G turboprop engines with first stage turbine disk part number (P/N) 3101520–1 or P/N 3107079–1, with serial numbers (SNs) listed in Table 1 of Honeywell International Inc. Alert Service Bulletin (ASB) TPE331–A72–2102, dated March 28, 2002, installed. These engines are installed on, but not limited to Mitsubishi MU–2B series, Construcciones Aeronauticas S.A. (CASA) C–212 series, Fairchild SA226 series (Swearingen Merlin and Metro series), Twin Commander 680 and 690 series (Jetprop Commander), Dornier 228 series, Beech 18 and 45 series, Beech Models JRB–6, 3N, 3TM, and B100, Cessna Aircraft Company Model 441 Conquest, and Jetstream 3201 series airplanes.

#### Unsafe Condition

(d) This AD results from a report of a first stage turbine disk found cracked at the disk bore. We are issuing this AD to prevent cracked first stage turbine disks from causing uncontained disk separation, resulting in engine damage and shutdown and damage to the airplane.

#### Compliance

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

#### Initial Inspection

(f) Perform a fluorescent penetrant inspection (FPI) of first stage turbine disks, P/N 3101520–1, in accordance with 2.A.(4)(a) through 2.A.(4)(d) of Accomplishment Instructions of ASB TPE331–A72–2102, dated March 28, 2002, and the following:

(1) For first stage turbine disks with 4,100 cycles-since-new (CSN) or less, inspect at next access, but no later than 4,500 CSN.

(2) For first stage turbine disks with more than 4,100 CSN, inspect at next access, but within 400 cycles-in-service (CIS) after the effective date of this AD.

(3) First stage turbine disks that pass FPI must be eddy current inspected (ECI) before return to service. Information on procedures for returning disks to Honeywell Engines, Systems, & Services, for ECI, can be found in ASB TPE331–A72–2102, dated March 28, 2002.

(4) First stage turbine disks, P/N 3107079–1, do not require initial inspection because they received an initial FPI and ECI at the time of conversion.

#### Repetitive Inspections

(g) Perform repetitive FPIs of first stage turbine disks P/N 3101520–1 and P/N 3107079–1, in accordance with 2.B.(3)(a) through 2.B.(3)(d) of Accomplishment Instructions of ASB TPE331–A72–2102, dated March 28, 2002 and the following:

(1) FPI first stage turbine disks at each scheduled hot section inspection.

(2) First stage turbine disks that pass FPI must be ECI before they are returned to service. Information on procedures for returning disks to Honeywell Engines, Systems, & Services, for ECI, can be found in ASB TPE331–A72–2102, dated March 28, 2002.

#### Optional Terminating Action

(h) Replacing a first stage turbine disk, that has a SN specified in this AD, with a disk that does not have a SN specified in this AD, is terminating action for the repetitive inspection requirements specified in paragraphs (g)(1) through (g)(2) of this AD.

#### Definition

(i) For the purposes of this AD, next access is when the turbine wheel assembly is removed from the engine or before installation into an engine.

#### Alternative Methods of Compliance

(j) The Manager, Los Angles Aircraft Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

#### Material Incorporated by Reference

(k) You must use Honeywell International Inc. ASB TPE331–A72–2102, dated March 28, 2002 to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin under 5 U.S.C. 552(a) and 1 CFR part 51. You can get the service information identified in this AD from Honeywell Engines, Systems & Services, Technical Data Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, AZ 85072–2170;

telephone: (602) 365–2493 (General Aviation); (602) 365–5535 (Commercial); fax: (602) 365–5577 (General Aviation and Commercial). You may examine the service information, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

### Related Information

(l) None.

Issued in Burlington, Massachusetts, on April 28, 2004.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04–10241 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–138–AD; Amendment 39–13611; AD 2004–09–22]**

**RIN 2120–AA64**

## Airworthiness Directives; Dornier Model 328–300 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment adopts a new airworthiness directive (AD), applicable to certain Dornier Model 328–300 series airplanes, that requires modification of a certain ground cooling fan. This action is necessary to prevent overheating of the connecting terminals of the ground cooling fan, which could result in smoke or fire in the flight compartment and main cabin. This action is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availablility of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

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

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Dornier Model 328–300 series airplanes was published in the **Federal Register** on March 5, 2004 (69 FR 10378). That action proposed to require modification of a certain ground cooling fan.

### Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been submitted on the proposed AD or on the determination of the cost to the public.

### Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed.

### Cost Impact

We estimate that 52 airplanes of U.S. registry will be affected by this AD, that it will take about 2 work hours per airplane to accomplish the modification, and that the average labor rate is $65 per work hour. Required parts will cost about $14,000 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $734,760, or $14,130 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**2004–09–22 Fairchild Dornier GmbH (Formerly Dornier Luftfahrt GmbH):** Amendment 39–13611. Docket 2003–NM–138–AD.

*Applicability:* Model 328–300 series airplanes equipped with a ground cooling fan, part number AE1716D00, certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To prevent overheating of the connecting terminals of the ground cooling fan, which could result in smoke or fire in the flight compartment and main cabin, accomplish the following:

**Modification**

(a) Within 60 days after the effective date of this AD: Modify the ground cooling fan by doing all the actions per the Accomplishment Instructions of Dornier Service Bulletin SB–328J–21–045, Revision 1, dated February 26, 2003.

**Alternative Methods of Compliance**

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

**Incorporation by Reference**

(c) The actions shall be done in accordance with Dornier Service Bulletin SB–328J–21–045, Revision 1, dated February 26, 2003. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AvCraft Aerospace GmbH, P.O. Box 1103, D–82230 Wessling, Germany. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the National Archives and Records Administration (NARA). For information on the availablility of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 1:** The subject of this AD is addressed in German airworthiness directive 2003–144, dated May 15, 2003.

**Effective Date**

(d) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 22, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10243 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–153–AD; Amendment 39–13612; AD 2000–02–07 R1]**

**RIN 2120–AA64**

## Airworthiness Directives; Bombardier Model DHC–7–100 Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises an existing airworthiness directive (AD), applicable to all Bombardier Model DHC–7–100 series airplanes, that currently requires repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions if necessary. In lieu of accomplishing the corrective actions, that amendment also provides a temporary option, for certain cases, for revising the Airplane Flight Manual and installing a placard. That AD was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that AD are intended to detect and correct fatigue cracking of the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight. This amendment extends the compliance time of the repetitive inspections based on test evidence and is intended to address the identified unsafe condition.

**DATES:** Effective June 15, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 2004.

**ADDRESSES:** The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** David Lawson, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York 11590; telephone (516) 228–7327; fax (516) 794–5531.

**SUPPLEMENTARY INFORMATION:** A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by revising AD 2000–02–07, amendment 39–11526 (65 FR 4354, January 27, 2000), which is applicable to all Bombardier Model DHC–7–100 series airplanes, was published in the **Federal Register** on January 29, 2004 (69 FR 4257). The action proposed to require repetitive high frequency eddy current inspections to detect cracks on the locking pin fittings of the baggage door and locking pin housings of the fuselage; repetitive detailed inspections to detect cracks of the inner door structure on all four door locking attachment fittings; and corrective actions, if necessary. In lieu of accomplishing the corrective actions, that amendment also provides a temporary option, for certain cases, for revising the Airplane Flight Manual (AFM), and installing a placard. That action was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that AD are intended to detect and correct fatigue cracking of the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight.

### Comments

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

### Change to Final Rule

We have changed paragraphs (b)(1) and (b)(2) of this final rule to specify that the actions shall be done in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, or the Transport Canada Civil Aviation (or its delegated agent). In addition, the de Havilland Dash 7 Maintenance Manual PSM 1–7–2 is listed as one approved method of compliance for accomplishment of the actions.

### Conclusion

After careful review of the available data, we have determined that air safety and the public interest require the adoption of the rule with the change described previously. This change will neither increase the economic burden on any operator nor increase the scope of the AD.

### Changes to 14 CFR Part 39/Effect on the AD

On July 10, 2002, we issued a new version of 14 CFR part 39 (67 FR 47997, July 22, 2002), which governs our

airworthiness directives system. The regulation now includes material that relates to altered products, special flight permits, and alternative methods of compliance (AMOCs). However, for clarity and consistency in this final rule, we have retained the language of the NPRM regarding that material.

**Cost Impact**

The changes in this action add no additional economic burden. The current costs for this AD are repeated for the convenience of affected operators, as follows:

We estimate that 32 airplanes of U.S. registry will be affected by this AD, that it will take about 3 work hours per airplane to accomplish the inspections, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $6,240, or $195 per airplane, per inspection cycle.

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

**Regulatory Impact**

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

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

**List of Subjects in 14 CFR Part 39**

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

**Adoption of the Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

■ 2. Section 39.13 is amended by removing amendment 39–11526 (65 FR 4354, January 27, 2000), and by adding a new airworthiness directive (AD), amendment 39–13612, to read as follows:

**AD 2000–02–07 R1 Bombardier, Inc. (Formerly de Havilland, Inc.):** Amendment 39–13612. Docket 2003–NM–153–AD. Revises AD 2000–02–07, Amendment 39–11526.

*Applicability:* All Model DHC–7–100 series airplanes, certificated in any category.

**Note 1:** This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the baggage door fittings and the support structure, which could result in structural failure, and consequent rapid decompression of the airplane during flight, accomplish the following:

**Repetitive Inspections**

(a) At the latest of the times specified in paragraphs (a)(1) and (a)(2) of this AD, perform a high frequency eddy current inspection to detect fatigue cracks of the locking pin fittings of the baggage door and locking pin housings of the fuselage; and a detailed inspection to detect fatigue cracks of the inner door structure on all four locking attachment fittings of the baggage door; in accordance with de Havilland Temporary Revision (TR) 5–101, dated August 17, 2001, for Supplementary Inspection Task 52–1 to the de Havilland Dash 7 Maintenance Manual PSM 1–7–2. Thereafter, repeat the inspections at intervals not to exceed 10,000 flight cycles.

(1) Inspect prior to the accumulation of 12,000 total flight cycles.

(2) Inspect within 600 flight cycles or 3 months after March 2, 2000 (the effective date of AD 2000–02–07, amendment 39–11526), whichever occurs later.

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

**Corrective Actions**

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish the requirements of paragraphs (b)(1) and (b)(2) of this AD, as applicable, except as provided in paragraph (c) of this AD. For operators that elect to accomplish the actions specified in paragraph (c) of this AD: After accomplishment of the replacement required by paragraph (b)(1) or (b)(2) of this AD, the Airplane Flight Manual (AFM) revision and placard required by paragraph (c) of this AD may be removed.

(1) If a crack is detected in a baggage door locking pin fitting or fuselage locking pin housing: Replace the fitting or housing with a new fitting or housing, as applicable, in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, or the Transport Canada Civil Aviation (or its delegated agent). The de Havilland Dash 7 Maintenance Manual PSM 1–7–2 is one approved method.

(2) If a crack is detected in the inner baggage door structure at the locking attachment fittings: Replace the structure with a new support structure or repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate, or the Transport Canada Civil Aviation (or its delegated agent). For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD. The de Havilland Dash 7 Maintenance Manual PSM 1–7–2 is one approved method.

(c) For airplanes on which only one baggage door stop fitting or its support structure is found cracked at one location, and on which the pressurization system ''Dump'' function is operational: Prior to further flight, accomplish the requirements of paragraphs (c)(1) and (c)(2) of this AD. Within 1,000 flight cycles after accomplishment of the requirements of paragraphs (c)(1) and (c)(2) of this AD, accomplish the requirements of paragraph (b)(1) or (b)(2) of this AD, as applicable.

(1) Revise the Limitations Section of the DHC–7 AFM, PSM 1–71A–1A, to include the

following statement. This AFM revision may be accomplished by inserting a copy of this AD into the AFM.

''Flight is restricted to unpressurized flight below 10,000 feet mean sea level (MSL). The airplane must be operated in accordance with DHC–7 AFM, PSM 1–71A–1A, Supplement 20.''

(2) Install a placard on the cabin pressure control panel or in a prominent location that states the following:

''DO NOT PRESSURIZE THE AIRCRAFT UNPRESSURIZED FLIGHT PERMITTED ONLY IN ACCORDANCE WITH DHC–7 AFM PSM 1–71A–1A, SUPPLEMENT 20 FLIGHT ALTITUDE LIMITED TO 10,000 FEET MSL OR LESS.''

**Alternative Methods of Compliance**

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

**Note 3:** Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

**Special Flight Permits**

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

**Incorporation by Reference**

(f) Unless otherwise specified in this AD, the actions shall be done in accordance with de Havilland Temporary Revision 5–101, dated August 17, 2001, for Supplementary Inspection Task 52–1 to the de Havilland Dash 7 Maintenance Manual PSM 1–7–2. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, 123 Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, suite 410, Westbury, New York; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Note 4:** The subject of this AD is addressed in Canadian airworthiness directive CF–99–03R1, dated August 22, 2001.

**Effective Date**

(g) This amendment becomes effective on June 15, 2004.

Issued in Renton, Washington, on April 22, 2004.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10244 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–P

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2001–NE–45–AD; Amendment 39–13625; AD 2004–09–34]**

**RIN 2120–AA64**

## Airworthiness Directives; General Electric Company CF6–80E1 Model Turbofan Engines

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule; request for comments.

**SUMMARY:** The FAA is superseding an existing airworthiness directive (AD) for General Electric Company (GE) CF6–80E1 model turbofan engines with high pressure turbine (HPT) stage 2 (S2) nozzle guide vanes (NGVs) part number (P/N) 1647M84G09 or 1647M84G10, installed. That AD currently requires flex borescope inspections of HPT S2 NGVs installed in CF6–80E1 model turbofan engines. This AD requires the same actions but at reduced compliance intervals. This AD results from inspection findings of HPT S2 NGVs that show cracks from distress could occur sooner and grow faster than originally predicted. We are issuing this AD to prevent failure of HPT rotor blades from HPT S2 NGV distress, which could result in an uncontained engine failure.

**DATES:** Effective May 26, 2004. The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of May 26, 2004.

We must receive any comments on this AD by July 12, 2004.

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

- By mail: The Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–NE–45–AD, 12 New England Executive Park, Burlington, MA 01803–5299.
- By fax: (781) 238–7055.
- By e-mail: *9-ane-adcomment@faa.gov.*

You can get the service information referenced in this AD from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422.

You may examine the AD docket, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA. You may examine the service information, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**FOR FURTHER INFORMATION CONTACT:** Karen Curtis, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone: (781) 238–7192; fax: (781) 238–7199.

**SUPPLEMENTARY INFORMATION:** On January 15, 2002, the FAA issued AD 2002–01–04, Amendment 39–12595 (67 FR 4326, January 30, 2002). That AD requires flex borescope inspections of HPT S2 NGVs installed in CF6–80E1 model turbofan engines. That AD was the result of an uncontained engine failure attributed to HPT S2 NGV distress. That condition, if not corrected, could result in failure of HPT rotor blades from HPT S2 NGV distress, which could result in an uncontained engine failure.

### Actions After AD 2002–01–04 Was Issued

After AD 2002–01–04 was issued, GE received inspection findings of HPT S2 NGVs that show cracks from distress. GE and the FAA have determined that cracks from this distress could occur sooner and propagate faster than originally predicted, and have also determined that the inspection compliance intervals of AD 2002–01–04 are too long.

### Relevant Service Information

We have reviewed and approved the technical contents of GE Service Bulletin (SB) No. CF6–80E1 S/B 72–0217, Revision 2, dated January 5, 2004, that describes procedures for initial and repetitive flex borescope inspection of HPT S2 NGV P/Ns 1647M84G09 and 1647M84G10.

### FAA's Determination and Requirements of This AD

Although no airplanes that are registered in the United States use these GE CF6–80E1 model turbofan engines, the possibility exists that the engine model could be used on airplanes that are registered in the United States in the future. The unsafe condition described previously is likely to exist or develop on other GE CF6–80E1 model turbofan engines of the same type design. We are issuing this AD to prevent blade failure from HPT S2 NGV distress, which could result in an uncontained engine failure. This AD requires flex borescope inspections of HPT S2 NGVs installed in GE CF6–80E1 model turbofan engines. These actions are required at initial and repetitive compliance intervals that are reduced from the intervals in AD 2002–01–04. You must use the service information described previously to perform the actions required by this AD.

### FAA's Determination of the Effective Date

Since there are currently no domestic operators of this engine model, notice and opportunity for public comment before issuing this AD are unnecessary. Therefore, a situation exists that allows the immediate adoption of this regulation.

### Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written relevant data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES.** Include ''AD Docket No. 2001–NE–45–AD'' in the subject line of your comments. If you want us to acknowledge receipt of your mailed comments, send us a self-addressed, stamped postcard with the docket number written on it; we will date-stamp your postcard and mail it back to you. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify it. If a person contacts us verbally, and that contact relates to a substantive part of this AD, we will summarize the contact and place the summary in the docket. We will consider all comments received by the closing date and may amend the AD in light of those comments.

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

### Examining the AD Docket

You may examine the AD Docket (including any comments and service information), by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. *See* **ADDRESSES** for the location.

### Regulatory Findings

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

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

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

We prepared a summary of the costs to comply with this AD and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES.** Include ''AD Docket No. 2001–NE–45–AD'' in your request.

### List of Subjects in 14 CFR Part 39

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

### Adoption of the Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–12595 (67 FR 4326, January 30, 2002) and by adding a new airworthiness directive, Amendment 39–13625, to read as follows:

**2004–09–34 General Electric Company:** Amendment 39–13625. Docket No. 2001–NE–45–AD. Supersedes AD 2002–01–04, Amendment 39–12595.

#### Effective Date

(a) This airworthiness directive (AD) becomes effective May 26, 2004.

#### Affected ADs

(b) This AD supersedes AD 2002–01–04.

#### Applicability

(c) This AD applies to General Electric Company (GE) CF6–80E1 engine models with high pressure turbine (HPT) stage 2 (S2) nozzle guide vanes (NGVs), part number (P/N) 1647M84G09 or 1647M84G10, installed. These engines are installed on, but not limited to, Airbus A330 airplanes.

#### Unsafe Condition

(d) This AD results from inspection findings of HPT S2 NGVs that show cracks from distress could occur sooner and propagate faster than originally predicted. We are issuing this AD to prevent failure of HPT rotor blades from HPT S2 NGV distress, which could result in an uncontained engine failure.

#### Compliance

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

#### NGVs Previously Inspected by Flex Borescope

(f) For NGVs inspected by flex borescope before the effective date of this AD, reinspect or remove from service the NGVs using the Conditions and Reinspection intervals listed in the ''Inspection Table for Cracking in the Airfoil Outer Fillet,'' Figure 5, of GE Service Bulletin (SB) No. CF6–80E1 S/B 72–0217, Revision 2, dated January 5, 2004, or within 200 cycles-in-service-since-last inspection (CSLI), whichever is earlier.

#### NGVs Not Previously Inspected by Flex Borescope

(g) For NGVs not previously inspected by flex borescope, remove from service, or inspect using the Accomplishment Instructions of GE SB No. CF6–80E1 S/B 72–0217, Revision 2, dated January 5, 2004, at the following:

(1) For NGVs with more than 800 cycles-since-overhaul (CSO) on the effective date of this AD, within 50 cycles-in-service (CIS) after the effective date of this AD.

(2) For NGVs with 800 or fewer CSO on the effective date of this AD, at the first regular HPT blade inspection after 800 CSO, but before reaching 900 CSO.

(3) Reinspect or remove from service NGVs using the Conditions and Reinspection intervals listed in the ''Inspection Table for Cracking in the Airfoil Outer Fillet,'' Figure 5, of GE SB No. CF6–80E1 S/B 72–0217, Revision 2, dated January 5, 2004.

**Cycles-Since-Overhaul Defined**

(h) For the purposes of this AD, cycles-since-overhaul (CSO) is defined as cycles since repair as described in GE SB No. CF6–80E1 S/B 72–0164, dated March 16, 1999.

**Engines Not Affected by this AD**

(i) Engines configured with HPT S2 NGV P/Ns 1647M84G05, 1647M84G06, 2080M47G01, 2080M47G02, 2086M62G03, or 2086M62G04 are not affected by this AD.

**Alternative Methods of Compliance**

(j) The Manager, Engine Certification Office, has the authority to approve alternative methods of compliance for this AD if requested using the procedures found in 14 CFR 39.19.

**Material Incorporated by Reference**

(k) You must use General Electric Company Service Bulletin No. CF6–80E1 S/B 72–0217, Revision 2, dated January 5, 2004, to perform the inspections required by this AD. The Director of the Federal Register approved the incorporation by reference of this service bulletin in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You can get a copy from General Electric Company via Lockheed Martin Technology Services, 10525 Chester Road, Suite C, Cincinnati, Ohio 45215, telephone (513) 672–8400, fax (513) 672–8422. You may review copies at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

**Related Information**

(l) None.

Issued in Burlington, Massachusetts, on April 29, 2004.

**Jay J. Pardee,**

*Manager, Engine and Propeller Directorate, Aircraft Certification Service.*

[FR Doc. 04–10371 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17427; Airspace Docket No. 04–ACE–27]**

## Modification of Class E Airspace; Oshkosh, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Oshkosh, NE. A review of controlled airspace for Garden County Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Oshkosh, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 7, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17427/Airspace Docket No. 04–ACE–27, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Oshkosh, NE. An examination of controlled airspace for Garden County Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination identified discrepancies in the location of the Oshkosh nondirectional radio beacon (NDB) used in the Class E airspace legal description and also that the legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area extension should be defined as a distance from the Oshkosh NDB and the bearing corrected. This amendment expands the airspace area from a 6-mile radius to a 6.5-mile radius of Garden County Airport, corrects the identified location of the Oshkosh NDB in the legal description, defines the airspace extension in relation to the Oshkosh NDB, corrects the NDB bearing from 303° to 300° and brings the legal description of the Oshkosh, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Direct Final Rule Procedure

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

### Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory

decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17427/Airspace Docket No. 04–ACE–27.'' The postcard will be date/time stamped and returned to the commenter.

**Agency Findings**

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**ACE NE E5 Oshkosh, NE**

Garden County Airport, NE
(Lat. 41°24′04″ N., long 102°21′18″ W.)
Oshkosh NDB
(Lat. 41°24′04″ N., long 102°21′03″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Garden County Airport and within 2.6 miles each side of the 300° bearing from the Oshkosh NDB extending from the 6.5 mile radius of the airport to 7 miles northwest of the NDB.

* * * * *

Issued in Kansas City, MO on April 27, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–10636 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17431; Airspace Docket No. 04–ACE–29]**

## Modification of Class E Airspace; Tekamah, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comment.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Tekamah, NE. A review of controlled airspace for Tekamah Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description of the Tekamah, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 8, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17431/Airspace Docket No. 04–ACE–29, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Tekamah, NE. An examination of controlled airspace for Tekamah Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also revealed that the Class E airspace legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area extension should be defined as a distance from the Tekamah very high frequency omni-directional radio range (VOR) and the radial corrected. This amendment expands the airspace area from a 6-mile radius to a 6.4-mile radius of Tekamah Municipal Airport, defines the extension in relation to the Tekamah VOR, corrects the VOR radial from 129° to 130° and brings the legal description of the Tekamah, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in

paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Direct Final Rule Procedure**

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

**Comment Invited**

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17431/Airspace Docket No. 04–ACE–29.'' The postcard will be date/time stamped and returned to the commenter.

**Agency Findings**

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**ACE NE E5 Tekamah, NE**

Tekamah Municipal Airport, NE
(Lat 41°45′49″ N., long. 96°10′41″ W.)
Tekamah VOR
(Lat 41°45′35″ N., long. 96°10′43″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Tekamah Municipal Airport and within 2.6 miles each side of the Tekamah VOR 130° radial extending from the 6.4 mile radius of the airport to 7 miles southeast of the VOR.

* * * * *

Issued in Kansas City, MO, on April 27, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–10637 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17433; Airspace Docket No. 04–ACE–31]**

## Modification of Class E Airspace; Kimball, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Kimball, NE. Kimball Municipal Airport has been renamed Kimball Municipal Airport/Robert E. Arraj Field. An examination of controlled airspace for Kimball, NE indicates it does not comply with criteria set forth in FAA Orders.

This action corrects the discrepancies by modifying the Kimball, NE Class E airspace area, replaces ''Kimball Municipal Airport'' in the legal description of Kimball, NE Class E airspace area with ''Kimball Municipal Airport/Robert E. Arraj Field'' and brings the legal description into compliance with FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 11, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17433/Airspace Docket No. 04–ACE–31, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m.,

Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Kimball, NE. Kimball Municipal Airport has been renamed Kimball Municipal Airport/Robert E. Arraj Field. An examination of Kimball, NE Class E airspace revealed it does not meet criteria as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The examination also identified a discrepancy in the bearing from the Kimball nondirectional radio beacon (NDB) used in the Class E airspace legal description and also that the legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area extension should be defined as a distance from the Kimball NDB and the bearing corrected. This amendment replaces ''Kimball Memorial Municipal Airport,'' the former name of the airport, with ''Kimball Municipal Airport/Robert E. Arraj Field,'' the new name of the airport, in the legal description, defines the airspace extension in relation to the Kimball NDB, corrects the NDB bearing from 120° to 124° and brings the legal description of the Kimball, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

## The Direct Final Rule Procedure

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

## Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledging receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17433/Airspace Docket No. 04–ACE–31.'' The postcard will be date/time stamped and returned to the commenter.

## Agency Findings

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

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

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**ACE NE E5 Kimball, NE**

Kimball Municipal Airport/Robert E. Arraj Field, NE
(Lat. 41°11′17″ N., long. 103°40′39″ W.)
Kimball NDB
(Lat. 41°11′29″ N., long. 103°40′11″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Kimball Municipal Airport/Robert E. Arraj Field and within 2.6 miles each side of the 124° bearing from the Kimball NDB extending from the 6.6 mile radius of the airport to 7 miles southeast of the NDB.

* * * * *

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

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–10638 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2004–17432; Airspace Docket No. 04–ACE–30]**

## Modification of Class E Airspace; Superior, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Superior, NE. A review of controlled airspace for Superior Municipal Airport revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Superior, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for including in the Rules Docket must be received on or before June 8, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17432/ Airspace Docket No. 04–ACE–30, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Superior, NE. An examination of controlled airspace for Superior Municipal Airport revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination also identified discrepancies in the Superior Municipal Airport ARP used in the Class E airspace legal description. This amendment expands the airspace area from a 6-mile radius to a 6.5-mile radius of Superior Municipal Airport, corrects the ARP in the legal description and brings the legal description of the Superior, NE Class E airspace area into compliance with FAA Order 7400.2E. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Direct Final Rule Procedure

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

### Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17432/Airspace Docket No. 04–ACE–30.'' The postcard will be date/time stamped and returned to the commenter.

### Agency Findings

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

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 19779;) and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### Adoption of the Amendment

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**ACE NE E5 Superior, NE**

Superior Municipal Airport, NE
(Lat. 40°02′47 ″ N., long. 98°03′36″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Superior Municipal Airport.

* * * * *

Issued in Kansas City, MO, on April 27, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–10639 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–M**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17426; Airspace Docket No. 04–ACE–26]**

## Modification of Class E Airspace; Minden, NE.

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Minden, NE. A review of controlled airspace for Pioneer Village Field revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Minden, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 7, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17426/ Airspace Docket No. 04–ACE–26, at the beginning of your comments. You may also submit comments on the internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

**FOR FURTHER INFORMATION CONTACT:** Brenda Mumper, Air Traffic Division, Airspace Branch, ACE–520A, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2534.

**SUPPLEMENTARY INFORMATION:** This amendment to 15 CFR 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Minden, NE. An examination of controlled airspace for Pioneer Village Field revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (AFP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher ten of a mile. The examination identified a discrepancy in the Pioneer Village Field ARP used in the Class E airspace legal description and also that the legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The Class E airspace area extension should be defined in relation to a radial of the Kearney very high frequency omni-directional radio range (VOR) and its limit extended to include the distance from the runway threshold to the ARP. This amendment expands the airspace area from a 6-mile radius to a 6.4-mile radius of Pioneer Village Field, corrects the ARP in the legal description, defines the extension in relation to the Kearney VOR 168° radial, extends the extension from 9.5 miles to 9.8 miles south of the airport and brings the legal description of the Minden, NE Class E airspace area into compliance with FAA Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.19L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

### The Direct Final Rule Procedure

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

### Comments Invited

Interested parties are invited to participate in this rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above.

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17426/Airspace Docket No. 04–ACE–26.'' The postcard will be date/time stamped and returned to the commenter.

**Agency Findings**

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**ACE NE E5 Minden, NE**

Minden, Pioneer Village Field, NE
(Lat. 40°30′54″N., long. 98°56′44″W.)
Kearney VOR
(Lat. 40°43′32″N., long. 99°00′18″W.)

That airspace extending upward from 700 feet above the surface within a 6.4–mile radius of Pioneer Village Field and within 3.5 miles each side of the Kearney VOOR 168° radial extending from the 6.4–mile radius to 9.8 miles south of the airport.

* * * * *

Issued in Kansas City, MO, on April 27, 2004.

**Paul J. Sheridan**

*Acting Manager, Air Traffic Division, Central Region*

[FR Doc. 04–10640 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17425; Airspace Docket No. 04–ACE–25]**

## Modification of Class E Airspace; Holdrege, NE

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** This action amends Title 14 Code of Federal Regulations, part 71 (14 CFR 71) by revising Class E airspace at Holdrege, NE. A review of controlled airspace for Brewster Field revealed it does not comply with the criteria for 700 feet above ground level (AGL) airspace required for diverse departures. The review also identified discrepancies in the legal description for the Holdrege, NE Class E airspace area. The area is modified and enlarged to conform to the criteria in FAA Orders.

**DATES:** This direct final rule is effective on 0901 UTC, August 5, 2004. Comments for inclusion in the Rules Docket must be received on or before June 4, 2004.

**ADDRESSES:** Send comments on this proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17425/Airspace Docket No. 04–ACE–25, at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

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

**SUPPLEMENTARY INFORMATION:** This amendment to 14 CFR part 71 modifies the Class E airspace area extending upward from 700 feet above the surface at Holdrege, NE. An examination of controlled airspace for Brewster Field revealed it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2E, Procedures for Handling Airspace Matters. The criteria in FAA Order 7400.2E for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the airport reference point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The examination identified discrepancies in the Brewster Field ARP used in the Class E airspace legal description and also that the legal description was not in compliance with FAA Order 8260.19C, Flight Procedures and Airspace. The limit of the Class E airspace area north extension should be defined as a distance from the Holdrege nondirectional radio beacon (NDB) and the bearing corrected. The limit of the Class E airspace area northeast extension should be extended and the Kearney very high frequency omni-directional radio range (VOR) radial corrected. This amendment expands the airspace area from a 6-mile radius to a 6.6-mile radius of Brewster Field, corrects the ARP in the legal description, defines the north extension in relation to the Holdrege ND, corrects the NDB bearing from 016° to 014°, extends the northeast extension from 10.6 miles to 11 miles northeast of the airport, corrects the Kearney VOR radial from 220° to 222° and brings the legal description of the Holdrege, NE Class E airspace area into compliance with FAA

Orders 7400.2E and 8260.19C. This area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9L, Airspace Designations and Reporting Points, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

**The Direct Final Rule Procedure**

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

**Comments Invited**

Interested parties are invited to participate in this rulemaking by submitting such written date, views, or arguments, as they may desire. comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2004–17425/Airspace Docket No. 04–ACE–25.'' The postcard will be date/time stamped and returned to the commenter.

**Agency Findings**

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

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

**List of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**Adoption of the Amendment**

■ Accordingly, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

## PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is amended as follows:

* * * * *

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

* * * * *

**ACE NE E5 Holdrege, NE**

Holdrege, Brewster Field, NE

(Lat. 40°27′10″ N., long. 99°20′14″ W).

Holdrege NDB

(Lat. 40°26′53″ N., long. 99°20′27″ W.)

Kearney VOR

(lat. 40°43′32″ N., long. 99°00′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Brewster Field and within 2.6 miles each side of the 014° bearing from the Holdrege NDB extending from the 6.6-mile radius of the airport to 7 miles north of the NDB and within 2.6 miles each side of the Kearney VOR 222° radial extending from the 6.6-mile radius to 11 miles northeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 27, 2004.

**Paul J. Sheridan,**

*Acting Manager, Air Traffic Division, Central Region.*

[FR Doc. 04–10641 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Food and Drug Administration

## 21 CFR Part 866

**[Docket No. 2004P–0126]**

## Medical Devices; Immunology and Microbiology Devices; Classification of the Immunomagnetic Circulating Cancer Cell Selection and Enumeration System

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is classifying the Immunomagnetic Circulating Cancer Cell Selection and Enumeration System device into class II (special controls). The special control that will apply to the device is the guidance document entitled ''Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System.'' The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976 (the amendments), the Safe Medical Devices Act of 1990 (the SMDA), the Food and Drug Administration Modernization Act of 1997 (FDAMA), and the Medical Device User Fee and Modernization Act of 2002 (MDUFMA). The agency is classifying the device into class II (special controls) in order to provide a reasonable assurance of safety and effectiveness of the device. Elsewhere in this issue of

the **Federal Register**, FDA is publishing a notice of availability of a guidance document that is the special control for this device.

**DATES:** This rule is effective June 10, 2004. The classification was effective January 21, 2004.

**FOR FURTHER INFORMATION CONTACT:** Nina Chace, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, ext. 138.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the amendments, generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of FDA's regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification (513(f)(2) of the act).

In accordance with section 513(f)(1) of the act, FDA issued a notice on December 24, 2003, classifying the CellSearch Epithelial Cell Kit/Cell Spotter Analyzer in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On December 24, 2003, Veridex, LLC, submitted a petition requesting classification of the CellSearch Epithelial Cell Kit/Cell Spotter Analyzer under section 513(f)(2) of the act. The manufacturer recommended that the device be classified into class II (Ref. 1).

In accordance with 513(f)(2) of the act, FDA reviewed the petition in order to classify the device under the criteria for classification set forth in 513(a)(1) of the act. Devices are to be classified into class II if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide reasonable assurance of the safety and effectiveness of the device for its intended use. After review of the information submitted in the petition, FDA determined that the CellSearch Epithelial Cell Kit/Cell Spotter Analyzer can be classified in class II with the establishment of special controls. FDA believes these special controls, in addition to general controls, will provide reasonable assurance of safety and effectiveness of the device.

The device is assigned the generic name immunomagnetic circulating cancer cell selection and enumeration system and is identified as a device consisting of biological probes, fluorochromes, and other reagents; preservation and preparation devices; and a semiautomated analytical instrument to select and count circulating cancer cells in a prepared sample of whole blood. This device is intended for adjunctive use in monitoring or predicting cancer disease progression, response to therapy, and for the detection of recurrent disease.

FDA has identified no direct risks to health when tests are used as an aid to monitoring and predicting cancer disease progression and response to therapy. However, failure of the test to perform as indicated, or an error in interpretation of results, could lead to misdiagnosis and improper treatment, improper patient management, improper treatment selection and dosing, and failure to identify circulating cancer cells. Consequently, FDA has identified the following risks to health associated with this type of device: (1) False negative, false low cancer cell count; and (2) false positive, false high cancer cell count. Therefore, in addition to the general controls of the act, the device is subject to special controls, identified as the guidance document entitled ''Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System.''

The class II special controls guidance document provides information on how to meet premarket (510(k)) submission requirements for the device including recommendations on validation of performance characteristics, including software validation; control methods; reproducibility; and clinical studies. FDA believes that following the class II special controls guidance document addresses the risks to health identified in the previous paragraph. Therefore, on January 21, 2004, FDA issued an order to the petitioner classifying the device into class II. FDA is codifying this classification by adding 21 CFR 866.6020.

Following the effective date of this final classification rule, any firm submitting a 510(k) premarket notification for an immunomagnetic circulating cancer cell selection and enumeration system will need to address the issues covered in the special controls guidance. However, the firm need only show that its device meets the recommendations of the guidance or in some other way provides equivalent assurance of safety and effectiveness.

Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this type of device, FDA has determined that premarket notification is necessary to provide reasonable assurance of safety and effectiveness; therefore, the device is not exempt from premarket notification requirements. The device is used as an adjunct in monitoring or predicting cancer disease progression and response to therapy and for detection of recurrent disease. FDA's review of the test's sensitivity, specificity, and reproducibility with regard to key performance characteristics, test methodology and other relevant performance data, will ensure that acceptable levels of performance for both safety and effectiveness will be addressed before marketing clearance. Thus, persons who intend to market this type of device must submit to FDA a premarket notification, prior to marketing the device, which contains information about the immunomagnetic circulating cancer cell selection and enumeration system they intend to market.

## II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

## III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the final rule is not a significant regulatory action as defined by the Executive order and so it is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Classification of these devices into class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The agency, therefore, certifies that the final rule will not have a significant impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate and, therefore, a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act is not required.

## IV. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

## V. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

## VI. Reference

The following reference has been placed on display in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Petition from Veridex, LLC, dated December 24, 2003.

## List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

## PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for 21 CFR part 866 continues to read as follows:

**Authority:** 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Section 866.6020 is added to subpart G to read as follows:

### § 866.6020 Immunomagnetic circulating cancer cell selection and enumeration system.

(a) *Identification.* An immunomagnetic circulating cancer cell selection and enumeration system is a device that consists of biological probes, fluorochromes, and other reagents; preservation and preparation devices; and a semiautomated analytical instrument to select and count circulating cancer cells in a prepared sample of whole blood. This device is intended for adjunctive use in monitoring or predicting cancer disease progression, response to therapy, and for the detection of recurrent disease.

(b) *Classification.* Class II (special controls). The special control for this device is FDA's guidance document entitled ''Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System.'' See § 866.1(e) for availability of this guidance document.

Dated: April 26, 2004.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 04–10592 Filed 5–10–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9127]**

**RIN 1545–BC47**

## Reduction of Tax Attributes Due to Discharge of Indebtedness

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final and temporary regulations.

**SUMMARY:** This document contains final regulations regarding the reduction of tax attributes under sections 108 and 1017 of the Internal Revenue Code. These final regulations affect taxpayers that realize income from the discharge of indebtedness that is excluded from gross income pursuant to section 108.

**DATES:** *Effective Date:* These final regulations are effective May 10, 2004.

*Applicability Date:* These final regulations apply to discharges of indebtedness occurring on or after May 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Theresa M. Kolish (202–622–7530) of the Office of Associate Chief Counsel (Corporate) (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background and Explanation of Provisions

On July 18, 2003, the IRS and Treasury Department promulgated temporary regulations providing guidance regarding the application of the attribute reduction rules of sections 108 and 1017. Those temporary regulations clarified that, in the case of a transaction described in section 381(a) that ends a year in which the distributor or transferor corporation excludes income from the discharge of indebtedness from gross income under section 108(a)(excluded COD income), any tax attributes to which the acquiring corporation succeeds, including the basis of property acquired by the acquiring corporation in the transaction, must reflect the reductions required by

sections 108 and 1017. For this purpose, all attributes listed in section 108(b)(2) of the distributor or transferor corporation immediately prior to the transaction described in section 381(a), including the basis of property, but after the determination of tax for the year of the discharge, are available for reduction under section 108(b)(2).

The temporary regulations were published in the **Federal Register** (68 FR 42590) for July 18, 2003, and a notice of proposed rulemaking (Reg-113112–03) cross-referencing the temporary regulations was published in the **Federal Register** for the same day (68 FR 42652). No public hearing was requested or held. One written comment was received. The following paragraphs describe the written comment received and the changes made to the temporary regulations in these final regulations.

The comment received argued that the rules of the temporary regulations are contrary to the relevant provisions of the Internal Revenue Code. The IRS and Treasury Department continue to believe that the rules of sections 108(b)(4)(A) and 1017 merely prescribe an ordering of calculations and that the rules of the temporary regulations are consistent with the policies underlying sections 108 and 1017 and the corporate reorganization provisions, including ''deferring, but eventually collecting within a reasonable period, tax on ordinary income realized from debt discharge.'' S. Rep. No. 96–1035, at 10 (1980).

The IRS and Treasury Department, however, have become aware that taxpayers are taking the position that the rules of the temporary regulations do not apply in certain cases to reduce the attributes to which the acquiring corporation succeeded as a result of certain transactions described in section 381(a). Therefore, these final regulations make certain modifications to the rules of the temporary regulations to ensure that, to the extent possible, the transferor corporation's excluded COD income is applied to reduce attributes in a manner that will effect a deferral, rather than a permanent elimination, of income. In that regard, the final regulations apply in cases in which the taxpayer realizes excluded COD income either during or after the taxable year in which the taxpayer is the distributor or transferor of assets in a transaction described in section 381(a). In addition, it provides that the basis of stock or securities of the acquiring corporation received by the taxpayer in exchange for the transferred assets in the transaction described in section 381(a) is not available for reduction under section 108(b)(2).

**Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

**Drafting Information**

The principal author of these regulations is Theresa M. Kolish, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

**List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

**Final Amendments to the Regulations**

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by removing the entry for ''1.108–7T'' and continues to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.108–7T is redesignated as § 1.108–7 and amended as follows:

■ 1. The language ''(temporary)'' is removed from the section heading.

■ 2. Paragraphs (c) and (e) are revised. The revisions read as follows:

**§ 1.108–7 Reduction of attributes.**

* * * * *

(c) *Transactions to which section 381 applies.* If a taxpayer realizes COD income that is excluded from gross income under section 108(a) either during or after a taxable year in which the taxpayer is the distributor or transferor of assets in a transaction described in section 381(a), any tax attributes to which the acquiring corporation succeeds, including the basis of property acquired by the acquiring corporation in the transaction, must reflect the reductions required by section 108(b). For this purpose, all attributes listed in section 108(b)(2) immediately prior to the transaction described in section 381(a), but after the determination of tax for the year of the distribution or transfer of assets, including basis of property, will be available for reduction under section 108(b)(2). However, the basis of stock or securities of the acquiring corporation, if any, received by the taxpayer in exchange for the transferred assets shall not be available for reduction under section 108(b)(2).

* * * * *

(e) *Effective date.* This section applies to discharges of indebtedness occurring on or after May 10, 2004.

■ **Par. 3.** Section 1.1017–1 is amended by revising paragraph (b)(4) to read as follows:

**§ 1.1017–1 Basis reductions following a discharge of indebtedness.**

* * * * *

(b) * * *

(4) *Transactions to which section 381 applies.* If a taxpayer realizes COD income that is excluded from gross income under section 108(a) either during or after a taxable year in which the taxpayer is the distributor or transferor of assets in a transaction described in section 381(a), the basis of property acquired by the acquiring corporation in the transaction must reflect the reductions required by section 1017 and this section. For this purpose, the basis of property of the distributor or transferor corporation immediately prior to the transaction described in section 381(a), but after the determination of tax for the year of the distribution or transfer of assets, will be available for reduction under section 108(b)(2). However, the basis of stock or securities of the acquiring corporation, if any, received by the taxpayer in exchange for the transferred assets shall not be available for reduction under section 108(b)(2). *See* § 1.108–7. This paragraph (b)(4) applies to discharges of indebtedness occurring on or after May 10, 2004.

■ **Par. 4.** In § 1.1017–1T, paragraph (b)(4) is removed and the entry for paragraphs (a) through (b)(3) is revised to read as follows:

**§ 1.1017–1T Basis reductions following a discharge of indebtedness (temporary).**

(a) through (b)(4) [Reserved]. For further guidance, *see* § 1.1017–1(a) through (b)(4).

* * * * *

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: May 4, 2004.

**Gregory F. Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04–10571 Filed 5–10–04; 8:45 am]

**BILLING CODE 4830–01–P**

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## DEPARTMENT OF THE TREASURY

## Internal Revenue Service

## 26 CFR Part 1

**[TD 9128]**

**RIN 1545–BB73**

## Real Estate Mortgage Investment Conduits; Application of Section 446 With Respect to Inducement Fees

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulation.

**SUMMARY:** This document contains final regulations relating to the proper timing and source of income from fees received to induce taxpayers to become the holders of noneconomic residual interests in Real Estate Mortgage Investment Conduits (REMICs).

**DATES:** *Effective Date:* These regulations are effective May 11, 2004.

*Applicability Dates:* For dates of applicability of the final regulations, *see* §§ 1.446–6(g) and 1.863–1(f).

**FOR FURTHER INFORMATION CONTACT:** For information concerning accounting for inducement fees relating to noneconomic REMIC residual interests, contact John W. Rogers III at (202) 622–3950 (not a toll-free number). For information concerning the source of REMIC inducement fee income, contact Bethany Ingwalson at (202) 622–3850 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under sections 446(b)(relating to general rules for methods of accounting), 860C (relating to other definitions and special rules applicable to REMICs), and 863(a)(relating to special rules for determining source) of the Internal Revenue Code of 1986 (Code). On July 21, 2003, the IRS and Treasury Department published a notice of proposed rulemaking (REG–162625–02) in the **Federal Register** (68 FR 43055).

In the notice of proposed rulemaking the IRS and Treasury Department requested comments on the proper method of accounting to be used by taxpayers for inducement fee income. No written or electronic comments were received from the public in response to the notice of proposed rulemaking. No requests to speak at the public hearing were received, and, accordingly, the hearing was canceled. Therefore, these final regulations adopt without substantive changes the proposed regulations set out in the notice of proposed rulemaking.

### Explanation of Provisions

Final regulations governing REMICs, issued in 1992, contain rules governing the transfer of noneconomic residual interests. Those regulations do not, however, contain rules that address the transferee's treatment of the fee received to induce the transferee to become the holder of a noneconomic residual interest. Following release of the final REMIC regulations, the IRS and the Treasury Department received requests for guidance on the proper method of accounting to be used by taxpayers for inducement fee income. These regulations provide rules relating to the proper timing and source of income from an inducement fee received in connection with becoming the holder of a noneconomic residual interest in a REMIC.

The notice of proposed rulemaking published on July 21, 2003, stated that, to clearly reflect income, an inducement fee must be included in income over a period that is reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest. The notice of proposed rulemaking further stated that an inducement fee generally may not be taken into account in a single tax year. The notice of proposed rulemaking also set forth two safe harbor methods of accounting for inducement fees and contained a rule clarifying that an inducement fee is income from sources within the United States. The final regulations adopt these provisions without substantive change. For further information on the rationale for the rules set out in these final regulations, *see* the preamble for the proposed regulations in the notice of proposed rulemaking.

The effective date provision of § 1.446–6(g) contained in the notice of proposed rulemaking stated that these regulations would become effective upon publication of the final regulations in the **Federal Register**. The notice of proposed rulemaking specifically requested comments on whether the applicability of these regulations should be limited to transactions arising on or after their effective date and whether some delay in the effective date of these regulations is warranted. No comments were received from the public in response to this request. In finalizing these regulations, the IRS and Treasury Department have determined not to limit the applicability of these regulations to transactions arising on or after the effective date of the final regulations or to delay the effective date. The effective date provision in § 1.446–6(g), therefore, is also adopted without substantive change.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### Drafting Information

The principal author of these regulations is John W. Rogers III, Office of Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and the Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

## PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read, in part, as follows:

**Authority:** 26 U.S.C. 7805 * * *

Section 1.446–6 also issued under 26 U.S.C. 446 and 26 U.S.C. 860G; * * *

■ **Par. 2.** Section 1.446–6 is added to read as follows:

**§ 1.446–6 REMIC inducement fees.**

(a) *Purpose.* This section provides specific timing rules for the clear reflection of income from an inducement fee received in connection with becoming the holder of a noneconomic REMIC residual interest. An inducement fee must be included in income over a period reasonably related to the period during which the applicable REMIC is expected to generate taxable income or net loss allocable to the holder of the noneconomic residual interest.

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

(1) *Applicable REMIC.* The applicable REMIC is the REMIC that issued the noneconomic residual interest with respect to which the inducement fee is paid.

(2) *Inducement fee.* An inducement fee is the amount paid to induce a person to become the holder of a noneconomic residual interest in an applicable REMIC.

(3) *Noneconomic residual interest.* A REMIC residual interest is a noneconomic residual interest if it is a noneconomic residual interest within the meaning of § 1.860E–1(c)(2).

(4) *Remaining anticipated weighted average life.* The remaining anticipated weighted average life is the anticipated weighted average life determined using the methodology set forth in § 1.860E–1(a)(3)(iv) applied as of the date of acquisition of the noneconomic residual interest.

(5) *REMIC.* The term REMIC has the same meaning in this section as given in § 1.860D–1.

(c) *General rule.* All taxpayers, regardless of their overall method of accounting, must recognize an inducement fee over the remaining expected life of the applicable REMIC in a manner that reasonably reflects, without regard to this paragraph, the after-tax costs and benefits of holding that noneconomic residual interest.

(d) *Special rule on disposition of a residual interest.* If any portion of an inducement fee received with respect to becoming the holder of a noneconomic residual interest in an applicable REMIC has not been recognized in full by the holder as of the time the holder transfers, or otherwise ceases to be the holder for Federal tax purposes of, that residual interest in the applicable REMIC, then the holder must include the unrecognized portion of the inducement fee in income at that time. This rule does not apply to a transaction to which section 381(c)(4) applies.

(e) *Safe harbors.* If inducement fees are recognized in accordance with a method described in this paragraph (e), that method complies with the requirements of paragraph (c) of this section.

(1) *The book method.* Under the book method, an inducement fee is recognized in accordance with the method of accounting, and over the same period, used by the taxpayer for financial reporting purposes (including consolidated financial statements to shareholders, partners, beneficiaries, and other proprietors and for credit purposes), provided that the inducement fee is included in income for financial reporting purposes over a period that is not shorter than the period during which the applicable REMIC is expected to generate taxable income.

(2) *The modified REMIC regulatory method.* Under the modified REMIC regulatory method, the inducement fee is recognized ratably over the remaining anticipated weighted average life of the applicable REMIC as if the inducement fee were unrecognized gain being included in gross income under § 1.860F–2(b)(4)(iii).

(3) *Additional safe harbor methods.* The Commissioner, by revenue ruling or revenue procedure (*see* § 1.601(d)(2) of this chapter), may provide additional safe harbor methods for recognizing inducement fees relating to noneconomic REMIC residual interests.

(f) *Method of accounting.* The treatment of inducement fees is a method of accounting to which the provisions of sections 446 and 481 and the regulations thereunder apply. A taxpayer is generally permitted to adopt a method of accounting for inducement fees that satisfies the requirements of paragraph (c) of this section. Once a taxpayer adopts a method of accounting for inducement fees, that method must be applied consistently to all inducement fees received in connection with noneconomic REMIC residual interests and may be changed only with the consent of the Commissioner, as provided by section 446(e) and the regulations and procedures thereunder.

(g) *Effective date.* This section is applicable for taxable years ending on or after May 11, 2004.

■ **Par. 3.** Section 1.860A–0 is amended by adding an entry in the outline for § 1.860C–1(d) to read as follows:

**1.860A–0 Outline of REMIC provisions.**

* * * * *

**1.860C–1 Taxation of holders of residual interests.**

* * * * *

(d) Treatment of REMIC inducement fees.

* * * * *

■ **Par. 4.** Section 1.860C–1 is amended by adding paragraph (d) to read as follows:

**1.860C–1 Taxation of holders of residual interests.**

* * * * *

(d) For rules on the proper accounting for income from inducement fees, *see* § 1.446–6.

* * * * *

■ **Par. 5.** Section 1.863–0 is amended by:

■ 1. Revising the entry for the section heading for § 1.863–1.

■ 2. Adding an entry for § 1.863–1(d).

■ 3. Redesignating the entry for § 1.863–1(e) as § 1.863–1(f).

■ 4. Adding a new entry for § 1.863–1(e).

The additions and revisions read as follows:

**§ 1.863–0 Table of contents.**

* * * * *

**§ 1.863–1 Allocation of gross income under section 863(a).**

* * * * *

(d) Scholarships, fellowship grants, grants, prizes and awards.

(e) REMIC inducement fees.

* * * * *

■ **Par. 6.** Section 1.863–1 is amended as follows:

■ 1. Paragraph (e) is revised.

■ 2. Paragraph (f) is added.

The revision and addition read as follows:

**§ 1.863–1 Allocation of gross income under section 863(a).**

* * * * *

(e) *REMIC inducement fees.* An inducement fee (as defined in § 1.446–6(b)(2)) shall be treated as income from sources within the United States.

(f) *Effective dates.* The rules of paragraphs (a), (b), and (c) of this section apply to taxable years beginning after December 30, 1996. However, taxpayers may apply the rules of paragraphs (a), (b), and (c) of this section for taxable years beginning after July 11, 1995, and on or before December 30, 1996. For years beginning before December 30, 1996, see § 1.863–1 (as contained in 26 CFR part 1 revised as of April 1, 1996). *See* paragraph (d)(4) of this section for rules regarding the applicability date of paragraph (d) of this section. Paragraph (e) of this section

is applicable for taxable years ending on or after May 11, 2004.

**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

Approved: May 4, 2004.

**Gregory Jenner,**

*Acting Assistant Secretary of the Treasury.*

[FR Doc. 04–10684 Filed 5–7–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[CGD07–04–021]**

**RIN 1625–AA09**

## Drawbridge Operation Regulations; Stono River; Mile 11.0 at Johns Island, SC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulations governing the operation of the Maybank Highway Bridge, Stono River mile 11.0, Johns Island, South Carolina. This rule is needed to provide for worker safety while preparations are made for the removal of the bridge. The bridge will open on signal, except that from 4 p.m. to 9 a.m., the bridge will remain closed to navigation unless a 12-hour notification is made to the bridge owner.

**DATES:** This rule is effective from May 11, 2004, until December 30, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket CGD07–04–021 and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch, at (305) 415–6744.

**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. Publishing an NPRM was impracticable and contrary to the public interest, because the rule is needed to provide for worker safety while preparations are made for the removal of the bridge.

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 **Federal Register** publication. The current bridge logs provide documentation that this bridge has not opened during the requested closure times. However, safety concerns arising from the bridge removal process require official closure of the bridge to navigation immediately. This rule provides provisions for vessels to transit through the bridge during the requested closure times.

### Background and Purpose

The Maybank Highway Bridge, Stono River mile 11.0, Johns Island, South Carolina, is being replaced with a high-level fixed bridge.

The South Carolina Department of Transportation notified the Coast Guard on December 9, 2003, that the current operating schedule for this bridge does not meet the needs of the Department. On December 22, 2003, the owner of the bridge facsimiled the bridge logs to this office for documentation. The bridge logs indicated that, for the past six months, no bridge openings have been requested during nighttime hours. For the reasons stated above, the owner of the bridge requested that the regulations be changed to reflect the current operation of the bridge. The bridge will be required to open on signal from 9 a.m. to 4 p.m. every day. At all other times, an opening will be available if a 12-hour notice is provided to the bridge owner at 843–830–9297. In cases of emergency, the bridge will be opened as soon as possible.

### Discussion of Rule

The draw of the Maybank Highway Bridge shall open on signal from 9 a.m. to 4 p.m. From 4 p.m. to 9 a.m., the bridge will remain closed to navigation unless a 12-hour advance notification is provided to the owner of the bridge at 843–830–9297. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

### 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). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. The rule will not affect vessel traffic through this bridge, as no openings have been requested during the six months prior to this rule, and vessel traffic can make arrangements for a bridge opening during the closed periods.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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 would not have a significant economic impact on a substantial number of small entities, because the regulations will not affect the current pattern of marine traffic through this bridge, yet still provide for the reasonable needs of navigation.

If you think that 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 to the address under **ADDRESSES.** In your comment, explain 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 rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in **FOR FURTHER INFORMATION CONTACT**.

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 would not result in such an expenditure, we do discuss the effects of this rule elsewhere in the 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 would not create an environmental risk to health or risk to safety that might 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 M16475.1D, 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 (32)(e), of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for Part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. From 9 a.m., May 11, 2004, until 9 a.m. on December 30, 2004, § 117.937 is suspended and new § 117.T940 is added as follows:

**§ 117.T940 Stono River, mile 11.0 at Johns Island, SC.**

The draw of the Maybank Highway Bridge shall open on signal from 9 a.m. to 4 p.m. From 4 p.m. to 9 a.m. the bridge will remain closed to navigation unless a 12-hour advance notification is provided to the owner of the bridge at 843–830–9297. The draw shall open as soon as possible for the passage of tugs with tows, public vessels of the United States and vessels in a situation where a delay would endanger life or property.

Dated: April 30, 2004.

**Harvey E. Johnson, Jr.,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 04–10635 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–15–P

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD01–03–025]**

**RIN 1625–AA00**

## Safety Zone; Coast Guard Station Fire Island, Fire Island, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a safety zone in the waters adjacent to Coast Guard Station Fire Island, Fire Island, New York. This zone ensures safety of the boating community and Coast Guard vessels when prompt response is needed for Coast Guard vessels to respond to mariners' or other requests for assistance. This zone excludes all vessels from operating within the prescribed safety zone without first obtaining authorization from the Captain of the Port, Long Island Sound.

**DATES:** This rule is effective May 15, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01–03–025 and are available for inspection or copying at Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468–4429.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On February 10, 2004, we published a notice of proposed rulemaking (NPRM) entitled ''Safety Zone; Coast Guard Station Fire Island, Fire Island, NY'' in the **Federal Register** (69 FR 6221). Good cause exists for making this rule effective in less than 30 days after publication. Throughout the summer months and fishing season, the waters immediately surrounding the Station and within a quarter mile radius of the Station become heavily congested with vessels, mainly consisting of recreational boaters. Any delay in implementing this zone would be contrary to the public interest as the accumulation of vessels immediately in front of the station presents a continuous hindrance to the safety of Coast Guard vessels responding to search and rescue or other maritime emergencies and hampers their ability to respond expeditiously. Any delay in implementing this zone would create unnecessary risk for Coast Guard vessels responding to maritime emergencies well into the boating season when there is an increased occurrence of search and rescue and other maritime emergencies. No public hearing was requested, and none was held.

**Background and Purpose**

United States Coast Guard Station (STA) Fire Island is located in Babylon, New York, on the northern shore of Fire Island, Long Island, New York. The waters north of the Station, Fire Island Inlet, attract numerous recreational and small charter fishing vessels from May through October. Throughout the summer months and fishing season, the waters immediately surrounding the Station and within a quarter mile radius of the Station become heavily congested with vessels, mainly consisting of recreational boaters. The congestion affects the Station in that vessels accumulate immediately in front of it and within the immediate waterway the Coast Guard utilizes to respond to maritime emergency response. The increased vessel congestion during the boating season presents a continuous hindrance to the safety of Coast Guard vessels responding to search and rescue or other maritime emergencies, and hampers their ability to respond expeditiously. This safety zone is established by reference to coordinates, representing approximately 100 yards seaward from STA Fire Island vessels, facilities and property.

This safety zone has been tailored to fit the needs of safety, while minimizing the impact on the maritime community. All coordinates are North American Datum 1983.

No person or vessel may enter or remain in a prescribed safety zone for any time without the permission of the COTP. Each person or vessel in a safety zone shall obey any direction or order of the COTP or designated on-scene Coast Guard patrol personnel. COTP designated on-scene patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

Any violation of this safety zone is punishable by, among others, civil and criminal penalties, including in rem liability against the offending vessel as well as license sanctions against the mariner. This regulation is promulgated under the authority contained in 33 U.S.C. 1223 and 1225 and the regulations promulgated thereunder.

**Discussion of Comments and Changes**

We received no comments on the proposed rule. Three changes have been made to the regulatory text. The first changed the format of a coordinate listed in the proposed safety zone. The proposed language had the coordinate listed as 40–37.612 N, 073°, 15.664′ W. For consistency among the coordinates listed in the regulatory text, this coordinate is changed to utilize degrees and minutes symbols, namely to read 40°37.612′ N, 073°,15.664′ W.

The second change further defined the on-scene Coast Guard patrol personnel. On-scene patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels.

The third change explains how vessels within the safety zone may be hailed to include the siren, lights, or other means from a vessel, other than a Coast Guard vessel, upon which Coast Guard patrol personnel are aboard.

**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 economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. This regulation may have some impact on the public, but these potential impacts will be minimized for the following reasons: the safety zone would encompass only a small portion of Fire Island Inlet allowing sufficient room for vessels to operate or anchor outside of the zone.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule will 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. This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in those portions of Fire Island Inlet covered by the safety zone.

For the reasons outlined in the Regulatory Evaluation section above, this rule will not have a significant impact on a substantial number of small entities.

If you think that 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 subsection 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If this rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call Lieutenant A. Logman, Waterways Management Officer, Group/Marine Safety Office Long Island Sound, at (203) 468–4429.

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 would not concern 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 would 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

**Environment**

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A ''Categorical Exclusion Determination'' is 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 § 165.152 to read as follows:

**§ 165.152 Coast Guard Station Fire Island, Long Island, New York—safety zone.**

(a) *Location.* The following waters of Fire Island Inlet are a safety zone: Beginning at a point on shore at 40°37.523′ N, 073°15.685′ W; then north to 40°37.593′ N, 073°15.719′ W; then east to 40°37.612′ N, 073°15.664′ W; then east to 40°37.630′ N, 073°15.610′ W; then east to 40°37.641′ N, 073°15.558′ W; then southeast to 40°37.630′ N, 073°15.475′ W; then southeast to 40°37.625′ N, 073–15.369′ W; then southeast to 40°37.627′ N, 073°15.318′ W; then southeast to point on shore at 40°37.565′ N, 073°15.346′ W. All coordinates are North American Datum 1983.

(b) *Regulations.* (1) The general regulations contained in 33 CFR § 165.23 apply.

(2) All persons and vessels must comply with the Coast Guard Captain of the Port or designated on-scene patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels. Upon being hailed by siren, radio, flashing light or other means from a U.S. Coast Guard vessel or other vessel with on-scene patrol personnel aboard, the operator of the vessel shall proceed as directed.

Dated: April 26, 2004.

**Joseph J. Coccia,**

*Captain, U.S. Coast Guard, Captain of the Port, Long Island Sound.*

[FR Doc. 04–10585 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–15–P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### 36 CFR Part 1200

**RIN 3095–AB19**

### Official Seals and Logos

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Final rule.

**SUMMARY:** The National Archives and Records Administration (NARA) is modifying its regulations on the use of official NARA seals by the public and other Federal agencies by extending the regulations to apply to the use of official NARA logos. This part applies to the public and other Federal agencies.

**DATES:** This rule is effective June 10, 2004.

**FOR FURTHER INFORMATION CONTACT:** Kim Richardson at telephone number (301) 837–2902 or fax number (301) 837–0319.

**SUPPLEMENTARY INFORMATION:** NARA published a proposed rule on February

20, 2004, at 69 FR 7881, for a 60-day public comment period. NARA did not receive any comments and therefore, we are not making any changes in this final rule.

**Information Collection Subject to the Paperwork Reduction Act**

The information collection in § 1200.8, the written request, is subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The control number for this information collection is 3095–0052.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. This rule is not a major rule as defined in 5 U.S.C. chapter 8, Congressional Review of Agency Rulemaking. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This regulation does not have any federalism implications.

**List of Subjects in 36 CFR Part 1200**

Seals and insignia.

■ For the reasons set forth in the preamble, NARA amends part 1200 of title 36, Code of Federal Regulations, as follows:

## PART 1200—OFFICIAL SEALS

■ 1. The authority citation for part 1200 is revised to read as follows:

**Authority:** 18 U.S.C. 506, 701, and 1017; 44 U.S.C. 2104(e), 2116(b), 2302.

■ 2. Amend § 1200.1 by adding the definition of ''NARA logo'' and revising the definition of ''Replica or reproduction'' to read as follows:

**§ 1200.1 Definitions.**

* * * * *

*NARA logo* means a name, trademark, service mark, or symbol used by NARA in connection with its programs, products, or services.

* * * * *

*Replica or reproduction* means a copy of an official seal or NARA logo displaying the form and content.

### Subpart B—How Are NARA's Official Seals and Logos Designed and Used?

■ 3. Revise the heading of Subpart B to read as set forth above.

■ 4. Add § 1200.7 to Subpart B to read as follows:

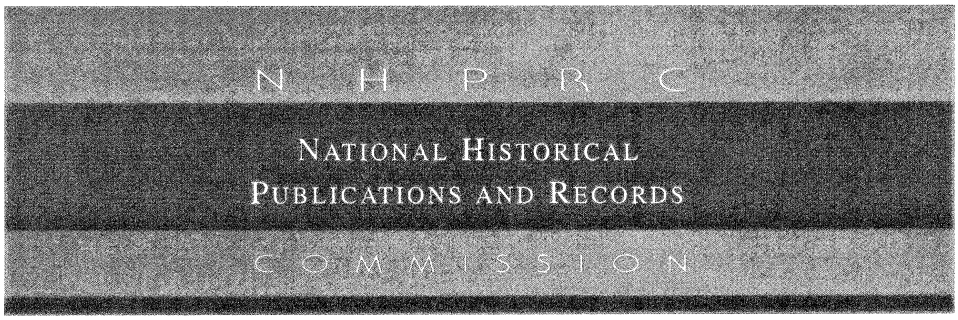
**§ 1200.7 What are NARA logos and how are they used?**

(a) NARA's official logos include, but are not limited to, those illustrated as follows:

BILLING CODE 7515–01–P

(1) The Records Center Program;

(2) The National Historical Publications and Records Commission;




(3) American Originals;

(4) Electronic Records Archives;

ERA
Electronic Records Archives

(5) The Archival Research Catalog;

(6) The Archives Library Information Center;

(7) Presidential Libraries; and

(8) Federal Register publications.

(i) Electronic Code of Federal Regulations.

(ii) Regulations.gov and FedReg.gov Web sites.

FEDERALREGISTER

(iii) Federal Register paper edition.

# Federal Register

12–19–03 Friday
Vol. 68 No. 244 Dec. 19, 2003

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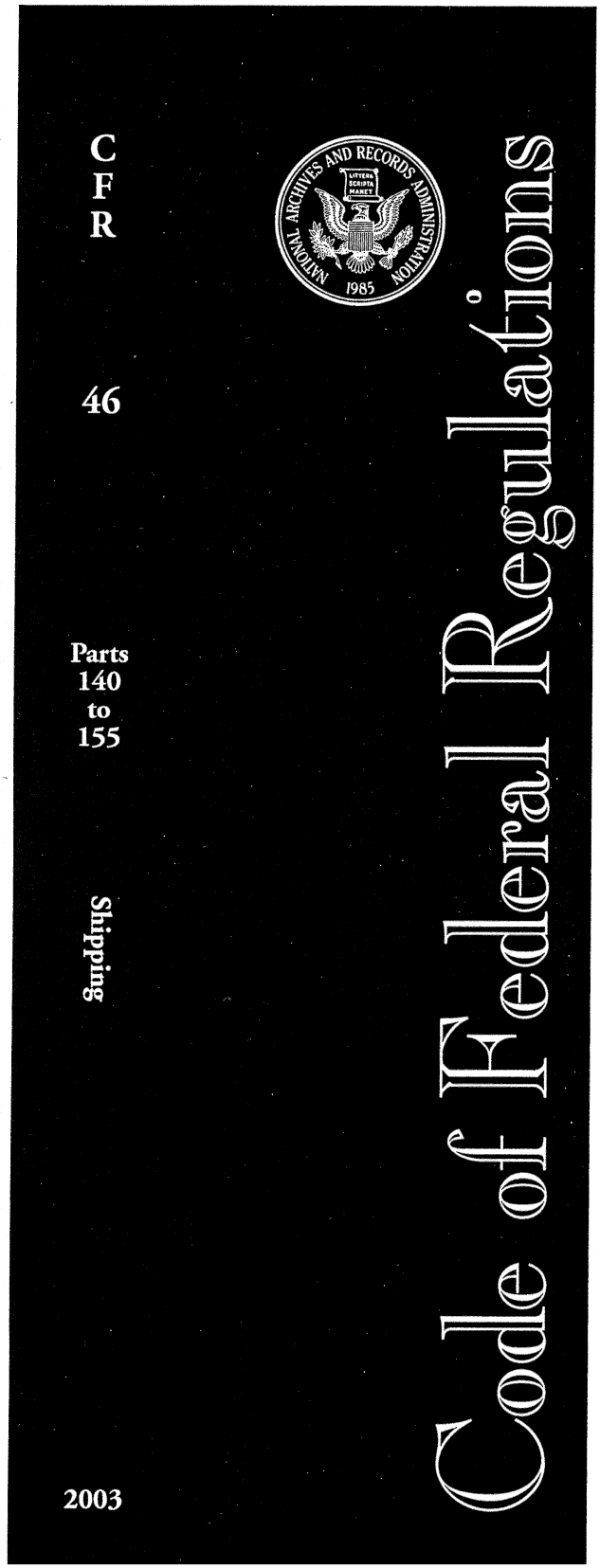


# 46

**Parts 140 to 155**

Revised as of October 1, 2003

## Shipping

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(b) Other official NARA logos. For inquiries on other official NARA logos, contact the Office of General Counsel (NGC). Send written inquiries to the Office of General Counsel (NGC), Room 3110, 8601 Adelphi Rd., College Park, MD 20740–6001.

(c) NARA uses its logos for official business which includes but is not limited to:

(1) Exhibits;

(2) Publicity and other materials associated with a one-time or recurring NARA event or activity;

(3) NARA Web sites (Intranet and Internet);

(4) Officially approved internal and external publications; and

(5) Presentations.

(d) NARA logos may be used by the public and other Federal agencies for events or activities co-sponsored by NARA, but only with the approval of the Archivist. See subpart C for procedures to request approval for use.

## Subpart C—Procedures for the Public To Request and Use NARA Seals and Logos

■ 5. Revise the heading of Subpart C to read as set forth above.

■ 6. Amend § 1200.8 by revising the introductory text, paragraphs (a)(2), (a)(3), and (a)(4), and paragraph (c) to read as follows:

### § 1200.8 How do I request to use the official seals and logos?

You may only use the official seals and logos if NARA approves your written request. Follow the procedures in this section to request authorization.

(a) * * *

(2) Which of the official seals and/or logos you want to use and how each is going to be displayed. Provide a sample of the document or other material on which the seal(s) and/or logo(s) would appear, marking the sample in all places where the seal(s) and/or logo(s) would be displayed;

(3) How the intended use of the official seal(s) and/or logo(s) is connected to your work with NARA on an event or activity (example: requesting to use the official NARA seal(s) and/or logo(s) on a program brochure, poster, or other publicity announcing a co-sponsored symposium or conference.); and

(4) The dates of the event or activity for which you intend to display the seal(s) and/or logo(s).

* * * * *

(c) The OMB control number 3095–0052 has been assigned to the information collection contained in this section.

■ 7. Amend § 1200.10 by revising paragraph (b) as follows:

### § 1200.10 What are NARA's criteria for approval?

* * * * *

(b) Seals and logos will not be used on any article or in any manner that reflects unfavorably on NARA or endorses, either directly or by implication, commercial products or services, or a requestor's policies or activities.

■ 8. Amend § 1200.12 by revising the introductory text to read as follows:

### § 1200.12 How does NARA notify me of the determination?

NARA will notify you by mail of the final decision, usually within 3 weeks from the date we receive your request. If NARA approves your request, we will send you a camera-ready copy of the official seal(s) and/or logo(s) along with an approval letter that will:

* * * * *

■ 9. Amend § 1200.14 by revising the heading and paragraphs (a), (d), and (e) to read as follows:

### § 1200.14 What are NARA's conditions for the use of the official seals and logos?

* * * * *

(a) Use the official seals and/or logos only for the specific purpose for which approval was granted;

* * * * *

(d) Do not change the official seals and/or logos themselves. They must visually and physically appear as NARA originally designed them, with no alterations.

(e) Only use the official seal(s) and/or logo(s) for the time period designated in the approval letter (example: for the duration of a conference or exhibit).

## Subpart D—Penalties for Misuse of NARA Seals and Logos

■ 10. Revise the heading of Subpart D to read as set forth above.

■ 11. Revise § 1200.16 to read as follows:

### § 1200.16 Will I be penalized for misusing the official seals and logos?

(a) *Seals.*

(1) If you falsely make, forge, counterfeit, mutilate, or alter official seals, replicas, reproductions or embossing seals, or knowingly use or possess with fraudulent intent any altered seal, you are subject to penalties under 18 U.S.C. 506.

(2) If you use the official seals, replicas, reproductions, or embossing seals in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 1017 and to other provisions of law as applicable.

(b) *Logos.* If you use the official logos, replicas or reproductions, of logos in a manner inconsistent with the provisions of this part, you are subject to penalties under 18 U.S.C. 701.

Dated: April 30, 2004.

**John W. Carlin,**

*Archivist of the United States.*

[FR Doc. 04–10317 Filed 5–10–04; 8:45 am]

BILLING CODE 7515–01–P

# Proposed Rules

Federal Register
Vol. 69, No. 91
Tuesday, May 11, 2004

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

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 2002–NM–333–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; McDonnell Douglas Model DC–9–14, DC–9–15, and DC–9–15F Airplanes; DC–9–20, DC–9–30, DC–9–40, DC–9–50 Series Airplanes; DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) Airplanes; and Model MD–88 Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas airplane models. This proposal would require an inspection of the retract cylinder support fitting and the cylinder bore of the support fitting of both main landing gear (MLG) for corrosion, and corrective action, if necessary. This proposal would also require replacing cadmium-plated retract cylinder support bushings and bearings of both MLG. This action is necessary to detect and correct corrosion to the retract cylinder support fitting of the MLG and the cylinder bore in the support fitting, which could result in compromised integrity of the retract cylinder support fitting of the MLG and possible damage to the hydraulic system. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by June 25, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–333–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

**FOR FURTHER INFORMATION CONTACT:** Mike Lee, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5325; fax (562) 627–5210.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–333–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA has received a report indicating that on a Model MD–80 series airplane there was a failure of the retract cylinder support fitting of the main landing gear (MLG) during gear extension, damaging the hydraulic system. The cause of the failure was extensive corrosion damage to the retract cylinder support fitting of the MLG and the cylinder bore in the support fitting. This condition, if not detected and corrected, could result in compromised integrity of the retract cylinder support fitting of the MLG and possible damage to the hydraulic system.

### Similar Models

The retract cylinder support fitting of the MLG on certain Model DC–9–14, DC–9–15, and DC–9–15F airplanes; and DC–9–20, DC–9–30, DC–9–40, DC–9–50 series airplanes are similar to those on the affected Model MD–80 series airplane. Therefore, all of these models may be subject to the same unsafe condition.

### Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin DC9–57–222, dated September 18, 2002, which describes procedures for a general visual inspection of the retract cylinder support fitting and the cylinder bore of the support fitting of both MLG for corrosion, and corrective action as necessary; and replacing cadmium-plated retract cylinder support bushings and bearings of the MLG with bushings and bearings that do not have cadmium plating in the bore. The corrective actions include replacing the retract cylinder support fitting of the MLG with a fitting having a different part number; and repairing, reidentifying, and installing the retract cylinder support fitting of the MLG. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

### Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

### Clarification of Compliance Time

Operators should note that the service bulletin specifies a compliance time of ''within 15,000 flight-hours after the issue date on this service bulletin on airplanes that have accumulated 30,000 or more flight-hours.'' We have confirmed with the manufacturer that the actions must be accomplished on all affected airplanes within 30,000 flight hours or within a grace period of 15,000 flight hours after the issue date of the service bulletin, whichever occurs later. To clarify the compliance time, this proposed AD has a compliance time of ''prior to the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of the AD, whichever is later.''

### Cost Impact

There are approximately 1,904 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,188 airplanes of U.S. registry would be affected by this proposed AD.

We estimate that it would take approximately 1 work hour per airplane to accomplish the proposed inspection on both MLG, and that the average labor rate is $65 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $77,220, or $65 per airplane.

We estimate that it would take approximately between 28 and 42 work hours per airplane to accomplish the proposed replacement on both MLG, and that the average labor rate is $65 per work hour. Required parts would cost between approximately $18,732 per airplane and $27,066 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be between $24,415,776 and $35,397,648, or between $20,552 and $29,796 per airplane.

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

### Regulatory Impact

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

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

### List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

### The Proposed Amendment

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

### § 39.13 [Amended]

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

**McDonnell Douglas:** Docket 2002–NM–333–AD.

*Applicability:* Model DC–9–14, DC–9–15, DC–9–15F, DC–9–21, DC–9–31, DC–9–32, DC–9–32 (VC–9C), DC–9–32F, DC–9–33F, DC–9–34, DC–9–34F, DC–9–32F (C–9A, C–9B), DC–9–41, DC–9–51, DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), and DC–9–87 (MD–87) airplanes; and Model MD–88 airplanes; as listed in Boeing Service Bulletin DC9–57–222, dated September 18, 2002; certificated in any category.

*Compliance:* Required as indicated, unless accomplished previously.

To detect and correct corrosion to the retract cylinder support fitting of the main landing gear (MLG) and the cylinder bore in the support fitting, which could result in compromised integrity of the retract cylinder support fitting of the MLG and possible damage to the hydraulic system, accomplish the following:

**Inspection and Replacement**

(a) Prior to the accumulation of 30,000 total flight hours, or within 15,000 flight hours after the effective date of the AD, whichever is later, do the actions in paragraphs (a)(1) and (a)(2) of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin DC9–57–222, dated September 18, 2002.

(1) Do the inspection specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD, as applicable. Before further flight following the inspection, accomplish all applicable corrective actions specified in the Accomplishment Instructions of Boeing Service Bulletin DC9–57–222, dated September 18, 2002. Do the actions in accordance with the service bulletin.

(i) For Group 1 airplanes specified in paragraph 1.A.1. of the service bulletin, do a general visual inspection of the retract cylinder support fitting and the cylinder bore of the support fitting of both MLG for corrosion.

(ii) For Group 2 airplanes specified in paragraph 1.A.1. of the service bulletin, do a general visual inspection of the retract cylinder support fitting of both MLG for corrosion.

**Note 1:** For the purposes of this AD, a general visual inspection is defined as: ''A

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

(2) Replace cadmium-plated retract cylinder support bushings and bearings of the MLG with bushings and bearings that do not have cadmium plating in the bore.

**Parts Installation**

(b) As of the effective date of this AD, no person shall install a retract cylinder support fitting for the MLG, part number (P/N) 3935860–1, 3912891–1, or 3912891–501 on any airplane, unless it has been found to have no corrosion during the inspection required by paragraph (a) of this AD, or unless it has been modified in accordance with the service bulletin.

**Alternative Methods of Compliance**

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

Issued in Renton, Washington, on April 29, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10696 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. 2003–NM–221–AD]**

**RIN 2120–AA64**

## Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes; and Model 757–200 and –200CB Series Airplanes

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes; and Model 757–200 and –200CB series airplanes. This proposal would require inspection of the applicable body station frames for open body station frames and related investigative/corrective actions; and installation of lanyard hook brackets and lanyard assemblies under the air conditioning overhead ducts, as applicable. This action is necessary to prevent loosened or disconnected overhead ducts from causing ceiling panels to drop below the minimum height of the evacuation zone for the passenger cabin, which could result in inadequate height for safe exit in the event of an emergency evacuation. This action is intended to address the identified unsafe condition.

**DATES:** Comments must be received by June 25, 2004.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2003–NM–221–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

**FOR FURTHER INFORMATION CONTACT:** Keith Ladderud, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6435; fax (425) 917–6590.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

- Submit comments using the following format:
- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2003–NM–221–AD.'' The postcard will be date stamped and returned to the commenter.

### Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2003–NM–221–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

### Discussion

The FAA received a report that the manufacturer has received numerous reports of leaking air conditioning (AC) overhead ducts (indicating cracking of the ducts) on Boeing Model 737 and 757 series airplanes. Two of those reports stated that fallen overhead ducts had caused ceiling panels to fall into the passenger cabin. Loosened or disconnected overhead ducts could fall, causing the ceiling panels to drop below the minimum height of the evacuation zone for the passenger cabin, since the inboard edge of the ceiling panels are attached to the diffusion fitting of the AC overhead duct. As regulated by the FAA, the minimum height of the evacuation zone for the passenger cabin is 73 inches. However, review of the ceiling panel configurations and reports from in-service airplanes show that ceiling panels may drop to 63 inches or less. This condition, if not corrected,

could result in inadequate height for safe exit in the event of an emergency evacuation.

**Explanation of Relevant Service Information**

The FAA has reviewed and approved Boeing Special Attention Service Bulletin 737–21–1131, Revision 2, dated April 18, 2002 (for Model 737–300, –400, and –500 series airplanes). This service bulletin describes procedures for a general visual inspection at body station frames 420 through 887, as applicable, for open body station frames and related investigative/corrective actions; and installation of lanyard hook brackets and lanyard assemblies under the AC overhead ducts. (For Model 737–300, –400, and –500 series airplanes, an open body station frame is a body station frame that does not have an overhead life raft or video monitor installed under the frame between stringers 3L and 3R.) The related investigative action includes a general visual inspection of the open body station frames between stringers 2L and 2R to determine if AC overhead duct supports are installed and to determine if open body station frames have sound damping angles. The corrective actions include installing lanyard support brackets on the body station frames, if the open body station frames do not have sound damping angles; removing part of the sound damping angles and installing lanyard support brackets, if the open body station frames have sound damping angles; and reworking the adjacent insulation blankets and installing the insulation blankets on the body station frames.

We have also reviewed and approved Boeing Special Attention Service Bulletin 757–21–0088, dated April 18, 2002 (for Model 757–200 and –200CB series airplanes). This service bulletin describes procedures for a general visual inspection at body station frames 418 through 1480, as applicable, for open body station frames and corrective actions. (For Model 757–200 and –200CB series airplanes, an open body station frame is a body station frame that does not have a center overhead video monitor, center overhead stowage bin, or lowered ceiling panel installed under the frame between stringers 3L and 3R.) The corrective actions include installing lanyard support brackets adjacent to stringers 2L and 2R; installing insulation capstrip blankets and tapes around the lanyard support brackets; and installing lanyard hook brackets and lanyards.

Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

**Explanation of Requirements of Proposed Rule**

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

**Difference Between Proposed Rule and Service Bulletins**

Operators should note that, although the service bulletins do not recommend a compliance time for accomplishing the proposed actions, we have determined that a compliance time is needed to ensure an adequate level of safety for the affected fleet. In developing an appropriate compliance time for this AD, we considered the degree of urgency associated with the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the proposed actions (27 to 28 hours). In light of all of these factors, we find that a 60-month compliance time represents an appropriate interval of time for affected airplanes to continue to operate without compromising safety.

**Cost Impact**

There are approximately 2,187 airplanes of the affected design in the worldwide fleet. The FAA estimates that 984 airplanes of U.S. registry would be affected by this proposed AD. The following table shows the estimated cost impact for airplanes affected by this AD. The average labor rate is $65 per work hour. The estimated maximum total cost for all airplanes affected by this proposed AD is $10,607,648.

TABLE—COST IMPACT

| Model | U.S. registered airplanes | Work hours per airplane | Labor cost per airplane | Parts cost per airplane | Total cost |
|---|---|---|---|---|---|
| 737–300, –400, and 500 series airplanes. | 665 | 28 (Identify the body frames; install support brackets; rework and install insulation; install lanyard and hook brackets). | $1,820 | $6,925 to $9,650 (Depending on overhead duct installation configuration). | $5,815,425 to $7,627,550 (Depending on overhead duct installation configuration), or $8,745 to $11,470 per airplane. |
| 757–200 and –200CB series airplanes. | 319 | 27 (Examine station frame, install bracket, lanyard, and insulation). | $1,755 | $7,587 | $2,980,098, or $9,342 per airplane. |

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

**Regulatory Impact**

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

**List of Subjects in 14 CFR Part 39**

Air transportation, Aircraft, Aviation safety, Safety.

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**Boeing:** Docket 2003–NM–221–AD.

*Applicability:* This AD applies to the airplanes listed in Table 1 of this AD, certificated in any category:

TABLE 1.—APPLICABILITY

| Boeing model | As listed in |
|---|---|
| Model 737–300, –400, and –500 series airplanes | Boeing Special Attention Service Bulletin 737–21–1131, Revision 2, dated April 18, 2002. |
| Model 757–200 and –200CB series airplanes | Boeing Special Attention Service Bulletin 757–21–0088, dated April 18, 2002. |

*Compliance:* Required as indicated, unless accomplished previously.

To prevent loosened or disconnected overhead ducts from causing ceiling panels to drop below the minimum height of the evacuation zone for the passenger cabin, which could result in inadequate height for safe exit in the event of an emergency evacuation, accomplish the following:

**Service Bulletin References**

(a) The term ''service bulletin,'' as used in this AD, means the applicable service bulletins listed in Table 1 of this AD.

**Inspection and Related Investigative/ Corrective Actions**

(b) For Model 737–300, –400, and –500 series airplanes, do the actions required in paragraphs (b)(1) and (b)(2) of this AD at the specified compliance times, in accordance with the Accomplishment Instructions of the service bulletin.

(1) Within 60 months after the effective date of this AD, do a general visual inspection at the applicable body station frames for open body station frames; and, before further flight, do all the related investigative/corrective actions, as applicable; by accomplishing all of the actions in paragraph 3.B. of the service bulletin.

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

(2) Within 60 months after the effective date of this AD, do the actions required in paragraph (b)(2)(i) or (b)(2)(ii) of this AD, as applicable.

(i) For Groups 1 and 3 airplanes identified in the service bulletin: Install the lanyard hook brackets and each lanyard assembly under the air conditioning (AC) overhead ducts in accordance with paragraph 3.C. of the service bulletin.

(ii) For Group 2 airplanes identified in the service bulletin: Install the lanyard hook brackets and the lanyard assemblies under the AC overhead ducts by accomplishing all of the actions in paragraph 3.D. of the service bulletin.

(c) For Model 757–200 and –200CB series airplanes: Within 60 months after the effective date of this AD, do a general visual inspection of the applicable body station frames for open body station frames; and, before further flight, do all the corrective actions, as applicable; by accomplishing all of the actions in the Accomplishment Instructions of the service bulletin.

**Credit for Actions Accomplished per Previous Service Bulletins**

(d) Actions accomplished before the effective date of this AD per Boeing Special Attention Service Bulletin 737–21–1131, original release, dated December 20, 2001; or Revision 1, dated January 25, 2002; are acceptable for compliance with the requirements of paragraph (b) of this AD.

**Alternative Methods of Compliance**

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

Issued in Renton, Washington, on April 29, 2004.

**Kevin M. Mullin,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 04–10695 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2004–17597 Airspace Docket No. 04–AEA–07]**

## Proposed Amendment to Class E Airspace; Richmond, VA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area in the Richmond, VA metropolitan area. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP) for numerous airports within the Richmond, VA metropolitan area with approved Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class Instrument Flight Rules (IFR) operations and the resulting overlap of designated Class E–5 airspace have made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for five airports and result in the rescission of four separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before June 10, 2004.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17597/ Airspace Docket No. 04–AEA–07 at the beginning of your comments. You may

also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

## Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. FAA–2004–17597/Airspace Docket No. 04–AEA–07.'' The postcard will be date/time stamped and returned to the commenter.

## Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dms.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov.* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783.

Communications must identify both the docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

## The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace within the Richmond, VA metropolitan area. The proposal would consolidate the following airport Class E–5 airspace designations into the Richmond, VA designation: Richmond International Airport (RIC), Richmond, VA; New Kent County Airport (W96), Quinton, VA; Chesterfield County Airport (FCI), Richmond, VA; Hanover County Municipal Airport (OFP), Richmond, VA; Dinwiddie County Airport (PTB), Petersburg, VA. This action would result in the rescission of four Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Richmond, VA description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designation for airspace areas extending upward from 700 ft or more above the surface are published in Paragraph 6005 of FAA Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

## List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

## The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is proposed to be amended as follows:

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

* * * * *

**AEA VA E5 Richmond, VA (Revised)**

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 37°03′52″ N., long. 77°47′45″ W., to lat. 37°11′51″ N., long. 77°41′25″ W., to lat. 37°27′45″ N., long. 77°41′44″ W., to lat. 37°49′25″ N., long. 77°32′39″ W., to lat. 37°49′28″ N., long. 77°19′42″ W., to lat. 37°34′38″ N., long. 76°56′19″ W., to lat. 37°26′41″ N., long. 76°55′56″ W., to lat. 36°55′48″ N., long. 77°37′56″ W., to the point of beginning.

* * * * *

Issued in Jamaica, New York, on May 4, 2004.

**John G. McCartney,**

*Assistant Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 04–10691 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 71**

**[Docket No. FAA–2004–17596; Airspace Docket No. 04–AEA–06]**

## Proposed Amendments to Class E Airspace; Norfolk, VA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Class E airspace area in the Norfolk, VA metropolitan area. The development of multiple area navigation (RNAV) Standard Instrument Approach Procedures (SIAP), the proliferation of airports within the Norfolk, VA metropolitan area with approved Instrument Flight Rules (IFR) operations, and the resulting overlap of designated Class E–5 airspace have made this proposal necessary. The proposal would consolidate the Class E–5 airspace designations for fourteen airports and result in the rescission of seven separate Class E–5 descriptions through separate rulemaking action. The area would be depicted on aeronautical charts for pilot reference.

**DATES:** Comments must be received on or before June 10, 2004.

**ADDRESSES:** Send comments on the proposal to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17596/ Airspace Docket No. 04–AEA–06 at the beginning of your comments. You may also submit comments on the Internet at *http://dms.dot.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527) is on the plaza level of the Department of Transportation NASSIF Building at the above address.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809.

**FOR FURTHER INFORMATION CONTACT:** Mr. Francis T. Jordan, Jr., Airspace Specialist, Airspace Branch, AEA–520, Eastern Region, 1 Aviation Plaza, Jamaica, NY 11434–4809, telephone: (718) 553–4521.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. FAA–2004–17596/Airspace Docket No. 04–AEA–06.'' The postcard will be date/ time stamped and returned to the commenter.

### Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://dmd.dot.gov.* Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov* or the Superintendent of Documents web page at *http://www.access.gpo.gov/nara.* Additionally, any person may obtain a copy of this notice by submitting a request to the Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591 or by calling (202) 267–8783. Communications must identify both the docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking, (202) 267–9677 to request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

### The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace within the Norfolk, VA metropolitan area. The proposal would consolidate the following airport Class E–5 airspace designations into the Norfolk, VA designation: Norfolk International Airport (ORF), Norfolk, VA; Norfolk NAS, Chambers Field (NGU), VA; Langley Air Force Base (LFI), VA; Oceana NAS, Apollo Soucek Field (NTU), VA; Fentress NALF (NFE), VA; Felker AAF (FAF), Ft. Eustis, VA; Hampton Roads Executive Airport (PVG), Portsmouth, VA; Chesapeake Regional Airport (CPK), VA; Hummel Field Airport (W75), Saluda, VA; Aberdeen Field Airport (31VA), Smithfield, VA; Suffolk Municipal Airport, Suffolk, VA; Middle Peninsula Regional Airport (FYJ), West Point, VA; Williamsburg-Jamestown Airport (JGG), Williamsburg, VA; Newport News/ Williamsburg International Airport (PHF), Newport News, VA. This action would result in the rescission of seven Class E–5 designations under a separate docket. The affected airspace would subsequently be incorporated into the Norfolk, VA description. The airspace will be defined to accommodate the approaches and contain IFR operations to and from those airports. This change would have no impact on aircraft operations since the type of airspace designation is not changing. Furthermore, the IFR approach procedures for the individual airports within the area would not be affected. Class E airspace designations for airspace areas extending upward from 700 ft or more above the surface are published in Paragraph 6005 of FAA order 7400.9L, dated September 2, 2003, and effective September 16, 2003, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that would only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR Part 71 as follows:

## PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

### § 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9L, dated September 2, 2003, and effective September 16, 2003, is proposed to be amended as follows:

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

* * * * *

**AEA VA E5 Norfolk, VA (Revised)**

That airspace extending upward from 700 feet above the surface within an area bounded by a line beginning at lat. 36°33′18″ N., long. 75°50′31″ W., to lat. 36°33′27″ N., long. 76°45′46″ W., to lat. 36°43′32″ N., long. 76°46′23″ W., to lat. 36°51′53″ N., long. 76°35′05″ W., to lat. 37°14′30″ N., long. 76°56′21″ W., to lat. 37°37′33″ N., long. 76°53′14″ W., to lat. 37°43′98″ N., long. 76°22′17″ W., to lat. 37°14′14″ N., long. 76°07′30″ W., to lat. 36°55′06″ N., long. 75°53′33″ W., to the point of beginning, excluding that airspace that coincides with W–50A and R–6606 when they are in effect.

* * * * *

Issued in Jamaica, New York, on May 4, 2004.

**John G. McCartney,**

*Assistant Manager, Air Traffic Division, Eastern Region.*

[FR Doc. 04–10692 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 82

**[FRL–7659–5]**

## Protection of Stratospheric Ozone: Notice of Data Availability; New Information Concerning Carbon Dioxide Total Flooding Fire Extinguishing Systems Listed Under the SNAP Program as an Acceptable Substitute for Ozone-Depleting Halons

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

**ACTION:** Notice of data availability and request for comment.

**SUMMARY:** The Environmental Protection Agency (EPA) is making available to the public new information related to carbon dioxide ($CO_2$) total flooding fire extinguishing systems, which are currently listed in the fire suppression sector as an acceptable substitute for ozone-depleting halon 1301 under the Significant New Alternatives Policy (SNAP) Program, pursuant to section 612 of the Clean Air Act. Under the Clean Air Act, as amended in 1990, and our regulations, the SNAP program reviews alternatives to Class I and Class II ozone-depleting substances and approves use of alternatives which reduce the overall risk to public health and the environment. Beginning with the March 18, 1994 rule which established the SNAP program, a number of alternative fire protection technologies have been approved, including $CO_2$ systems which was listed as an acceptable halon 1301 substitute in total flooding applications.

Since the initial SNAP listing, EPA has continued to raise awareness about the precautions needed in using $CO_2$ systems and has worked with the fire protection industry to promote responsible use of these and other technologies. The Agency has also collected additional information on potential safety hazards associated with carbon dioxide systems, and on the increasing use of $CO_2$ total flooding fire extinguishing systems, particularly in the marine sector for systems protecting machinery spaces on ships. Today, the Agency is making available for public review and comment two reports: *Review of the Use of Carbon Dioxide Total Flooding Fire Extinguishing Systems* (Wickham, R.T., 2003) and *Carbon Dioxide as a Fire Suppressant: Examining the Risks* (EPA, 2000). We plan to consider the information contained in these two reports and any comment received during the comment period in reviewing the current SNAP listing for the use of $CO_2$ in total flooding applications. If, after considering this information and comments, we intend to change the current acceptability determination, we will issue a proposed rule.

**DATES:** We will accept comments on the new information through June 10, 2004.

**ADDRESSES:** Comments may also be submitted electronically, by facsimile, or through hand delivery/courier. Follow the detailed instructions as provided at the beginning of the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** For further information about this notice, contact Bella Maranion by telephone at (202) 343–9749, or by e-mail at *maranion.bella@epa.gov*. Notices and rulemakings under the SNAP program are available on the Internet at *http://www.epa.gov/ozone/snap/regs*. Information related to this notice is available online through EPA Dockets at *http://www.epa.gov/edocket/* as described below in Section I under **SUPPLEMENTARY INFORMATION**.

**SUPPLEMENTARY INFORMATION:**

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## I. General Information

### *A. How Can I Get Copies of Related Information?*

1. Docket

EPA has established an official public docket for this action under Docket ID No. OAR–2004–0024. The official public docket consists of the documents specifically referenced in this action, any public comments received, and other information related to this action. Although a part of the official docket, the public docket does not include Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. The official public docket is the collection of materials that is available for public viewing at the 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 Reading Room is (202) 566–1742, and the telephone number for the Air and Radiation Docket is (202) 566–1742.

2. Electronic Access

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 in section I.B.1. 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, by facsimile, 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. If you wish to submit CBI or information that is otherwise protected by statute, please follow the instructions in section I.D. Do not use EPA Dockets or e-mail to submit CBI or information protected by statute.

1. *Electronically.* If you submit an electronic comment as prescribed 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. To access EPA's electronic public docket from the EPA Internet Home Page, select ''Information Sources'', ''Dockets'', and ''EPA Dockets''. Once in the system, select ''search,'' and then key in Docket ID No. OAR–2004–0024. 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@epa.gov,* Attention Docket ID No. OAR–2004–0024. 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 in section I.B.2. These electronic submissions will be accepted in WordPerfect or ASCII file format. Avoid the use of special characters and any form of encryption.

2. *By Mail.* Send two copies of your comments to: Air and Radiation Docket, Environmental Protection Agency, Mailcode: 6102T, 1200 Pennsylvania Ave., NW, Washington, DC 20460, Attention Docket ID No. OAR–2003–0228.

3. *By Hand Delivery or Courier.* Deliver your comments to: EPA Docket Center, (EPA/DC) EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC., Attention Docket ID No. OAR–2003–0228. Such deliveries are only accepted during the Docket's normal hours of operation as identified in section I.B.1.

4. *By Facsimile.* Fax your comments to: 202–566–1741, Attention Docket ID. No. OAR–2003–0228.

*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. Send or deliver information identified as CBI only to the following address: Bella Maranion, U.S. EPA, 8th floor, 1310 L Street NW., Washington DC 20005 via overnight delivery service, Attention Docket ID No. OAR–2004–0024. 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 CAR 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.

## II. What Is Today's Action?

Today, we are making new information available on the use of $CO_2$ total flooding fire extinguishing systems listed under EPA's SNAP program as

acceptable substitutes for ozone-depleting halon 1301 in total flooding applications (59 FR 13044). Under the terms of the Montreal Protocol on Substances that Deplete the Ozone Layer, EPA promulgated regulations to phase out the production and import of halon 1301 effective January 1, 1994. In response to the halon phase out, the fire protection industry has developed a number of safe, effective alternatives. The SNAP program reviews alternatives to Class I and Class II ozone-depleting substances and approves use of alternatives which reduce the overall risk to public health and the environment. A number of alternatives have been suggested by industry, including $CO_2$ systems. The March 18, 1994 final rule established the SNAP program and issued EPA's initial decisions on the acceptability and unacceptability of substitutes for ozone-depleting substances. The original SNAP rule listed carbon dioxide as an acceptable halon 1301 substitute in total flooding applications. At the time, EPA noted that while water, carbon dioxide, foam, and dry chemical were currently in use, these substances fell within the definition of alternative technology for fire suppression and explosion protection (59 FR 13101). In these cases, EPA simply listed these as acceptable and noted their applicable National Fire Protection Association (NFPA) industry standards; EPA did not perform the same assessment of potential health and environmental impacts as for the new alternative technologies such as water mist systems and the new in-kind fire suppressants such as hydrofluorocarbons and inert gases.

In 2000, EPA published a report *Carbon Dioxide as a Fire Suppressant: Examining the Risks,* to provide users of total flooding halon systems who may be unfamiliar with total flooding $CO_2$ systems with information regarding the potential safety hazards associated with carbon dioxide systems, including accidental discharges or improper use. Appropriate precautions must be taken before switching to $CO_2$ systems. With the report, EPA attempted to raise awareness and promote the responsible use of $CO_2$ fire suppression systems.

Since that publication, EPA received information indicating a resurgence in use of $CO_2$ total flooding fire extinguishing systems, particularly in the marine sector for systems protecting machinery spaces on ships. In 2003, EPA funded a report to provide information on the growing use of $CO_2$ fire extinguishing systems, particularly in the marine market. The report *Review of the Use of Carbon Dioxide Total Flooding Fire Extinguishing Systems* (Wickham, Robert T., 2003) considers the personnel safety risks from use in occupied areas, compares these systems to halon and other halon alternatives, and recommends changes in industry standards for improving safety.

Today, the Agency is making available for public review and comment these two reports. The purpose of making the reports available is to request comment on the accuracy and completeness of the technical information and data. We plan to consider the information in these reports and any comment received during the comment period in reviewing the current SNAP listing for the use of $CO_2$ in total flooding fire extinguishing applications. If, based on our review and consideration of comments, we determine to change our current acceptability listing decision, we will issue a proposed rule.

## III. What Information Is EPA Making Available for Review and Comment?

The Agency is seeking comment on the accuracy and thoroughness of the information in the above reports: *Carbon Dioxide as a Fire Suppressant: Examining the Risks and Review of the Use of Carbon Dioxide Total Flooding Fire Extinguishing Systems,* specifically:

—Overview of historical and current use of $CO_2$ fire extinguishing systems;
—Potential risks of $CO_2$ systems;
—The comparison of $CO_2$ systems with other halon alternative systems in terms of technical and economic viability;
—Personnel safety standards in existing regulations, standards, and codes.

## IV. Where Can I Get the Information Being Made Available for Comment?

All of the information on which we are seeking comment can be obtained through the Air Docket (see Supplemental Information section above for docket contact info) with the reference numbers as follows:

—*Carbon Dioxide as a Fire Suppressant: Examining the Risks* Air Docket, OAR–2004–0024 reference number II–A–1
—*Report on the Use of Carbon Dioxide Total Flooding Fire Extinguishing Systems* Air Docket, OAR–2004–0024 reference number II–A–2

## V. Why Is EPA Making This Information Available?

We are considering whether to revise the current acceptable SNAP determination for $CO_2$ as a halon 1301 substitute in total flooding applications because of reports on increasing use and continuing injuries and fatalities, indicating $CO_2$ systems may pose greater risks to human health than other available substitutes. We are soliciting comment on this new information to ensure that we use the most accurate information available in our review of the current listing for $CO_2$ total flooding fire extinguishing systems. The Agency is providing the public with an opportunity to comment on the quality of the available information and to provide additional data for our consideration. We will use this information to ensure that we fully consider issues relating to the technical viability of alternatives, human health and safety, and industry impacts in our review of the current SNAP listing for $CO_2$ systems in total flooding applications.

## VI. What Supporting Documentation Do I Need To Include in My Comments?

Please provide any published studies or data supporting your statements.

Dated: May 3, 2004.

**Brian McLean,**

*Director, Office of Atmospheric Programs, Office of Air and Radiation.*

[FR Doc. 04–10651 Filed 5–10–04; 8:45 am]

BILLING CODE 6560–50–P

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## FEDERAL COMMUNICATIONS COMMISSION

## 47 CFR Part 73

**[DA 04–1027; MB Docket No. 04–127, RM–10941; MB Docket No. 04–128, RM–10942; MB Docket No. 04–129, RM–10943; MB Docket No. 04–130, RM–10944; MB Docket No. 04–131, RM–10945; MB Docket No. 04–132, RM–10946; MB Docket No. 04–133, RM–10947; MB Docket No. 04–134, RM–10948, MB Docket No. 04–135, RM–10949, RM–10950; MB Docket No. 04–136, RM–10951; MB Docket No. 04–137, RM–10952; MB Docket No. 04–138, RM–10953, RM–10954]**

## Radio Broadcasting Services; Augusta, WI, Barnwell, SC, Burnet, TX, Denver City, TX, Fountain Green, UT, Hayward, WI, Liberty, PA, Shenandoah, VA, St. Marys, WV, Susquehanna, PA, Toquerville, UT, and Van Alstyne, TX

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** This document sets forth twelve reservation proposals requesting to amend the FM Table of Allotments by reserving certain vacant FM allotments for noncommercial educational use in Augusta, WI, Barnwell, SC, Burnet, TX, Denver City, TX, Fountain Green, UT, Hayward, WI, Liberty, PA, Shenandoah, VA, St. Marys, WV, Susquehanna, PA,

Toquerville, UT, and Van Alstyne, TX. The Audio Division requests comment on a petition filed Youngshine Media, Inc. proposing the reservation of vacant Channel 298A at Liberty, PA for noncommercial use. The reference coordinates for Channel *298A at Liberty are 41–29–28 North Latitude and 77–12–22 West Longitude. The Audio Division requests comment on petitions filed by American Family Association proposing the reservation of vacant Channel 227A at Susquehanna, PA, vacant Channel 256C3 at Barnwell, SC, vacant Channel 240A at Burnet, TX, vacant Channel 248C2 at Denver City, TX, and vacant Channel 260A at Van Alstyne, TX for noncommercial use. The reference coordinates for Channel *227A at Susquehanna are 41–55–44 North Latitude and 75–31–50 West Longitude. The reference coordinates for Channel *256C3 at Barnwell are 33–24–29 North Latitude and 81–16–43 West Longitude. The reference coordinates for Channel *240A at Burnet are 30–51–5 North Latitude and 98–17–35 West Longitude. The reference coordinates for Channel *248C2 at Denver City are 33–1–53 North Latitude and 102–48–47 West Longitude. The reference coordinates for Channel *260A at Van Alstyne are 33–27–8 North Latitude and 96–27–21 West Longitude. *See* **SUPPLEMENTARY INFORMATION**, *infra.*

**DATES:** Comments must be filed on or before June 10, 2004, and reply comments on or before June 25, 2004.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, his counsel, or consultant, as follows: Arthur H. Harding, Esq., Christopher G. Wood, Esq., Mark B. Denbo, Esq., c/o Youngshine Media, Inc., Fleischman and Walsh, L.L.P., 1919 Pennsylvania Avenue, NW., Suite 600, Washington, DC 20006; Patrick J. Vaughn, General Counsel, American Family Association, Post Office Drawer 2440, Tupelo, MS 38803; Peter Gutmann, Esq., c/o Intermountain Educational Communications, Inc., Womble, Carlyle, Sandridge & Rice, PLLC, 1401 I Street, NW., Seventh Floor, Washington, DC 20005; David A. O'Connor, Esq., c/o Calvary Chapel of St. George, Holland & Knight LLP, 2099 Pennsylvania Avenue, NW., Suite 100, Washington, DC 20006; Jeffrey D. Southmayd, Esq., c/o Sister Sherry Lynn Foundation, Inc., Southmayd & Miller, 1220 19th Street, NW., Suite 400, Washington, DC 20036; Mark Follett, Starboard Media Foundation, Inc., 2300 Riverside Drive, Green Bay, WI 54301; Thomas P. Taggart, Trustee/Counsel, Fine Arts Radio, Inc., 8 Ransom Road, Athens, OH 45701; and Kenneth E. Satten, Esq., Timothy J. Cooney, Esq., and Rebecca A. Schillings, c/o West Virginia Educational Broadcasting Authority, Wilkinson, Barker, Knauer, LLP, 2300 N Street, NW., Suite 700, Washington, DC 20037.

**FOR FURTHER INFORMATION CONTACT:** Rolanda F. Smith, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket Nos. 04–127, 04–128, 04–129, 04–130, 04–131, 04–132, 04–133, 04–134, 04–135, 04–136, 04–137, 04–138, adopted April 14, 2004 and released April 19, 2004. The full text of this Commission decision is available for inspection and copying during regular business hours at the FCC's Reference Information Center, Portals II, 445 Twelfth Street, SW., Room CY–A257, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, 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 Audio Division requests comment on a petition filed by Intermountain Educational Communications, Inc. proposing the reservation of vacant Channel 260A at Fountain Green for noncommercial use. The reference coordinates for Channel *260A at Fountain Green are 39–37–42 North Latitude and 111–38–24 West Longitude.

The Audio Division requests comment on a petition filed by Calvary Chapel of St. George proposing the reservation of vacant Channel 280C at Toquerville, UT for noncommercial use. The reference coordinates for Channel *280C at Toquerville are 37–15–12 North Latitude and 113–17–0 West Longitude.

The Audio Division requests comment on petitions filed by Sister Sherry Lynn Foundation, Inc. and American Family Association proposing the reservation of vacant Channel 296A at Shenandoah, VA for noncommercial use. The reference coordinates for Channel *296A at Shenandoah are 38–30–0 North Latitude and 78–36–33 West Longitude.

The Audio Division requests comment on petitions filed by Starboard Media Foundation, Inc. proposing the reservation of vacant Channel 268C3 at Augusta, WI and vacant Channel 232C2 at Hayward, WI for noncommercial use. The reference coordinates for Channel *268C3 at Augusta are 44–40–11 North Latitude and 90–57–55 West Longitude. The reference coordinates for Channel *232C2 at Hayward are 46–15–4 North Latitude and 91–23–1 West Longitude.

The Audio Division requests comment on petitions filed by Fine Arts Radio, Inc. and West Virginia Educational Broadcasting Authority proposing the reservation of vacant Channel 287A at St. Marys, WV for noncommercial use. The reference coordinates for Channel *287A at St. Marys are 39–18–3 North Latitude and 81–15–19 West Longitude. 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* contact.

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 Pennsylvania is amended by adding Channel *298A and by removing Channel 298A at Liberty; and by adding Channel *227A and by removing Channel 227A at Susquehanna.

3. Section 73.202(b), the Table of FM Allotments under South Carolina, is amended by adding Channel *256C3 and by removing Channel 257C1 at Barnwell.[1]

4. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Channel *240A and by removing

[1] In MM Docket No. 00–18, the Audio Division substituted Channel 257C1 for 256C3 at Barnwell, SC, reallotted Channel 257C1 to Pembroke, Georgia, and modified the license of Station WBAW to specify operation on Channel 257C1 at Pembroke. As such, Channel 256C3 was allotted to Barnwell, SC as a replacement service. *See* 66 FR 55596, published November 2, 2001.

Channel 240A at Burnet; by adding Channel *248C2 and by removing Channel 248C2 at Denver City; by adding Channel *260A and by removing Channel 260A at Van Alstyne.

5. Section 73.202(b), the Table of FM Allotments under Utah, is amended by adding Channel *260A and by removing Channel 260A at Fountain Green; and by adding Channel *280C and by removing Channel 280C at Toquerville.

6. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by adding Channel *296A and by removing Channel 296A at Shenandoah.

7. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by adding Channel *287A and by removing Channel 287A at St. Marys.

8. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Channel *268C3 and by removing Channel 268C3 at Augusta; and by adding Channel *232C2 and by removing Channel 232C2 at Hayward.

Federal Communications Commission.

**Peter H. Doyle,**

*Chief, Audio Division, Media Bureau.*

[FR Doc. 04–10682 Filed 5–10–04; 8:45 am]

BILLING CODE 6712–01–P

# Notices

Federal Register

Vol. 69, No. 91

Tuesday, May 11, 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.

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

**AGENCY:** Joint Board for the Enrollment of Actuaries.

**ACTION:** Notice.

**SUMMARY:** The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 2004. This notice describes the Advisory Committee and invites applications from those interested in servicing on it.

**1. General**

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

**2. Programs**

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

**3. Function**

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommend.)

**4. Membership**

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations that will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travels meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director SE:OPR, 1111 Constitution Avenue, NW., Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–622–8229.

The deadline for accepting applications is August 13, 2004.

Dated: May 3, 2004.

**Patrick W. McDonough,**

*Executive Director, Joint Board for the Enrollment of Actuaries.*

[FR Doc. 04–10700 Filed 5–10–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Bear Knoll Timber Management Project, Mt. Hood National Forest, Wasco County, OR

**AGENCY:** Forest Service, USDA.

**ACTION:** Cancellation notice.

**SUMMARY:** On May 2, 2002, a Notice of Intent (NOI) to prepare an environmental impact statement (EIS) for the Bear Knoll Timber Management Project on the Hood River Ranger District of the Mt. Hood National Forest, was published in the **Federal Register** (67 FR 22049). The Forest Service has decided to cancel the preparation of this EIS. The NOI is hereby rescinded

**FOR FURTHER INFORMATION CONTACT:** Questions may be addressed to Mike Redmond, Environmental Coordinator, 16400 Champion Way, Sandy, Oregon 97055–7248 (phone: 503–668–1776).

Dated: April 20, 2004.

**Gary L. Larsen,**

*Forest Supervisor.*

[FR Doc. 04–10648 Filed 5–10–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMMENT OF AGRICULTURE

### Forest Service

### Hood/Willamette Resource Advisory Committee (RAC)

**AGENCY:** Forest Service, USDA

**ACTION:** Notice.

**SUMMARY:** The Hood/Willamette Resource Advisory Committee (RAC) will meet on Wednesday, May 26, 2003. The meeting is scheduled to begin at 1 p.m. and will conclude at approximately 4 p.m. The meeting will be held at Salem Office of the Bureau of Land Management Office; 1717 Febry Road SE; Salem, Oregon; (503) 375–5646. The tentative agenda includes: (1) Report on National Conference and Workshop; (2) Election of chairperson; (3) Decision on overhead rate for 2005 projects; (4) Presentation of 2005 Projects; and (5) Public Forum.

The Public Form is tentatively scheduled to begin at 2 p.m. Time allotted for individual presentations will be limited to 3–4 minutes. Written comments are encouraged, particularly if the material cannot be presented within the time limits for the Public Forum. Written comments may be submitted prior to the May 26th meeting by sending them to Designated Federal Donna Short at the address given below.

**FOR FURTHER INFORMATION CONTACT:** For more information regarding this meeting, contact Designated Federal Official Donna Short; Sweet Home Ranger District; 3225 Highway 20; Sweet Home, Oregon 97386; (541) 367–9220.

Dated: May 5, 2004.

**Dallas J. Emch,**

*Forest Supervisor.*

[FR Doc. 04–10616 Filed 5–10–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Lake Tahoe Basin Federal Advisory Committee

**AGENCY:** Forest Service, USDA.

**ACTION:** Notice of meeting.

**SUMMARY:** The Lake Tahoe Basin Federal Advisory Committee will hold a meeting on June 4, 2004, at the US Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA. This Committee, established by the Secretary of Agriculture on December 15, 1998, (64 FR 2876) is chartered to provide advice to the Secretary on implementing the terms of the Federal Interagency Partnership on the Lake Tahoe Region and other matters raised by the Secretary.

**DATES:** The meeting will be held June 4, 2004, beginning at 9 a.m. and ending at 12 p.m.

**ADDRESSES:** The meeting will be held at the US Forest Service Office, Emerald Bay Conference Room, 35 College Drive, South Lake Tahoe, CA.

**FOR FURTHER INFORMATION CONTACT:** Maribeth Gustafson or Jeannie Stafford, Lake Tahoe Basin Management Unit, Forest Service, 35 College Drive, South Lake Tahoe, CA 96150, (530) 543–2642.

**SUPPLEMENTARY INFORMATION:** The committee will meet jointly with the Lake Tahoe Basin Executives Committee. Items to be covered on the agenda include: (1) Review and recommendations on the Forest Service Lake Tahoe Restoration Act; (2) update on Southern Nevada Public Land Management Act (SNPLMA) process; (3) status report on the Charter renewal; (4) public comment; and (5) update on the recent EPA decision regarding Sacramento air quality. All Lake Tahoe Basin Federal Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend at the above address. Issues my be brought to the attention of the Committee during the open public comment period at the meeting or by filing written statements with the secretary for the Committee before or after the meeting. Please refer any written comments to the Lake Tahoe Basin Management Unit at the contact address stated above.

Dated: May 5, 2004.

**Dave Marlow,**

*Acting Forest Supervisor.*

[FR Doc. 04–10617 Filed 5–10–04; 8:45 am]

BILLING CODE 3410–11–M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 1331]**

### Expansion and Reorganization of Foreign-Trade Zone 202: Los Angeles, CA, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Board of Harbor Commissioners of the City of Los Angeles, grantee of Foreign-Trade Zone 202, submitted an application to the Board for authority to expand and reorganize FTZ 202 to extend authority at Sites 12, 13 and 14, to restore 44 acres to Site 9, to delete 78 acres from Site 3, to expand existing Site 1 (at Howard Hartry, Inc. facility), to expand existing Site 2 (at Exel Global Logistics Inc. facility), and to include 7 new sites to the zone project at the Artesia Corridor Commerce Park (Site 16), Tri-Modal's Lucerne and Watson Center facilities (Site 17), Tri-Modal's Carson facility (Site 18), Chino South Business Park (Site 19), Park Mira Loma West (Site 20), Pattillo—Redlands Commerce Center (Site 21), and, Bixby—Redlands Business Center (Site 22), within and adjacent to the Los Angeles-Long Beach Customs port of entry area (FTZ Docket 54–2002; filed 11/21/02; amended 4/2/03 and 1/7/04);

*Whereas*, notice inviting public comment was given in the **Federal Register** (application: 67 FR 72643, 12/6/02; amendments: 68 FR 17342, 4/9/03 and 69 FR 6252, 1/13/04) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that the proposal, as amended, would be in the public interest if subject to certain conditions;

*Now, therefore*, the Board hereby orders:

The application to expand FTZ 202, as amended, is approved, subject to the Act and the Board's regulations, including Section 400.28, and subject to the Board's standard 2,000-acre activation limit for the overall zone project, and further subject to a time limit (to July 1, 2009) for each of the sites or additions listed above.

Signed at Washington, DC, this 30th day of April 2004.

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 04–10670 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1325]**

### Grant of Authority; Establishment of a Foreign-Trade Zone; Alexandria, LA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board of Commissioners of the England Economic and Industrial Development District (the Grantee), has made application to the Board (FTZ Docket 43–2003, filed 9/8/03), requesting the establishment of a foreign-trade zone at sites in Alexandria, Louisiana, adjacent to the Morgan City Customs port of entry;

*Whereas,* notice inviting public comment has been given in the **Federal Register** (68 FR 54202, 9/16/03); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore,* the Board hereby grants to the Grantee the privilege of establishing a foreign-trade zone, designated on the records of the Board as Foreign-Trade Zone No. 261, at the sites described in the application, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 21st day of April 2004.

Foreign-Trade Zones Board.

**Donald L. Evans,**

*Secretary of Commerce, Chairman and Executive Officer.*

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–10666 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1330]**

### Grant of Authority for Subzone Status; Wacker Chemical Corporation (Silicone and Ceramics Products); Adrian, MI

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas,* the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas,* the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 70, has made application to the Board for authority to establish a special-purpose subzone at the silicones and ceramics products manufacturing and warehousing facilities of Wacker Chemical Corporation, located in Adrian, Michigan (FTZ Docket 29–2003, filed 6/18/03);

*Whereas,* notice inviting public comment was given in the **Federal Register** (68 FR 38009, 6–26–03) and the comment period was extended (68 FR 51549, 8/27/03; 68 FR 54887, 9/19/03; 68 FR 61790, 10/30/03; 68 FR 67400, 12/2/03; 68 FR 68590 12/9/03); and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

*Now, therefore,* the Board hereby grants authority for subzone status at the silicones and ceramics products manufacturing and warehousing facilities of Wacker Chemical Corporation, located in Adrian, Michigan (Subzone 70U), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Privileged foreign status (19 CFR Part 146.41) shall be elected on foreign merchandise that falls under HTSUS Subheadings #3204 and #3206.

2. Foreign merchandise admitted to the zone that falls under HTSUS Subheadings #3204.14, #3204.17 and #3206.49 shall be limited to 300,000 KG per year.

Signed at Washington, DC, this 22nd day of April, 2004.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 04–10669 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1333]**

### Approval of Processing Activity Within Foreign-Trade Zone 66: Wilmington, NC; Siemens Westinghouse Power Corporation (Inc.) (Industrial Power Generation Equipment)

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the North Carolina Department of Commerce, grantee of FTZ 66, has requested authority under Section 400.32(b)(1) of the Board's regulations on behalf of Siemens Westinghouse Power Corporation (Inc.), to process foreign-origin turbines and domestic industrial power generators under zone procedures within FTZ 66, Wilmington, North Carolina (Docket 8–2004, filed 3–9–2004);

*Whereas,* pursuant to 15 CFR 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making such decisions on new manufacturing/processing activity under certain circumstances, including situations where the proposed activity is the same,

in terms of products involved, to activity recently approved by the Board (§ 400.32(b)(1)(i)); and,

*Whereas,* the FTZ Staff has reviewed the proposal, taking into account the criteria of Section 400.31, and the Executive Secretary has recommended approval;

*Now, therefore,* the Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 30th day of April, 2004.

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 04–10672 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–M

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1332]**

## Expansion of Foreign-Trade Zone 151: Findlay, OH, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Findlay-Hancock County Chamber of Commerce, grantee of Foreign-Trade Zone 151, submitted an application to the Board for authority to expand FTZ 151 to include a site within the Ottawa Industrial Park (373 acres) in Ottawa, Ohio (Site 3), adjacent to the Toledo Customs port of entry (FTZ Docket 28–2003; filed 6/10/03);

*Whereas*, notice inviting public comment was given in the **Federal Register** (68 FR 35856, 6/17/03) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore*, the Board hereby orders:

The application to expand FTZ 151 is approved, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 30th day of April, 2004.

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 04–10671 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1327]**

## Expansion of Foreign-Trade Zone 7; San Juan, PR, Area

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas,* the Puerto Rico Industrial Development Company, grantee of Foreign-Trade Zone 7, submitted an application to the Board for authority to expand FTZ 7 to include five new sites (FTZ Docket 52–2003; filed 10/2/2003);

*Whereas,* notice inviting public comment was given in **Federal Register** (68 FR 58652–58653, 10/10/2003) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

*Whereas,* the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

*Now, therefore,* the Board hereby orders:

The application to expand FTZ 7 is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the Board's standard 2,000-acre activation limit.

Signed at Washington, DC, this 22nd day of April 2004.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

Attest:

**Dennis Puccinelli,**

*Executive Secretary.*

[FR Doc. 04–10667 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

## Foreign-Trade Zones Board

**[Order No. 1329]**

## Grant of Authority for Subzone Status; Maxtor Corporation (Data Storage Products); Coppell, TX

Pursuant to its authority under the Foreign-Trade Zones Act, of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

*Whereas*, the Foreign-Trade Zones Act provides for "* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

*Whereas*, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

*Whereas*, the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, has made application to the Board for authority to establish special-purpose subzone at the data storage assembly and warehousing facility of Maxtor Corporation, located in Coppell, Texas (FTZ Docket 34–2003, filed 7/2/03);

*Whereas*, notice inviting public comment was given in the **Federal Register** (68 FR 42685, 7/18/03); and,

*Whereas*, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, therefore*, the Board hereby grants authority for subzone status at the data storage assembly and warehousing facility of Maxtor Corporation, located in Coppell, Texas (Subzone 39G), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 22nd day of April 2004.

**James J. Jochum,**

*Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.*

[FR Doc. 04–10668 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–580–809]**

### Circular Welded Non-Alloy Steel Pipe From Korea: Rescission of Antidumping Duty Administrative Review

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of rescission of administrative review.

**SUMMARY:** In response to requests from interested parties, the Department of Commerce initiated an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Korea. Based on requests from interested parties for withdrawal of the review with respect to all respondents, we are rescinding the administrative review.

**EFFECTIVE DATE:** May 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Scott Holland or Julie Santoboni, Office 1, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–1279 or (202) 482–4194, respectively.

**SUPPLEMENTARY INFORMATION:**

#### Background

On November 3, 2003, the Department of Commerce (''the Department'') published a notice in the **Federal Register** of the opportunity for interested parties to request an administrative review of the antidumping duty order on circular welded non-alloy steel pipe from Korea. *See Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding or Suspended Investigation*, 68 FR 62279 (November 3, 2003). On November 26, 2003, the Department received a timely request for review of Husteel Co. Ltd. (''Husteel''), Hyundai HYSCO (''HYSCO''), and SeAH Steel Corporation, Ltd. (''SeAH'') (collectively, ''respondents'') from Allied Tube and Conduit Corporation and Wheatland Tube Company (collectively, ''domestic interested parties''). We also received timely filed requests for review from Husteel, HYSCO, and SeAH.

In accordance with 19 CFR 351.221(b)(1), we published a notice of initiation of the antidumping duty administrative review on December 24, 2003, with respect to the respondents. *See Notice of Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 68 FR 74550 (December 24, 2003). The period of review is November 1, 2002, through October 31, 2003.

On April 9, 2004, the domestic interested parties withdrew their request for review of all three respondents. HYSCO withdrew its request for review on April 21, 2004. Husteel and SeAH withdrew their requests for review on April 23, 2004.

#### Rescission of Antidumping Administrative Review

In accordance with 19 CFR 351.213(d)(1), the Department will rescind an administrative review if a party that requested the review withdraws the request within 90 days of the date of publication of the notice of initiation of the requested review. The Department may extend this time limit if it decides it is reasonable to do so. Although the domestic interested parties and the respondents submitted requests for withdrawal of this administrative review subsequent to the 90 day deadline, *i.e.*, March 23, 2004, because all parties withdrew their requests for an administrative review, we are hereby rescinding this administrative review.

#### Assessment

The Department will instruct U.S. Customs and Border Protection (''CBP'') to assess antidumping duties on all appropriate entries. For the companies for which this review is rescinded, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

The Department will issue appropriate assessment instructions directly to CBP within 15 days of publication of this notice.

#### Notification to Importers

This notice serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

#### Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective orders (''APOs'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This notice is issued and published in accordance with section 777(i) of the Act, as amended and 19 CFR 351.213(d)(4).

Dated: May 4, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–1072 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–475–059]**

### Pressure Sensitive Plastic Tape From Italy; Final Results of the Second Sunset Review of Antidumping Duty Finding

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of final results of the second expedited sunset review of antidumping finding on pressure sensitive plastic tape from Italy.

**SUMMARY:** On January 2, 2004, the Department of Commerce (''the Department'') published the notice of initiation of sunset review on Pressure Sensitive Plastic Tape (''PSPT'') from Italy. On the basis of the notice of intent to participate, and adequate substantive comments filed on behalf of a domestic interested party and inadequate response (in this case, no response) from respondent interested parties, we determined to conduct an expedited (120-day) sunset review. As a result of this review, we find that revocation of the antidumping duty finding would be likely to lead to continuation or recurrence of dumping at the levels listed below in the section entitled ''Final Results of Review.''

**EFFECTIVE DATE:** May 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Alessandra Cortez or Ozlem Koray, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–5925 or (202) 482–3675.

**SUPPLEMENTARY INFORMATION:**

## Background

On January 2, 2004, the Department published the notice of initiation of sunset review of the antidumping duty finding on PSPT from Italy pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[1] The Department received the notice of intent to participate on behalf of 3M Company (''3M''), a domestic interested party, within the deadline specified in section 351.218(d)(1)(I) of the Department's Regulations (''Sunset Regulations''). 3M claimed interested party status under section 771(9)(C) of the Act as a U.S. producer of a domestic like product. We received a complete substantive response from 3M within the 30-day deadline specified in the Sunset Regulations under section 351.218(d)(3)(i).

We did not receive a substantive response from any interested party respondents in this proceeding. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited (120-day) sunset review of this finding.

## Scope of Review

The products covered in this review are shipments of PSPT measuring over one and three-eights inches in width and not exceeding four millimeters in thickness. The above described PSPT is classified under HTS subheading 3919.90.50.[2] On May 7, 1992, the Department issued a scope ruling on highlighting ''note tape'' and determined that it was not within the scope of the finding. *See* Scope Rulings, 57 FR 19602 (May 7, 1992). The HTS subheadings are provided for convenience and for customs purposes. The written description remains dispositive.

## Analysis of Comments Received

All issues raised in this case by 3M are addressed in the ''Issues and Decision Memorandum'' (''Decision Memo'') from Ronald K. Lorentzen, Acting Director, Office of Policy, Import Administration, to James J. Jochum, Assistant Secretary for Import Administration, dated May 3, 2004, which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the finding were to be revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Commerce Building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*, under the heading ''May 2004.'' The paper copy and electronic version of the Decision Memorandum are identical in content.

## Final Results of Review

We determine that revocation of the antidumping duty finding on PSPT from Italy would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

| Italy manufacturers/exporters/producers weighted average | Margin percent |
|---|---|
| Comet SARA, S.p.A | 10 |
| Manuli Autoadesivi (Manuli) | *10 |
| All Others | 10 |

*Tyco Adhesives Italia S.p.A became a successor-in-interest company to Manuli Tapes S.p.A. *See* Final Results of Antidumping Duty Changed Circumstances Review: Pressure Sensitive Plastic Tape from Italy, 69 FR 15297 (March 25, 2004).

This notice also serves as the only reminder to parties subject to administrative protective orders (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 3, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E4–1074 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DR–P**

[1] Initiation of Five-Year (Sunset) Reviews, 69 FR 50 (January 2, 2004).

[2] HTS number 3919.90.20 was incorrectly included in the first sunset review, but later determined to be an invalid number. Pressure Sensitive Plastic Tape From Italy, USITC Pub. 3157, p. I–4, fn. 8 (February 1999).

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# DEPARTMENT OF COMMERCE

## International Trade Administration

**[C–122–815]**

## Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of Countervailing Duty Administrative Reviews

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of preliminary results of countervailing duty administrative reviews.

**SUMMARY:** The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 2002, through December 31, 2002. We preliminarily find that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the U.S. Bureau of Customs and Border Protection to assess countervailing duties as detailed in the ''Preliminary Results of Reviews'' section of this notice. Interested parties are invited to comment on these preliminary results (*see* the Public Comment section of this notice).

**EFFECTIVE DATE:** May 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Melanie Brown, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, telephone: (202) 482–4987.

## Case History

On August 31, 1992, the Department of Commerce (''the Department'') published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (*see Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada,* 57 FR 39392 (July 13, 1992)). On August 1, 2003, the Department published a notice of ''Opportunity to Request Administrative Review'' of these countervailing duty orders (*see Antidumping or Countervailing Duty Order, Finding, or*

*Suspended Investigation; Opportunity to Request Administrative Review,* 68 FR 45218). We received timely requests for review from Norsk Hydro Canada, Inc. (''NHCI''), Magnola Metallurgy, Inc. (''Magnola'') and from the petitioner, U.S. Magnesium, LLC. On September 30, 2003, we initiated these reviews covering shipments of subject merchandise from NHCI and Magnola (*see Initiation of Antidumping and Countervailing Duty Administrative Reviews, Request for Revocation in Part and Deferral of Administrative Review*, 68 FR 56262).

On November 13, 2003, we issued countervailing duty questionnaires to NHCI, Magnola, the Government of Québec (''GOQ''), and the Government of Canada (''GOC''). We received questionnaire responses from NHCI and Magnola on December 19, 2003, and from the GOQ and the GOC on December 22, 2003. A supplemental questionnaire was issued to Magnola on January 15, 2004. We received Magnola's supplemental questionnaire response on January 27, 2004.

**Scope of the Reviews**

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada,* 57 FR 6094 (February 20, 1992).

**Period of Review**

The period of review (''POR'') for which we are measuring subsidies is January 1, 2002 through December 31, 2002.

**Subsidies Valuation Information**

*Discount Rate:* As noted below, the Department preliminarily finds that NHCI and Magnola benefitted from countervailable subsidies during the POR. In accordance with 19 CFR 351.524(d)(3), it is the Department's preference to use a company's long-term, fixed-rate cost of borrowing in the same year a grant was approved as the discount rate. However, where a company does not have a loan that can be used as a discount rate, the Department's next preference is to use the average cost of long-term fixed-rate loans in the country in question. In the investigation and previous reviews, the Department determined that NHCI received and benefitted from countervailable subsidies from the Article 7 grant from the Québec Industrial Development Corporation (''Article 7 grant''). (*See e.g.,* Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada, 57 FR 30946 (July 13, 1992) (''*Magnesium Investigation*'')). In line with the Department's practice, we used NHCI's cost of long-term, fixed-rate debt in the year in which the Article 7 grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

In the *Final Results of Pure Magnesium from Canada: Notice of Final Results of Countervailing Duty New Shipper Review* (''*New Shipper Review*''), 68 FR 22359 (April 28, 2003), we found that Magnola benefitted from grants under the Emploi-Québec Manpower Training Measure Program (''MTM Program''). Magnola did not have any long-term fixed rate debt during the years the grants were approved. Therefore, consistent with our previous decision, we continue to use long-term commercial bond rates for purposes of calculating the benefit attributable to the POR.

*Allocation Period:* In the investigations and previous administrative reviews of these cases, the Department used as the allocation period for non-recurring subsidies the average useful life (''AUL'') of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System (''the IRS tables''), *i.e.*, 14 years. Pursuant to § 351.524(d)(2) of the Department's regulations, we use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect either the company-specific or country-wide AUL for the industry. During this review, none of the parties contested using the AUL reported for the magnesium industry in the IRS tables. Therefore, we continue to allocate non-recurring benefits over 14 years.

For non-recurring subsidies, we applied the ''0.5 percent expense test'' described in § 351.524(b)(2) of the Department's regulations. In this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of the subsidies is less than 0.5 percent of sales, the benefits are expensed in their entirety, in the year of receipt, rather than allocated over the AUL period.

**Analysis of Programs**

*I. Programs Preliminarily Determined To Confer Countervailable Subsidies*

A. Article 7 Grant From the Québec Industrial Development Corporation (''SDI'')

SDI (Société de Développement Industriel du Québec) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance is provided for projects that are capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of ''special economic importance and value to the province.'' (*See Magnesium Investigation,* 57 FR at 30948.)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation,* the Department determined the Article 7 grant confers a countervailable subsidy within the meaning of section 771(5) of the Tariff Act of 1930, as amended (''the Act''). The grant is a direct transfer of funds from the GOQ bestowing a benefit in the amount of the grant. We previously determined that NHCI received a disproportionately large share of assistance under this program, and on this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5A)(D)(iv) of the Act. In these reviews, neither the GOQ nor NHCI has provided new information

which would warrant reconsideration of this determination.

In the *Magnesium Investigation,* the Department determined that the Article 7 assistance received by NHCI constituted a non-recurring grant because it represented a one-time provision of funds. In the *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada,* 61 FR 11186, 11187 (March 19, 1996), we found this determination to be consistent with the principles enunciated in the Allocation section of the *General Issues Appendix* (''*GIA*'') appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria,* 58 FR 37225, 37226 (July 9, 1993). In the current reviews, no new information has been placed on the record that would cause us to depart from this treatment. To calculate the benefit, we performed the expense test, as explained in the AUL section above, and found that the benefits approved were more than 0.5 percent of NHCI's total sales. Therefore, we allocated the benefits over time. We used the grant methodology as described in § 351.524(d) of the Department's regulations to calculate the amount of benefit allocable to the POR. We then divided the benefit attributable to the POR by NHCI's total sales of Canadian-manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 grant to be 1.07 percent ad valorem for NHCI.

B. Emploi-Québec Manpower Training Program

The MTM Program is a labor-focused program designed to improve and develop the labor market in the region of Québec. It is implemented by the Emploi-Québec (''E–Q''), a labor unit within Québec's Ministry of Employment and Solidarity (Ministére de L'Emploi et de la Solidarité sociale), and funded by the GOQ. The Program provides grants to companies in Québec that have training programs approved by the E–Q. Up to 50 percent of a company's training expenses, normally over a period of 24 months, are reimbursed under the MTM program if the training programs satisfy the E–Q's five policy objectives of job preparation, job integration, job management, job stabilization, and job creation.

Once the five objectives are met, companies with small-scale projects are eligible to receive reimbursement of 50 percent of their labor training expenses, up to a maximum reimbursement of $100,000. Major economic projects are required to: (1) Create either 50 jobs or 100 jobs in 24 months, depending on whether the company is a new company or a company that has been in operation; (2) have the approval of the Ministry's Commission des partenaires du marche du travail; and (3) agree to close monitoring by the E-Q. The $100,000 reimbursement limit does not apply to major economic projects. (*See New Shipper Review* and accompanying Issues and Decision Memorandum at ''Analysis of Programs.'')

In 1998 and 2000, the E–Q approved grants to reimburse 50 percent of Magnola's training expenses. Magnola received the MTM grants in 1999, 2000 and 2001. In the *New Shipper Review,* the Department found that the MTM program assistance received by Magnola, constituted countervailable benefits within the meaning of section 771(5) of the Act. They are a direct transfer of funds from the GOQ bestowing a benefit in the amount of the grants. We also found Magnola received a disproportionately large share of assistance under the MTM program and, on this basis, we found the grants to be limited to a specific enterprise or industry, or group of enterprises or industries, within the meaning of section 771(5A)(D)(iv) of the Act. In these reviews, neither the GOQ nor Magnola has provided new information which would warrant reconsideration of this determination.

In accordance with 19 CFR 351.524(c)(1) and (2), we treated the grants as non-recurring. In the current reviews, no new information has been provided that would warrant reconsideration of these determinations. To calculate the benefit, we performed the expense test, as explained in the AUL section above, and found that the benefits approved were more than 0.5 percent of Magnola's total sales. Therefore, we allocated the benefits over time. We used the grant methodology as described in § 351.524(d) of the Department's regulations to calculate the amount of benefit allocable to the POR. We then divided the benefit attributable to the POR by Magnola's total sales in the POR. On this basis, we preliminarily find the net subsidy rate from the MTM program to be 1.84 percent *ad valorem* for Magnola.

*II. Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that neither NHCI nor Magnola applied for or received benefits under these programs during the POR:

St. Lawrence River Environment Technology Development Program.

Program for Export Market Development.

The Export Development Corporation.

Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec.

Opportunities to Stimulate Technology Programs.

Development Assistance Program.

Industrial Feasibility Study Assistance Program.

Export Promotion Assistance Program.

Creation of Scientific Jobs in Industries.

Business Investment Assistance Program.

Business Financing Program.

Research and Innovation Activities Program.

Export Assistance Program.

Energy Technologies Development Program.

Transportation Research and Development Assistance Program.

*III. Program Previously Determined To Be Terminated*

Exemption from Payment of Water Bills.

**Alleged Over-Assessment of Countervailing Duties**

In its December 22, 2003 questionnaire response, NHCI revisits an argument it previously raised in the 2001 administrative reviews. NHCI contends that the Department should adjust the assessment rate applied to the value of entries made during the current POR in order to avoid alleged over-countervailing in connection with cash deposits retained on 1997 entries. NHCI states that the Department issued appropriate liquidation instructions to the U.S. Bureau of Customs and Border Protection (''CBP'') following the completion of the 1997 administrative reviews, but that the CBP erroneously liquidated hundreds of NHCI entries at the cash deposit rate at the time of entry, rather than at the rate established in the final results of the 1997 administrative reviews.

In the 2001 administrative reviews, the Department determined that it does not have the statutory authority to address what is properly a customs protest issue concerning entries from a prior, completed review in the context of a subsequent administrative review. (*See Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews,* 68 FR 53962 (September 15, 2003) (''*Final Results*''), and accompanying Issues and Decision Memorandum, at Comment (1). We note that NHCI has challenged this

determination at the Court of International Trade. No new information or argument has been presented in these reviews which would warrant reconsideration of this determination. Therefore, for the reasons stated in the *Final Results* of the 2001 administrative reviews, we continue to find that the Department does not have the statutory authority to adjust the assessment rate as requested by NHCI.

**Preliminary Results of Reviews**

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for each producer/exporter subject to these administrative reviews. For the period January 1, 2002, through December 31, 2002, we preliminarily determine the net subsidy rates for producers/exporters under review to be those specified in the chart shown below. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the CBP to assess countervailing duties at these net subsidy rates. We will disclose our calculations to the interested parties in accordance with § 351.224(b) of the Department's regulations.

| Company | Ad valorem rate (percent) |
|---|---|
| Norsk Hydro Canada, Inc. ..... | 1.07 |
| Magnola Metallurgy, Inc. ..... | 1.84 |

**Cash Deposit Instructions**

The Department also intends to instruct the CBP to collect cash deposits of estimated countervailing duties at the rate specified on the f.o.b. value of all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

We will instruct the CBP to continue to collect cash deposits for non-reviewed companies (except Timminco Limited which was excluded from the orders during the investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews,* 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

**Public Comment**

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(1)(ii), are due.

The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2004.

**Joseph A. Spetrini,**

*Acting Assistant Secretary for Import Administration.*

[FR Doc. E4–1071 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DS–P**

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## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–122–838]**

### Initiation of Antidumping Duty Changed Circumstances Review: Certain Softwood Lumber Products From Canada

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**EFFECTIVE DATE:** May 11, 2004.

**ACTION:** Notice of initiation of changed circumstances review.

**SUMMARY:** In accordance with 19 CFR 351.216(b) (2003), the Coalition for Fair Lumber Imports Executive Committee, the petitioner in this case, filed a request for a changed circumstances review of the antidumping duty order on certain softwood lumber products from Canada, as described below. In response to this request, the Department of Commerce (the Department) is initiating a changed circumstances review of the antidumping order on certain softwood lumber from Canada.

**FOR FURTHER INFORMATION CONTACT:** Amber Musser or Constance Handley, at (202) 482–1777 or (202) 482–0631, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

**SUPPLEMENTARY INFORMATION:** As a result of the antidumping duty order issued following the completion of the less-than-fair-value investigation of certain softwood lumber products from Canada, imports of softwood lumber from Canfor Corporation (Canfor) and Slocan Forest Products (Slocan), which were both respondents, received company-specific cash-deposit rates (*see Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Order: Certain Softwood Lumber Products from Canada*, 67 FR 36068 (May 22, 2002)). Both companies are participating as separate companies in the ongoing first administrative review of this order, which covers the period May 22, 2002, through April 30, 2003. The petitioner has provided the Department of Commerce (the Department) with information indicating that as of April 1, 2004, Canfor and Slocan completed the merger of their lumber operations.[1] As a result, the petitioner is requesting that the Department initiate a changed circumstances review to establish a new cash-deposit rate for the merged entity. *Id.*

**Scope of the Order**

The products covered by this order are softwood lumber, flooring and siding (softwood lumber products). Softwood lumber products include all products classified under headings 4407.1000, 4409.1010, 4409.1090, and 4409.1020, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS), and any softwood lumber, flooring and siding described below. These softwood lumber products include:

(1) Coniferous wood, sawn or chipped lengthwise, sliced or peeled, whether or

[1] *See* letter from the petitioner to the Department, dated April 22, 2004.

not planed, sanded or finger-jointed, of a thickness exceeding six millimeters;

(2) Coniferous wood siding (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed;

(3) Other coniferous wood (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces (other than wood moldings and wood dowel rods) whether or not planed, sanded or finger-jointed; and

(4) Coniferous wood flooring (including strips and friezes for parquet flooring, not assembled) continuously shaped (tongued, grooved, rabbeted, chamfered, v-jointed, beaded, molded, rounded or the like) along any of its edges or faces, whether or not planed, sanded or finger-jointed.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive. Preliminary scope exclusions and clarifications were published in three separate **Federal Register** notices.

Softwood lumber products excluded from the scope:

- Trusses and truss kits, properly classified under HTSUS 4418.90.
- I-joist beams.
- Assembled box spring frames.
- Pallets and pallet kits, properly classified under HTSUS 4415.20.
- Garage doors.
- Edge-glued wood, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- Properly classified complete door frames.
- Properly classified complete window frames.
- Properly classified furniture.

Softwood lumber products excluded from the scope only if they meet certain requirements:

- Stringers (pallet components used for runners): if they have at least two notches on the side, positioned at equal distance from the center, to properly accommodate forklift blades, properly classified under HTSUS 4421.90.97.40 (formerly HTSUS 4421.90.98.40).
- Box-spring frame kits: if they contain the following wooden pieces—two side rails, two end (or top) rails and varying numbers of slats. The side rails and the end rails should be radius-cut at both ends. The kits should be individually packaged, they should contain the exact number of wooden components needed to make a particular box spring frame, with no further processing required. None of the components exceeds 1″ in actual thickness or 83″ in length.
- Radius-cut box-spring-frame components, not exceeding 1'' in actual thickness or 83″ in length, ready for assembly without further processing. The radius cuts must be present on both ends of the boards and must be substantial cuts so as to completely round one corner. $ Fence pickets requiring no further processing and properly classified under HTSUS 4421.90.70, 1″ or less in actual thickness, up to 8″ wide, 6″ or less in length, and have finials or decorative cuttings that clearly identify them as fence pickets. In the case of dog-eared fence pickets, the corners of the boards should be cut off so as to remove pieces of wood in the shape of isosceles right angle triangles with sides measuring ¾ inch or more.
- U.S. origin lumber shipped to Canada for minor processing and imported into the United States, is excluded from the scope of this order if the following conditions are met: (1) the processing occurring in Canada is limited to kiln-drying, planing to create smooth-to-size board, and sanding, and (2) if the importer establishes to U.S. Customs and Border Protection's (CBP) satisfaction that the lumber is of U.S. origin.
- Softwood lumber products contained in single family home packages or kits,[2] regardless of tariff classification, are excluded from the scope of the orders if the following criteria are met:

1. The imported home package or kit constitutes a full package of the number of wooden pieces specified in the plan, design or blueprint necessary to produce a home of at least 700 square feet produced to a specified plan, design or blueprint;

2. The package or kit must contain all necessary internal and external doors and windows, nails, screws, glue, subfloor, sheathing, beams, posts, connectors and if included in purchase contract decking, trim, drywall and roof shingles specified in the plan, design or blueprint;

3. Prior to importation, the package or kit must be sold to a retailer of complete home packages or kits pursuant to a valid purchase contract referencing the particular home design plan or blueprint, and signed by a customer not affiliated with the importer;

4. The whole package must be imported under a single consolidated entry when permitted by CBP, whether or not on a single or multiple trucks, rail cars or other vehicles, which shall be on the same day except when the home is over 2,000 square feet;

5. The following documentation must be included with the entry documents:

- A copy of the appropriate home design, plan, or blueprint matching the entry;
- A purchase contract from a retailer of home kits or packages signed by a customer not affiliated with the importer;
- A listing of inventory of all parts of the package or kit being entered that conforms to the home design package being entered;
- In the case of multiple shipments on the same contract, all items listed immediately above which are included in the present shipment shall be identified as well.

We have determined that the excluded products listed above are outside the scope of this order provided the specified conditions are met. Lumber products that CBP may classify as stringers, radius cut box-spring-frame components, and fence pickets, not conforming to the above requirements, as well as truss components, pallet components, and door and window frame parts, are covered under the scope of this order and may be classified under HTSUS subheadings 4418.90.40.90, 4421.90.70.40, and 4421.90.98.40. Due to changes in the 2002 HTSUS whereby subheading 4418.90.40.90 and 4421.90.98.40 were changed to 4418.90.45.90 and 4421.90.97.40, respectively, we are adding these subheadings as well.

In addition, this scope language has been further clarified to now specify that all softwood lumber products entered from Canada claiming non-subject status based on U.S. country of origin will be treated as non-subject U.S.-origin merchandise under the countervailing duty order, provided that these softwood lumber products meet the following condition: upon entry, the importer, exporter, Canadian processor and/or original U.S. producer establish to CBP's satisfaction that the softwood lumber entered and documented as U.S.-origin softwood lumber was first produced in the United States as a lumber product satisfying the physical parameters of the softwood lumber

[2] To ensure administrability, we clarified the language of this exclusion to require an importer certification and to permit single or multiple entries on multiple days as well as instructing importers to retain and make available for inspection specific documentation in support of each entry.

scope.[3] The presumption of non-subject status can, however, be rebutted by evidence demonstrating that the merchandise was substantially transformed in Canada.

**Initiation of Changed Circumstances Review**

Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act), the Department will conduct a changed circumstances review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. The petitioner contends that, now that Slocan and Canfor are no longer separate companies, they should have a combined cash-deposit rate. In accordance with 19 CFR 351.216(d), the Department finds there is sufficient information to warrant initiating a changed circumstances review. Therefore, pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a changed circumstances administrative review to determine the facts surrounding the merger and what cash-deposit rate should be applied to entries produced and exported by the merged entity.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review in accordance with 19 CFR 351.221(b)(4) and 351.221(c)(3)(i), which will set forth the Department's preliminary factual and legal conclusions. Pursuant to 19 CFR 351.221(b)(4)(ii) interested parties will have an opportunity to comment on the preliminary results. The Department will issue its final results of review in accordance with the time limits set forth in 19 CFR 351.216(e).

This notice is in accordance with section 751(b)(1) of the Act.

Dated: May 4, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–1073 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DS–P**

[3] See the scope clarification message (3034202), dated February 3, 2003, to CBP, regarding treatment of U.S.-origin lumber on file in the Central Records Unit, Room B–099 of the main Commerce Building.

## DEPARTMENT OF COMMERCE

### International Trade Administration

### Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in Suite 4100W, U.S. Department of Commerce, Franklin Court Building, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 03–053. *Applicant:* Case Western Reserve University, 10900 Euclid Avenue, Cleveland, OH 44106. *Instrument:* Scanning Near-Field Optical Microscope, Model ALPHASNOM. *Manufacturer:* WITEC, Germany. *Intended Use:* The instrument is intended to be used to examine and investigate:

1. The location of nanometer sized minerals within collagen fibril templates and the alignment of collagen fibrils with respect to each other.
2. The rate of diffusion of Ca ions normal to the neuron membrane surface after stimulating Ca ion channels to conduct.
3. Relative placement of fluorescently labeled proteins residing on sphingolipid rafts on T cell membranes.
4. Alignment of liquid crystal molecules at a glass surface.
5. Surface diffusion of fluorescently labeled antibodies conjugated to proteins inserted in fluorosomes.

*Application accepted by Commissioner of Customs:* April 7, 2004.

*Docket Number:* 04–006. *Applicant:* The Jackson Laboratory, 600 Main Street, Bar Harbor, ME 04609. *Instrument:* Electron Microscope, Model JEM–1230 (HC). *Manufacturer:* Jeol Ltd., Japan. *Intended Use:* The instrument is intended to be used to investigate:

1. Morphological studies in the area of eye research including corneal disease, glaucoma, and retinal degenerations.
2. Development of progressive ataxia correlated with progressive neuronal loss in the cerebellum of a novel mutant mouse strain.
3. Characterizing trophoblast stem (TS) cell differentiation *in vitro*.
4. Severe hemolytic anemia in mice (hereditary spherocytosis) with deficiencies of the red cell cytoskeletal proteins alpha spectrin, beta spectrin or ankyrin.

*Application accepted by Commissioner of Customs:* April 6, 2004.

*Docket Number:* 04–007. *Applicant:* Argonne National laboratory. *Instrument:* UHV STM Microscope with Cryostat. *Manufacturer:* Unisoku Scientific Instruments, Japan. *Intended Use:* The instrument is intended to be used for low temperature microscopy and spectroscopy of superconductors and semiconductors and to study surface reconstruction and conditioning, vortex imaging and measurement of phonon spectra in materials to obtain a better understanding of the mechanisms of superconductivity and other electronic phenomena.

*Application accepted by Commissioner of Customs:* April 10, 2004.

*Docket Number:* 04–008. *Applicant:* California Institute of Technology. *Instrument:* Dual Beam SEM/FIB System, Model Nova 600 NanoLab. *Manufacturer:* FEI Company, Japan. *Intended Use:* The instrument is intended to be used to investigate:

1. Deposition of contacts and local metallization for connecting nano-devices.
2. Definition of gratings and lenses on optical fibers as well as ring and sphere resonators.
3. Ion-beam assisted intermixing of semiconductors for low-loss optical devices.
4. Rapid prototyping of nano-electric and nano-photonic devices.
5. Identification of corrosion products for surface analysis and mineral analysis.

*Application accepted by Commissioner of Customs:* April 19, 2004.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 04–10664 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DS–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of California at Santa Barbara; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

*Docket Number:* 04–005. *Applicant:* University of California, Santa Barbara, CA 93106–5050. *Instrument:* Electron Microscope, Model Tecnai G² Sphera. *Manufacturer:* FEI Company, The Netherlands. *Intended Use:* See notice at 69 FR 9301, February 27, 2004. *Order Date:* December 3, 2002. *Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered.

*Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of the instrument OR at the time of receipt of the application by U.S. Customs and Border Protection.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 04–10665 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

### University of Colorado, Boulder., et al; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in Suite 4100W, Franklin Court Building, U.S. Department of Commerce, 1099 14th Street, NW., Washington, DC.

*Comments:* None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

*Docket Number 04–002. Applicant:* University of Colorado, Boulder, CO 80309–0425. *Instrument:* Fiber Laser System, Model E5. *Manufacturer:* Koheras A/S, Denmark. *Intended Use: See* notice at 69 FR 9301, February 27, 1904. *Order Date:* December 1, 2003. *Reasons:* The foreign instrument provides (1) linewidth of 1 kHz, (2) thermal tunability of 38 Ghz and Piezo tunability of 38 Ghz. *Advice received from:* A domestic manufacturer of similar equipment.

*Docket Number:* 04–003. *Applicant:* Research Foundation of the City of New York, 555 West 57th Street, New York, NY 10019. *Instrument:* Femtosecond Fiber Laser, Model Femtolite C–20–SP. *Manufacturer:* IMRA America, Inc., Japan. *Intended Use: See* notice at 69 FR 9301, February 27, 2004.

*Reasons:* The foreign instrument provides a source of THz radiation on a 100 fs scale for investigation of THz time-domain spectroscopy and THz time-resolved spectroscopy.

*Advice received from:* A domestic manufacturer of similar equipment.

Domestic manufacturers of similar equipment advise that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) they know of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

**Gerald A. Zerdy,**

*Program Manager, Statutory Import Programs Staff.*

[FR Doc. 04–10663 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DS–P

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[C–423–809]**

### Stainless Steel Plate in Coils From Belgium: Notice of Decision of the Court of International Trade

**AGENCY:** Import Administration, International Trade Administration, Department of Commerce.

**ACTION:** Notice of decision of the court of international trade: stainless steel plate in coils from Belgium.

**SUMMARY:** On April 22, 2004, the Court of International Trade (''CIT'') sustained the Department of Commerce's (''the Department'') final redetermination results in all respects. *See ALZ N.V.* v. *United States*, Slip Op. 04–38, Court No. 01–00834 (CIT April 22, 2004) (*ALZ* v. *United States*). Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''Federal Circuit'') in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the Department is notifying the public that the *ALZ* v. *United States* decision, discussed below, was ''not in harmony'' with the Department's original results.

The Department will continue to order the suspension of liquidation of the subject merchandise until there is a ''conclusive'' decision in this case. If the case is not appealed, or if it is affirmed on appeal, the Department will instruct the U.S. Customs Service to terminate the suspension of liquidation and revise the cash deposit rate for ALZ N.V. (''ALZ'') accordingly.

**EFFECTIVE DATE:** May 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anthony Grasso, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3853.

**SUPPLEMENTARY INFORMATION:**

#### Background

On July 11, 2003, the CIT remanded to the Department its determination in the first administrative review of stainless steel plate in coils from Belgium. *See Stainless Steel Plate in Coils from Belgium: Final Results of Countervailing Duty Administrative Review*, 66 FR 45007 (August 27, 2001) (''*SS Plate from Belgium*''). The countervailing duty (''CVD'') order subject to this review was issued on May 11, 1999. *See Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South*

*Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa*, 64 FR 25288 (May 11, 1999).

In *SS Plate from Belgium*, applying the Department's regulations as codified at 19 CFR part 351 (2000), including the new substantive countervailing duty regulations published in the **Federal Register** on November 25, 1998 (66 FR 65348), the Department found the following three equity programs to be countervailable: (1) The government of Belgium's (''GOB'') purchases of Sidmar's common and preference shares in 1984; (2) the GOB's purchases of ALZ's common and preference shares in 1985; and (3) the GOB's 1985 debt-to-equity conversion for Sidmar.

In its remand order, the CIT directed the Department to: (1) Apply the equityworthiness methodology in existence at the time of the original petition to the 1984 and 1985 equity investments into Sidmar, and the 1985 equity investment into ALZ; and (2) (a) more closely scrutinize the terms of the Memorandum of Understanding regarding the purchase of Sidmar's common and preference shares to determine whether such document indicates a binding decision to invest; (b) reexamine the record for any additional evidence regarding the date upon which the government of Belgium (''GOB'') decided to invest in Sidmar's common shares; and (c) explain its reasoning for choosing the date it finds to be the date the GOB decided to invest.

To assist it in complying with the Court's instructions, on August 21, 2003, the Department issued a supplemental questionnaire to ALZ and the GOB. On September 22, 2003, ALZ and the GOB timely submitted their responses to this questionnaire.

The Department released for comment its draft final results of redetermination pursuant to the CIT's remand order (''*Draft Results*'') to ALZ and the GOB on November 21, 2003. The Department received no comments on the *Draft Results*.

The Department complied with the CIT's instructions and issued its redetermination pursuant to remand on December 10, 2003. See Final Results of Redetermination Pursuant to Court Remand: *ALZ N.V.* v. *United States*, Slip Op. 03–81, Court No. 01–00834 (CIT July 11, 2003) (''*Final Results of Redetermination*''). Pursuant to the CIT's remand instructions, we analyzed the information on the record as well as the information provided by ALZ and the GOB. As explained in the *Final Results of Redetermination*, we made changes to the Department's findings in *SS Plate from Belgium* in regard to the GOB's 1984 and 1985 equity infusions in Sidmar and ALZ.

On April 22, 2004, the CIT issued an order without an opinion affirming the Department's *Final Results of Redetermination*. *See ALZ N.V.* v. *United States*, Slip Op. 04–38, Court No. 01–00834 (CIT April 22, 2004).

### Suspension of Liquidation

The U.S. Court of Appeals for the Federal Circuit, in *Timken*, held that the Department must publish notice of a decision of the CIT or the Federal Circuit which is not ''in harmony'' with the Department's *Final Determination*. Publication of this notice fulfills that obligation. The Federal Circuit also held that the Department must suspend liquidation of the subject merchandise until there is a ''conclusive'' decision in the case. Therefore, pursuant to *Timken*, the Department must continue to suspend liquidation pending the expiration of the period to appeal the CIT's April 22, 2004, decision or, if that decision is appealed, pending a final decision by the Federal Circuit. The Department will instruct the United States Customs and Border Protection to revise cash deposit rates and liquidate relevant entries covering the subject merchandise effective the date of publication of this notice in the **Federal Register**, in the event that the CIT's ruling is not appealed, or if appealed and upheld by the Court of Appeals for the Federal Circuit.

Dated: May 4, 2004.

**James J. Jochum,**

*Assistant Secretary for Import Administration.*

[FR Doc. E4–1075 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DR–P**

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[I.D. 050504A]**

### Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Southeastern Data, Assessment, and Review (SEDAR) Steering Committee Meeting

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

**ACTION:** Notice of a SEDAR Steering Committee meeting.

**SUMMARY:** The SEDAR Steering Committee will meet via conference call on May 21, 2004, to discuss the SEDAR process and the king mackerel review workshop. Listening posts will be established at three locations to accommodate interested members of the public.

**DATES:** The SEDAR Steering Committee conference call will be held from 9 a.m. to 11 a.m. on Friday, May 21, 2004.

**ADDRESSES:** Listening posts to accommodate interested members of the public will be established at the following locations:

1. South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407;

2. NMFS, Southeast Regional Office, 9721 Executive Center Drive N., St. Petersburg, FL 33702; and

3. NMFS, Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, FL 33149.

**FOR FURTHER INFORMATION CONTACT:** John Carmichael, SEDAR Coordinator, SEDAR/SAFMC, One Southpark Circle, Suite 306, Charleston, SC 29407; phone: 843–571–4366 or toll free 866–SAFMC–10; fax: 843–769–4520.

**SUPPLEMENTARY INFORMATION:** The South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, in conjunction with NMFS, the Atlantic States Marine Fisheries Commission, and the Gulf States Marine Fisheries Commission, implemented the SEDAR process - a multi-step method for determining the status of fish stocks. The SEDAR Steering Committee provides oversight of the SEDAR process and establishes assessment priorities.

The Steering Committee meeting will convene via conference call from 9 a.m. to 11 a.m. on May 21, 2004, to discuss and review the SEDAR process and the king mackerel review workshop. Listening posts will be established to accommodate interested members of the public (see **ADDRESSES**).

### Special Accommodations

The listening post locations for this conference call are accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joyce Mochrie at NMFS Southeast Regional Office (see **ADDRESSES**) by May 12, 2004.

Dated: May 5, 2004.

**Alan D. Risenhoover,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E4–1081 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–22–S**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Denial of Commercial Availability Request under the United States-Caribbean Basin Trade Partnership Act (CBTPA)

May 6, 2004.

**AGENCY:** The Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Denial of the request alleging that certain yarn-dyed, 100 percent cotton woven flannel fabrics, made from ring-spun yarns, for use in apparel articles, excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA.

**SUMMARY:** On March 4, 2004, the Chairman of CITA received a petition from Sandler, Travis, & Rosenberg, P.A. on behalf of Dillards, Inc. of Little Rock Arkansas and BWA, Inc. of New York, New York alleging that certain 100 percent cotton woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns of different colors, classified in subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS) of 2 × 1 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles, excluding gloves, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel of such fabrics be eligible for preferential treatment under the CBTPA. Based on currently available information, CITA has determined that these subject fabrics can be supplied by the domestic industry in commercial quantities in a timely manner and therefore denies the request.

**FOR FURTHER INFORMATION CONTACT:** Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Section 6 of Executive Order No. 13191 of January 17, 2001.

### Background

The CBTPA provides for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The CBTPA also provides for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191, the President delegated to CITA the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the CBTPA and directed CITA to establish procedures to ensure appropriate public participation in any such determination. On March 6, 2001, CITA published procedures that it will follow in considering requests. (66 FR 13502).

On March 4, 2004, the Chairman of CITA received a petition from Sandler, Travis, & Rosenberg, P.A. on behalf of Dillards, Inc. of Little Rock Arkansas and BWA, Inc. of New York, New York alleging that certain 100 percent cotton woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns of different colors, classified in subheading 5208.43.00 of the Harmonized Tariff Schedule of the United States (HTSUS) of 2 × 1 twill weave construction, weighing not more than 200 grams per square meter, cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting quota- and duty-free treatment under the CBTPA for apparel articles, excluding gloves, that are both cut and sewn in one or more CBTPA beneficiary countries from such fabrics.

On March 11, 2004, CITA solicited public comments regarding this request (69 FR 11596), particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner. On March 29, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. We also requested the advice of the U.S. International Trade Commission and the relevant Industry Trade Advisory Committees.

Based on the information provided, including review of the request, public comments and advice received, and our knowledge of the industry, CITA has determined that certain 100 percent cotton woven flannel fabrics, made from 14 through 41 NM single ring-spun yarns of different colors, of 2 × 1 twill weave construction, weighing not more than 200 grams per square meter, for use in apparel articles, excluding gloves, can be supplied by the domestic industry in commercial quantities in a timely manner. The petition is denied.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 04–10674 Filed 5–10–04; 8:45 am]

BILLING CODE 3510–DR–S

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Denial of Commercial Availability Request under the African Growth and Opportunity Act (AGOA), the United States-Caribbean Basin Trade Partnership Act (CBTPA), and the Andean Trade Promotion and Drug Eradication Act (ATPDEA)

May 6, 2004.

**AGENCY:** The Committee for the Implementation of Textile Agreements (CITA).

**ACTION:** Denial of the request alleging that certain cotton corduroy fabric for use in apparel articles cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, and the ATPDEA.

**SUMMARY:** On March 5, 2004, the Chairman of CITA received a request from S. Schwab Company Inc. alleging that smooth, round cut 10-wale per inch (4-wale per centimeter) 100% cotton corduroy fabric classified in subheading 5801.22.90 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of such fabrics be eligible for preferential treatment under the ATPDEA, the AGOA and the CBTPA.

**FOR FURTHER INFORMATION CONTACT:** Anna Flaaten, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 112(b)(5)(B) of the AGOA; Section 213(b)(2)(A)(v)(II) of the Caribbean Basin Economic Recovery Act, as added by Section 211(a) of the CBTPA; Sections 1 and 6 of Executive Order No. 13191 of January 17, 2001; Presidential Proclamations 7350 and 7351 of October 4, 2000; Section 204 (b)(3)(B)(ii) of the ATPDEA, Presidential Proclamation 7616 of October 31, 2002, Executive Order 13277 of November 19, 2002, and the United States Trade Representative's Notice of Further Assignment of Functions of November 25, 2002.

**Background**

The AGOA, the CBTPA, and the ATPDEA provide for quota- and duty-free treatment for qualifying textile and apparel products. Such treatment is generally limited to products manufactured from yarns and fabrics formed in the United States or a beneficiary country. The AGOA, the CBTPA, and the ATPDEA also provide for quota- and duty-free treatment for apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries from fabric or yarn that is not formed in the United States, if it has been determined that such fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner. In Executive Order No. 13191 (66 FR 7271) and pursuant to Executive Order No. 13277 (67 FR 70305) and the United States Trade Representative's Notice of Redelegation of Authority and Further Assignment of Functions (67 FR 71606), CITA has been delegated the authority to determine whether yarns or fabrics cannot be supplied by the domestic industry in commercial quantities in a timely manner under the AGOA, the CBTPA, or the ATPDEA. On March 6, 2001, CITA published procedures that it will follow in considering requests (66 FR 13502).

On March 5, 2004, the Chairman of CITA received a request from S. Schwab Company Inc. alleging that smooth, round cut 10-wale per inch (4-wale per centimeter) 100% cotton corduroy fabric classified in subheading 5801.22.90 of the HTSUS, cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requests that apparel articles of such fabrics be eligible for preferential treatment under the ATPDEA, the AGOA and the CBTPA.

On March 11, 2004, CITA published a Federal Register notice requesting public comments on the request, particularly with respect to whether these fabrics can be supplied by the domestic industry in commercial quantities in a timely manner (69 FR 11595). On March 29, 2004, CITA and the Office of the U.S. Trade Representative offered to hold consultations with the relevant Congressional committees. CITA also requested the advice of the U.S. International Trade Commission and the relevant Industry Sector Advisory Committees.

Based on the information provided, including review of the request, public comment and advice received, and its knowledge of the industry, CITA has determined that smooth, round cut 10-wale per inch (4-wale per centimeter) 100% cotton corduroy fabric classified in subheading 5801.22.90 of the HTSUS, can be supplied by the domestic industry in commercial quantities in a timely manner. The request is denied.

**James C. Leonard III,**

*Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. 04–10673 Filed 5–10–04; 8:45 am]

**BILLING CODE 3510–DR–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 June 10, 2004.

*Title, Form, and OMB Number:* Defense Federal Acquisition Regulation Supplement Part 230, Cost Accounting Standards Administration; DD Form 1861; OMB Number 0704–0267.

*Type of Request:* Extension.

*Number of Respondents:* 15,000.

*Responses per Respondent:* 3 (approximate).

*Annual Responses:* 45,138.

*Average Burden per Response:* 10 hours.

*Annual Burden Hours:* 451,380.

*Needs and Uses:* A DD Form 1861 is normally completed for each proposal for a contract for supplies or services that is priced and negotiated on the basis of cost analysis, and for each indirect cost rate negotiation. Contracting officers use DD Form 1861 in computing profit objectives for negotiated contracts. The form enables contracting officers to differentiate profit objectives for various types of contractor assets—land, buildings, and equipment.

*Affected Public:* Business or Other For Profit; Not-For-Profit Institutions.

*Frequency:* On Occasion.

*Respondents'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: May 5, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–10587 Filed 5–10–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Strategic Environmental Research and Development Program, Scientific Advisory Board

**AGENCY:** Department of Defense.

**ACTION:** Notice.

**SUMMARY:** In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee meeting:

**DATES:** June 8, 2004 from 0900 a.m. to 1710 p.m. and June 10, 2004 from 0900 a.m. to 1145 a.m.

**ADDRESSES:** SERDP Program Office, 901 North Stuart Street, Suite 804, Arlington, VA 22203.

**FOR FURTHER INFORMATION CONTACT:** Ms. Veronica Rice, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2119.

**SUPPLEMENTARY INFORMATION:**

**Matters To Be Considered**

Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

Dated: May 5, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 04–10586 Filed 5–10–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Privacy Act of 1974; System of Records

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Office of the Secretary of Defense proposed to alter a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The Office of the Secretary is proposing to alter the existing system of records to add a new category of individuals covered, i.e., Washington Headquarters Services officials.

**DATES:** The changes will be effective on June 10, 2004, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to OSD Privacy Act Coordinator, Records Management Section, Washington Headquarters Services, 1155 Defense Pentagon, Washington, DC 20301–1155.

**FOR FURTHER INFORMATION CONTACT:** Ms. Juanita Irvin at (703) 601–4722, extension 110.

**SUPPLEMENTARY INFORMATION:** The Office of the Secretary of Defense notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems records, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, were submitted on April 27, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 5, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### DWHS 48

**SYSTEM NAME:**

Biographies of OSD Officials (April 9, 2003, 68 FR 17358).

**CHANGES:**

**SYSTEM IDENTIFIER:**

Delete entry and replace with 'DWHS P48'

**System name:**

Delete entry and replace with 'Biographies of OSD and WHS Officials'.

* * * * *

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Add to the end of the first sentence 'and Washington Headquarters Services (WHS)'. Add to the end of the second sentence 'and WHS workforces'.

* * * * *

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with '10 U.S.C. 131, Office of the Secretary of Defense and 10 U.S.C. 192, Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense'.

**PURPOSE(S):**

After the acronym '(PSA)' in the first sentence, and 'and the Directors, Washington Headquarters Service' and after the acronym 'OSD' add 'and WHS'. In the second sentence, after 'PSAs' add 'and Directors'.

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### DWHS P48

**SYSTEM NAME:**

Biographies of OSD and WHS Officials.

**SYSTEM LOCATION:**

Office of the Secretary of Defense, Chief Information Office, ATTN: Biographies of OSD and WHS Officials, 1950 Defense Pentagon, Room BG849, Washington, DC 20301–1950.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Military and civilian personnel currently occupying professional positions within the offices of the Office of the Secretary of Defense (OSD) and Washington Headquarters Services (WHS). A professional position is one occupied by a civilian in the grade of GS 13 and above or a military officer in the grade of major/lieutenant commander and above; employees in developmental programs such as Presidential Management Interns and Defense Fellows; and employees from other organizations serving as detailees and serving under intergovernmental personnel act agreements who are integrated within the OSD and WHS workforce.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Basic biographical information on individual OSD and WHS staff to include full name of the individual; rank/grade; title; organization/office; current assignments within OSD and WHS (starting with present and working backwards to cover all periods of assignment within OSD and WHS; past experience (a brief history of other related past experiences); and education (optional). A photograph of the individual is optional.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 131, Office of the Secretary of Defense and 10 U.S.C. 192, Defense Agencies and Department of Defense Field Activities: oversight by the Secretary of Defense.

**PURPOSE(S):**

To provide the Secretary and Deputy Secretary of Defense, as well as the OSD Principal Staff Assistants (PSA) and the Directors, Washington Headquarters Services, with immediate access to biographical information on the OSD and WHS staff personnel. PSAs and Directors will only have access to those biographies for personnel who are employed, assigned, or detailed to their respective offices.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices applies to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are stored on electronic media.

**RETRIEVABILITY:**

Retrieved alphabetically by the individual's full name.

**SAFEGUARDS:**

Records are maintained in a secure, limited access or monitored area. Physical entry by unauthorized persons is restricted by the use of locks, guards, or administrative procedures. Access to personal information is limited to those who require the records to perform their official duties. All personnel whose official duties require access to the information are trained in the proper safeguarding and use of the information.

**RETENTION AND DISPOSAL:**

Records are deleted when the individual concerned departs the OSD or WHS staff.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Personnel and Security Directorate, ATTN: Biographies of OSD and WHS Officials, 5001 Eisenhower Avenue, Room 2N36, Alexandria, VA 22333–0001.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Personnel and Security Directorate, ATTN: Biographies of OSD and WHS Officials, 5001 Eisenhower Avenue, Room 2N36, Alexandria, VA 22333–0001.

Requests for information should contain individual's full name.

**RECORDS ACCESS PROCEDURES:**

Individuals seeking to access information about themselves contained in this system of records should address written inquiries to the Chief, Personnel Systems and Evaluation Division, Washington Headquarters Services, Personnel and Security Directorate, ATTN: Biographies of OSD and WHS Officials, 5001 Eisenhower Avenue, Room 2N36, Alexandria, VA 22333–0001.

Requests for information should contain individual's full name.

**CONTESTING RECORD PROCEDURES:**

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

The source of record is from the individuals concerned.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–10596 Filed 5–10–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF DEFENSE

### Department of the Air Force

### Notice of Intent (NOI) To Prepare Environmental Impact Statement (EIS) on the Relocation of the C–5 Formal Training Unit (FTU) From Altus Air Force Base (AFB), OK

**AGENCY:** Air Force Reserve Command, United States Air Force, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and Air Force policy and procedures (32 CFR Part 989), the Air Force is issuing this notice to advise the public of its intent to prepare an EIS to assess the potential environmental impacts of a proposal to relocate a C–5 FTU from Altus AFB to Lackland AFB, Texas.

The number of personnel and aircraft operations is expected to increase with the realignment of the FTU mission at the gaining installation. The Air Force proposes construction of three facilities to support the relocation of the C–5 training mission to Lackland AFB. Construction projects include: (1) A new training schoolhouse, (2) a training load assembly facility, and (3) adding and/or altering the Aircraft Generation Facility. The Air Force will consider all environmental issues supporting relocation, however, the Air Force has currently identified air quality and noise as issues requiring detailed analysis. Under the No Action Alternative, the C–5 FTU mission would not be transferred. The AF would continue to conduct its C–5 training mission using its current, existing facilities.

The Air Force will host a scoping meeting located in KellyUSA at the Kelly Field Club, 205 Mabry, Building 1676, San Antonio Texas from 7 to 9 p.m., on Tuesday, June 15, 2004. Oral and written comments presented at the public meetings, as well as written comments received by the Air Force during this scoping period and throughout the environmental impact analysis process, will be considered in the preparation of the EIS. To ensure the Air Force has sufficient time to consider public input in the preparation of the Draft EIS, comments or questions, regarding this proposal or EIS, from the public should be submitted by Friday, June 25, 2004.

*Point of Contact:* Please direct any written comments or requests for information to Ms. Julia Cantrell, HQ AFCEE/ISM, 3300 Sydney Brooks Road, Brooks City-Base, TX 78235–5112 (PH: 210.536.3515).

**Pamela Fitzgerald,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 04–10654 Filed 5–10–04; 8:45 am]

**BILLING CODE 5001–05–P**

## DEPARTMENT OF DEFENSE

### Department of the Army

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Army, DoD.

**ACTION:** Notice to amend systems of records.

**SUMMARY:** The Department of the Army is proposing to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

**DATES:** This proposed action will be effective without further notice on June 10, 2004, unless comments are received which result in a contrary determination.

**ADDRESSES:** Department of the Army, Freedom of Information/Privacy Act Office, 7701 Telegraph Road, Alexandria, VA 22315–3905.

**FOR FURTHER INFORMATION CONTACT:** Ms. Janice Thornton at (703) 428–6504.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 5, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

### A0600–8–101 AHRC

**SYSTEM NAME:**

Military and Civilian Out-Processing Files (January 6, 2004, 69 FR 790).

**CHANGES:**

* * * * *

**RETENTION AND DISPOSAL:**

Replace second paragraph with 'Information listed in the out-processing master file and out-processing outputs files are maintained until no longer needed for conducting official business, but no longer than 6 years, and are then destroyed.'

* * * * *

**A0600–8–101 AHRC**

**SYSTEM NAME:**

Military and Civilian Out-Processing Files.

**SYSTEM LOCATION:**

Administrative offices and Army Staff agencies, field operating commands, installations and/or activities Army wide. Official Mailing addresses are published as an appendix to the Army's compilation of record systems notices.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

All Army active duty, National Guard, Army Reserve and Department of the Army civilian personnel'

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Installation and Unit Clearance Records, Reassignment Records Checklist, copy of receipts or documents evidencing payment of telephone bills, return of material held on memorandum receipt and other supporting clearance matters and materials.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–101, Personnel (In- and Out- and Mobilization Processing); and E.O. 9397 (SSN).

**PURPOSE(S):**

To verify that an individual has obtained clearance from the Army staff agency or installation's facilities and has accomplished his/her personal and official obligations.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Paper records in file folders and electronic storage media.

**RETRIEVABILITY:**

By Social Security Number and Surname of departing individual.

**SAFEGUARDS:**

Information is assessed only be designated persons having official need therefore.

**RETENTION AND DISPOSAL:**

Information concerning clearance procedures for departing soldiers, included are clearance certificates, checklists, and related information are maintained for one year then destroyed.

Information listed in the out-processing master file and out-processing output files are maintained until no longer needed for conducting official business, but no longer than 6 years, and are then destroyed.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, U.S. Army Human Resources Command, Out-Processing Functional Proponent, 200 Stovall Street, Alexandria, Virginia 22332–0474.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, Social Security Number, departure date, location of last employing office, and signature.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the administrative office of the installation/activity to which the individual had been assigned.

Individual should provide the full name, Social Security Number, departure date, location of last employing office, and signature.

**CONTESTING RECORD PROCEDURES:**

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

From the individual and Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–10598 Filed 5–10–04; 8:45 am]

BILLING CODE 5001–06–M

## DEPARTMENT OF DEFENSE

### Defense Logistics Agency

### Privacy Act of 1974; Systems of Records

**AGENCY:** Defense Logistics Agency.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy act of 1974 (5 U.S.C. 552a), as amended.

The alteration to S322.50 DMDC adds a routine use to permit the release of records to the Department of Health and Human Services for purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents or either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

**DATES:** This action will be effective without further notice on June 10, 2004, unless comments are received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Salus at (703) 767–6183.

**SUPPLEMENTARY INFORMATION:** The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 3, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 5, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**S322.50 DMDC**

**SYSTEM NAME:**

Defense Eligibility Records (March 24, 2004, 69 FR 13822).

**CHANGES:**

* * * * *

**SYSTEM LOCATION:**

Delete Biometrics Fusion Center from entry.

* * * * *

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Add a new paragraph 'To the Department of Health and Human Services for purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization At of 2002 (as codified at 42 U.S.C. 1395p and 1395r).'

* * * * *

## S322.50 DMDC

**SYSTEM NAME:**

Defense Eligibility Records.

**SYSTEM LOCATION:**

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943–5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

**CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:**

Active duty Armed Forces and reserve personnel and their family members; retired Armed Forces personnel and their family members; 100 percent disabled veterans and their dependents or survivors; surviving family members or deceased active duty or retired personnel; active duty and retired Coast Guard personnel and their family members; active duty and retired Public Health Service personnel (Commissioned Corps) and their family members; active duty and retired National Oceanic and Atmospheric Administration employees (Commissioned Corps) and their family members; and State Department employees employed in a foreign country and their family members; civilian employees of the Department of Defense; contractors; and any other individuals entitled to care under the health care program or to other DoD benefits and privileges; providers and potential providers of health care; and any individual who submits a health care claim.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Computer files containing beneficiary's name, Service or Social Security Number, enrollment number, relationship of beneficiary to sponsor, residence address of beneficiary or sponsor, date of birth of beneficiary, sex of beneficiary, branch of Service of sponsor, dates of beginning and ending eligibility, number of family members of sponsor, primary unit duty location of sponsor, race and ethnic origin of beneficiary, occupation of sponsor, rank/pay grade of sponsor, disability documentation, Medicare eligibility and enrollment data, index fingerprints and photographs of beneficiaries, blood test result, dental care eligibility codes and dental x rays.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Chapters 53, 54, 55, 58, and 75; 10 U.S.C. 136; 31 U.S.C. 3512(c); 50 U.S.C. Chapter 23 (Internal Security); DoD Directive 1341.1, Defense Enrollment/Eligibility Reporting System; DoD Instruction 1341.2, DEERS Procedures; and E.O. 9397 (SSN).

**PURPOSE(S):**

The purpose of the system is to provide a database for determining eligibility to DoD entitlements and privileges; to support DoD health care management programs; to provide identificaiton of deceased members; to record the issuance of DoD badges and identification cards; and to detect fraud and abuse of the benefit programs by claimants and providers to include appropriate collection actions arising out of any debts incurred as a consequence of such programs.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Health and Human Services; Department of Veterans Affairs; Department of Commerce; Department of Transportation for the conduct of health care studies, for the planning and allocation of medical facilities and providers, for support of the DEERS enrollment process, and to identify individuals not entitled to health care. The data provided includes Social Security Number, name, age, sex, residence and demographic parameters of each Department's enrollees and family members.

To the Social Security Administration (SSA) to perform computer data matching against the SSA Wage and Earnings Record file for the purpose of identifying employers of Department of Defense (DoD) beneficiaries eligible for health care. This employer data will in turn be used to identify those employed beneficiaries who have employment-related group health insurance, to coordinate insurance benefits provided by DoD with those provided by the other insurance. This information will also be used to perform computer data matching against the SSA Master Beneficiary Record file for the purpose of identifying DoD beneficiaries eligible for health care who are enrolled in the Medicare Program, to coordinate insurance benefits provided by DoD with those provided by Medicare.

To other Federal agencies and state, local and territorial governments to identify fraud and abuse of the Federal agency's programs and to identify debtors and collect debts and overpayment in the DoD health care programs.

To each of the fifty states and the District of Columbia for the purpose of conducting an ongoing computer matching program with state Medicaid agencies to determine the extent to which state Medicaid beneficiaries may be eligible for Uniformed Services health care benefits, including CHAMPUS, TRICARE, and to recover Medicaid monies from the CHAMPUS program.

To provide dental care providers assurance of treatment eligibility.

To Federal agencies and/or their contractors, in response to their requests, for purposes of authenticating the identity of individuals who, incident to the conduct of official DoD business, present the Common Access Card or similar identification as proof of identity to gain physical or logical access to government and contractor facilities, locations, networks, or systems.

To State and local child support enforcement agencies for purposes of providing information, consistent with the requirements of 29 U.S.C. 1169(a), 42 U.S.C. 666(a)(19), and E.O. 12953 and in response to a National Medical Support Notice (NMSN) (or equivalent notice if based upon the statutory authority for the NMSN), regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD health care coverage.

**Note:** Information requested by the States is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

To the Department of Health and Human Services (HHS) for purposes of providing information, consistent with the requirements of 42 U.S.C. 653 and in response to a HHS request, regarding the military status of identified individuals and whether, and for what period of time, the children of such individuals are or were eligible for DoD healthcare coverage.

**Note:** Information requested by HHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

To the Department of Health and Human Services for purposes of providing information so that specified Medicare determinations, specifically late enrollment and waiver of penalty, can be made for eligible (1) DoD military retirees and (2) spouses (or former spouses) and/or dependents of either military retirees or active duty military personnel, pursuant to section 625 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2002 (as codified at 42 U.S.C. 1395p and 1395r).

The DoD 'Blanket Routine Uses' published at the beginning of DLA's compilation of systems of records notices apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained on magnetic tapes and disks, and are housed in a controlled computer media library.

**RETRIEVABILITY:**

Records about individuals are retrieved by an algorithm which uses name, Social Security Number, date of birth, rank, and duty location as possible inputs. Retrievals are made on summary basis by geographic characteristics and location and demographic characteristics. Information about individuals will not be distinguishable in summary retrievals. Retrievals for the purposes of generating address lists for direct mail distribution may be made using selection criteria based on geographic and demographic keys.

**SAFEGUARDS:**

Computerizerd records are maintained in a controlled area accessible only to authorized personnel. Entry to these areas is restricted to those personnel with a valid requirement and authorization to enter. Physical entry is restricted by the use of locks, guards, and administrative procedures (e.g., fire protection regulations).

Access to personal information is restricted to those who require the records in the performance of their official duties, and to the individuals who are the subjects of the record or their authorized representatives. Access to personal information is further restricted by the use of passwords, which are changed periodically.

**RETENTION AND DISPOSAL:**

Data is destroyed when superseded or when no longer needed for operational purposes, whichever is later.

**SYSTEM MANAGER(S) AND ADDRESS:**

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 300 Gigling Road, Seaside, CA 93955–6771.

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, DSS–B, 8725 John J. Kingman Road, Stop 6220, Fort Belvoir, VA 22060–6221.

Written requests for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, DSS–B, 8725 John J. Kingman Road, Stop 6220, 2533 Fort Belvoir, VA 22060–6221.

Written request for the information should contain full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location.

For personal visits the individual should be able to provide full name and Social Security Number of individual and sponsor, date of birth, rank, and duty location. Identification should be corroborated with a driver's license or other positive identification.

**CONTESTING RECORD PROCEDURES:**

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DSS–B, 8725 John J. Kingman Road, Stop 6220, 2533 Fort Belvoir, VA 22060–6221.

**RECORD SOURCE CATEGORIES:**

Individuals, personnel pay, and benefit systems of the military and civilian departments and agencies of the Defense Department, the Coast Guard, the Public Health Service, Department of Commerce, the National Oceanic and Atmospheric Administration, Department of Commerce, and other Federal agencies.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–10597 Filed 5–10–04; 8:45 am]

BILLING CODE 5001–04–M

## DEPARTMENT OF DEFENSE

### Department of the Navy

### Privacy Act of 1974; System of Records

**AGENCY:** Department of the Navy, DoD.

**ACTION:** Notice to alter a system of records.

**SUMMARY:** The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

The alteration consists of adding five new routine uses to the existing notice, and amending six routine uses. The new routine uses allow the U.S. Citizenship and Immigration Service to use information for alien admission and naturalization inquiries; the Office of Personnel Management to verify military benefits, leave, or reduction in force and to establish Civil Service employee tenure and leave accrual rate; the Selective Service System in the performance of official duties related to registration with the Selective Service Program; the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation; and to officials of the U.S. Coast Guard (USCG) for the purpose of creating service records for current USCG members that had prior service with the Navy.

**DATES:** This action will be effective on June 10, 2004, unless comments are

received that would result in a contrary determination.

**ADDRESSES:** Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (DNS–36), 2000 Navy Pentagon, Washington, DC 20350–2000.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

**SUPPLEMENTARY INFORMATION:** The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, were submitted on April 27, 2004, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 5, 2004.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**N01070–3**

**SYSTEM NAME:**

Navy Personnel Records System (October 13, 2000, 65 FR 60923).

**CHANGES:**

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**SYSTEM NAME:**

Delete entry and replace with ''Navy Military Personnel Records System''.

**SYSTEM LOCATION:**

Delete entry and replace with ''Primary locations:

Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty and reserve members (except Individual Ready Reserve (IRR)); and for records of members that were retired, discharged, or died while in service since 1995;

Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800 for records of all IRR members;

National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of members that were retired, discharged, or died while in service prior to 1995.

*Secondary locations:* Personnel Offices and Personnel Support Detachments providing administrative support for the local activity where the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*''

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**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Delete entry and replace with 10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 10606 as implemented by DoD Instruction 1030.1, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).''

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**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)93) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, in the performance of their office duties related to eligibility, notification and assistance in obtaining health and medical benefits by members and former members of the Navy.

To the U.S. Citizenship and Immigration Services for use in alien admissions and naturalization inquiries.

To the Office of Personnel management for verification of a military service for benefits, leave, or reduction-in-force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Director of Selective Service System in the performance of official duties related to registration with the Selective Service System.

To the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation.

To officials and employees of the Department of Veterans Affairs in the performance of their duties relating to approved research projects, and for processing and adjudicating claims, benefits, and medical care.

To officials of the U.S. Coast Guard (USCG) for the purpose of creating service records for current USCG members that had prior service with the Navy.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to a member of the Navy. Access will be limited to those portions of the member's record required to effectively assist the member.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress. Access is limited to those portions of the member's record required to verify service time.

To provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To Federal, State, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law

enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

* * * * *

**RETENTION AND DISPOSAL:**

Delete entry and replace with ''Those documents that are designated as temporary in the prescribing regulations remain in the record until their obsolescence, or the member is separated from the Navy, then are removed and provided to the individual. Those documents designated as permanent are submitted to Navy Personnel Command at predetermined times to form a single personnel record in the Electronic Military Personnel Records System (EMPRS), and remain in EMPRS permanently. Permanent records are transferred to the National Archives and Records Administration 62 years after the completion of the service member's obligated service.''

* * * * *

**N01070–3**

**SYSTEM NAME:**

Navy Military Personnel Records System.

**SYSTEM LOCATION:**

Primary locations: Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty and reserve members (except Individual Ready Reserve (IRR)); and for records of members that were retired, discharged, or died while in service since 1995;

Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800 for records of all IRR members;

National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of members that were retired, discharged, or died while in service prior to 1995.

Secondary locations: Personnel Offices and Personnel Support Detachments providing administrative support for the local activity where the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

*All Navy military personnel:* officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

10 U.S.C. 5013, Secretary of the Navy; 42 U.S.C. 10606 as implemented by DoD Instruction 1030.1, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

**PURPOSE(S):**

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease, of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, in the performance of their official duties related to eligibility, notification and assistance in obtaining health and medical benefits by members and former members of the Navy.

To the U.S. Citizenship and Immigration Services for use in alien admission and naturalization inquiries.

To the Office of Personnel Management for verification of military service for benefits, leave, or reduction-in-force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Director of Selective Service System in the performance of offiical duties related to registration with the Selective Service System.

To the Social Security Administration to obtain or verify Social Security Numbers or to substantiate applicant's credit for social security compensation.

To officials and employees of the Department of Veterans Affairs in the performance of their duties relating to approved research projects, and for processing and adjudicating claims, benefits, and medical care.

To officials of the U.S. Coast Guard (USCG) for the purpose of creating service records for current USCG members that had prior service with the Navy.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual, assisted or his/her sponsor continues to be a member of the Navy. Access will be limited to those portions of the member's record required to effectively assist the member.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress. Access is limited to those

portions of the member's record required to verify service time.

To provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To Federal, State, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To Federal agencies, their contractors and grantees, and to private organizations, such as the National Academy of Sciences, for the purposes of conducting personnel and/or health-related research in the interest of the Federal government and the public. When not considered mandatory, the names and other identifying data will be eliminated from records used for such research studies.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

**RETRIEVABILITY:**

Automated records may be retireved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

**SAFEGUARDS:**

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

**RETENTION AND DISPOSAL:**

Those documents that are designated as temporary in the prescribing regulations remain in the record until their obsolescence, or the member is separated from the Navy, then are removed and provided to the individual. Those documents designated as permanent are submitted to Navy Personnel Command at predetermined times to form a single personnel record in the Electronic Military Personnel Records System (EMPRS), and remain in EMPRS permanently. Permanent records are transferred to the National Archives and Records Administration 62 years after the completion of the service member's obligated service.

**SYSTEM MANAGER(S) AND ADDRESS:**

Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3130; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.deps,mil/sndl.htm.*

**NOTIFICATION PROCEDURE:**

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to:

Inquiries regarding permanent records of all active duty and reserve members (except Individual Ready Reserve (IRR)), former members discharged, deceased, or retired since 1995, should be addressed to the Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120; Inquiries regarding records of reserve members serving in the Individual Ready Reserve (IRR) should be addressed to the Commanding Officer, Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800;

Inquiries regarding records of former members discharged, deceased, or retired before 1995 should be addressed to the Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100. You may access their Web site at *http://www.nara.gov/regional/mpr.html* to obtain guidance on how to access records;

Inquiries regarding field service records of current members should be addressed to the Personnel Office or Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.*

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

**RECORD ACCESS PROCEDURES:**

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to:

Commander, Navy Personnel Command (PERS–312), 5720 Integrity Drive, Millington, TN 38055–3120 for records of all active duty and reserve members (except individual Ready Reserve (IRR); Commanding Officer, Naval Reserve Personnel Center, 4400 Dauphine Street, New Orleans, LA 70149–7800;

Director, National Personnel Records Center, Military Personnel Records, 9700 Page Avenue, St. Louis, MO 63132–5100 for records of former members discharged, deceased, or retired before 1995. Visit their Web site at *http://www.archives.gov/facilities/mo/at Louis/military personnel records.html* to download SF180 to request records through regular mail or to file an electronic request for records;

The Personnel Office of Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned for field service records of current members. Official mailing addresses are published in the Standard Navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.* to download SF180 to request records

through regular mail or to file an electronic request for records;

The Personnel Office or Personnel Support Detachment providing administrative support to the local activity to which the individual is assigned for field service records of current members. Official mailing addresses are published in the Standard navy Distribution List that is available at *http://neds.nebt.daps.mil/sndl.htm.* The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

Current members, active and reserve, may visit the Navy Personnel Command, Records Review Room, Bldg 109, Millington, TN for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.''

**CONTESTING RECORD PROCEDURES:**

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

**RECORD SOURCE CATEGORIES:**

Correspondence; educational institutions; Federal, State, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualification; Navy Relief and American Red Cross requests for verification of status.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

None.

[FR Doc. 04–10599 Filed 5–10–04; 8:45 am]

**BILLING CODE 5001–06–M**

## DEPARTMENT OF EDUCATION

### Submission for OMB Review; Comment Request

**AGENCY:** Department of Education.

**SUMMARY:** The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

**DATES:** Interested persons are invited to submit comments on or before June 10, 2004.

**ADDRESSES:** Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Alice Thaler, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10222, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

**SUPPLEMENTARY INFORMATION:** Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 6, 2004.

**Angela C. Arrington,**

*Leader, Regulatory Information Management Group, Office of the Chief Information Officer.*

*Office of Vocational and Adult Education*

*Type of Review:* New.

*Title:* National School Dropout Prevention Program's Recognition Initiative.

*Frequency:* On Occasion.

*Affected Public:* State, Local, or Tribal Gov't, SEAs or LEAs; Federal Government.

*Reporting and Recordkeeping Hour Burden:*

Responses: 16.

Burden Hours: 192.

*Abstract:* To recognize the successful dropout prevention efforts that schools are making, the Department has established the National School Dropout Prevention Program's Recognition Initiative for schools that are able to provide evidence of effectiveness in reducing dropout rates. Noteworthy programs also may provide evidence of improvements in other areas such as academic achievement, improved behavior, increased high school completion rates, or increased post-secondary employment or enrollment. This application provides an opportunity for schools to demonstrate their effectiveness.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 2470. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to Department of Education, 400 Maryland Avenue, SW., Potomac Center, 9th Floor, Washington, DC 20202–4700. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–245–6623. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at her e-mail address *Sheila.Carey@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 04–10655 Filed 5–10–04; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### List of Approved ''Ability-to-Benefit'' (ATB) Tests and Passing Scores

**AGENCY:** Department of Education.

**ACTION:** Notice to remove the CTB/McGraw-Hill Test of Adult Basic Education (TABE) from the list of approved ''Ability-to-Benefit'' tests.

**SUMMARY:** The Secretary gives notice that the CTB/McGraw-Hill Ability-to-Benefit Test of Adult Basic Education (TABE): (Reading, Total Mathematics, and Language)—Forms 7 and 8, Level A, Complete Battery and Survey test is being removed from the list of approved Ability-to-Benefit (ATB) tests.

**SUPPLEMENTARY INFORMATION:** The Secretary is amending the list of approved ATB tests and passing scores that was published in the **Federal Register** on September 4, 2002 (67 FR 56539) by removing the CTB/McGraw-Hill TABE test and its passing scores from the ATB list. The list was published under the authority of section

484(d) of the Higher Education Act of 1965, as amended (HEA) and the regulations the Secretary promulgated to implement that section in 34 CFR part 668, subpart J.

An institution will no longer be permitted to use this test to determine if a student who does not have a high school diploma or its recognized equivalent is eligible to receive funds under any title IV, HEA program. The title IV, HEA programs include the Federal Pell Grant, Federal Family Education Loan, William D. Ford Federal Direct Loan, Federal Perkins Loan, Federal Work-Study, Federal Supplemental Educational Opportunity Grant, and the Leveraging Educational Assistance Partnership (LEAP) programs.

**Transition**

Institutions are allowed to continue to make ATB eligibility determinations using the tests and passing scores that were listed in the September 4, 2002 **Federal Register** notice, including the CTB/McGraw-Hill Test of Adult Basic Education (TABE): (Reading, Total Mathematics, Language)—Forms 7 and 8, Level A, Complete Battery and Survey Versions until September 8, 2004. After September 8, 2004, only the tests and passing scores listed in this notice may be used.

**FOR FURTHER INFORMATION CONTACT:** Dan Klock, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202–5345. Telephone: (202) 377–4026.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

*List of approved tests and passing scores:* For the convenience of all interested parties, we have listed the seven approved ATB tests and passing scores that may continue to be used as approved ATB tests.

1. ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2, C2, D2 and E2.

*Passing Scores:* The approved passing scores on this test are as follows: Reading (35), Writing (35), and Numerical (33).

*Publisher:* The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

2. Career Programs Assessment (CPAT) Basic Skills Subtests (Language Usage, Reading and Numerical)—Forms B and C.

*Passing Scores:* The approved passing scores on this test are as follows: Language Usage (42), Reading (43), and Numerical (41).

*Publisher:* The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

3. COMPASS Subtests: Prealgebra/Numerical Skills Placement, Reading Placement, and Writing Placement.

*Passing Scores:* The approved passing scores on this test are as follows: Prealgebra/Numerical (25), Reading (62), and Writing (32).

*Publisher:* The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

4. Combined English Language Skills Assessment (CELSA), Forms 1 and 2.

*Passing Scores:* The approved passing scores on this test are as follows: CELSA Form 1 (90) and CELSA Form 2 (90).

*Publisher:* The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Association of Classroom Teacher Testers (ACTT), 1187 Coast Village Road, PMB 378, Montecito, California 93108–2794, Contact: Pablo Buckelew, Telephone: (805) 569–0734, Fax: (805) 569–0004.

5. Computerized Placement Tests (CPTs)/Accuplacer (Reading Comprehension, Sentence Skills, and Arithmetic).

*Passing Scores:* The approved passing scores on this test are as follows: Reading Comprehension (55), Sentence Skills (60), and Arithmetic (34).

*Publisher:* The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Suzanne Murphy, Telephone: (405) 842–9891, Fax: (405) 842–9894.

6. Descriptive Tests: Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT.

*Passing Scores:* The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

*Publisher:* The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Suzanne Murphy, Telephone: (405) 842–9891, Fax: (405) 842–9894.

7. Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2.

*Passing scores:* The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

*Publisher:* The test publisher and the address, contact person, and telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1795 N. Butterfield Road, Libertyville, IL 60048, Contact: Mr. David Teuber, Telephone: (877) 605–9499, Fax: (847) 680–9492.

*Electronic Access to This Document:* You may view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *www.ed.gov/news/fedregister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *www.gpoaccess.gov/nara/index.html.*

**Program Authority:** 20 U.S.C. 1091(d).

Dated: May 6, 2004.

**Theresa S. Shaw,**

*Chief Operating Officer, Federal Student Aid.*

[FR Doc. 04–10697 Filed 5–10–04; 8:45 am]

BILLING CODE 4000–01–P

## DEPARTMENT OF ENERGY

**[Docket No. PP–234 and PP–235]**

### Notice of Availability of Draft Environmental Impact Statement and Public Hearings for the Proposed Baja California Power, Inc., and Sempra Energy Resources Transmission Lines

**AGENCY:** Department of Energy (DOE).

**ACTION:** Notice of availability and public hearings.

**SUMMARY:** The Department of Energy (DOE), with the Department of the Interior's Bureau of Land Management (BLM) as a cooperating agency, announces the availability of the ''Imperial-Mexicali 230-kV Transmission Lines Draft Environmental Impact Statement'' (DOE/EIS–0365) for public review and comment. DOE and BLM also announce two public hearings on the Draft EIS. The Draft EIS was prepared pursuant to the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321 *et seq.*, the Council on Environmental Quality NEPA regulations, 40 CFR Parts 1500–1508, and the DOE NEPA regulations, 10 CFR Part 1021. The Draft EIS evaluates the environmental impacts of the DOE's proposed Federal actions of issuing Presidential permits to either Sempra Energy Resources or Baja California Power, Inc. (also known as Sempra and Intergen, respectively), or to both, for the construction, operation, maintenance, and connection of two double-circuit, 230,000-volt electric transmission lines that would cross the United States international border in the vicinity of Calexico, California, and connect to separate natural gas-fired electric power plants that have been constructed in Mexico. BLM's proposed Federal actions are the issuance of right-of-way grants to allow the transmission lines to cross Federal lands within BLM's management responsibility.

**DATES:** DOE and BLM invite interested Members of Congress, state and local governments, other Federal agencies, American Indian tribal governments, organizations, and members of the public to provide comments on the Draft EIS. The public comment period will start with the publication in the **Federal Register** by the Environmental Protection Agency of the ''Notice of Availability'' of the Draft EIS, expected to occur on May 14, 2004, and will continue until June 30, 2004. Written and oral comments will be given equal weight, and all comments received or postmarked by that date will be considered in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Dates for the public hearings are:

1. June 17, 2004, 11 a.m. to 1 p.m., El Centro, California
2. June 17, 2004, 6 p.m. to 8 p.m., Calexico, California

Requests to speak at a specific public hearing should be received by Mrs. Russell as indicated in the **ADDRESSES** section below on or before June 15, 2004. Requests to speak may also be made at the time of registration for the hearing(s). However, persons who have submitted advance requests to speak will be given priority if time should be limited during the hearing.

**ADDRESSES:** Requests to speak at the public hearings should be addressed to: Mrs. Ellen Russell, Office of Fossil Energy (FE–27), U.S. Department of Energy, Washington, DC 20585, or transmitted by phone: 202–586–9624, by facsimile: 202–287–5736 or by electronic mail at *Ellen.Russell@hq.doe.gov.*

The locations of the public hearings are:

1. El Centro City Hall, 1275 W. Main Street, El Centro, California
2. Calexico City Hall, 608 Heber Street, Calexico, California

Printed copies of the Draft EIS are available. Requests should be made to Mrs. Russell at one of the addresses provided above. Alternatively, the Draft EIS is available on the Internet at *http://web.ead.anl.gov/bajatermoeis.*

Written comments on the Draft EIS may be addressed to Mrs. Russell as indicated in the **ADDRESSES** section of this notice.

**FOR FURTHER INFORMATION CONTACT:** For information on the proposed project or to receive a copy of the Draft EIS, contact Mrs. Russell as indicated in the **ADDRESSES** section of this notice or Lynda Kastoll, Bureau of Land Management, U.S. Department of the Interior, 1661 South Fourth Street, El Centro, CA 92243, Phone 760–337–4421, facsimile: 760–337–4490, or electronic mail at *lkastoll@ca.blm.gov.*

For general information on the DOE NEPA process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Compliance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Phone: 202–586–4600 or leave a message at 800–472–2756; Facsimile: 202–586–7031.

**SUPPLEMENTARY INFORMATION:**

### Background

Executive Order (E.O.) 10485, as amended by E.O. 12038, requires that a Presidential permit be issued by DOE before electric transmission facilities may be constructed, maintained, operated, or connected at the U.S. international border. The E.O. provides that a Presidential permit may be issued after a finding that the proposed project is consistent with the public interest. In determining consistency with the public interest, DOE considers the impacts of the project on the reliability of the U.S. electric power system and on the environment. The regulations implementing the E.O. have been codified at 10 CFR 205.320–205.329. Issuance of a permit indicates that there is no Federal objection to the project, but does not mandate that a project be completed.

On December 5, 2002, DOE issued Presidential permits to Sempra and Intergen based in part on the information contained in an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) prepared pursuant to NEPA. BLM was also a cooperating agency in the preparation of the EA and prepared separate FONSIs for its Federal actions. Right-of-way grants were issued by BLM in December 2002. In February 2003, Sempra and Intergen completed construction of the permitted facilities and began exporting electricity to the United States in July 2003.

In March 2003, the Border Power Plant Working Group filed suit in the U.S. District Court for the Southern District of California requesting that the court declare that the EA, FONSI, BLM Decision Notice and DOE Presidential permits failed to comply with NEPA. The court granted in part plaintiff's request ''to set aside the Presidential permits, the rights of way, and the FONSI'' and remanded the NEPA review back to the Federal agencies ''for the preparation of NEPA documents consistent with [the court's May 2 and July 8, 2003 orders].'' At the same time, the court declined to enjoin the operation of the transmission lines immediately and ''defer[red] the setting aside the permits and the FONSI until July 1, 2004, or until such time as superceding NEPA documents and permits have issued, whichever is earlier.'' In light of the concerns raised by the court, and to increase the opportunities for public and stakeholder participation, DOE and BLM decided to prepare an EIS.

In its July 8, 2003 order, the court expressly prohibited DOE and BLM from considering the interim operation of the transmission lines, completion of their construction, or the court's analysis of environmental impacts of the proposed actions in conducting the

agencies' additional environmental review. DOE and BLM have interpreted this language to require them to conduct their NEPA review from a fresh slate, as if the transmission lines had never been built. Accordingly, the discussion and analysis of the transmission lines are presented in this Draft EIS as if the lines do not exist.

On October 30, 2003, DOE published in the **Federal Register** (68 FR 61796) a Notice of Intent (NOI) to prepare an EIS for the proposed projects. The NOI informed the public of the proposed scope of the EIS, solicited public participation in the scoping process, and announced public scoping meetings that were held on November 20, 2003, in El Centro, and Calexico, California. The public scoping period closed on December 1, 2003. Comments received during the public scoping process were used in preparing the Draft EIS.

**Action Alternatives Considered**

The action alternatives analyzed in the Draft EIS are:

1. The proposed action of granting one or both Presidential permits and corresponding ROWs. This sets forth the impacts in the United States of constructing and operating the line(s) from powerplants in Mexico, as those plants are presently designed.

2. The ''Alternative Technologies'' action of granting one or both permits and corresponding ROWs to authorize transmission lines that connect to powerplants that would employ more efficient emissions controls and alternative cooling technologies.

3. The ''Mitigation Measures'' action of granting one or both permits and corresponding ROWs to authorize transmission lines whose developers would employ off-site mitigation measures to minimize environmental impacts in the United States.

NEPA requires the identification of the agency's preferred alternative or alternatives in a Draft EIS if one or more exists or, if one does not yet exist at the draft stage, in the Final EIS, 40 CFR Part 1502.14(e). DOE's and BLM's preferred alternative is to grant both permits and corresponding ROW grants.

**No Action Alternative**

The Council on Environmental Quality's (CEQ) regulations require that an agency ''include the alternative of no action'' as one of the alternatives it considers, 40 CFR 1502.14(d). For DOE and BLM, ''no action'' means neither of the proposed transmission lines would be constructed and the environmental impacts associated with their construction and operation would not occur. In the case of Sempra, lack of the requested transmission line would preclude the powerplant from operating because there would be no delivery path for the electricity generated. Similarly, in the case of Intergen, as discussed more fully in the Draft EIS, only a portion of the electricity generated inside Mexico would have been available to be transmitted to the United States because of powerplant design. One of Intergen's generating units designated for export to the United States would be connected solely to the proposed transmission line. Its other generating unit designated for export to the United States normally would be connected to the proposed transmission line but also could be connected to other transmission lines within Mexico for export to the United States over an existing international transmission line. If the permit is denied, the electricity produced by the generating unit connected solely to the proposed transmission line would not have a transmission path.

The Draft EIS analyzes the potential environmental effects, or impacts, of Sempra and Intergen constructing and operating the proposed transmission lines. CEQ's regulations require that an EIS contain a description of the environmental effects (both positive and negative) of the proposed alternatives. The regulations also distinguish between direct and indirect effects (40 CFR 1508.8). Direct effects are caused by an action and occur at the same time and place as the action. Indirect effects are reasonably foreseeable effects caused by the action that occur later in time or farther in distance. Both direct and indirect effects are addressed in the Draft EIS. CEQ's regulations also require that an EIS contain a description of the cumulative impacts of the proposed alternatives (40 CFR 1508.7). CEQ's regulations define cumulative impacts as those that result from the incremental impact of an action when added to other past, present, and reasonably foreseeable future actions, regardless of what agency or person undertakes such other actions. Cumulative impacts are addressed in the Draft EIS.

The Draft EIS presents information on the potential environmental effects of the construction and subsequent operation of the transmission lines on land use and recreation, visual resources, biological resources, cultural resources, socioeconomics, geology and soils, water resources, air quality, noise, human health and environment, infrastructure, transportation, and minority and low income populations. The Draft EIS also includes a Floodplains and Wetlands Assessment, in accordance with E.O. 11988, *Floodplain Management*, and E.O. 11990, *Protection of Wetlands*.

**Availability of the Draft EIS**

DOE has distributed copies of the Draft EIS to appropriate Members of Congress, state and local government officials in California, American Indian tribal governments, and other Federal agencies, groups, and interested parties. Copies of the document may be obtained by contacting DOE as provided in the section of this notice entitled **ADDRESSES**. Copies of the Draft EIS and supporting documents are also available for inspection at the locations identified below:

1. U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC.

2. Bureau of Land Management, El Centro Field Office, 1661 South 4th Street, El Centro, California.

Comments on the Draft EIS may be submitted to Mrs. Russell (*see* **ADDRESSES**, above) or provided at the public hearings (*see* **DATES**, above). After the public comment period ends on June 30, 2004, DOE and BLM will consider all comments received, revise the Draft EIS as appropriate, and issue a Final EIS. DOE and BLM will consider the Final EIS, along with other information, such as electric reliability and national policy factors, in deciding whether or not to issue Presidential permits or right-of-way grants.

Issued in Washington, DC, this 5th day of May, 2004.

**Anthony J. Como,**

*Deputy Director, Electric Power Regulation, Office of Coal and Power Import/Export, Office of Coal and Power Systems, Office of Fossil Energy.*

[FR Doc. 04–10656 Filed 5–10–04; 8:45 am]

**BILLING CODE 6450–01–P**

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## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. ER04-617-000]**

## Black River Generation, LLC; Notice of Issuance of Order

May 4, 2004.

Black River Generation, LLC (Black River) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy and ancillary services at market-based rates. Black River also requested waiver of various Commission regulations. In particular, Black River

requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Black River.

On April 30, 2004, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Black River should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is June 1, 2004.

Absent a request to be heard in opposition by the deadline above, Black River is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Black River, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Black River's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, 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.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1077 Filed 5–10–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL04–98–000]**

### Carl Blumstein, Severin Borenstein, Douglas Grandy, Manuel Robledo, Alan Vallow v. California Power Exchange Corporation; Notice of Complaint Requesting Fast Track Processing

April 30, 2004.

Take notice that on April 29, 2004, Carl Blumstein, Severin Borenstein, Douglas Grandy, Manuel Robledo, and Alan Vallow (Complainants) jointly filed with the Federal Energy Regulatory Commission a formal complaint pursuant to section 206 of the Federal Power Act alleging the failure of the California Power Exchange to disclose new litigation in violation of the Commission's order issued April 1, 2003 in Docket No. EC03–20–000, *et al.,* 103 FERC ¶ 61,001 and the unauthorized use of jurisdictional assets for new litigation in violation of the Commission's order issued July 30, 2002 in Docket Nos. EL02–63–000 and EL02–104–000, 100 FERC ¶ 61,124.

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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. 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 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. The answer to the complaint, comments, 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.

*Comment Date:* May 10, 2004.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1076 Filed 5–10–04; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. EL04–98–000]**

### Carl Blumstein, Severin Borenstein, Douglas Grandy, Manuel Robledo, Alan Vallow v. California Power Exchange Corporation; Notice of Complaint Requesting Fast Track Processing

April 30, 2004.

Take notice that on April 29, 2004, Carl Blumstein, Severin Borenstein, Douglas Grandy, Manuel Robledo, and Alan Vallow (Complainants) jointly filed with the Federal Energy Regulatory Commission a formal complaint pursuant to section 206 of the Federal Power Act alleging the failure of the California Power Exchange to disclose new litigation in violation of the Commission's order issued April 1, 2003, in Docket No. EC03–20–000, *et al.*, 103 FERC ¶ 61,001 and the unauthorized use of jurisdictional assets for new litigation in violation of the Commission's order issued July 30, 2002, in Docket Nos. EL02–63–000 and EL02–104–000, 100 FERC ¶ 61,124.

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. The answer to the complaint and all comments, interventions or protests must be filed on or before the comment date below. 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 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. The answer to

the complaint, comments, 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.

*Comment Date:* May 10, 2004.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1079 Filed 5–10–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER04–180–000]**

### Central Mississippi Generating Company, LLC; Notice of Issuance of Order

April 30, 2004.

Central Mississippi Generating Company, LLC (Central Mississippi) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity, energy and ancillary services at market-based rates. Central Mississippi also requested waiver of various Commission regulations. In particular, Central Mississippi requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Central Mississippi.

On December 30, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development—South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Central Mississippi should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is May 10, 2004.

Absent a request to be heard in opposition by the deadline above, Central Mississippi is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Central Mississippi, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Central Mississippi's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e-library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, 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.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1080 Filed 5–10–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER03–717–000]**

### Chehalis Power Generation, Limited Partnership; Notice of Issuance of Order

May 4, 2004.

Chehalis Power Generation, Limited Partnership (Chehalis Power) filed an application for market-based rate authority, with an accompanying tariff. The proposed tariff provides for wholesale sales of capacity and energy services at market-based rates. Chehalis Power also requested waiver of various Commission regulations. In particular, Chehalis Power requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Chehalis Power.

On May 9, 2003, pursuant to delegated authority, the Director, Division of Tariffs and Market Development - South, granted the request for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Chehalis Power should file a motion to intervene or protest 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).

Notice is hereby given that the deadline for filing motions to intervene or protests, is May 12, 2004.

Absent a request to be heard in opposition by the deadline above, Chehalis Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Chehalis Power, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Chehalis Power's issuances of securities or assumptions of liability.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Commission's Web site at *http://www.ferc.gov*, using the e library (FERRIS) link. Enter the docket number excluding the last three digits in the docket number filed to access the document. Comments, 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.

**Linda Mitry,**

*Acting Secretary.*

[FR Doc. E4–1078 Filed 5–10–04; 8:45 am]

**BILLING CODE 6717–01–P**

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## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7659–9]**

### Notice of Availability of ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2004 Appropriations Act''

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

**ACTION:** Notice of document availability.

**SUMMARY:** EPA is announcing availability of a memorandum entitled ''Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's Fiscal Year (FY) 2004 Appropriations Act.'' This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants (STAG) account of the Agency's FY 2004 Appropriations Act (Public Law 108–199). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects, as well as budget authority for funding the United States-Mexico Border program, the Alaska Rural and Native Villages program, the National Wastewater Treatment Demonstration Program, and the Long Island Sound Restoration Program. Each grant recipient will receive a copy of this document from EPA.

**ADDRESSES:** See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

**FOR FURTHER INFORMATION CONTACT:** Larry McGee, (202) 564–0619 or *mcgee.larry@epa.gov.*

**SUPPLEMENTARY INFORMATION:** The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm0323.pdf.*

Dated: April 29, 2004.

**James A. Hanlon,**

*Director, Office of Wastewater Management.*

[FR Doc. 04–10652 Filed 5–10–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7659–7]**

### Availability of FY 03 Grant Performance Reports for States of Alabama, Florida, Mississippi, North Carolina, South Carolina, Tennessee; All Local Agencies Within the States of Alabama, Florida, and North Carolina; and the Local Agencies of Chattanooga-Hamilton County and Nashville-Davidson County in the State of Tennessee

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

**ACTION:** Notice of availability of grantee performance evaluation reports.

**SUMMARY:** EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 56.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA performed end-of-year evaluations of six state air pollution control programs (Alabama Department of Environmental Management; Florida Department of Environmental Protection; Mississippi Department of Environmental Quality; North Carolina Department of Environment and Natural Resources; South Carolina Department of Health and Environmental Control; and Tennessee Department of Environment and Conservation); and 13 local programs (City of Huntsville Division of Natural Resources, AL; Jefferson County Department of Health, AL; Broward County Department of Planning and Environmental Protection, FL; Jacksonville Air and Water Quality Division, FL; Hillsborough County Environmental Protection Commission, FL; Miami-Dade County Air Quality Management Division, FL; Palm Beach County Health Department, FL; Pinellas County Department of Environmental Management, FL; Forsyth County Environmental Affairs Department, NC; Mecklenburg County Land Use and Environmental Services Agency, NC; Western North Carolina Regional Air Quality Agency, NC; Chattanooga-Hamilton County Air Pollution Control Bureau, TN; and Nashville-Davidson County Metropolitan Public Health Department, TN). The 19 evaluations were conducted to assess the agencies' performance under the grants awarded by EPA under authority of section 105 of the Clean Air Act. EPA Region 4 has prepared reports for each agency identified above and these reports are now available for public inspection. The evaluations for the remainder of the State and local governments will be published at a later date.

**ADDRESSES:** The reports may be examined at the EPA's Region 4 office, 61 Forsyth Street, SW., Atlanta, Georgia 30303, in the Air, Pesticides, and Toxics Management Division.

**FOR FURTHER INFORMATION CONTACT:** Marie Persinger (404) 562–9048 for information concerning the state and local agencies of Alabama; Miya Smith (404) 562–9091 for the state and local agencies of Florida, Gloria Knight (404) 562–9064 for the State of Mississippi; Mary Fox (404) 562–9053 for the state and local agencies of North Carolina; and Rayna Brown (404) 562–9093 for the States of South Carolina and Tennessee, and the local agencies of Chattanooga-Hamilton County, TN and Nashville-Davidson County, TN. They may be contacted at the above Region 4 address.

Dated: May 3, 2004.

**A. Stanley Meiburg,**

*Deputy Regional Administrator, Region 4.*

[FR Doc. 04–10650 Filed 5–10–04; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL–7659–6]**

### Meeting of the Local Government Advisory Committee

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

**ACTION:** Notice.

**SUMMARY:** The Local Government Advisory Committee (LGAC) will meet on May 18–20, 2004, in Kansas City, MO. The Committee will be discussing issues concerning the relationship between Local Governments and the U.S. Environmental Protection Agency. The focus of the meeting will be the orientation of new members to the Committee, the development of Committee Work Plans and briefings on current environmental issues. During the meeting decisions will be made establishing Subcommittee and Workgroup organizations.

The Committee will hear comments from the public between 10 a.m.–10:15 a.m. on May 19, 2004. Each individual or organization wishing to address the LGAC meeting will be allowed a maximum of five minutes to present their point of view. Please contact the Designated Federal Officer (DFO) at the number listed below to schedule agenda time. Time will be allotted on a first come, first served basis, and the total period for comments may be extended, if the number of requests for appearances required it.

These are open meetings and all interested persons are invited to attend. LGAC meeting minutes and Subcommittee summary notes will be available after the meetings and can be obtained by written request from the DFO. Members of the public are requested to call the DFO at the number listed below if planning to attend so that arrangements can be made to comfortably accommodate attendees as much as possible. Seating will be on a first come, first served basis.

**DATES:** The Local Government Advisory Committee plenary session will begin at 8:30 a.m. Tuesday, May 18 and conclude at 12 p.m. Thursday, May 20.

**ADDRESSES:** The meetings will be held in Kansas City, MO at the Four Points by Sheraton Kansas City, located at One East 45th Street in the Ballroom A.

Additional information can be obtained by writing the DFO at 1200 Pennsylvania Avenue, NW (1301A), Washington, DC 20460.

**FOR FURTHER INFORMATION CONTACT:** The DFO for the Local Government Advisory Committee (LGAC) is Pamela Luttner. She is the point of contact for information concerning any Committee matters and can be reached by calling (202) 564–3107.

*Information on Services for the Handicapped:* For information on facilities or services for the handicapped or to request special assistance at the meetings, contact the Designated Federal Officer at (202) 564–3107 as soon as possible.

Dated: April 29, 2004.

**Pamela Luttner,**

*Designated Federal Officer, Local Government Advisory Committee.*

[FR Doc. 04–10649 Filed 5–10–04; 8:45 am]

**BILLING CODE 6560–50–P**

## FARM CREDIT ADMINISTRATION

### Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

**AGENCY:** Farm Credit Administration.

**SUMMARY:** Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the regular meeting of the Farm Credit Administration Board (Board).

**DATE AND TIME:** The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 13, 2004, from 9 a.m. until such time as the Board concludes its business.

**FOR FURTHER INFORMATION CONTACT:** Jeanette C. Brinkley, Secretary to the Farm Credit Administration Board, (703) 883–4009, TTY (703) 883–4056.

**ADDRESSES:** Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

**SUPPLEMENTARY INFORMATION:** This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

**Open Session**

*A. Approval of Minutes*

—April 20, 2004 (Closed) and April 22, 2004 (Open)

*B. Reports*

—Farm Credit System Funding Activity Report

*C. New Business*

1. Regulations

—Capital Adequacy Risk-Weighting Revisions—Proposed Rule

2. Other

—Review of Significant Regulatory Actions Pursuant to Executive Order 12866

Dated: May 6, 2004.

**Jeanette C. Brinkley,**

*Secretary, Farm Credit Administration Board.*

[FR Doc. 04–10729 Filed 5–7–04; 8:46 am]

**BILLING CODE 6705–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

April 22, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction (PRA) comments should be submitted on or before June 10, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0963.

*Title:* Sections 101.527 Construction Requirements for 24 GHz operations and Section 101.529, Renewal Expectancy Criteria for 24 GHz Licensees.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit.

*Number of Respondents:* 952.

*Estimated Time per Response:* .50–20 hours.

*Frequency of Response:* Once every 10 years report requirement.

*Total Annual Burden:* 14,399 hours.

*Total Annual Cost:* $952,000.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The information required by these rule sections is used to determine whether a renewal applicant of a 24 GHz service system has complied with the requirement to provide substantial service by the end of the ten-year initial license term. The FCC uses this information to determine whether an applicant's license will be renewed at the end of the license period.

Federal Communications Commission

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10676 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 28, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13.

An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before June 10, 2004. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Judith B. Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Judith-B.Herman@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control No.:* 3060–0926.

*Title:* Transfer of the 4.9 GHz From Federal Government Use to the Private Sector—Notice of Proposed Rulemaking.

*Form No.:* N/A.

*Type of Review:* Extension of a currently approved collection.

*Respondents:* Business or other for-profit and Federal government.

*Number of Respondents:* 200 respondents; 1,200 responses.

*Estimated Time Per Response:* 1–20 hours.

*Frequency of Response:* On occasion reporting requirement and third party disclosure requirement.

*Total Annual Burden:* 22,600 hours.

*Total Annual Cost:* N/A.

*Privacy Act Impact Assessment:* N/A.

*Needs and Uses:* The various information reporting and verification requirements, and the prospective coordination requirement (third party disclosure requirement) will be used by the Commission to verify licensee compliance with Commission rules and regulations, and to ensure that licensees continue to fulfill their statutory responsibilities in accordance with the Communications Act of 1934, as amended. These reporting and disclosure requirements relate to common carriers providing fixed services under part 27 of the Commission's rules, and non-common carriers providing service under part 27 that voluntarily discontinue, reduce or impair service. The proposed rules also included licensee coordination requirements to minimize the possibility of in-band interference. Such information has been used in the past and will continue to be used to minimize interference, verify that the applicant is legally and technically qualified to hold the license. The Commission is submitting this information collection to the OMB as an extension (no change in reporting or third party disclosure requirements) in order to obtain the full three year clearance.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10677 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–01–M**

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## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 21, 2004.

**SUMMARY:** The Federal Communications Commissions, 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, 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 comments should be submitted on or before June 10, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–0761.

*Title:* Closed Captioning of Video Programming.

*Form Number:* N/A.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business and other for-profit entities; and Not-for-profit institutions.

*Number of Respondents:* 1,425.

*Estimate Time per Response:* 30 mins. to 5 hrs.

*Frequency of Response:* On occasion reporting requirement; Third party disclosure.

*Total Annual Burden:* 2,013 hours.

*Total Annual Costs:* $50,000.

*Privacy Impact Assessment:* No impact.

*Needs and Uses:* The FCC's Report and Order, MM Docket No. 95–176, FCC 97–279, adopted rules and implementation schedules for the closed captioning of video programming, pursuant to Section 305 of the Telecommunications Act of 1996, which added Section 713, Video Programming Accessibility, to the Communications Act of 1934, as amended. The requirements set forth in section 713 are intended to ensure that video programming is accessible to individuals with hearing disabilities through close captioning, regardless of the delivery mechanism used to reach consumers. Pursuant to section 713, the

FCC established phase-in schedules to increase the amount of closed captioned programming. The rules also provided procedures for entities to use to request exemptions of the closed captioning requirements based on an undue burden standard. Furthermore, they detailed a complaint process for viewers to use for the enforcement of closed captioning requirements.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10678 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 3, 2004.

**SUMMARY:** The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

**DATES:** Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 12, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all Paperwork Reduction Act (PRA) comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov.*

**FOR FURTHER INFORMATION CONTACT:** For additional information or copies of the information collection(s), contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov.*

**SUPPLEMENTARY INFORMATION:**

*OMB Control Number:* 3060–XXXX.

*Title:* Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992 Re: DBS Public Interest Obligations, 47 CFR Section 25.701.

*Form Number:* N/A.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities.

*Number of Respondents:* 15.

*Estimated Time per Response:* 25 hours.

*Frequency of Response:* Quarterly and on occasion reporting requirements.

*Total Annual Burden:* 375 hours.

*Total Annual Cost:* None.

*Privacy Impact Assessment:* No impact.

*Needs and Uses:* On March 25, 2004, the FCC released a Second Order on Reconsideration of First Report and Order, *In the Matter of Implementation of Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, Direct Broadcast Satellite Public Interest Obligations, Sua Sponte Reconsideration (''Order'')*, MM Docket No. 93–25, FCC 04–44. The political broadcasting reporting and recordkeeping requirements adopted in this Order will be used by the public to assess money expended and time allotted to a political candidate and by the Commission to ensure that equal access is afforded to other qualified candidates. The Commission and the public will use the children's programming recordkeeping burden to verify DBS operator compliance with the Commission's commercial limits on children's television programming.

*OMB Control Number:* 3060–XXXX.

*Title:* Application for Digital Channel Election for Television Broadcast station, FCC Form 339.

*Form Number:* FCC 339.

*Type of Review:* New collection.

*Respondents:* Business or other for-profit entities; Not-for-profit institutions.

*Number of Respondents:* 1,700.

*Estimated Hours per Response:* 1 hour.

*Frequency of Response:* One-time reporting requirement.

*Total Annual Burden:* 1,700 hours.

*Total Annual Cost:* 340,000.

*Privacy Impact Assessment:* No impact.

*Needs and Uses:* FCC Form 339 is used to elect a Digital Television (DTV) Channel for final DTV operations. All television stations, except those without an ''in core'' (Channels 2–51), NTSC, or DTV channel, must file FCC Form 339 electronically.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10679 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–10–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

April 16, 2004.

**SUMMARY:** The Federal Communications Commissions, 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, 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 comments should be submitted on or before June 10, 2004. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

**ADDRESSES:** Direct all comments to Les Smith, Federal Communications

Commission, Room 1–A804, 445 12th Street, SW., Washington, DC 20554 or via the Internet to *Leslie.Smith@fcc.gov* or Kristy L. LaLonde, Office of Management and Budget (OMB), Room 10236 NEOB, Washington, DC 20503, (202) 395–3087 or via the Internet at *Kristy_L._LaLonde@omb.eop.gov*.

**FOR FURTHER INFORMATION CONTACT:** For additional information or copy of the information collection(s) contact Les Smith at (202) 418–0217 or via the Internet at *Leslie.Smith@fcc.gov*.

**SUPPLEMENTARY INFORMATION:** *OMB Control Number:* 3060–0700.

*Title:* Open Video Systems Provisions, FCC Form 1275.

*Form Number:* FCC 1275.

*Type of Review:* Revision of a currently approved collection.

*Respondents:* Business or other for-profit entities; and State, local, or tribal government.

*Number of Respondents:* 748.

*Estimated Time per Response:* 0.25 to 20 hours.

*Total Annual Burden:* 3,910 hours.

*Total Annual Costs:* None.

*Privacy Impact Assessment:* No impact.

*Needs and Uses:* Section 302 of the Telecommunications Act of 1996 provides for specific entry options for entities wishing to enter the video programming marketplace, one option being to provide cable service over an ''Open Video System'' (''OVS''). On April 15, 1997, the Commission released a Fourth Report and Order, FCC 97–130, which clarified various OVS rules and modified certain OVS filing procedures. The Commission has made changes and revisions in the header/footer of the form, in the instructions to FCC 1275, and various other administrative edits to update the form and instructions.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10680 Filed 5–10–04; 8:45 am]

**BILLING CODE 6712–01–P**

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## FEDERAL COMMUNICATIONS COMMISSION

**[CC Docket Number 96–45; FCC 04–37]**

## Highland Cellular, Inc. Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** In this document, the Commission grants in part and denies in part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act).

**FOR FURTHER INFORMATION CONTACT:** Thomas Buckley, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order in CC Docket 96–45 released on April 12, 2004. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554.

### I. Introduction

1. In this Order, we grant in part and deny in part the petition of Highland Cellular, Inc. (Highland Cellular) to be designated as an eligible telecommunications carrier (ETC) in portions of its licensed service area in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (the Act). In so doing, we conclude that Highland Cellular, a commercial mobile radio service (CMRS) carrier, has satisfied the statutory eligibility requirements of section 214(e)(1) of the Act. Specifically, we conclude that Highland Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area. Highland Cellular requests ETC designation for a service area that overlaps, among other areas, the study areas of three rural telephone companies. We find that the designation of Highland Cellular as an ETC in a wire center served by Verizon Virginia, Inc. (Verizon Virginia), a non-rural carrier, and certain areas served by two of the three rural companies serves the public interest and furthers the goals of universal service. With regard to the study area of Verizon South, Inc. (Verizon South) and the Saltville wire center of United Telephone Company—Southeast Virginia (United Telephone) we do not find that ETC designation would be in the public interest.

2. Highland Cellular is licensed to serve the entire study area of only one of the three rural companies for which it seeks ETC designation—Burkes Garden Telephone Company, Inc. (Burkes Garden). Because Highland Cellular is licensed to serve only part of the study areas of the other two incumbent rural telephone companies, Highland Cellular has requested that we redefine the service areas of these rural telephone companies for ETC designation purposes, in accordance with section 214(e)(5) of the Act. We agree to the service area redefinition proposed by Highland Cellular for the service area of United Telephone, subject to agreement by the Virginia State Corporation Commission (Virginia Commission) in accordance with applicable Virginia Commission requirements. We find that the Virginia Commission's first-hand knowledge of the rural areas in question uniquely qualifies it to examine the redefinition proposal and determine whether it should be approved. Because we do not designate Highland Cellular as an ETC in Verizon South's study area, we do not redefine this service area.

3. In response to a request from the Commission, the Federal-State Joint Board on Universal Service (Joint Board) is currently reviewing: (1) The Commission's rules relating to the calculation of high-cost universal service support in areas where a competitive ETC is providing service; (2) the Commission's rules regarding support for non-primary lines; and (3) the process for designating ETCs. Some commenters in that proceeding have raised concerns about the rapid growth of high-cost universal service support and the impact of such growth on consumers in rural areas. The outcome of that proceeding could potentially impact, among other things, the support that Highland Cellular and other competitive ETCs may receive in the future and the criteria used for continued eligibility to receive support.

4. While we await a recommended decision from the Joint Board, we acknowledge the need for a more stringent public interest analysis for ETC designations in rural telephone company service areas. As we concluded in a recent order granting ETC designation to Virginia Cellular in the Commonwealth of Virginia, this framework shall apply to all ETC designations for rural areas pending further action by the Commission. We conclude that the value of increased competition, by itself, is not sufficient to satisfy the public interest test in rural areas. Instead, in determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh numerous factors, including the benefits of increased competitive choice, the

impact of multiple designations on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any commitments made regarding quality of telephone service provided by competing providers, and the competitive ETC's ability to provide the supported services throughout the designated service area within a reasonable time frame. Further, in this Order, we impose as ongoing conditions the commitments Highland Cellular has made on the record in this proceeding. These conditions will ensure that Highland Cellular satisfies its obligations under section 214 of the Act. We conclude that these steps are appropriate in light of the increased frequency of petitions for competitive ETC designations and the potential impact of such designations on consumers in rural areas.

## II. Discussion

5. After careful review of the record before us, we find that Highland Cellular has met all the requirements set forth in sections 214(e)(1) and (e)(6) of the Act, to be designated as an ETC by this Commission for the portions of its licensed service area described herein. First, we find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the designation and that the Commission therefore may consider Highland Cellular's petition under section 214(e)(6) of the Act. Second, we conclude that Highland Cellular has demonstrated that it will offer and advertise the services supported by the federal universal service support mechanisms throughout the designated service area upon designation as an ETC in accordance with section 214(e)(1) of the Act. In addition, we find that designation of Highland Cellular as an ETC in certain areas served by rural telephone companies serves the public interest and furthers the goals of universal service by better ensuring that consumers in high-cost and rural areas of Virginia have access to the services supported by universal service at affordable rates. Pursuant to our authority under section 214(e)(6) of the Act, we therefore designate Highland Cellular as an ETC for parts of its licensed service area in the Commonwealth of Virginia as set forth below. As explained below, however, we do not designate Highland Cellular as an ETC in the study area of the rural telephone company, Verizon South, and the Saltville wire center of the rural telephone company, United Telephone. In areas where Highland Cellular's proposed service areas do not cover the entire study area of a rural telephone company, Highland Cellular's ETC designation shall be subject to the Virginia Commission's agreement with our new definition for the rural telephone company service areas. In all other areas, as described herein, Highland Cellular's ETC designation is effective immediately. Finally, we note that the outcome of the Commission's pending proceeding, now before the Joint Board, examining the rules relating to high-cost universal service support in competitive areas could potentially impact the support that Highland Cellular and other ETCs may receive in the future. This Order is not intended to prejudge the outcome of that proceeding. We also note that Highland Cellular always has the option of relinquishing its ETC designation and its corresponding benefits and obligations to the extent that it is concerned about its long-term ability to provide supported services in the affected rural study areas.

### *A. Commission Authority To Perform the ETC Designation*

6. We find that Highland Cellular has demonstrated that the Virginia Commission lacks the jurisdiction to perform the requested ETC designation and the Commission has authority to consider Highland Cellular's petition under section 214(e)(6) of the Act. Highland Cellular submitted as an ''affirmative statement'' an order issued by the Virginia Commission addressing an application filed by Virginia Cellular, LLC (Virginia Cellular) seeking ETC designation. In the *Virginia Commission Order*, the Virginia Commission concluded that it ''has not asserted jurisdiction over CMRS carriers and that the Applicant should apply to the FCC for ETC designation.''

7. We find that, as required by the *Twelfth Report and Order*, 65 FR 47941, August 4, 2000, the Virginia Commission was given the specific opportunity to address and resolve the issue of whether it has authority to regulate CMRS providers as a class of carriers when it rendered its decision in the *Virginia Commission Order*. We find it sufficient that the Virginia Commission indicated that it does not have jurisdiction over CMRS carriers and that the Federal Communications Commission is the proper venue for CMRS carriers seeking ETC designation in the Commonwealth of Virginia. Therefore, based on this statement by the Virginia Commission, we find the Virginia Commission lacks jurisdiction to designate Highland Cellular as an ETC and this Commission has authority to perform the requested ETC designation in the Commonwealth of Virginia pursuant to section 214(e)(6) of the Act.

### *B. Offering and Advertising the Supported Services*

8. *Offering the Services Designated for Support.* We find that Highland Cellular has demonstrated through the required certifications and related filings that it now offers, or will offer upon designation as an ETC, the services supported by the federal universal service support mechanism. As noted in its petition, Highland Cellular is an ''A2–Band'' cellular carrier for the Virginia 2 Rural Service Area, serving the counties of Bland and Tazewell. Highland Cellular states that it currently provides all of the services and functionalities enumerated in § 54.101(a) of the Commission's rules throughout its cellular service area in Virginia. Highland Cellular certifies that it has the capability to offer voice-grade access to the public switched network, and the functional equivalents to DTMF signaling, single-party service, access to operator services, access to interexchange services, access to directory assistance, and toll limitation for qualifying low-income consumers. Highland Cellular also complies with applicable law and Commission directives on providing access to emergency services. In addition, although the Commission has not set a minimum local usage requirement, Highland Cellular certifies it will comply with ''any and all minimum local usage requirements adopted by the FCC'' and it intends to offer a number of local calling plans as part of its universal service offering. As discussed below, Highland Cellular has committed to report annually its progress in achieving its build-out plans at the same time it submits its annual certification required under §§ 54.313 and 54.314 of the Commission's rules.

9. Highland Cellular has also made specific commitments to provide service to requesting customers in the service areas in which it is designated as an ETC. Highland Cellular states that if a request is made by a potential customer within its existing network, Highland Cellular will provide service immediately using its standard customer equipment. In instances where a request comes from a potential customer within Highland Cellular's licensed service area but outside its existing network coverage, it will take a number of steps to provide service that include determining whether: (1) The requesting customer's equipment can be modified or replaced to provide service; (2) a roof-mounted antenna or other

equipment can be deployed to provide service; (3) adjustments can be made to the nearest cell tower to provide service; (4) there are any other adjustments that can be made to network or customer facilities to provide service; (5) it can offer resold services from another carrier's facilities to provide service; and (6) an additional cell site, cell extender, or repeater can be employed or can be constructed to provide service. In addition, if after following these steps, Highland Cellular still cannot provide service, it will notify the requesting party and include that information in an annual report filed with the Commission detailing how many requests for service were unfulfilled for the past year.

10. Highland Cellular has further committed to use universal service support to further improve its universal service offering by constructing new cellular sites in sparsely populated areas within its licensed service area but outside its existing network coverage. Highland Cellular states that it will modify its construction plans based on the areas where ETC designation is granted. Highland Cellular notes that the parameters of its build-out plans may evolve over time as it responds to consumer demand. In connection with its annual reporting obligations, Highland Cellular will submit detailed information on its progress toward meeting build-out plans.

11. *Offering the Supported Services Using a Carriers's Own Facilities.* Highland Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(A) of the Act, that it offer the supported services using either its own facilities or a combination of its own facilities and resale of another carrier's services. Highland Cellular states that it intends to provide the supported services using its cellular network infrastructure, which includes ''the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its existing conventional mobile cellular service customers.'' We find that this certification is sufficient to satisfy the facilities requirement of section 214(e)(1)(A) of the Act.

12. *Advertising the Supported Services.* We conclude that Highland Cellular has demonstrated that it satisfies the requirement of section 214(e)(1)(B) of the Act, to advertise the availability of the supported services and the charges therefor using media of general distribution. Highland Cellular certifies that it will ''use media of general distribution that it currently employs to advertise its universal service offerings throughout the service areas designated by the Commission.'' In addition, Highland Cellular details alternative methods that it will employ to advertise the availability of its services. For example, Highland Cellular will provide notices at local unemployment, social security, and welfare offices so that unserved consumers can learn about Highland Cellular's service offerings and learn about Lifeline and Linkup discounts. Highland Cellular also commits to publicize locally the construction of all new facilities in unserved or underserved areas so customers are made aware of improved service. We find that Highland Cellular's certification and its additional commitments to advertise its service offerings satisfy section 214(e)(1)(B) of the Act. In addition, as the Commission has stated in prior decisions, because an ETC receives universal service support only to the extent that it serves customers, we believe that strong economic incentives exist, in addition to the statutory obligation, for an ETC to advertise its universal service offering in its designated service area.

*C. Public Interest Analysis*

13. We conclude that it is ''consistent with the public interest, convenience, and necessity'' to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia. We also conclude that it is in the public interest to designate Highland Cellular as an ETC in Virginia in the study area served by the rural telephone company, Burkes Garden and the Bland and Ceres wire centers served by the rural telephone company, United Telephone. In determining whether the public interest is served, the Commission places the burden of proof upon the ETC applicant. We conclude that Highland Cellular has satisfied the burden of proof in establishing that its universal service offering in these areas will provide benefits to rural consumers. We do not designate Highland Cellular as an ETC, however, for the study area of Verizon South and the Saltville wire center of United Telephone because we find that Highland Cellular has not satisfied its burden of proof in this instance.

14. *Non-Rural Study Areas.* We conclude that it is ''consistent with the public interest, convenience, and necessity'' to designate Highland Cellular as an ETC for the portion of its requested service area that is served by the non-rural telephone company, Verizon Virginia. We note that the Common Carrier Bureau previously found designation of additional ETCs in areas served by non-rural telephone companies to be *per se* in the public interest based upon a demonstration that the requesting carrier complies with the statutory eligibility obligations of section 214(e)(1) of the Act. We do not believe that designation of an additional ETC in a non-rural telephone company's study area based merely upon a showing that the requesting carrier complies with section 214(e)(1) of the Act will necessarily be consistent with the public interest in every instance. We nevertheless conclude that Highland Cellular's public interest showing here is sufficient based on the detailed commitments Highland Cellular made to ensure that it provides high quality service throughout the proposed rural and non-rural service areas; indeed, given our finding that Highland Cellular has satisfied the more rigorous public interest analysis for certain rural study areas, it follows that its commitments satisfy the public interest requirements for non-rural areas. We also note that no parties oppose Highland Cellular's request for ETC designation in the study area of this non-rural telephone company. We therefore conclude that Highland Cellular has demonstrated that its designation as an ETC in the study area of this non-rural telephone company, is consistent with the public interest, as required by section 214(e)(6) of the Act. We further note that the Joint Board is reviewing whether to modify the public interest analysis used to designate both non-rural and rural ETCs under section 214(e) of the Act. The outcome of that proceeding could impact the Commission's public interest analysis for future ETC designations in non-rural telephone company service areas.

15. *Rural Study Areas.* Based on the record before us, we conclude that grant of this ETC designation for the requested rural study areas, in part, is consistent with the public interest. In considering whether designation of Highland Cellular as an ETC will serve the public interest, we have considered whether the benefits of an additional ETC in the wire centers for which Highland Cellular seeks designation outweigh any potential harms. We note that this balancing of benefits and costs is a fact-specific exercise. In determining whether designation of a competitive ETC in a rural telephone company's service area is in the public interest, we weigh the benefits of increased competitive choice, the impact of the designation on the universal service fund, the unique advantages and disadvantages of the competitor's service offering, any

commitments made regarding quality of telephone service, and the competitive ETC's ability to satisfy its obligation to serve the designated service areas within a reasonable time frame. We recognize that as part of its review of the ETC designation process in the pending proceeding examining the rules relating to high-cost support in competitive areas, the Commission may adopt a different framework for the public interest analysis of ETC applications. This Order does not prejudge the Joint Board's deliberations in that proceeding and any other public interest framework that the Commission might ultimately adopt.

16. Highland Cellular's universal service offering will provide benefits to customers in situations where they do not have access to a wireline telephone. For instance, Highland Cellular has committed to serve residences that do not have access to the public switched network through the incumbent telephone company. Also, the mobility of Highland Cellular's wireless service will provide other benefits to consumers. For example, the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations. In addition, the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities. Highland Cellular also submits that, because its local calling area is larger than those of the incumbent local exchange carriers it competes against, Highland Cellular's customers will be subject to fewer toll charges.

17. We acknowledge arguments made in the record that wireless telecommunication offerings may be subject to dropped calls and poor coverage. In addition, wireless carriers often are not subject to mandatory service quality standards. Highland Cellular has committed to mitigate these concerns. Highland Cellular assures the Commission that it will alleviate dropped calls by using universal service support to build new towers and facilities to offer better coverage. As evidence of its commitment to high service quality, Highland Cellular has also committed to comply with the Cellular Telecommunications Industry Association Consumer Code for Wireless Service, which sets out certain principles, disclosures, and practices for the provision of wireless service. In addition, Highland Cellular has committed to provide the Commission with the number of consumer complaints per 1,000 handsets on an annual basis. Therefore, we find that Highland Cellular's commitment to provide better coverage to unserved areas and its other commitments discussed herein adequately address any concerns about the quality of its wireless service.

18. Although we find that grant of this ETC designation will not dramatically burden the universal service fund, we are increasingly concerned about the impact on the universal service fund due to the rapid growth in the number of competitive ETCs. Specifically, although competitive ETCs only receive a small percentage of all high-cost universal service support, the amount of high-cost support distributed to competitive ETCs is growing at a dramatic pace. For example, in the first quarter of 2001, three competitive ETCs received approximately $2 million or 0.4 percent of high-cost support. In the fourth quarter of 2003, 112 competitive ETCs received approximately $32 million or 3.7 percent of high-cost support. This concern has been raised by parties in this proceeding, especially as it relates to the long-term sustainability of universal service high-cost support. Specifically, Verizon Telephone Companies (Verizon) argues that the Commission should not rule on the Highland Cellular ETC petition until after it has had an opportunity to initiate a broader rulemaking on high-cost fund issues. In particular, Verizon contends that the Commission should reexamine the rules concerning portability of support for ETCs and the designation of ETCs for areas different from those served by the incumbent LEC. We recognize that Verizon raises important issues regarding universal service high-cost support. As discussed above, the Commission has asked the Joint Board to examine, among other things, the Commission's rules relating to high-cost universal service support in service areas in which a competitive ETC is providing service, as well as the Commission's rules regarding support for second lines. We note that the outcome of the Commission's pending proceeding examining the rules relating to high-cost support in competitive areas could potentially impact, among other things, the support that Highland Cellular and other competitive ETCs may receive in the future. It is our hope that the Commission's pending rulemaking proceeding also will provide a framework for assessing the overall impact of competitive ETC designations on the universal service mechanisms.

19. We further conclude that designation of Highland Cellular as an ETC in the Burkes Garden study area and the Bland and Ceres wire centers served by United Telephone does not create rural creamskimming concerns. As discussed below, however, we conclude that designation of Highland Cellular as an ETC in the study area of Verizon South and the Saltville wire center does raise creamskimming and other concerns, and therefore would be inconsistent with the public interest. Rural creamskimming occurs when competitors serve only the low-cost, high revenue customers in a rural telephone company's study area. Because Highland Cellular requests ETC designation in the entire study area of Burkes Garden, designation of Highland Cellular as an ETC in this portion of its licensed service area does not create creamskimming concerns. We note, however, that because the contours of Highland Cellular's CMRS licensed area differ from United Telephone's and Verizon South's service areas, Highland Cellular will be unable to provide facilities-based service to the entire study areas of these two companies. In this case, however, Highland Cellular commits to provide universal service throughout its licensed service area. It therefore does not appear that Highland Cellular is deliberately seeking to enter only certain portions of these companies' study areas in order to creamskim.

20. At the same time, we recognize that, for reasons beyond a competitive carrier's control, the lowest cost portion of a rural study area may be the only portion of the study area that a wireless carrier is licensed to serve. Under these circumstances, granting a carrier ETC designation for only its licensed portion of the rural study may have the same effect on the ILEC as rural creamskimming.

21. We have analyzed the record before us in this matter and find that, for the study area of United Telephone, Highland Cellular's designation as an ETC is unlikely to undercut the incumbent's ability to serve the entire study area. Our analysis of the population density of each of the affected wire centers for United Telephone reveals that Highland Cellular will not be serving only low-cost areas to the exclusion of high-cost areas. Although there are other factors that define high-cost areas, a lower population density indicates a higher cost area. The average population density for the United Telephone wire centers for which we grant Highland Cellular ETC designation is 19.5 persons per square mile and the average population density for United

Telephone's remaining wire centers is 73.21 persons per square mile.

22. We conclude, however, that it would not be in the public interest to designate Highland Cellular as an ETC in the study area of Verizon South. Highland Cellular's licensed CMRS service area covers only certain wire centers in the study area of Verizon South. Based on our examination of the population densities of the wire centers in Verizon South's study area, and using the same analysis used by the Commission in the *Virginia Cellular Order,* we find that designating Highland Cellular as an ETC in Verizon South's study area would not be in the public interest.

23. In the *Virginia Cellular Order,* the Commission granted in part and denied in part the petition of Virginia Cellular LLC (Virginia Cellular) to be designated as an ETC throughout parts of its licensed service area in the Commonwealth of Virginia. In that proceeding, Virginia Cellular requested ETC designation for the study areas of six rural telephone companies. The Commission found that the designation of Virginia Cellular as an ETC in certain areas served by five of the six rural telephone companies served the public interest by promoting the provision of new technologies to consumers in high-cost and rural areas of Virginia. However, the Commission denied designation of Virginia Cellular as an ETC in one rural incumbent LEC's study area because Virginia Cellular would only have served the lowest-cost, highest-density wire center within the incumbent LEC's study area.

24. In this case, we find that the ETC designation of Highland Cellular in the portion of its licensed service area that covers only certain wire centers of Verizon South raises creamskimming concerns similar to those identified by the Commission in the *Virginia Cellular Order.* We agree with the arguments of Verizon that Highland Cellular should not be allowed to serve only the low-cost customers in a rural telephone company's study area. Our analysis of the population data for each of the affected rural wire centers, including the wire centers in Verizon South's study area that are not covered by Highland Cellular's licensed service area, reveals that Highland Cellular would be primarily serving customers in the low-cost and high-density portion of Verizon South's study area. Specifically, although the wire centers in Verizon South's study area that Highland Cellular would be able to serve includes two low density wire centers, approximately 94 percent of Highland Cellular's potential customers in Verizon South's study area would be located in the four highest-density, and thus presumably lowest-cost, wire centers in Verizon South's study area. The population in these four wire centers represents approximately 42,128 customers. In contrast, the remaining approximately six percent of Highland Cellular's potential customers in Verizon South's study area, which are located in the two lowest-density, highest-cost wire centers, represent only approximately 2,800 customers.

25. As we discussed in the *Virginia Cellular Order,* when a competitor serves only the lowest-cost, highest-density wire centers in a study area with widely disparate population densities, the incumbent may be placed at a sizeable unfair disadvantage. Universal service support is calculated on a study-area-wide basis. Although Verizon South did not take advantage of the Commission's disaggregation options to protect against possible uneconomic entry in its lower cost area, we find on the facts here that designating Highland Cellular as an ETC in these requested wire centers potentially could undermine Verizon South's ability to serve its entire study area. Specifically, because Verizon South's study area includes wire centers with highly variable population densities, and therefore highly variable cost characteristics, disaggregation may be a less viable alternative for reducing creamskimming opportunities. This problem may be compounded where the cost characteristics of the incumbent and competitor differ substantially. We therefore reject arguments that incumbents can, in every instance, protect against creamskimming by disaggregating high-cost support to the higher-cost portions of the incumbent's study area.

26. Finally, we conclude that designating Highland Cellular as an ETC in a portion of United Telephone's Saltville wire center would not serve the public interest. Although the Wireline Competition Bureau previously designated an ETC for portions of a rural telephone company's wire center, we conclude that making designations for a portion of a rural telephone company's wire center would be inconsistent with the public interest. In particular, we conclude, that prior to designating an additional ETC in a rural telephone company's service area, the competitor must commit to provide the supported services to customers throughout a minimum geographic area. A rural telephone company's wire center is an appropriate minimum geographic area for ETC designation because rural carrier wire centers typically correspond with county and/or town lines. We believe that requiring a competitive ETC to serve entire communities will make it less likely that the competitor will relinquish its ETC designation at a later date. Because consumers in rural areas tend to have fewer competitive alternatives than consumers in urban areas, such consumers are more vulnerable to carriers relinquishing ETC designation. Highland Cellular has stated that, should the Commission impose a requirement that competitive ETCs serve complete rural telephone company wire centers, it would not seek designation in the Saltville wire center. We, therefore, do not designate Highland Cellular as an ETC in the Saltville wire center.

*D. Designated Service Area*

27. Highland Cellular is designated an ETC in the requested areas served by the non-rural telephone company, Verizon Virginia, as listed in Appendix A. We designate Highland Cellular as an ETC throughout most of its CMRS licensed service area in the Virginia 2 Rural Service Area. Highland Cellular is designated as an ETC in the area served by the rural telephone company, Burkes Garden, whose study area Highland Cellular is able to serve completely, as listed in Appendix B. Subject to the Virginia Commission's agreement on redefining the service area of United Telephone, we also designate Highland Cellular as an ETC for the entire Bland and Ceres wire centers as listed in Appendix C. Finally, we do not designate Highland Cellular as an ETC in the study area served by Verizon South or the Saltville wire center served by United Telephone.

28. We designate Highland Cellular as an ETC in the Bland and Ceres wire centers in the study area of United Telephone. We find that because the Bland and Ceres wire centers are low-density, high-cost wire centers, concerns about undermining United Telephone's ability to serve the entire study area are minimized. Accordingly, we find that denying Highland Cellular ETC status for United Telephone's Bland and Ceres wire centers simply because Highland Cellular is not licensed to serve the twenty-five remaining wire centers would be inappropriate. Consequently, we conclude that it is in the public interest to designate Highland Cellular as an ETC in United Telephone's Bland and Ceres wire centers and include those wire centers in Highland Cellular's service area, as redefined below.

29. Finally, for the reasons described above, the service area we designate for Highland Cellular does not contain any

portion of Verizon South's study area or United Telephone's Saltville wire center.

*E. Redefining Rural Company Service Areas*

30. We redefine the service area of United Telephone pursuant to section 214(e)(5) of the Act. Consistent with prior rural service area redefinitions, we redefine each wire center in the United Telephone study area as a separate service area. Our decision to redefine the service area of United Telephone is subject to the review and final agreement of the Virginia Commission in accordance with applicable Virginia Commission requirements. Accordingly, we submit our redefinition proposal to the Virginia Commission and request that it examine such proposal based on its unique familiarity with the rural areas in question.

31. In order to designate Highland Cellular as an ETC in a service area that is different from the affected rural telephone company study area, we must redefine the service areas of the rural telephone company in accordance with section 214(e)(5) of the Act. We redefine the affected service area only to determine the portions of the rural service area in which to designate Highland Cellular and future competitive carriers seeking ETC designation in the same rural service area. In defining United Telephone's service area to be different than its study area, we are required to act in concert with the relevant state commission, ''taking into account the recommendations'' of the Joint Board. The Joint Board's concerns regarding rural telephone company service areas as discussed in the *1996 Recommended Decision,* FCC 96J–1, June 19, 1996, are as follows: (1) Minimizing creamskimming; (2) recognizing that the Act places rural telephone companies on a different competitive footing from other LECs; and (3) recognizing the administrative burden of requiring rural telephone companies to calculate costs at something other than a study area level. We find that the proposed redefinition properly addresses these concerns.

32. First, we conclude that redefining United Telephone's service area at the wire center level should not result in opportunities for creamskimming. We have analyzed the population densities of the wire centers in United Telephone's study area where Highland Cellular will and will not receive support and conclude that this redefinition does not raise creamskimming concerns. We note that we do not propose redefinition in areas where ETC designation would potentially undermine the incumbent's ability to serve its entire study area. Therefore, we conclude, based on the particular facts of this case, that there is little likelihood of rural creamskimming effects in redefining the service area of United Telephone.

33. Second, our decision to redefine the service area includes special consideration for the affected rural carrier. We find no evidence that the proposed redefinition will harm United Telephone. Although no parties have opposed the specific redefinition of United Telephone's service area, Verizon has raised general concerns that the designation of Highland Cellular as a competitive ETC will result in inefficient investment or will strain the universal service fund. We find no evidence that the proposed redefinition will harm United Telephone. We note that redefining the service area of the affected rural telephone company will not change the amount of universal service support that is available to the incumbents.

34. Third, we find that redefining United Telephone's service area as proposed will not require United Telephone to determine its costs on any basis other than the study area level. Rather, the redefinition merely enables competitive ETCs to serve areas that are smaller than the entire ILEC study area. Our decision to redefine the service area does not modify the existing rules applicable to rural telephone companies for calculating costs on a study area basis, nor, as a practical matter, the manner in which United Telephone will comply with these rules. Therefore, we find that the concern of the Joint Board that redefining rural service areas might impose additional administrative burdens on affected rural telephone companies is not at issue here.

35. In accordance with § 54.207(d) of the Commission's rules, we submit this Order to the Virginia Commission, and request that the Virginia Commission treat this Order as a petition to redefine a service area under § 54.207(d)(1) of the Commission's rules. Highland Cellular's ETC designation in the service area of United Telephone is subject to the Virginia Commission's review and agreement with the redefinition proposal herein. We find that the Virginia Commission is uniquely qualified to examine the proposed redefinition because of its familiarity with the rural service area in question. Upon the effective date of the agreement of the Virginia Commission with our redefinition of the service area of United Telephone, our designation of Highland Cellular as an ETC in the area served by United Telephone as set forth herein, shall also take effect. In all other areas for which this Order grants ETC status to Highland Cellular, as described herein, such designation is effective immediately. If, after its review, the Virginia Commission determines that it does not agree with the redefinition proposal herein, we will reexamine Highland Cellular's petition with regard to redefining United Telephone's service area.

*F. Regulatory Oversight*

36. We note that Highland Cellular is obligated under section 254(e) of the Act to use high-cost support ''only for the provision, maintenance, and upgrading of facilities and services for which support is intended'' and is required under §§ 54.313 and 54.314 of the Commission's rules to certify annually that it is in compliance with this requirement. Separate and in addition to its annual certification filing under §§ 54.313 and 54.314 of our rules, Highland Cellular has committed to submit records and documentation on an annual basis detailing its progress towards meeting its build-out plans. Highland Cellular also has committed to become a signatory to the Cellular Telecommunications Industry Association's Consumer Code for Wireless Service and provide the number of consumer complaints per 1,000 mobile handsets on an annual basis. In addition, Highland Cellular will annually submit information detailing how many requests for service from potential customers were unfulfilled for the past year. We require Highland Cellular to submit these additional data to the Commission and USAC on October 1 of each year beginning October 1, 2004. We find that reliance on Highland Cellular's commitments is reasonable and consistent with the public interest and the Act and the Fifth Circuit decision in *Texas Office of Public Utility Counsel* v. *FCC.* We conclude that fulfillment of these additional reporting requirements will further the Commission's goal of ensuring Highland Cellular satisfies its obligation under section 214(e) of the Act to provide supported services throughout its designated service area. We note that the Commission may institute an inquiry on its own motion to examine any ETC's records and documentation to ensure that the high-cost support it receives is being used ''only for the provision, maintenance, and upgrading of facilities and services'' in the areas where it is designated as an ETC. Highland Cellular will be required to provide such records and documentation to the Commission and

USAC upon request. We further emphasize that if Highland Cellular fails to fulfill the requirements of the statute, our rules and the terms of this Order after it begins receiving universal service support, the Commission has authority to revoke its ETC designation. The Commission also may assess forfeitures for violations of Commission rules and orders.

### III. Anti-Drug Abuse Act Certification

37. Pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, no applicant is eligible for any new, modified, or renewed instrument of authorization from the Commission, including authorizations issued pursuant to section 214 of the Act, unless the applicant certifies that neither it, nor any party to its application, is subject to a denial of federal benefits, including Commission benefits. Highland Cellular has provided a certification consistent with the requirements of the Anti-Drug Abuse Act of 1988. We find that Highland Cellular has satisfied the requirements of the Anti-Drug Abuse Act of 1988, as codified in §§ 1.2001–1.2003 of the Commission's rules.

### IV. Ordering Clauses

38. Pursuant to the authority contained in section 214(e)(6) of the Communications Act, 47 U.S.C. 214(e)(6), Highland Cellular, Inc. is designated an eligible telecommunications carrier for portions of its licensed service area in the Commonwealth of Virginia to the extent described herein.

39. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. 214(e)(5), and § 54.207(d) and (e) of the Commission's rules, 47 CFR 54.207(d) and (e), the request of Highland Cellular, Inc. to redefine the service area of United Telephone Company—Southeast Virginia in Virginia is granted to the extent described herein and subject to the agreement of the Virginia State Corporation Commission with the Commission's redefinition of the service area. For United Telephone Company—Southeast Virginia, upon the effective date of the agreement of the Virginia State Corporation Commission with the Commission's redefinition of such service area, this designation of Highland Cellular, Inc. as an ETC for such area as set forth herein shall also take effect.

40. Pursuant to the authority contained in section 214(e)(5) of the Communications Act, 47 U.S.C. 214(e)(5), and § 54.207(d) and (e) of the Commission's rules, 47 CFR 54.207(d) and (e), the request of Highland Cellular, Inc. to redefine the service area of Verizon South, Inc.—Virginia in Virginia is denied.

41. It is further ordered that a copy of this Memorandum Opinion and Order shall be transmitted by the Office of the Secretary to the Virginia State Corporation Commission and the Universal Service Administrative Company.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

### Appendix A—Virginia Non-Rural Telephone Company Wire Centers for Inclusion in Highland Cellular's ETC Service Area

**Verizon Virginia Inc.**

Honaker (wire center code HNKRVAHK)

### Appendix B—Virginia Rural Telephone Company Study Areas for Inclusion in Highland Cellular's ETC Service Area

**Burkes Garden Telephone Company, Inc. (Study Area Code 190220)**

### Appendix C—Virginia Rural Telephone Company Wire Centers for Inclusion in Highland Cellular's ETC Service Area

**United Telephone Company—Southeast Virginia**

Bland (wire center code BLNDVAXA)
Ceres (wire center code CERSVAX)

[FR Doc. 04–10675 Filed 5–10–04; 8:45 am]

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## FEDERAL COMMUNICATIONS COMMISSION

**[Report Nos. AUC–04–37–I (Auction No. 37); DA 04–1020 and AUC–04–37–J (Auction No. 37); DA 04–1275]**

## Revised Inventory and Auction Start Date for FM Broadcast Construction Permits, Auction Rescheduled for November 3, 2004; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedures; and Auction for FM Broadcast Construction Permits; Deadlines Extended for Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice.

**SUMMARY:** By this document, the Wireless Telecommunications Bureau (WTB) and the Media Bureau (MB) (collectively referred to as the Bureaus) reschedule the postponed FM Broadcast auction (Auction No. 37) for November 3, 2004, and seek comment on previously announced procedures for Auction No. 37. Also this document announces the revised auction inventory for Auction No. 37.

**DATES:** Comments are due on or before May 17, 2004, and reply comments are due on or before May 24, 2004.

**ADDRESSES:** Comments and reply comments must be sent by electronic mail to the following address: *auction37@fcc.gov*.

**FOR FURTHER INFORMATION CONTACT:** *For legal questions:* Kenneth Burnley at (202) 418–0660. *For general auction questions:* Jeff Crooks at (202) 418–0660 or Linda Sanderson at (717) 338–2851. *For legal and service rule questions:* Lisa Scanlan or Tom Nessinger at (202) 418–2700.

**SUPPLEMENTARY INFORMATION:** This is a summary of two public notices, DA 04–1020 (''*Auction No. 37 Comment Public Notice*'') and DA 04–1275 (''*Auction No. 37 Comment Extension Public Notice*'') released on April 15, 2004 and May 5, 2004 respectively. The complete text of the *Auction No. 37 Comment Public Notice* and the *Auction No. 37 Comment Extension Public Notice*, including the attachments, are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The *Auction No. 37 Comment Public Notice* may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898, or via e-mail *qualexint@aol.com*.

1. By the *Auction No. 37 Comment Public Notice*, the Wireless Telecommunications Bureau (''WTB'') and the Media Bureau (''MB'') (collectively referred to as the ''Bureaus'') reschedule the postponed auction for FM broadcast construction permits (Auction No. 37) for November 3, 2004, and seek comment on previously announced procedures for Auction No. 37. In addition, the *Auction No. 37 Comment Public Notice* announces the revised auction inventory for Auction No. 37. As discussed in greater detail herein, Auction No. 37 will be composed of 290 construction permits in the FM broadcast service as listed in Attachment A of the *Auction No. 37 Comment Public Notice*.

2. Specifically, Attachment A of the *Auction No. 37 Comment Public Notice* lists vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b), pursuant to the Commission's

established rulemaking procedures, designated for use in the indicated community. Pursuant to the policies established in the *Broadcast First Report and Order*, 63 FR 48615 (September 11, 1998), applicants may apply for any vacant FM allotment, as specified in Attachment A of the *Auction No. 37 Comment Public Notice*; applicants specifying the same FM allotment will be considered mutually exclusive and, thus, the construction permit for the FM allotment will be awarded by competitive bidding procedures. The reference coordinates for each vacant FM allotment are also listed in Attachment A of the *Auction No. 37 Comment Public Notice*.

**I. Background**

3. Auction No. 37 was originally scheduled to commence February 21, 2001 but was subsequently postponed. In *Reexamination of the Comparative Standards for Noncommercial Educational Applicants, Report and Order*, 65 FR 36375 (June 8, 2000) (''*NCE Report and Order*''), the Commission adopted new procedures to select among applicants competing for noncommercial educational (''NCE'') reserved channels. The Commission also concluded that it would use competitive bidding to select among competing applications for nonreserved channels even if NCE applicants are among the competitors. Several parties, including National Public Radio, sought judicial review of this decision in the U.S. Court of Appeals for the D.C. Circuit. In *National Public Radio, Inc. et al.* v. *F.C.C.*, 254 F.3d 226 (D.C. Cir. 2001) (''NPR''), the court of appeals vacated the portion of the *NCE Report and Order* that required NCE applicants for authorizations in the nonreserved spectrum to participate in auctions with mutually exclusive commercial applicants. In light of *NPR*, the Commission postponed Auction No. 37 while it formulated its response to the court's decision.

4. In the *NCE Second Report and Order*, 68 FR 26220 (May 15, 2003), the Commission established new policies and procedures for licensing nonreserved broadcast spectrum in response to *NPR*. Pursuant to a *Public Notice* released September 30, 2003, 18 FCC Rcd 19600 (2003), the Media Bureau opened a window to permit NCE reservation showings for certain vacant FM allotments. The *Public Notice* established a November 21, 2003 deadline for filing petitions for rulemaking to amend the FM Table of Allotments to reserve FM channels. By the reservation filing deadline, 129 Petitions for Rulemaking had been filed, including petitions to reserve 60 vacant FM allotments previously scheduled to be included in Auction No. 37.

5. In Attachment A of the *Auction No. 37 Procedures Public Notice*, 66 FR 8961 (February 5, 2001), the Bureaus listed 351 FM allotments for which construction permits would be auctioned. The Bureaus subsequently added and removed certain allotments from the Auction No. 37 inventory, and the resulting FM allotments, minus those for which Petitions for Rulemaking requesting reservation as NCE channels have been filed, will comprise the inventory for Auction No. 37. Therefore, Auction No. 37 will consist of 290 construction permits in the FM broadcast service for stations throughout the United States and Guam. These construction permits are for vacant FM allotments, reflecting FM channels assigned to the Table of FM Allotments, 47 CFR 73.202(b).

6. Before Auction No. 37 was postponed, on September 25, 2000, the Bureaus released a public notice seeking comment on the establishment of reserve prices and/or minimum opening bids and procedures for Auction No. 37, in accordance with the Balanced Budget Act of 1997. Section 3002(a), Balanced Budget Act, 47 U.S.C. 309(j)(4)(F). On September 29, 2000, the Bureaus released a second public notice, adding eight additional vacant FM allotments to the auction inventory and seeking comment on auction procedures and minimum opening bids with respect to the additional allotments. The Bureaus received twenty comments and three reply comments in response to the *2000 Auction No. 37 Comment Public Notice*, 65 FR 59841 (October 6, 2000) and the *Auction No. 37 Additional Comment Public Notice*, 65 FR 59841 (October 6, 2000). Following this round of comments, on January 19, 2001, the Bureaus released the *2001 Auction No. 37 Procedures Public Notice*, 66 FR 8961 (February 5, 2001), in which the Bureaus, inter alia, reduced the minimum opening bids for the Auction No. 37 construction permits and set forth the procedures to be followed in Auction No. 37. We take this opportunity to seek comment again on the following issues related to Auction No. 37.

**II. Auction Structure**

*A. Simultaneous Multiple Round Auction Design*

7. We propose to award all construction permits included in Auction No. 37 in a single stage, simultaneous multiple round auction. This methodology offers every construction permit for bid at the same time with successive bidding rounds in which bidders may place bids. We seek comment on this proposal.

*B. Upfront Payments and Bidding Eligibility*

8. The Bureaus propose to make the upfront payments equal to the minimum opening bids, which are established based on various factors related to the efficiency of the auction and the potential value of the spectrum. The specific upfront payment for each FM construction permit is set forth in Attachment A of the *Auction No. 37 Comment Public Notice*. We seek comment on this proposal.

9. We further propose that the amount of the upfront payment submitted by a bidder will determine the maximum number of bidding units on which a bidder may place bids. This limit is a bidder's initial eligibility. Each FM construction permit is assigned a specific number of bidding units equal to the upfront payment listed in Attachment A of the *Auction No. 37 Comment Public Notice*, on a bidding unit per dollar basis. This number does not change as prices rise during the auction. Rather, a bidder may place bids on multiple construction permits as long as the total number of bidding units associated with those construction permits does not exceed the bidder's current eligibility. Eligibility cannot be increased during the auction. In order to bid on a construction permit, qualified bidders must have an eligibility level that meets the number of bidding units assigned to that construction permit. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

*C. Activity Rules*

10. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively throughout the auction, rather than wait until late in the auction before participating. Bidders are required to be active on a specific percentage of their current eligibility during each round of the auction. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

11. We propose a single stage auction with the following activity requirement: In each round of the auction, a bidder desiring to maintain its current

eligibility is required to be active on construction permits representing one hundred (100) percent of its current bidding eligibility. A bidder's activity will be the sum of the bidding units associated with the construction permits upon which it places a bid during the current round and the bidding units associated with the construction permits upon which it is the standing high bidder. Failure to maintain the requisite activity level will result in the use of an activity rule waiver, if any remain, or a reduction in the bidder's eligibility, possibly eliminating the bidder from further bidding in the auction. We seek comment on this proposal.

*D. Activity Rule Waivers and Reducing Eligibility*

12. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular construction permit. Activity rule waivers can be either proactive or automatic and are principally a mechanism for auction participants to avoid the loss of bidding eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

13. The FCC Automated Auction System assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an ''automatic waiver'') at the end of any bidding period where a bidder's activity level is below the minimum required, unless (i) the bidder has no more activity rule waivers available; or (ii) the bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements. If a bidder has no waivers remaining and does not satisfy the required activity level, its current eligibility will be permanently reduced, possibly eliminating the bidder from further bidding in the auction.

14. A bidder that is eligible to bid on more than one construction permit and has insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the bidding system. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules; that is, the bidder's eligibility will be reduced to equal its current activity. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

15. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding system) during a bidding period in which no bids or withdrawals are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new bids or withdrawals will not keep the auction open. The submission of a proactive waiver cannot occur after a bid has been submitted in a round and will preclude a bidder from placing any bids later in that round. **Note:** Once a proactive waiver is submitted during a round, that waiver cannot be unsubmitted.

16. We propose that each bidder in Auction No. 37 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction. We seek comment on this proposal.

**E. Information Relating to Auction Delay, Suspension or Cancellation**

17. For Auction No. 37, we propose that, by public notice or by announcement during the auction, the Bureaus may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and efficient conduct of competitive bidding. In such cases, the Bureaus, in their sole discretion, may elect to resume the auction starting from the beginning of the current round, resume the auction starting from some previous round, or cancel the auction in its entirety. Network interruption may cause the Bureaus to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureaus, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

**III. Bidding Procedures**

*A. Round Structure*

18. The Commission will conduct Auction No. 37 over the Internet. Telephonic bidding will also be available. As a contingency plan, the FCC Wide Area Network will be available as well. The telephone number through which the backup FCC Wide Area Network may be accessed will be announced in a later public notice. Full information regarding how to establish such a connection will be provided in the public notice announcing details of auction procedures.

19. In the *2001 Auction No. 37 Procedures Public Notice*, the Bureaus announced that auction participants could place bids either by telephone or electronically by purchasing remote bidding software from the Commission. Bidders will still be able to place bids telephonically or electronically. However, the Commission's remote bidding software has been replaced by an Internet bidding system. The new bidding system does not require the purchase of software; however, it does require distribution of registration materials to each applicant's contact person. These materials include the confidential bidder identification number (BIN) and the SecurID cards, both of which are required to place bids.

20. The initial schedule of bidding rounds will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

21. The Bureaus have the discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureaus may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

*B. Reserve Price or Minimum Opening Bid*

22. The Balanced Budget Act calls upon the Commission to prescribe methods for establishing a reasonable reserve price or a minimum opening bid when FCC licenses or construction permits are subject to auction, unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureaus to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

23. Normally, a reserve price is an absolute minimum price below which

an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, the auctioneer often has the discretion to lower the minimum opening bid amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

24. In light of the Balanced Budget Act's requirements, as well as comments received in response to the *2000 Auction 37 Comment Public Notice* and *Auction No. 37 Additional Comment Public Notice*, the Bureaus propose to establish minimum opening bids for Auction No. 37. The Bureaus believe a minimum opening bid, which has been utilized in other broadcast auctions, is an effective bidding tool.

25. Specifically, for Auction No. 37, the proposed minimum opening bids were determined by taking into account various factors related to the efficiency of the auction and the potential value of the spectrum, including the type of service and class of facility offered, market size, population covered by the proposed FM broadcast facility, industry cash flow data and recent broadcast transactions. The specific minimum opening bid for each construction permit available in Auction No. 37 is set forth in Attachment A of the *Auction No. 37 Comment Public Notice.* We seek comment on this proposal.

26. If commenters believe that these minimum opening bids will result in unsold construction permits, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. We also seek comment on whether, consistent with the Balanced Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

*C. Minimum Acceptable Bids and Bid Increments*

27. In each round, eligible bidders will be able to place bids on a given construction permit in any of nine different amounts. The FCC Automated Auction System interface will list the nine acceptable bid amounts for each construction permit. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. In the rounds after a bid is placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to the standing high bid plus the defined increment.

28. Once there is a standing high bid on a construction permit, the FCC Automated Auction System will calculate a minimum acceptable bid for that construction permit for the following round. The difference between the minimum acceptable bid and the standing high bid for each construction permit will define the *bid increment.* The nine acceptable bid amounts for each construction permit consist of the minimum acceptable bid (the standing high bid plus one bid increment) and additional amounts calculated using multiple bid increments (*i.e.*, the second bid amount equals the standing high bid plus two times the bid increment, the third bid amount equals the standing high bid plus three times the bid increment, etc.).

29. For Auction No. 37, we propose to use a 10 percent bid increment. This means that the minimum acceptable bid for a construction permit will be approximately 10 percent greater than the previous standing high bid received on the construction permit. The minimum acceptable bid amount will be calculated by multiplying the standing high bid times one plus the increment percentage—*i.e.*, (standing high bid) * (1.10). We will round the result using our standard rounding procedure for minimum acceptable bid calculations: Results above $10,000 are rounded to the nearest $1,000; results below $10,000 but above $1,000 are rounded to the nearest $100; and results below $1,000 are rounded to the nearest $10.

30. Until a bid has been placed on a construction permit, the minimum acceptable bid for that construction permit will be equal to its minimum opening bid. The additional bid amounts are calculated using the difference between the minimum opening bid times one plus the percentage increment, rounded as described, and the minimum opening bid. That is, the increment used to calculate additional bid amounts = (minimum opening bid)(1 + percentage increment){rounded} − (minimum opening bid). Therefore, when the percentage increment equals 0.1 (*i.e.*, 10%), the first additional bid amount will be approximately ten percent higher than the minimum opening bid; the second, twenty percent higher; the third, thirty percent higher; etc.

31. The Bureaus retain the discretion to change the minimum acceptable bids and bid increments if they determine that circumstances so dictate. The Bureaus will do so by announcement in the FCC Automated Auction System. We seek comment on these proposals.

*D. High Bids*

32. At the end of a bidding round, a high bid for each construction permit will be determined based on the highest gross bid amount received for the construction permit. The Internet bidding system does not allow the Commission to determine the relative order in which bids are placed during a round. Because of this, in the event of identical high bids on a construction permit in a given round (*i.e.*, tied bids), a Sybase® SQL pseudo-random number generator will be used to assign a random number to each bid. The tied bid having the highest random number will become the standing high bid. If the auction were to end with no higher bids being placed for that construction permit, the winning bidder would be the one that placed the selected high bid. However, the remaining bidders, as well as the high bidder, can submit higher bids in subsequent rounds. If any bids are received on the construction permit in a subsequent round, the high bid again will be determined by the highest gross bid amount received for the construction permit. We seek comment on this proposal.

33. A high bid will remain the high bid until there is a higher bid on the same construction permit at the close of a subsequent round. A high bid from a previous round is sometimes referred to as a ''standing high bid.'' Bidders are reminded that standing high bids are counted as activity for purposes of the activity rule.

*E. Information Regarding Bid Withdrawal and Bid Removal*

34. For Auction No. 37, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bid placed in that round. By removing selected bids in the bidding system, a bidder may effectively ''unsubmit'' any bid placed within that round. A bidder removing a bid placed in the same round is not subject to a withdrawal payment. Once a round closes, a bidder may no longer remove a bid.

35. A high bidder may withdraw standing high bids from previous rounds using the withdraw function in the bidding system. A high bidder that withdraws its standing high bid from a previous round is subject to the bid

withdrawal payment provisions of the Commission rules. We seek comment on these bid removal and bid withdrawal procedures.

36. In the *Part 1 Third Report and Order*, 65 FR 52401 (August 29, 2000), the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that in some instances bidders may seek to withdraw bids for improper reasons. The Bureaus, therefore, have the discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureaus should assertively exercise their discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureaus find that a bidder is abusing the Commission's bid withdrawal procedures.

37. Applying this reasoning, we propose to limit each bidder in Auction No. 37 to withdraw standing high bids in no more than two rounds during the course of the auction. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on these proposals.

*F. Stopping Rule*

38. The Bureaus have the discretion ''to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time.'' For Auction No. 37, the Bureaus propose to employ a simultaneous stopping rule approach. A simultaneous stopping rule means that all construction permits remain available for bidding until bidding closes simultaneously on all construction permits.

39. Bidding will close simultaneously on all construction permits after the first round in which no new bids, proactive waivers or withdrawals are received. Thus, unless circumstances dictate otherwise, bidding would remain open on all construction permits until bidding stops on every permit.

40. However, the Bureaus propose to retain the discretion to exercise any of the following options during Auction No. 37:

i. Utilize a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all construction permits after the first round in which no bidder submits a proactive waiver, withdrawal, or a new bid on any construction permit on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a construction permit for which it is the standing high bidder would not keep the auction open under this modified stopping rule.

ii. Keep the auction open even if no new bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

iii. Declare that the auction will end after a specified number of additional rounds (''special stopping rule''). If the Bureaus invoke this special stopping rule, it will accept bids in the specified final round(s) only for construction permits on which the high bid increased in at least one of a specified preceding number of rounds.

41. The Bureaus propose to exercise these options only in certain circumstances, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising these options, the Bureaus are likely to attempt to increase the pace of the auction by, for example, increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of construction permits where there is still a high level of bidding activity. We seek comment on these proposals.

**IV. Due Diligence**

42. Potential bidders are solely responsible for investigating and evaluating all technical and market place factors that may have a bearing on the value of the broadcast facilities in this auction. The FCC makes no representations or warranties about the use of this spectrum for particular services. Applicants should be aware that an FCC auction represents an opportunity to become an FCC permittee in the broadcast service, subject to certain conditions and regulations. An FCC auction does not constitute an endorsement by the FCC of any particular service, technology, or product, nor does an FCC construction permit or license constitute a guarantee of business success. Applicants should perform their individual due diligence before proceeding as they would with any new business venture. In particular, potential bidders are strongly encouraged to review all underlying Commission orders, such as the specific Report and Orders amending the FM Table of Allotments and allotting the FM channel(s) on which they plan to bid. Reports and Orders adopted in FM allotment rulemaking proceedings often include anomalies such as site restrictions or expense reimbursement requirements. Additionally, potential bidders should perform technical analyses sufficient to assure them that, should they prevail in competitive bidding for a given FM construction permit, they will be able to build and operate facilities that will fully comply with the Commission's technical and legal requirements.

43. Potential bidders are strongly encouraged to conduct their own research prior to Auction No. 37 in order to determine the existence of pending proceedings that might affect their decisions regarding participation in the auction. Participants in Auction No. 37 are strongly encouraged to continue such research during the auction.

**V. Dates and Deadlines**

44. The auction is scheduled to begin on November 3, 2004. In the public notice announcing the auction procedures, we will announce the following additional pre-auction dates and deadlines:

- Auction Seminar
- Short-Form Application (FCC Form 175) Filing Window Opens
- Short-Form Application (FCC Form 175) Filing Window Deadline
- Upfront Payments (via wire transfer)
- Mock Auction

45. After bidding has ended, the Commission will issue a public notice declaring the auction closed and identifying winning bidders, down payments, final payments, and any withdrawn bid payments due.

46. Within ten business days after release of the auction closing notice, each winning bidder must submit sufficient funds (in addition to its upfront payment) to bring its total amount of money on deposit with the Commission for Auction No. 37 to 20 percent of the net amount of its winning bids (gross bids less any applicable bidding credits). In addition, by the same deadline, all bidders must pay any

bid withdrawal payments due under 47 CFR 1.2104(g).

47. WTB now employs a final payment deadline different from that announced in the *2001 Procedures Public Notice.* Consistent with current practice, for Auction No. 37, the Bureaus are considering requiring each winning bidder to submit the balance of the net amount of its winning bids within 10 business days after the deadline for submitting down payments.

**VI. Conclusion**

48. Comments are due on or before May 17, 2004, and reply comments are due on or before May 24, 2004. Because of the disruption of regular mail and other deliveries in Washington, DC, the Bureaus require that all comments and reply comments be filed electronically. Comments and reply comments must be sent by electronic mail to the following address: *auction37@fcc.gov.* The electronic mail containing the comments or reply comments must include a subject or caption referring to Auction No. 37 Comments and the name of the commenting party. The Bureaus request that parties format any attachments to electronic mail as Adobe® Acrobat® (pdf) or Microsoft® Word documents. Copies of comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. In addition, the Bureaus request that commenters fax a courtesy copy of their comments and reply comments to the attention of Kathryn Garland at (717) 338–2850.

49. This proceeding has been designated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in § 1.1206(b) of the Commission's rules.

Federal Communications Commission.

**Gary Michaels,**

*Deputy Chief, Auctions and Spectrum Access Division, WTB.*

[FR Doc. 04–10662 Filed 5–6–04; 3:54 pm]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

**[DA04–1041]**

## NeuStar, Inc. Request To Allow Certain Transactions Without Prior Commission Approval and To Transfer Ownership

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice; solicitation of comments.

**SUMMARY:** Comment is sought on NeuStar's request to allow certain transactions without prior commission approval and to transfer ownership. We seek comment on the potential impact on NeuStar's ability to perform its numbering administration responsibilities in a neutral manner. We also seek specific comment on the potential impact of an initial public offering (IPO) on NeuStar's ability to maintain its neutrality.

**DATES:** Comments are due on or before May 12, 2004. Reply comments are due on or before May 24, 2004.

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

**FOR FURTHER INFORMATION CONTACT:** Pam Slipakoff, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–7400, TTY (202) 418–0484.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's public notice, CC Docket No. 92–237, DA 04–1041, released April 20, 2004. On April 15, 2004, NeuStar, Inc. (NeuStar), the current North American Numbering Plan Administrator (NANPA), national Pooling Administrator (PA) and Local Number Portability Administrator, filed a letter with the Federal Communications Commission (Commission) seeking a ruling that it need not seek prior Commission neutrality review and approval for certain types of transactions that it believes does not affect its ability to be a neutral administrator for the North American Numbering Plan (NANP). In addition, in anticipation of a potential IPO, NeuStar seeks Commission approval for a transfer of control of the company from the current majority shareholder, a voting trust, to a broad shareholder base.

Specifically, NeuStar contends that the types of changes that should not be subject to prior Commission approval fall into the following three general categories: (1) Corporate changes that do not increase the rights of any entity affiliated with a telecommunications service provider (TSP); (2) transactions that do not increase any interests of a TSP or a TSP affiliate in NeuStar; and (3) transactions that permit NeuStar to become a public company (including an IPO) and subsequent sales of NeuStar equity, subject to several limitations on TSP ownership. In addition, NeuStar notes that prior agency approval would continue to be required for all other changes within the existing scope of the prior approval requirement. NeuStar also notes that all other oversight mechanisms would remain in place.

Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before May 12, 2004, and reply comments on or before May 24, 2004. All filings should refer to CC Docket No. 92–237. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121, May 1, 1998.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html.* Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, ''get form <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. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. 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.

Commercial overnight mail (other then 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 Twelfh Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission.

Parties also must send three paper copies of their filing to Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, 445 Twelfth Street, SW., Room 5–B540, Washington, DC 20554. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 Twelfth Street, SW., Room CY–B402, Washington, DC 20054.

Pursuant to § 1.1206 of the Commission's rules, 47 CFR 1.1206, this proceeding will be conducted as a permit-but-disclose proceeding in which *ex parte* communications are permitted subject to disclosure.

Federal Communications Commission.

**Cheryl L. Callahan,**

*Assistant Chief, Wireline Competition Bureau, Telecommunications Access Policy Division.*

[FR Doc. 04–10703 Filed 5–7–04; 10:12 am]

**BILLING CODE 6712–01–P**

## FEDERAL COMMUNICATIONS COMMISSION

### Sunshine Act Meeting; Open Commission Meeting, Thursday, May 13, 2004

May 6, 2004.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 13, 2004, which is scheduled to commence at 9:30 a.m.in Room TW–C305, at 445 12th Street, SW., Washington, DC.

| Item no. | Bureau | Subject |
|---|---|---|
| 1 | Wireless Tele-Communications, Wireline Competition, and Consumer & Governmental Affairs. | The Wireless Telecommunications Bureau, Wireline Competition Bureau and the Consumer & Governmental Affairs Bureau will present a progress report on number portability implementation. |
| 2 | Wireline Competition | *Title:* Access Charge Reform (CC Docket No. 96–262); Reform of Access Charges Imposed by Competitive Local Exchange Carriers; and Petition of Z-tel Communications, Inc. for Temporary Waiver of Commission Rule 61.26(d) to Facilitate Deployment of Competitive Service in Certain Metropolitan Statistical Areas. *Summary:* The Commission will consider an Eighth Report and Order and Fifth Order on Reconsideration concerning amendments to and clarification of the rules governing the tariffing of interstate switched exchange access services provided by competitive LECs. |
| 3 | Wireline Competition | *Title:* The Use of N11 Codes and Other Abbreviated Dialing Arrangements (CC Docket No. 92–105). *Summary:* The Commission will consider a Notice of Proposed Rulemaking seeking comment on various abbreviated dialing arrangements that could be used by state ''One Call'' notification systems in compliance with the Pipeline Safety Improvement Act of 2002. |
| 4 | International | *Title:* AT&T Corp. Emergency Petition for Settlements Stop Payment Order and Request for Immediate Interim Relief (IB Docket No. 03–38); and Petition of WorldCom, Inc. for Prevention of ''Whipsawing'' on the U.S.-Philippines Route. *Summary:* The Commission will consider an Order on Review that will address petitions for review of the March 10, 2003 Order finding that the Philippine carriers named in that Order ''whipsawed'' U.S. carriers, and ordering the suspension of payments for termination services to the Philippine carriers pending restoration of circuits. |
| 5 | Office of Engineering and Technology. | *Title:* Unlicensed Operation in the TV Broadcast Bands; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band (ET Docket No. 02–380). *Summary:* The Commission will consider a Notice of Proposed Rulemaking concerning unlicensed operation in the TV broadcast bands. |

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–888–835–5322.

Audio/Video coverage of the meeting will be broadcast live over the Internet from the FCC's Audio/Video Events Web page at *http://www.fcc.gov/realaudio.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *http://www.capitolconnection.gmu.edu.* Audio and video tapes of this meeting can be purchased from CACI Productions, 341 Victory Drive, Herndon, VA 20170, (703) 834–1470, Ext. 19; Fax (703) 834–0111.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Qualex International (202) 863–2893; Fax (202) 863–2898; TTY (202) 863–2897. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. Qualex International may be reached by e-mail at *Qualexint@aol.com.*

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

[FR Doc. 04–10824 Filed 5–7–04; 3:19 pm]

**BILLING CODE 6712–01–P**

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. on Thursday, May 13, 2004, to consider the following matter:

*Summary Agenda*

No matters are scheduled.

*Discussion Agenda*

Memorandum and resolution re: FDIC Insurance Funds: Outlook and Premium Rate Recommendations for the Second Semiannual Assessment Period of 2004.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (*e.g.*, sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 416–2089 (Voice); (202) 416–2007 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: May 6, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E4–1082 Filed 5–10–04; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL DEPOSIT INSURANCE CORPORATION

### Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11 a.m. on Thursday, May 13, 2004, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to section 552b(c)(2) of Title 5, United States Code, to consider a matter relating to the Corporation's corporate activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: May 6, 2004.

Federal Deposit Insurance Corporation.

**Robert E. Feldman,**

*Executive Secretary.*

[FR Doc. E4–1083 Filed 5–10–04; 8:45 am]

BILLING CODE 6714–01–P

## FEDERAL RESERVE SYSTEM

### Sunshine Act Meeting

**AGENCY HOLDING THE MEETING:** Board of Governors of the Federal Reserve System.

**TIME AND DATE:** 11:30 a.m., Monday, May 17, 2004.

**PLACE:** Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:**

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

**FOR FURTHER INFORMATION CONTACT:** Michelle A. Smith, Director, Office of Board Members; 202–452–2955.

**SUPPLEMENTARY INFORMATION:** You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Board of Governors of the Federal Reserve System, May 7, 2004.

**Robert deV. Frierson,**

*Deputy Secretary of the Board.*

[FR Doc. 04–10768 Filed 5–7–04; 1:11 pm]

BILLING CODE 6210–01–S

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the ''Schedule of Certified Interest Rates with Range of Maturities.'' This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11⅞% for the quarter ended March 31, 2003. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: May 4, 2004.

**George Strader,**

*Deputy Assistant Secretary, Finance.*

[FR Doc. 04–10601 Filed 5–10–04; 8:45 am]

BILLING CODE 4150–04–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICE

### Food and Drug Administration

### Delegation of Authority

Notice is hereby given that I have delegated to the Commissioner of Food and Drugs the authority under Public Law 107–108 (Best Pharmaceuticals for Children Act), as amended by section 3(b)(2) of Public Law 108–155 (Pediatric Research Equity Act of 2003), to charter, convene, consult, and appoint members to an advisory committee on pediatric therapeutics. This authority may be redelegated.

The October 11, 2002, delegation of authority to you under Public Law 107–108 (Best Pharmaceuticals for Children Act) and Section 222 of the Public Health Service Act, as amended, (42 U.S.C. 217a), is superseded.

This delegation is effective upon date of signature. In addition, I ratified and affirmed any actions taken by you or your subordinates, which involved the exercise of the authorities delegated herein, prior to the effective date of this delegation.

Dated: April 30, 2004.

**Tommy G. Thompson,**

*Secretary, Department of Health and Human Services.*

[FR Doc. 04–10600 Filed 5–10–04; 8:45 am]

BILLING CODE 4160–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Toxic Substances and Disease Registry

### Public Meeting of the Citizens Advisory Committee on Public Health Service (PHS) Activities and Research at Department of Energy (DOE) Sites: Oak Ridge Reservation Health Effects Subcommittee

*Name:* Public meeting of the Citizens Advisory Committee on PHS Activities and Research at DOE Sites: Oak Ridge Reservation Health Effects Subcommittee (ORRHES).

*Time and Date:* 6 p.m.–8 p.m., June 7, 2004. 12 p.m.–6:30 p.m., June 8, 2004.

*Place:* DOE Information Center, 475 Oak Ridge Turnpike, Oak Ridge, TN. Telephone: (865) 241–4780.

*Status:* Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

*Background:* A Memorandum of Understanding (MOU) signed in October 1990 and renewed in September 2000 between ATSDR and DOE, the MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

In addition, under an MOU signed in December 1990 with DOE and replaced by an MOU signed in 2000, the Department of Health and Human Services (HHS) has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use. HHS has delegated program responsibility to CDC. Community involvement is a critical part of ATSDR's and CDC's energy-related research and activities and input from members of the ORRHES is part of these efforts.

*Purpose:* The purpose of this meeting is to address issues that are unique to community involvement with the ORRHES, and agency updates.

*Matters to be Discussed:* Agenda items will include a presentation and discussion on the ORRHES Web-site; EPA and ATSDR special presentation; Cancer Incidence Review document discussion and presentation; updates and recommendations from the Public Health Assessment, Communications and Outreach, Agenda, Guidelines and Procedures; the Health Education Needs Assessment Workgroups; and agency updates.

Agenda items are subject to change as priorities dictate.

**FOR FURTHER INFORMATION CONTACT:** Marilyn Horton, Designated Federal Official and Committee Management Specialist, Division of Health Assessment and Consultation, ATSDR, 1600 Clifton Road, NE. M/S E–32 Atlanta, Georgia 30333, telephone 1–888–42–ATSDR (28737), fax 404/498–1744.

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 ATDSR.

Dated: May 5, 2004.

**Alvin Hall,**

*Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–10622 Filed 5–10–04; 8:45 am]

BILLING CODE 4163–18–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 04193]**

### Quality Assurance of HIV and HIV/AIDS-Related Testing; Notice of Intent To Fund Single Eligibility Award

#### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program for to improve the quality of laboratory testing services in support of HIV prevention, surveillance, care and treatment programs in Zimbabwe. The Catalog of Federal Domestic Assistance number for this program is 93.939.

#### B. Eligible Applicant

Assistance will be provided only to the Zimbabwe National Quality Assurance Program (ZINQAP). ZINQAP is uniquely qualified to be the recipient organization for the following reasons:

a. ZINQAP is the only laboratory quality assurance body in Zimbabwe and has been in existence since 1995 with the mission of assisting laboratories to attain and maintain a high standard of performance. ZINQAP has sole government authority by Zimbabwe's Health Professions Authority (HPA) to certify laboratories.

b. ZINQAP coordinated the development of Zimbabwe's national standards for medical laboratories and test sites. These standards require laboratories and test sites to implement and maintain quality assurance activities. Laboratories adhering to these standards will be approved by ZINQAP. It is anticipated that laboratories and test sites meeting these standards will be recognized by the HPA as meeting the legal requirements for operating a medical laboratory service.

c. ZINQAP currently provides a limited proficiency-testing program for approximately 90 laboratories and test sites within the country; and, as such, has established relationships with district, provincial, and regional laboratories within the country. This is the only existing in-country quality assurance program and, with minimal time, it can expand its capabilities.

d. ZINQAP has established relationships with U.S.-based scientists, international quality assurance experts, and local governmental public health officials. ZINQAP routinely interfaces with appropriate officials on issues affecting the quality of Zimbabwe's laboratory test results.

#### C. Funding

Approximately $200,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before July 15, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

#### D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Shannon Hader, M.D., Director, CDC Zimbabwe, 38 Samora Machel Avenue, Harare ZIMBABWE,

Telephone: 263–4 796040, E-mail: *Haders@zimcdc.co.zw;*
or

Stacy M. Howard, Health Scientist (Project Officer), Division of Laboratory Systems, Public Health Practice Program Office, 4770 Buford Hwy., MS A–16, Atlanta, GA 30341, Telephone: 770–488–8065, E-mail: *sam5@cdc.gov.*

For budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2696, E-mail: *zbx6@cdc.gov.*

Dated: May 5, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–10619 Filed 5–10–04; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 04194]**

### Strengthening the Center for Evaluation of Public Health Interventions (CEPHI) in Zimbabwe; Notice of Intent to Fund Single Eligibility Award

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to strengthen the capacity for supporting excellence in monitoring and evaluating the public health response to the HIV/AIDS epidemic in Zimbabwe. The Catalog of Federal Domestic Assistance number for this program is 93.283.

**B. Eligible Applicant**

Assistance will be provided only to the University of Zimbabwe (UZ), with the assistance targeted to the University's School of Medicine. The UZ/CEPHI was established in 2002, with the support of CDC through a cooperative agreement. UZ maintains the only graduate public health training program in the country, and, as such, includes faculty with specific expertise in monitoring and evaluation and in training. UZ also formed an Informatics Unit in 2002, with the support of CDC through a cooperative agreement, which includes computer training facilities, and faculty and staff with expertise in computer application development and utilization of existing applications. This Informatics Unit serves both to support UZ students and faculty, and also as a resource to national programs and organizations. The purpose of this agreement is to build upon the initial successes of these programs, and to support them to function at greater capacity.

Zimbabwe is among the countries in the world most affected by HIV/AIDS: HIV prevalence is estimated to be approximately 25 percent; there has been a ten-fold increase in the number of TB cases; and up to 35 percent of the children may be orphaned by AIDS at the end of this decade. There are increasing amounts of international funds being made available to HIV/AIDS programs in Zimbabwe, such as those from the Global Fund for AIDS, TB and Malaria. These funds also demand high standards of monitoring and evaluation of HIV/AIDS activities. At the same time, the public health response to the epidemic in Zimbabwe is challenged by insufficient manpower and expertise in the Zimbabwe public health system. Support for CEPHI and the associated Informatics Unit aims to enhance training and capacity for monitoring the response to the epidemic as well as to improve efficiency and quality of programs through optimal use of technology.

**C. Funding**

Approximately $125,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before July 15, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

**D. Where to Obtain Additional Information**

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For program technical assistance, contact: Shannon Hader, M.D., Director, CDC Zimbabwe, 38 Samora Machel Avenue, Harare, Zimbabwe, Telephone: +263 4 796040, E-mail: *haders@zimcdc.co.zw.*

For budget assistance, contact: Shirley Wynn, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2696, E-mail: *zbx6@cdc.gov.*

Dated: May 5, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–10621 Filed 5–10–04; 8:45 am]

**BILLING CODE 4163–18–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

**[Program Announcement 04174]**

### Environmental Health Epidemiology Resources Development for Mexico and Latin American Countries; Notice of Intent To Fund Single Eligibility Award

**A. Purpose**

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to continue and strengthen an established environmental health epidemiology, environmental health professional training, and demonstration and training service delivery program based in a university setting in Mexico. The Catalog of Federal Domestic Assistance number for this program is 93.283.

**B. Eligible Applicant**

Assistance will be provided only to the Instituto Nacional de Salud Publica (INSP).

The INSP, as the national institute of public health of the Government of Mexico, is the most appropriate and qualified agency to provide the services specified under this cooperative agreement because:

The INSP is a leading environmental health epidemiology teaching institution, both at the undergraduate and graduate levels, in Mexico and the Latin American and Caribbean country region, and is the only public health teaching institution in the region whose mission scope covers the entire region.

The INSP has formal collaborative arrangements with other teaching institutions in Mexico, including those located near the Mexico-U.S. border, and with those in other countries in the region which provide the entre for establishing and maintaining the environmental health epidemiology training and demonstration program supported by this cooperative agreement.

The INSP has a highly qualified doctoral- and master's-level teaching staff whose responsibilities include the conduct of programs related to the

achievement of the environmental health epidemiology and fellow-training activities, which are the intended objectives of this cooperative agreement.

### C. Funding

Approximately $315,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

### D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For scientific/research issues, contact: Dr. Robert Spengler, Program Official, 1600 Clifton Road, NE., Mail Stop E–28, Atlanta, GA 30333, Telephone: 404–498–0003, E-mail: *RSpengler@cdc.gov.*

For questions about peer review, contact: Dr. Robert Spengler, Senior Advisor for Peer Review and Research, Office of Science, 1600 Clifton Road, NE, Mail Stop E–28, Atlanta, GA 30333, Telephone: 404–498–0003, E-mail: *RSpengler@cdc.gov.*

For program technical assistance, contact: Gary P. Noonan, Associate Director, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, 4770 Buford Hwy., NE., Mail Stop F–52, Atlanta, GA 30341–3717, Telephone: 770–488–3449, E-mail: *GNoonan@cdc.gov.*

For financial, grants management, or budget assistance, contact: Steward Nichols, Contract Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: 770–488–2788, E-mail: *shn8@cdc.gov.*

Dated: May 5, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–10618 Filed 5–10–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Centers for Disease Control and Prevention

**[Program Announcement 04146]**

## World Health Organization Stop TB Initiative: Expanding Efforts and Strategies To Prevent and Control Tuberculosis and TB/HIV; Notice of Intent To Fund Single Eligibility Award

### A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the intent to fund fiscal year (FY) 2004 funds for a cooperative agreement program to expand efforts and strategies to prevent and control tuberculosis (TB) and the intersecting epidemics of TB and HIV (TB/HIV). The Catalog of Federal Domestic Assistance number for this program is 93.116.

### B. Eligible Applicant

Assistance will be provided only to the World Health Organization (WHO). WHO is the only qualified international/intergovernmental organization that has the technical and administrative capacity to conduct the specific set of activities requested to support CDC TB and TB/HIV prevention and control activities outlined under this cooperative agreement because:

1. WHO is uniquely positioned, in terms of legal authority, ability, track record, infrastructure and credibility throughout the world to develop and support TB and TB/HIV control activities in both public and non-governmental organizations.
2. WHO has already established a framework and mechanisms to develop and implement TB and TB/HIV treatment and control activities in numerous countries, enabling it to immediately become engaged in the activities listed in this announcement.
3. WHO has demonstrated its ability to coordinate and implement TB treatment and control activities including TB/HIV co-infection worldwide.
4. WHO has the ability to collect information, train staff and advocate for policy based on the experiences learned from implementing the activities described in this announcement.
5. WHO occupies a unique position among the world's health agencies as the technical agency for health within the United Nations.
6. WHO has an unprecedented level of access to all national TB and related programs through its six regional offices located in the USA, Denmark, Egypt, Zimbabwe, India, and the Philippines.
7. In collaboration with other international organizations, WHO works to accomplish its mission by disseminating information related to TB and TB/HIV program needs and services, recommends and advocates improved policies and programs, and provides consultation and guidance at the international, national, and local levels.
8. WHO is uniquely qualified to conduct activities that have specific relevance to the TB and TB/HIV response mission and objectives of CDC, which have direct impact on the health and safety of the United States and of Americans abroad.

### C. Funding

Approximately $1,143,000 is available in FY 2004 to fund this award. It is expected that the award will begin on or before September 1, 2004, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

### D. Where To Obtain Additional Information

For general comments or questions about this announcement, contact: Technical Information Management, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2700.

For technical questions about this program, contact: Steward Nichols, Grants Management Specialist, CDC Procurement and Grants Office, 2920 Brandywine Road, Atlanta, GA 30341, Telephone: (770) 488–2788, E-mail: *SNichols1@cdc.gov.*

Dated: May 5, 2004.

**William P. Nichols,**

*Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention.*

[FR Doc. 04–10620 Filed 5–10–04; 8:45 am]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

## Family Support Services for Grandparents and Other Relatives Providing Caregiving for Children of Substance Abusing and/or HIV–Positive Women

*Federal Agency Contact Name:* Administration for Children and Families, Children's Bureau

*Announcement Type:* Competitive Grant-Initial.

*Funding Opportunity Number:* HHS–2004–ACF–ACYF–CB–0017.

*CFDA Number:* 93.551.

*Due Date for Applications:* July 12, 2004.

## I. Funding Opportunity Description

The purpose of this funding opportunity is to provide counseling and other support services to family caregivers for drug-exposed, HIV-exposed, HIV-positive or HIV/AIDS affected children. The funds will be used to establish or enhance a system of support services that should include, but are not limited to, social services, counseling, legal and financial services, and assistance with custodial issues.

Projects supported under this funding opportunity are expected to serve as models for service provision to children and adolescents affected by HIV/AIDS. A model project funded under this initiative must:

(a) Develop and implement an evidence-based project with specific components or strategies that are based on theory, research, or evaluation data; or, replicate or test the transferability of successfully evaluated program models;

(b) Determine the effectiveness of the model and its components or strategies; and

(c) Produce materials that will enable others to replicate the model.

Applicants should have an understanding of family caregiver support and service needs and a history of involvement with grandparent groups or other family member caregiver groups that specifically address the needs of drug-exposed and/or HIV-positive children in their applications. Applicants should coordinate and collaborate, as appropriate, with other related programs, such as SAMSHA and Ryan White CARE Act.

*Background Information*

The purposes of Public Law 100–505, the Abandoned Infants Act of 1988 as amended, are to establish a program of local support services projects designed to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug and those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive support services for these infants and young children and their natural families (see Definitions) that include, but are not limited to, foster family care services, case management services, family support services, parenting skills, in-home support services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. The legislation also allows for the provision of a technical assistance training program to support the planning, development and operation of the service demonstration projects. The reauthorized legislation allows the Secretary to give priority to applicants located in States that have developed and implemented procedures for expedited termination of parental rights and placement for adoption of infants determined to be abandoned under State law.

As an increasing number of HIV-positive and/or substance abusing parents become unable to provide adequate care for their infants and young children, family members, frequently grandparents, assume the responsibility as the primary caretaker for the children. Social service agencies report that an increasing number of families include a grandparent raising a grandchild, a circumstance that is due primarily to parental drug addiction.

*Definitions*

Abandoned and Abandonment—The terms ''abandoned'' and ''abandonment'', used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of appropriate out-of-hospital placement alternatives.

Acquired Immune Deficiency Syndrome—The term ''acquired immune deficiency syndrome'' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

Dangerous Drug—The term ''dangerous drug'' means a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Natural Family—The term ''natural family'' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation, with respect to infants and young children covered under this Act.

## II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated total Priority Area Funding:* The anticipated total for all awards under this funding announcement in FY 2004 is $400,000.

*Anticipated Number of Awards:* It is anticipated that 4 awards will be made.

*Ceiling on amount of individual Awards:* The maximum Federal share of the project is $100,000 in the first budget period. The Children's Bureau reserves the right to change this amount in subsequent budget periods. An application received that exceeds this amount will be considered ''non-responsive and be returned to the applicant without further review.

*Floor of Individual Award Amounts:* none.

*Average Anticipated Award Amount:* $100,000 per budget period.

*Project Periods for Awards:* The projects will be awarded for a project period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

*Average Projected Award Amount:* $100,000 per budget period.

## III. Eligibility Information

*1. Eligible Applicants*

State governments
County governments
City or township governments
State controlled institutions of higher education
Native American tribal governments (Federally recognized)
Native American tribal organizations (other than Federally recognized tribal governments)
Non-profits having a 501(c)(3) status with the IRS, other than institutions of higher education
Non-profits that do not have 501 (c) (3) status with the IRS, other than institutions of higher education
Private institutions of higher education

Additional Information on Eligibility

Non-profit organizations, including community and faith-based organizations are eligible to apply. Non-profit applicants must demonstrate proof of their status and this proof must be included in their applications. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list

of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applications that exceed the $100,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

*2. Cost Sharing or Matching*

The grantee must provide at least 10 per cent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $100,000 per budget period must include a match of at least $11,111 per budget period. Applicants should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the required 10% match amount for a $100,000 grant:

$100,000 (Federal share) divided by .90 (100%–10%) equals $111,111 (total project cost including match) minus $100,000 (federal share) equals $11,111 (required 10% match)

The non-federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

*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*.

## IV. Application and Submission Information

*1. Address To Request Application Package*

ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132; Telephone: (866) 796–1591.

*2. Content and Form of Application Submission*

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 from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

*Electronic Address Where Applications Will Be Accepted:* Grants.gov.

*Address Where Hard Copy Applications Will Be Accepted:* Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street NE., Washington, DC 20002–2132.

Each application must contain the following items in the order listed:

1. Application for Federal Assistance (Standard Form 424). Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in ''Organizational DUNS:'' box.

In Item 5 of Form 424, include name, phone number, and, if available, email and fax numbers of the contact person.

In Item 8 of Form 424, check 'New.'

In Item 10 of Form 424, clearly identify the Catalog of Federal Domestic Assistance (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. Budget Information Non-Construction Programs (Form 424A) and Budget Justification.

Follow the instructions provided and those in the Uniform Project Description. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

Applicants have the option of omitting from application copies (not originals) specific salary rates or amounts for individuals specified in the application budget. The copies may include summary salary information.

3. Certifications/Assurances. Applicants requesting financial

assistance for nonconstruction 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 to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

By signing the ''Signature of Authorized Representative'' on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following grant and cooperative agreement requirements:

The applicant will have the project fully functioning within 90 days of the notification of the grant award.

The applicant will submit all required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer.

The applicant will allocate sufficient funds in the budget to provide for the project director and the evaluator attend an annual three-day grantees' meeting in Washington, DC and an early kick off meeting to be held within the first six months of the project (first year only) in Washington, DC. Attendance at these meetings is a grant requirement.

The applicant will participate if the Children's Bureau chooses to do a national evaluation or a technical assistance contract that relates to this funding opportunity.

The applicant will allocate five percent of the total approved project cost for an evaluation of the project. For example, a grant award of $100,000 with a match of $11,111 per budget year must commit no less than $5,556 annually to the evaluation effort.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides website information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR part 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

4. Project Abstract/Summary (one page maximum). Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant funding opportunity and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. Project Description for Evaluation. Applicants should organize their project description according to the Evaluation Criteria described in this funding opportunity announcement providing information that addresses all the components. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

6. Proof of non-profit status (if applicable).

7. Indirect cost rate agreement. If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. Letters of agreement and memoranda of understanding. If applicable, include a letter of commitment or Memorandum of Understanding from each partner organization and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide letters of support for your program from community-based agencies.

10. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

11. The application limit is 75 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled Deadline at the beginning of the announcement. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this funding opportunity announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each

copy must be stapled securely in the upper left corner.

*Tips for Preparing a Competitive Application:* It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the Children's Bureau priority-area initiatives. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A ''responsive application'' is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be ''unresponsive'' generally receive very low scores and are rarely funded.

The Children's Bureau's web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of the Children's Bureau by exploring the website.

*Organizing Your Application:* The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

*Project Evaluation Plan:* Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled ''Program Manager's Guide to Evaluation.'' A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/core/pubs_reports/prog_mgr.html* or ordered by contacting the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW., Washington, DC 20447; phone (800) 394–3366; fax (703) 385–3206; e-mail *nccanch@calib.com.*

*Logic Model:* A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

*Use of Human Subjects:* If your evaluation plan includes gathering data from or about clients, there are specific procedures that must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. For more information about use of human subjects and IRB's you can visit these web sites: *http://ohrp.osophs.dhhs.gov/irb/irb_chapter2.htm#d2* and *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/ictips.htm.*

*3. Submission Dates and Times*

The closing date for submission of applications is July 12, 2004. Mailed applications received after 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 July 12, 2004 the deadline date and received by ACF in time for the independent review. Applications must be mailed to the following address: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant 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 ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''ATTN: Children's Bureau.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*Late applications:* Applications that 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 |
|---|---|---|---|
| 1. SF424 | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | See application due date. |
| 2. SF424A | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | |
| 3.a. SF424B | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | See application due date. |
| 3.b. Certification regarding lobbying. | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | See application due date. |
| 3.c. Disclosure of Lobbying Activities (SF–LLL). | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/forms.htm.* | See application due date. |
| 4. Project Summary/Abstract | Summary of application request. | See instructions in this funding opportunity announcement. | See application due date. |

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| 5. Project Description | Responsiveness to evaluation criteria. | See instructions in this funding opportunity announcement. | See application due date. |
| 6. Proof of non-profit status | Explained in Sections III and IV. | See above | See application due date. |
| 7. Indirect cost rate agreement. | Explained in Section IV | See above | See application due date. |
| 8. Letters of agreement & MOUs. | Explained in Section IV | See above | See application due date. |
| 9. Letters of support | Explained in Section IV | See above | See application due date. |
| 10. Non-Federal share letter | Explained in Section IV | See above | See application due date. |

Additional Forms

Private-non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.''

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applications. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 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 2003, of the most recent SPOC list, 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: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

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 differentiate clearly 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.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

*5. Funding Restrictions*

Grant awards will not allow reimbursement of pre-award costs. Construction is not an allowable activity or expenditure under this solicitation.

*Available Funds:* Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

*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, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132.

*For Hand Delivery:* 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. and 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE., Washington, DC

20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*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**

*The Paperwork Reduction Act of 1995 (Pub. L. 104–13)*

Public reporting burden for this collection of information is estimated to average 40 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.

*Instruction*

Introduction

Applicants should prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

1. Criteria

*General Instruction for Preparing Full Project Description*

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.

Approach

Outline a plan of action that 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 that 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.

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.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

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.

Personnel

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

*Description:* ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of

more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (**Note:** Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

*Description:* Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

*Justification:* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the applicant clearly describes appropriate goals (end results of an effective project) and objectives (measurable steps for reaching these goals) for the proposed project. The extent to which these goals and objectives will effectively address community needs.

(2) The extent to which the applicant clearly demonstrates that there is a need for the program (*e.g.* sharing the results of a thorough assessment of community needs and including letters of support for the proposed program from community-based agencies).

(3) The extent to which the applicant demonstrates a thorough understanding of the multiple needs of the relative caregivers, particularly the support services needed to address the unique needs of families dealing with intergenerational differences and issues, including caring for siblings.

(4) The extent to which the estimated number of infants, young children and families to be served by the project is reasonable and appropriate.

(5) The extent to which the geographic location to be served by the project is clearly defined and justified based on factors such as the key socioeconomic and demographic characteristics of the targeted community as they relate to women of childbearing age, the needs of women and families who are affected by substance abuse and HIV/AIDS, and the current availability of needed services that serve substance-abusing and/or AIDS/HIV-infected women and their families in the community.

(6) The extent to which the applicant describes significant results or benefits that can be expected for the children of substance-abusing women and/or women with HIV/AIDS and the grandparents or other relatives providing care, and community-wide results, if any.

(7) The extent to which this project would improve evidence-based practices to prevent child maltreatment. The extent to which the applicant presents a concise summary of the literature that reflects an understanding of the research on best practices and promising approaches in the field. The extent to which the program results will benefit national policy and practice, and lead to additional research in this field.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which the timeline for implementing the proposed project, including major milestones and target dates, is comprehensive and reasonable. The extent to which the applicant's plan for managing factors which could speed or hinder project implementation is feasible.

(2) The extent to which the specific services which would be provided under the proposed project are appropriate and are described in detail.

(3) The extent to which the applicant demonstrates a thorough understanding of the parenting issues involved in caring for children of substance-abusing and/or HIV-positive parent(s) and a thorough understanding of the special needs of children who may be HIV-positive.

(4) The extent to which the applicant demonstrates a thorough understanding of the program, service and legal issues involved in serving families affected by substance abuse and HIV/AIDS.

(5) The extent to which the project will be culturally responsive to the target population.

(6) The extent to which the applicant demonstrates a commitment to work effectively with appropriate social services, public health, mental health agencies or legal services in providing excellent consultation, support services and advice to meet the needs of family caregivers.

(7) The extent to which the proposed project would work effectively with families in establishing, to the extent possible, standby guardianship arrangements (or medical or educational authority to make decisions for the child) for the children in the care of the family member.

(8) The extent to which the applicant describes appropriate procedures for conducting an effective minimal evaluation effort. The extent to which data on the individuals and families served; types of services provided; service utilization information; types and nature of needs identified and met and any other such information that may be required by ACYF. The extent to which the methods/procedures used will effectively determine the extent to which the program has achieved the stated objectives. The extent to which the proposed evaluation plan would be likely to yield useful findings or results about effective strategies, and contribute to and promote evaluation research and evidence-based practices that could be used to guide replication or testing in other settings. The extent to which the applicant provides a sound plan for collecting this data and securing informed consent. The extent to which the plan includes appropriate procedures for an Institutional Review Board (IRB) review, if applicable.

(9) The extent to which the products (if any) that would be developed during the proposed project would provide useful information on strategies utilized and the outcomes achieved that would effectively support evidence-based improvements of practices in the field. The extent to which the schedule for developing these products is reasonable, and the proposed dissemination plan is appropriate in scope and budget. The extent to which the intended audience (*e.g.*, researchers, policymakers, and practitioners) for product dissemination is appropriate to the goals of the proposed project. The extent to which the project's products would be useful to each of these audiences. The extent to which there is a sound plan for effectively disseminating information, using appropriate mechanisms and forums to convey the information and support replication by other interested agencies.

(10) The extent to which there is a sound plan for continuing this project beyond the period of Federal funding.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the applicant organization and its staff have sufficient experience in successfully providing services to substance-abusing women and women who have HIV/AIDS and their infants and/or young children; in providing social support services to families faced with dealing with HIV/AIDS; and in collaborating effectively with community-based agencies. The extent to which the applicant's history and relationship with grandparent groups or other family caregiver groups that specifically address the needs of drug exposed and/or HIV-positive children will assist in the effective implementation of the proposed project. The extent to which the applicant organization's capabilities and experience relative to this project, including experience with administration, development, implementation, management, and evaluation of similar projects, will enable them to implement the proposed project effectively.

(2) If the applicant represents a consortium of partner agencies, the extent to which their background and experience with children and families impacted by substance abuse and HIV/AIDS will support the planning and implementation of the proposed project. The extent to which there are letters of commitment from each partner authorizing the applicant to apply on behalf of the consortium and agreeing to participate if the proposal is funded.

(3) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(4) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are reasonable and programmatically justified, in view of the targeted population and community, the activities to be conducted and the expected results and benefits. The extent to which the dollar amount requested is fully justified and documented in terms of the targeted population and community.

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

*2. Review and Selection Process*

Applications will be screened to confirm that they are received by the deadline. Federal staff will verify whether the applicant is eligible and confirm that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials proposed in applications. They will be interested in applicants' plans for sustaining the project without Federal funds if the evaluation findings are supportive. Reviewers will be looking to see that the total budget proposed and the way the budget is apportioned is appropriate and reasonable for the project described. Applicants are cautioned to remember that the reviewers only have the information provided them ''and thus all information in the application must be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on unserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

## VI. Award Administration Information

*1. Award Notices*

*Anticipated Announcement and Award Dates:* Applications will be reviewed during summer 2004. Grant awards will have a start date no later than September 30, 2004.

*Award Notices:* Successful applicants will receive a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant or cooperative agreement, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, if applicable, and the total project period for which support is contemplated. The Grants Management Office issues the award notice.

The Commissioner will notify organizations in writing when their applications will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

*2. Administrative and National Policy Requirements*

45 CFR Part 74 and 45 CFR Part 92.

*3. Reporting*

*Reporting Requirements:* Programmatic Reports and Financial Reports are required semi-annually. All required reports will be submitted in a timely manner, in recommended formats (to be provided), and the final report will also be submitted on disk or electronically using a standard word-processing program.

Within 90 days of project end date, the applicant will submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect, 330 C Street, SW., Washington, DC 20447. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

## VII. Agency Contacts

*Program Office Contact:* Pat Campiglia, 330 C St., SW., Washington, DC 20447, 202–205–8060, *pcampiglia@acc.hhs.gov.*

*Grants Management Office Contact:* William Nelson, 330 C St., SW., 20447, Washington, DC, 202–401–4524, *wnelson@acf.hhs.gov.*

*General:* The Dixon Group, ACYF Operations Center, 118 Q Street, NE., Washington, DC 20002–2132, Telephone: (866) 796–1591.

## VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/cb/.*

Dated: April 29, 2004.

**Joan E. Ohl,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 04–10557 Filed 5–10–04; 8:45 am]

BILLING CODE 4184–01–P

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

## Grants and Cooperative Agreements; Notice of Availability

*Federal Agency Name:* Administration for Children and Families, Office of Community Services.

*Funding Opportunity Title:* Community Economic Development National Philanthropic Institutions.

*Announcement Type:* Competitive Grant-Initial.

*Funding Opportunity Number:* HHS–2004–ACF–OCS–CED–0021.

*CFDA Number:* 93.570.

*Dates:* Applications are due June 25, 2004.

## I. Funding Opportunity Description

The Community Services Block Grant (CSBG) Act of 1981, as amended, (Section 680 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary to award grants and provide technical and financial assistance for economic

development activities designed to address the economic needs of low-income individuals and families by creating employment and business ownership opportunities.

The Office of Community Services (OCS) will accept competing applications for grants in the form of cooperative agreements for Community Development Corporation/National Philanthropic Institution Projects (CDC/NPI) that support neighborhood transformation and create jobs and business ownership opportunities for low-income residents of urban areas. Faith-based organizations that meet the eligibility requirements specified in this announcement may apply for these grants.

Applicants must be non-profit community development corporations (CDCs) including faith-based CDCs that:

(a) Propose a project that will focus on neighborhoods located in a city with at least 250,000 residents where a comprehensive neighborhood transformation initiative is planned or underway;

(b) Demonstrate firm and substantial support (financial or other support) for the proposed project from one or more locally based philanthropic institution(s); and

(c) Demonstrate firm and substantial support (financial or other support) for the proposed project from a consortium of national philanthropic institutions, financial institutions, and government agencies that is strengthening community development and community revitalization in urban neighborhoods throughout the nation.

*Project Beneficiaries:* Applicants must show that the proposed project will assist low-income persons to become economically self-sufficient by creating employment or business ownership opportunities for them or significantly aiding such residents in maintaining an economically viable business. The Poverty Income Guidelines published by the U.S. Department of Health and Human Services at *http://aspe.hhs.gov/poverty.shtml* are used to define ''low income.'' In addition, grantees may contact the OCS Operations Center to obtain a copy of the guidelines. No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for these OCS programs.

*Definitions of Terms*

The following definitions apply:

*Budget Period*—The time interval into which a grant period is divided for budgetary and funding purposes.

*Business Start-up Period*—Time interval when the grantee completes preliminary project tasks. These tasks include but are not limited to assembling key staff, executing contracts, administering lease out or build-out of space for occupancy, purchasing plant and equipment and other similar activities. The Business Start-Up Period typically entails three to six months from when OCS awards the grant or cooperative agreement.

*Cash contributions*—The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

*Community Development Corporation (CDC)*—A private non-profit corporation governed by a board of directors consisting of residents of the community and business and civic leaders, which has as a principal purpose planning, developing, or managing low-income housing or community development projects.

*Community Economic Development (CED)*—A process by which a community uses resources to attract capital and increase physical, commercial, and business development, as well as job opportunities for its residents.

*Construction projects*—Projects that involve land improvements and development or major renovation of (new or existing) facilities and buildings, fixtures, and permanent attachments.

*Cooperative Agreement*—An award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project. Substantial involvement may include collaboration or participation by the designating awarding office staff in activities specified in the award and, as appropriate, decision-making at specified milestones related to performance. The involvement may range from joint conduct of a project to awarding office approval prior to the recipient's undertaking the next phase of a project.

*Hypothesis*—An assumption made in order to test a theory. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and its result must be measured in order to confirm the hypothesis. The following is a hypothesis: ''Eighty hours of classroom training will be sufficient for participants to prepare a successful loan application.'' In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

*Intervention*—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan is an intervention.

*Job creation*—New jobs, i.e. jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

*Job placement*—Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

*Letter of commitment*—A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities contingent only on OCS accepting the applicant's project proposal.

*Low Income Families and Individuals*—People who are living in poverty, including those who rely on public assistance such as Temporary Assistance for Needy Families (TANF). Low-income beneficiaries may also include at-risk youth, custodial and non-custodial parents, public housing residents, persons with disabilities, and people who are homeless.

*Non-profit Organization*—An organization, including faith-based and community-based, that provides proof of non-profit status described in the ''Additional Information on Eligibility'' section of this announcement.

*Outcome evaluation*—An assessment of project results as measured by collected data that define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for being replicated. It should answer the question: Did this program work?

*Phase One*—The time interval when grantees accomplish preliminary activities including establishing third party agreements, mobilizing monetary funds and other resources, assembling, rezoning, and leasing of properties, conducting architectural and engineering studies, constructing facilities, etc.

*Phase Two*—The time interval during the Project Period when businesses, commercial development or other activities are in operation, and employment, business development assistance, and so forth are provided.

*Poverty Income Guidelines*—Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http://aspe.hhs.gov/poverty.shtml.*

*Philanthropic Institution*—Foundations (including private, family and community foundations) and corporations (including, among other incorporated entities, banks and other lending institutions) that are providing grants and/or loans for charitable purposes, such as the elimination of slums and blight or provision of services for low-income families and individuals.

*Process evaluation*—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer the questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred, how the problems were resolved and what recommendations are needed for future implementation.

*Program income*—Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

*Project Period*—The total time for which a project is approved for OCS support, including any approved extensions.

*Self-employment*—The employment status of an individual who engages in self-directed economic activities.

*Self-sufficiency*—The economic status of a person who does not require public assistance to provide for his/her needs and that of his/her immediate family.

*Sub-award*—An award of financial assistance in the form of money, or property, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in 45 CFR Part 74. (**Note:** Equity investments and loan transactions are not sub-awards.)

*Temporary Assistance for Needy Families (TANF)*—The Federal block grant program authorized in Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). The TANF program transformed ''welfare'' into a system that requires work in exchange for time-limited assistance.

*Third party*—Any individual, organization or business entity that is not the direct recipient of grant funds.

*Third party agreement*—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

*Third party in-kind contributions*—Non-cash contributions provided by non-Federal third parties. These contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and especially identifiable to the project or program.

*Program Purpose, Scope and Focus*

OCS seeks to stimulate positive collaborative relationships between a small number of local private non-profit CDCs, locally based philanthropic institutions, and a national consortium of philanthropic institutions, financial services organizations and government agencies, to support neighborhood transformation in urban localities and to create long-term employment or business ownership opportunities for low-income people through business or commercial development.

OCS seeks to support a total of four (4) CDC/NPI projects. Each project will be in a city with 250,000 or more residents. OCS will fund projects in two phases: (1) Phase One—the initial portion of the project when the grantee CDC and its partners analyze needs and opportunities, develop collaborative relationships, and finalize plans for job creation or business ownership strategies in the context of a neighborhood transformation effort. During this phase, the CDC and its partners also develop a thorough business plan for the job creation or business ownership strategy to be implemented in Phase Two. OCS will release no more than $200,000 for this phase. (2) Phase Two—the portion of the project when the grantee CDC and its partners execute the project plan to establish the business or commercial development or other activities that create jobs or business ownership opportunities for low-income persons in the target neighborhoods. OCS will release the balance of the grant award for Phase Two activities when the grantee CDC meets relevant program requirements such as, for example, presenting a final business plan concerning the job creation or business ownership strategy.

*The Cooperative Agreement*

This announcement uses a cooperative agreement as the vehicle for funding Community Development Corporation/National Philanthropic Institution Projects. A cooperative agreement is an assistance instrument for which substantial involvement is anticipated between the awarding office and the recipient during performance of the funded activity. Substantial involvement may include collaboration or participation by designating awarding office staff in activities specified in the award and, as appropriate, decision-making at specified milestones related to performance. Potential types of substantial involvement under a cooperative agreement include, but are not limited to, collaborating in the design of a research protocol or a training or service delivery model; approving research protocols or analytical approaches or approving the initiation of a subsequent phase in a phased activity; training project staff in participating organizations; assisting in the evaluation of potential contractors; participating in the presentation of research results, including co-authorship of papers; or providing other assistance in program management or technical performance.

OCS and the grantee CDCs will each be responsible for particular duties and responsibilities throughout the project.

*Guidance on Developing a Business Plan*

Business Plans are vital for the long-term success of OCS-funded business development projects. As described by the Small Business Administration, a business plan precisely defines a business, identifies its goals, and serves as the business' resume. The plan helps the supporting CDC, the business and other partners allocate resources property, handle unforeseen complications, and make good business decisions. Please see Section VI. Award Administration Information for details about the Business Plan that will be required before the beginning of Phase Two.

## II. Award Information

*Funding Instrument Type:* Cooperative Agreement. For a full

description of the cooperative agreement please review *The Cooperative Agreement* in Section I.

*Anticipated total priority area funding:* $2,000,000.

*Anticipated number of awards:* 4 per project period.

*Ceiling of Individual Awards:* $500,000 per project period.

*Floor on amount of individual awards:* $500,000 per project period.

*Average Projected Award Amount:* $500,000 per project period.

*Project Periods for Awards:* Applications for projects that are exclusively construction, major alteration or renovation may request a budget and project period up to 5 years. Applications for non-construction projects may request a budget and project period up to 17 months.

## III. Eligibility Information

### *1. Eligible Applicants*

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education and Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Faith-based organizations are eligible to apply for these grants.

Additional Information on Eligibility

Applicants must demonstrate proof of non-profit status and this proof must be included in their applications (*see* section IV. 2). Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

In addition to demonstrating proof of non-profit status, applicants must also demonstrate proof of CDC status. This proof must be included in their applications. Proof of CDC status is any one of the following:

- A list of governing board members along with their designation as a community resident or business or civic leader; and
- Documentation that the applicant organization has as a primary purpose planning, developing or managing low-income housing or community development activities. This documentation may include incorporation documents or other official documents that identify the organization.

Applicants are cautioned that the ceiling for individual awards is $500,000. An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and will be returned to the applicant without further review.

Applicants must demonstrate firm and substantial support (financial or other support) from one or more locally based philanthropic institution(s) and additional support from a consortium of national philanthropic institutions, financial institutions and government agencies that is strengthening community development and community revitalization in urban neighborhoods throughout the nation. OCS anticipates that funded projects will require significant financial support from other sources.

*Limitations on Current Grantees:* Applicants that are currently administering previously awarded OCS CED grants for Incremental Development Projects (IDP) are not eligible to receive a CDC/NPI project grant during the one-year period following the end of the project period of the last IDP grant award.

### *2. Cost Sharing or Matching*

None.

### *3. Other*

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.*

Applications are cautioned that the ceiling for individual awards is $500,000. Applications exceeding the $500,000 threshold will be considered non-responsive and returned without review.

## IV. Application and Submission Information

### *IV.1 Address To Request Application Package*

Office of Community Services, Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com,* Telephone: (800) 281–9519.

URL to Obtain an Application Package: *http://www.acf.hhs.gov/programs/ocs.*

### *IV.2 Content and Form of Application Submission*

This subsection provides detailed instructions for developing the application. Please see Section V ''Application Review Information'' for additional relevant information.

You may submit your application to us in either electronic or paper format. To submit an application electronically, please use the *www.Grants.gov* 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 to 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 electronic format, nor

will we penalize you if you submit an application in paper format.

- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurance and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.* You must search for the downloadable application package by the CFDA number.

Application Content

Each application must include the following components:

1. *Table of Contents.*

2. *Project Summary/Abstract*—A very brief narrative that identifies the type of project, the target population and the major elements of the work plan.

3. *Objectives and Needs for Assistance*—A thorough description of the economic situation and needs of residents of the target neighborhood(s) and the comprehensive community building or neighborhood transformation effort that is planned or currently underway in that neighborhood.

4. *Results or Benefits Expected*—Identify the results and benefits to be derived. For example, the number of new jobs that will be targeted for residents.

5. *Approach*—An overall project plan including detailed information about strategies to be implemented during Phase One and general information about strategies planned for Phase Two, as follows:

(a) *Phase One Work Plan*—The project work plan should list specific activities that the applicant and its philanthropic partner(s) and other partners would implement in Phase One. These activities may including, for example: (a) Develop and disseminate information and knowledge about trends, assets, and needs in the target low-income neighborhood(s); (b) Assess issues and factors concerning the overall neighborhood transformation process in the targeted neighborhood(s) and other areas of the city and evaluate the feasibility of potential job creation projects that will address needs in the targeted low-income neighborhood(s); (c) Convene meetings and discussion groups that include community development practitioners, leaders of other community-based organizations including community action agencies and faith-based organizations, financial investors and others to discuss findings and explore new ideas for neighborhood transformation and options for job creation strategies; (d) Develop materials that promote and explain the neighborhood transformation effort including the job creation component for potential supporters such as investors and leaders of other community-based organizations; (e) Implement strategies for mobilizing resources for the neighborhood transformation effort including the job creation component; (f) Develop organizational capacity of the applicant CDC by, for example, collaborating with CDCs in other cities that are implementing CDC/NPI projects, collaborating with philanthropic institutions that support CDC/NPI projects in other cities, hiring staff, training board members, training staff and volunteers, recruiting community volunteers, and developing management systems; (g) Develop a detailed Phase Two Work Plan for implementing a strategy for developing jobs or business ownership opportunities for low-income persons in the context of the neighborhood transformation strategy.

(b) *Phase Two Work Plan*—The project work plan should list and discuss specific activities planned for Phase Two. The strongest applications will include firm details about specific activities that the applicant and/or its national philanthropic partner(s) or other partners will implement in Phase Two. The application must include an initial rough draft Business Plan for the business(es) or other ventures planned for Phase Two. OCS will require grantees to submit a final and thorough Business Plan after Phase One and as a condition of receiving funds for Phase Two activities. Please see Section VI. Award Administration Information for detailed instructions on the format and content of the final Business Plan. The following four project components need not be fully in place at the time of application, but they must be in place before OCS will release funds for Phase Two activities: (a) Written commitments from partners other than local philanthropic foundations and other organizations; (b) commitments of all non-OCS funding; (c) third-party agreements; and (d) acquisition or site control of any proposed development site.

6. *Project Assessment/Evaluation Plan*—OCS requires applicants to include an outline of a project evaluation plan. The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented, whether the project activities, or interventions, achieved the expected immediate outcomes, and why or why not (the process evaluation); and whether and to what extent the project achieved its stated goals, and why or why not (the outcome evaluation). Together, the process and outcome evaluations should answer the question: ''What did this program accomplish and why did it work/not work?'' Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework identifies the key project assumptions about the target populations and its needs, as well as the hypotheses, or expected cause-effect relationships to be tested in the project; and the proposed project activities, or interventions that will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency. It also identifies in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization, and the community. Finally, the outline should provide for prompt reporting, concurrently with the semi-annual program progress reports, of lessons learned during the course of the project. Each successful applicant must have a third-party evaluator selected and performing by the time the project work begins. Plans for selecting an evaluator should be included in the application narrative.

7. *Organizational Profile*—A narrative and supporting documents, as follows:

(a) *Proof of Non-Profit Status*—Documentation about the applicant agency's non-profit status. Please include any one of the following:

- A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.
- A copy of a currently valid IRS tax exemption certificate.
- A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

• A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

• Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

(b) *Description of the Applicant's Relationship with a Locally Based Philanthropic Institution*—A description of the applicant's relationship with one or more locally-based national philanthropic institution(s) including details about what role the philanthropic institution(s) will have in assisting the applicant with all phases of the proposed project. Applicants must include clear written commitments from the participating philanthropic institution(s) indicating that they will work in partnership with the applicant and provide significant support for the proposed job creation project.

(c) *Description of the Applicant's Relationship with a National Consortium of Philanthropic Institutions*—A description of the applicant's and its partner locally based philanthropic institution's relationship with a national consortium of philanthropic institutions, financial services organizations and government agencies that support neighborhood transformation in urban places. Applicants must include documents showing clear commitment from a national consortium indicating that it will work in partnership with the applicant and provide significant support for the proposed job creation project.

(d) *Proof of Status as Private Non-Profit Community Development Corporation*—Proof of status as a CDC. Please include any one of the following:

• A list of governing board members along with their designation as a community resident or business or civic leader; and

• Documentation that the applicant organization has as a primary purpose planning, developing or managing low-income housing or community development activities. This documentation may include incorporation documents or other official documents that identify the organization.

(e) *Proof of Sufficiency of Financial Management System*—The following documentation: (1) A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the applicant CDC's financial management system in accordance with HHS regulation 45 CFR part 74; and (2) Financial statements for the CDC for the prior three years. If such statements are not available because the CDC is a newly formed entity, the application must include a statement to this effect. (**Note:** CDC grantees are responsible for ensuring that all grant funds are expended in compliance with applicable federal regulations and Federal Office of Management Budget Circulars.)

8. *Budget and Budget Justification*—Standard forms and a narrative as follows:

*Salary Information and Social Security Numbers:* 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.

• *Completed Standard Form 424*—standard form signed by an official representative of the applicant CDC who has authority to obligate the organization.

• *Standard Form 424A*—Standard form concerning budget issues for non-construction projects.

• *Narrative Budget Justification*—Narrative information about each object class category required under Section B, Standard Form 424A.

Application Format

Applicants should submit one signed original application and two additional copies of the same application document.

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, and Project Narrative may not exceed 65 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures, appendices, and any other supplemental documents as required in this announcement.

Required Standard Forms

Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, Assurances: Non-Construction Programs with their applications.

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their applications.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.'' The forms are located on the Web at *http://www.acf.hhs.gov/programs/ofs/forms.htm*.

*IV.3 Submission Dates and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Standard Time) on June 25, 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 U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209. 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 U.S. Department of Health and

Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Office of Community Services Operations Center''. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*Late applications:* Applications that do not meet the criteria above will be considered late applications. ACF will notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Table of Contents | A numbered list of key parts of the application. | Consistent with guidance in ''Application Format'' section of this announcement.. | By application due date. |
| Project Summary/Abstract | Very brief narrative that identifies the type of project, the target population and the major elements of the work plan. | Consistent with guidance in the ''Application Content'' sub-section. | By application due date. |
| Objectives and Needs for Assistance | Narrative that describes the economic situation and needs of residents of the target neighborhood(s) and the comprehensive community building or neighborhood transformation effort that is planned or currently underway in that neighborhood. | Consistent with guidance in ''Application Content'' sub-section and the ''Evaluation Criteria'' section of this announcement. | By application due date. |
| Results or Benefits Expected | Narrative that identifies the results and benefits to be derived. For example, the number of new jobs that will be targeted for residents. | Consistent with guidance in ''Application Content'' sub-section and the ''Evaluation Criteria'' section of this announcement. | By application due date. |
| Approach | Overall Project Work Plan including plans for Phase One and Phase Two. | Consistent with guidance in ''Application Content'' sub-section (see above) and the ''Evaluation Criteria'' section of this announcement.<br>The Phase Two Work Plan should include an initial draft Business Plan concerning the businesses or other economic ventures planned for that phase of the project. | By application due date. |
| Project Assessment/Evaluation Plan | Description of the plan to assess project outcomes include: (1) details about the evaluation design; (2) information about the proposed evaluator; and (3) plans for reporting. | Consistent with guidance in ''Application Content'' sub-section and the ''Evaluation Criteria'' section of this announcement. | By application due date. |
| Organizational Profile | Description of organizational ability including: (a) Documentation of non-profit status; (b) Description of the applicant's relationship with local philanthropic institution; (c) Description of the applicant's relationship with national consortium of philanthropic institutions, financial service institutions and government agencies; (d) Proof of Status as Private Non-Profit Community Development Corporation; and (e) Proof of Sufficiency of Financial Management System. | Consistent with guidance in the ''Additional Information on Eligibility'' section, the ''Application Content'' sub-section and the ''Evaluation Criteria'' section of this announcement. | By application due date. |
| Budget and Budget Justification | Budget information including: (a) Narrative budget justification; (b) Completed Standard Form 424; (c) Completed Standard Form 424A. | Consistent with guidance in ''Application Content'' section of this announcement.<br>See Section VIII ''Other Information'' for guidelines for budget and budget justifications..<br>Required Standard Forms are posted on the Internet 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 |
|---|---|---|---|
| Certification regarding lobbying | As per required form | Required Standard Forms are posted on the Internet at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Certification regarding environmental tobacco smoke. | As per required form | Required Standard Forms are posted on the Internet at *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |

*Additional Forms:* Private-non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants''.

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/form.htm*. | By application due date. |

*IV.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 June 20, 2001, 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, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming have elected to participate in the Executive Order process and have established Single Point of Contacts (SPOCs). Applicants from these twenty-five jurisdictions need take no action regarding Executive Order 12372.

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 about 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.

Comments should be submitted directly to Department of Health and Human Services, Administration for Children and Families, Office of Grants Management, 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.

*IV.5 Funding Restrictions*

Cost Per Job

OCS will not fund projects with a cost-per-job that exceeds $10,000 in OCS Community Economic Development (CED) grant funds. An exception will be made if the project includes purchase or major renovation of real estate. In this instance, the applicant must explain the factors that raise the cost beyond $10,000. In no instance will OCS allow for more than $15,000 cost per job in CED funds. Cost per job is calculated by dividing the number of jobs to be created by the total grant amount.

National Historic Preservation Act

If an applicant is proposing a project that will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the application narrative (the Phase One or Phase Two Work Plans) and explain how it has complied with the National Historic Preservation Act of 1996, as amended. If there is any question as to whether property is listed in or eligible for inclusion in the National Register of Historic Places, the applicant must consult with the State Historic Preservation Officer and describe in the narrative the results of this consultation.

Sub-Contracting or Delegating Projects

OCS will not consider applications that propose projects where the applicant would serve primarily as a conduit of funds to other organizations. Grantee CDCs must have a substantive role in implementing the proposed project. Grantees may award sub-grants or enter into sub-contracts with other organizations for specific services or activities.

Number of Projects in Application

Each application may include only one proposed project.

Prohibited Activities

OCS will not consider applications that propose to establish either a Small

Business Investment Corporation or a Minority Enterprise Small Business Investment Corporation.

OCS will not consider applications for projects that focus primarily on education and job training or that involve training and placement for existing vacant jobs. Grantees may use OCS funds to support specific job-related training for individuals who have been selected for employment in the grant support project.

OCS will not consider applications for projects that would result in the relocation of a business from one geographic area to another resulting in job displacement.

Pre-award costs will not be covered by an award.

*Limitations on Current Grantees:* Applicants that are currently administering previously awarded OCS CED grants for Incremental Development Projects (IDP) are not eligible to receive a CDC/NPI project grant during the one-year period following the end of the project period of the last IDP grant award.

*IV.6 Other Submission Requirements*

*Submission by Mail:* An Applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The Application must be received at the address below by 4:30 PM Eastern Standard Time on or before the closing date. Applications should be mailed to: Department of Health and Human Services (HHS), Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209.

*For Hand Delivery:* 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 PM 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: Department of Health and Human Services (HHS) Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Meyer Drive, Suite 300, Arlington, Virginia 22209. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

**V. Application Review Information**

*1. Criteria*

Instructions: ACF Uniform Project Description (UPD)

The following are instructions and guidelines on how to prepare the ''project summary/abstract'' and ''Full Project Description'' sections of the application. The generic UPD requirement is followed by the evaluation criterion specific to the Community Economic Development National Philanthropic Institution Projects program. 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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

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.

Results or Benefits Expected

Identify the results and benefits to be derived. Explain how the project will reach the targeted population and how it will benefit participants or the community.

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, for example, such terms as the ''number of people served.'' 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.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

Organizational Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports, documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. A non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criterion I: Organizational Profiles (Maximum: 35 Points)

*Factors:*

(1) *Organizational Ability and Facilities/Resources.* The extent to which the application presents compelling information that the applicant CDC will successfully implement business development, commercial development, physical development, or financial service projects. The extent to which the applicant describes its facilities and other key resources (*i.e.*, space and equipment to carry out the work plan).

(2) *Staff skills, resources and responsibilities.* The extent to which the application shows that the proposed staff has skills and experience appropriate for the project and that the staff will have sufficient resources and organizational support to assure timely implementation of the project in a cost-effective manner. For example, that the proposed Project Director has sufficient experience, skills and professional capabilities to manage this project and, if the Project Director or other key staff has not yet been identified, the extent to which the application describes the process that will be used to hire staff for key positions.

(3) *Vital Partnerships with Philanthropic Institutions.* The extent to which the applicant provides clear evidence that it is working closely with one or more local philanthropic institution(s) and a national consortium of philanthropic institutions, financial services organizations and government agencies. The extent to which the applicant provides evidence of a history of strong and productive partnership with a local philanthropic institution by, for example: Evidence of collaborative efforts; evidence of past or current support (financial or other support) from the philanthropic institution(s) and the national consortium; and information that the philanthropic institution(s) and the national consortium would provide additional resources for the proposed project.

Evaluation Criterion II: Approach (Maximum: 25 Points)

*Factors:*

(1) *Overall project plan.* The extent to which the application presents a clear and logical plan that lists the major tasks and explains how it will succeed in accomplishing the key objectives (*e.g.*, the development of businesses and creation of jobs for low-income persons) during the Project Period. For example, the degree to which the application describes quarterly time targets for key tasks.

(2) *Plan for Phase One.* The extent to which the application describes a clear plan for the initial phase of the project. For example, a thorough presentation of a clear approach for developing information about the target neighborhood(s) and identifying appropriate job-creation strategies for low-income people in that area; strategies for promoting the overall neighborhood transformation project and involving other community-based organizations and other potential investors in the planning for the project; tactics for developing the organizational capacity of the applicant CDC (if warranted); and plans for creating an effective work plan for Phase Two.

(3) *Plan for Phase Two.* The extent to which the application describes a clear plan for Phase Two. For example, the extent to which the applicant describes firm details about specific activities that the applicant and/or its national philanthropic partner(s) or other partners will implement in Phase Two.

(4) *Draft Business Plan.* The extent to which the application describes an initial draft Business Plan for businesses or other ventures planned for Phase Two.

Evaluation Criterion III: Objectives and Need for Assistance (Maximum: 25 Points)

a. Description of and Responsiveness to Needs

*Factors:*

(1) *Description of needs.* The extent to which the application documents the needs of the target neighborhood(s). For example, the extent to which the application documents that both the unemployment rate and poverty level for the targeted neighborhood or community are equal or greater than the national level and cites the most recent available statistics from published sources, e.g., the recent U.S. Census or updates, the State, county, city, election district, and other information.

(2) *Responsiveness to needs.* The extent to which the application is responsive to needs of the target neighborhoods. For example, the extent to which the application describes the critical issues or potential problems that might have a negative affect on the project. Furthermore, the extent to which the application describes how the applicant would address these issues.

b. Resource Mobilization and Services Integration:

*Factors:*

(1) *Support from Key Organizations.* The extent to which the application describes how the applicant would

mobilize needed assistance from public and private sources. For example, the extent to which the application describes funding or other vital resources including in-kind contributions from non-federal sources for the project.

(2) *Coordination with Partner Agencies and Private Organizations.* The extent to which the application demonstrates that the applicant has commitments or agreements with local agencies responsible for administering child support enforcement, the local Temporary Assistance for Needy Families (TANF) program or the local employment education, and training programs to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals, and low-income custodial and non-custodial parents will be trained and placed in the newly created jobs.

Evaluation Criterion IV: Results or Benefits Expected (Maximum: 10 Points)

a. Benefits Expected

*Factors:*

(1) *Measurable Results.* The extent to which the application will produce permanent and measurable results including, but not limited to, employment and business development opportunities that reduce poverty and the need for TANF assistance in the community and thus enable families to be economically self-sufficient.

(2) *Permanent Employment for Area Residents.* The extent to which the applicant demonstrates that the project will, during the project period, result in new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job not to exceed $10,000 in OCS funds. For example, the extent to which the applicant documents that the jobs to be created for low-income people have career development opportunities that will promote self-sufficiency.

b. Evaluation Design

*Factors:*

(1) *Evaluation Design.* The extent to which the application presents a through outline of an evaluation plan that identifies the principal cause-and-effect relationships to be tested, and that demonstrates the applicant's understanding of the role and purpose of both process and outcome evaluations. For example, the extent to which the application indicates that the applicant is committed to the selection of a third-party evaluator approved by OCS. Furthermore, the extent to which the applicant demonstrates that they will be able to complete a final evaluation design and plan, in collaboration with the approved evaluator and the OCS Evaluation Technical Assistance provider during the six-month start-up period of the project.

(2) *Third-Party Evaluator.* The extent to which the applicant identifies and describes a proposed third-party evaluator and demonstrates that the proposed evaluator is knowledgeable about, and has experience in, conducting process and outcome evaluations in the job creation field, and has a thorough understanding of the range and complexity of the problems faced by the target population.

(3) *Project Reporting.* The extent to which the application presents a reporting format based on its proposed activities and their effectiveness. For example, the extent to which the applicant proposes to submit semi-annual program progress reports that will provide OCS with insights and lessons learned concerning the various aspects of the work plan, such as recruitment, training, support, public-private partnerships, and coordination with other community resources, as they may be relevant to the proposed project.

Criterion V: Budget and Budget Justification (Maximum: 5 Points)

*Factors:*

(1) *Budget Amount.* The extent to which the applicant seeks funding in an amount that is commensurate with the level of effort necessary to accomplish the goals and objectives of the project. For example, the extent to which the estimated cost to the government of the project is reasonable in relation to the anticipated results.

(2) *Budget Detail.* The extent to which the application includes a detailed budget breakdown and a narrative justification for each of the budget categories in the SF–424A. For example, the extent to which the applicant presents a reasonable administrative cost.

### *V.2 Review and Selection Process*

OCS Evaluation of Applications

Applications that pass the initial program eligibility screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

*Funding Considerations:* In cases where an application ranks high and is competitive, the following may apply: (a) Previous performance of the applicant is an important determining factor in the grant award decision; (b) OCS may conduct a pre-award site visit to assess an applicant prior to making a final determination on the grant award.

## VI. Award Administration Information

### *VI.1 Award Notices*

Following approval of the applications selected for funding, notice of project approval and authority to draw down projects will be made in writing. The official award document is the Financial Assistance Award, which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, and the total project period for which support is contemplated. The Financial Assistance Award will be signed by the Grants Officer.

*VI.2 Administrative and National Policy Requirements*

Grantees are subject to the requirements in 45 CFR part 74 (non-governmental) or 45 CFR part 92 (governmental).

Upon successful completion of Phase I, the final and thorough Phase II Business Plan is due. Applicants NEED NOT submit this information with their applications. However, applicants should note that this information will be required prior to receiving funds for Phase II activities. The Phase II Business Plan must follow the following format and include the following information:

(1) Executive Summary.

(2) Description of the business: The business as a legal entity and its general business category. Business activities must be described by Standard Industrial Codes (SIC) using the North American Industry Classification System (NAICS) and jobs by occupational classification. This information is published by the U.S. Department of Commerce in the Statistical Abstract of the United States, 1998, Tables No. 679 and 680. These tables include information necessary to meet this requirement.

(3) Description of the industry, current status and prospects.

(4) Products and services, including detailed descriptions of:

(a) Products or services to be sold;

(b) Proprietary position of any of the product, *e.g.*, patents, copyright, trade secrets;

(c) Features of the product or service that may give it an advantage over the competition;

(5) Market Research: This section describes the research conducted to assure that the business has a substantial market to develop and achieve sales in the face of competition. This includes researching:

(a) Customer base: Describe the actual and potential purchasers for the product or service by market segment.

(b) Market size and trends: Describe the site of the current total market for the product or service offered;

(c) Competition: Provide an assessment of the strengths and weaknesses of the competition in the current market;

(d) Estimated market share and sales: Describe the characteristics of the product or service that will make it competitive in the current market;

(6) Marketing Plan: The marketing plan details the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan addresses overall marketing, strategy, packaging, service and warranty, pricing, distribution and promotion.

(7) Design and Development Plans: If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, describe the nature, extent and cost of this work. The section covers items such as development status and tasks, difficulties and risks, product improvement and new products and costs.

(8) Operations Plan: An operations plan describes the kind of facilities, site location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

(9) Management Team: This section describes the technical, managerial and business skills and experience to be brought to the project. It is a description of key management personnel and their primary duties; compensation and/or ownership; the organizational structure and placement of this proposed project within the organization; the board of directors; management assistance and training needs; and supporting professional services.

(10) Overall Schedule: This section is the implementation plan which shows the timing and interrelationships of the major events or benchmarks necessary to launch the venture and realize its objectives. This includes a month-by-month schedule of activities such as product development, market planning, sales programs, production and operations. If the proposed project is for construction, this section lays out timeframes for conduct of predevelopment, architectural, engineering and environmental and other studies, and acquisition of permits for building, use and occupancy that are required for the project.

(11) Job Creation: This section describes the job creation activities and projections expected as a result of this project. This includes a description of the strategy that will be used to identify and hire individuals who are low-income, including those on TANF. This section includes the following:

(a) The number of permanent jobs that will be created during the project period, with particular emphasis on jobs for low-income individuals.

(b) For low-income individuals, the number of jobs that will be filled by low income individuals (this must be at least 60 percent of all jobs created); the number of jobs that have career development opportunities and a description of those jobs; the number of jobs that will be filled by individuals receiving TANF; the annual salary expected for each person employed.

(c) For low income individuals who become self-employed, the number of self-employed and other ownership opportunities created; specific steps to be taken including on-going management support and technical assistance provided by the grantee or a third party to develop and sustain self-employment after the businesses are in place; and expected net profit after deductions of business expenses.

**Note:** OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

(12) Financial Plan: The financial plan demonstrates the economic supports underpinning the project. It shows the project's potential and the timetable for financial self-sufficiency. The following exhibits must be submitted for the first three years of the business's operation:

(a) Profit and Loss Forecasts—quarterly for each year;

(b) Cash Flow Projections—quarterly for each year;

(c) Pro forma balance sheets—quarterly for each year;

(d) Sources and Use of Funds Statement for all funds available to the project;

(e) Brief summary discussing any further capital requirements and methods or projected methods for obtaining needed resources.

(13) Critical Risks and Assumptions: This section covers the risks faced by the project and assumptions surrounding them. This includes a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product or service market appeal, and the timing and financing of the venture.

(14) Community Benefits: This section describes other economic and non-economic benefits to the community such as development of a community's physical assets; provision of needed, but currently unsupplied, services or products to the community; or improvement in the living environment.

*VI.3 Reporting*

All grantees are required to submit semi-annual program and financial reports (SF–269) with a final report due 90 days after the project end date. A suggested format for the program report will be sent to all grantees after the awards are made.

**VII. Agency Contacts**

*Program Office Contact*

Debbie Brown, Office of Community Services, 370 L'Enfant Promenade, SW., Suite 500 West, Aerospace Building, Washington, DC 20447–0002, E-mail: *dbrown@acf.hhs.gov*, Telephone: (202) 401–3446.

*Grants Management Office Contact*

Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447–0002, E-mail: *bziegler-johns@acf.hhs.gov*, Telephone: (202) 401–4646.

**General Contact**

Office of Community Services, Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com*, Telephone: (800) 281–9519.

**VIII. Other Information**

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: April 29, 2004.

**Clarence H. Carter,**

*Director, Office of Community Services.*

[FR Doc. 04–10555 Filed 5–10–04; 8:45 am]

**BILLING CODE 4184–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Community Services Block Grant Program Community Economic Development Discretionary Grant Program—Operational Projects

*Federal Agency Contact Name:* Administration for Children and Families (ACF), Office of Community Services (OCS).

*Funding Opportunity Title:* The Community Services Block Grant Program Community Economic Development Discretionary Grant Program ''Operational Projects.

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2004–ACF–OCS–EE–0019.

*CFDA Number:* 93.570.

*Due Date for Applications:* The due date for receipt of applications is July 12, 2004.

**I. Funding Opportunity Description**

The Community Services Block Grant (CSBG) Act of 1981, as amended, (section 680 of the Community Opportunities, Accountability, and Training and Educational Services Act of 1998), authorizes the Secretary of the U.S. Department of Health and Human Services to make grants to provide technical and financial assistance for economic development activities designed to address the economic needs of low-income individuals and families by creating employment and business development opportunities. Pursuant to this Announcement, OCS will award operational project grants to Community Development Corporations (CDCs) that are experienced in implementing economic development projects.

The primary purpose of the Operational Projects (OPs) is to assist eligible CDCs that have in place written commitments for all projected non-OCS funding, project operations and site control for their economic development project. Low-income beneficiaries of such projects include those who are determined to be living in poverty as determined by the HHS Guidelines on Poverty at *http://aspe.hhs.gov/poverty/poverty.shtml.* They may be unemployed, on public assistance, including Temporary Assistance for Needy Families (TANF), are at risk teenagers, custodial and non-custodial parents, public housing residents, persons with disabilities and persons who are homeless.

Operational Projects are designed to encourage rural and urban community development corporations to create projects intended to provide employment and business development opportunities for low-income people through business or commercial development. Generally the opportunities must aim to improve the quality of the economic and social environment of TANF recipients; low-income residents including displaced workers; at-risk teenagers; non-custodial parents, particularly those of children receiving TANF assistance; individuals residing in public housing; individuals who are homeless; and individuals with disabilities. Grant funds under this announcement are intended to provide resources to eligible applicants (CDCs) but also have the broader objectives of arresting tendencies toward dependency, chronic unemployment, and community deterioration in urban and rural areas.

Eligible applicants should submit a business plan that shows the economic feasibility of the venture. Applicants for an OP should have in place written commitments for all projected non-OCS funding required for the project. Written proof of commitments from third parties should be submitted with the application. Letters of support, only, are insufficient. The application should also clearly explain whether it has site control, and if not, the time period required to obtain site control.

Under this OP grant announcement for Fiscal Year 2004, particular emphasis will be placed on applications for retail development that will (1) bring goods and services into underserved urban communities, (2) provide at least 60 sustainable jobs with benefits per site and (3) provide equity ownership for CDCs. The application must include a signed commitment on the part of a retailer to establish one or more businesses in an urban area. Because the approach to retail is city-wide, unlike other CED awards, these grants may fund more than one project. In addition to other costs allowed under the Operational Project (OP) announcement, funds may be used for an assessment of the retail market in a city, a demographic analysis of potential consumers, identification of funding and other resources available to the project, and means to integrate social and community services into the project.

*Project Goals*

CED projects should further HHS goals of strengthening American families and promoting their self-sufficiency, and OCS goals of promoting healthy families in healthy communities. The CED Program is particularly directed toward public-private partnerships that develop employment and business opportunities for low-income people and revitalize distressed communities.

*Project Scope*

Projects may include business startups, business expansions, development of new products and services, and other newly-undertaken physical and commercial activities. Projects must result in creation of new jobs. Each applicant must describe the project scope including the low-income community to be served, business activities to be undertaken and the types of jobs to be created.

*Definitions of Terms*

The following definitions apply:

*Beneficiaries*—Low-income individuals (as defined in the most recent annual revision of the Poverty Income Guidelines published by the U.S. Department of Health and Human Services) who receive direct benefits and low-income communities that receive direct benefits.

*Budget Period*—The time interval into which a grant period is divided for budgetary and funding purposes.

*Business Start-up Period*—Time interval within which the grantee completes preliminary project tasks. These tasks include but are not limited to assembling key staff, executing contracts, administering lease out or build-out of space for occupancy, purchasing plant and equipment and other similar activities. The Business Start-Up Period typically takes three to six months from the time OCS awards the grant or cooperative agreement.

*Cash contributions*—The recipient's cash outlay, including the outlay of money contributed to the recipient by the third parties.

*Community Development Corporation (CDC)*—A private non-profit corporation governed by a board of directors consisting of residents of the community and business and civic leaders, which has as a principal purpose planning, developing, or managing low-income housing or community development activities. A CDC may be faith-based.

*Community Economic Development (CED)*—A process by which a community uses resources to attract capital and increase physical, commercial, and business development, as well as job opportunities for its residents.

*Construction projects*—Projects that involve the initial building or large scale modernization or permanent improvement of a facility.

*Cooperative Agreement*—An award instrument of financial assistance when substantial involvement is anticipated between the awarding office, (the Federal government) and the recipient during performance of the contemplated project.

*Developmental/Research Phase*—The time interval during the Project Period that precedes the Operational Phase. Grantees accomplish preliminary activities during this phase including establishing third party agreements, mobilizing monetary funds and other resources, assembling, rezoning, and leasing of properties, conducting architectural and engineering studies, constructing facilities, etc.

*Displaced worker*—An individual in the labor market who has been unemployed for six months or longer.

*Distressed community*—A geographic urban neighborhood or rural community of high unemployment and pervasive poverty.

*Employment education and training program*—A program that provides education and/or training to welfare recipients, at-risk youth, public housing tenants, displaced workers, homeless and low-income individuals and that has demonstrated organizational experience in education and training for these populations.

*Empowerment Zone and Enterprise Community Project Areas (EZ/EC)*—Urban neighborhoods and rural areas designated as such by the Secretaries of Housing and Urban Development and Agriculture.

*Equity investment*—The provision of capital to a business entity for some specified purpose in return for a portion of ownership using a third party agreement as the contractual instrument.

*Faith-Based Community Development Corporation*—A community development corporation that has a religious character.

*Hypothesis*—An assumption made in order to test a theory. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and its result must be measured in order to confirm the hypothesis. The following is a hypothesis: ''Eighty hours of classroom training will be sufficient for participants to prepare a successful loan application.'' In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

*Intervention*—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan is an intervention.

*Job creation*—New jobs, *i.e.*, jobs not in existence prior to the start of the project, that result from new business startups, business expansion, development of new services industries, and/or other newly-undertaken physical or commercial activities.

*Job placement*—Placing a person in an existing vacant job of a business, service, or commercial activity not related to new development or expansion activity.

*Letter of commitment*—A signed letter or agreement from a third party to the applicant that pledges financial or other support for the grant activities contingent only on OCS accepting the applicant's project proposal.

*Loan*—Money lent to a borrower under a binding pledge for a given purpose to be repaid, usually at a stated rate of interest and within a specified period.

*Non-profit Organization*—An organization, including faith-based and community-based, that provides proof of non-profit status described in the ''Additional Information on Eligibility'' section of this announcement.

*Operational Phase*—The time interval during the Project Period when businesses, commercial development or other activities are in operation, and employment, business development assistance, and so forth are provided.

*Outcome evaluation*—An assessment of project results as measured by collected data that define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for being replicated. It should answer the question: Did this program work?

*Poverty Income Guidelines*—Guidelines published annually by the U.S. Department of Health and Human Services that establish the level of poverty defined as low-income for individuals and their families. The guideline information is posted on the Internet at the following address: *http://aspe.hhs.gov/poverty/poverty.shtml.*

*Process evaluation*—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer the questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred, how the problems were resolved and what recommendations are needed for future implementation.

*Pre-Development Phase*—The time interval during the Project Period when an applicant or grantee plans a project, conducts feasibility studies, prepares a business or work plan and mobilizes non-OCS funding.

*Program income*—Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

*Project Period*—The total time for which a project is approved for OCS support, including any approved extensions.

*Revolving loan fund*—A capital fund established to make loans whereby

repayments are re-lent to other borrowers.

*Self-employment*—The employment status of an individual who engages in self-directed economic activities.

*Self-sufficiency*—The economic status of a person who does not require public assistance to provide for his/her needs and that of his/her immediate family.

*Sub-award*—An award of financial assistance in the form of money, or property, made under an award by a recipient to an eligible sub-recipient or by a sub-recipient to a lower tier sub-recipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in 45 CFR part 74.

**(Note:** Equity investments and loan transactions are not sub-awards.)

*Technical assistance*—A problem-solving event generally using the services of a specialist. Such services may be provided on-site, by telephone or by other communications. These services address specific problems and are intended to assist with immediate resolution of a given problem or set of problems.

*Temporary Assistance for Needy Families (TANF)*—The Federal block grant program authorized in Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Pub. L. 104–193). The TANF program transformed ''welfare'' into a system that requires work in exchange for time-limited assistance.

*Third party*—Any individual, organization or business entity that is not the direct recipient of grant funds.

*Third party agreement*—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

*Third party in-kind contributions*—Non-cash contributions provided by non-Federal third parties. These contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and especially identifiable to the project or program.

## II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated Total Program Funding:* The estimated level of funding available for Operational Projects is $11,000,000.

*Anticipated Number of Awards:* 15–17.

*Ceiling on amount of individual awards:* $700,000 per project period. Applications that exceed the $700,000 ceiling specified will be considered ''non-responsive'' and be returned to the applicant without further review.

*Floor on amount of individual awards:* None.

*Project Periods for Award:* Applications for projects that are exclusively construction, major alteration or renovation may request a budget and project period up to 5 years. Applications for non-construction projects may request a budget and project period up to 17 months.

## III. Eligibility Information

### *III.1 Eligible Applicants*

Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education.

Nonprofits that do not have a 501(c)(3) status with the IRS, other than institutions of higher education.

Faith-based community development corporations are eligible to apply.

Additional Information on Eligibility

Applicants must be a private, non-profit Community Development Corporation (CDC) experienced in developing and managing economic development projects. For purposes of this grant program, the CDC must be governed by a Board of Directors consisting of residents of the community and business and civic leaders. The CDC must have as a principal purpose planning, developing, or managing low-income housing or community development activities.

Applicants must document their eligibility as a CDC for the purposes of this grant program. The application must include a list of governing board members along with their designation as a community resident, or business or civic leader. In addition, the application must include documentation that the organization has as a primary purpose planning, developing or managing low-income housing or community development activities. This documentation may include incorporation documents or other official documents that identify the organization. Applications that do not include proof of CDC status in the application will be disqualified.

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code;

(b) A copy of a currently valid IRS tax exemption certificate;

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals;

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status;

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate. Applications that do not include proof of nonprofit status in the application will be disqualified.

Applicants are cautioned that the ceiling for individual awards is $700,000. Applications that exceed this threshold will be considered ''non-responsive'' and be returned without review.

### *III.2. Cost Sharing or Matching*

*None.* There is no cost sharing or matching requirement; however, economic development projects often require significant funding in addition to the federal Community Economic Development (CED) funds. Therefore, applicants are strongly encouraged to mobilize the resources needed for a successful project. The ability to mobilize resources is considered in evaluating the feasibility of an application (See Evaluation Criterion No. VI).

### *III.3. Other*

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 online at *http://www.dnb.com.*

## IV. Application and Submission Information

### *IV.1. Address To Request Application Package*

Office of Community Services, Operations Center, Administration for Children and Families, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com,* Telephone: (800) 281–9519.

### *IV.2. Content and Form of Application Submission*

*You may submit your application to us in either electronic or paper format.* To submit an application electronically, please use the *www.Grants.gov* 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 electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.gov.
- We may request that you provide original signatures on forms at a later date.
- You may access the electronic application for this program on *www.Grants.gov.*
- You must search for the downloadable application package by the CFDA number.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm.*

Application Content

Each application must include the following components:

1. *Table of Contents*
2. *Project Summary/Abstract*—one or two paragraphs, not to exceed 350 words, that describe the community in which the project will be implemented, beneficiaries to be served, type(s) of business(es) to be developed, type(s) of jobs to be created, projected cost-per-job, any land or building to be purchased or building constructed, resources leveraged and intended impact on the community.

**Note:** Please see Section V.1. Criteria, for instructions on preparing the project summary/abstract and the full project description.

3. *Completed Standard Form 424*—that has been signed by an official of the organization applying for the grant who has legal authority to obligate the organization. Under Box 11, indicate the Priority Area for which the application is written (*This announcement is for Priority Area 1—Operational Projects*).
4. *Standard Form 424A*—Budget Information—Non-Construction Programs.
5. *Standard Form 424B*—Budget Information—Construction Programs.
6. *Narrative Budget Justification*—for each object class category required under Section B, Standard Form 424A.

Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

7. *Project Narrative*—A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.
8. *Private Nonprofit Community Development Corporation*—Applicants must provide proof of status as a community development corporation as required by statute and as described under ''Additional Information on Eligibility.''
9. *Sufficiency of Financial Management System*—Because CED funds are Federal, all grantees must be capable of meeting the requirements of 45 CFR part 74 concerning their financial management system.

The CDC grantee is responsible for ensuring that grant funds expended by it and the third party are expended in compliance with Federal regulations of 45 CFR part 74 and OMB Circular A–122.

10. *Business Plan*—Applications for the OP grant announcement must submit a business plan. For incubator or microenterprise development projects, the business plan covers the project, not the individual business plans of beneficiaries.

The business plan is a major component that will be evaluated by an expert review panel, OCS and OGM to determine the feasibility of a business venture or other economic development project. It must address all the relevant elements as follows:

(a) Executive Summary (limit to 2 pages)

(b) Description of the business: The business as a legal entity and its general business category. Business activities must be described by Standard Industrial Codes (SIC) using the North American Industry Classification System (NAICS) and jobs by occupational classification. This information is published by the U.S. Department of Commerce in the Statistical Abstract of the United States, 1998, Tables No. 679 and 680. These tables include information necessary to meet this requirement.

(c) Description of the industry, current status and prospects.

(d) Products and Services, including detailed descriptions of:

(1) Products or services to be sold;

(2) Proprietary Position of any of the product, *e.g.*, patents, copyright, trade e secrets;

(3) Features of the product or service that may give it an advantage over the competition;

(e) Market Research: This section describes the research conducted to assure that the business has a substantial market to develop and achieve sales in the face of competition. This includes researching:

(1) Customer base: Describe the actual and potential purchasers for the product or service by market segment;

(2) Market size and trends: Describe the site of the current total market for the product or service offered;

(3) Competition: Provide an assessment of the strengths and weaknesses of the competition in the current market;

(4) Estimated market share and sales: Describe the characteristics of the product or service that will make it competitive in the current market;

(f) Marketing Plan: The marketing plan details the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan addresses overall marketing, strategy, packaging, service and warranty, pricing, distribution and promotion.

(g) Design and Development Plans: If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, describe the nature, extent and cost of this work. The section covers items such as development status and tasks, difficulties and risks, product improvement and new products and costs.

(h) Operations Plan: An operations plan describes the kind of facilities, site location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

(i) Management Team: This section describes the technical, managerial and business skills and experience to be brought to the project. This a description of key management personnel and their primary duties; compensation and/or ownership; the organizational structure and placement of this proposed project within the organization; the board of directors; management assistance and training needs; and supporting professional services.

(j) Overall Schedule: This section is the implementation plan which shows the timing and interrelationships of the major events or benchmarks necessary to launch the venture and realize its objectives. This includes a month-by-month schedule of activities such as product development, market planning, sales programs, production and operations. If the proposed project is for construction, this section lays out timeframes for conduct of predevelopment, architectural, engineering and environmental and other studies, and acquisition of permits for building, use and occupancy that are required for the project.

(k) Job Creation: This section describes the job creation activities and projections expected as a result of this project. This includes a description of the strategy that will be used to identify and hire individuals who are low-income, including those on TANF. This section includes the following:

(1) The number of permanent jobs that will be created during the project period, with particular emphasis on jobs for low-income individuals.

(2) For low-income individuals, the number of jobs that will be filled by low-income individuals (this must be at least 60% of all jobs created); the number of jobs that have career development opportunities and a description of those jobs; the number of jobs that will be filled by individuals receiving TANF; the annual salary expected for each person employed.

(3) For low-income individuals who become self-employed, the number of self-employed and other ownership opportunities created; specific steps to be taken including on-going management support and technical assistance provided by the grantee or a third party to develop and sustain self-employment after the businesses are in place; and expected net profit after deductions of business expenses;

**Note:** OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

(l) Financial Plan: The financial plan demonstrates the economic supports underpinning the project. Its shows the project's potential and the timetable for financial self-sufficiency. The following exhibits must be submitted for the first three years of the business' operation:

(1) Profit and Loss Forecasts—quarterly for each year;

(2) Cash Flow Projections—quarterly for each year;

(3) Pro forma balance sheets—quarterly for each year;

(4) Sources and Use of Funds Statement for all funds available to the project;

(5) Brief summary discussing any further capital requirements and methods or projected methods for obtaining needed resources.

(m) Critical Risks and Assumptions: This section covers the risks faced by the project and assumptions surrounding them. This includes a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product or service market appeal, and the timing and financing of the venture.

(n) Community Benefits: This section describes other economic and non-economic benefits to the community such as development of a community's physical assets; provision of needed, but currently unsupplied, services or products to the community; or improvement in the living environment.

11. *Work Plan*—An applicant must include a detailed work plan covering the activities to be undertaken and benchmarks that demonstrate progress toward stated goals and measurable objectives.

12. *Third Party Agreements*—Applicants submitting an application for funding under this Operational Projects announcement who propose to use some or all of the requested CED funds to enter into a third party agreement in order to make an equity investment, such as the purchase of stock or a loan to an organization or business entity (including a wholly-owned subsidiary), are required to submit the signed Third Party Agreement in the application, along with the business plan, for approval by OCS.

It should be noted that the portion of the grant that will be used to fund project activities related to a third party agreement will not be released (in any instances) until the agreement has been approved by OCS.

All third party agreements must include written commitments as follows: From third party (as appropriate): (1) Low-income individuals will fill a minimum of 60% of the jobs to be created from project activities as a result of the injection of grant funds. (2) The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility. (3) If the grantee's equity investment equals 25% or more of the business' assets, the grantee will have representation on the board of directors. (4) Reports will be made to the grantee regarding the use of grant funds on a quarterly basis or more frequently, if necessary. (5) Procedures will be developed to assure that there are no duplicate counts of jobs created. (6) That the third party will maintain documentation related to the grant objectives as specified in the agreement and will provide the grantee and HHS access to that documentation. From the grantee: (1) Detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals. (2) How the grantee will provide oversight of the grant-supported activities of the third party for the life of the agreement. Detailed information must be provided

on how the grant funds will be used by the third party by submitting a Sources and Uses of Funds Statement.

A third party agreement covering an equity investment must contain, at a minimum, the following: (1) Purpose(s) for which the equity investment is being made. (2) The type of equity transaction (*e.g.* stock purchase). (3) Cost per share and basis on which the cost per share is derived. (4) Number of shares being purchased. (5) Percentage of CDC ownership in the business. (6) Term of duration of the agreement. (7) Number of seats on the board, if applicable. (8) Signatures of the authorized officials of the grantee and third party organization.

A third party agreement covering a loan transaction must contain, at a minimum, the following information: (1) Purpose(s) for which the loan is being made. (2) Interest rates and other fees. (3) Terms of the loan. (4) Repayment schedules. (5) Collateral security. (6) Default and collection procedures. (7) Signatures of the authorized officials of the lender and borrower.

All third party agreements must be accompanied by a signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR part 74 and financial statements for the third party organization for the prior three years. If such statements are not available because the organization is a newly formed entity, the application must include a statement to this effect. The grantee is responsible for ensuring that grant funds expended by it and the third party are expended in compliance with Federal regulations of 45 CFR part 74 and OMB Circular A–122.

13. *Evaluation Plan*—Applications must include provision for an independent, methodologically sound evaluation of the effectiveness of the activities carried out with the grant and their efficacy in creating new jobs and business ownership opportunities. There must be a well-defined process evaluation, and an outcome evaluation whose design will permit tracking of project participants throughout the proposed project period. The evaluation must be conducted by an independent evaluator, *i.e.*, a person with recognized evaluation skills who is organizationally distinct from, and not under the control of, the applicant. It is important that each successful applicant have a third-party evaluator selected, and implement their role at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the design of the program, in order to assure that data necessary for the evaluation will be collected and available.

Application Format

Applicants should submit one signed original and two additional copies of the same application document.

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Do not include organizational brochures or other promotional materials, slides, films, clips, *etc.*

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives, business and work plans must not exceed 60 pages. The page limitation does not include Standard Forms and Assurances, Certifications, Disclosures, appendices and any supplemental documents as required in this announcement.

Applicants are cautioned that applications exceeding the page limitation specified will be considered ''non-responsive'' and be returned to the applicant without further review.

Certifications, Assurances and Disclosures Required for Non-Construction Programs

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 to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with all Federal statutes relating to nondiscrimination. Applicants provide certification by signing the SF424 and need not mail back the certification with the application.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. Applicants provide certification by signing the SF424 and need not mail back the certification with the application.

*IV.3. Submission Date and Times*

The closing time and date for receipt of applications is 4:30 p.m. eastern standard time (e.s.t.) on July 12, 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 U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209. 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., e.s.t., at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Community Services Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note: ''Attention: Barbara Ziegler-Johnson''. Applicants are responsible express/overnight mail services delivery.

*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 |
|---|---|---|---|
| Table of Contents | A numbered list of key parts of the application. | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |
| Project Summary/Abstract. | Very brief narrative that identified the type of project, target population and major elements of the proposed project. | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |
| Completed Standard Form 424. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Completed Standard Form 424A. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Completed Standard Form 424B. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Narrative Budget Justification. | As described above | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |
| Certification regarding lobbying. | As described above and per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Certification regarding environmental tobacco smoke. | As described above and per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Private, Nonprofit Community Development Corporation Status. | As described above | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |

Additional Forms

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *www.acf.hhs.gov/programs/ofs/forms.htm*.

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per Required Form | *http://www.acf.hhs.gov/programs/ofs/form.htm* | By application due date. |

*IV.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, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-six jurisdictions need take no 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.

Comments should be submitted directly to Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Washington, DC 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html*.

*IV.5. Funding Restrictions*

*Approved But Unfunded Applications:* In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

*Pre-award costs:* OCS will not allow the reimbursement of pre-award costs.

*Cost-Per-Job:* OCS will not fund projects with a cost-per-job in CED funds that exceed $10,000. An exception will be made if the project includes purchase of land or a building, or major renovation or construction of a building. In this instance, the applicant must explain the factors that raise the cost beyond $10,000. In no instance, will OCS allow for more than $15,000 cost-per-job in CED funds. Cost-per-job is calculated by dividing the number of jobs to be created into the amount of the CED grant request.

*National Historic Preservation Act:* If an applicant is proposing a project which will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the National Historic Preservation Act of 1996, as amended. If there is any question as to whether the property is listed in, or eligible for, inclusion in the National Register of Historic Places, the applicant must consult with the State Historic Preservation Officer and describe in the narrative the content of such consultation.

*Sub-Contracting or Delegating Projects:* OCS will not fund projects where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities necessary to conduct the project.

*Number of Projects in Application:* Except for the retail development initiative under the Operational Projects announcement, each application may include only one proposed project.

*Prohibited Activities:* OCS will not consider applications that propose to establish Small Business Investment Corporations or Minority Enterprise Small Business Investment Corporations.

OCS will not fund projects that are primarily education and training projects. In projects where participants must be trained, any funds proposed for training must be limited to specific job-related training to those individuals who have been selected for employment in the grant supported project. Projects involving training and placement for existing vacant positions will be disqualified from competition.

OCS will not fund projects that would result in the relocation of a business from one geographic area to another resulting in job displacement.

*IV.6. Other Submission Requirements*

*Electronic Address to Submit Applications: www.Grants.Gov.*

*Submission by Mail:* Mailed applications shall be considered as meeting an announced deadline if they are received on or before the deadline time and date at: Administration for Children and Families, Office of Community Services, Operations Center, Attention: Barbara Ziegler-Johnson, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com*, Telephone: (800) 281–9519.

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.

*Hand Delivery:* Applications hand carried by applicants, applicant couriers, other representatives of the applicant, or by overnight/express mail couriers shall be considered as meeting the announced deadline if they are received on or before the deadline date, between the hours of 8 a.m. and 4:30 p.m. e.s.t. Monday through Friday (excluding Federal holidays) at the following location: Administration for Children and Families, Office of Community Services, Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, Attention: Barbara Ziegler-Johnson, E-mail: *ocs@lcgnet.com*, Telephone: (800) 281–9519.

This address must appear on the envelope/package containing the application with the note Attention: Barbara Ziegler-Johnson. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

ACF cannot accommodate transmission of applications by fax.

*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

*V.1. Criteria*

*The Paperwork Reduction Act of 1995 (Pub. L. 104–13):* Public reporting burden 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 of information.

The project description is approved under Office of Management and Budget (OMB) Control Number 0970–0139.

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.

*Instructions: ACF Uniform Project Description (UPD)*—The following are instructions and guidelines on how to prepare the Project Summary / Abstract and the Full Project Description sections of the application. The generic UPD requirement is followed by the evaluation criterion specific to the Community Economic Development Project.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

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.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

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. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical 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, for example such terms as the ''number of people served.'' 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.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

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.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

Evaluation Criteria I: Approach (Maximum: 30 Points)

(1) The business plan is the most important document. It must be sound and feasible. The project must be able to be implemented soon after a grant award is made. The business plan meets the requirements of this program announcement and development of business and job creation will occur during project period. (0–15 points)

(2) The application includes site control. (0–5)

(3) Executed third party agreements meet the requirements set forth above. (0–5)

(4) The required financial documents are contained in the application and clearly describe proposed use of CED funds and demonstrate the project is viable. (0–5)

Evaluation Criterion II: Organizational Profiles (Maximum: 20 Points)

(1) Organizational profile. The application demonstrates the management capacity, organizational structure and successful record of accomplishment relevant to business development, commercial development, physical development, and/or financial services and that it has the ability to mobilize other financial and in-kind resources. (0–10 points)

(2) Staff skills, resources and responsibilities. The application describes in brief resume form the experience and skills of the project director who is not only well qualified, but whose professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description that indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. (0–5 points)

The application documents adequate facilities and resources (*i.e.* space and equipment) to successfully carry out the work plan. (0–3 points)

The assigned responsibilities of the staff are appropriate to the tasks identified for the project and sufficient time of senior staff will be budgeted to assure timely implementation and cost effective management of the project. (0–2 points)

Evaluation Criterion III: Results or Benefit Expected (Maximum: 15 Points)

(1) Results or Benefits Expected. Application proposes to produce permanent and measurable results including, but not limited to, employment and business ownership opportunities that reduce poverty, reduce the need for TANF assistance in the community and thus enable families to be economically self-sufficient. (0–3 points)

Application proposes a project designed to produce the above mentioned measurable results specifically in a rural community or urban neighborhood characterized by economic distress. Indicators of economic distress may include: high rate of poverty; high incidence of TANF program participation; high rates of unemployment; significant rates of children dropping out of school; high incidence of crime. (0–2 points)

(2) Community empowerment and coordination. Application documents that applicant is an active partner in either a new or on-going comprehensive community revitalization project such as: a federally-designated Empowerment Zone, Enterprise Community or Renewal Community project that has clear goals of strengthening economic and human development in target neighborhoods; a State or local-government supported comprehensive neighborhood revitalization project; or a private sector supported community revitalization project. (0–2 points)

(3) Cost-per-job. During the project period, the proposed project will create new, permanent jobs or maintain permanent jobs for low-income residents at a cost-per-job not to exceed $10,000 in OCS funds unless the project involves construction or significant renovation. (0–5 points)

(4) Career development opportunities. The application documents that the jobs to be created for low-income people have career development opportunities that will promote self-sufficiency. (0–3 points)

Evaluation Criterion IV: Objectives and Need for Assistance (Maximum: 10 points)

The application documents that the project addresses a vital need in a distressed community. ''Distressed community'' is defined as a geographic urban neighborhood or rural community with high unemployment and pervasive poverty. The application documents that both the unemployment rate and poverty level for the targeted neighborhood or community must be equal to or greater than the state or national level. (0–5 points)

The application cites the most recent available statistics from published sources, *e.g.*, the recent U.S. Census or updates, the State, county, city, election district and other information are provided in support of its contention. (0–2 points)

The application shows how the project will respond to stated need. (0–3 points)

Evaluation Criterion V: Project Evaluation (Maximum: 10 points)

Sound evaluations are essential to the Community Economic Development Program. OCS requires applicants to include in their applications a well thought through outline of an evaluation plan for their project. The outline should explain how the applicant proposes to answer the key questions about how effectively the project is being/was implemented; whether the project activities, or interventions, achieved the expected immediate outcomes, and why or why not (the process evaluation); and whether and to what extent the project achieved its stated goals, and why or why not (the outcome evaluation). Together, the process and outcome evaluations should answer the question: ''What did this program accomplish and why did it work/not work?''

Applicants are not being asked to submit a complete and final evaluation plan as part of their application; but they must include:

(1) A well thought through outline of an evaluation plan that identifies the principal cause-and-effect relationships to be tested, and that demonstrates the applicant's understanding of the role and purpose of both process and outcome evaluations. (0–2 points)

(2) A reporting format based on the grantee's demonstration of its activities (interventions) and their effectiveness, to be included in the grantee's semi-annual program progress report, which will provide OCS with insights and lessons learned, as they become evident, concerning the various aspects of the work plan, such as recruitment, training, support, public-private partnerships, and coordination with other community resources, as they may by relevant to the proposed project. (0–2 points)

(3) The identity and qualifications of the proposed third-party evaluator, of if not selected, the qualifications which will be sought in choosing an evaluator, which must include successful experience in evaluating community development programs, and the planning and/or evaluation of programs designed to foster self-sufficiency in low-income populations. (0–2 points)

(4) A commitment to the selection of a third-party evaluator approved by OCS, and to completion of a final evaluation design and plan, in collaboration with the approved evaluator and the OCS Evaluation Technical Assistance Contractor during the six-month start-up period of the project, if funded. (0–2 points)

Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework of the type recommended earlier identifies the key project assumptions about the target populations and their needs, as well as the hypotheses, or expected cause-effect relationships to be tested in the project; and the proposed project activities, or interventions, that will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency. It also identifies in advance the most important process and outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization, and the community. Finally, as noted above, the outline should provide from prompt reporting, concurrently with the semi-annual program progress reports, of lessons learned during the course of the project, so that they maybe shared without waiting for the final evaluation report.

(5) For all these reasons, it is important that each successful applicant have a third-party evaluator selected and performing at the very latest by the time the work program of the project is

begun, and if possible before that time so that he or she can participate in the final design of the program, and in order to assure that data necessary for the evaluation will be collected and available. Plans for selecting an evaluator should be included in the application narrative. A third-party evaluator must have knowledge about, and have experience in, conducting process and outcome evaluations in the job creation field, and have a thorough understanding of the range and complexity of the problems faced by the target population. (0–2 points)

The competitive procurement regulations (45 CFR, part 74, §§74.40–74.48, especially §74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than three pages for this Element, plus the resume or position description for the evaluator, which should be included in an appendix.

Evaluation Criterion VI: Public-Private Partnerships (Maximum: 10 points)

(1) Mobilization of resources:

The application documents it has mobilized from public and/or private sources the proposed balance of non-OCS funding required to fully implement the project. Lesser contributions will be given consideration based upon the value documented. (0–5 points)

**Note 1:** Cash resources such as cash or loans contributed from all project sources (except for those contributed directly by the applicant) are documented by letters of commitment from third parties making the contribution.

**Note 2:** The value of in-kind contributions for personal property is documented by an inventory valuation for equipment and a certified appraisal for real property. Also, a copy of a deed or other legal document is required for real property.

**Note 3:** Anticipated or projected program income such as gross or net profits from the project or business operations will not be recognized as mobilized or contributed resources.

(2) Integration/coordination of services:

The application demonstrates a commitment to, or agreements with, local agencies responsible for administering child support enforcement, employment education, and training programs to ensure that welfare recipients, at-risk youth, displaced workers, public housing tenants, homeless and low-income individuals, and low-income custodial and non-custodial parents will be trained and placed in the newly created jobs. The application includes written agreements from the local TANF or other employment education and training offices, and child support enforcement agency indicating what actions will be taken to integrate/coordinate services that relate directly to the project for which funds are being requested. (0–2 points)

The agreements include: (1) The goals and objectives that the applicant and the TANF or other employment education and training offices and/or child support enforcement agency expect to achieve through their collaboration; (2) the specific activities/actions that will be taken to integrate/coordinate services on an on-going basis; (3) the target population that this collaboration will serve; (4) the mechanism(s) to be used in integrating/coordinating activities; (5) how those activities will be significant in relation to the goals and objectives to be achieved through the collaboration; and (6) how those activities will be significant in relation to their impact on the success of the OCS-funded project. (0–2 points)

The application provides documentation that illustrates the organizational experience is related to the employment, education and training program. (0–1 point)

Evaluation Criterion VII: Budget and Budget Justification (Maximum: 5 points)

(1) Funds requested are commensurate with the level of effort necessary to accomplish the goals and objectives of the project. (0–2 points)

(2) The application includes a detailed budget breakdown and a narrative justification for each of the budget categories in the SF–424A. The applicant presents a reasonable administrative cost. (0–2 points)

(3) The estimated cost to the government of the project also is reasonable in relation to the anticipated results. (0–1 point)

Factors:

a. The resources requested are reasonable and adequate to accomplish the project

b. Total costs are reasonable and consistent with anticipated results.

*V.2. Review and Selection Process*

*Approved But Unfunded Applications:* In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in the later competition.

Initial OCS Screening: Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the requirements listed in this announcement. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

OCS Evaluation of Applications: Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and the program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in

project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

## VI. Award Administration Information

1. Award Notices will be issued 90 days after the due date of applications. 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 Office of Community Services.

2. Administrative and National Policy Requirements—45 CFR part 74 and 45 CFR part 92.

3. Special Terms and Conditions of Awards—None.

4. Reporting Requirements. Grantees must submit an original and one copy of all reports.

Programmatic Reports: required semi-annually and a final report is due 90 days after the end of the grant period. A suggested format for the program report will be sent to all grantees after the awards are made.

Financial Reports: required semi-annually and a final report is due 90 days after the end of the grant period. Grantees must use the required Financial Standard Form (SF–269) which is located on the Internet at: *http://forms.psc.gov/forms/sf/SF–269.pdf.*

## VII. Agency Contacts

*Program Office Contact*

Debra Brown, Office of Community Services, Operations Center, Administration for Children and Families, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com,* Telephone: (800) 281–9519.

*Grants Management Office Contact*

Barbara Ziegler Johnson, Office of Community Services, Operations Center, Administration for Children and Families, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com,* Telephone: (800) 281–9519.

## VIII. Other Information

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: May 3, 2004.

**Clarence H. Carter,**

*Director, Office of Community Services.*

[FR Doc. 04–10558 Filed 5–10–04; 8:45 am]

BILLING CODE 4184–01–P

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# DEPARTMENT OF HEALTH AND HUMAN SERVICES

## Administration for Children and Families

## Program Announcement; Job Opportunities for Low-Income Individuals

*Federal Agency Name:* Administration for Children and Families, Office of Community Services.

*Funding Opportunity Title:* Job Opportunities for Low-Income Individuals (JOLI) Program.

*Announcement Type:* Initial.

*Funding Opportunity Number:* HHS–2004-ACF-OCS-EO–0018.

*CFDA Number:* 93.593.

*Due Date for Applications:* The due date for receipt of application is July 12, 2004.

## I. Funding Opportunity Description

Section 505 of the Family Support Act of 1988, Public Law 100–485, as amended, authorizes the Secretary of HHS to enter into agreements with non-profit organizations (including faith-based organizations and community development corporations) for the purpose of conducting projects designed to create employment opportunities for certain low-income individuals (42 U.S.C. 9926).

*Definitions of Terms*

The following definitions apply:

*Budget and Project Periods*—This announcement is inviting applications for budget and project periods up to seventeen (17) months.

*Community-Level Data*—Key information to be collected by each grantee that will allow for a national-level analysis of common features of JOLI projects. This consists of data on the population of the target area, including the percentage of TANF recipients and others on public assistance, and the percentage whose income fall below the poverty line; the unemployment rate; the number of new business starts and business closings; and a description of the major employers and average wage rates and employment opportunities with those employers.

*Community Development Corporation*—A private, non-profit entity, governed by a board of directors consisting of residents of the community and business and civic leaders, that has a principal purpose planning, developing, or managing low-income housing or community development projects.

*Hypothesis*—An assumption made in order to test its validity. It should assert a cause-and-effect relationship between a program intervention and its expected result. Both the intervention and result must be measured in order to confirm the hypothesis. For example, the following is a hypothesis: ''Eighty hours of classroom training in small business planning will be sufficient for participants to prepare a successful loan application.'' In this example, data would be obtained on the number of hours of training actually received by participants (the intervention), and the quality of loan applications (the result), to determine the validity of the hypothesis (that eighty hours of training is sufficient to produce the result).

*Intervention*—Any planned activity within a project that is intended to produce changes in the target population and/or the environment and that can be formally evaluated. For example, assistance in the preparation of a business plan and loan package is planned intervention.

*Job Creation*—To bring about, by activities and services funded under this program, new jobs, that is, jobs that were not in existence before the start of the project. These activities can include self-employment/micro-enterprise training, the development of new business ventures or the expansion of existing businesses.

*Non-Profit Organization*—Any organization (including a faith-based organization or a community development corporation) exempt from taxation under section 501(a) of the Internal Revenue Code of 1986 by reason of paragraph (3) or (4) of section 501(c) of such Code.

*Non-Traditional Employment for Women or Minorities*—Employment in an industry or field where women or minorities currently make up less than twenty-five percent of the work force.

*Outcome Evaluation*—An assessment of project results as measured by collected data which define the net effects of the interventions applied in the project. An outcome evaluation will produce and interpret findings related to whether the interventions produced desirable changes and their potential for

replicability. It should answer the question: Did this project work?

*Private Employers*—Third party non-profit organizations or third party for-profit businesses operating or proposing to operate in the same community as the applicant, and which are proposed or potential employers of project participants.

*Process Evaluation*—The ongoing examination of the implementation of a program. It focuses on the effectiveness and efficiency of the program's activities and interventions (for example, methods of recruiting participants, quality of training activities, or usefulness of follow-up procedures). It should answer questions such as: Who is receiving what services and are the services being delivered as planned? It is also known as formative evaluation, because it gathers information that can be used as a management tool to improve the way a program operates while the program is in progress. It should also identify problems that occurred and how they were dealt with and recommend improved means of future implementation. It should answer the question: ''How was the program carried out?'' In concert with the outcome evaluation, it should also help explain, ''Why did this program work/not work?'' and, ''What worked and what did not?''

*Program Participant/Beneficiary*—An individual eligible to receive TANF assistance under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act) and any other individual whose income level does not exceed 100 percent of the official poverty line as found in the most recent revision of the Poverty Income Guidelines published by the Department of Health and Human Services. (See Part A.)

*Project Period*—This announcement is soliciting applications for project periods of up to seventeen (17) months.

*Self-Sufficiency*—A condition where an individual or family, by reason of employment, does not need and is not eligible for public assistance.

*Third Party*—Any individual, organization, or business entity that is not the direct recipient of grant funds.

*Third Party Agreement*—A written agreement entered into by the grantee and an organization, individual or business entity (including a wholly owned subsidiary), by which the grantee makes an equity investment or a loan in support of grant purposes.

*Third Party In-Kind Contributions*—The value of non-cash contributions provided by non-Federal third parties which may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

*Program Purpose, Scope and Focus*

The purpose of the JOLI program is to create employment and business opportunities for individuals receiving Temporary Assistance for Needy Families (TANF) assistance and other low-income individuals through self-employment, micro-enterprise, new business ventures, and expansion of existing businesses through technical and financial assistance and non-traditional initiatives.

The ultimate goals of the projects to be funded under the JOLI Program are: (a) to achieve, through project activities and interventions, the creation of new employment opportunities for TANF recipients and other low-income individuals that lead to economic self-sufficiency.

Priority will be given to applicants proposing to serve those areas containing the highest percentage of individuals receiving TANF assistance under a State program, which is funded under Part A of Title IV of the Social Security Act.

While projected employment in future years may be included in the application, it is essential that the focus of the project concentrate on the creation of new full-time, permanent jobs and/or new business development opportunities for TANF recipients and other low-income individuals during the grant project period. OCS is particularly interested in receiving innovative applications that grow out of the experience and creativity of applicants and the needs of their clientele and communities.

Applicants should include strategies which seek to integrate projects financed and jobs created under this program into a larger effort of broad community revitalization which will promote job and business opportunities for eligible program participants and impact the overall economic environment.

OCS will only fund projects that create new employment and/or business opportunities for eligible program participants. That is new, full-time permanent jobs through the expansion of a pre-identified business or new business development, or by providing opportunities for self-employment. In addition, projects should enhance the participants' capacities, abilities, and skills and thus contribute to their progress toward self-sufficiency.

With national welfare reform a reality, and many States implementing ''welfare-to-work'' programs, the need for well-paying jobs with career potential for TANF recipients becomes ever more pressing. In this context, the role of JOLI as a vehicle for exploring new and promising areas of employment opportunity for the poor is more important than ever.

Within the JOLI Program framework of job creation through new or expanding businesses or self-employment, OCS welcomes applications offering business or career opportunities to eligible participants in a variety of fields. For instance, these might include day care and transportation, which are not only opportunities for employment, but when not available, can be serious barriers to employment for TANF recipients; environmental justice initiatives involving activities such as toxic waste cleanup, water quality management, or Brownfield's remediation; health-related jobs such as home health aides or medical support services; and non-traditional jobs for women and minorities.

Priority Areas

**I. Priority Area**

*1. Priority Area 1. Business Expansion*

Applicants applying under Priority Area 1 must show that the proposed project will provide technical and/or financial assistance to businesses already in existence to allow the businesses to expand by helping them to obtain better marketing services, contracts, access to additional money to help the business grow, etc., resulting in the creation of new jobs.

*2. Priority Area 2. Self-Employment/ Micro-enterprise Projects*

Applicants applying under Priority Area 2 must show that the proposed project will create self-employment/ micro-enterprise opportunities for eligible participants.

Self-employment is the creation of a business that is designed to employ a single individual such as home-based day care, graphic design, medical billings, sewing and secretarial service, etc. Micro-enterprise is the creation of a business that is designed to hire more than one person, *i.e.*, a cleaning business that will create more than one job.

For this Priority Area, OCS does not consider a job to have been created until contracts and/or subcontracts have been committed at the end of the training for each of these self-employment/micro-enterprise businesses that ultimately

may be construed as jobs. All applications under this priority area must address the following items:

- The types of self-employment and/or micro-enterprise businesses that may thrive in your target area
- Need for such businesses in those communities
- Applicant's ability to help secure commitments of contracts/subcontracts at the end of the training for each of those self-employment/micro-enterprise businesses. More specifically, who is going to provide the contracts or subcontracts to the individuals that complete the entrepreneur training. The end result of the project should be jobs for low-income individuals. OCS wants to be assured that there are commitments (contracts/subcontracts) attached to entrepreneurs at the end of their training that will ultimately be construed as jobs.

*3. Priority Area 3. New Business Venture*

Applicants applying under this priority area must show the development of a new business that will train and employ 40–100 TANF and/or low-income persons to work within that business. Applicant must submit a business plan that complies with the test of economic feasibility. (Business Plan requirements are found under, 6. Other Submission Requirements).

*4. Priority Area 4. Non-Traditional Projects*

Applicants applying under this priority area must show that these projects will train and employ women and minorities in industries and trades where they make up 25 percent or less of the workforce in local industries, for example, women and minorities in highway or heavy construction, machine tool and die, plumbing, construction, and deconstruction, computer repair, lead abatement, etc.

## II. Award Information

*Funding Instrument Type:* Grants.

*Anticipated total Priority Area Funding:* $4,500,000 in FY 2004.

*Anticipated Number of Awards:* 9–10.

*Ceiling on Amount of Individual Awards:* $ 500,000 per project period.

An application that exceeds the upper value of the dollar range specified will be considered ''non-responsive'' and be returned to the applicant without further review.

*Floor of Individual Award Amounts:* N/A.

*Average projected Award Amount:* $ 500,000 per project period.

*Project Periods for Awards:* 17 months.

## III. Eligibility Information

*1. Eligible Applicants*

Nonprofits having a 501 (c) (3) or (4) status with the IRS, other than institutions of higher education Faith-based Organizations

Additional Information on Eligibility

Non-profit organizations applying for funding are required to submit proof of their non-profit status. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement singed by the parent organization that the applicant organization is a local non-profit affiliate.

Private, non-profit organizations are encouraged to submit with their applications the survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants'' at *http://www.acf.hhs.gov/programs/ofs/htm.*

*2. Cost Sharing or Matching*

None.

*3. Other*

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.*

## IV. Application and Submission Information

*1. Address To Request Application Package*

OCS Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, e-mail: *ocs@lcgnet.com*, Telephone: 1–800–281–9519.

*2. Content and Form of Application Submission*

1. Application Content

Each application must include the following components:

1. Table of Contents.
2. Abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the types of business(es) to be assisted, types of jobs, number of jobs to be created, low income persons served and the major elements of the work plan.
3. Completed Standard Form 424—that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally.
4. Standard Form 424A—Budget Information-Non-Construction Programs.
5. Narrative Budget Justification—for each object class category required under Section B, Standard Form 424A.
6. Project Narrative—A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement.
7. Applicants are encouraged to use job titles and not specific names in developing the application budget. However, the specific salary rates or amounts for staff positions identified must be included in the application budget.

2. Application Format

Submit application materials on white 8½ x 11 inch paper only. Do not use colored, oversized or folded materials.

Please do not include organizational brochures or other promotional materials, slides, films, clips, etc.

The font size may be no smaller than 12 pitch and the margins must be at least one inch on all sides.

Number all application pages sequentially throughout the package, beginning with the abstract of the proposed project as page number one.

Please present application materials either in loose-leaf notebooks or in folders with pages two-hole punched at the top center and fastened separately with a slide paper fastener.

3. Number of Pages

Each application should include one signed original and two additional copies.

4. Page Limitation

The application package including sections for the Table of Contents, Project Abstract, Project and Budget Narratives and Business Plan must not exceed 60 pages. The page limitation does not include the following attachments and appendices: Standard Forms for Assurances, Certifications, Disclosures and appendices. The page limitation also does not apply to any supplemental documents as required in this announcement.

An application that exceeds the page limitation requirement will be considered ''non-responsive'' and be returned to the applicant without further review.

5. Required Standard Forms

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 receiving an award in excess of $100,000. Applicants must sign and return the certification with their application.

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 to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

You may submit your application to us in either 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 coy 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 electronic format, nor will we penalize you if you submit an application in paper format.
- You may submit all documents electronically, including all information typically included on the SF 424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in this program announcement.
- After you electronically submit your application, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number. The Administration for Children and Families will retrieve your application from Grants.
- 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.

*3. Submission Date and Times*

The closing time and date for receipt of applications is 4:30 p.m. (Eastern Time Zone) on July 12, 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 Office of Community Services, Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209. 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 Office of Community Services, Operations Center, 1815 Fort Myer Drive, Suite 300, Arlington, Virginia 22209. This address must appear on the envelope/package containing the application with the note: ''Attention: Operations Center''. 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.

Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*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 |
|---|---|---|---|
| Table of Contents | As described above | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |
| Abstract of Proposed Project | Brief abstract that identifies the type of project, the target population and the major elements of the proposed project. | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Completed Standard Form 424 | As described above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Completed Standard Form 424A | As described above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Completed Standard Form 424B | As described above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Narrative Budget Justification | As described above | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |
| Project Narrative | A narrative that addresses issues described in the ''Application Review Information'' and the ''Review and Selection Criteria'' sections of this announcement. | Consistent with guidance in ''Application Format'' section of this announcement. | By application due date. |
| Certification regarding lobbying | As described above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| Certification regarding environmental tobacco smoke. | As described above and per required form. | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | By application due date. |
| State Human Services Administrators Responsible for TANF. | As described below | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | |
| State Child State Support Enforcement Agencies. | As described below | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | |
| Poverty Guidelines | As described below | May be found on: *http://aspe.os.dhhs.gov/poverty/poverty.html*. | |
| Applicant's Checklist | As described above | May be found on *http://www.acf.hhs.gov/programs/ofs/forms.htm*. | |

*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, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no 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., Mail Stop 6C–462, 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*

Part A. Program Objectives and Requirements

1. Program Participants/Beneficiaries

A low-income individual eligible to participate in a project conducted under this program is any individual eligible to receive TANF assistance under a State program funded under Part A of Title IV of the Social Security Act, or

any other individual whose income level does not exceed 100 percent of the official poverty line (*http://aspe.os.dhhs.gov/poverty/poverty.html.*) Within these categories, emphasis should be on individuals who are receiving TANF assistance or its equivalent under State auspices; those who are unemployed; those residing in public housing or receiving housing assistance; non-custodial parents, and those who are homeless.

Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March. Grantees will be required to apply the most recent guidelines throughout the project period. These revised guidelines also may be obtained at public libraries, Congressional offices, by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by accessing the following Web site: *http://aspe.os.dhhs.gov/poverty/poverty.html.*

No other government agency or privately defined poverty guidelines are applicable for the determination of low-income eligibility for this program.

2. National Historic Preservation Act

The use of funds for new construction or the purchase of real property is prohibited. If the applicant is proposing a project that will affect a property listed in, or is eligible for inclusion in, the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in, or is eligible for inclusion in, the National Register of Historic Places, the applicant should consult with the State Historic Preservation Officer. (See SF–424B) Failure to comply with the cited Act will result in the application being ineligible for funding consideration.

3. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the applicant is primarily to serve as a conduit for funds to organizations other than the applicant. The applicant must have a substantive role in the implementation of the project for which funding is requested. This prohibition does not bar the making of sub-grants or sub-contracting for specific services or activities needed to conduct the project.

4. Creation of Jobs and Employment Opportunities

The requirement for creation of new, full-time permanent employment opportunities (jobs) applies to all applications. OCS has determined that the creation of non-traditional job opportunities for women or minorities in industries or activities where they currently make up less than twenty-five percent of the work force meets the requirements of the JOLI legislation for the creation of new employment opportunities. OCS continues to solicit other JOLI applications that propose the creation of jobs through the expansion of existing businesses, the development of new businesses, or the creation of employment opportunities through self-employment/micro-enterprise development.

Proposed projects must show that the jobs and/or business/self employment opportunities to be created under this program will contribute to achieving self-sufficiency among the target population. The employment opportunities should provide hourly wages that exceed the minimum wage and also provide benefits such as health insurance, childcare, and career development opportunities.

5. Third Party Project Evaluation

Applications must include provision for an independent methodologically sound evaluation of the effectiveness of the activities carrier out with the grant and their efficacy in creating new jobs and business opportunities. There must be a well-defined process evaluation and an outcome evaluation whose design will permit tracking of project participants throughout the proposed project period. The evaluation must be conducted by an independent evaluator, *i.e.*, a person with recognized evaluation skills who is organizationally distinct from, and not under the control of the applicant. It is important that each successful applicant should have a third party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time, so that he or she can participate in the final design of the program in order to assure that data necessary for the evaluation will be collected and available.

6. Economic Development Strategy

In the Conference Report on the FY 1992 appropriation, Congress directed ACF to require economic development strategies as part of the application process for JOLI to ensure that highly qualified organizations participate in the program. Accordingly, applicants must include in their application an explanation of how the proposed project is integrated with and supports a larger economic development strategy within the target community. Where appropriate, applicants should document how they were involved in the preparation and planned implementation of a comprehensive community-based strategic plan, such as that required for applying for Empowerment Zone/Enterprise Community (EZ/EC) status, to achieve both economic and human development in an integrated manner, and how the proposed project supports the goals of that plan. (See Element II, Sub-Element II(b).)

7. Training and Support for Micro-Business Development

In the case of applications for creating self-employment micro-business opportunities for eligible participants, the applicant must detail how it will provide training and support services to potential entrepreneurs. The assistance to be provided to potential entrepreneurs must include, at a minimum: (a) Technical assistance in basic business planning and management concepts; (b) assistance in preparing a business plan and loan application; and, (c) access to business loans.

8. Support for Non-Custodial Parents

The Office of Community Services (OCS) and the Office of Child Support Enforcement (OCSE), both part of ACF, signed a Memorandum of Understanding (MOU) to foster and enhance partnerships between OCS grantees and local Child Support Enforcement (CSE) agencies. (See the list of CSE State Offices that can identify local CSE agencies.) In the words of the MOU:

''The purpose of these partnerships will be to develop and implement innovative strategies in States and local communities to increase the capability of low-income parents and families to fulfill their parental responsibilities. Too many low-income parents are without jobs or resources needed to support their children. A particular focus of these partnerships will be to assist low-income, non-custodial parents of children receiving TANF to achieve a degree of self-sufficiency that will enable them to provide support that will free their families of the need for such assistance.''

Accordingly, a rating factor and a review criterion have been included in this Program Announcement that will award two points to applicants who have entered into partnership

agreements with their local CSE agency to provide for referrals to their project in accordance with provisions of the OCS–OCSE MOU (*See* Element II, Sub-Element II(c)).

9. Technical Assistance to Employers

Technical assistance should be specifically addressed to the needs of the private employer in creating new jobs to be filled by eligible individuals and/or to the individuals themselves in areas such as job-readiness, literacy, and other basic skills training, job preparation, self-esteem building, etc. Financial assistance may be provided to the private employer as well as to the individual.

If the technical and/or financial assistance is to be provided to pre-identified businesses that will be expanded or franchised, written commitments from the businesses to create the planned jobs must be included with the application.

10. Applicant Experience and Cost-per-Job

In the review process, favorable consideration will be given to applicants with a demonstrated record of achievement in promoting job and enterprise opportunities for low-income people.

The Office of Community Services will not fund projects where the cost-per-job in OCS funds exceeds $10,000. Favorable consideration will be given to those applicants who show the lowest cost-per-job created for low-income individuals.

11. Loan Funds

The creation of a revolving loan fund with funds received under this program is an allowable activity. Loans made to eligible beneficiaries for business development activities must be at or below market rate. Interest accrued on revolving loan funds may be used to continue or expand the activities of the approved project.

12. Dissemination of Project Results

Applications should include a plan for disseminating the results of the project after expiration of the grant period. Applicants may budget up to $2,000 for dissemination purposes. Final project reports should include a description of dissemination activities with copies of any materials produced.

13. Evaluation Criteria

Application Elements and Review Criteria for Applications

Each application that passes the initial screening will be assessed and scored by three independent reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points, and for each application will be the average of the scores of the three reviewers.

The competitive review of applications will be based on the degree to which applicants:

a. Adhere to the requirements in PART A and incorporate each of the Elements and Sub-Elements below into their applications;

b. Describe convincingly a project that will develop new employment or business opportunities for TANF recipients and other low-income individuals that can lead to a transition from dependency to economic self-sufficiency;

c. Propose a realistic budget and time frame for the project that will support the successful implementation of the work plan to achieve the projects goals in a timely and cost effective manner; and

d. Provide for the collection and validation of relevant data to support the national evaluation.

Applications with project narratives (excluding Project Summaries, Budget Justifications and Appendices) of more than 60 letter-sized pages of 12–pitch type or equivalent on single sided will not be reviewed for funding.

Applicants should prepare and assemble their project description using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

Project descriptions are evaluated on the basis of substance, not length. Pages should be numbered and a table of contents should be included for easy reference. For each of the Project Elements or Sub-Elements below, there is at the end of the discussion a suggested number of pages to be devoted to the particular element or sub-element. These are suggestions only, but the applicant must remember that the overall Project Narrative must not be longer than 65 pages.

14. Multiple Submittals

Due to the limited amount of funds available under this program, only a single application from any one eligible applicant will be funded by OCS from FY 2004 JOLI funds pursuant to this announcement. The application must consist of one project only.

15. Re-Funding

OCS will not provide funding to a previously funded grantee to carry out the same work plan in the same target area.

*6. Other Submission Requirements*

1. Documentation of 501(c)(3) or (4) Status

2. Sufficiency of Financial Management

Because JOLI funds are Federal, all grantees must be capable of meeting the requirements of 45CFR Part 74 concerning their financial management system. To assure that the applicant has such capability, applications must include a signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the CDCs financial management system in accordance with 45 CFR 74 and financial statements for the CDC for the prior three years. If such statements are not available because the CDC is a newly formed entity, the application must include a statement to this effect. The CDC grantee is responsible for ensuring that grant funds expended by it and the third party are expended in compliance with Federal regulations of 45 CFR, Part 74 and OMB Circular A–122.

3. Cooperative Partnership Agreement With the Designated Agency Responsible for the TANF Program

A formal, cooperative relationship between the applicant and the designated State agency responsible for administering the TANF program (as provided for under Part A of Title IV of the Social Security Act) in the area served by the project is a requirement for funding. The application should include a signed, written agreement between the applicant and the designated State agency responsible for administering the TANF program. The agreement must describe the cooperative relationship, including specific activities and/or actions each of these entities propose to carry out over the course of the grant period in support of the project.

The agreement, at a minimum, must cover the specific services and activities that will be provided to the target population (see list of the State Human Services Administrators administering TANF).

Applications submitted without an agreement with the TANF agency, but which indicates that it will have a cooperative relationship with the agency responsible for administering the

Temporary Assistance For Needy Families Program (TANF) as provided for under title IV–A of the Social Security Act in the area served by the project will receive fewer points.

4. Business Plan

Applications for Priority Areas 1. Business Expansion, 2. Self-Employment/Micro-enterprise Projects, 3. New Business Venture Projects, and 4. Non-traditional Projects must submit a business plan. For incubator or micro-enterprise development projects, the business plan covers the project, not the individual business plans of beneficiaries.

The business plan is a major component that will be evaluated by an expert review panel, OCS and OGM to determine the feasibility of a business venture or other economic development project. It must address all the relevant elements as follows:

(1) Executive Summary (limit to 2 pages).

(2) Description of the business: The business as a legal entity and its general business category. Business activities must be described by Standard Industrial Codes (SIC) and jobs by occupational classification. The information is published by the U. S. Department of Commerce in the Statistical Abstract of the United States, 1998, Tables No. 679 and 680. These tables include information necessary to meet this requirement.

(3) Description of the industry, current status and prospects.

(4) Products and Services, including detailed descriptions of:

(a) Products or services to be sold;

(b) Proprietary Position of any of the product, e.g., patents, copyright, trade secrets;

(c) Features of the product or service that may give it an advantage over the competition;

(5) Market Research: This section describes the research conducted to assure that the business has a substantial market to develop and achieve sales in the face of competition. This includes researching:

(a) Customer base: Describe the actual and potential purchasers for the product or service by market segment.

(b) Market size and trends: Describe the site of the current total market for the product or service offered;

(c) Competition: Provide an assessment of the strengths and weaknesses of the competition in the current market;

(d) Estimated market share and sales: Describe the characteristics of the product or service that will make it competitive in the current market;

(6) Marketing Plan: The marketing plan details the product, pricing, distribution, and promotion strategies that will be used to achieve the estimated market share and sales projections. The marketing plan must describe what is to be done, how it will be done and who will do it. The plan addresses overall marketing, strategy, packaging, service and warranty, pricing, distribution and promotion.

(7) Design and Development Plans: If the product, process or service of the proposed venture requires any design and development before it is ready to be placed on the market, describe the nature, extent and cost of this work. The section covers items such as development status and tasks, difficulties and risks, product improvement and new products and costs.

(8) Operations Plan: An operations plan describes the kind of facilities, site location, space, capital equipment and labor force (part and/or full time and wage structure) that are required to provide the company's product or service.

(9) Management Team: This section describes the technical, managerial and business skills and experience to be brought to the project. This a description of key management personnel and their primary duties; compensation and/or ownership; the organizational structure and placement of this proposed project within the organization; the board of directors; management assistance and training needs; and supporting professional services.

(10) Overall Schedule: This section is the implementation plan which shows the timing and interrelationships of the major events or benchmarks necessary to launch the venture and realize its objectives. This includes a month-by-month schedule of activities such as product development, market planning, sales programs, production and operations.

(11) Job Creation: This section describes the job creation activities and projections expected as a result of this project. This includes a description of the strategy that will be used to identify and hire individuals who are low-income, including those on TANF. This section includes the following:

(a) The number of permanent jobs that will be created during the project period, with particular emphasis on jobs for low-income individuals.

(b) For low-income individuals, the number of jobs that have career development opportunities and a description of those jobs; the number of jobs that will be filled by individuals receiving TANF; the annual salary expected for each person employed.

(c) For low income individuals who become self-employed, the number of self-employed and other ownership opportunities created; specific steps to be taken including on-going management support and technical assistance provided by the grantee or a third party to develop and sustain self-employment after the businesses are in place; and expected net profit after deductions of business expenses;

**Note:** OCS will not recognize job equivalents nor job counts based on economic multiplier functions; jobs must be specifically identified.

(12) Financial Plan: The financial plan demonstrates the economic supports underpinning the project. It shows the project's potential and the timetable for financial self-sufficiency. The following exhibits must be submitted for the first three years of the business' operation:

(a) Profit and Loss Forecasts—quarterly for each year;

(b) Cash Flow Projections—quarterly for each year;

(c) Pro forma balance sheets—quarterly for each year;

(d) Sources and Use of Funds Statement for all funds available to the project;

(e) Brief summary discussing any further capital requirements and methods or projected methods for obtaining needed resources.

(13) Critical Risks and Assumptions: This section covers the risks faced by the project and assumptions surrounding them. This includes a description of the risks and critical assumptions relating to the industry, the venture, its personnel, the product or service market appeal, and the timing and financing of the venture.

(14) Community Benefits: This section describes other economic and non-economic benefits to the community such as development of a community's physical assets; provision of needed, but currently unsupplied, services or products to the community; or improvement in the living environment.

5. Mobilization of Resources

There is no match requirement for the Job Opportunities for Low-Income Individuals (JOLI) Program. However, OCS will give favorable consideration in the review process to applicants who mobilize cash and/or in-kind contributions for direct use in the project. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process

under the Public-Private Partnerships project element (Element II). Except in unusual situations, this documentation must be in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. Grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Element II, Sub-element II(e) and Instructions for Completing the SF–424, Section C, Non-Federal Resources).

6. Third Party Agreements

Any applicant submitting a application for funding who proposes to use some or all of the requested OCS funds to enter into a third party agreement in order to make an equity investment (such as the purchase of stock) or a loan to an organization, or business entity (including a wholly-owned subsidiary), must include in the application, along with the business plan, a copy of the signed third party agreement for approval by OCS.

All third party agreements must include written commitments as follows:

From the third party (as appropriate):

a. Jobs to be created as a result of the infusion of grant funds will be filled by low-income individuals;

b.The grantee will have the right to screen applicants for jobs to be filled by low-income individuals and to verify their eligibility;

c. If the grantee's equity investment equals 25 percent or more of the business' assets, the grantee will have representation on the board of directors;

d. Reports will be made to the grantee regarding the use of grant funds no less than on a quarterly basis;

e. A procedure will be developed to assure that there are no duplicate counts of jobs created; and

f. Detailed information should be provided on how the grant funds will be used by the third party by submitting a narrative Source and Use of Funds Statement. In addition, the agreement must provide details on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

A third party agreement covering an equity investment must contain, at a minimum, the following:

a. The type of equity transaction (*e.g.* stock purchase);

b. Purpose(s) for which the equity investment is being made;

c. Cost per share and basis for determining cost per share;

d. Number of shares being purchased;

e. Percentage of ownership of the business; and,

f. Number of seats on the board, if applicable.

A third party agreement covering a loan transaction must contain, at a minimum, the following information:

g. Purpose(s) for which the loan is being made;

h. Rates of interest and other fees;

i. Terms of loan;

j. Repayment schedules;

k. Collateral security; and

l. Default and collection procedures.

From the grantee: Detailed information on how the grantee will provide support and technical assistance to the third party in areas of recruitment and retention of low-income individuals.

All third party agreements should be accompanied by:

m. A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR 74, to protect adequately any federal funds awarded under the application;

n. Financial statements for the third party organization for the prior three years. (If not available because the organization is a newly-formed entity, include a statement to this effect); and

o. Specifications as to how the grantee will provide oversight of the third party for the life of the agreement. Also, the agreement will specify that the third party will maintain documentation related to the expenditure of grant funds loaned to or invested in the third party and grant objectives as specified in the agreement and will provide the grantee and HHS access to that documentation. If a signed third party agreement is not available when the application is submitted, the applicant must submit, as part of the narrative, as much of the above-mentioned information as possible in order to enable reviewers to evaluate the application.

**Note:** Funded applications with funds for a third party agreement will not have those funds released until the agreement has been approved by the Office of Community Services.

Applicants submitting an application must include the following:

a. A signed statement from a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system in accordance with 45 CFR 74, to protect adequately any federal funds awarded under the application;

b. Financial statements for the applicant organization for the prior three years. (If not available because the organization is a newly-formed entity, include a statement to this effect); and

## V. Application Review Information

*1. Criteria*

*Paperwork Reduction Act of 1995 (Pub. L. 104–13):* Public reporting burden for this collection is estimated to average 25 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collection of information.

The project description is approved under OMB control #0970–0139.

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.

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. In preparing your project description, all information requested through each specific evaluation criteria should be provided. Awarding offices use this and other information in making their funding recommendations. It is important, therefore, that this information be included in the application.

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

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.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the program and the number of new jobs that will be targeted to the target population. Explain how the project will reach the targeted population, how it will benefit participants including how it will support individuals to become more economically self-sufficient.

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. Account for all functions or activities identified in the application. Cite factors that might accelerate or decelerate the work and state your reasons for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technical 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, for example such terms as the ''number of people served.'' 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.

Evaluation

Provide a narrative addressing how the results of the project and the conduct of the project will be evaluated. In addressing the evaluation of results, state how you will determine the extent to which the project has achieved its stated objectives and the extent to which the accomplishment of objectives can be attributed to the project. Discuss the criteria to be used to evaluate results, and explain the methodology that will be used to determine if the needs identified and discussed are being met and if the project results and benefits are being achieved. With respect to the conduct of the project, define the procedures to be employed to determine whether the project is being conducted in a manner consistent with the work plan presented and discuss the impact of the project's various activities on the project's effectiveness.

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.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

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.

**1. Evaluation Criteria**

**Criteria for Review and Evaluation of Applications Submitted Under Job Opportunities for Low-Income Individuals (JOLI) Program**

*Evaluation Criterion I: Approach (Maximum: 30 Points)*

Element I: Project Theory, Design and Plan

OCS seeks to learn from the application why and how the project, as proposed, is expected to lead to the creation of new employment opportunities for low-income individuals, which can lead to significant improvements in individual and family self-sufficiency.

Applicants are urged to design and present their project in terms of a conceptual cause-effect framework. In the following paragraphs, a framework is described that suggests a way to present a project so as to show the logic of the cause-effect relations between project activities and project results. Applicants are not required to use the exact language described; but it is important to present the project in a way that makes clear the cause-effect relationship between what the project plans to do and the results it expects to achieve.

Sub-Element (a)—Description of Target Population, Analysis of Need and Project Assumptions (Weight of 0–10 Points in application Review)

The project design or plan should begin by identifying the underlying program assumptions. These are the beliefs on which the proposed program is built. These assumptions include: The needs of the population to be served; the current services available to that population, and where and how they fail to meet their needs; why the

proposed services or interventions are appropriate and will meet those needs; and the impact the proposed interventions will have on the project participants. In other words, the underlying assumptions of the program are the applicant's analysis of the needs and problems to be addressed by the project, and the applicant's theory of how its proposed interventions will address those needs and problems to achieve the desired result. Thus a strong application is based upon a clear description of the needs and problems to be addressed and a persuasive understanding of the causes those problems. (0–4 Points)

In this sub-element of the application, the applicant must precisely identify the target population to be served. The geographic area to be impacted should then be described briefly, citing the percentage of low-income individuals and TANF recipients, as well as the unemployment rate and other data relevant to the project design. (0–2 Points)

The application should include an analysis of the identified personal barriers to employment, job retention and greater self-sufficiency faced by the target population. (These might include such problems as illiteracy, substance abuse, family violence, lack of skills training, health or medical problems, need for child care, lack of suitable clothing or equipment or poor self-image.) (0–2 Points)

The application should also include an analysis of the identified community systemic barriers that the project will seek to overcome. These might include lack of jobs (high unemployment rate); lack of public transportation; lack of markets; unavailability of financing, insurance or bonding; inadequate social services (employment service, child care, job training); high incidence of crime; inadequate health care; or environmental hazards (such as toxic dumpsites or leaking underground tanks). (0–2 Points)

Applicants should be sure not to overlook the personal and family services and support that might be needed by project participants after they are on the job which will enhance job retention and advancement.

If the jobs to be created by the proposed project are themselves designed to fill one or more of the needs, or remove one of more of the barriers so identified, this fact should be highlighted in the discussion, *e.g.*, jobs in child care, health care or transportation.

It is suggested that applicants use no more than 4 pages for this sub-element.

Sub-Element (b)—Project Strategy and Design: Interventions, Outcomes and Goals (Weight of 0–10 Points in Application Review)

The work plan must describe the proposed project activities, or interventions, and explain how they are expected to result in outcomes that will meet the needs of the program participants and assist them to overcome the identified personal and systemic barriers to employment, job retention and self-sufficiency. In other words, what will the project staff do with the resources provided to the project and how will what they do (interventions) assist in creating and sustaining employment and business opportunities for program participants in the face of the needs and problems that have been identified? (0–4 Points)

The underlying assumptions concerning client needs and the theory of how they can be effectively addressed, which are discussed above, lead in the project design to the conduct of a variety of project activities or interventions, each of which is assumed to result in immediate changes or outcomes. The immediate changes lead to intermediate outcomes; and the intermediate outcomes lead to the attainment of the final project goals.

The applicant should describe the major activities, or interventions, which are to be carried out to address the needs and problems identified in Sub-Element II(a); and should discuss the immediate changes or outcomes, which are expected to result. These are the results expected from each service or intervention immediately after it is provided. For example, a job readiness training program might be expected to result in clients having increased knowledge of how to apply for a job, improved grooming for job interviews, and improved job interview skills; or business training and training in bookkeeping and accounting might be expected to result in project participants making an informed decision about whether they are suited for entrepreneurship. (0–2 Points)

At the next level are the intermediate outcomes, which result from these immediate changes. Often an intermediate project outcome is the result of several immediate changes resulting from a number of related interventions such as training and counseling. Intermediate outcomes should be expressed in measurable changes in knowledge, attitudes, behavior, or status/condition. In the above examples, the immediate changes achieved by the job readiness program, coupled with technical assistance to an employer in the expansion of a business, could be expected to lead to intermediate outcomes of creation of new job openings and in the participant applying for a job with the company. The acquisition of business skills, coupled with the establishment of a loan fund, could be expected to result in the actual decision by the participant to go into a particular business venture or seek the alternative track of pursuing job readiness and training. (0–2 Points)

Finally, the application should describe how the achievement of these intermediate outcomes will be expected to lead to the attainment of the project goals; employment in newly created jobs, new careers in non-traditional jobs, successful business ventures, or employment in an expanded business, depending on the project design. Applicants must remember that if the major focus of the project is to be the development and start-up of a new business or the expansion of an existing business, then a business plan that follows the outline in this announcement must be submitted as an appendix to the application. (See Part A) (0–2 Points)

Applicants do not have to use the exact terminology described above, but it is important to describe the project in a way that makes clear the expected cause-and-effect relationship between what the project plans to do: The activities or interventions, the changes that are expected to result and how those changes will lead to attainment of the project goals of new employment opportunities and greater self-sufficiency. The competitive review of this sub-element will be based on the extent to which the application makes a convincing case that the activities to be undertaken will lead to the projected results.

It is suggested that applicants use no more than 4 pages for this sub-element.

Sub-Element (c)—Work Plan (Weight of 0–10 Points in Application Review)

Once the project strategy and design framework is established, the applicant should present a detailed work plan for the project. The plan should explicitly tie into the project design framework and should be feasible, *i.e.*, capable of being accomplished with the resources, staff and partners available. The plan should briefly describe the key project tasks and show the time lines and major milestones for their implementation. Critical issues or potential problems that might affect the achievement of project objectives should be explicitly addressed, with an explanation of how they would be overcome, and how the objectives will be achieved

notwithstanding any such problems. The plan should be presented in such a way that it can be correlated with the budget narrative included earlier in the application. Applicants may be able to use a simple Gantt or timeline chart to convey the work plan in minimal space. (0–5 Points)

The application contains a full and accurate description of the proposed use of the requested financial assistance. If the applicant proposes to make an equity investment or a loan to an individual, organization, or business entity (including a wholly-owned subsidiary), the application must include: A signed third party agreement; a signed statement by a Certified or Licensed Public Accountant as to the sufficiency of the third party's financial management system; and financial statements for the third party's prior three years of operation. (If newly formed and unable to provide the information regarding the prior three years of operation, a statement to that effect should be included.) If the applicant states that an agreement is not currently in place, the application must contain in the narrative as much information required for third party agreements as is available. Also, if the project proposes the development of a new or expanded business, service, physical or commercial activity, the application must address applicable elements of a business plan. Guidelines for a business plan are found under, 6. Other Submission Requirements. (0–2 Points)

Special attention should be given to assure that the financial plan element, which indicates the project's potential and timetable for financial self-sufficiency, is included. It must include for the applicant and the third party, if appropriate, the following exhibits for the first three years (on a quarterly basis) of the business' operations: Profit and Loss Forecasts, Cash Flow Projections and Pro Forma Balance Sheets. Based on these documents, the application must also contain an analysis of the financial feasibility of the project. Also, a narrative ''Source and Use of Funds'' statement for all project funding must be included. (0–3 Points)

It is suggested that applicants use no more than 3 pages for this sub-element.

*Evaluation Criterion II: Results or Benefits Expected (Maximum: 30 Points)*

Element II: Significant and Beneficial Impact

Sub-Element (a)—Quality of Jobs/ Business Opportunities (Weight of 0–10 Points in Application Review)

The proposed project is expected to produce permanent and measurable results that will reduce the incidence of poverty in the community and lead welfare recipients from welfare dependency toward economic self-sufficiency. Results are expected to be quantifiable in terms of the creation of permanent, full-time jobs; the development of business opportunities; the expansion of existing businesses; or the creation of non-traditional employment opportunities. In developing business opportunities and self-employment for TANF recipients and low-income individuals; the applicant proposes, at a minimum, to provide basic business planning and management concepts, and assistance in preparing a business plan and loan package. (0–5 Points)

The application should document that:

The business opportunities to be developed for eligible participants will contribute significantly to their progress toward self-sufficiency; and/or jobs to be created for eligible participants will contribute significantly to their progress toward self-sufficiency. For example, they should provide salaries that exceed the minimum wage, plus benefits such as health insurance, child care and career development opportunities. (0–5 Points)

It is suggested that applicants use no more than 2 pages for this sub-element.

Sub-Element (b)—Community Empowerment Consideration (Weight of 0–3 Points in Application Review)

Special consideration will be given to applicants located in areas characterized by conditions of extreme poverty and other indicators of socio-economic distress. Examples of such distress may include: A poverty rate of at least 20 percent, designation as an EZ/EC, high levels of violence, gang activity or drug use. Applicants should document that in response to these conditions, they have been involved in the preparation and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner, and they should identify how the proposed project will support the goals of that plan.

It is suggested that applicants use no more than 2 pages for this sub-element.

Sub-Element (c)—Support for Non-Custodial Parents (Weight of 0–2 Points in Application Review)

Applicants who have entered into partnership agreements with local CSE Agencies will also receive special consideration upon demonstrating they have developed and implemented innovative strategies to increase the capability of low-income parents and families, which assists them to fulfill their parental responsibilities. In addition, such partnership agreements should include referrals of identified income eligible families and non-custodial parents economically unable to provide child support to the applicant's project.

To receive the full credit of two points, applicants should include, as an Appendix to the application, a signed letter of agreement with the local CSE Agency for referral of eligible non-custodial parents to the proposed project. See listed information on the location of the local CSE Agency in your state.

It is suggested that applicants use no more than 1 page for this sub-element.

Sub-Element (d)—Cooperative Partnership Agreement with the Designated Agency Responsible for the TANF Program (Weight of 0–5 Points in Application Review)

The application should include a signed, written agreement between the applicant and the designated State agency responsible for administering the TANF Program. The agreement, at a minimum, must cover the specific services and activities that will be provided to the target population. Applications that contain such an agreement will receive the maximum five (5) points.

Applications that have not included a signed written agreement but document that the organization is in the process of securing a cooperative relationship with the agency responsible for administering the Temporary Assistance For Needy Families Program (TANF) (as provided for under Title IV–A of the Social Security Act) in the area served by the project will receive a much lesser point. (2 Points)

It is suggested that applicants use no more than 1 page for this sub-element.

Sub-Element (e)—Public/Private Partnerships and Resources (Weight of 0–5 Points in the Application Review)

The application should briefly describe any public/private partnerships, which will contribute to the implementation of the project. Where partners' contributions to the

project are a vital part of the project design and work program, the narrative should describe undertakings of the partners. A partnership agreement specifying the roles of the partners and making a clear commitment to the fulfilling of the partnership role must be included in an appendix to the application. The firm commitment of mobilized resources must be documented and submitted with the application in order to be given credit under this element. The application should meet the following criteria:

Where other resources are mobilized, the application must provide documentation that public and/or private sources of cash and/or third party-in-kind contributions will be available in the form of letters of commitment from the organization(s)/individual(s) from which resources will be received. Applications that can document dollar for dollar contributions equal to the OCS funds, and demonstrate that the partnership agreement clearly relates to the objectives of the proposed project will receive the maximum number of points for this criterion. Lesser contributions will be given consideration based upon the value documented.

**Note:** Even though there is no matching requirement for the JOLI Program, grantees will be held accountable for any match, cash or in-kind contribution proposed or pledged as part of an approved application. (See Part A—Mobilization of Resources.)

- Partners involved in the proposed project should be responsible for substantive project activities and services. Applicants should note that partnership relationships are not created via service delivery contracts.

It is suggested that applicants use no more than 4 pages for this element.

Sub-Element (f)—Cost-Per-Job (Weight of 0–5 Points in Application Review)

The applicant should document that during the project period the proposed project will create new, permanent jobs through business opportunities or non-traditional employment opportunities for low-income residents. The cost-per-job should be calculated by dividing the total amount of grant funds requested (*e.g.*, $500,000) by the number of jobs to be created (*e.g.*, 50) which would equal the cost-per-job ($10,000). In making calculations of cost-per-job, only jobs filled by low-income project participants may be counted. (See Part A, Applicant Experience and Cost-per-job.)

**Note:** The Office of Community Services will not fund projects where the cost-per-job in OCS funds exceeds $10,000. The maximum number of points will be given only to those applicants proposing cost-per-job created estimates of $10,000 or less of OCS requested funds.

It is suggested that applicants use no more than 1 page for this sub-element.

*Evaluation Criterion III: Organizational Profiles (Maximum 20 Points)*

Element III—Organizational Experience in Program Area and Staff Skills, Resources and Responsibilities

Sub-Element (a)—Agency's Experience and Commitment in Program Area (Weight of 0–10 Points in Application Review)

Applicants should cite their organization's capability and relevant experience in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project. They should also cite the organization's experience in collaborative programming and operations that involve evaluations and data collection. Applicants should identify agency executive leadership in this section and briefly describe their involvement in the proposed project and provide assurance of their commitment to its successful implementation. (0–6 Points.)

The application should include documentation that briefly summarizes two similar projects undertaken by the applicant agency and the extent to which the stated and achieved performance targets, including permanent benefits to low-income populations, have been achieved. The application should note and justify the priority that this project will have within the agency, including the facilities and resources that it has available to carry it out. (0–4 Points)

It is suggested that applicants use no more than 2 pages for this sub-element.

**Note:** The maximum number of points will be given only to those organizations with a demonstrated record of achievement in promoting job creation and enterprise opportunities for low-income people.

Sub-Element (b)—Staff Skills, Resources and Responsibilities (Weight of 0–10 Points in Application Review)

The application must identify the two or three individuals who will have the key responsibility for managing the project, coordinating services and activities for participants and partners, and for achieving performance targets. The focus should be on the qualifications, experience, capacity and commitment to the program of the executive officials of the organization and the key staff persons who will administer and implement the project. The person identified as project director should have supervisory experience, experience in finance and business, and experience with the target population. Because this is a new project, within an already-established agency, OCS expects that the key staff person(s) would be identified, if not hired, or provide an estimated hiring time line for each individual to be on board. (0–5 Points)

The application must also include a resume of the third party evaluator, if identified or hire; or the minimum qualifications and position description for the third party evaluator, who must be a person with recognized evaluation skills who is organizationally distinct from and not under the control of applicant. (See Element IV: Project Evaluation, below, for fuller discussion of evaluator qualifications.) (0–3 Points)

Actual resume of key staff and position descriptions should be included in an appendix to the application. (0–2 Points)

It is suggested that applicants use no more than 3 pages for this sub-element.

*Evaluation Criteria IV: Project Evaluation (Maximum: 15)*

Element IV: Project Evaluation (Weight of 0–15 Points in the Application Review)

Sound evaluations are essential to the JOLI Program. OCS requires each application to include a well thought through outline of an Evaluation Plan for the project. The outline should explain how the applicant proposes to answer the key questions about how effectively the project will be implemented such as (1) whether the project activities or interventions achieve the expected immediate outcomes; (2) why or why not (the process evaluation); (3) whether and to what extent the project achieved its stated goals; and (4) why or why not (the outcome evaluation). Together the process and outcome evaluations should answer the question: ''What did this program accomplish and why did it work/not work?'' (0–5 Points)

Applicants should ensure, above all, that the evaluation outline presented is consistent with their project design. A clear project framework of the type recommended earlier identifies the key project assumptions about the target population and their needs, as well as the hypotheses, or expected cause-effect relationships to be tested in the project; and the proposed project activities, or interventions, that will address those needs in ways that will lead to the achievement of the project goals of self-sufficiency. It also identifies in advance the most important process and

outcome measures that will be used to identify performance success and expected changes in individual participants, the grantee organization and the community. (0–3 Points)

Applicants are not being asked to submit a complete and final Evaluation Plan as part of their application, but they must include:

1. A well thought through Evaluation Plan outline that identifies the principal cause-and-effect relationships to be tested, and that demonstrates the applicant's understanding of the role and purpose of both process and outcome evaluations (see previous paragraph); (0–2 Points)

2. The identity and qualifications of the proposed independent third party evaluator, *i.e.*, a person or organization with recognized evaluation skills. Assurance that the third party evaluator will be organizationally distinct from and not under the control of, the applicant. The third party evaluators qualifications must include successful experience in evaluating social service delivery programs, and the planning and/or evaluation of programs designed to foster self-sufficiency in low-income populations; (0–2 Points) and

3. A commitment to the selection of a third party evaluator approved by OCS and completion of a final evaluation design and plan, in collaboration with the approved evaluator and the OCS evaluation technical assistance contractor during the six-month start-up period of the project, if funded. (0–1 Points)

Finally, as noted above, the outline should provide for prompt reporting, concurrently with the semi-annual program progress reports, of lessons learned during the course of the project, so that they may be shared without waiting for the final evaluation report. For all these reasons, it is important that each successful applicant have a third party evaluator selected and performing at the very latest by the time the work program of the project is begun, and if possible before that time so that he or she can participate in the final design of the program and assure that data necessary for the evaluation will be collected and available. Plans for selecting an evaluator should be included in the application narrative. A third party evaluator must have knowledge of and experience in conducting process and outcome evaluations in the job creation field, and have thorough understanding of the range and complexity of the problems faced by the target population. (0–2 Points)

The competitive procurement regulations (45 CFR Part 74, sections 74.40–74.48, esp. 74.43) apply to service contracts such as those for evaluators.

It is suggested that applicants use no more than 3 pages for this element, plus the resume or position description for the evaluator, which should be in an appendix.

*Evaluation Criteria V: Budget and Budget Justification (Maximum: 5 Points)*

Element V: Budget Appropriateness and Reasonableness (Weight of 0–5 Points in Application Review)

Applicants must submit a detailed budget breakdown and a budget narrative or explanatory budget information for each of the budget categories in the SF–424A. The duration of the proposed project and the funds requested in the budget must be commensurate with the level of effort necessary to accomplish the goals and objectives of the project. The estimated cost to the government of the project should be reasonable in relation to the project's duration and to the anticipated results. The applicant presents a reasonable administrative cost. (0–3 Points)

Applicants must also include a Source and Use Document showing total project cost and the document should include all mobilized resources to accomplish project purposes within the proposed time frame. (0–2 Points)

This budget narrative and Source and Use Document are not considered a part of the project narrative, and does not count as part of the 30 page limitation but rather should be included in the application following the budget forms (SF–424 and SF–424A).

Applicants should include funds in the project budget for travel by project directors and chief evaluators to attend two national evaluation workshops in Washington, D.C.

**2. Review and Selection Process**

Initial OCS Screening

Each application submitted to OCS will be screened to determine whether it was received by the closing date and time.

Applications received by the closing date and time will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

All applications must comply with the following requirements except as noted:

(a) The application must contain a signed Standard Form 424 Application for Federal Assistance, a Standard Form 424–A Budget Information and signed Standard Form 424B Assurance—Non-Construction Programs completed according to instructions provided in this Program Announcement. The forms SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. The applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6);

(b) The application must include a project narrative that meets requirements set for in this announcement.

(c) The application must contain documentation of the applicant's tax-exempt status as indicated in the ''Additional Information on Eligibility'' section of this announcement.

OCS Evaluation of Applications

Applications that pass the initial OCS screening will be reviewed and rated by a panel based on the program elements and review criteria presented in relevant sections of this program announcement.

The review criteria are designed to enable the review panel to assess the quality of a proposed project and determine the likelihood of its success. The criteria are closely related to each other and are considered as a whole in judging the overall quality of an application. The review panel awards points only to applications that are responsive to the program elements and relevant review criteria within the context of this program announcement.

The OCS Director and program staff use the reviewer scores when considering competing applications. Reviewer scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by the review panel. Because other important factors are taken into consideration, highly ranked applications are not guaranteed funding. These other considerations include, for example: the timely and proper completion by the applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy;

geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

**VI. Award Administration Information**

In cases where more applications are approved for funding than ACF can fund with money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must be placed in rank order along with other applications in the later competition.

1. *Award Notices:* 90 days after the due date of applications.

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.

2. *Administrative and National Policy Requirements:* 45 CFR part 74

*Special Terms and Conditions of Awards:* None.

3. *Reporting Requirements*

*Programmatic Reports:* Semi-annually with a final report due 90 days after the project end date.

*Financial Reports:* Semi-annually with a final report due 90 days after the project end date.

*Special Reporting Requirements:* None.

**VII. Agency Contacts**

*Program Office Contact:* Aleatha E. Slade, Office of Community Services, Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, Virginia 22209, E-mail: *ocs@lcgnet.com*, Telephone: 1–800–281–9519.

*Grants Management Office Contact:* Barbara Ziegler Johnson, Office of Grants Management, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., Aerospace Building, Washington, DC 20447–0002. E-mail: *dweeden@acf.hhs.gov.* Telephone: (202) 401–2344.

**VIII. Other Information**

Additional information about this program and its purpose can be located on the following Web site: *http://www.acf.hhs.gov/programs/ocs.*

Dated: May 3, 2004.

**Clarence H. Carter,**

*Director, Office of Community Services.*

[FR Doc. 04–10554 Filed 5–10–04; 8:45 am]

BILLING CODE 4184–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Grants and Cooperative Agreements; Notice of Availability

*Federal Agency Contact Name:* Administration for Children and Families, Children's Bureau.

*Funding Opportunity Title:* Previous Abandoned Infant Comprehensive Service Demonstration Projects.

*Announcement Type:* Competitive Grant—Initial.

*Funding Opportunity Number:* HHS–2004–ACF–ACYF–CB–0018.

*CFDA Number:* 93.551.

*Due Date for Applications:* July 12, 2004.

**I. Funding Opportunity Description**

The purpose of this funding opportunity is to provide support for the comprehensive service demonstration projects initially funded in FY 2000. Applicants should document continuing need for the project and propose ways of improving service provision to meet the needs of abandoned infants and young children or those who are at risk of abandonment and their families. Applicants should also propose methods to continue the program evaluation including proposed outcome measures and summary evaluative data on the current program. Applicants applying under this funding opportunity should be advised that this is a competitive funding process and that applications approved for funding will be given a new grant number. Further, existing award activities cannot overlap with the new grant's project period; and finally, funds from the currently existing grants cannot be expended for new grant activities. Projects supported under this funding opportunity are expected to serve as models for service provision to children and adolescents affected by HIV/AIDS. A model project funded under this initiative must:

(a) Develop and implement an evidence-based project with specific components or strategies that are based on theory, research, or evaluation data; or, replicate or test the transferability of successfully evaluated program models;

(b) Determine the effectiveness of the model and its components or strategies; and

(c) Produce materials that will enable others to replicate the model.

*Background*

The purposes of Public Law 100–505, the Abandoned Infants Act of 1988 as amended, are to establish a program of demonstration projects to prevent the abandonment in hospitals of infants and young children, particularly those who have been perinatally exposed to a dangerous drug and those with the human immunodeficiency virus (HIV) or who have been perinatally exposed to the virus; to identify and address the needs of those infants and children who are, or might be, abandoned; to develop a program of comprehensive support services for these infants and young children and their natural families (see Definitions) that include, but are not limited to, foster family care services, case management services, family support services, parenting skills, in-home support services, counseling services and group residential home services; and to recruit and train health and social services personnel, foster care families, and residential care providers to meet the needs of abandoned children and infants and children who are at risk of abandonment. The legislation also allows for the provision of a technical assistance training program to support the planning, development and operation of the service demonstration projects. The reauthorized legislation allows the Secretary to give priority to applicants located in States that have developed and implemented procedures for expedited termination of parental rights and placement for adoption of infants determined to be abandoned under State law.

*Definitions*

*Abandoned and Abandonment*—The terms ''abandoned'' and ''abandonment,'' used with respect to infants and young children, mean that the infants and young children are medically cleared for discharge from acute-care hospital settings, but remain hospitalized because of a lack of

appropriate out-of-hospital placement alternatives.

*Acquired Immune Deficiency Syndrome*—The term ''acquired immune deficiency syndrome'' includes infection with the etiologic agent for such syndrome, any condition indicating that an individual is infected with such etiologic agent, and any condition arising from such etiologic agent.

*Dangerous Drug*—The term ''dangerous drug'' means a controlled substance, as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

*Natural Family*—The term ''natural family'' shall be broadly interpreted to include natural parents, grandparents, family members, guardians, children residing in the household, and individuals residing in the household on a continuing basis who are in a care-giving situation, with respect to infants and young children covered under this Act.

Projects funded under this program must do the following things:

Projects funded under this announcement must collect descriptive data on characteristics of individuals and families served, types and nature of needs identified and met, the services provided, measures of client outcomes, child development and well-being, client satisfaction, parenting skills, parent/child interaction, cost benefit, service utilization information, and any other such information as may be required by ACYF. (For additional information on outcome measures, suggested data collection instruments, and specific data characteristics, please contact the National Abandoned Infants Assistance Resource Center's Web site *http://aia.berkeley.edu*.

Projects must also submit descriptive data on the clients served and the services provided annually to the National Abandoned Infants Assistance Resource Center. Timeframes for the submission of data on outcome measures will be negotiated within six months after grant award.

Projects must also comply with ACYF/CB requirements for a third party evaluation of the project. In order to evaluate the competence of the third-party evaluator and to assure that the evaluation methodology and design are appropriate, the third party evaluator must write the evaluation section of the application. This means that the evaluator must be selected as soon as possible after an applicant has decided to compete for a demonstration project. In selecting an evaluator, applicants are reminded that it is a regulatory requirement to encourage maximum free and open competition, using the applicant's own procurement policies and procedures. The application must indicate whether the third party evaluator was competitively selected, or whether the applicant is proposing a sole source contract for the evaluator. Sole source procurements must be fully justified in the application. For those applicants who plan to continue the services of their current third party evaluator, the applicant must include in the application a sole source justification for review, by the program office and the Office of Grants Management, ACYF.

Applications including residential care services should make that component a part of and integral to a larger system of services directed toward achieving permanency for the children. These residential services should be transitional (*i.e.*, three to six months and no longer) to a permanent placement.

Applicants should commit no less than 10% of the total approved project cost for the evaluation component. For example, a $450,000 grant award with a $50,000 match should commit no less than $50,000 annually to the evaluation effort or a total of no less than $200,000 during the entire project period.

## II. Award Information

*Funding Instrument Type:* Grant.

*Anticipated Total Priority Area Funding:* The anticipated total for all awards under this funding announcement in FY 2004 is $2.7 million.

*Anticipated Number of Awards:* It is anticipated that 3 to 6 projects will be funded.

*Ceiling on amount of individual Awards:* The maximum Federal share of the project is $450,000 in the first budget period. An application received that exceeds that amount will be considered ''non-responsive'' and be returned to the applicant without further review.

*Floor of Individual Award Amounts:* none.

*Average Anticipated Award Amount:* $450,000 per budget period.

*Project Periods for Awards:* The projects will be awarded for a period of 48 months. The initial grant award will be for a 12-month budget period. The award of continuation funding beyond each 12-month budget period will be subject to the availability of funds, satisfactory progress on the part of the grantee, and a determination that continued funding would be in the best interest of the government.

## III. Eligibility Information

### *1. Eligible Applicants*

State governments
County governments
City or township governments
State controlled institutions of higher education
Native American tribal governments (Federally recognized)
Native American tribal organizations (other than Federally recognized tribal governments)
Nonprofits having a 501(c)(3) status with the IRS, other than institutions of higher education
Non-profits that do not have 501(c)(3) status with the IRS, other than institutions of higher education
Private institutions of higher education

*Additional Information on Eligibility:* Only those Abandoned Infants Comprehensive Service Demonstration Projects that were funded in FY 2000 are eligible to apply.

Non-profit applicants must submit proof of their non-profit status and this proof must be included in their applications. Proof of non-profit status is any one of the following:

(a) A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS code.

(b) A copy of a currently valid IRS tax exemption certificate.

(c) A statement from a State taxing body, State Attorney General, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earnings accrue to any private shareholders or individuals.

(d) A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

(e) Any of the items in the subparagraphs immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

Applications that exceed the $450,000 ceiling will be considered non-responsive and will not be eligible for funding under this announcement.

### *2. Cost Sharing or Matching*

The grantee should provide at least 10 per cent of the total approved cost of the project. The total approved cost is the sum of the Federal share and the non-Federal share. Therefore, a project requesting $450,000 per budget period should include a match of at least $50,000 per budget period. Applicants

should provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

The following example shows how to calculate the 10% match amount for a $450,000 grant: $450,000 (Federal share) divided by .90 (100% − 10%) equals $500,000 (total project cost including match) minus $450,000 (federal share) equals $50,000 (required 10% match).

The non-federal share may be cash or in-kind contributions, although applicants are encouraged to meet their match requirements through cash contributions. If approved for funding, grantees will be held accountable for the commitment of non-Federal resources and failure to provide the required amount will result in a disallowance of unmatched Federal funds.

*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*.

## IV. Application and Submission Information

*1. Address To Request Application Package*

ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE., Washington, DC 20002–2132; Telephone: (866) 796–1591.

*2. Content and Form of Application Submission*

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.

*Electronic Address Where Applications Will Be Accepted:* Grants.gov.

*Address Where Hard Copy Applications Will Be Accepted:* Children's Bureau Grant Receipt Point, ACYF Operations Center, c/o The Dixon Group, Inc., 118 Q Street NE, Washington, DC 20002–2132.

Each application must contain the following items in the order listed:

1. *Application for Federal Assistance (Standard Form 424).* Follow the instructions below and those that accompany the form.

In Item 5 of Form 424, put DUNS number in ''Organizational DUNS:'' box.

In Item 5 of Form 424, include name, phone number, and, if available, e-mail and fax numbers of the contact person.

In Item 8 of Form 424, check ''New.''

In Item 10 of Form 424, clearly identify the *Catalog of Federal Domestic Assistance* (CFDA) program title and number for the program for which funds are being requested as stated in this funding opportunity announcement.

In Item 11 of Form 424, identify the single funding opportunity the application addresses.

In Item 12 of Form 424, identify the specific geographic area to be served.

In Item 14 of Form 424, identify Congressional districts of both the applicant and project.

2. *Budget Information Non-Construction Programs (Form 424A) and Budget Justification.* Follow the instructions provided and those in the Uniform Project Description. Note that Federal funds provided to States and services or other resources purchased with Federal funds may not be used to match project grants.

3. *Certifications/Assurances.* Applicants requesting financial assistance for nonconstruction 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 to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification regarding environmental tobacco smoke. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

If applicable, applicants must include a completed SPOC certification (Single Point of Contact) with the date of the SPOC contact entered in line 16, page 1 of the Form 424.

By signing the ''Signature of Authorized Representative'' on the SF 424, the applicant is providing a certification and need not mail assurances for completing the following grant and cooperative agreement requirements: Participation in any evaluation or technical assistance effort supported by ACYF; submission of all

required semi-annual and final Financial Status Reports (SF269) and Program Performance Reports in a timely manner, in hard-copy and electronic formats (preferably MS WORD and PDF) as negotiated with the Federal Project Officer; and attendance of a key staff person and evaluator from the project at an annual 3–5 day grantees' meeting (to be determined by the Children's Bureau) in Washington, DC and at a ''kick-off'' meeting following award.

The Office for Human Research Protections of the U.S. Department of Health and Human Services provides website information and policy guidance on the Federal regulations pertaining to protection of human subjects (45 CFR 46), informed consent, informed consent checklists, confidentiality of personal identification information, data collection procedures, and internal review boards: *http://ohrp.osophs.dhhs.gov/polasur.htm.*

If applicable, applicants must include a completed Form 310, Protection of Human Subjects.

In implementing their projects, grantees are expected to comply with all applicable administrative regulations regarding extent or types of costs. Applicable DHHS regulations can be found in 45 CFR part 74 or 92.

4. *Project Abstract/Summary (one page maximum).* Clearly mark this page with the applicant name as shown on item 5 of the Form 424, identify the competitive grant funding opportunity and the title of the proposed project as shown in item 11 and the service area as shown in item 12 of the Form 424. The summary description should not exceed 300 words.

Care should be taken to produce an abstract/summary that accurately and concisely reflects the proposed project. It should describe the objectives of the project, the approach to be used and the results or benefits expected.

5. *Project Description for Evaluation.* Applicants should organize their project description according to the Evaluation Criteria described in this funding opportunity announcement providing information that addresses all the components.

6. *Proof of non-profit status (if applicable).* Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. Any of the following constitutes acceptable proof of such status:

a. A reference to the applicant organization's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in the IRS Code.

b. A copy of a currently valid IRS tax exemption certificate.

c. A statement from a State taxing body, State attorney general, or other appropriate State official certifying that the applicant organization has a non-profit status and that none of the net earning accrue to any private shareholders or individuals.

d. A certified copy of the organization's certificate of incorporation or similar document that clearly establishes non-profit status.

e. Any of the items immediately above for a State or national parent organization and a statement signed by the parent organization that the applicant organization is a local non-profit affiliate.

7. *Indirect cost rate agreement.* If claiming indirect costs, provide documentation that applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

8. *Letters of agreement and memoranda of understanding.* If applicable, include a letter of commitment or Memorandum of Understanding from each partner and/or sub-contractor describing their role, detailing specific tasks to be performed, and expressing commitment to participate if the proposed project is funded.

9. Provide letters of support and commitment from faith and community-based agencies whose cooperation will be critical to your program's success.

10. For those applicants who propose to continue the services of their current third party evaluator, the applicant must include in the application a sole source justification for review by the program office, the Office of Grants Management, and ACF.

11. Provide a letter of commitment verifying the actual amount of the non-Federal share of project costs.

12. The application limit is 90 pages total including all forms and attachments. Submit one original and two copies.

To be considered for funding, each application must be submitted with the Standard Federal Forms (provided at the end of this announcement or through the electronic links provided) and following the guidance provided. The application must be signed by an individual authorized to act for the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award.

To be considered for funding, each applicant must submit one signed original and two additional copies of the application, including all forms and attachments, to the Application Receipt Point specified in the section titled *Deadline* at the beginning of the announcement. The original copy of the application must have original signatures, signed in *black* ink.

The application must be typed, double spaced, printed on only one side, with at least ½ inch margins on each side and 1 inch at the top and bottom, using standard 12 Point fonts (such as Times Roman or Courier). Pages must be numbered.

Pages over the page limit stated within this funding opportunity announcement will be removed from the application and will not be reviewed. All copies of an application must be submitted in a single package, and a separate package must be submitted for each funding opportunity. The package must be clearly labeled for the specific funding opportunity it is addressing.

Because each application will be duplicated, do not use or include separate covers, binders, clips, tabs, plastic inserts, maps, brochures, or any other items that cannot be processed easily on a photocopy machine with an automatic feed. Do not bind, clip, staple, or fasten in any way separate subsections of the application, including supporting documentation. Applicants are advised that the copies of the application submitted, not the original, will be reproduced by the Federal government for review. Each copy must be stapled securely in the upper left corner.

*Tips for Preparing a Competitive Application:* It is essential that applicants read the entire announcement package carefully before preparing an application and include all of the required application forms and attachments. The application must reflect a thorough understanding of the purpose and objectives of the Children's Bureau priority-area initiatives. Reviewers expect applicants to understand the goals of the legislation and the Children's Bureau's interest in each topic. A ''responsive application'' is one that addresses all of the evaluation criteria in ways that demonstrate this understanding. Applications that are considered to be ''unresponsive'' generally receive very low scores and are rarely funded.

The Children's Bureau's Web site (*http://www.acf.dhhs.gov/programs/cb*) provides a wide range of information and links to other relevant web sites. Before you begin preparing an application, we suggest that you learn more about the mission and programs of

the Children's Bureau by exploring the website.

*Organizing Your Application:* The specific evaluation criteria in Section V of this funding announcement will be used to review and evaluate each application. The applicant should address each of these specific evaluation criteria in the project description. It is strongly recommended that applicants organize their proposals in the same sequence and using the same headings as these criteria, so that reviewers can readily find information that directly addresses each of the specific review criteria.

*Project Evaluation Plan:* Project evaluations are very important. If you do not have the in-house capacity to conduct an objective, comprehensive evaluation of the project, then the Children's Bureau advises that you propose contracting with a third-party evaluator specializing in social science or evaluation, or a university or college, to conduct the evaluation. A skilled evaluator can assist you in designing a data collection strategy that is appropriate for the evaluation of your proposed project. Additional assistance may be found in a document titled ''Program Manager's Guide to Evaluation.'' A copy of this document can be accessed at *http://www.acf.hhs.gov/programs/core/pubs_reports/prog_mgr.html* or ordered by contacting the National Clearinghouse on Child Abuse and Neglect Information, 330 C Street, SW, Washington, DC 20447; phone (800) 394–3366; fax (703) 385–3206; e-mail nccanch@calib.com.

*Logic Model:* A logic model is a tool that presents the conceptual framework for a proposed project and explains the linkages among program elements. While there are many versions of the logic model, they generally summarize the logical connections among the needs that are the focus of the project, project goals and objectives, the target population, project inputs (resources), the proposed activities/processes/outputs directed toward the target population, the expected short- and long-term outcomes the initiative is designed to achieve, and the evaluation plan for measuring the extent to which proposed processes and outcomes actually occur. Information on the development of logic models is available on the Internet at *http://www.uwex.edu/ces/pdande/* or *http://www.extension.iastate.edu/cyfar/capbuilding/outcome/outcome_logicmdir.html.*

*Use of Human Subjects:* If your evaluation plan includes gathering data from or about clients, there are specific procedures which must be followed in order to protect their privacy and ensure the confidentiality of the information about them. Applicants planning to gather such data are asked to describe their plans regarding an Institutional Review Board (IRB) review. For more information about use of human subjects and IRB's you can visit these Web sites: *http://ohrp.osophs.dhhs.gov/irb/irb_chapter2.htm#d2* and *http://ohrp.osophs.dhhs.gov/humansubjects/guidance/ictips.htm.*

*3. Submission Dates and Times*

The closing date for submission of applications is July 12, 2004. Mailed applications received after 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 July 12, 2004, and received by ACF in time for the independent review. Applications must be mailed to the following address: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE, Washington, DC 20002–2132.

Applications hand-carried by applicants, applicant couriers, or by other representatives of the applicant 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 ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE, Washington, DC 20002–2132, between Monday and Friday (excluding Federal holidays). This address must appear on the envelope/package containing the application with the note ''ATTN: Children's Bureau.'' Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*Late applications:* Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

*Extension of deadlines:* ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

*Required Forms:*

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| 1. SF424 | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.* | See application due date. |
| 2. SF424A | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.* | See application due date. |
| 3.a. SF424B | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.* | See application due date. |
| 3.b. Certification regarding lobbying | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.* | See application due date. |
| 3.c. Disclosure of Lobbying Activities (SF–LLL). | Per required form | May be found at *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.* | See application due date. |
| 4. Project Summary/Abstract | Summary of application request. | See instructions in this funding opportunity announcement | See application due date. |
| 5. Project Description | Responsiveness to evaluation criteria. | See instructions in this funding opportunity announcement | See application due date. |
| 6. Proof of non-profit status | See above | See above | See application due date. |
| 7. Indirect cost rate agreement | See above | See above | See application due date. |
| 8. Letters of agreement & MOUs | See above | See above | See application due date. |
| 9. Letters of support | See above | See above | See application due date. |

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| 10. Sole source justification | See above | See above | See application due date. |
| 11. Non-Federal share letter | See above | See above | See application due date. |
| Total application | See above | Application limit 90 pages total including all forms and attachments. Submit one original and two copies. | See application due date. |

*Additional Forms:* Private-non-profit organizations may submit with their applications the additional survey located under ''Grant Related Documents and Forms'' titled ''Survey for Private, Non-Profit Grant Applicants.''

| What to submit | Required content | Required form or format | When to submit |
|---|---|---|---|
| Survey for Private, Non-Profit Grant Applicants. | Per required form | May be found on *http://www.acf.hhs.gov/programs/ofs/grants/form.htm.* | By application due date. |

*4. Intergovernmental Review*

State Single Point of Contact (SPOC)

This program is covered under Executive Order (E.O.) 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 2003, of the most recent SPOC list, 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: Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Palau, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington and Wyoming.

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 differentiate clearly 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, S.W., Washington, D.C. 20447.

The official list, including addresses, of the jurisdictions elected to participate in E.O. 12372 can be found on the following URL: *http://www.whitehouse.gov/omb/grants/spoc.html.*

*5. Funding Restrictions*

Grant awards will not allow reimbursement of pre-award costs. Construction is not an allowable activity or expenditure under this solicitation.

*Available Funds:* Applicants should note that grants to be awarded under this program announcement are subject to the availability of funds. The size of the actual awards will vary. In cases where more applications are approved for funding than ACF can fund with the money available, the Grants Officer shall fund applications in their order of approval until funds run out. In this case, ACF has the option of carrying over the approved applications up to a year for funding consideration in a later competition of the same program. These applications need not be reviewed and scored again if the program's evaluation criteria have not changed. However, they must then be placed in rank order along with other applications in later competitions.

*6. Other Submission Requirements*

*Submission by Mail:* An applicant must provide an original application with all attachments, signed by an authorized representative and two copies. The application must be received at the address below by 4:30 p.m. Eastern Standard Time on or before the closing date. Applications should be mailed to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau, 118 Q Street, NE, Washington, DC 20002–2132.

*For Hand Delivery:* 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. and 4:30 p.m., Monday through Friday. Applications may be delivered to: ACYF Operations, The Dixon Group, ATTN: Children's Bureau 118 Q Street, NE, Washington, DC 20002–2132. It is strongly recommended that applicants obtain documentation that the application was hand delivered on or before the closing date. Applicants are cautioned that express/overnight mail services do not always deliver as agreed.

*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

*The Paperwork Reduction Act of 1995 (Pub. L. 104–13)*

Public reporting burden for this collection of information is estimated to average 40 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.

*Instruction*

Introduction

Applicants required to submit a full project description shall prepare the project description statement in accordance with the following instructions and the specified evaluation criteria. The instructions give a broad overview of what your project description should include while the evaluation criteria expands and clarifies more program-specific information that is needed.

*1. Criteria*

*General Instruction for Preparing Full Project Description*

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.

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.

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.

The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

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.

Personnel

*Description:* Costs of employee salaries and wages.

*Justification:* Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

*Description:* Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

*Justification:* Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

*Description:* Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

*Justification:* For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

*Description:* ''Equipment'' means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary

apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in or excluded from acquisition cost in accordance with the organization's regular written accounting practices.)

*Justification:* For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

*Description:* Costs of all tangible personal property other than that included under the Equipment category.

*Justification:* Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

*Description:* Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

*Justification:* All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 403(11). Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

**Note:** Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

*Justification:* Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

*Description:* Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

*Justification:* An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgement that the applicant is accepting a lower rate than allowed.

Specific Evaluation Criteria

The following criteria will be used to review and evaluate each application. The applicant should address each criterion in the project description. The point values (summing up to 100) indicate the maximum numerical weight each criterion will be accorded in the review process.

Criterion 1. Objectives and Need for Assistance

In reviewing the objectives and need for assistance, the following factors will be considered: (20 points)

(1) The extent to which the applicant clearly demonstrates that there is a continuing need for the program (*e.g.* sharing the results of a thorough assessment of community needs and including letters of support for the proposed program from community-based agencies).

(2) The extent to which the applicant clearly describes appropriate goals (end results of an effective project) and objectives (measurable steps for reaching these goals) for the proposed project. The extent to which these goals and objectives will effectively address community needs.

(3) The extent to which the applicant demonstrates a clear understanding of the population to be served by the project, including the needs of the target population. The extent to which the proposed project responds appropriately to needs of this target population. The extent to which the estimated number of infants and families to be served by the project is reasonable and appropriate.

(4) The extent to which the geographic location to be served by the project is clearly defined and justified based on factors such as the key socioeconomic and demographic characteristics of the targeted community as they relate to women of childbearing age, the needs of women and families who are affected by substance abuse and HIV/AIDS, and the current availability of needed services that serve substance-abusing and/or AIDS/HIV-infected women and their families in the community.

(5) The extent to which the applicant describes significant results or benefits that can be expected for substance-abusing women and/or women with HIV/AIDS and their children, and community-wide results, if any.

(6) The extent to which the program results will benefit national policy and practice, and lead to additional research in this field.

(7) The extent to which the proposed project is based and builds on an outcome analysis of prior evaluation(s). The extent to which this project would improve evidence-based practices to prevent child maltreatment. The extent to which the applicant presents a concise summary of the literature that reflects an understanding of the research on best practices and promising approaches in the field.

Criterion 2. Approach

In reviewing the approach, the following factors will be considered: (50 points)

(1) The extent to which the timeline for implementing the proposed project, including major milestones and target dates, is comprehensive and reasonable. The extent to which the applicant's plan

for managing factors which could speed or hinder project implementation is feasible.

(2) The extent to which the specific services which would be provided under the proposed project are appropriate and are described in detail.

(3) The extent to which the proposed project will accomplish the provision(s) of the legislation as stated in the Background section of this announcement. The extent to which the need for short-term, transitional residential care services for small groups of infants or young children is justified (if these services are provided).

(4) The extent to which the applicant will work effectively with terminally ill parent(s), if present in the program, to make stand-by guardianship or stand-by adoption arrangements for their children to ensure the smooth transition to another caregiver and prevent a possible out-of home placement.

(5) The extent to which the project will be culturally responsive to the target population.

(6) The extent to which any revision or expansion of project goals and objectives is based on a review of the development and implementation of the previously funded Abandoned Infants Comprehensive Service Demonstration Project. The extent to which the review is based on an assessment of the effectiveness of the approaches (and revised approaches if appropriate) and intervention strategies initially proposed. The extent to which this review process includes a thorough assessment of problems in program implementation and improved strategies to address those barriers.

(7) The extent to which the proposed approach will effectively organize, make accessible and implement a comprehensive range of services for substance-abusing women and women with HIV/AIDS and their families. The extent to which the proposed range of services includes enhanced services based on prior year's experience in conducting a service program.

(8) The extent to which the logic model for this project demonstrates strong links between proposed inputs and activities and intended short-term and long-term outcomes, and shows how the achievement of these outcomes will be accurately measured.

(9) The extent to which the qualitative and quantitative data the program will collect will accurately measure progress towards the stated results or benefits. The extent to which the evaluation methods and procedures used will accurately determine the degree to which the program has achieved the stated objectives. The extent to which the applicant will comply with ACYF/CB requirements for third party evaluation and for collecting and submitting descriptive, process and outcome data as described in this announcement. The extent to which the applicant provides a sound plan for collecting this data and securing informed consent. The extent to which the plan includes appropriate procedures for an Institutional Review Board (IRB) review, if applicable.

(10) The extent to which the proposed evaluation plan would be likely to yield findings or results about effective strategies, and contribute to and promote evaluation research and evidence-based practices that could be used to guide replication or testing in other settings.

(11) The extent to which the products (if any) that would be developed during the proposed project would provide useful information on strategies utilized and the outcomes achieved that would effectively support evidence-based improvements of practices in the field. The extent to which the schedule for developing these products is reasonable, and the proposed dissemination plan is appropriate in scope and budget. The extent to which the intended audience (*e.g.*, researchers, policymakers, and practitioners) for product dissemination is appropriate to the goals of the proposed project. The extent to which the project's products would be useful to each of these audiences. The extent to which there is a sound plan for effectively disseminating information, using appropriate mechanisms and forums to convey the information and support replication by other interested agencies.

(12) The extent to which there is a sound plan for continuing this project beyond the period of Federal funding.

Criterion 3. Organizational Profiles

In reviewing the organizational profiles, the following factors will be considered: (20 points)

(1) The extent to which the applicant organization and its staff have sufficient experience in successfully providing comprehensive services to substance-abusing women and women who have HIV/AIDS and their infants and/or young children, and in collaborating effectively with community-based agencies. The extent to which the applicant's history and relationship with the targeted community will assist in the effective implementation of the proposed project. The extent to which the applicant organization's capabilities and experience relative to this project, including experience with administration, development, implementation, management, and evaluation of similar projects, will enable them to implement the proposed project effectively.

(2) If the applicant represents a consortium of partner agencies, the extent to which their background and experience with children and families impacted by substance abuse and HIV/AIDS will support the planning and implementation of the proposed project. The extent to which there are letters of commitment from each partner authorizing the applicant to apply on behalf of the consortium and agreeing to participate if the proposal is funded.

(3) The extent to which the applicant's project director and key project staff possess sufficient relevant knowledge, experience and capabilities to implement and manage a project of this size, scope and complexity effectively. The extent to which the role, responsibilities and time commitments of each proposed project staff position, including consultants, subcontractors and/or partners, are clearly defined and appropriate to the successful implementation of the proposed project. The extent to which the author of this proposal will be closely involved throughout the implementation of the proposed project.

(4) The extent to which there is a sound management plan for achieving the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines and milestones for accomplishing project tasks and ensuring quality. The extent to which the plan clearly defines the role and responsibilities of the lead agency. The extent to which the plan clearly describes the effective management and coordination of activities carried out by any partners, subcontractors and consultants (if appropriate). The extent to which there would be a mutually beneficial relationship between the proposed project and other work planned, anticipated or underway with Federal assistance by the applicant.

Criterion 4. Budget and Budget Justification (10 points)

In reviewing the budget and budget justification, the following factors will be considered: (10 points)

(1) The extent to which the costs of the proposed project are reasonable and programmatically justified, in view of the targeted population and community, the activities to be conducted and the expected results and benefits. (The size of a prior grant award is not, in and of itself, adequate justification to request the same amount under this announcement.)

(2) The extent to which the applicant's fiscal controls and accounting procedures would ensure prudent use, proper and timely disbursement and accurate accounting of funds received under this program announcement.

*2. Review and Selection Process*

When the Operations Center receives your application it will be screened to confirm that your application was received by the deadline. Federal staff will verify that you are an eligible applicant and that the application contains all the essential elements. Applications received from ineligible organizations and applications received after the deadline will be withdrawn from further consideration.

A panel of at least three reviewers (primarily experts from outside the Federal government) will use the evaluation criteria described in this announcement to evaluate each application. The reviewers will determine the strengths and weaknesses of each application, provide comments about the strengths and weaknesses and give each application a numerical score.

All applications will be reviewed and evaluated using four major criteria: (1) Objectives and need for assistance, (2) approach, (3) organizational profiles, and (4) budget and budget justification. Each criterion has been assigned a point value. The point values (summing up to 100) indicate the maximum numerical weight each criterion may be given in the review and evaluation process.

Reviewers also are evaluating the project products and materials that you propose. They will be interested in your plans for sustaining your project without Federal funds if the evaluation findings are supportive. Reviewers will be looking to see that the total budget you propose and the way you have apportioned that budget are appropriate and reasonable for the project you have described. Remember that the reviewers only have the information that you give them—it needs to be clear, complete, and concise.

The results of the competitive review are a primary factor in making funding decisions. In addition, Federal staff conducts administrative reviews of the applications and, in light of the results of the competitive review, will recommend applications for funding to the ACYF Commissioner. ACYF reserves the option of discussing applications with other funding sources when this is in the best interest of the Federal government. ACYF may also solicit and consider comments from ACF Regional Office staff in making funding decisions. ACYF may take into consideration the involvement (financial and/or programmatic) of the private sector, national, or State or community foundations; a favorable balance between Federal and non-Federal funds for the proposed project; or the potential for high benefit from low Federal investment. ACYF may elect not to fund any applicants having known management, fiscal, reporting, programmatic, or other problems which make it unlikely that they would be able to provide effective services or effectively complete the proposed activity.

With the results of the peer review and the information from Federal staff, the Commissioner of ACYF makes the final funding decisions. The Commissioner may give special consideration to applications proposing services of special interest to the Government and to achieve geographic distributions of grant awards. Applications of special interest may include, but are not limited to, applications focusing on unserved or inadequately served clients or service areas and programs addressing diverse ethnic populations.

## VI. Award Administration Information

*1. Award Notices*

*Anticipated Announcement and Award Dates:* Applications will be reviewed summer 2004. Grant awards will have a start date no later than September 30, 2004.

*Award Notices:* Successful applicants will receive a Financial Assistance Award which will set forth the amount of funds granted, the terms and conditions of the grant or cooperative agreement, the effective date of the grant, the budget period for which initial support will be given, the non-Federal share to be provided, if applicable, and the total project period for which support is contemplated. The Grants Management Office issues the award notice.

The Commissioner will notify organizations in writing when their applications will not be funded. Every effort will be made to notify all unsuccessful applicants as soon as possible after final decisions are made.

*2. Administrative and National Policy Requirements*

45 CFR part 74 and 45 CFR part 92.

*3. Reporting*

*Reporting Requirements:* Programmatic Reports and Financial Reports are required semi-annually. All required reports will be submitted in a timely manner, in recommended formats (to be provided), and the final report will also be submitted on disk or electronically using a standard word-processing program.

Within 90 days of project end date, the applicant will submit a copy of the final report, the evaluation report, and any program products to the National Clearinghouse on Child Abuse and Neglect, 330 C Street, SW., Washington, DC 20447. This is in addition to the standard requirement that the final program and evaluation report must also be submitted to the Grants Management Specialist and the Federal Project Officer.

## VII. Agency Contacts

*Program Office Contact*

Pat Campiglia, 330 C St. SW., Washington, DC 20447, 202–205–8060, *pcampiglia@acf.hhs.gov.*

*Grants Management Office Contact*

Bill Wilson, 330 C St SW., Washington, DC 20447, 202–205–8913, *wwillson@acf.hhs.gov.*

*General*

The Dixon Group, ACYF Operations Center, 118 Q Street, NE., Washington, DC 20002–2132, Telephone: (866) 796–1591.

## VIII. Other Information

Additional information about this program and its purpose can be located on the following Web sites: *http://www.acf.hhs.gov/programs/cb/.*

Dated: May 4, 2004.

**Joan E. Ohl,**

*Commissioner, Administration on Children, Youth and Families.*

[FR Doc. 04–10556 Filed 5–10–04; 8:45 am]

BILLING CODE 4184–01–P

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Obstetrics and Gynecology Devices Panel of the Medical Devices 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 the Committee*: Obstetrics and Gynecology Devices Panel of the Medical Devices 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 June 3, 2004, 8:30 a.m. to 4:30 p.m.

*Location*: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact*: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512524. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss, make recommendations, and vote on a premarket approval application for a system that ablates uterine fibroids using focused ultrasound under the guidance of magnetic resonance. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. Material will be posted on June 2, 2004.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 26, 2004. Oral presentations from the public will be scheduled between approximately 8:45 a.m. and 9:15 a.m. and between approximately 3 p.m. and 3:30 p.m. on June 3, 2004. Time allotted for each presentation may be limited. Those desiring to make formal presentations should notify the contact person before May 26, 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 AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, 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: May 3, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–10591 Filed 5–10–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Neurological Devices Panel of the Medical Devices 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*: Neurological Devices Panel of the Medical Devices 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 June 15, 2004, from 8 a.m. to 6 p.m.

*Location*: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

*Contact Person*: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512513. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss, make recommendations, and vote on premarket approval application supplement for a vagus nerve stimulation therapy system. The system is indicated for the adjunctive long-term treatment of chronic or recurrent depression for patients who are experiencing a major depressive episode that has not had an adequate response to two or more antidepressant treatments. Background information for the topic, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at *http://www.fda.gov/cdrh/panelmtg.html*. The material will be posted on June 14, 2004.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 1, 2004. Oral presentations from the public will be scheduled for approximately 90 minutes at the beginning of committee deliberations and for approximately 30 minutes near the end of committee deliberations. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 1, 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 Shirley Meeks, Conference Management Staff, at 301–594–1283, ext. 105, 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: May 3, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–10595 Filed 5–10–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### Pulmonary-Allergy Drugs 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*: Pulmonary-Allergy Drugs 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 June 10, 2004, from 8 a.m. to 5:30 p.m.

*Location*: Food and Drug Administration, Center for Drug Evaluation and Research Advisory Committee Conference Room, rm. 1066, 5630 Fishers Lane, Rockville, MD.

*Contact Person*: Shalini Jain, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery: 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: jains@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512545. Please call the Information Line for up-to-date information on this meeting.

*Agenda*: The committee will discuss the possible removal of the essential use designation of albuterol under 21 CFR 2.125.

*Procedure*: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 24, 2004. Oral presentations from the public will be scheduled between approximately 11 a.m. and 1 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 24, 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 Kimberly Littleton Topper 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: May 3, 2004.

**Peter J. Pitts,**

*Associate Commissioner for External Relations.*

[FR Doc. 04–10590 Filed 5–10–04; 8:45 am]

**BILLING CODE 4160–01–S**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 2004D–0163]**

### Guidance for Industry and Food and Drug Administration Staff; Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System; Availability

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is announcing the availability of the guidance document entitled ''Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System.'' This guidance document describes a means by which the immunomagnetic circulating cancer cell selection and enumeration system may comply with the requirement of special controls for class II devices. Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule to classify the immunomagnetic circulating cancer cell selection and enumeration system into class II (special controls). This guidance document is immediately in effect as the special control for the immunomagnetic circulating cancer cell selection and enumeration system but it remains subject to comment in accordance with the agency's good guidance practices (GGPs).

**DATES:** Submit written or electronic comments on this guidance at any time.

**ADDRESSES:** Submit written requests for single copies on a 3.5″ diskette of the guidance document entitled ''Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System'' to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments concerning this guidance to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. Identify comments with the docket number found in brackets in the heading of this document.

**FOR FURTHER INFORMATION CONTACT:** Nina Chace, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293, ext. 138.

**SUPPLEMENTARY INFORMATION:**

### I. Background

Elsewhere in this issue of the **Federal Register**, FDA is publishing a final rule classifying the immunomagnetic circulating cancer cell selection and enumeration system into class II (special controls) under section 513(f)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c(f)(2)). This guidance document will serve as the special control for the device. Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act (21 U.S.C. 360(k)) for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification. Because of the timeframes established by section 513(f)(2) of the act, FDA has determined, under § 10.115(g)(2) (21 CFR 10.115(g)(2)), that it is not feasible to allow for public participation before issuing this guidance. Therefore, FDA is issuing this guidance document as a level 1 guidance document that is immediately in effect. FDA will consider any comments that are received in response to this notice to determine whether to amend the guidance document.

### II. Significance of Guidance

This guidance is being issued consistent with FDA's GGPs (§ 10.115). The guidance represents the agency's current thinking on the

immunomagnetic circulating cancer cell selection and enumeration system. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

### III. Electronic Access

To receive ''Class II Special Controls Guidance Document: Immunomagnetic Circulating Cancer Cell Selection and Enumeration System'' by fax machine, call FDA's Center for Devices and Radiological Health (CDRH) Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt, press 1 to order a document. Enter the document number (1531) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so by using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of cleared submissions, approved applications, and manufacturers' addresses), small manufacturer's assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH Web site may be accessed at *http://www.fda.gov/cdrh*. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/cdrh/guidance.html*. Guidance documents are also available on the Division of Dockets Management Internet site at *http://www.fda.gov/ohrms/dockets*.

### IV. Paperwork Reduction Act of 1995

This guidance contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520) . The collections of information addressed in the guidance document have been approved by OMB in accordance with the PRA under the regulations governing premarket notification submissions (21 CFR part 807, subpart E, OMB control number 0910–0120). The labeling provisions addressed in the guidance have been approved by OMB under OMB control number 0910–0485.

### V. Comments

Interested persons may submit to the Division of Dockets Management (see **ADDRESSES**), written or electronic comments regarding this document. Submit a single copy of electronic comments to *http://www.fda.gov/dockets/ecomments*. Submit two paper copies of any mailed comments, except that individuals may submit paper copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 2004.

**Linda S. Kahan,**

*Deputy Director, Center for Devices and Radiological Health.*

[FR Doc. 04–10594 Filed 5–10–04; 8:45 am]

BILLING CODE 4160–01–S

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Eosinophil-Derived Neurotoxin, an Antimicrobial Protein With Ribonuclease Activity, is an Immunostimulant**

De Yang *et al.* (NCI).

U.S. Provisional Patent Application Nos. 60/466,797 and 60/466,796, filed 29 Apr 2003 (DHHS Reference Nos. E–175–2003/0–US–01 and E–191–2003/0–US–01).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

Eosinophil-derived neurotoxin (EDN) has *in vitro* anti-viral activity that is dependent on its ribonuclease activity. This invention discloses that EDN is a selective chemoattractant and activator of dendritic cells, resulting in dendritic cell migration, maturation, and a production of a wide variety of cytokines. Based on these potent chemotactic and activating effects on dendritic cells, EDN might be useful as a clinical immunoadjuvant for the promotion of immune responses to specific antigens of tumors or pathogenic organisms.

**Detection of Antigen-Specific T Cells and Novel T Cell Epitopes by Acquisition of Peptide/HLA–GFP Complexes**

Steven Jacobson, Utano Tomaru, and Yoshihisa Yamano (NINDS).

U.S. Provisional Application No. 60/457,006 filed 24 Mar 2003 (DHHS Reference No. E–084–2003/0–US–01); U.S. Provisional Application No. 60/480,083 filed 20 Jun 2003 (DHHS Reference No. E–084–2003/1–US–01); PCT Application filed 24 Mar 2004 (DHHS Reference No. E–084–2003/2–PCT–01).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

This invention relates to a method for identifying specific T cell epitopes and antigen-specific T cells through labeling with an HLA–GFP complex expressed on an antigen-presenting cell. The T cells acquired the peptide-HLA–GFP complex through T cell mediated endocytosis upon specific antigen stimulation. This basic method can be used for several purposes. First, it can be used to generate a T-cell immune response through the attachment of a reporter peptide to the antigen-presenting cell. It can also be used as a way to assay a population of cells to determine whether any T cells specific for a particular antigen are present. This might be useful in applications related to autoimmunity, infectious disease, or cancer. Third, it can be used as a therapeutic to eliminate antigen-specific T cells associated with disease, if coupled to a toxic moiety.

**Protein Kinase C Inhibitor, Related Composition, and Method of Use**

Shaomeng Wang, Peter Blumberg (NCI), Nancy Lewin (NCI).

U.S. Provisional Patent Application No. 60/451,214 filed 28 Feb 2003 (DHHS Reference No. E–073–2003/0–US–01); PCT Application No. PCT/US04/05855 filed 26 Feb 2004 (DHHS Reference No. E–073–2003/0–PCT–02).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

Protein kinase C is a critical component in cellular signaling, involved in cellular growth, differentiation, and apoptosis. It has been identified as a promising therapeutic target for cancer, diabetic retinopathy, and Alzheimer's disease, among other indications. This invention relates to lead compounds that can inhibit protein kinase C isoforms through disruption of their C1 domains. The inventors also found that these compounds possess isoform selectivity, an important feature for therapeutic specificity. Finally, although the disclosed compounds are previously known molecules, novel structures are described in the invention that have further improved specificity.

**Recombinant Immunotoxin and Use in Treating Tumors**

Ira Pastan (NCI), Masanori Onda (NCI), Nai-Kong Cheung (EM).

PCT Application No. PCT/US03/38227 filed 01 Dec 2003 (DHHS Reference No. E–051–2003/0–PCT–02).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

The current invention relates to the 8H9 monoclonal antibody (MAb), which is highly reactive with a cell surface glycoprotein expressed on human breast cancers, childhood sarcomas, and neuroblastomas but is not reactive with the cell surface of normal human tissues. This specific reactivity suggests that this antibody could be useful as a diagnostic, or as a therapeutic molecule to treat breast cancer, osteosarcoma, and neuroblastoma. The PCT application claims the 8H9 protein, 8H9 antibodies, 8H9 immunotoxins, pharmaceutical compositions, and methods of use.

More information can be found in a recent publication: M. Onda *et al.*, ''*In vitro* and *in vivo* cytotoxic activities of recombinant immunotoxin 8H9(Fv)-PE38 against breast cancer, osteosarcoma, and neuroblastoma,'' Cancer Res. 2004 Feb 15;64(4):1419–1424.

**Methods of Diagnosing Potential for Developing Hepatocellular Carcinoma or Metastasis and of Identifying Therapeutic Agents**

Xin Wei Wang *et al.* (NCI).

U.S. Provisional Application No. 60/370,895 filed 05 Apr 2002 (DHHS Reference No. E–125–2002/0–US–01); PCT Application No. PCT/US03/10783 filed 04 Apr 2003 (DHHS Reference No. E–125–2002/0–PCT–02).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

Expression of nearly 10,000 genes was analyzed in hepatocellular carcinoma (HCC) tumors, and a molecular signature was identified that targets genes that are most likely relevant to the prediction outcome of metastases, including patient survival. A specific therapeutic target protein was also identified, and antibodies against this protein prevent invasion of metastatic HCC cells in vitro. These data identify this target protein both as a diagnostic marker and a therapeutic target for metastatic HCC. In addition, by analyzing premalignant cirrhotic liver tissues from high risk liver disease patients, a molecular signature were identified that may be useful in diagnosing early onset of HCC. Some of the biomarkers have been validated with serum samples to have potentially predictive values.

This invention may be useful in diagnosing early onset of HCC and HCC metastatic tumors, evaluating risk for development of HCC and HCC metastatic tumors, and identifying HCC therapeutic targets. This invention also identifies a specific therapeutic target protein, and identifies methods of identifying antagonists to this protein, which might be useful in developing a variety of HCC therapeutics.

**p-Toluemesulfonhydrazide Derivatization for Separation and Measurement of Endogenous Estrogen Metabolites by High-Pressure Liquid Chromatography-Electrospray-Mass Spectrometry**

Xia Xu, David Waterhouse, Joseph Saavedra, Larry Keefer, Regina Ziegler (NCI).

U.S. Provisional Patent Application 60/372,848 filed 15 Apr 2002 (DHHS Reference No. E–103–2002/0–US–01); PCT Application No. PCT/US03/11562 filed 15 Apr 2003, which published as WO 03/089921 on 30 Oct 2003 (DHHS Reference No. E–103–2002/0–PCT–02).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

The current invention relates to a method for measuring endogenous estrogen levels, and this technology may be generalizable to all endogenous ketolic steroids, including estrogens, androgens, and phytoestrogens.

Specifically, the current invention is a derivatization technique that forms estrogen-p-toluenesulfonhydrazones, which can be separated and then measured using high-pressure liquid chromatography-electrospray-mass spectrometry (HPLC–ESI–MS). This method offers a number of improvements over current methods. It is more sensitive, it is faster, it is more accurate, and it requires a smaller sample size.

**Cloning and Mutational Analysis of the Hyperparathyroidism-Jaw Tumor Syndrome (HPT–JT) Gene**

John D. Carpten *et al.* (NHGRI).

U.S. Provisional Application No. 60/378,022 filed 13 May 2002 (DHHS Reference No. E–004–2002/0–US–01); PCT Application No. PCT/US03/15081 filed 13 May 2003, which published as WO 03/094860 on 20 Nov 2003 (DHHS Reference No. E–004–2002/0–PCT–02).

*Licensing Contact:* Brenda Hefti; 301/435–4632; *heftib@mail.nih.gov.*

Hyperparathyroidism is a key feature of some hereditary endocrine neoplasias and the autosomal dominant disorder HPJT, all of which are characterized by the presence of tumors in endocrine tissues. The current invention identifies a series of mutations in chromosome 1 open reading frame 28 (C10RF28)—the HPT–JT gene. Linkage analysis and physical mapping studies of clinical samples from multiple families with HPT–JT syndrome were used to identify these mutations. These genomic changes are predicted to result in truncated gene products.

This new technology might be useful for: (1) Diagnosis of HPT–JT and/or a predisposition to HPT–JT; (2) development of a treatment for HPT–JT; and (3) determination of the effectiveness of various potential HPT–JT therapies.

Additional information may be found in: J.D. Carpten *et al.*, ''*HRPT2*, encoding parafibromin, is mutated in hyperparathyroidism-jaw tumor syndrome,'' Nat. Genet. (2002 Dec) 32(4):676–80, Epub 2002 Nov 18.; J.D. Chen *et al.*, ''Hyperparathyroidism-jaw tumour syndrome,'' J. Int. Med. (2003 Jun) 253(6):634–642, doi: 10.1046/j.1365–2796.2003.01168.x; T.M. Shattuck *et al.*, ''Somatic and germ-line mutations of the *HRPT2* gene in sporadic parathyroid carcinoma,'' N. Engl. J. Med. (2003 Oct) 349(18):1722–1729; W.F. Simonds *et al.*, ''Familial isolated hyperparathyroidism is rarely caused by germline mutation in *HRPT2*, the gene for the hyperparathyroidism-jaw tumor syndrome,'' J. Clin. Endocrinol. Metab. (2004 Jan) 89(1):96–102, doi: 10.1210/jc.2003–030675; A. Villablanaca *et al.*, ''Germline and de

novo mutations in the *HRPT2* tumour suppressor gene in familial isolated hyperparathyroidism (FIHP),'' J. Med. Genet. (2004 Mar) 41(3):e32, doi: 10.1136/jmg.2003.012369.

Dated: May 4, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–10607 Filed 5–10–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Government-Owned Inventions; Availability for Licensing

**AGENCY:** National Institutes of Health, Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

**ADDRESSES:** Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

**Mouse Model With Targeted Disruption of the Neurofibromatosis Type-1 (Nf1) Gene**

Neal G. Copeland *et al.* (NCI).
DHHS Reference No. E–162–2004/0—Research Tool
*Licensing Contact:* Jesse S. Kindra; 301–435–5559; *kindraj@mail.nih.gov*.

This invention relates to a mouse model having a targeted disruption of the neurofibromatosis type–1 (NF1) gene. This mouse model is useful as a research tool in studying some forms of human neuron diseases/injuries in addition to juvenile chronic myelomonocytic leukemia (JMML).

The neurofibromatosis (NF1) gene shows significant homology to mammalian GAP and is an important regulator of the Ras signal transduction pathway. To study the function of NF1 in normal development and to develop a mouse model of NF1 disease, the inventors have used gene targeting in ES cells to generate mice carrying a null mutation at the mouse Nf1 locus. Although heterozygous mutant mice, aged up to 10 months, have not exhibited any obvious abnormalities, homozygous mutant embryos die in utero. Embryonic death is likely attributable to a severe malformation of the heart. Interestingly, mutant embryos also display hyperplasia of neural crest-derived sympathetic ganglia. These results identify new roles for NF1 in development and indicate that some of the abnormal growth phenomena observed in NF1 patients can be recapitulated in neurofibromin-deficient mice. In addition, lethally-irradiated wild type mice transplanted with fetal liver cells taken from NF1 null embryos develop a form of juvenile chronic myelomonocytic leukemia (JMML) that is very similar to what is seen in children with NF1 disease. This mouse model can be used to test various therapeutic treatments for this disease.

**Novel Antisense Oligonucleotides Targeting Folate Receptor Alpha**

Mona S. Jhaveri, Patrick C. Elwood, Koong-Nah Chung (NCI).
U.S. Patent Application No. 10/093,523 filed 11 Mar 2002, U.S. Pat. App. Pub. No. U.S. 2003/0050267 A1 (DHHS Reference No. E–321–2000/0–EIR–00).
*Licensing Contact:* Thomas P. Clouse; 301/435–4976; *clousetp@mail.nih.gov*.

Ovarian cancer is the fifth leading cause of cancer death for women in the United States. Drug resistance of ovarian tumors to chemotherapy is a common problem resulting in only 20 to 30 percent overall 5-year survival rates.

Folate is a vitamin that is required for cell survival. Some cancer cells, including ovarian carcinomas, have an abundance of a folate-binding protein termed the human alpha folate receptor (ahFR). It is believed that elevated levels of ahFR in cancer, relative to normal cells, contribute to the cellular malignant phenotype by mediating increased folate uptake or by generating positive regulatory growth signals.

This invention comprises a DNA-based therapy that selectively targets and diminishes the levels of ahFR using antisense oligonucleotides that block the transcription of the ahFR gene. Studies have shown that this invention significantly decreases proliferation of cultured cancer cells and sensitizes these cells to treatment with chemotherapeutic drugs. Further development of ahFR-targeted antisense oligonucleotides and related compounds has potential therapeutic value for a range of cancers that express increased levels of ahFR, including cancers of the ovary, cervix, uterus, and brain.

Dated: May 5, 2004.

**Steven M. Ferguson,**

*Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.*

[FR Doc. 04–10689 Filed 5–10–04; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Ovarian Cancer SPORE.

*Date:* May 18, 2004

*Time:* 8:30 a.m. to 5 p.m.

*Agenda:* To review and evaluate grant applictions.

*Place:* The Crystal City Marriott at National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202.

*Contact Person:* Olivia Preble Bartlett, PhD, Chief, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, 8th Floor, Room 8121, 6116 Executive Boulevard, Rockville, MD 20892–7405. (301) 594–2501; *op2t@nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399,

Cancer Control, National Institutes of Health, HHS.)

Dated: May 4, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10608 Filed 5–10–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the National Cancer Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

A portion of the meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4), and 552b(c)(6), as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Advisory Board.

*Closed:* June 2, 2004, 8:30 a.m. to 4:20 p.m.

*Agenda:* Program reports and presentations; Business of the Board.

*Place:* National Cancer Institute, Natcher Building, 45 Center Drive, Conference Room E1 and E2, Bethesda, MD 20892.

*Contact Person:* Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327, (301) 496–4218.

*Name of Committee:* National Cancer Advisory Board.

*Closed:* June 2, 2004, 4:20 p.m. to Recess.

*Agenda:* Review of grant applications.

*Contact Person:* Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327, (301) 496–4218.

*Name of Committee:* National Cancer Advisory Board.

*Open:* June 3, 2004, 8:30 a.m. to Adjournment.

*Agenda:* Program reports and presentations; Business of the Board.

*Contact Person:* Dr. Paulette S. Gray, Executive Secretary, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, 8th Floor, Room 8141, Bethesda, MD 20892–8327, (301) 496–4218.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Information is also available on the Institute's/Center's home page: *deainfo.nci.nih.gov/advisory/ncab.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 4, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10610 Filed 5–10–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Cancer Institute Special Emphasis Panel, Radiation Oxidative Stress.

*Date:* May 25–26, 2004.

*Time:* 6:30 p.m. to 5 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Holiday Inn Select Bethesda, 8120 Wisconsin Ave., Bethesda, MD 20814.

*Contact Person:* Sunghan Yoo, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, (301) 594–9025, *yoosu@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 4, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10611 Filed 5–10–04; 8:45 am]

**BILLING CODE 4140–01–M**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Center for Complementary and Alternative Medicine; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Center for Complementary and Alternative Medicine Special Emphasis Panel.

*Date:* June 29, 2004.

*Time:* 8 a.m. to 12 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

*Contact Person:* Jeanette M. Hosseini, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, (301) 594–9096.

*Name of Committee:* National Center for Complementary and Alternative Medicine Special Emphasis Panel, CP–15 CERC.

*Date:* July 6–8, 2004.
*Time:* 6 p.m. to 5 p.m.
*Agenda:* To review and evaluate grant applications.
*Place:* Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
*Contact Person:* Carol Pontzer, PhD, Scientific Review Administrator, National Center for Complementary and Alternative Medicine, 6707 Democracy Blvd., Bethesda, MD 20892.

Dated: May 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10686 Filed 5–10–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NICHD.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Child Health and Human Development, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NICHD.
*Date:* June 4, 2004.
*Open:* 8 a.m. to 11 a.m.
*Agenda:* To review and discuss current NICHD intramural research activities.
*Place:* National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.
*Closed:* 11 a.m. to adjournment.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* National Institutes of Health, Building 31, Conference Room 2A48, Bethesda, MD 20892.
*Contact Person:* Owen M. Rennert, MD, Scientific Director, National Institute of Child Health and Human Development, 9000 Rockville Pike, Building 31, Room 2A50, Bethesda, MD 20892, (301) 496–2133; *rennerto@mail.nih.gov*.

Information is also available on the Institute's/Center's Home page: *www.nichd.nih.gov/about/bsd/htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 4, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10609 Filed 5–10–04; 8:45 am]

BILLING CODE 4140–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Allergy and Infectious Diseases Special Emphasis Panel, In Vitro and Animal Models for Emerging Infectious Diseases and Biodefense.
*Date:* June 2–4, 2004.
*Time:* 8:30 a.m. to 6 p.m.
*Agenda:* To review and evaluate contract proposals.
*Place:* Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
*Contact Person:* Vassil St. Georgiev, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, Room 2102, 6700–B Rockledge Drive, MSC 7616, Bethesda, MD 20892, (301) 496–2550, *vg8q@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10687 Filed 5–10–04; 8:45 am]

BILLING CODE 4140–01–M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the board of Scientific Counselors, NIAID.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* Board of Scientific Counselors, NIAID, Division of Intramural Research, Board of Scientific Counselors.
*Date:* June 7–9, 2004.
*Time:* June 7, 2004, 8 a.m. to 6 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* National Institutes of Health, Building 4, 4 Center Drive, Conference Room 433, Bethesda, MD 20892.
*Time:* June 8, 2004, 8 a.m. to 5:15 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* National Institutes of Health, Building 4, 4 Center Drive, Conference Room 433, Bethesda, MD 20892.
*Time:* June 9, 2004, 8 a.m. to 12:10 p.m.
*Agenda:* To review and evaluate personal qualifications and performance, and competence of individual investigators.
*Place:* National Institutes of Health, Building 4, 4 Center Drive, Conference Room 433, Bethesda, MD 20892.
*Contact Person:* Thomas J. Kindt, PhD, Director, Division of Intramural Research,

National Institute of Allergy and Infectious Diseases, Building 10, Room 4A31, Bethesda, MD 20892, (301) 496–3006, *tk9c@nih.gov.*

In the interest of security, NIH has instituted stringent procedures for entrance into the building by non-government employees. Persons without a government I.D. will need to show a photo I.D. and sign-in at the security desk upon entering the building.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 2004.

**LaVerne Y. Stringfield,**

*Director, Office of Federal Advisory Committee Policy.*

[FR Doc. 04–10688 Filed 5–110–04; 8:45 am]

**BILLING CODE 44140–01–M**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1511–DR]**

### Federated States of Micronesia; Amendment No. 3 to Notice of a Major Disaster Declaration

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

**ACTION:** Notice.

**SUMMARY:** This notice amends the notice of a major disaster declaration for the Federated States of Micronesia (FEMA–1511–DR), dated April 10, 2004, and related determinations.

**EFFECTIVE DATE:** April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** The notice of a major disaster declaration for the Federated States of Micronesia is hereby amended to include Categories C–G under the Public Assistance Program and Hazard Mitigation in the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 10, 2004:

Yap State for Categories C–G under the Public Assistance Program and Hazard Mitigation (already designated for debris removal and emergency protective measures [Categories A and B under the Public Assistance program] including direct Federal Assistance and Individual Assistance to include the Emergency Food Assistance Program through USDA.)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050, Individual and Household Program—Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–10630 Filed 5–10–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOMELAND SECURITY

### Federal Emergency Management Agency

**[FEMA–1514–DR]**

### New Mexico; Major Disaster and Related Determinations

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

**ACTION:** Notice.

**SUMMARY:** This is a notice of the Presidential declaration of a major disaster for the State of New Mexico (FEMA–1514-DR), dated April 29, 2004, and related determinations.

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

**FOR FURTHER INFORMATION CONTACT:** Magda Ruiz, Recovery Division, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that, in a letter dated April 29, 2004, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of New Mexico, resulting from severe storms and flooding on April 2–11, 2004, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). I, therefore, declare that such a major disaster exists in the State of New Mexico.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Other Needs Assistance under Section 408 of the Stafford Act is later warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Under Secretary for Emergency Preparedness and Response, Department of Homeland Security, under Executive Order 12148, as amended, Thomas Davies, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of New Mexico to have been affected adversely by this declared major disaster: Bernalillo, Eddy, Mora, and San Miguel Counties for Public Assistance.

All counties within the State of New Mexico are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individual and Household Housing; 97.049, Individual and Household Disaster Housing Operations; 97.050 Individual and Household Program-Other Needs, 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

**Michael D. Brown,**

*Under Secretary, Emergency Preparedness and Response, Department of Homeland Security.*

[FR Doc. 04–10631 Filed 5–10–04; 8:45 am]

**BILLING CODE 9110–10–P**

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

**[Docket No. FR–4912–N–06]**

### Notice of Intent To Prepare a Draft Environmental Impact Statement for the Development of the Stillwater Business Park, City of Redding, CA

**AGENCY:** Office of the Assistant Secretary for Community Planning and Development, HUD.

**ACTION:** Notice.

**SUMMARY:** The Department of Housing and Urban Development (HUD) gives notice to the public, agencies, and Indian tribes that the City of Redding, CA, intends to prepare an Environmental Impact Statement (EIS)/ Environmental Impact Report (EIR) (EIS/EIR) for the Stillwater Business Park Project located in Redding, CA. The City of Redding, CA, acting as the lead agency will prepare the EIS/EIR acting under its authority as the responsible entity for compliance with the National Environmental Policy Act (NEPA) in accordance with 42 U.S.C. 3547(c) and HUD regulations at 24 CFR 58.4, and under its authority as lead agency in accordance with the California Environmental Quality Act (CEQA). The EIS/EIR will be a joint NEPA and CEQA document. The EIR will satisfy requirements of the CEQA (Public Resources Code 21000 *et seq.*) and State CEQA Guidelines (14 California Code of Regulations 15000 *et seq.*), which require that all state and local government agencies consider the environmental consequences of projects over which they have discretionary authority before acting on those projects. Because federal Economic Development Initiative (EDI) special project funds would be used, the proposed action is also subject to NEPA. EPA State and Tribal Assistance Grants (STAG) will also fund water and wastewater related infrastructure. EPA is acting as a cooperating agency for this process. A permit under section 404 (b)(1) of the clean water act may be necessary. This notice is given in accordance with the Council on Environmental Quality regulations at 40 CFR parts 1500–1508. All interested federal, state, and local agencies, Indian tribes, groups, and the public are invited to comment on the scope of the EIS.

**ADDRESSES:** Comments relating to the scope of the EIS are requested and will be accepted by the contact persons listed below for up to 45 days following the publication of this notice to assure full consideration. At least one scoping meeting will be held no sooner than 15 days from the publication of this notice and will be noticed in the appropriate local media. Any person or agency interested in receiving a notice and making comment on the draft EIS should contact one of the persons listed below.

**FOR FURTHER INFORMATION CONTACT:** Randy Bachman, Administrative Services Director, City of Redding, P.O. Box 496071, Redding, CA 96049–6071; telephone (530) 225–4067, Fax (530) 225–4325 or Nathan Cherpeski, Management Assistant to the City Manager, City of Redding, P.O. Box 496071, Redding, CA 96049–6071; telephone (530) 225–4519, Fax (530) 225–4324.

**SUPPLEMENTARY INFORMATION:** This notice seeks public input on issues that should be addressed in the EIS/EIR and solicits input from potentially affected agencies and interested parties regarding the scope and content of the EIS/EIR.

The proposed action is the development of a large business park capable of attracting and accommodating primary industries to the Redding Area. The City of Redding is proposing the development of the area East and Northeast of the Municipal Airport in Redding, California. The proposed action site is located on the Enterprise and Cottonwood, California 7.5-minute USGS quadrangles, Township 31 North, Range 4 West, Sections 2, 3, 10, 14, 15, 22, 23, 26, 34, and 35. The proposed location is classified a portion as industrial and a portion as park under the Redding General Plan, adopted in 2000. The City's goal in developing this proposal is to increase the activity of contributory economic sectors by constructing a business park within the City of Redding sphere of influence capable of attracting and accommodating diverse business and industrial users.

Although additional alternatives may be identified during the scoping period, the following is a list of alternatives that the City of Redding has identified for consideration:

- Alternative 1: Develop large lot business park capable of accommodating a broad range of industries near the Redding Municipal Airport. This proposal would result in an approximate 687-acre business park consisting of 383 acres of developable land for a total of 4,410,400 sq. ft. of improvements for professional offices and industrial users. The proposal includes parcels ranging from 4 acres to more than 100 acres and is intended to be flexible in the configuration of those parcels to meet the needs of potential users. About 250 acres in the northern portion will be preserved as open space to protect the vernal pool and wetland features in the area and mitigation for impacts. An extensive trail system, for pedestrians and bikes, will wind throughout the project including through the open space preserve. Part of this trail will also serve as a utility access road for a proposed 115Kv transmission line that runs through the northern open space area and then down the east side of the project area and will need to be constructed in a manner to support vehicles. This alternative involves two bridge crossings of Stillwater Creek and the construction of a backbone road, trunk sewer lines, water lines, electric transmission lines, electrical substations, and other on-site and off-site utilities. It also reserves a floating right-of-way easement for a road to the property north of the project and a fixed 110′ right-of-way easement to the east. The environmental study area consists of 1055 acres with approximately 80 acres of wetlands or jurisdictional waters, most of which would not be impacted. Implementation of this alternative would result in direct discharge of fill material into waters of the U.S. totaling more than 3 acres but less than 7 acres.
- Alternative 2: (proposed action): An onsite variation of Alternative 1 intended to reduce the intensity of impacts. The overall project is 687 acres with approximately 383 acres of developable land. The proposal includes parcels ranging from 4 acres to more than 100 acres and is intended to be flexible in the configuration of those parcels to meet the needs of potential users. The major change for this alternative is that it relocates the 115Kv transmission lines away from the open space area to the west side of the property near the proposed backbone road. This alternative also removes both the floating easement to the north and the 110′ right of way easement to the east. Traffic models show these roads are not necessary to achieve the project goals. About 250 acres in the northern portion will be preserved as open space to protect the vernal and wetland features in the area and as mitigation for impacts. The trail system, for pedestrian or bicycle use only, will remain in the open space area to provide public recreation and educational benefits. Implementation of this alternative would result in direct discharge of fill material into waters of the U.S. totaling less than 3 acres.
- Alternative 3: This offsite alternative includes the combination of separately owned parcels into a single large (approximately 395 developable acres) site Northwest of the Redding Municipal Airport. This alternative could also have direct and indirect impacts upon wetlands (including but not limited to vernal pool features) and waters of the U.S. It is anticipated that this site could provide parcels ranging from 1.5 acres to 100 acres to meet the need for flexible parcel configurations. Based on projections for professional

office and industrial users this site could provide up to 4,499,000 sq. ft. for development. The availability of this land is yet to be determined. This alternative could yield various on-site alternatives as well.

• No Project—No Action. No action would be taken. Significant portions of alternatives 1, 2, and 3 are zoned for development and these areas will likely develop over the next 20 years in some fashion absent this action.

The EIS/EIR will address the following environmental issues: Air quality, cultural resources, flood hazard, hydrology, noise, hazardous materials, biological resources, traffic, land use, erosion control, environmental justice, and secondary and cumulative impacts. Each of the action alternatives identified to date include areas designated as critical habitat for vernal pool species and some occurrences of listed vernal pool species are found within all action alternatives. Other issues or alternatives may be identified during the scoping process.

The following agencies have been or will be invited to serve as cooperating agencies: U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, National Marine Fisheries Service, and EPA.

Questions may be directed to the individuals named in this notice under the heading **FOR FURTHER INFORMATION CONTACT**.

Dated: May 3, 2004.

**Roy A. Bernardi,**

*Assistant Secretary for Community Planning and Development.*

[FR Doc. 04–10606 Filed 5–10–04; 8:45 am]

**BILLING CODE 4210–29–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### Notice of Availability, Draft Restoration Plan and Environmental Assessment

**AGENCY:** Fish and Wildlife Service, Department of the Interior.

**ACTION:** Notice of availability.

**SUMMARY:** The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI); the State of New Jersey; and the National Oceanic and Atmospheric Administration, on behalf of the Department of Commerce, announces the release for public review of the draft Restoration Plan and Environmental Assessment (RP/EA) for the *T/V Anitra* Oil Spill, of May 1996. The RP/EA describes the Trustees' proposal to restore natural resources injured as a result of the release of oil from the *T/V Anitra* to the Delaware Bay and the Atlantic Coast shorelines of New Jersey.

**DATES:** Written comments must be submitted on or before June 10, 2004.

**ADDRESSES:** Requests for copies of the RP/EA may be made to the U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D, Pleasantville, New Jersey 08232.

Written comments or materials regarding the RP/EA should be sent to the same address.

**FOR FURTHER INFORMATION CONTACT:** Timothy J. Kubiak, Environmental Contaminants Program, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D, Pleasantville, New Jersey 08232.

Interested parties may also call 609–646–9310 for further information.

**SUPPLEMENTARY INFORMATION:** The Anitra Oil Spill occurred May 10, 1996. Over 50 miles of beaches were oiled over a 2-week period, including at least some oiling of several State Wildlife Management Areas, two State Parks, and Edwin B. Forsythe National Wildlife Refuge. The oil formed tarballs which proceeded northward up the Atlantic Coast shoreline from the spill site in Delaware Bay. Over 4,000 shorebirds were oiled to some degree, including at least 51 adult piping plovers and 2 chicks.

The Trustees are to receive $1.25 million in compensation from the Responsible Party to restore resources injured as a result of the oil spill and $250,000 to compensate the Trustees for past assessment costs. The settlement proceeds will be used to compensate for loss of natural resources under trusteeship of the Department of Interior, and the State of New Jersey. In the event that the exact dollar amounts available for restoration differ from the amount set forth in the draft RP/EA, the actual restoration project amounts will be adjusted by the Trustees given the factors and considerations described in the draft RP/EA. The draft RP/EA is being released in accordance with Oil Pollution Act of 1990 (OPA) (33 U.S.C. 2701 *et seq.*), the Natural Resource Damage Assessment Regulations found at 15 CFR part 990, and the National Environmental Policy Act. It is intended to describe the Trustees' proposals to restore natural resources injured from the *T/V Anitra* spill and evaluate the impacts of each.

The RP/EA describes a number of habitat restoration and protection alternatives and discusses the environmental consequences of each. Restoration efforts which have the greatest potential to restore migratory shorebird habitats and the services those habitats provide to migratory shorebirds are preferred. Based on an evaluation of the various restoration alternatives, management and enhancement of piping plover and other migratory shorebird habitat in New Jersey and the development of a partnership to manage South American shorebird wintering grounds are being proposed.

Interested members of the public are invited to review and comment on the RP/EA. Copies of the RP/EA are available for review at the U.S. Fish and Wildlife Service's New Jersey Field Office in Pleasantville, New Jersey (927 North Main Street, Building D Pleasantville, New Jersey). Additionally, the RP/EA will be available for review at the Cape May County Library, 30 West Mechanic Street, Cape May Court House, New Jersey 08210. Written comments will be considered and addressed in the final RP/EA at the conclusion of the restoration planning process.

Comments, including names and home addresses of respondents, will be available for public review during regular business hours. Individual respondents may request confidentiality. If you wish us to withhold your name and or address from public review, or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

*Author:* The primary author of this notice is Timothy J. Kubiak, U.S. Fish and Wildlife Service, New Jersey Field Office, 927 North Main Street, Building D, Pleasantville, New Jersey 08232.

**Authority:** The authority for this action is the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.*), and implementing Natural Resource Damage Assessment Regulations found at 15 CFR part 990.

Dated: April 2, 2004.

**Marvin E. Moriarty,**

*Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Designated Authorized Official.*

[FR Doc. 04–9695 Filed 5–10–04; 8:45 am]

**BILLING CODE 4310–55–P**

## DEPARTMENT OF JUSTICE

### Executive Office for Immigration Review; AAG/A Order No. 007–2004; Privacy Act of 1974; System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Executive Office for Immigration Review (EOIR), Department of Justice, proposes to modify ''Records and Management Information System (JUSTICE/EOIR–001),'' revisions last published on July 5, 2001 (66 FR 35458), full text last published October 10, 1995 (60 FR 52694).

The modifications are based, in part, on a proposed rule, published December 30, 2003 (68 FR 75160) that would amend the regulations pertaining to appearances by attorneys and representatives before EOIR. The proposed rule would allow EOIR to collect, electronically, new information from attorneys and other Immigration practitioners as a condition of practicing before Immigration Judges and the Board of Immigration Appeals. This new information will consist of the birth date, the last four digits of the social security number, bar membership, as well as the electronic and mailing addresses, of these attorneys or representatives, for purposes of secure communications within an EOIR electronic case access and filing system.

In addition, language changes have been made to clarify and simplify certain routine uses of the information in the system. Also, the address listed for EOIR is amended to reflect that the new location of the EOIR headquarters is 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. Finally, the Appendix, EOIR–999, which previously listed EOIR field offices will be eliminated on the effective date of this notice. Instead, updated addresses for EOIR field offices may be located on the EOIR Web site at *http://www.usdoj.gov/eoir/.*

In accordance with 5 U.S.C. 552a(e)(4) and (11), the public is given a 30-day period in which to comment on the system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to conclude its review of the system. Therefore, please submit any comments by June 10, 2004. The public, OMB and the Congress are invited to submit any comments to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (Room 1400, National Place Building).

In accordance with 5 U.S.C. 552a(r) the Department has provided a report to OMB and the Congress.

Dated: May 4, 2004.

**Paul R. Corts,**

*Assistant Attorney General for Administration.*

### JUSTICE/EOIR–001

#### SYSTEM NAME:

Records and Management Information System (JUSTICE/EOIR–001).

#### SECURITY CLASSIFICATION:

Not classified.

#### SYSTEM LOCATION:

Executive Office for Immigration Review, Department of Justice, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041. The system is also located in EOIR field offices. The EOIR Web site, *http://www.usdoj.gov/eoir/,* maintains a current address listing of all EOIR field offices.

#### CATEGORY OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains case-related information pertaining to aliens and alleged aliens brought into the immigration hearing process, including certain aliens previously or subsequently admitted for lawful permanent residence. The system also includes information pertaining to attorneys and representatives practicing before Immigration Judges and the Board of Immigration Appeals.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

This system includes the name, file number, address and nationality of aliens and alleged aliens, decision memoranda, investigatory reports and materials compiled for the purpose of enforcing immigration laws, exhibits, transcripts, and other case-related papers concerning aliens, alleged aliens or lawful permanent residents brought into the administrative adjudication process. The system also includes electronic records of the names, birth dates, last four (4) digits of social security number, bar membership, and addresses, including electronic addresses, of attorneys and representatives practicing before Immigration Judges, and the Board of Immigration Appeals.

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority granted the Attorney General pursuant to 44 U.S.C. 3101 and 3103 and to fulfill the legislative mandate under 8 U.S.C. 1103, 1226 and 1252. Such authority has been delegated to EOIR by 8 CFR part 1003.

#### PURPOSE(S):

Information in this system serves as the official record of immigration proceedings. EOIR employees use the information to prepare, process and track the proceedings. The information is further used to generate statistical reports and various documents, *i.e.*, hearing calendars and administrative orders.

#### ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information may be disseminated as follows:

(A) To the Department of State; the Department of Homeland Security; the Department of Health and Human Services; federal courts; the alien or alleged alien's representative or attorney of record; and, to federal, state and local agencies. Information is disseminated to the Department of State, pursuant to 8 CFR 208.11, to allow its preparation of advisory opinions regarding applications for political asylum; to the Federal courts to enable their review of EOIR administrative decisions on appeal; and, to the representative or attorney of record to ensure fair representation. Information is disseminated to the Department of Homeland Security as one of the parties affected by EOIR decisions, and as the agency which enforces the EOIR decision on a case. Information is disseminated to the Department of Health and Human Services as the provider of benefits to qualified immigrants, as well as the custodian of some immigrants in immigration proceedings.

(B) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(C) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(D) To the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(E) Where a record either on its face or in conjunction with other information, indicates a violation or potential violation of law—criminal, civil, or regulatory in nature—the

relevant records may be referred to the appropriate federal, state, local, foreign, or tribal, law enforcement authority or other appropriate agency charged with the responsibility of investigating or prosecuting such a violation or enforcing or implementing such law.

(F) In an appropriate proceeding before a court, or administrative or adjudicative body, when the Department of Justice determines that the records are arguably relevant to the proceeding; or in an appropriate proceeding before an administrative or adjudicative body when the adjudicator holds the records to be relevant to the proceeding.

(G) Relevant information contained in this system of records may also be released to contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records.

(H) The Department of Justice may disclose relevant and necessary information to a former employee of the Department for purposes of: Responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility.

**DISCLOSURE TO CONSUMER REPORTING AGENCIES:**

Not applicable.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:**

**STORAGE:**

Records are maintained in file folders which are stored in file cabinets. A subset of the records is maintained on fixed disks or removable disk packs which are stored in file cabinets. All records are stored in secured EOIR office space.

**RETRIEVABILITY:**

Manual records are indexed by alien file number. Automated records are retrievable by a variety of identifying data elements including, but not limited to, alien file number, alien name and nationality, and attorney's or representative's name and UserId.

**SAFEGUARDS:**

Information maintained in the system is safeguarded in accordance with Department of Justice rules and procedures. Record files are maintained in file cabinets accessible only to EOIR employees. Automated information is stored on either fixed disks or removable disk packs which are stored in cabinets. Only EOIR employees in possession of specific access codes and passwords will be able to generally access automated information. In addition, attorneys or authorized representatives will be able to access information specifically related to their case through the use of a secure UserId and password. All manual and automated records and mediums are located in EOIR office space accessible only to EOIR employees and locked during off-duty hours.

**RETENTION AND DISPOSAL:**

Record files are retained for six months after the final disposition of the case, then forwarded to regional Federal Records Centers. Automated records are maintained in EOIR field office data bases for ninety days after final disposition, then transferred to the host computer at EOIR headquarters and retained in accordance with the General Record Schedule filed with the National Archives and Records Administration.

**SYSTEM MANAGER(S) AND ADDRESSES:**

General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

**NOTIFICATION PROCEDURE:**

Address all inquiries to the system manager listed above.

**RECORD ACCESS PROCEDURES:**

Portions of this system are exempt from disclosure and contest by 5 U.S.C. 522a (k)(1) and (k)(2). Make all request for access to those portions not so exempted by writing to the system manager identified above. Clearly mark the envelope and letter ''Privacy Access Requests'': provide the full name and notarized signature, or dated signature under penalty of perjury, of the individual who is the subject of the record, his/her date and place of birth, or any other identifying number or information which may assist in locating the record; and, a return address.

**CONTESTING RECORD PROCEDURES:**

Direct all requests to contest or amend information maintained to the system manager listed above. Provide the information required under ''Record Access Procedure.'' State clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information.

**RECORD SOURCE CATEGORIES:**

Department of Justice offices and employees, the Department of Homeland Security, the Department of State, the Department of Health and Human Services, and other federal, state and local agencies; and the parties to immigration proceedings, their attorneys or representatives, and their witnesses.

**EXEMPTIONS CLAIMED FOR THE SYSTEM:**

The Attorney General has exempted certain records of this system from the access provisions of the Privacy Act (5 U.S.C. 552a(d)) pursuant to 5 U.S.C. 552a (k)(1) and (k)(2). Rules have promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register** and are codified at 28 CFR 16.83 (a) and (b).

[FR Doc. 04–10564 Filed 5–10–04; 8:45 am]

**BILLING CODE 4410–30–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,901]**

### Delaine Worsted Mills, Inc., Gastonia, NC; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(c) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at Delaine Worsted Mills, Inc., Gastonia, North Carolina. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–53,901; Delaine Worsted Mills, Inc., Gastonia, North Carolina (April 28, 2004)

Signed in Washington, DC this 3rd day of May 2004.

**Timothy Sullivan,**

*Director, Division of Trade Adjustment Assistance.*

[FR Doc. E4–1066 Filed 5–10–04; 8:45 am]

**BILLING CODE 4510–13–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,597]**

### Fashion Technologies, Gaffney, SC; Notice of Negative Determination on Reconsideration

On March 23, 2004, the Department issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of the subject firm. The notice was published in the **Federal Register** on April 5, 2004 (69 FR 17711).

The petition for the workers of Fashion Technologies, Gaffney, South Carolina was denied because the ''contributed importantly'' group eligibility requirement of section 222 of the Trade Act of 1974, as amended, was not met. The ''contributed importantly'' test is generally demonstrated through a survey of customers of the workers' firm. The survey revealed that none of the respondents increased their imports of engraved rotary screens.

In the request for reconsideration, the petitioner states that Fashion Technology, Gaffney, South Carolina worked very closely with companies (converters) that print fabric using engraved rotary screens produced by the subject firm. The petitioner believes that even though engraved rotary screens are not being imported by customers, they are used in the production of print fabric, and customers were shifting their fabric printing production abroad. The petitioner concludes that, because these print plants are being transferred abroad, the subject firm workers producing the engraved rotary screens are import impacted. The petitioner supplied a list of customers, alleging that these companies are now printing fabric abroad and an investigation of these additional customers would prove that the subject firm was eligible under secondary impact.

In order to establish import impact, the Department must consider imports that are like or directly competitive with those produced at the subject firm. The Department conducted a survey of the additional customers regarding their purchases of engraved rotary screens. The survey revealed no imports of engraved rotary screens during the relevant period.

The fact that subject firm's customers are shifting their production abroad may be relevant to this investigation if determining whether workers of the subject firm are eligible for trade adjustment assistance (TAA) based on the secondary upstream supplier impact. For certification on the basis of the workers' firm being a secondary upstream supplier, the subject firm must have customers that are TAA certified, and these TAA certified customers must represent a significant portion of subject firm's business. In addition, the subject firm would have to produce a component part of the product that was the basis for the customers' certification.

In this case, however, the subject firm does not act as an upstream supplier, because engraved rotary screens do not form a component part of the fabric. Furthermore, none of the customers provided by the petitioner are certified for TAA. Thus the subject firm workers are not eligible under secondary impact.

#### Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC this 13th day of April, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance Assistance.*

[FR Doc. E4–1067 Filed 5–10–04; 8:45 am]

BILLING CODE 4510–13–P

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## DEPARTMENT OF LABOR

### Employment and Training Administration

**[TA–W–53,585]**

### Sealed Air Corporation, Salem, IL; Notice of Revised Determination Regarding Application for Reconsideration

By application of February 25, 2004, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA).

The initial investigation resulted in a negative determination issued on January 20, 2004, because the ''contributed importantly'' test of the Group Eligibility Requirements of the Trade Act was not met for workers at the subject firm. The workers produce padded mailing envelopes. The denial notice was published in the **Federal Register** on March 12, 2004 (69 FR 11888).

The petitioner alleges that Sealed Air Corporation, Salem, Illinois produced more products than just mailing envelopes and that 50 percent of the plant production was extruded plastic foam. The petitioner further states that while production of paper envelopes was shifted domestically, production of plastic foam was shifted to Mexico upon the subject plant's closure. To support this statement, the petitioner attached copies of the Bill of Landing, which show the shipment of machinery from the subject facility to Mexico.

A company official was contacted to verify this information. Upon further review, it was revealed that some workers at Sealed Air Corporation, Salem, Illinois were indeed engaged in the production of plastic foam during the relevant period; they were separately identifiable. A company official confirmed that approximately fifty percent of production of plastic foam was shifted to Mexico in 2003 and that this shift contributed importantly to layoffs at Sealed Air Corporation in Salem, Illinois.

In accordance with section 246 the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor herein presents the results of its investigation regarding certification of eligibility to apply for alternative trade adjustment assistance (ATAA) for older workers.

In order for the Department to issue a certification of eligibility to apply for ATAA, the group eligibility requirements of section 246 of the Trade Act must be met. The Department has determined in this case that the requirements of section 246 have been met.

A significant number of workers at the firm are age 50 or over and possess skills that are not easily transferable. Competitive conditions within the industry are adverse.

#### Conclusion

After careful review of the facts obtained in the investigation, I conclude that there was a shift in production from the workers' firm or subdivision to Mexico of articles that are like or directly competitive with plastic foam produced by the subject firm or subdivision. In accordance with the provisions of the Act, I make the following certification:

All workers of Sealed Air Corporation, Salem, Illinois, engaged in the production of plastic foam, who became totally or partially separated from employment on or after October 30, 2002, through two years from the date of this certification, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974, and are eligible to apply for alternative trade adjustment assistance under section 246 of the Trade Act of 1974.

Signed in Washington, DC this 13th day of April, 2004.

**Elliott S. Kushner,**

*Certifying Officer, Division of Trade Adjustment Assistance.*

[FR Doc. E4–1068 Filed 5–10–04; 8:45 am]

**BILLING CODE 4510–13–P**

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Proposed Information Collection Request Submitted for Public Comment and Recommendations: Quantum Opportunity Program Demonstration Information Collection

**ACTION:** Notice.

**SUMMARY:** The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL) is soliciting comments concerning the proposed continuing collection of information for the Quantum Opportunity Program (QOP) Demonstration Evaluation.

A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

**DATES:** Submit comments on or before July 12, 2004.

**ADDRESSES:** Send comments to Eileen Pederson, U.S. Department of Labor, ETA/OPDER, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–3647 (this is not a toll-free number) or *Pederson.eileen@dol.gov,* or to fax: (202) 693–2766 (this is not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Eileen Pederson, U.S. Department of Labor, ETA/OPDER, Room N–5637, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 693–3647 (this is not a toll-free number) or *Pederson.eileen@dol.gov,* or to fax: (202) 693–2766 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### I. Background

In July 1995, under authority of Title IV of the Job Training Partnership Act (JTPA), ETA, in partnership with the Ford Foundation, launched the QOP Demonstration (QOP) in seven sites: Cleveland, Ohio; Fort Worth, Texas; Houston, Texas; Memphis, Tennessee; Philadelphia, Pennsylvania; Washington, DC; and Yakima, Washington. The Office of Juvenile Justice and Delinquency Prevention of the U.S. Department of Justice (DOJ) provided financial support for gang-prevention and evaluation activities. The Planning and Evaluation Service of the Department of Education's (DoE) Office of the Under Secretary has provided information and guidance in support of the evaluation. This data collection covers outcome variables of interest to DOL, DOJ and DoE.

QOP provided mentoring, computer-assisted instruction, course-based tutoring, life skills training, and community service activities for high school students at risk of dropping out of school. A youth was eligible to participate in QOP if he or she attended a high school with a four-year dropout rate equal to or greater than 40 percent, was entering the ninth grade for the first time during either the 1995–1996 or 1996–1997 (in Washington, DC) academic year, and was in the lower two-thirds of the grade distribution for entering ninth graders, according to the grade point averages from the eighth grade. The demonstration is being evaluated based on its impacts on academic achievement, high school completion, and engagement in postsecondary education or training programs. The demonstration is also being evaluated based on its impacts on behaviors that are associated with barriers to achieving economic self-sufficiency and adults. Such behaviors include substance abuse, teen parenting, and criminal activity. Many components of the QOP model are elements promoted by the Workforce Investment Act and evaluative evidence of their potential effectiveness will support DOL efforts to develop policy guidance for workforce investment agencies on strategies for serving at-risk youth.

### II. Desired Focus of Comments

Currently, ETA is soliciting comments concerning the proposed extension with revisions of the collection of information for the QOP Demonstration. ETA 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the office listed above in the addressee section of this notice.

### III. Current Actions

This notice concerns the collection of outcome data from each member of the research sample, consisting of a treatment group and a control group, by means of a telephone survey.

*Type of Review:* Extension with Revision.

*Agency:* Employment and Training Administration, U.S. Department of Labor.

*Title:* Quantum Opportunity Program (QOP) Demonstration.

*OMB Number:* 1205–0397.

*Affected Public:* Individuals.

*Cite/Reference/Form:* A Quantum Opportunity Program telephone questionnaire.

*Total Respondents:* 1,052.

*Frequency:* The questionnaire will be administered once, in the fall/winter of 2004–2005.

*Total Responses:* 842.

*Average Time per Response:* The questionnaire is estimated to take 20 minutes to complete.

*Estimated Total Burden Hours:* 281 hours.

*Total Burden Cost:* The cost to participants to complete the questionnaire by telephone, based on the minimum wage of $5.15, is approximately $1,447.

Comments submitted in response to this Notice will be summarized and/or included in the request for Office of Management and Budget approval of the ICR; they will also become a matter of public record.

Dated: May 5, 2004.

**Emily Stover DeRocco,**

*Assistant Secretary for Employment and Training.*

[FR Doc. 04–10629 Filed 5–10–04; 8:45 am]

BILLING CODE 4510–30–P

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

### Labor Research Advisory Council; Notice of Meetings and Agenda

The spring meetings of committees of the Labor Research Advisory Council will be held on June 7, 8, and 9, 2004. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows:

**Monday, June 7, 2004**

*9:30 a.m.—Committee on Productivity, Technology and Growth—Meeting Room 9*

1. The role of outsourcing in the productivity measures
2. Results of the 2002–2012 projections
3. Topics for the next meeting

*Committee on Foreign Labor Statistics*

1. Cooperative work with the International Labor Organization (ILO) on comparisons of hourly compensation costs
2. Topics for the next meeting

*1:30 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9*

1. 2002 Survey of Occupational Injuries and Illnesses Results
2. New Data on Time of Event and Time Shift Started
3. Items to add to the Annual Survey of Occupational Injuries and Illnesses
4. Denominators for computing safety and health indicators
5. Special surveys status update
6. Census of Fatal Occupational Injuries (CFOI) Chartbook
7. Budget Update
8. Other Business
9. Topics for next meeting

**Tuesday, June 8, 2004**

*9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9*

1. Brief updates on release plans for: Job Openings and Labor Turnover Survey (JOLTS) Business Employment Dynamics data
2. Report on efforts to collect data on the association between extended mass layoffs and outsourcing
3. Highlights of 2002–2012 employment projections
4. Current Employment Statistics plans for producing data on all employee hours and earnings and on total wages
5. Topics for next meeting

*1:30 p.m.—Committee on Compensation and Working Conditions—Meeting Room 9*

1. Demonstration and discussion of the National Compensation Survey's (NCS) Internet Collection Vehicle
2. New Employee Benefit Data from NCS
   a. Review of recently released information and plans for additional outputs
   b. Discussion of data collection issues and their impact on selected estimates
3. Accessing BLS's files of collective bargaining agreements on-line
4. Other topics and new business
5. Topics for next meeting

**Wednesday, June 9, 2004**

*9:30 a.m.—Committee on Prices and Living Conditions*

1. Medical care in the Consumer Price Index
2. Topics for next meeting

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC this 3rd day of May 2004.

**Kathleen P. Utgoff,**

*Commissioner.*

[FR Doc. 04–10628 Filed 5–10–04; 8:45 am]

BILLING CODE 4510–24–P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice (04–062)]**

### Aerospace Medicine Occupational Health Advisory Committee

**AGENCY:** National Aeronautics and Space Administration.

**ACTION:** Notice of meeting.

**SUMMARY:** In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Aerospace Medicine Occupational Health Advisory Committee.

**DATES:** Wednesday, June 2, 2004, 8:30 a.m. to 4:30 p.m.

**ADDRESSES:** National Aeronautics and Space Administration, 300 E Street, SW., Room 2X40, Washington, DC. Attendees must check in at the Visitor's Center located in the West Lobby (4th and E Streets) and will be escorted to the conference room.

**FOR FURTHER INFORMATION CONTACT:** Ms. Pamela Barnes, Code Z, National Aeronautics and Space Administration, Washington, DC, 20546, (202) 358–2390.

**SUPPLEMENTARY INFORMATION:** The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Opening Remarks by Chief Health and Medical Officer

—Aerospace Medicine Occupational Health Advisory Committee Report from October 15, 2003, Meeting

—Aerospace Medicine Highlights and Issues

—Occupational Health Highlights and Issues

—Open discussion and action assignments

—Next Meeting

—Closing Comments

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID, before receiving an access badge. Foreign nationals attending this meeting will be required to provide the following information: full name; gender; date/place of birth; citizenship; visa/green card information (number, type, expiration date); employer/affiliation information (name of institution, address, county, phone); and title/position of attendee. To expedite admittance, attendees can provide identifying information in advance by contacting Ms. Pamela R. Barnes via email at *pamela.r.barnes@nasa.gov* or by telephone at (202) 358–2390. Persons with disabilities who require assistance should indicate this. It is imperative that the meeting be held on this date to

accommodate the scheduling priorities of the key participants.

**R. Andrew Falcon,**

*Advisory Committee Management Officer, National Aeronautics and Space Administration.*

[FR Doc. 04–10660 Filed 5–10–04; 8:45 am]

BILLING CODE 7510–01–P

## NUCLEAR REGULATORY COMMISSION

**[Docket Number 030–31768]**

## Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment for Truman State University, Kirksville, MO

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Notice of availability of Environmental Assessment and Finding of No Significant Impact.

**FOR FURTHER INFORMATION CONTACT:** Dr. Peter J. Lee, Division of Nuclear Materials Safety, U.S. Nuclear Regulatory Commission, Region III, 2443 Warrenville Road, Lisle, Illinois 60532–4352; telephone (630) 829–9870; or by email at *pjl2@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is considering the issuance of a license amendment of Material License No. 24–17224–02 issued to Truman State University (the licensee), to terminate its license and authorize release of its Kirksville, Missouri facility for unrestricted use.

The NRC staff has prepared an Environmental Assessment (EA) in support of this licensing 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 terminate Truman State University's license and release its Kirksville, Missouri facility for unrestricted use. On July 25, 1990, the NRC authorized Truman State University to use labeled compounds of P–32, I–125, H–3, C–14, etc. for research and development. On December 18, 2003, Truman State University submitted a license amendment request to terminate its license and release its Kirksville facility for unrestricted use. Truman State 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 staff has examined Truman State University's request and the information that the licensee has provided in support of its request, including the surveys performed by Truman State University to demonstrate compliance with 10 CFR 20.1402, "'Radiological Criteria for Unrestricted Use,'" to ensure that the NRC's decision is protective of the public health and safety and the environment.

### III. Finding of No Significant Impact

The staff has prepared the EA (summarized above) in support of Truman State University's proposed license amendment to terminate its license and release the Kirksville facility for unrestricted use. Based on its review, the staff has determined that the affected environment and the environmental impacts associated with the decommissioning of Truman State University's facility 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 Nuclear Facilities" (NUREG–1496). No outdoor areas were affected by the use of licensed materials. Additionally, no non-radiological impacts or other activities that could result in cumulative impacts were identified. The staff also finds that the proposed release for unrestricted use of the Truman State University's facility is in compliance with 10 CFR 20.1402. On the basis of the EA, the staff has concluded that the environmental impacts from the proposed action would not be significant. Accordingly, the staff has determined that a FONSI is appropriate, and has determined that the preparation of an environmental impact statement is not warranted.

### IV. Further Information

In accordance with 10 CFR 2.390 of the NRC's "Rules of Practice," Truman State University's request, the EA summarized above, and the documents related to this proposed action are available electronically for public inspection and copying from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm/adams.html.* These documents include Truman State University's NRC Form 314 dated December 18, 2003, with enclosures (Accession No. ML041120082); and the EA summarized above (Accession No. ML041190131). These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in 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 at Lisle, Illinois, this 28th day of April, 2004.

**William G. Snell,**

*Acting Chief, Decommissioning Branch, Division of Nuclear Materials Safety, RIII.*

[FR Doc. 04–10614 Filed 5–10–04; 8:45 am]

BILLING CODE 7590–01–P

## NUCLEAR REGULATORY COMMISSION

## Biweekly Notice; Applications and Amendments to Facility Operating Licenses

## Involving No Significant Hazards Considerations

### I. Background

Pursuant to section 189a.(2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from, April 16 through April 29, 2004. The last biweekly notice was published on April 27, 2004 (69 FR 22877).

### Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve

no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed by: (1) First class mail addressed to the

Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; (2) courier, express mail, and expedited delivery services: Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff; (3) E-mail addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, *HEARINGDOCKET@NRC.GOV;* or (4) facsimile transmission addressed to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC, Attention: Rulemakings and Adjudications Staff at (301) 415–1101, verification number is (301) 415–1966. A copy of the request for hearing and petition for leave to intervene should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and it is requested that copies be transmitted either by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of the request for hearing and petition for leave to intervene should also be sent to the attorney for the licensee.

Nontimely requests and/or petitions and contentions will not be entertained absent a determination by the Commission or the presiding officer of the Atomic Safety and Licensing Board that the petition, request and/or the contentions should be granted based on a balancing of the factors specified in 10 CFR 2.309(a)(1)(i)–(viii).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

*AmerGen Energy Company, LLC, et al., Docket No.* 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

*Date of amendment request:* March 23, 2004.

*Description of amendment request:* The licensee requested to revise the Technical Specifications (TSs), deleting the requirements for the Independent Onsite Safety Review Group (IOSRG) and locating them intact to a licensee-controlled document, the company-wide Quality Assurance Topical Report (QATR). The requirements are in the administrative section of the TSs and include IOSRG organization, function description, member qualifications, and recordkeeping. The relocation is proposed per the guidance of Nuclear Regulatory Commission (NRC) Administrative Letter 95–06. In addition, the licensee proposed to correct the reference for facility activities audits from a site-specific document to the company-wide QATR.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own analysis as follows:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment does not affect assumptions contained in the current licensing basis plant safety analyses, will not lead to physical changes of a plant structure, system, or component (SSC), and will not alter the method of operation of any SSC. The IOSRG requirements and conduct of IOSRG activities were not factors in any previously analyzed accident or transient scenarios, and thus, the elimination of IOSRG requirements from the TSs will have no effect on the probability of occurrence and consequences of any previously analyzed accident or transient.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment is not the result of a design change or method of operation change, and will not lead to such changes. Hence no, new or different kind of accident can be created from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed amendment does not involve any change to current analysis models, assumptions, limiting conditions for operation, operational parameters, action statements, and surveillance requirements. Hence, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

*NRC Section Chief:* Richard J. Laufer.

*AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania*

*Date of amendment request:* March 23, 2004.

*Description of amendment request:* The licensee requested to revise the Technical Specifications (TSs), deleting the requirements for the Independent Onsite Safety Review Group (IOSRG) and locating them intact to a licensee-controlled document, the company-wide Quality Assurance Topical Report (QATR). The requirements are in the administrative section of the TSs and include IOSRG organization, function description, member qualifications, and recordkeeping. The relocation is proposed per the guidance of Nuclear Regulatory Commission (NRC) Administrative Letter 95–06. In addition, the licensee proposed to correct the reference for facility activities audits from a site-specific document to the company-wide QATR.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff reviewed the licensee's analysis and has performed its own analysis as follows:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed amendment does not affect assumptions contained in the current licensing basis plant safety analyses, will not lead to physical changes of a plant structure, system, or component (SSC), and will not alter the method of operation of any SSC. The IOSRG requirements and conduct of IOSRG activities were not factors in any previously analyzed accident or transient scenarios, and thus, the elimination of IOSRG requirements from the TSs will have no effect on the probability of occurrence and consequences of any previously analyzed accident or transient.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed amendment is not the result of a design change or method of operation change, and will not lead to such changes. Hence, no new or different kind of accident can be created from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No. The proposed amendment does not involve any change to current analysis models, assumptions, limiting conditions for operation, operational parameters, action statements, and surveillance requirements. Hence, there is no reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its own analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

*Attorney for licensee:* Edward J. Cullen, Jr., Esquire, Vice President, General Counsel and Secretary, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348

*NRC Section Chief:* Richard J. Laufer.

*Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana*

*Date of amendment request:* March 4, 2004.

*Description of amendment request:* The proposed amendment deletes requirements from the Technical Specifications to maintain hydrogen recombiners and hydrogen and oxygen monitors. Licensees were generally required to implement upgrades as described in NUREG–0737, ''Clarification of TMI [Three Mile Island] Action Plan Requirements,'' and Regulatory Guide (RG) 1.97, ''Instrumentation for Light-Water-Cooled Nuclear Power Plants to Assess Plant and Environs Conditions During and Following an Accident.'' Implementation of these upgrades was an outcome of the lessons learned from the accident that occurred at TMI, Unit 2. Requirements related to combustible gas control were imposed by Order for many facilities and were added to or included in the technical specifications (TS) for nuclear power reactors currently licensed to operate. The revised 10 CFR 50.44, ''Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors,'' eliminated the requirements for hydrogen recombiners and relaxed safety classifications and licensee commitments to certain design and qualification criteria for hydrogen and oxygen monitors.

The NRC staff issued a notice of availability of a model no significant hazards consideration determination for referencing in license amendment applications in the **Federal Register** on September 25, 2003 (68 FR 55416). The licensee affirmed the applicability of the model NSHC determination in its application dated March 4, 2004.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The revised 10 CFR 50.44 no longer defines a design-basis loss-of-coolant accident (LOCA) hydrogen release, and eliminates requirements for hydrogen control systems to mitigate such a release. The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage. In addition, these systems were ineffective at mitigating hydrogen releases from risk-significant accident sequences that could threaten containment integrity.

With the elimination of the design-basis LOCA hydrogen release, hydrogen and oxygen monitors are no longer required to mitigate design-basis accidents and, therefore, the hydrogen monitors do not meet the definition of a safety-related component as defined in 10 CFR 50.2. RG 1.97 Category 1, is intended for key variables that most directly indicate the accomplishment of a safety function for design-basis accident events. The hydrogen and oxygen monitors no longer meet the definition of Category 1 in RG 1.97. As part of the rulemaking to revise 10 CFR 50.44 the Commission found that Category 3, as defined in RG 1.97, is an appropriate categorization for the hydrogen monitors because the monitors are required to diagnose the course of beyond design-basis accidents. Also, as part of the rulemaking to revise 10 CFR 50.44, the Commission found that Category 2, as defined in RG 1.97, is an appropriate categorization for the oxygen monitors, because the monitors are required to verify the status of the inert containment.

The regulatory requirements for the hydrogen and oxygen monitors can be relaxed without degrading the plant emergency response. The emergency response, in this sense, refers to the methodologies used in ascertaining the condition of the reactor core, mitigating the consequences of an accident, assessing and projecting offsite releases of radioactivity, and establishing protective action recommendations to be communicated to offsite authorities. Classification of the hydrogen monitors as Category 3, classification of the oxygen monitors as Category 2 and removal of the hydrogen and oxygen monitors from TS will not prevent an accident management strategy through the use of the severe accident management guidelines, the emergency plan, the emergency operating procedures, and site survey monitoring that support modification of emergency plan protective action recommendations.

Therefore, the elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, does not involve a significant increase in the probability or the consequences of any accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, will not result in any failure mode not previously analyzed. The hydrogen recombiner and hydrogen and oxygen monitor equipment was intended to mitigate a design-basis hydrogen release. The hydrogen recombiner and hydrogen and oxygen monitor equipment are not considered accident precursors, nor does their existence or elimination have any adverse impact on the pre-accident state of the reactor core or post accident confinement of radionuclides within the containment building.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety.

The elimination of the hydrogen recombiner requirements and relaxation of the hydrogen and oxygen monitor requirements, including removal of these requirements from TS, in light of existing plant equipment, instrumentation, procedures, and programs that provide effective mitigation of and recovery from reactor accidents, results in a neutral impact to the margin of safety.

The installation of hydrogen recombiners and/or vent and purge systems required by 10 CFR 50.44(b)(3) was intended to address the limited quantity and rate of hydrogen generation that was postulated from a design-basis LOCA. The Commission has found that this hydrogen release is not risk-significant because the design-basis LOCA hydrogen release does not contribute to the conditional probability of a large release up to approximately 24 hours after the onset of core damage.

Category 3 hydrogen monitors are adequate to provide rapid assessment of current

reactor core conditions and the direction of degradation while effectively responding to the event in order to mitigate the consequences of the accident. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related hydrogen monitors. Category 2 oxygen monitors are adequate to verify the status of an inerted containment.

Therefore, this change does not involve a significant reduction in the margin of safety. The intent of the requirements established as a result of the TMI, Unit 2 accident can be adequately met without reliance on safety-related oxygen monitors. Removal of hydrogen and oxygen monitoring from TS will not result in a significant reduction in their functionality, reliability, and availability.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

*NRC Section Chief:* Robert A. Gramm.

*Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.*

*Date of amendment request: April 15, 2004.*

*Description of amendment request:* The proposed amendment would change the reactor coolant system (RCS) pressure/temperature (P/T) limits in the technical specifications (TSs) by providing a single maximum cooldown rate instead of a variable cooldown rate and by revising the cooldown curve with one that is slightly more restrictive.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The probability of occurrence of an accident previously evaluated for ANO–2 [Arkansas Nuclear One, Unit 2] is not altered by the proposed amendment to the TSs. The accidents remain the same as currently analyzed in the ANO–2 Safety Analysis Report (SAR) as a result of the change to the cooldown P/T limits. The new P/T cooldown limits were based on NRC [Nuclear Regulatory Commission] accepted methodologies along with ASME [American Society of Mechanical Engineers] Code [Boiler and Pressure Vessel Code] alternatives. The proposed change does not impact the integrity of the reactor coolant pressure boundary (RCPB) (i.e., there is no change to the operating pressure, materials, loadings, etc.) as a result of this change. In addition, there is no increase in the potential for the occurrence of a loss of coolant accident. The proposed P/T cooldown limit curve is not considered to be an initiator or contributor to any accident currently evaluated in the ANO–2 SAR. The revised P/T cooldown limits ensure the long term integrity of the RCPB. For each analyzed transient and steady state condition, the allowable pressure was determined as a function of reactor coolant temperature considering postulated flaws in the reactor vessel beltline, inlet nozzle, outlet nozzle, and closure head flange.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes to the P/T limits will not create a new accident scenario. The requirements to have P/T protection are part of the ANO–2 licensing basis. The proposed change in the P/T cooldown limits is based on NRC approved methodologies performed by Framatome ANP. This methodology complies with NRC and ASME requirements for protecting the RCS. Therefore, the revised P/T cooldown limits provide protection of the RCS from limiting transients during normal cooldown.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The revision of the P/T limits and curves will ensure that ANO–2 continues to operate within the operating margins of the ASME Code. The application of ASME Code Cases N–640 and N–588 presents alternative procedures for calculating P/T temperatures and pressures. These Code Cases allow certain assumptions to be conservatively reduced. However, the procedures allowed by these Code Cases still provide sufficient conservatism and ensure an adequate margin of safety in the development of P/T operating and pressure test limits to prevent non-ductile fractures.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

*NRC Section Chief:* Robert A. Gramm.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio.*

*Date of amendment request:* March 31, 2004.

*Description of amendment request:* This license amendment request (LAR) proposes to eliminate the Technical Specification Surveillance Requirements (SRs) that require each Main Steam Safety/Relief Valve (S/RV) to open during the manual actuation portion of testing the valves. In accordance with 10 CFR 50.55a, ''Codes and Standards,'' paragraph (a)(3), this request also includes Relief Request VR–13. VR–13 is a request for relief from the requirements of ASME/American National Standards Institute (ANSI) Operation and Maintenance (OM) of Nuclear Power Plants, OM–1995, Appendix I, Section 3.4.1(d) that after isolation, the S/RVs are manually opened and closed.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed [License Amendment Request] LAR modifies TS 3.4.4.3, SR 3.5.1.7, and SR 3.6.1.6.1 to allow the uncoupling of the S/RV stem from the S/RV actuator during manual actuation. The proposed LAR does not change the manner in which the S/RVs are intended to operate.

The performance of S/RV testing provides assurance that the S/RVs are capable of depressurizing the Reactor Pressure Vessel (RPV). This will protect the RPV from over pressurization and allows the combination of the Low Pressure Coolant Injection (LPCI) system and the Low Pressure Core Spray (LPCS) system to inject into the RPV as designed. The proposed testing requirements are sufficient to provide confidence that the S/RVs, [Automatic Depressurization System] ADS valves, and the [Low-Low Set] LLS valves will perform their intended design safety functions.

Therefore, the proposed LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed LAR changes TS [Surveillance Requirements] SR 3.4.4.3, SR 3.5.1.7, and SR 3.6.1.6.1. The changes to these SRs do not effect the assumed accident performance of the S/RVs, nor any plant structure, system or component previously evaluated. The LAR does not install any new equipment, nor does it cause existing equipment to be operated in a new or

different manner. The S/RVs continue to be bench-tested to verify the safety and relief modes of valve operation. The changes will allow the testing of the manual actuation electrical circuitry, solenoid and air control valve, and the actuator without causing the S/RV to open. No setpoints are being changed which would alter the dynamic response of plant equipment.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from that previously evaluated.

3. The proposed change will not involve a single reduction in the margin of safety.

The proposed LAR will allow the uncoupling of the S/RV stem from the other components associated with the manual actuation testing of the S/RVs. The proposed changes will allow the testing of the manual actuation electrical circuitry, solenoid and air control valve, and the actuator without causing the S/RV to open. The S/RVs will continue to be manually actuated by the bench-test of the valve control system and setpoint testing program prior to installation in the plant. The changes do not effect the valve setpoint or operational criteria that directs the S/RVs to be manually opened during plant transients. There are no changes which alter the setpoints at which protective actions are initiated.

Therefore, the proposed change does not involve a significant reduction in any margins of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Anthony J. Mendiola.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant (PNPP), Unit 1, Lake County, Ohio*

*Date of amendment request:* April 5, 2004.

*Description of amendment request:* This license amendment request (LAR) proposes to modify the existing Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2. Specifically, the change modifies the MCPR Safety Limit values, as calculated by Global Nuclear Fuel (GNF), by decreasing the limit for two recirculating loop operation from 1.10 to 1.08, and decreasing the limit for single recirculation loop operation from 1.11 to 1.10. The change resulted from a core reload analysis performed during the PNPP Fuel Cycle 10.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR) Section 4.2, ''Fuel System Design,'' states the PNPP fuel system design bases are provided in the General Electric Topical Report, NEDE–24011–P–A, ''General Electric Standard Application for Reactor Fuel (GESTAR II).'' The Minimum Critical Power Ratio (MCPR) Safety Limit is one of the limits used to protect the fuel in accordance with the design basis. The MCPR Safety Limit establishes a margin to the onset of transition boiling. The basis of the MCPR Safety Limit remains the same, ensuring that greater than 99.9 % of all fuel rods in the core avoid transition boiling. The methodology used to determine the MCPR Safety Limit values is contained within GESTAR II and is NRC approved. The change does not result in any physical plant modifications or physically affect any plant components. As a result, there is no increase in the probability of occurrence of a previously analyzed accident.

The fundamental sequences of accidents and transients have not been altered. The Safety Limit MCPR is established to avoid fuel damage in response to anticipated operational occurrences. Compliance with a MCPR Safety Limit greater than or equal to the calculated value will ensure that less than 0.1% of the fuel rods will experience boiling transition. This in turn ensures fuel damage does not occur following transients due to excessive thermal stresses on the fuel cladding. The MCPR Operating Limits are set higher (i.e., more conservative) than the Safety Limit such that potentially limiting plant transients prevent the MCPR from decreasing below the MCPR Safety Limit during the transient. Therefore, there is no impact on any of the limiting USAR Appendix 15B transients. The radiological consequences remain the same as previously stated in the USAR. Therefore, the consequences of an accident do not increase over previous evaluations in the USAR.

Therefore, the proposed LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The MCPR Safety Limit basis is preserved, which is to ensure that transition boiling does not occur in at least 99% of the fuel rods in the core as a result of the postulated limiting transient. The values are calculated in accordance with GESTAR II. The GESTAR II analyses have been accepted by the NRC. The MCPR Safety Limit is one of the limits established to ensure the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. No changes in the design of the plant or the method of operating the plant are associated with these revised safety limit valves. Therefore, no new or different kind of accident from any previously evaluated is created.

3. The proposed change will not involve a single reduction in the margin of safety.

This change revises the PNPP MCPR Safety Limit values. The new MCPR Safety Limit values reflect changes due to Cycle 10 core design, but do not alter the design or function of any plant system, including the fuel. The new MCPR Safety Limit values were calculated using NRC-approved methods described in GESTAR II. The proposed MCPR Safety Limit values continue to satisfy the fuel design safety criteria which ensures that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the postulated limiting transient. Therefore, the proposed values for the MCPR Safety Limit do not involve a significant reduction in a safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Anthony J. Mendiola.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant (PNPP), Unit 1, Lake County, Ohio*

*Date of amendment request:* April 5, 2004.

*Description of amendment request:* This license amendment request (LAR) proposes to modify the existing Minimum Critical Power Ratio (MCPR) Safety Limit contained in Technical Specification 2.1.1.2. Specifically, the change modifies the MCPR Safety Limit values, as calculated by Global Nuclear Fuel (GNF), by decreasing the limit for two recirculating loop operation from 1.10 to 1.08, and decreasing the limit for single recirculation loop operation from 1.11 to 1.10. The change resulted from a core reload analysis performed during the PNPP Fuel Cycle 10.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR) Section 4.2, ''Fuel System Design,'' states the PNPP fuel system design bases are provided in the General Electric Topical Report, NEDE–

24011–P–A, ''General Electric Standard Application for Reactor Fuel (GESTAR II).'' The Minimum Critical Power Ratio (MCPR) Safety Limit is one of the limits used to protect the fuel in accordance with the design basis. The MCPR Safety Limit establishes a margin to the onset of transition boiling. The basis of the MCPR Safety Limit remains the same, ensuring that greater than 99.9 % of all fuel rods in the core avoid transition boiling. The methodology used to determine the MCPR Safety Limit values is contained within GESTAR II and is NRC approved. The change does not result in any physical plant modifications or physically affect any plant components. As a result, there is no increase in the probability of occurrence of a previously analyzed accident.

The fundamental sequences of accidents and transients have not been altered. The Safety Limit MCPR is established to avoid fuel damage in response to anticipated operational occurrences. Compliance with a MCPR Safety Limit greater than or equal to the calculated value will ensure that less than 0.1% of the fuel rods will experience boiling transition. This in turn ensures fuel damage does not occur following transients due to excessive thermal stresses on the fuel cladding. The MCPR Operating Limits are set higher (i.e., more conservative) than the Safety Limit such that potentially limiting plant transients prevent the MCPR from decreasing below the MCPR Safety Limit during the transient. Therefore, there is no impact on any of the limiting USAR Appendix 15B transients. The radiological consequences remain the same as previously stated in the USAR. Therefore, the consequences of an accident do not increase over previous evaluations in the USAR.

Therefore, the proposed LAR does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The MCPR Safety Limit basis is preserved, which is to ensure that transition boiling does not occur in at least 99% of the fuel rods in the core as a result of the postulated limiting transient. The values are calculated in accordance with GESTAR II. The GESTAR II analyses have been accepted by the NRC. The MCPR Safety Limit is one of the limits established to ensure the fuel is protected in accordance with the design basis. The function, location, operation, and handling of the fuel remain unchanged. No changes in the design of the plant or the method of operating the plant are associated with these revised safety limit valves. Therefore, no new or different kind of accident from any previously evaluated is created.

3. The proposed change will not involve a single reduction in the margin of safety.

This change revises the PNPP MCPR Safety Limit values. The new MCPR Safety Limit values reflect changes due to Cycle 10 core design, but do not alter the design or function of any plant system, including the fuel. The new MCPR Safety Limit values were calculated using NRC-approved methods described in GESTAR II. The proposed MCPR Safety Limit values continue to satisfy the fuel design safety criteria which ensures that transition boiling does not occur in at least 99.9% of the fuel rods in the core as a result of the postulated limiting transient. Therefore, the proposed values for the MCPR Safety Limit do not involve a significant reduction in a safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* Mary E. O'Reilly, Attorney, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

*NRC Section Chief:* Anthony J. Mendiola.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* August 27, 2003.

*Description of amendment requests:* The proposed amendments would amend Unit 1 and Unit 2 Technical Specifications (TS) 4.0.3. TS 4.0.3 describes the relationship between meeting the surveillance requirement and operability. The proposed change will modify TS 4.0.3 to allow a missed surveillance to be completed within 24 hours or up to the limit of the specified interval, whichever is greater. Additionally, a statement that a risk evaluation shall be performed for any surveillance delayed greater than 24 hours and that the risk impact shall be managed is being added to the TS.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. The format changes are intended to improve readability and appearance and do not alter any requirements. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

No.

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the limiting condition for operation is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function. The format changes are intended to improve readability and appearance and do not alter any requirements. Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* L. Raghavan.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* February 14, 2004.

*Description of amendment requests:* The proposed amendments would revise the Technical Specifications (TS) governing containment penetrations and the Containment Purge and Exhaust Isolation System, which are applicable during CORE ALTERATIONS and movement of irradiated fuel, such that those TSs are only applicable during the movement of recently irradiated fuel.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

*Response:* No.

The proposed changes incorporate line item improvements that are based on assumptions in the postulated fuel handling accident (FHA) analysis. These proposed changes remove the applicability of the Technical Specifications (TS) governing containment penetrations and the Containment Purge and Exhaust Isolation System when handling fuel assemblies that have decayed for a sufficient period of time. The containment penetration and Containment Purge and Exhaust Isolation System are not initiators to any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. The only previously analyzed accident affected by the proposed change is an FHA. The current, Nuclear Regulatory Commission (NRC)-approved analysis of an FHA does not assume any holdup of the postulated radioactivity release by the containment building nor does it assume the operation of the Containment Purge and Exhaust Isolation System. As a result, the proposed change does not affect the assumed mitigation or consequences of that event.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed changes incorporate line item improvements that are based on assumptions in the postulated FHA analysis. These proposed changes remove the applicability of the TS governing containment penetrations and the Containment Purge and Exhaust Isolation System when handling fuel assemblies that have decayed for a sufficient period of time. The proposed changes do not involve the addition or modification of equipment nor do they alter the design of the plant. The revised operations are consistent with the FHA analysis and do not require any new or different ways of operating the plant equipment.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes incorporate line item improvements that are based on assumptions in the postulated FHA analysis. These proposed changes remove the applicability of the TS governing containment penetrations and the Containment Purge and Exhaust Isolation System when handling fuel assemblies that have decayed for a sufficient period of time. The calculated offsite and Control Room doses resulting from an FHA are not affected by this change as the proposed TS changes are revised to be consistent with the assumptions used in these analyses. As a further measure, [Indiana Michigan Power Company] I&M has committed to maintaining a single normal or contingency method to promptly close containment penetrations following an FHA. These prompt methods will enable the ventilation systems to draw the release from a postulated FHA such that it can be treated and monitored. This will provide a further margin of safety beyond that assumed in the accident analysis.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107

*NRC Section Chief:* L. Raghavan.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* February 14, 2004.

*Description of amendment requests:* The proposed amendments would modify the Technical Specification (TS) 3.9.2 limiting condition for operation, to delete TS Surveillance Requirements (SRs) 4.9.2.a and b for the Source Range Neutron Flux Monitor channel functional test, to revise SR 4.9.2.c for the channel check test, and to add a requirement to perform a channel calibration every 18 months as well as revise TS 4.10.4.2 and 4.10.3.2 (Units 1 and 2 respectively) for Intermediate and Power Range channel functional test.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed amendment replaces the Technical Specification (TS) 3.9.2 limiting condition for operation (LCO) requirement for an audible indication in the containment (both units) and control room (Unit 2) with a requirement that a source range audible count rate circuit be operable. This involves no physical changes to the plant, and maintains the capability to alert the operators to changes in core reactivity. Thus, neither the probability of an accident nor the consequences are significantly increased.

The proposed amendment revises the TS SR for the Power Range, Intermediate Range, and the Source Range Neutron Flux Monitors to reduce redundant testing. Surveillance testing is not an initiator to any accident previously evaluated. As a result, the proposed changes will not result in a significant increase in the probability of any accident previously evaluated.

The Power Range, Intermediate Range, and the Source Range Neutron Flux Monitors are used to detect and mitigate accidents previously evaluated. However, the LCOs continue to require the subject flux monitors to be operable and the remaining testing is sufficient to ensure the flux monitors are capable of performing their detection and mitigation functions. Thus, the consequences of an accident are not significantly changed.

Based on the above, [Indiana Michigan Power Company] I&M concludes that proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from and accident previously evaluated?

*Response:* No.

The proposed amendment replaces the TS 3.9.2 LCO requirement for an audible indication in the containment (both units) and control room (Unit 2) with a requirement that a source range audible count rate circuit be operable.

The change does not make any physical changes to the plant. Thus, the change does not create the possibility of a new or different kind of accident.

The proposed amendment revises the TS SR for the Power Range, Intermediate Range, and the Source Range Neutron Flux Monitors to reduce redundant testing. The proposed changes do not change the design function or operation of any plant equipment. No new failure mechanisms, malfunctions, or accident initiators are being introduced by the proposed changes. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed amendment replaces the TS 3.9.2 LCO requirement for an audible indication in the containment (both units) and control room (Unit 2) with a requirement that a source range audible count rate circuit be operable. The source range audible count rate circuit will continue to perform its function of alerting the operators to changes in core reactivity.

The proposed amendment revises the TS Surveillance Requirement (SR) for the Power Range, Intermediate Range, and the Source Range Neutron Flux Monitors to reduce redundant testing. The elimination of redundant testing does not reduce the reliability of the tested flux monitors. The flux monitors continue to be tested in a manner and at a frequency necessary to provide confidence that the equipment can perform its assumed safety function.

Therefore, there is no significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107

*NRC Section Chief:* L. Raghavan.

*Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan*

*Date of amendment requests:* April 6, 2004.

*Description of amendment requests:* The proposed amendments would revise Technical Specification (TS) design features for fuel assemblies and new fuel storage criticality limitations. In addition, the licensee requests approval of the criticality analysis methodology supporting the spent fuel storage rack and new fuel storage rack in accordance with 10 CFR 50.59(c)(2)(viii).

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

*Response:* No.

The proposed Technical Specification (TS) changes allow the zirconium-based alloy, M5, to be used in addition to Zircaloy-4 and ZIRLO in Donald C. Cook Nuclear Plant fuel assemblies. TS changes are also proposed to allow Gadolinia to be used in fuel assemblies in the new fuel storage racks to ensure adequate reactivity margin. In addition, methodology changes were proposed for a criticality analysis supporting new and spent fuel rack design criteria. M5 is a Nuclear Regulatory Commission (NRC)-approved alloy for fuel cladding and Gadolinia is an NRC-approved fuel burnable absorber used in the maintenance of reactivity margin in the new fuel storage rack. The use of NRC-approved cladding and fuel absorbers and methodology changes to criticality analyses to support TS design criteria for the spent and new fuel storage racks are not initiators of any accident previously evaluated. As a result, the probability of any accident previously evaluated is not significantly increased. M5 cladding has been shown to meet all 10 CFR 50.46 acceptance criteria. Analysis has shown that the use of Gadolinia assures sufficient reactivity margin to prevent a criticality accident in the new fuel storage rack. Changes in methodology for criticality analyses were performed to demonstrate TS requirements are met or to support proposed TS changes and do not affect plant equipment. Therefore, the consequences of an accident are not significantly increased.

Therefore, the proposed change does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

The proposed change to use the M5 alloy is based on an NRC-approved topical report which demonstrates that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. The design and performance criteria continue to be met and no new failure mechanisms have been identified. Therefore, M5 fuel rod cladding and fuel assembly structural components will perform similarly to those fabricated from Zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

The proposed TS change to use Gadolinia to ensure adequate reactivity margin for higher enrichment fuel assemblies prevents reactivity limits from being exceeded. An NRC-approved topical report demonstrates that Gadolinia is acceptable for use in fuel assemblies. The proposed change only modifies the type of fuel burnable absorber and does not affect any permanent plant equipment or plant operating procedures, and can not be an initiator of an accident.

The proposed criticality analysis supports TS design criteria for spent and new fuel racks. The analysis evaluates reactivity margin based on conservative assumptions on fuel assembly design and burnup and does not affect any plant equipment. The criticality analysis can not be an initiator of an accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

*Response:* No.

The proposed TS change to allow the use of fuel rods clad with the M5 alloy does not change the reactor fuel reload design and safety limits. For each cycle reload core, the fuel assembly design and core configuration are evaluated using NRC-approved reload design methods, including consideration of the core physics analysis peaking factors and core average linear heat rate effects. The design basis and modeling techniques for fuel assemblies with Zircaloy-4 and ZIRLO clad fuel rods remain valid for fuel assemblies with M5 clad fuel rods. Use of the M5 alloy as cladding material has no effect on the criticality analysis for the spent fuel storage racks and the new fuel storage racks. Furthermore, it has no effect on the thermal-hydraulic and structural analysis for the spent fuel pool. Therefore, the design and safety analysis limits specified in the TS are maintained with this proposed change.

The proposed TS change to use Gadolinia as a fuel burnable absorber for fuel assemblies with higher enrichments of Uranium-235 to ensure proper reactivity control in the spent fuel storage rack is consistent with the current method of reducing reactivity of high enrichment fuel assemblies. Each method reduces the equivalent uranium enrichment to below that found acceptable by the NRC for safe storage of new fuel.

The proposed criticality analyses use NRC-approved codes with a methodology different than previously approved by the NRC. The criticality analysis results for the spent fuel storage rack flooded with unborated water condition and for the new fuel storage rack moderated by aqueous foam condition remain less than the limiting TS values. Analysis results for the new fuel storage rack flooded with unborated water condition are consistent with previous analysis results.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

*Attorney for licensee:* David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

*NRC Section Chief:* L. Raghavan.

*TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas*

*Date of amendment request:* April 13, 2004.

*Brief description of amendments:* The requested amendments will revise the Technical Specification 3.3.2, ''Engineered Safety Features Actuation System (ESFAS) Instrumentation,'' to revise the trip setpoint allowable value for Refueling Water Storage Tank (RWST) Low-Low Level (ESFAS function 7.b) for Unit 2 to be the same as it is for Unit 1. Also, the frequency of calibration of the RWST water level transmitters will be revised from once in 9 months to once in 18 months.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration by focusing on the three standards set forth in 10 CFR 50.92. The licensee's analysis of three standards is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

*Response:* No.

The proposed change in the trip setpoint allowable value for Unit 2 Refueling Water Storage Tank (RWST) Low-Low Level has no impact on the probability of any accident previously evaluated. Since none of the accident analyses are affected by this change, the consequences of all previously evaluated accidents remain unchanged.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

*Response:* No.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes. There are no changes in the method by which any safety-related plant system performs its safety function. Overall protection system performance will remain within the bounds of the previously performed accident analyses and the protection systems will continue to function in a manner consistent with the plant design basis. The proposed changes do not affect the probability of any event initiators. The proposed changes do not alter any assumptions or change any mitigation actions in the radiological consequence evaluations in the Final Safety Analysis Report (FSAR).

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

*Response:* No.

The proposed changes do not affect the acceptance criteria for any analyzed event nor is there a change to any Safety Analysis Limit (SAL). There will be no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on the overpower limit, the Departure from Nucleate Boiling Ratio (DNBR) limits, the Heat Flux Hot Channel Factor ($F_Q$), the Nuclear Enthalpy Rise Hot Channel Factor ($F_{\Delta H}$), the Loss of Coolant Accident Peak Centerline Temperature (LOCA PCT), peak local power density, or any other margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involves no significant hazards consideration.

*Attorney for licensee:* George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

*NRC Section Chief:* Robert A. Gramm.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of amendment request:* April 8, 2004.

*Description of amendment request:* The proposed amendment revises TS 5.5.7, ''Reactor Coolant Pump Flywheel Inspection Program,'' to extend the allowable inspection interval to 20 years.

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 24, 2003 (68 FR 37590), on possible amendments to extend the inspection interval for reactor coolant pump (RCP) flywheels, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line-item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on October 22, 2003, (68 FR 60422). The licensee affirmed the applicability of the model NSHC determination in its application dated April 8, 2004.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to the RCP flywheel examination frequency does not change the response of the plant to any accidents. The RCP will remain highly reliable and the proposed change will not result in a significant increase in the risk of plant operation. Given the extremely low failure probabilities for the RCP motor flywheel during normal and accident conditions, the extremely low probability of a loss-of-coolant accident (LOCA) with loss of offsite power (LOOP), and assuming a conditional core damage probability (CCDP) of 1.0 (complete failure of safety systems), the core damage frequency (CDF) and change in risk would still not exceed the NRC's acceptance guidelines continued in Regulatory Guide (RG) 1.174 (<1.0E–6 per year). Moreover, considering the uncertainties involved in this evaluation, the risk associated with the postulated failure of an RCP motor flywheel is significantly low. Even if all four RCP motor flywheels are considered in the bounding plant configuration case, the risk is still acceptably low.

The proposed change does not adversely affect accident initiators or precursors, nor alter the design assumptions, conditions, or configuration of the facility, or the manner in which the plant is operated and maintained; alter or prevent the ability of structures, systems, components (SSCs) from performing their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits; or affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Further, the proposed change does not increase the type or amount of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposure. The proposed change is consistent with the safety analysis assumptions and resultant consequences. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in flywheel inspection frequency does not involve any change in the design or operation of the RCP. Nor does the change to examination frequency affect any existing accident scenarios, or create any new or different accident scenarios. Further, the change does not involve a physical alteration of the plant

(*i.e.*, no new or different type of equipment will be installed) or alter the methods governing normal plant operation. In addition, the change does not impose any new or different requirements or eliminate any existing requirements, and does not alter any assumptions made in the safety analysis. The proposed change is consistent with the safety analysis assumptions and current plant operating practice. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined. The safety analysis acceptance criteria are not impacted by this change. The proposed change will not result in plant operation in a configuration outside of the design basis. The calculated impact on risk is insignificant and meets the acceptance criteria contained in RG 1.174. There are no significant mechanisms for inservice degradation of the RCP flywheel. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri*

*Date of application request:* April 8, 2004.

*Description of amendment request:* The proposed change allows entry into a mode or other specified condition in the applicability of a technical specification (TS), while in a condition statement and the associated required actions of the TS, provided the licensee performs a risk assessment and manages risk consistent with the program in place for complying with the requirements of Title 10 of the Code of Federal Regulations (10 CFR), Part 50, Section 50.65(a)(4). Limiting Condition for Operation (LCO) 3.0.4 exceptions in individual TSs would be eliminated, several notes or specific exceptions are revised or deleted to reflect the related changes to LCO 3.0.4, and Surveillance Requirement (SR) 3.0.4 is revised to reflect the LCO 3.0.4 allowance.

This change was proposed by the industry's Technical Specification Task Force (TSTF) and is designated TSTF–359. The NRC staff issued a notice of opportunity for comment in the **Federal Register** on August 2, 2002 (67 FR 50475), on possible amendments concerning TSTF–359, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on April 4, 2003 (68 FR 16579). The licensee affirmed the applicability of the following NSHC determination in its application dated April 8, 2004.

*Basis for proposed no significant hazards consideration determination:* As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. Being in a TS condition and the associated required actions is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased. The consequences of an accident while relying on required actions as allowed by proposed LCO 3.0.4, are no different than the consequences of an accident while entering and relying on the required actions while starting in a condition of applicability of the TS. Therefore, the consequences of an accident previously evaluated are not significantly affected by this change. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed). Entering into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS, will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously evaluated. The addition of a requirement to assess and manage the risk introduced by this change will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety.

The proposed change allows entry into a mode or other specified condition in the applicability of a TS, while in a TS condition statement and the associated required actions of the TS. The TS allow operation of the plant without the full complement of equipment through the conditions for not meeting the TS LCO. The risk associated with this allowance is managed by the imposition of required actions that must be performed within the prescribed completion times. The net effect of being in a TS condition on the margin of safety is not considered significant. The proposed change does not alter the required actions or completion times of the TS. The proposed change allows TS conditions to be entered, and the associated required actions and completion times to be used in new circumstances. This use is predicated upon the licensee's performance of a risk assessment and the management of plant risk. The change also eliminates current allowances for utilizing required actions and completion times in similar circumstances, without assessing and managing risk. The net change to the margin of safety is insignificant. Therefore, this change does not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

*Attorney for licensee:* John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

*NRC Section Chief:* Stephen Dembek.

## Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant

to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov.*

*AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station (OCNGS), Ocean County, New Jersey*

*Date of application for amendment:* December 20, 2002, as supplemented on May 30, September 10, and November 3, 2003.

*Brief description of amendment:* The amendment authorized the revision of the OCNGS Updated Final Safety Analysis Report (UFSAR) to reflect implementation of the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel Integrated Surveillance Program (ISP) as the basis for demonstrating compliance with the requirements of Appendix H, ''Reactor Vessel Material Surveillance Program Requirements,'' to Title 10 of the *Code of Federal Regulations,* Part 50.

*Date of Issuance:* April 27, 2004.

*Effective date:* The amendment is effective immediately. The ISP shall be implemented prior to the next scheduled reactor vessel surveillance capsule removal. The UFSAR is to be revised to reflect use of the ISP in accordance with the schedule of 10 CFR 50.71(e).

*Amendment No.:* 242.

*Facility Operating License No. DPR–16:* Amendment revised the Operating License DPR–16.

*Date of initial notice in **Federal Register:** February 4, 2003 (68 FR 5669).*

The May 30, September 10, and November 3, 2003, letters provided clarifying information within the scope of the original application, and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated April 27, 2004. No significant hazards consideration comments received: No.

*Calvert Cliffs Nuclear Power Plant, Inc., Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland*

*Date of application for amendments:* May 12, 2003, as supplemented December 5, 2003, February 23, 2004, March 26, 2004 and April 6, 2004.

*Brief description of amendments:* These amendments extend several Required Action completion times for inoperable diesel generators identified in Technical Specification 3.8.1, ''AC Sources Operating.''

*Date of issuance:* April 13, 2004.

*Effective date:* As of the date of issuance to be implemented within 30 days.

*Amendment Nos.:* 265 and 242.

*Renewed Facility Operating License Nos. DPR–53 and DPR–69:* Amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** June 24, 2003 (68 FR 37576). The licensee's December 5, 2003, February 23, 2004, March 26, 2004, and April 6, 2004, letters provided additional information that clarified the application, did not change the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 13, 2004.

No significant hazards consideration comments received: No.

*Exelon Generation Company, LLC, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania*

*Date of application for amendments:* June 27, 2003.

*Brief description of amendments:* The amendments modified Technical Specification 4.0.5.f and associated Bases, and Bases Section 3/4.4.8, with regard to the commitment to perform piping inspections in accordance with Generic Letter 88–01, by adding the words ''or in accordance with alternate measures approved by the NRC staff.''

*Date of issuance:* As of date of issuance and shall be implemented within 30 days.

*Effective date:* April 20, 2004.

*Amendment Nos.:* 171 and 133.

*Facility Operating License Nos. NPF–39 and NPF–85.* The amendments revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** August 19, 2003 (68 FR 49817).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 20, 2004.

No significant hazards consideration comments received: No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of application for amendment:* January 30, 2003.

*Brief description of amendment:* By letter dated January 30, 2003, FirstEnergy Nuclear Operating Company, (FENOC), the licensee for Perry Nuclear Power Plant (PNPP), Unit 1, submitted a request for Nuclear Regulatory Commission review and approval of a license amendment to modify the basis for their compliance with the requirements of Appendix H to Title 10 Part 50 of the Code of Federal Regulations (Appendix H to 10 CFR Part 50), ''Reactor Vessel Material Surveillance Program Requirements.'' In the license amendment submittal, FENOC requested that they be approved to implement the Boiling Water Reactor Vessel and Internals Project reactor pressure vessel integrated surveillance program as the basis for demonstrating the compliance of PNPP, Unit 1, with the requirements of Appendix H to 10 CFR Part 50.

*Date of issuance:* April 15, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 128.

*Facility Operating License No. NPF–58:* Amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** January 6, 2004 (69 FR 696).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 2004.

*No significant hazards consideration comments received:* No.

*FirstEnergy Nuclear Operating Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio*

*Date of application for amendment:* January 14, 2003.

*Brief description of amendment:* By letter dated January 14, 2003, FirstEnergy Nuclear Operating Company, the licensee for Perry Nuclear Power Plant, Unit 1, submitted a request for Nuclear Regulatory Commission review and approval of a license amendment to modify the Technical Specifications (TS) 5.1.1, 5.4.1, and 5.5.1 to replace the requirement for the plant manager to approve administrative procedures and the Offsite Dose Calculation Manual. The plant manager approval signature will be replaced with the signature of a procedurally authorized individual who would be the more appropriate authority for approval of the activity. Additionally, a change is proposed to revise License Condition 2.F, to replace the 30-day reporting period with a direct reference to the 10 CFR 50.73 subsection that contains the reporting period. The License Condition already references 10 CFR 50.73 for use in reporting plant issues.

*Date of issuance:* April 23, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment No.:* 129.

*Facility Operating License No. NPF–58:* Amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 1, 2003 (68 FR 15761).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 23, 2004.

*No significant hazards consideration comments received:* No.

*Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota*

*Date of application for amendments:* March 25, 2003, as supplemented by your letters dated June 16, 2003, January 14, February 23, and April 7, 2004.

*Brief description of amendments:* The amendments revise the technical specifications (TSs) to include implementation of relaxed axial offset control of the reactor core through changes in TS 3.2.1 and TS 3.2.3; relocation of selected operating parameters from TS 2.0, TS 3.1.8 and TS 3.3.1 to the Core Operating Limit Report (COLR) and the revised pressurizer pressure-low allowable value in TS Table 3.3.1–1. The TS changes also include, in TS 5.6.5, the topical reports documenting the Nuclear Regulatory Commission-approved methodologies that are used to support COLR implementation.

*Date of issuance:* April 28, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 90 days.

*Amendment Nos.:* 162 and 153.

*Facility Operating License Nos. DPR–42 and DPR–60:* Amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 29, 2003 (68 FR 22750).

The supplemental letters contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original ***Federal Register*** notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 28, 2004.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California*

*Date of application for amendment:* May 29, 2003, as supplemented by letters dated November 5, 2003 and December 23, 2003.

*Brief description of amendments:* The amendment revises Technical Specification 3.8.1, ''AC Sources-Operating,'' to extend the completion times for the required actions associated with restoration of an inoperable diesel generator (DG). Specifically, the changes extend the completion times for restoring an inoperable DG from 7 days to 14 days.

*Date of issuance:* April 20, 2004.

*Effective date:* April 20, 2004, and shall be implemented within 180 days of the date of issuance.

*Amendment No.:* Unit 1–166; Unit 2–167.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendment revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** June 24, 2003 (68 FR 37581).

The supplemental letters dated November 5, 2003 and December 23, 2003, provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 2004.

*No significant hazards consideration comments received:* No.

*Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California*

*Date of application for amendments:* February 28, 2003, as supplemented by letters dated October 30, 2003, December 2, 2003, and January 23, 2004.

*Brief description of amendments:* The amendments revise the Diablo Canyon Power Plant Technical Specifications (TS) to add a surveillance requirement to the Power Range Neutron Flux Rate—High Positive Rate Trip function.

*Date of issuance:* April 22, 2004.

*Effective date:* April 22, 2004, and shall be implemented within 180 days from the date of issuance.

*Amendment Nos.:* Unit 1—167; Unit 2—168.

*Facility Operating License Nos. DPR–80 and DPR–82:* The amendments revised the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** April 15, 2003 (68 FR 18283).

The October 30, 2003, December 2, 2003, and January 23, 2004, supplemental letters provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the NRC staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2004

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee*

*Date of application for amendment:* June 5, 2003.

*Brief description of amendment:* Revise the required actions in Technical Specification (TS) 3.6.1.9 when a containment purge or exhaust isolation valve is found inoperable as a result of leakage in excess of the limit. The changes allow alternate methods to ensure flow path isolation to the environment consistent with the methods allowed for containment isolation valves in TS 3.6.3, ''Containment Isolation Valves.''

*Date of issuance:* April 21, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 45 days of issuance.

*Amendment Nos.:* 290 & 280.

*Facility Operating License No. DPR–77:* Amendment revises the TSs.

*Date of initial notice in* ***Federal Register:*** July 8, 2003 (68 FR 40719).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 2004.

*No significant hazards consideration comments received:* No.

*Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee*

*Date of application for amendment:* August 22, 2003, as supplemented March 19, 2004.

*Brief description of amendment:* The amendment revises Technical Specification 3.3.1, ''Reactor Trip System Instrumentation.'' The revision adds a Surveillance Requirement for response time to the Source Range Neutron Flux Reactor Trip function.

*Date of issuance:* April 19, 2004.

*Effective date:* As of the date of issuance and shall be implemented within 30 days of issuance.

*Amendment No.:* 52.

*Facility Operating License No. NPF–90:* Amendment revises the Technical Specifications.

*Date of initial notice in* ***Federal Register:*** September 18, 2003 (68 FR 54753). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2004.

*No significant hazards consideration comments received:* No.

Dated at Rockville, Maryland, this 30th day of April 2004.

For the Nuclear Regulatory Commisison.

**Ledyard B. Marsh,**

*Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.*

[FR Doc. 04–10305 Filed 5–10–04; 8:45 am]

**BILLING CODE 7590–01–P**

## OFFICE OF MANAGEMENT AND BUDGET

### Revised Information Quality Bulletin on Peer Review

**AGENCY:** Office of Management and Budget, Executive Office of the President.

**ACTION:** Notice and request for comment: correction.

**SUMMARY:** This Notice provides the contact information and suggested approach for submitting comments on the ''Revised Information Quality Bulletin on Peer Review,'' published in the **Federal Register** on April 28, 2004 (69 FR 23230); this information was inadvertently omitted from the April 28th notice. As that notice indicated, interested parties should submit comments on or before May 28, 2004, to OMB's Office of Information and Regulatory Affairs. The April 28th notice contains the text of the proposed ''Revised Information Quality Bulletin on Peer Review'' as well as background and explanatory information.

**ADDRESSES:** Due to potential delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. We cannot guarantee that comments mailed will be received before the comment closing date. Electronic comments may be submitted to: *OMB_peer_review@omb.eop.gov.* Please put the full body of your comments in the text of the electronic message and as an attachment. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395–7245. Comments may be mailed to Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Dr. Margo Schwab, Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., New Executive Office Building, Room 10201, Washington, DC 20503 (tel. (202) 395–3093).

**John D. Graham,**

*Administrator, Office of Information and Regulatory Affairs.*

[FR Doc. 04–10633 Filed 5–10–04; 8:45 am]

**BILLING CODE 3110–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 6a–3, SEC File No. 270–0015, OMB Control No. 3235–0021.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 6 of the Exchange Act[2] sets out a framework for the registration and regulation of national securities exchanges. Under Commission Rule 6a–3,[3] one of the rules that implements Section 6, a national securities exchange (or an exchange exempted from registration as a national securities exchange based on limited trading volume) must provide certain supplemental information to the Commission, including any material (including notices, circulars, bulletins, lists, and periodicals) issued or made generally available to members of, or participants or subscribers to, the exchange. Rule 6a–3 also requires the exchanges to file monthly reports that set forth the volume and aggregate dollar amount of securities sold on the exchange each month.

The information required to be filed with the Commission pursuant to Rule 6a–3 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are national securities exchanges and exchanges that are exempt from registration based on limited trading volume.

The Commission estimates that each respondent makes approximately 25 such filings on an annual basis at an average cost of approximately $21 per response. Currently, 11 respondents (nine national securities exchanges and two exempt exchanges) are subject to the collection of information requirements of Rule 6a–3. The Commission estimates that the total burden for all respondents is 137.5 hours (25 filings/respondent per year × 0.5 hours/filing × 11 respondents) and $5775 ($21/response × 25 responses/respondent per year × 11 respondents) per year.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the

[1] 44 U.S.C. 3501 *et seq.*

[2] 15 U.S.C. 78f.

[3] 17 CFR 240.6a–3.

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 in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: April 30, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10604 Filed 5–10–04; 8:45 am]

**BILLING CODE 8010–01–P**

## SECURITIES AND EXCHANGE COMMISSION

### Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form 1, Rules 6a–1 and 6a–2—SEC File No. 270–0018—OMB Control No. 3235–0017.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995,[1] the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Securities Exchange Act of 1934 (''Act'') sets forth a regulatory scheme for national securities exchanges. Rule 6a–1 under the Act [2] generally requires an applicant for initial registration as a national securities exchange to file an application with the Commission on Form 1. An exchange that seeks an exemption from registration based on limited trading volume also must apply for such exemption on Form 1. Rule 6a–2 under the Act [3] requires registered and exempt exchanges: (1) To amend the Form 1 if there are any material changes to the information provided in the initial Form 1; and (2) to submit periodic updates of certain information provided in the initial Form 1, whether such information has changed or not. The information required pursuant to Rules 6a–1 and 6a–2 is necessary to enable the Commission to maintain accurate files regarding the exchange and to exercise its statutory oversight functions. Without the information submitted pursuant to Rule 6a–1 on Form 1, the Commission would not be able to determine whether the respondent met the criteria for registration or exemption set forth in sections 6 and 19 of the Act. Without the amendments and periodic updates of information submitted pursuant to Rule 6a–2, the Commission would have substantial difficulty determining whether a national securities exchange or exempt exchange was continuing to operate in compliance with the Act.

The respondents to the collection of information are entities that seek registration as a national securities exchange or that seek exemption from registration based on limited trading volume. After the initial filing of Form 1, both registered and exempt exchanges are subject to ongoing informational requirements.

Initial filings on Form 1 by new exchanges are made on a one-time basis. The Commission estimates that it will receive approximately three initial Form 1 filings per year and that each respondent would incur an average burden of 47 hours to file an initial Form 1 at an average cost per response of approximately $4517. Therefore, the Commission estimates that the annual burden for all respondents to file the initial Form 1 would be 141 hours (one response/respondent × three respondents × 47 hours/response) and $13,551 (one response/respondent × three respondents × $4517/response).

There currently are nine entities registered as national securities exchanges and two exempt exchanges. The Commission estimates that each registered or exempt exchange files one amendment or periodic update to Form 1 per year, incurring an average burden of 25 hours to comply with Rule 6a–2. The Commission estimates that the annual burden for all respondents to file amendments and periodic updates to the Form 1 pursuant to Rule 6a–2 is 275 hours (11 respondents × 25 hours/response × one response/respondent per year) and $25,630 (11 respondents × $2330/response × one response/respondent per year).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to R. Corey Booth, Director/Chief Information Officer, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: April 30, 2004.

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10605 Filed 5–10–04; 8:45 am]

**BILLING CODE 8010–01–P**

[1] 44 U.S.C. 3501 *et seq.*

[2] 17 CFR 240.6a–1.

[3] 17 CFR 240.6a–2.

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49653; File No. SR–NYSE–2004–19]**

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. Relating to Series 86/87 Examination Development Fee for Research Analysts

May 4, 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 April 30, 2004, the New York Stock Exchange, Inc. (''NYSE'') 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 NYSE. On April 30, 2004, the NYSE filed Amendment number 1 to the proposed rule change (''Amendment No. 1'').[3] The NYSE has designated this proposal as one establishing or changing a due, fee or other charge imposed by

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from William Jannace, Director, Rule and Interpretive Standards, NYSE, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2004. In Amendment No. 1, the NYSE clarified that after implementation of the Series 86/87, the NYSE will continue to update, as necessary, the examination content and questions, and maintain statistics related to the maintenance of the exam.

the NYSE pursuant to section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

The NYSE is filing with the Commission a proposed rule change that would establish an examination development fee for the Research Analyst Qualification Examination (''Series 86/87'').

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

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change 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 NYSE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

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

1. Purpose

NYSE Rule 344.10 requires that research analysts be registered with, qualified by, and approved by the NYSE. On July 29, 2003, the Commission approved amendments to NYSE Rule 472 (''Communications With The Public''), Rule 351 (''Reporting Requirements''), Rule 344 (''Research Analysts And Supervisory Analysts''), and Rule 345A (''Continuing Education For Registered Persons'').[6] The amendments include a new Research Analyst Qualification Examination requirement for research analysts who are primarily responsible for the preparation of the substance of research reports and/or whose names appear on such reports (NYSE Rule 344.10).

Accordingly, the NYSE, together with the National Association of Securities Dealers, Inc. (''NASD''), developed a Research Analyst Qualification Examination, which is a two-part examination that tests competency of fundamental security analysis and valuation (Series 86) and applicable federal rules and regulations and self-regulatory organization (SRO) rules (Series 87).[7]

NYSE Rule 344.10 became effective on March 30, 2004. Concurrently, the NASD filed a proposed rule change establishing an administration fee of $105.00 and $55.00 for an associated person to take the Series 86 and Series 87 examinations, respectively.[8] Its fees are based on the costs to the NASD to administer the examinations, including printing, delivery and systems changes. Associated persons of NYSE only members and member organizations that take the examination must pay the fees stated in the NASD's filing to the NASD.

The NYSE's filing would establish an examination development fee of $45.00, to be collected by the NASD on behalf of the NYSE, each time an individual takes either of the Series 86 or Series 87 examinations. This development fee, which is the subject of this filing, was determined by the NYSE based on the costs incurred to develop, implement, and maintain the Series 86 and Series 87 examinations.[9] The NYSE represents that after implementation of the Series 86/87, the NYSE expects to continue to update, as necessary, the examination content and questions, and maintain statistics and conduct various examination committee meetings.[10] Accordingly, the NYSE notes that this fee will be assessed on an on-going basis, as is the case with various other qualification examinations, *e.g.* the Series 7 (General Securities Registered Representative) Examination. The total examination and development fees assessed on each individual who takes a Series 86 examination for registration as a research analyst will be $150.00.

The total examination and development fees assessed on each individual who takes a Series 87 examination for registration as a research analyst will be $100.00. In addition, there shall be a service charge of $15.00 in addition to the fees described above for any examination taken in a foreign test center located outside the territorial limits of the United States. Such fees will be paid to the NASD, with no portion thereof being remitted to the NYSE.

On March 24, 2004, the Commission approved an interpretation to NYSE Rule 344, which permits a research analyst candidate who has passed both Level I and Level II of the Chartered Analyst (CFA) Examination to request an exemption from the Series 86 examination.[11] The CFA examination is administered by the Association for Investment Management and Research. To be eligible for the exemption, an applicant must not only have passed Levels I and II of the CFA examination, but also must either (1) have functioned continuously as a research analyst since having passed CFA Level II or (2) have passed CFA Level II within two years of application for registration as a research analyst. Applicants who do not meet these criteria may, based upon previous related employment/experience, make a written request to the NYSE or the NASD for a waiver. The NASD will be processing all requests for exemptions from the Series 86. Each candidate who is granted a waiver for the Series 86 shall be assessed as a waiver application fee, the fee for this examination. Associated persons of NYSE-only members and member organizations who are granted a waiver or exemption must still pay the examination fee to the NASD, plus the NYSE development fee that will be collected by the NASD and remitted to the NYSE.

2. Statutory Basis

The NYSE believes that the proposal is consistent with section 6(b) of the Act,[12] in general, and section 6(b)(4) of the Act,[13] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The NYSE does not believe that the proposed rule change will impose any

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] *See* Securities Exchange Act Release No. 48252 (July 29, 2003), 68 FR 45875 (August 4, 2003) (SR–NYSE–2002–49).

[7] On January 27, 2004, the Exchange filed with the Commission for immediate effectiveness the Series 86/87 study outline. *See* Securities Exchange Act Release No. 49253 (February 13, 2004), 69 FR 8257 (February 23, 2004) (notice of filing and immediate effectiveness of File No. SR NYSE–2003–41). The NYSE previously filed with the Commission on January 16, 2004, a proposed rule change for immediate effectiveness that delayed the effective date of NYSE Rule 344.10 to ''not later than March 30, 2004.'' *See* Securities Exchange Act Release No. 49119 (January 23, 2004), 69 FR 4337 (January 29, 2004) (notice of filing and immediate effectiveness of File No. SR–NYSE–2004–01). On January 30, 2004, the Exchange filed with the Commission a proposed rule change that would establish certain prerequisites to and exemptions from the Research Analyst Qualification Examination. *See* Securities Exchange Release No. 49314 (February 24, 2004), 69 FR 9888 (March 2, 2004) (SR–NYSE–2004–03).

[8] *See* Securities Exchange Act Release No. 49527 (April 2, 2004), 69 FR 19255 (April 12, 2004) (SR–NASD–2004–49).

[9] *See* Amendment No. 1, *supra* note 3.

[10] *See* Amendment No. 1, *supra* note 3.

[11] *See* Securities Exchange Act Release No. 49464 (March 24, 2004), 69 FR 16628 (March 30, 2004) (SR–NYSE–2004–03).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4).

burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act [14] and subparagraph (f)(2) of Rule 19b–4 [15] thereunder because it establishes a fee to be imposed by the NYSE. Accordingly, the proposal has taken effect upon filing with the Commission. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[16]

**IV. Solicitation of Comments**

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

*Electronic comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–19 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609.

All submissions should refer to File Number SR–NYSE–2004–19. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2004–19 and should be submitted on or before June 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10602 Filed 5–10–04; 8:45 am]

BILLING CODE 8010–01–P

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 240.19b–4(f)(2).

[16] For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 30, 2004, the date the NYSE filed Amendment No. 1.

[17] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49649; File No. SR–NYSE–2004–21]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 thereto by the New York Stock Exchange, Inc. to Extend for an Additional Year the Pilot Relating to the Allocation Policy for Trading of Exchange-Traded Funds on an Unlisted Trading Privileges Basis (NYSE Rule 103B)

May 4, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 13, 2004, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NYSE. On April 23, 2004, NYSE filed Amendment No. 1 to the proposal.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The proposed rule change seeks to extend for an additional year [4] the pilot relating to the allocation policy for trading certain ETFs (''Pilot''), which has been codified in NYSE Rule 103B (''Rule 103B''), Section VIII. The Pilot is set to expire on May 8, 2004. In addition, the Exchange proposes to substitute the term ''Chief Executive Officer'' for ''Chairman'' in NYSE Rule 103B, Section VIII as a result of changes to the governance structure of the NYSE, which differentiated the authority and responsibilities of the Chairman of the Board of Directors and the Chief Executive Officer (CEO). For purposes of the allocation policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Rule 1200), which trade on an Unlisted Trading Privileges Basis (''UTP''). The text of the proposed rule change is available at the NYSE 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 NYSE 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.

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

[2] 17 CFR 240.19b–4.

[3] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 22, 2004 (''Amendment No. 1''). In Amendment No. 1, NYSE amended the filing to request that the Commission waive the 30-day delayed operative date to ensure that the pilot relating to the allocation policy for trading certain Exchange-Traded Funds (''ETFs'') continued without interruption.

[4] The Exchange is continuing to develop its market in ETFs and is reviewing the results of utilizing the allocation procedures adopted in the pilot. As greater experience is gained, the Exchange will evaluate the continued usefulness of these procedures and consider whether to make the procedures permanent.

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

1. Purpose

The Exchange seeks to extend for an additional year the allocation policy for trading certain ETFs, as codified in NYSE Rule 103B,[5] Section VIII. This proposed rule change was originally filed as a one-year pilot in SR–NYSE–2001–07,[6] and subsequently amended by SR–NYSE–2001–10[7] and SR–NYSE–2002–07.[8] The pilot was subsequently extended for an additional two years, and is due to expire on May 8, 2004.[9]

The Exchange also proposes to make one change to NYSE Rule 103B. The Exchange proposes to replace the term ''Chairman'' with ''Chief Executive Officer'' in NYSE Rule 103B, Section VIII (the Allocation policy for trading certain ETFs). This change is being made as a result of amendments to the governance structure of the Exchange, which differentiated the authority and responsibilities of the Chairman and CEO.[10]

Since the inception of the Allocation Policy, 36 ETFs have been allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDRs), a type of Trust Issued Receipt, nine types of Select Sector Standard & Poor's Depositary Receipts (SPDRs), one MidCap SPDR, five types of iShares, one Vanguard Index Participation Equity Recipient (VIPER) Shares, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's 500 Index (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

*Allocation Policy for ETFs Trading Under UTP.* The purposes of the Exchange's current Allocation Policy and Procedures (the ''Policy'') is to: (1) Ensure that the allocation process is based on fairness and consistency and that all specialist units have a fair opportunity for allocations based on established criteria and procedures; (2) provide an incentive for ongoing enhancement of performance by specialist units; (3) provide the best possible match between specialist unit and security; and (4) contribute to the strength of the specialist system.

The Allocation Committee has sole responsibility for the allocation of securities to specialist units under this policy pursuant to authority delegated by the Board of Directors, and is overseen by the Quality of Markets Committee of the Board (''QOMC''). The Allocation Committee renders decisions based on the allocation criteria specified in this Policy.[11]

The Exchange believes that it would be appropriate to modify the listed equities allocation process to provide that ETFs traded on a UTP basis be allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members on the Allocation Committee, and four members of the Exchange's senior management as designated by the CEO of the Exchange. This will permit Exchange management, acting with designated members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. For purposes of the Allocation Policy, ETFs collectively include Investment Company Units (as defined in paragraph 703.16 of the Listed Company Manual) and Trust Issued Receipts (as defined in Exchange Rule 1200).

Allocation applications would be solicited by the Exchange, and this special committee would review the same performance and disciplinary material as is reviewed by the Allocation Committee.[12] In addition, specialist unit applicants would be required to demonstrate:

(a) an understanding of the trading characteristics of ETFs;

(b) expertise in the trading of derivatively-priced instruments;

(c) ability and willingness to engage in hedging activity as appropriate;

(d) knowledge of other markets in which the ETF which is to be allocated trades; and

(e) willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

A specialist organization cannot be both the specialist in the ETF and the specialist in any security that is a component of the ETF. This restriction is necessary to avoid the possibility of ''wash sales'' in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security.

The special committee would review specialist unit applications and reach its allocation decision by majority vote. Any tie vote would be decided by the CEO of the Exchange. The Exchange has determined that due to the unique aspects of certain ETF products, it may be helpful for the special committee to meet with and interview specialist units before making an allocation decision.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[13] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

*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*

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act,[14] and subparagraph (f)(6) of Rule 19b–4,[15] thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant

[5] *See* Securities Exchange Act Release No. 46579 (October 1, 2002), 67 FR 63004 (October 9, 2002) (SR–NYSE–2002–31).

[6] *See* Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR–NYSE–2001–07).

[7] *See* Securities Exchange Act Release No. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001) (SR–NYSE–2001–10).

[8] *See* Securities Exchange Act Release No. 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (SR–NYSE–2002–07).

[9] *See* Securities Exchange Act Release No. 45884 (May 6, 2002), 67 FR 32073 (May 13, 2002) (SR–NYSE–2002–17). *See* also Securities Exchange Act Release No. 47690, 68 FR 20205 (April 24, 2003) (SR–NYSE–2003–07).

[10] *See* Securities Exchange Act Release No.48946 (December 17, 2003), 68 FR 74678 (December 24, 2003) (SR–NYSE–2003–34). *See* Securities Exchange Act Release No. 49345 (March 1, 2004), 69 FR 10791 (March 8, 2004) (SR–NYSE–2004–02).

[11] *See* Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR–NYSE–99–34).

[12] *See* Section IV (''Allocation Criteria'') of the Allocation Policy and Procedures approved in Securities Exchange Act Release No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR–NYSE–99–34) for details of the performance and disciplinary material available to the Allocation Committee.

[13] 15 U.S.C. 78f(b)(5).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. [16]

The Exchange requests that the Commission waive the 30-day delayed operative date of Rule 19b–4(f)(6)(iii). Waiver of this period will allow the Exchange to continue the pilot without interruption. The Exchange believes that this is in the public interest. The Commission also believes that it is consistent with the protection of investors and the public interest to waive the 30-day operative delay and make this proposed rule change immediately effective as of April 23, 2004.[17]

## IV. Solicitation of Comments

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

*Electronic comments:*

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send E-mail to *rule-comments@sec.gov*. Please include File Number SR–NYSE–2004–21 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR-NYSE–2004–21. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the NYSE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSE–2004–21 and should be submitted on or before June 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. 04–10603 Filed 5–10–04; 8:45 am]

**BILLING CODE 8010–01–P**

[16] For the purposes of calculating the 60-day abrogation period, the Commission considers the proposed rule change to have been filed on April 23, 2004, the date NYSE filed Amendment No. 1.

[17] For purposes of only accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[18] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–49656; File No. SR–PCX–2004–41]**

## Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change by the Pacific Exchange, Inc. Relating to Exchange Fees and Charges

May 5, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 30, 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 PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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

[2] 17 CFR 240.19b–4.

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

The Exchange is proposing to amend its Schedule of Fees and Charges for Exchange Services in order to rebate the fees charged to Lead Market Makers (''LMMs'') when they use the intermarket options linkage (''Linkage'') to send a Principal Acting as Agent (''P/A'') Order [3] to another options exchange (an ''away market'').

The text of the proposed rule change is available at the offices of the Exchange 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 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 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

The purpose of this proposed rule change is to rebate the fees for PCX LMMs who trade P/A Orders executed through Linkage at away markets. Currently, when a PCX LMM sends a P/A Order through Linkage to an away market, the LMM pays transaction costs to execute the order at both the PCX and the away market center. The Exchange believes that fees have placed an unnecessary burden on the PCX LMMs and have created a disincentive to use Linkage. In order to encourage the use of Linkage and to remove some of the financial burden placed on PCX LMMs that use Linkage, the PCX is proposing to rebate the fees for PCX LMMs that send P/A Orders through Linkage to away markets. Specifically, the Exchange is proposing to rebate the LMM for the transaction and comparison charges incurred on the subsequent execution of customer

[3] A ''P/A Order'' is an order for the principal account of a market maker that is authorized to represent customer orders, reflecting the terms of a related unexecuted customer order for which the market maker is acting as agent. *See* section 2(16) of the Plan for the Purpose of Creating and Operating an Intermarket Option Linkage.

orders that have been routed to and received an execution on another exchange through Linkage. Fees will be rebated based on the aggregate market maker transaction and aggregate market maker comparison charge calculated at month-end.

2. Statutory Basis

The Exchange believes that the proposal is consistent with section 6(b) of the Act,[4] in general, and section 6(b)(4),[5] in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other persons using its facilities for the purpose of accessing the National Best Bid or Offer by using the Linkage on behalf of a customer order.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

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

Written comments on the proposed rule change were neither solicited nor received.

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

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the PCX, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[6] and Rule 19b–4(f)(2)[7] thereunder. At any time within 60 days after 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 proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic comments:*

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–PCX–2004–41 on the subject line.

*Paper comments:*

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–PCX–2004–41. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–PCX–2004–41 and should be submitted on or before June 1, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

**J. Lynn Taylor,**

*Assistant Secretary.*

[FR Doc. 04–10634 Filed 5–10–04; 8:45 am]

BILLING CODE 8010–01–P

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3573]**

### State of Illinois (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 23, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on April 20, 2004, and continuing through April 23, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 22, 2004, and for economic injury the deadline is January 24, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 4, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. E4–1070 Filed 5–10–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

**[Declaration of Disaster #3572]**

### Commonwealth of Massachusetts (Amendment #1)

In accordance with a notice received from the Department of Homeland Security—Federal Emergency Management Agency, effective April 30, 2004, the above numbered declaration is hereby amended to establish the incident period for this disaster as beginning on April 1, 2004, and continuing through April 30, 2004.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 21, 2004, and for economic injury the deadline is January 21, 2005.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 5, 2004.

**Herbert L. Mitchell,**

*Associate Administrator for Disaster Assistance.*

[FR Doc. 04–10698 Filed 5–10–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### National Advisory Council Public Meeting

The Small Business Administration (SBA) will be hosting a meeting of the National Advisory Councils (NAC). The meeting will be held from Monday, May 17th through Wednesday, May 19, 2004, at the Disney Yacht & Beach Club Resort located at 1700 Epcot Resort Boulevard, Lake Buena Vista, FL 32830.

Anyone wishing to attend and make an oral presentation to the Board must contact Kimberly Mace, no later than

Wednesday, May 12, 2004, via e-mail or fax. Kimberly Mace, U.S. Small Business Administration, 409 3rd Street SW., Washington, DC 20416 (202) 401–8525 phone or (202) 481–2974 fax or e-mail *kimberly.mace@sba.gov*.

**Balbina A. Caldwell,**

*Director of Advisory Councils.*

[FR Doc. E4–1069 Filed 5–10–04; 8:45 am]

BILLING CODE 8025–01–P

## SMALL BUSINESS ADMINISTRATION

### Public Federal Regulatory Enforcement Fairness Hearing; Region IV Regulatory Fairness Board

The Small Business Administration Region IV Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Friday, May 21, 2004 at 1:30 p.m. at the Orange County Convention Center, 9800 International Drive, Orlando, FL 32819–8111, to receive comments and testimony from small business owners, small government entities, and non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Jose Mendez in writing or by fax, in order to be put on the agenda. José Méndez, Event Coordinator, SBA Office of the National Ombudsman, 409 3rd Street, SW., Suite 7125, Washington, DC 20416, phone (202) 205–6178, fax (202) 481–2707, e-mail: *jose.mendez@sba.gov.*

For more information, *see* our Web site at *http://www.sba.gov/ombudsman.*

Dated: May 5, 2004.

**Peter Sorum,**

*Senior Advisor, Office of the National Ombudsman.*

[FR Doc. 04–10612 Filed 5–10–04; 8:45 am]

BILLING CODE 8025–01–P

## DEPARTMENT OF STATE

**[Public Notice 4713]**

### Culturally Significant Objects Imported for Exhibition Determinations: Seurat and the Making of ''La Grande Jatte''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 (68 FR 19875), I hereby determine that the objects to be included in the exhibition Seurat and the Making of ''La Grande Jatte,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant I also determine that the exhibition or display of the exhibit objects at The Art Institute of Chicago, Chicago, IL from on or about June 16, 2004 to on or about September 19, 2004, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 4, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04–10657 Filed 5–10–04; 8:45 am]

BILLING CODE 4710–08–P

## DEPARTMENT OF STATE

**[Public Notice 4714]**

### Culturally Significant Objects Imported for Exhibition Determinations: ''Van Gogh to Mondrian: Modern Art from the Kroller-Muller Museum''

**SUMMARY:** Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Van Gogh to Mondrian: Modern Art from the Kroller-Muller Museum,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owners. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum Seattle, Washington from on or about May 29, 2004 to on or about September 12, 2004 and the High Museum of Art, Atlanta, GA from on or about October 16, 2004 to on or about January 16, 2005, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, Department of State, (telephone: 202/619–6981). The address is Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 4, 2004.

**C. Miller Crouch,**

*Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.*

[FR Doc. 04–10658 Filed 5–10–04; 8:45 am]

BILLING CODE 4710–08–P

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Petition under Section 302 on Workers' Rights in China; Decision Not to Initiate Investigation

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Decision not to initiate investigation.

**SUMMARY:** The United States Trade Representative (USTR) has determined not to initiate an investigation under section 302 of the Trade Act of 1974 with respect to a petition filed on March 16, 2004 addressed to workers' rights in China because initiation of an investigation would not be effective in addressing the issues raised in the petition.

**EFFECTIVE DATE:** April 28, 2004.

**FOR FURTHER INFORMATION CONTACT:** Terrence McCartin, Director of Monitoring and Enforcement for China, (202) 395–3900; William Clatanoff, Assistant USTR for Labor, (202) 395–6120; or William Busis, Associate General Counsel, (202) 395–3150.

**SUPPLEMENTARY INFORMATION:** On March 16, 2004, the American Federation of Labor and Congress of Industrial Organizations filed a petition pursuant to section 302(a)(1) of the Trade Act of 1974, as amended (the Trade Act), alleging that certain acts, policies and practices of the Government of China with respect to Chinese manufacturing workers are unreasonable, as defined in

section 301(d)(3)(B)(iii) of the Trade Act, and burden or restrict U.S. commerce. In particular, the petition alleges that acts, policies and practices of the Government of China constitute a persistent pattern of conduct that: (i) Denies to manufacturing workers the right of association, and the right to organize and bargain collectively; (ii) permits any form of forced or compulsory labor; and (iii) fails to provide standards for minimum wages, hours of work, and occupational safety and health. The petition claims that these acts, policies and practices of the Government of China burden U.S. commerce by depressing the wages of Chinese manufacturing workers, resulting in a cost advantage for goods manufactured in China and a loss of U.S. manufacturing jobs.

The USTR has determined not to initiate an investigation under section 302 of the Trade Act with respect to the petition because initiation of an investigation would not be effective in addressing the acts, policies, and practices raised in the petition. The Administration is currently involved in efforts to address with the Government of China many of the labor issues raised in the petition. The USTR believes that initiation of an investigation under section 302 would not further Administration efforts to improve workers' rights in China and, to the contrary, that initiation would instead hamper those efforts.

**William Busis,**

*Chairman, Section 301 Committee.*

[FR Doc. 04–10685 Filed 5–10–04; 8:45 am]

BILLING CODE 3190–W4–P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent to Rule on Application 04–04–C–00–JHW To Impose and Use the Revenue From a Passenger Facility Charge (PRC) at Chautauqua County/Jamestown Airport, Jamestown, New York

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

**DATES:** Comments must be received on or before June 10, 2004.

**ADDRESSES:** Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Kenneth B. Brentley, Director of Public Works of Chautauqua County, New York at the following address: 3163 Airport Drive, Jamestown, New York 14701.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Chautauqua County, New York under 158.23 of Part 158.

**FOR FURTHER INFORMATION CONTACT:** Philip Brito, Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, New York, 11530, (516) 227–3800. The application may be reviewed in person at this same location.

**SUPPLEMENTARY INFORMATION:** The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Chautauqua County/Jamestown Airport under the provisions of the 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On May 3, 2004, the FAA determined that the application to impose and use the revenue from a PFC submitted by Chautauqua County, New York was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 10, 2004.

The following is a brief overview of the application.

*Proposed charge effective date:* September 1, 2004.

*Proposed charge expiration date:* July 1, 2009.

*Level of the proposed PFC:* $4.50.

*Total estimated PFC revenue:* $200,112.

*Brief description of proposed project(s):*

1. Runway 7/25 Lighting Rehabilitation;
2. Rehabilitate General Aviation Apron;
3. Security Improvements;
4. Runway 13/31 Partial Parallel taxiway;
5. Preparation of Passenger Facility Charge Application.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Nonscheduled/On-Demand Air Carriers Filing FAA From 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airports office located at: Federal Aviation Administration, Airports Division, 1 Aviation Plaza, Jamaica, New York 11434–4809.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Chautauqua County, New York.

Issued in Garden City, New York, on May 3, 2004.

**Philip Brito,**

*Manager, New York Airports District Office, Eastern Region.*

[FR Doc. 04–10693 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Notice of Intent To Rule on Application 04–04–C–00–GEG to Impose and Use and Impose Only the Revenue from a Passenger Facility Charge (PFC) at Spokane International Airport, Submitted by Spokane Airport Board, Spokane International Airport, Spokane, Washington

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of intent to rule on application.

**SUMMARY:** This correction incorporates information from the public agency's application. In notice document 04–9922 beginning on page 24216 in the issue of Monday, May 3, 2004, make the following correction:

In the second column: Addresses: Change mailing address of Mr. John G. Morrison, CEO/Executive Director to 9000 W. Airport Drive, Suite 204, Spokane, WA 99224–8700.

Issued in Renton, Washington, on May 3, 2004.

**David A. Field,**

*Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.*

[FR Doc. 04–10694 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–13–M

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### Large Agricultural Restricted Category Airplane Certification Topics and Twin Engine Large Agricultural Restricted Category Airplane Certification Basis Proposal—AT–2002 Project

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of proposed policy and request for public comment.

**SUMMARY:** This notice announces the availability of and requests comments on two documents concerning airworthiness standard for restricted category type certificates for large airplanes that are to be used for agricultural, firefighting, and special purpose operations. The first document ''Large Agricultural Restricted Category Airplane Topics'' addresses two topics concerning design criteria for a large airplane weighing 19,000 pounds or less maximum certificated takeoff weight. For reference purposes, the first document also provides an overview of the second document. The second document ''Twin Engine Large Agricultural Restricted Category Airplane Certification Basis Proposal AT–2002 Project'' presents a proposed certification basis for twin-engine airplanes having a certificated maximum weight of 36,000 pound. The proposed certification bases contains many airworthiness standards currently in Title 14 of the Code of Federal Regulations (14 CFR) part 23, rather than 14 CFR part 25.

**DATES:** Comments must be received on or before July 2, 2004.

**ADDRESSES:** Send all comments on the proposals to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Room 815, 800 Independence Avenue, SW., Washington, DC 20591. Attn: Stephen (Steve) Flanagan, AIR–110. You may deliver comments to: Federal Aviation Administration, Room 815, 800 Independence Avenue, SW., Washington, DC, 20591, or electronically submit comments to the following Internet address: *9-AWA-AVR-AIR-Policycomments@faa.gov*. Include in the subject line of your message the title of the document on which you are commenting.

**FOR FURTHER INFORMATION CONTACT:** Stephen (Steve) Flanagan, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Certification Procedures Branch, AIR–110, Room 815, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3549, Fax (202) 267–5340, or e-mail at: *steve.flanagan@faa.gov*

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

You are invited to comment on the proposals listed in this notice by sending such written data, views, or arguments to the above listed address. Your comment should identify ''Large Agricultural Restricted Category Airplane Certification Basis Proposal'' or ''Single Engine Large Agricultural Restricted Category Airplane Proposal'' as appropriate. You may also examine comments received on the proposals before and after the comment closing date at the FAA Headquarters Building, Room 815, 800 Independence Avenue SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. The Director of the Aircraft Certification Service will consider all communications received on or before the closing date before implementing these proposals.

#### Background

The first document ''Large Agricultural Restricted Category Airplane Topics'' addresses two topics concerning design criteria for a large airplane that would weight 19,000 pounds or less maximum certificated takeoff weight. The first topic is the appropriate limit maneuvering load factor for the airplane. The second topic presents the FAA discussion explaining our agreement with the applicant's proposal that a single engine design for a small to medium size airplane is safer than a multi-engine design for the agricultural and firefighting special purpose operations. For reference purposes, the first document also provides an overview of the second document.

The second document ''Twin Engine Large Agricultural Restricted Category Airplane Certification Basis Proposal AT–2002 Project'' explains how the FAA and the applicant have developed a proposed certification basis for a twin-engine 36,000-pound airplane. The proposed certification basis uses many airworthiness standards from 14 CFR part 23, rather than 14 CFR part 25 requirements. Our rationale for this is based on the difference between transport category and restricted category safety expectations.

The FAA developed these proposals based on an applicant's proposal that using 14 CFR part 25 airworthiness standards for a large agricultural restricted category airplane is excessively burdensome for an airplane that is only suitable for use in the unique special purpose operations of agricultural and forest and wildlife conservation (14 CFR 21.25(b)(1) and 21.25(b)(2)). The FAA agrees that the growth of turboprop engine power capability permits development of restricted category airplanes that are heavier than envisioned when the weight limits for normal, utility, and acrobatic category were originally established. FAA contends that these proposals are appropriate relief from the weight limits of normal, utility, or acrobatic category airplanes. This relief is appropriate only for airplanes that by design are suited only for their intended special purpose, and will not be eligible for a standard airworthiness certificate.

#### How To Obtain Copies

You can get an electronic copy via the Internet at *http://www.airweb.faa.gov/rgl* or by contacting the person named in the paragraph **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, DC, on May 30, 2004.

**Susan J. M. Cabler,**

*Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.*

[FR Doc. 04–10642 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–M**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**[Docket Nos. FMCSA–99–5748, FMCSA–2001–11426, FMCSA–2002–11714]**

### Qualification of Drivers; Exemption Applications; Vision

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Notice of renewal of exemption; request for comments.

**SUMMARY:** This notice publishes the FMCSA decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 20 individuals. The FMCSA has statutory authority to exempt individuals from vision standards if the exemptions granted will not compromise safety. The agency has concluded that granting these exemptions will provide a level of safety that will be equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

**DATES:** This decision is effective May 30, 2004. Comments from interested

persons should be submitted by June 10, 2004.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Numbers FMCSA–99–5748, FMCSA–2001–11426 and FMCSA–2002–11714 by any of the following methods:

- Web Site: *http://dms.dot.gov.* Follow the instructions for submitting comments on the DOT electronic docket site.
- Fax: 1–202–493–2251.
- Mail: Docket Management Facility; U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590–0001.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 am and 5 pm, Monday through Friday, except Federal Holidays.
- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

*Instructions:* All submissions must include the agency name and docket numbers for this notice. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the Supplementary Information section of this document. Note that all comments received will be posted without change to *http://dms.dot.gov*, including any personal information provided. Please see the Privacy Act heading under Regulatory Notices.

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

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Zywokarte, Office of Bus and Truck Standards and Operations, (202) 366–2987, FMCSA, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

*Public Participation:* The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help guidelines under the ''help'' section of the DMS web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation'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.*

**Exemption Decision**

Under 49 U.S.C. 31315 and 31136(e), the FMCSA may renew an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381. This notice addresses 20 individuals who have requested renewal of their exemptions in a timely manner. The FMCSA has evaluated these 20 applications for renewal on their merits and decided to extend each exemption for a renewable 2-year period. They are: Paul R. Barron, Joe W. Brewer, James D. Coates, Micahel D. DeBerry, Donald D. Dunphy, James W. Ellis, IV, John E. Engstad, David W. Grooms, Joe H. Hanniford, Sammy K. Hines, David A. Inman, Harry L. Jones, Teddie W. King, Lawrence C. Moody, Stanley W. Nunn, William R. Proffitt, Charles L. Schnell, Charles L. Shirey, Kevin R. Stoner, Carl J. Suggs.

These exemptions are extended subject to the following conditions: (1) That each individual have a physical exam every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for 2 years unless rescinded earlier by the FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31315 and 31136(e).

**Basis for Renewing Exemptions**

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than 2 years from its approval date and may be renewed upon application for additional 2-year periods. In accordance with 49 U.S.C. 31315 and 31136(e), each of the 20 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (64 FR 40404, 64 FR 66962, 67 FR 10475, 67 FR 10471, 67 FR 19798, 67 FR 15662, 67 FR 37907). Each of these 20 applicants has requested timely renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past 2 years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, the FMCSA concludes that extending the exemption for each renewal applicant for a period of 2 years is likely to achieve a level of safety equal to that existing without the exemption.

**Comments**

The FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31315 and 31136(e). However, the FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 10, 2004.

In the past the FMCSA has received comments from Advocates for Highway and Auto Safety (Advocates) expressing continued opposition to the FMCSA's procedures for renewing exemptions from the vision requirement in 49 CFR 391.41(b)(10). Specifically, Advocates objects to the agency's extension of the

exemptions without any opportunity for public comment prior to the decision to renew, and reliance on a summary statement of evidence to make its decision to extend the exemption of each driver.

The issues raised by Advocates were addressed at length in 66 FR 17994 (April 4, 2001). The FMCSA continues to find its exemption process appropriate to the statutory and regulatory requirements.

Issued on: April 23, 2004.

**Rose A. McMurray,**

*Associate Administrator, Policy and Program Development.*

[FR Doc. 04–10584 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–EX–P**

## 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 Ms. Claire M. Tieder to NHTSA's Office of Defects Investigation (ODI), dated January 11, 2004, 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 automatic transmission performance of model year (MY) 2004 BMW 3-Series xi all-wheel drive sedans. 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 DP04–001.

**FOR FURTHER INFORMATION CONTACT:** Mr. Steve Chan, Defects Assessment Division, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–8537.

**SUPPLEMENTARY INFORMATION:** By letter dated January 11, 2004, Ms. Claire M. Tieder of Reston, VA, submitted a petition requesting that the agency investigate the automatic transmission performance of MY 2004 BMW 3-Series xi all-wheel drive vehicles. The petitioner alleges that she had experienced transmission delay engagement of one-half minute to two minutes after shifting from Reverse to Drive on her MY 2004 BMW 325xi vehicle.

ODI requested information from Bayerische Motoren Werke (BMW) pertaining to the issue of automatic transmission delayed engagement when shifting from Reverse to Drive or from Drive to Reverse (alleged defect) on all MY 2004 BMW 3-Series vehicles (subject vehicles) manufactured for sale or lease in the United States. According to BMW, two automatic transmission models—GM5 and 5HP19—were used in the subject vehicles. The GM5 transmission was used in both the rear-wheel drive and the all-wheel drive vehicles, and the 5HP19 transmission was used for the rear-wheel drive vehicles only. The table below is a summary of BMW's response to certain requested information which relates, or may relate, to the alleged defect on the subject vehicles:

| Transmission model | Vehicle [1] population | Consumer complaints | Field reports | Warranty claims | TSB | Crash | Injury | Fatality |
|---|---|---|---|---|---|---|---|---|
| 5HP19 ..... | 6,942 | 2 | 0 | 12 | 0 | 0 | 0 | 0 |
| GM5 ..... | 49,706 | 139 | 256 | 1742 | 2 | 0 | 0 | 0 |

[1] As of February 27, 2004.

BMW apparently was well aware of the alleged defect in the subject vehicle. In December 2003, BMW issued Technical Service Bulletin (TSB) SI B24 07 03, Subject: ''GM5: Delayed P [Park] to D [Drive] Engagement on Cold Start.'' The TSB stated that ''Customer may complain of delayed 'P' to 'D' engagement (2 to 30 seconds) during the first cold start in the morning,'' and that the cause was ''Unfavorable tolerances of C1 clutch housing causing internal transmission pressure leak after extended (overnight) parking.'' The TSB applied to the subject vehicles and the BMW X5 3.0iA model with a GM5 transmission manufactured during certain time periods. The TSB indicated that if a customer complained about this problem, the affected transmission would be replaced with an improved unit after the servicing dealer verified the aforementioned delayed 'P' to 'D' engagement. On February 2004, BMW issued an updated TSB to include the BMW X3 3.0iA model with GM5 transmission. No TSB was issued with respect to the 5HP19 transmission.

In its response to ODI, BMW stated that the transmission engagement delay after shifting from Park to Drive, or from Reverse to Drive, is caused by an internal transmission fluid leak of the main drive clutch (C1 clutch) between the molded piston outer seal and the main drive clutch housing. The C1 clutch provides input torque to the transmission's 1st, 2nd, 3rd, and 4th gear. If the C1 clutch's torque-carrying capacity is interrupted, then forward drive gear engagement is delayed. The problem is more prevalent in colder weather, and usually occurs during a ''cold start'' such as after the vehicle has been parked with the engine off overnight.

In its response, BMW argued that the alleged defect does not pose an unreasonable risk to motor vehicle safety, for the following reasons:

(1) The delay can only occur at vehicle ''cold start'' after the vehicle has been at rest for more than eight hours, and typically lasts less than 15 seconds. At the time of a ''cold start,'' the vehicle is stationary. It is not moving in traffic. Therefore, the driver is not traveling at some measurable speed. There have been no crashes, no property damage claims, no injuries and no fatalities associated with the alleged defect reported to BMW;

(2) The delay is ''self-correcting.'' Coincident with the transmission engagement delay, a driver who has been sensitized to this occurrence may increase the engine speed in order to reduce the delay time. By increasing the engine speed, the transmission's internal pressure increases more quickly toward its operating pressure, and enables the drive gear to engage sooner;

(3) The transition from delay occurrence to ''normal'' vehicle usage is benign. At the end of the delay, the transition to full engagement of the drive gear occurs in a ''smooth'' manner. There is no sudden/abrupt forward acceleration of the vehicle. Nothing in front of the vehicle is at an increased

risk of being contacted, nor is there any risk of startling the driver;

(4) The drivers are sensitized to the delay and can take corrective actions once they have experienced the delay. They will know to expect it in future cold starts and can increase the engine speed to avoid the temporary effect of transmission engagement delay; and

(5) If a subject vehicle is prone to the condition of transmission engagement delay, the occurrence will arise early in the vehicle's lifecycle when it is fully covered by warranty. BMW's analysis of the warranty claims suggests that most of the potentially affected vehicles have already been repaired.

ODI has received a total of 13 consumer complaints (including one from the petitioner, who has a GM5 transmission) regarding this issue, of which 11 are unique to ODI. Like those reported to BMW, none of these complaints involved a crash, injury, or fatality. Information contained in the ODI consumer complaints and from telephone interviews with complainants is consistent with BMW's assessment of the safety consequences of the alleged defect. The reported transmission delay period ranged from 4 seconds to 75 seconds, with an average of 20 seconds. The complainants indicated that the delay only occur during ''cold start,'' after the vehicle has been parked overnight. Drivers learned to shorten the delay by increasing the engine speed; when the engine speed is increased, the vehicle creeps forward until the transmission is fully engaged. One complainant indicated that he shortens or eliminates the delay by shifting the transmission in Drive but keeping the vehicle stationary for 30 seconds with the brakes applied for pressure to build up in the transmission.

As the petitioner noted, it is possible for a driver to back a subject vehicle into the street from a driveway and then not to be able to move forward as normal. While this could theoretically create a safety problem, the risk is very small, and there are no reported crashes or injuries due to the alleged defect. As mentioned previously, once they are aware of the problem, the drivers appear to have learned to take precautionary and compensatory measures.

In view of the foregoing, it is unlikely that the 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 the 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: May 5, 2004.

**Kenneth N. Weinstein,**

*Associate Administrator for Enforcement.*

[FR Doc. 04–10644 Filed 5–10–04; 8:45 am]

BILLING CODE 4910–59–P

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

**[STB Docket No. AB–33 (Sub–No. 172X)]**

### Union Pacific Railroad Company—Abandonment Exemption—in Marshall County, KS

On April 21, 2004, the Union Pacific Railroad Company (UP) filed with the Surface Transportation Board a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon a 5.30-mile line of railroad known as the Vliets Industrial Lead, extending from milepost 409.10, near Frankfort, to milepost 403.80, near Vliets, in Marshall County, KS. The line traverses United States Postal Service Zip Codes 66427 and 66544, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in UP's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuing this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 9, 2004.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,100 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than June 1, 2004. Each trail use request must be accompanied by a $200 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–33 (Sub-No. 172X) and must be sent to: (1) Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423–0001; and (2) Mack H. Shumate, Jr., Senior General Attorney, 101 North Wacker Drive, Room 1920, Chicago, IL 60606. Replies to the UP petition are due on or before June 1, 2004.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1539. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary), prepared by SEA, will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days after the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

By the Board, David M. Konschnik, Director, Office of Proceedings.

Decided: May 4, 2004.

**Vernon A. Williams,**

*Secretary.*

[FR Doc. 04–10539 Filed 5–10–04; 8:45 am]

BILLING CODE 4915–01–P

## DEPARTMENT OF THE TREASURY

### Financial Crimes Enforcement Network; Proposed Collection; Comment Request; Registration of Money Services Business—Accompanied by FinCEN Form 107, Registration of Money Services Business

**AGENCY:** Financial Crimes Enforcement Network (''FinCEN''), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** As part of its continuing effort to reduce paperwork and respondent burden, FinCEN invites comment on a proposed information collection contained in a revised form, Registration of Money Services Business, FinCEN Form 107 (formerly Form TD F 90–

22.53). The form will be used by currency dealers or exchangers; check cashers; issuers of traveler's checks, money orders or stored value; sellers of traveler's checks, money orders or stored value; redeemers of traveler's checks, money orders or stored value; and money transmitters to register with the Department of the Treasury as required by statute. This request for comments is being made pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. 3506(c)(2)(A).

**DATES:** Written comments are welcome and must be received on or before July 12, 2004.

**ADDRESSES:** Written comments should be submitted to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, Virginia 22183, Attention: PRA Comments—MSB Registration-Form 107. Comments also may be submitted by electronic mail to the following Internet address: *regcomments@fincen.treas.gov*, again with a caption, in the body of the text, ''Attention: PRA Comments—MSB Registration-Form 107.''

*Inspection of comments.* Comments may be inspected, between 10 a.m. and 4 p.m., in the FinCEN reading room in Washington, DC. Persons wishing to inspect the comments submitted must request an appointment by telephoning (202) 354–6400.

**FOR FURTHER INFORMATION CONTACT:** Thomas Gormley, Regulatory Compliance Program Specialist, Office of Regulatory Programs, FinCEN, at (202) 354–6400; or Cynthia Clark, Office of Chief Counsel, FinCEN, at (703) 905–3590.

**SUPPLEMENTARY INFORMATION:**

*Title:* Registration of Money Services Business.

*OMB Number:* 506–0013.

*Form Number:* FinCEN Form 107.

*Abstract:* The statute generally referred to as the ''Bank Secrecy Act,'' Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR Part 103. The authority of the Secretary to administer the Bank Secrecy Act has been delegated to the Director of FinCEN.

Under 31 U. S. C. 5330 and its implementing regulations, money services businesses must register with the Department of the Treasury, maintain a list of their agents, and renew their registration every two years. Currently, money services businesses register by filing Form TD F 90–22.55, which is being revised, as explained below. The information collected on the revised form is required to comply with 31 U. S. C. 5330 and its implementing regulations. The information will be used to assist supervisory and law enforcement agencies in the enforcement of criminal, tax, and regulatory laws and to prevent money services businesses from use by those engaging in money laundering. The collection of information is mandatory.

Money services businesses are advised that the draft form that appears at the end of this notice is presented only for purposes of soliciting public comment on the draft form. They should not use the draft form to register, renew, correct a prior report, or re-register with Treasury. A final version of the draft form will be made available at a later date. In the meantime, money services businesses can use the current Form TD F 90–22.55.

*Current Actions:* Current Form TD F 90–22.55 is renamed as FinCEN Form 107 and is revised as follows. The box for ''Date of Filing'' is deleted. Minor editorial changes are made to the check boxes describing the type of filing, for example, initial registration, to clarify the form. Box 22—identifying information such as driver's license number or passport number—will no longer have to be completed if Box 21—taxpayer identification number—is completed. The list of money services business activities for both the registrant and its agents is changed to break out redeemers of traveler's check and redeemers of money orders as separate selections. A new question is added asking whether or not any part of the business is an informal value transfer system. Item headings are modified and instructions are added to the form to provide more specific guidance on how to fill out the form.

*Type of Review:* Revision of currently approved collection report.

*Affected public:* Individuals, business or other for-profit institutions, and not-for-profit institutions.

*Frequency:* As required.

*Estimated Burden:* Reporting average of 30 minutes per response; recordkeeping average of 30 minutes per response.

*Estimated number of respondents:* 17,000.

*Estimated Total Annual Burden Hours:* 17,000 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected: (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: April 27, 2004.

**William J. Fox,**

*Director, Financial Crimes Enforcement Network.*

Attachments: Registration of Money Services Business, FinCEN Form 107, and instructions.

**BILLING CODE 4810–02–P**

**FinCEN Form 107**
Formerly Dept. Treasury form TD F 90-22.55,
**Effective December 31, 2004**

# Registration of Money Services Business

**Please type or print. Always complete entire report. See instructions.**

**OMB No.1506-0013**

*Send your completed form to: IRS Detroit Computing Center, Attn: Money Services Business Registration, P. O. Box 33116, Detroit, MI 48232-0116*

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## Part I Filing Information

1 Indicate the type of filing by checking a, b, c, or d below.

a ☐ Initial registration b ☐ Renewal c ☐ Correction d ☐ Re-registration

2 If you checked item 1 d please indicate the reason(s). Check all that apply.

a ☐ Re-registered under state law b ☐ More than 10 percent transfer of equity interest c ☐ More than 50 percent increase in agents

## Part II Registrant Information

3 Legal name of the money services business

4 Doing business as

5 Address

6 City

7 State

8 ZIP Code

9 EIN (entity), SSN/ITIN (individual)

10 Telephone number (include area code)

## Part III Owner or Controlling Person

11 Individual's last name, or organization's name

12 First name

13 Middle initial

14 Address

15 City

16 State

17 ZIP Code

18 Country (if other than US)

19 Telephone number - (include area code)

20 Date of birth _____ / _____ / _____ MM DD YYYY

21 SSN/ITIN (individual), EIN (entity)

22 Skip this item if you completed item 21.
If the owner or controlling person is an individual enter their form of identification, the ID number, and the issuing state or country.

a ☐ Driver's license/state ID b ☐ Passport c ☐ Alien registration d ☐ Other _____

e ID number f Issuing state or country _____

## Part IV Money Services and Product Information

23 States and/or territories where the registrant, its agents or branches are located. Check as many as apply. If you check either "All States" or "All States & Territories", do not check any other boxes.

| | | | | |
|---|---|---|---|---|
| ☐ All States | ☐ District of Columbia (DC) | ☐ Maine (ME) | ☐ New Mexico (NM) | ☐ South Dakota (SD) |
| ☐ All States & Territories | ☐ Florida (FL) | ☐ Maryland (MD) | ☐ New York (NY) | ☐ Tennessee (TN) |
| | ☐ Georgia (GA) | ☐ Massachusetts (MA) | ☐ North Carolina (NC) | ☐ Texas (TX) |
| ☐ Alabama (AL) | ☐ Guam (GU) | ☐ Michigan (MI) | ☐ North Dakota (ND) | ☐ Utah (UT) |
| ☐ Alaska (AK) | ☐ Hawaii (HI) | ☐ Minnesota (MN) | ☐ N. Mariana Isls. (MP) | ☐ Vermont (VT) |
| ☐ American Somoa (AS) | ☐ Idaho (ID) | ☐ Mississippi (MS) | ☐ Ohio (OH) | ☐ Virgin Islands (VI) |
| ☐ Arizona (AZ) | ☐ Illinois (IL) | ☐ Missouri (MO) | ☐ Oklahoma (OK) | ☐ Virginia (VA) |
| ☐ Arkansas (AR) | ☐ Indiana (IN) | ☐ Montana (MT) | ☐ Oregon (OR) | ☐ Washington (WA) |
| ☐ California (CA) | ☐ Iowa (IA) | ☐ Nebraska (NE) | ☐ Pennsylvania (PA) | ☐ West Virginia (WV |
| ☐ Colorado (CO) | ☐ Kansas (KS) | ☐ Nevada (NV) | ☐ Puerto Rico (PR) | ☐ Wisconsin (WI) |
| ☐ Connecticut (CT) | ☐ Kentucky (KY) | ☐ New Hampshire (NH) | ☐ Rhode Island (RI) | ☐ Wyoming (WY) |
| ☐ Delaware (DE) | ☐ Louisiana (LA) | ☐ New Jersey (NJ) | ☐ South Carolina (SC) | |

## Part IV (continued) 2

24 Enter the number of branches of the registrant. **Reminder: do not separately register each branch.** See instructions for an explanation of the term "branch".

25 Money services business activities of the registrant. Check as many as apply. See instructions for an explanation of the terms " issuer", "seller", "redeemer", "check casher", and "money transmitter".

a ☐ Issuer of traveler's checks
b ☐ Seller of traveler's checks
c ☐ Redeemer of traveler's checks
d ☐ Issuer of money orders
e ☐ Seller of money orders
f ☐ Redeemer of money orders
g ☐ Currency dealer or exchanger
h ☐ Check casher
i ☐ Money transmitter

26 Is any part of the registrant's money services business an informal value transfer system? See the explanation of "money transmitter" in the instructions. a ☐ Yes b ☐ No

27 Is any part of the registrant's money services business conducted as a mobile operation? a ☐ Yes b ☐ No

28 Enter the number of agents authorized to conduct each money services business activity. Do not include branches, or persons who are solely employees. See instructions for an explanation of the term "agent".

a Traveler's check sales
b Traveler's check redemption
c Money order sales
d Money order redemption
e Currency exchange or dealer
f Check cashing
g Money transmission

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## Part V Primary Transaction Account for MSB Activities

29 If the registrant has more than one transaction account for money services business activities check here ☐. See instructions for an explanation of the term "transaction account". The registrant's primary transaction account is the one that has the greatest annual dollar amount of money services business activity. In items 30 through 35 enter information about the registrant's primary transaction account for money services business activities.

30 Name of financial institution where the primary transaction account is held

31 Address

32 City

33 State

34 ZIP Code

35 Primary transaction account number

## Part VI Location of Supporting Documentation

If the supporting documentation is kept at the U.S. location reported in Part II check here ☐ and continue to Part VII.

36 Address

37 City

38 State

39 ZIP Code

## Part VII Authorized Signature

I am authorized to file this form on behalf of the money services business listed in Part II. I declare that the information provided is true, correct and complete. I understand that the money services business listed in Part II is subject to the Bank Secrecy Act and its implementing regulations. See 31 CFR Part 103. The money services business listed in Part II maintains a current list of all agents, an estimate of its business volume in the coming year, and all other information required to comply with 31 U.S.C. 5330 and the regulations thereunder. **The signature of the owner, controlling person or authorized corporate officer is mandatory.**

40 Signature

41 Print name

42 Title

43 Date of signature

MM / DD / YYYY

**FinCEN Form 107 Registration of Money Services Business Instructions** **1**

## General Information

### Who Must Register

Generally each money services business must register with the Department of the Treasury. This form must be used by a money services business (also referred to as an MSB) to register. However, not all MSBs are required to register. For example, if you are an MSB solely because you are an agent of another MSB, you are not required to register. The discussion below will help you determine whether or not you are an MSB that is required to register. For more information visit **www.msb.gov**.

The term money services business includes:
1. Currency dealers or exchangers who exchange more than $1,000 for any one customer on any day.
2. Check cashers who cash checks totaling more than $1,000 for any one customer on any day.
3. Issuers of traveler's checks, money orders or stored value who issue more than $1,000 in traveler's checks, money orders or stored value for any one customer on any day.
4. Sellers of traveler's checks, money orders or stored value who sell more than $1,000 in traveler's checks, money orders or stored value for any one customer on any day.
5. Redeemers of traveler's checks, money orders or stored value who redeem more than $1,000 in traveler's checks, money orders or stored value for any one customer on any day.
6. Money transmitters.
7. U.S. Postal Service.

The following are not required to register:
1. A business that is an MSB solely because it serves as an agent of another MSB. For example, a supermarket corporation that sells money orders for an issuer of money orders is not required to register. This is true even if the supermarket corporation serves as an agent for two or more MSBs. However, an MSB that serves as an agent of another MSB and engages in MSB activities on its own behalf must register. For example, a supermarket corporation must register if, in addition to acting as an agent of the money order issuer, it provides check cashing or currency exchange services on its own behalf in an amount greater than $1,000 for any one person on any day.
2. The United States Postal Service, any agency of the United States, of any state, or of any political subdivision of any state.
3. At this time, persons are not required to register to the extent that they issue, sell or redeem stored value. If, however, a money services business provides money services in addition to stored value, the provision of stored value services does not relieve it of the responsibility to register, if required, as a provider of those other services.

For the regulatory definition of "money services business" see 31 CFR 103.11(n) and (uu).

The following terms are used in the form and instructions to describe a money services business:
1. An "agent" is a separate business entity from the issuer that the issuer authorizes, through written agreement or otherwise, to sell its instruments or, in the case of funds transmission, to sell its send and receive transfer services. A person who is solely an employee of the MSB is not an agent of that MSB.
2. A "branch" is an owned location of either an issuer or agent at which financial services are sold. An MSB should not separately register each of its branches. A mobile operation owned by an MSB is a branch of that MSB. The MSB's headquarters is not a branch. If the MSB has only one location, that location is not a branch.
3. A "check casher" is a person engaged in the business of providing cash to persons in return for a check.
4. A "currency dealer or exchanger" is a person who engages in the physical exchange of currency for retail customers.
5. "Informal value transfer system". See explanation of the term money transmitter.
6. An "issuer" is the business that is ultimately responsible for payment of money orders or travelers checks as the drawer of such instruments, or a money transmitter that has the obligation to guarantee payment of a money transfer.
7. A "money transmitter" is a person that engages as a business in the transfer of funds through a financial institution.
Generally, acceptance and transmission of funds as an integral part of the execution and settlement of a transaction other than the funds transmission itself (for example, in connection with the bona fide sale of securities) will not cause a person to be a money transmitter.
An "informal value transfer system" is a kind of money transmitter. An informal value transfer system includes any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.
8. A "person" is an individual, a corporation, a partnership, a trust or estate, a joint stock company, an association, a syndicate, joint venture, or other unincorporated organization or group, an Indian Tribe (as that term is defined in the Indian Gaming Regulatory Act), and all entities cognizable as legal personalities.
9. A "redeemer" is a business that accepts instruments in exchange for currency or other instruments for which it is not the issuer. You are not a redeemer if you take the instruments in exchange for goods or general services, provided that the amount of cash returned is not more than $1,000 for any one customer on any day.
10. A "seller" is a business that issuers authorize, through written agreement or otherwise, to sell their instruments or their send and receive transfer services.
11. A "transaction account" is a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others. Such terms include demand deposits, negotiable order of withdrawal accounts, savings deposit subject to automatic transfers, and share draft accounts. See 12 USC 461(b)(1)(c).

### When to Register

*Initial registration:* File the form within 180 days after the date the business is established.
*Renewal:* Each MSB must renew its registration every two years, on or before December 31. See 31 CFR 103.41(b)(2). For example, if an MSB registered on October 15, 2003, it must file a renewal by December 31, 2004, and then every 24 months thereafter (on or before December 31, 2006, then December 31, 2008, etc.).
*Correction:* Use the form to correct a prior report. Complete Part I in its entirety and only those other entries that are being added or changed. Staple a copy of the prior report (or the acknowledgement from DCC if received) to the corrected report.
*Re-registration:* Refile a new registration form when one of the following events occurs:
1. a change in ownership requiring re-registration under state registration law;
2. more than 10 percent of voting power or equity interest is transferred (except certain publicly-traded companies) or;
3. the number of agents increases by more than 50 percent.

### Where to Register

Send your completed form to:

**IRS Detroit Computing Center**
**Attn: Money Services Business Registration**
**P.O. Box 33116**
**Detroit, MI 48232-0116**

The IRS Detroit Computing Center (abbreviatedDCC) will send an acknowledgement of receipt to the registrant listed in Part I within approximately 60 days after the form is processed. DCC can respond to general questions over the phone at telephone (800) 800-2877.

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**FinCEN Form 107 Registration of Money Services Business Instructions** **2**

## General Instructions

1. This form is available on the Financial Crimes Enforcement Network's web site for MSBs at www.msb.gov, or FinCEN's web site at www.fincen.gov, or by calling the IRS Forms Distribution Center at (800) 829-3676.
2. Unless there is a specific instruction to the contrary, leave blank any items that do not apply or for which information is not available.
3. Complete the form by providing as much information as possible.
4. Do not include supporting documents with this form.
5. Type or complete the form using block written letters.
6. Enter all dates in MM / DD / YYYY format where MM=month, DD=day, and YYYY=year. Precede any single number with a zero, *i.e.*, 01,02, etc.
7. List all U.S. telephone numbers with area code first and then the seven-digit phone number, using the format (XXX) XXX-XXXX.
8. Always enter an individual's name as last name, first name, and middle initial (if known). If a legal entity is listed, enter its name in the last name field.
9. Enter identifying numbers starting from left to right. Do not include spaces, dashes, or other punctuation. Identifying numbers include social security number (SSN), employer identification number (EIN), individual taxpayer identification number (ITIN), alien registration number, driver's license/state identification, foreign national identification, and passport number.
10. Enter all Post Office ZIP Codes from left to right with at least the first five numbers, or with all nine (ZIP + 4) if known.
11. Addresses: Enter the permanent street address, city, two-letter state or territory abbreviation used by the U.S. Postal Service and ZIP Code (ZIP+4 if known) of the individual or entity. A post office box number should not be used for an individual, unless no other address is available. For an individual, also enter any apartment number, suite number, or road or route number. If a P.O. Box is used for an entity, enter the street name, suite number, and road or route number. If the address of the individual or entity is in a foreign country, enter the city, province or state, postal code and the name of the country. Complete any part of the address that is known, even if the entire address is not known. If the address is in the United States leave country code blank.

## Specific Instructions

### Part I Filing Information

See "When to Register" in the General Information part of these instructions.

### Part II Registrant Information

**Item 3--Legal name of the money services business.** Enter the full legal name of the registrant money services business as it is shown on the charter or other document creating the entity. For example, enter Good Hope Enterprises, Inc. when the money services business is Good Hope Enterprises, Inc., d.b.a Joe's Check Cashing. If a sole proprietorship, enter the business name of the proprietorship.

**Item 4-- Doing business as.** If applicable, enter the separate doing business as name of the registrant. For example, enter d.b.a. Joe's Check Cashing when the money services business is Good Hope Enterprises, Inc., d.b.a. Joe's Check Cashing.

**Items 5, 6, 7 and 8-- Address.** Enter the permanent address of the registrant.

**Item 9--EIN (entity), SSN/ITIN (individual).** If the registrant is an entity enter its employer identification number (EIN). If the registrant is an individual and a U. S. Citizen or an alien with a social security number, enter his/her SSN. If the registrant is an individual who is an alien and has an individual taxpayer identification number, enter his/her ITIN. If a number has been applied for, but not yet received, leave item 9 blank. When the number is received file a corrected form.

### Part III Owner or Controlling Person

**General:** Any person who owns or controls a money services business is responsibile for registering the MSB. Only one registration form is required for any business in any registration period.

If more than one person owns or controls the business, they may enter into an agreement designating one of them to register the business. The designated owner or controlling person must complete Part III and provide the requested information. In addition, that person must sign and date the form as indicated in Part VII. Failure by the designated person to register the business does not relieve any other person who owns or controls the business of the liability for failure to register the business.

An "Owner or Controlling Person" includes the following:

| *Registrant Business* | *Owner or Controlling Person* |
|---|---|
| Sole Proprietorship | the individual who owns the business |
| Partnership | a general partner |
| Trust | a trustee |
| Corporation | the largest single shareholder |

If two or more persons own equal numbers of shares of a corporation, those persons may enter into an agreement as explained above that one of those persons may register the business.

If the owner or controlling person is a corporation, a duly authorized officer of the owner-corporation may execute the form on behalf of the owner-corporation.

**Item 11--Individual's last name, or organization's name.** If the registrant is a publicly held corporation, it is sufficient to write "public corporation" in item 11. Where registrant is a public corporation, a duly authorized officer of the registrant must execute the form in Part VII.

**Items 12 to 21--**Enter the applicable information for the owner or controlling person. Their home address and phone number should not be used, unless a business address and phone number are unavailable.

**Item 22--Identification information.** If you completed item 21, you may omit this item. If you did not complete item 21, enter separately the form of identification, the ID number, and the issuing state or country. Do not provide "other" identification unless no driver's license/state ID, passport or alien registration number is available. "Other" identification includes any unexpired official identification that is issued by a governmental authority. If you check item 22 d, give a brief description of the "other" identification.

### Part IV Money Services and Product Information

**Item 23--States and/or territories where the registrant, its agents or branches are located.** Check the box(es) for any state, territory or district in which the money services business offers services through its branches and/or agents. If a service is offered on tribal lands, mark the box for the state, territory or district in which the tribal lands are located. If you checked either "All States" or "All States & Territories", do not check any other states or territories.

**Item 24--Enter the number of branches of the registrant.** Enter the number of branches of the money services business at which one or more MSB activities are offered. If there are no branches, enter zero. See the General Information for an explanation of the term "branch".

**Item 25--MSB activities of the registrant**. Items 25a through 25i are MSB activities. Check the box of each MSB activity conducted by the registrant at its branches. See the General Information for an explanation of the terms "issuer", "seller", "redeemer", "check casher", and "money transmitter".

**Item 26--Informal value transfer system.** If any part of the registrant's money services business is an informal value transfer system, check yes. An informal value transfer system is a kind of money transmitter. See the General Information explanation of the term "money transmitter".

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**Item 27--Mobile operation.** If any part of the registrant's money services business is conducted as a mobile operation, check yes. A mobile operation is one based in a vehicle. For example, a check cashing service offered from a truck is a mobile operation. For purposes of Item 24, each mobile operation should be counted as a separate branch.

**Item 28--Number of agents.** Enter the number of agents that the registrant has authorized to sell or distribute its MSB services. Do not count branches or any person who is solely an employee of the MSB. A bank is not an agent for this purpose. See the General Information for an explanation of the term "agent".

## Part V Primary Transaction Account for MSB Activities

**Item 29--**Check the box if the registrant has more than one primary transaction account for money services business activities. Example: If the registrant is both an issuer of money orders and an issuer of traveler's checks and the registrant has separate clearing accounts for money orders and traveler's checks, the box should be checked.

**Item 30--Name of the financial institution where the primary transaction account is held.** Enter the name of the bank or other financial institution where the registrant has its primary transaction account. If you indicated that the registrant has more than one primary transaction account in Item 29, enter information about the account with the greatest money service activity transaction volume as measured by value in dollars. See the General Information for an explanation of the term "transaction account".

**Items 31, 32, 33 and 34--**Enter the permanent address for the financial institution.

**Item 35--Primary transaction account number.** Enter the primary transaction account number.

## Part VI Location of Supporting Documentation

**General:** The registrant must retain for five (5) years certain information at a location within the United States. That information includes:

1. A copy of the registration form.
2. Annual estimate of the volume of the registrant's business in the coming year.
3. The following information regarding ownership or control of the business: the name and address of any shareholder holding more than 5% of the registrant's stock, any general partner, any trustee, and/or any director or officer of the business.
4. An agent list.

If the registrant has agents it must prepare and maintain a list of its agents. That agent list must be updated annually and retained by the business at the location in the United States reported on this registration form in Part II or Part VI. The agent list should not be filed with this registration form.

The agent list must include:

1. Each agent's name,
2. Each agent's address,
3. Each agent's telephone number,
4. The type of service(s) provided by each agent on behalf of the registrant,
5. A listing of the months in the immediately preceding 12 months in which the gross transaction amount of each agent with respect to financial products/services issued by the registrant exceeds $100,000,
6. The name and address of any depository institution at which each agent maintains a transaction account for the money services business activities conducted by the agent on behalf of the registrant,
7. The year in which each agent first became an agent of the registrant, and
8. The number of branches or subagents of each agent.

**Items 36, 37, 38 and 39--**If the supporting documentation is retained at a location other than the address listed in Part II, enter the location information in items 35 through 38.

## Part VII Authorized Signature

**Items 40, 41, 42 and 43--**The owner or controlling person listed in Part III must sign and date the form as indicated in Part VII. If the owner or controlling person is a corporation, a duly authorized officer of the corporation must execute the form on behalf of the corporation.

**Penalties for failure to comply:** Any person who fails to comply with the requirements to register, keep records, and/or maintain agent lists pursuant to 31 CFR 103.41 may be liable for civil penalties of up to $5,000 for each violation. Failure to comply also may subject a person to criminal penalties, which may include imprisonment for up to five (5) years and criminal fines. See 18 USC 1960.

**Note:** Registration with the IRS Detroit Computing Center does not satisfy any state or local licensing or registration requirement.

**Paperwork Reduction Act Notice.** The purposes of this form are to provide an effective and consistent means for money services businesses to register with the Financial Crimes Enforcement Network, and to assure maintenance of reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. This report is required by law, pursuant to authority contained in Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR 103. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States, to any State, or Tribal Government. Public reporting and recordkeeping burden for this information collection is estimated to average 45 minutes per response, and includes time to gather and maintain data for the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget Paperwork Reduction Project, Washington, DC 20503 *and* to the Paperwork Reduction Act; Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183-0039. The agency may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

**Privary Act Notice.** Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that, in accordance with 5 U.S.C. 552a(e), the authority to collect information on **FinCEN Form 107** is Public Law 103-305; 31 USC 5330; 5 USC 301; 31 CFR 103.

The Department of the Treasury may use and share the information with any other department or agency of the United States, to any State, or Tribal Government, or part thereof, upon the request of the head of such department or agency, or authorized State or Tribal Government official for use in a criminal, tax, or regulatory investigation or proceeding, and to foreign governments in accordance with an agreement, or a treaty. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than $5,000 per day and imprisonment of not more than five years, are provided for failure to file the form, supply information requested by the form, and for filing a false or fraudulent form. Disclosure of the social security number or taxpayer identification number is mandatory. The authority to collect is 31 CFR 103. The social security number/taxpayer identification number will be used as a means to identify the individual or entity who files the report.

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[FR Doc. 04–10549 Filed 5–10–04; 8:45 am]

BILLING CODE 4810–02–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Proposed Collection; Comment Request for Revenue Procedure 2004–29

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2004–29, Statistical Sampling in § 274 Context.

**DATES:** Written comments should be received on or before July 12, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the revenue procedure should be directed to Carol Savage at Internal Revenue Service, room 6407, 1111 Constitution Avenue, NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *CAROL.A.SAVAGE@irs.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* Statistical Sampling in § 274 Contest.

*OMB Number:* 1545–1847.

*Revenue Procedure Number:* Revenue Procedure 2004–29.

*Abstract:* Revenue Procedure 2004–29 prescribes the statistical sampling methodology by which taxpayers under examination, making claims for refunds or filing original returns may establish the amounts of substantiated meal and entertainment expenses that are excepted from the 50% deduction disallowance of section 274(n)(1) under section 274(n)(2)(A),(C),(D),or(E).

*Current Actions:* There are no changes being made to the revenue procedure at this time.

*Type of Review:* Extension of a currently approved collection.

*Affected Public:* Business or other for-profit organizations.

*Estimated Number of Respondents:* 400.

*Estimated Annual Average Time Per Respondent:* 8 hours.

*Estimated Total Annual Hours:* 3.200.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2004.

**Glenn P. Kirkland,**

*IRS Reports Clearance Officer.*

[FR Doc. 04–10699 Filed 5–10–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel.

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the Ad Hoc Committee of the Taxpayer Advocacy Panel will be conducted in Seattle, Washington. The Taxpayer Advocacy Panel (TAP) will be discussing issues on IRS Customer Service.

**DATES:** The meeting will be held Monday, May 24, and Tuesday, May 25, 2004.

**FOR FURTHER INFORMATION CONTACT:** Anne Gruber at 1–888–912–1227, or 206–220–6096.

**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 Ad Hoc Committee of the Taxpayer Advocacy Panel will be held Monday, May 24, 2004, from 8:30 am PDT to 4:30 pm PDT and Tuesday, May 25, 2004, from 8:30 am PDT to 12 pm PDT. Both meetings will be held in room 3442 in the Jackson Federal Building in Seattle, Washington. If you would like to have the TAP consider a written statement, please call 1–888–912–1227 or 206–220–6096, or write Anne Gruber, TAP Office, 915 2nd Ave, Seattle, WA 98174. Due to limited time and space, notification of intent to participate in the meeting must be made in advance with Anne Gruber. Ms. Gruber can be reached at 1–888–912–1227 or 206–220–6096.

The agenda will include the following: Various IRS issues.

Dated: May 5, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–10701 Filed 5–10–04; 8:45 am]

BILLING CODE 4830–01–P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### Open Meeting of the Taxpayer Advocacy Panel, E-Filing Issue Committee

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice.

**SUMMARY:** An open meeting of the E-Filing Issue Committee will be conducted (via teleconference). The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

**DATES:** The meeting will be held Thursday, June 10, 2004, from 3 to 4 pm, Eastern Time.

**FOR FURTHER INFORMATION CONTACT:** Mary Ann Delzer at 1–888–912–1227, or (414) 297–1604.

**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 Taxpayer Advocacy Panel, E-Filing Issue Committee will be held Thursday, June 10, 2004, from 3 to 4 pm, Eastern time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 297–1623, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 310 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or on the Web site at *www.improveirs.org.* Public comments will also be welcome during the meeting. Please contact Mary Ann Delzer at 1–888–912–1227 or (414) 297–1604 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: May 5, 2004.

**Bernard Coston,**

*Director, Taxpayer Advocacy Panel.*

[FR Doc. 04–10702 Filed 5–10–04; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Subscription for purchase of Treasury Securities-State and Local Government Series One-Day Certificates of Indebtedness.

**DATES:** Written comments should be received on or before July 11, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Subscription for Purchase of U.S. Treasury Securities State and Local Government Series One-Day Certificates of Indebtedness.

*OMB Number:* 1535–0082.

*Form Number:* PD F 5237.

*Abstract:* The information is requested to establish an account for State and Local Government entities wishing to purchase Treasury Securities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or Local Government.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 8 minutes.

*Estimated Total Annual Burden Hours:* 13.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2004.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 04–10623 Filed 5–10–04; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request for Redemption of U.S. Treasury Securities—State and Local Government Series One-Day Certificates of Indebtedness.

**DATES:** Written comments should be received on or before July 11, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Request for Redemption of U.S. Treasury Securities State and Local Government Series—One-Day Certificates of Indebtedness.

*OMB Number:* 1535–0083.

*Form Number:* PD F 5238.

*Abstract:* The information is requested to process redemption for State and Local Government entities.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* State or Local Government.

*Estimated Number of Respondents:* 100.

*Estimated Time Per Respondent:* 3 minutes.

*Estimated Total Annual Burden Hours:* 5.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation,

maintenance, and purchase of services to provide information.

Dated: May 5, 2004.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 04–10624 Filed 5–10–04; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the resolution for transactions involving registered securities.

**DATES:** Written comments should be received on or before July 11, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Resolution for Transactions Involving Registered Securities.

*OMB Number:* 1535–0117.

*Form Number:* PD F 1010.

*Abstract:* The information is requested to establish the official's authority to act on behalf of the organization.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Business or other for profit.

*Estimated Number of Respondents:* 500.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 85.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2004.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 04–10625 Filed 5–10–04; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Direct Deposit Sign Up Form.

**DATES:** Written comments should be received on or before July 11, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Direct Deposit Sign Up Form.

*OMB Number:* 1535–0128.

*Form Number:* PD F 5396.

*Abstract:* The information is requested to process payment data to a financial institution.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals.

*Estimated Number of Respondents:* 20,000.

*Estimated Time Per Respondent:* 10 minutes.

*Estimated Total Annual Burden Hours:* 3,400.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2004.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 04–10626 Filed 5–10–04; 8:45 am]

**BILLING CODE 4810–39–P**

## DEPARTMENT OF THE TREASURY

### Bureau of the Public Debt

### Proposed Collection: Comment Request

**ACTION:** Notice and request for comments.

**SUMMARY:** The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the sale and issue of Marketable Book-Entry securities.

**DATES:** Written comments should be received on or before July 11, 2004, to be assured of consideration.

**ADDRESSES:** Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

**SUPPLEMENTARY INFORMATION:**

*Title:* Treasury Security Commercial Tender Form.

*OMB Number:* 1535–0112.

*Form Number:* Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds.

*Abstract:* The information is requested to process the tenders and to ensure compliance with regulations.

*Current Actions:* None.

*Type of Review:* Extension.

*Affected Public:* Individuals, business or other for profit, or not-for-profit institutions.

*Estimated Total Annual Burden Hours:* 1.

*Request for Comments:* Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (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; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 2004.

**Vicki S. Thorpe,**

*Manager, Graphics, Printing and Records Branch.*

[FR Doc. 04–10627 Filed 5–10–04; 8:45 am]

BILLING CODE 4810–39–P

Federal Register

Tuesday,
May 11, 2004

# Part II

# Environmental Protection Agency

## 40 CFR Parts 85 and 86

## Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; Nonroad Engines; and Motorcycles; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Parts 85 and 86**

**[OAR–2003–09; FRL–7656–9]**

**RIN 2060–AJ62**

## Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles; Light-Duty Trucks; Heavy-Duty Vehicles and Engines; Nonroad Engines; and Motorcycles

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

**ACTION:** Final rule.

**SUMMARY:** This final rule updates the Motor Vehicle and Engine Compliance Program fees regulation promulgated in 1992 under which the Agency collects fees for certain Clean Air Act compliance programs administered by EPA including those for light-duty vehicles and trucks, heavy-duty highway vehicles and engines, and highway motorcycles. Today's action updates existing fees to reflect the increased costs of administering these compliance programs since the initial 1992 rulemaking. EPA is also adding a fee program for similar compliance programs for certain nonroad engines and vehicles for which emission standards have been finalized.

**DATES:** This final rule takes effect on July 12, 2004.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number OAR–2002–0023. All documents in the docket are listed in the EDOCKET index at *http://www.epa.gov/edocket.* Althought listed in the index, some information is not publicly available, *i.e.*, CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically on EDOCKET or in hard copy at: Docket, (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744. The telephone number for the Air Docket is (202) 566–1742.

**FOR FURTHER INFORMATION CONTACT:** Lynn Sohacki, Certification and Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851, fax number: 734–214–4869; e-mail address: *sohacki.lynn@epa.gov* or Trina D. Vallion, Certification and Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105, telephone number: 734–214–4449; fax number: 734–214–4869; e-mail address: *vallion.trina@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. General Information

*Regulated Entities*

Entities regulated by this rule are those which manufacture or seek certification (''manufacturer'' or ''manufacturers'') of new motor vehicles and engines (including both highway and nonroad). The table below shows the category, North American Industry Classification System (NAICS) Codes, Standard Industrial Classification (SIC) Codes and examples of the regulated entities:

| Category | NAICS codes (1) | SIC codes (2) | Examples of potentially regulated entities |
|---|---|---|---|
| Industry | 333111 | 3523 | Farm Machinery and Equipment Manufacturing. |
| Industry | 333112 | 3524 | Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing. |
| Industry | 333120 | 3531 | Construction Machinery Manufacturing. |
| Industry | 333131 | 3532 | Mining Machinery and Equipment Manufacturing. |
| Industry | 333132 | 3533 | Oil & Gas Field Machinery. |
| Industry | 333210 | 3553 | Sawmill & Woodworking Machinery. |
| Industry | 333924 | 3537 | Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing. |
| Industry | 333991 | 3546 | Power Driven Handtool Manufacturing. |
| Industry | 336111 | 3711 | Automotive and Light-Duty Motor Vehicle Manufacturing. |
| Industry | 336120 | 3711 | Heavy-duty Truck Manufacturing. |
| Industry | 336213 | 3716 | Motor Home Manufacturing. |
| Industry | 336311 | 3592 | Motor Vehicle Gasoline Engine and Engine Parts Manufacturing. |
| Industry | 336312 | 3714 | Gasoline Engine & Engine Parts Manufacturing. |
| Industry | 336991 | 3751 | Motorcycle, Bicycle, and Parts Manufacturing. |
| Industry | 336211 | 3711 | Motor Vehicle Body Manufacturing. |
| Industry | 333618 | 3519 | Gasoline, Diesel & dual-fuel engine Manufacturing. |
| Industry | 811310 | 7699 | Commercial & Industrial Engine Repair and Maintenance. |
| Industry | 336999 | 3799 | Other Transportation Equipment Manufacturing. |
| Industry | 421110 | | Independent Commercial Importers of Vehicles and Parts. |
| Industry | 333612 | 3566 | Speed Changer, Industrial High-speed Drive and Gear Manufacturing. |
| Industry | 333613 | 3568 | Mechanical Power Transmission Equipment Manufacturing. |
| Industry | 333618 | 3519 | Other Engine Equipment Manufacturing. |

(1) North American Industry Classification System (NAICS)

(2) Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product would be regulated by this action, you should carefully examine the applicability criteria in title 40 of the Code of Federal Regulations, Parts 86, 89, 90, 91, 92 and 94; also Parts 1048 and 1051 when those Parts are finalized. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

### II. Obtaining Rulemaking Documents Through the Internet

*Electronic Access.* You may access this **Federal Register** document electronically through the EPA Internet under the **Federal Register** listings at *http://www.epa.gov/fedrgstr/.*

An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at *http://www.epa.gov/edocket/* to 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 docket identification number: OAR–2002–0023.

The preamble, regulatory language and regulatory support documents are also available electronically from the EPA Internet Web site. This service is free of charge. The official EPA version is made available on the day of publication on the primary Web site listed below. The EPA Office of Transportation and Air Quality also publishes these notices on the secondary Web site listed below.

(1) *http://www.epa.gov/docs/fedrgstr/EPA–AIR/* (either select desired date or use Search feature)

(2) *http://www.epa.gov/OTAQ/* (look in ''What's New'' or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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## I. Introduction

Since 1992, EPA has assessed fees for the motor vehicle emissions compliance program (MVECP). Since the initial MVECP fees regulation, EPA has incurred additional costs and will continue to incur costs in administering the light-duty and heavy-duty compliance programs for motor vehicles and engines, and new compliance programs for nonroad vehicles and engines. Today's final rule updates the MVECP fee provisions to reflect these changes.

Today's final rule establishes fees under the authority of section 217 of the Clean Air Act (CAA) and the Independent Offices Appropriation Act (IOAA) (31 U.S.C. 9701) to ensure that the MVECP is self-sustaining to the extent possible. The services provided by EPA are described in the section II.B. of the Notice of Proposed Rulemaking (NRPM) (67 FR 51402). Because of comments received, EPA has adjusted the fees collected per certificate for some industry categories. EPA has created several new worksheets and a further explanation of the changes in the worksheets. This updated cost analysis is available in Docket OAR–2002–0023.

On September 19, 2002, EPA held a public hearing concerning the proposed regulations. Comments from that hearing and written comments are included in the public docket. Today's final rule addresses comments received both before and after the close of the public comment period. A discussion of certain comments received is contained in section V below. You may also want to review the Response to Comments document in the Docket OAR–2002–0023 which contains a detailed discussion of many topics raised in this preamble and other comments received and EPA's responses.

## II. What Are the Requirements of This Final Rule?

EPA is adopting as final its proposed rule with a few changes. The most significant changes are pointed out in sections II.A through II.G below. Additional changes are listed in section III. A more detailed discussion of the comments received is in the Response to Comments Document in the docket for this rule.

### *A. What Is the Finalized Fee Schedule?*

The following table indicates fees for light-duty vehicles (LD), medium-duty passenger vehicles (MDPV), complete spark-ignition [1] heavy-duty vehicles (SI HDV), motorcycles (MC), heavy-duty engines (HDE), nonroad compression-ignition [2] (NR CI) engines, nonroad spark-ignition (NR SI) engines, marine engines (excluding inboard and sterndrive engines), nonroad recreational vehicles and engines, and locomotives. The table distinguishes fees for vehicles and engines that are imported by independent commercial importers (ICIs) and also distinguishes vehicles and engines certified for highway (HW) and nonroad (NR) use.

The following is the final fee schedule for each certification request:

[1] A spark-ignition engine is an engine that uses a spark source, such as a spark plug, to initiate combustion in the combustion chamber. Examples of fuels used in spark-ignition engines are: gasoline, compressed natural gas, liquid petroleum gas and alcohol-based fuels.

[2] A compression-ignition engine is an engine that uses compression to initiate combustion in the combustion chamber. Diesel fuel is an example of a fuel used in compression-ignition engines.

TABLE II.A–1

[Fee Schedule]

| Category | Certificate type [a] | Fee |
|---|---|---|
| LD, excluding ICIs | Fed Certificate | $33,883 |
| LD, excluding ICIs | Cal-only Certificate | 16,944 |
| MDPV, excluding ICIs | Fed Certificate | 33,883 |
| MDPV, excluding ICIs | Cal-only Certificate | 16,944 |
| Complete SI HDVs, excluding ICIs | Fed Certificate | 33,883 |
| Complete SI HDVs, excluding ICIs | Cal-only Certificate | 16,944 |
| ICIs for the following industries: LD, MDPV, or Complete SI HDVs | All Types | 8,387 |
| MC (HW), including ICIs | All Types | 2,414 |
| HDE (HW), including ICIs | Fed Certificate | 21,578 |
| HDE (HW), including ICIs | Cal-only Certificate | 826 |
| HDV (evap), including ICIs | Evap Certificate | 826 |
| NR CI engines, including ICIs, but excluding Locomotives, Marine and Recreational engines. | All Types | 1,822 |
| NR SI engines, including ICIs | All Types | 826 |
| Marine engines, excluding inboard & sterndrive engines, including ICIs | All Types and Annex VI | 826 |
| All NR Recreational,[b] including ICIs, but excluding marine engines | All Types | 826 |
| Locomotives, including ICIs | All Types | 826 |

[a] Fed and Cal-only Certificate and Annex VI are defined in 40 CFR 85.2403.
[b] Recreational means the engines subject to 40 CFR 1051 which includes off road motorcycles, all-terrain vehicles and snowmobiles.

This fee schedule will change in calendar year 2006 when the fees will be adjusted for inflation and to reflect changes in the number of certificates issued as explained in sections II.B and C.

*B. Will the Fees Automatically Adjust To Reflect Future Inflation?*

By function of today's rule fees will be automatically adjusted on a calendar year basis to reflect inflation. A formula created by today's rule will determine the fees each year by applying any change in the consumer price index (CPI) to EPA's labor costs. The formula that will be used by EPA to determine the total cost for each fee category and subcategory [3] is:

$$\text{Category Fee}_{cy} = [F + (L^* (CPI_{CY-2}/CPI_{2002}))] *1.169$$

Category $\text{Fee}_{cy}$ = Fee per category for the calendar year of the fees to be collected.

F = Fixed costs within a category or subcategory.

L = Labor costs within a category or subcategory.

$CPI_{CY-2}$ = the consumer price index for all United States (U.S.) cities using the ''U.S. city average'' area , ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor listed for the month of November of the year two years before the calendar year (CY). (*e.g.*, for the 2006 CY use the CPI based on the date of November, 2004).

$CPI_{2002}$ = the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor for December, 2002. The actual value for $CPI_{2002}$ is 180.9.

1.169 = Adds overall EPA overhead which is applied to all costs

The LD category has been split into Cert/FE and In-use subcategories because not all LD certificates require direct EPA In-use services. The costs were totaled from the labor and fixed costs of worksheets #3 and #4 of the Cost Analysis. The values of EPA's labor and fixed costs for the ICI, motorcycle, heavy-duty highway engines, nonroad CI engines and Other categories were taken from worksheet #1 of the Cost Analysis and are shown in the table below:

TABLE II.B–1

[Fixed and Labor Costs by Fee Category]

| | F | L |
|---|---|---|
| LD Cert/FE | $3,322,039 | $2,548,110 |
| LD In-use | 2,858,223 | 2,184,331 |
| LD ICI | 344,824 | 264,980 |
| MC HW | 225,726 | 172,829 |
| HD HW | 1,106,224 | 1,625,680 |
| NR CI | 486,401 | 545,160 |
| Other [4] | 177,425 | 548,081 |

Light-duty manufacturers certifying vehicles for sale only in California will determine the category fee by using the fixed and labor values only for the LD Cert/FE subcategory.

Light-duty manufacturers certifying vehicles that will not be sold only in California (federal vehicles) will determine a category fee that incorporates the costs for both Cert/FE and In-use subcategories. These manufacturers will determine the Cert/FE portion of the fees using the above formula and LD Cert/FE F and L values and then calculate the in-use portion of

[3] The light-duty category is divided into subcategories, Cert/FE and In-use.

[4] The Other category includes: HD HW evap, including ICI; Marine (excluding inboard & sterndrive ) including ICI & Annex VI; NR SI, including ICI; NR Recreational (non-marine), including ICI; Locomotives, including ICI.

the fees by using the LD In-use F and L values. The light-duty federal category fee will be the total of the Cert/FE and In-use fees.

The fee amount per certificate will be determined by dividing the total cost for each certificate category by a rolling average of the number of certificates as discussed below in section II.C. The limitation of the applicability of the CPI to labor costs is a change from the proposal. The removal of the non-labor costs from the portion of EPA's costs to which the CPI will apply is a response to comments received and is discussed in more detail in section 4 of the Response to Comments document.

EPA will calculate new fees based on this established formula for each certificate category in Table II.A–1 and publish the fees in a ''Dear Manufacturer'' letter or by similar means. The ''Dear Manufacturer'' letters are also located on EPA's Web site: *http://www.epa.gov/otaq/cert/dearmfr/dearmfr.htm.* The new fees will also be located on EPA's Fees Web site: *http://www.epa.gov/otaq/fees.htm.* The fees will be applicable by calendar year rather than model year. The first year that the fees will be adjusted for inflation is calendar year 2006.

*C. Will Fees Change To Reflect Changes in the Number of Certificates?*

EPA will adjust fees based on the total number of certificates [5] issued to reflect the change in the cost of services provided by EPA per certificate. As discussed in section II.B above, EPA will annually adjust the amount of the labor costs in each fee category by the CPI approximately 11 months before the new fees will apply. At the time that the adjustment based on CPI is made, EPA will also adjust fees based on the average of the total number of certificates issued in the two completed model years previous to the adjustment. The full formula that will be applied to adjust the fee amount for each category is:

Certificate $Fee_{cy}$ = $[F + L^* (CPI_{CY-2}/CPI_{2002})] *1.169 / [(cert\#_{MY-2} + cert\#_{MY-3}) * .5]$

Certificate $Fee_{cy}$ = Fee per certificate for the calendar year of the fees to be collected

F = the fixed costs, not to be adjusted by the CPI

L = the labor costs, to be adjusted by the CPI

$CPI_{CY-2}$ = the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor listed for the month of November of the year two years before the calendar year. (*e.g.,* for the 2006 CY use the CPI based on the date of November, 2004).

$CPI_{2002}$ = the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor for December, 2002. The actual value for $CPI_{2002}$ is 180.9.

1.169 = Adds overall EPA overhead which is applied to all costs

$cert\#_{MY-2}$ = the total number of certificates issued for a fee category or subcategory model year two years prior to the calendar year for applicable fees ($Fee_{cy}$)

$cert\#_{MY-3}$ = the total number of certificates issued for a fee category or subcategory model year three years prior to the calendar year for the applicable fees ($Fee_{cy}$)

Light-duty manufacturers certifying vehicles for sale only in California will pay a fee determined by calculating the fees for the LD Cert/FE subcategory and dividing by the average of the total number (California and federal) of light-duty vehicle certificates issued in the applicable model years.

Light-duty manufacturers certifying federal vehicles will pay fees that incorporate the costs for both Cert/FE and In-use subcategories. These manufacturers will determine the Cert/FE portion of the fees as described above and divide by the total number (California and federal) of light-duty certificates issued in the applicable model years. Manufacturers will then calculate the in-use portion of the fees by dividing the LD In-use by the average number of federal certificates issued in the applicable model years. Manufacturers will determine the total fee for light-duty federal certificates by adding the Cert/FE fees and the In-use fees.

As an example, the first year for which the fees will be adjusted is calendar year 2006. In January, 2005, EPA will adjust the total for each fee category for the 2006 model year (MY) based on the CPI published in November, 2004, and will divide the total fee amounts for each category by the average of certificates issued for model years 2003 and 2004.

$Fee_{2006}$ = $[F + L^* (CPI_{2004}/CPI_{2002})] *1.169 / [(cert\#_{MY\ 2004} + cert\#_{MY\ 2003}) * .5]$

If an event such as a rulemaking occurs that causes a significant change in the number of certificate applications received, the Agency will reexamine the formula to determine whether adjusting the fees based upon the number of certificate applications is still applicable.

EPA will notify manufacturers within 11 months of the calendar year in which fees are adjusted by this section, with the new fees for each category, the number of certificates for the appropriate model years and the applicable CPI values after the November CPI values for each year are made available by the U.S. Department of Labor. This information will be available on EPA's Fees Web site: http://www.epa.gov/otaq/fees.htm as well as EPA's ''Dear Manufacturer'' letter Web site: *http://www.epa.gov/otaq/cert/dearmfr/dearmfr.htm.*

This formula will result in an annual adjustment of fees to reflect the change in the number of certificates issued by the EPA. This change from the proposal to adjust fees as a result in a change in the number of certificates is discussed more fully in the response to comments document.

*D. What Is the Procedure for Paying Fees?*

As with the current regulations, fees must be paid in advance of receiving a certificate. For each certification request manufacturers and ICIs will submit a MVECP Fee Filing Form (filing form) and the appropriate fee in the form of a corporate check, money order, bank draft, certified check, or electronic funds transfer [wire or Automated Clearing House (ACH)], payable in U.S. dollars, to the order of the U.S. Environmental Protection Agency. A single fee will be paid when a manufacturer or ICI submits an application for a single engine family or test group that includes multiple evaporative families. It should be noted that separate fees must be paid for each heavy-duty evaporative family certificate application. The filing form and accompanying fee will be sent to the address designated on the filing form. EPA will not be responsible for fees sent to any location other than the designated location. Applicants will continue to submit the application for certification to the National Vehicle and Fuel Emission Laboratory (NVFEL) in Ann Arbor, Michigan or to the Engine Programs Group in Washington, DC.

To ensure proper identification and handling, the check or electronic funds transfer and the accompanying filing form will indicate the manufacturer's corporate name and the EPA

[5] For purposes of this preamble, the regulations and the cost analysis, the term ''total number of certificates'' is used to represent the number of certificate applications for which fees are paid. This term is not intended to represent multiple certificates which are issued within a single engine family or test group.

standardized test group or engine family name. The full fee is to accompany the filing form. Partial payments or installment payments will not be permitted. A banking institution may add an extra charge for processing a wire or an ACH. The manufacturer is responsible for any extra fees a banking institution may charge to perform these services.

*E. What Is the Implementation Schedule for the New Fees?*

The implementation date of the new fees is July 12, 2004. The final fee schedule adopted in this final rule applies to 2004 and later model year vehicles and engines where the certification application is received on or after July 12, 2004. The new fees will not apply to 2004 and later model year certification applications received by EPA prior to the effective date of the regulations, provided that the applications are complete and include all required data. A description of the items needed to constitute a complete application, for the purposes of this fees rule, is included in section 5 of the Response to Comments Document.

*F. What Are the Reduced Fees Provisions?*

EPA believes that an appropriate fee reduction policy can be consistent with the premise underlying section 217 of the CAA: to reimburse the government for the specific regulatory services provided to an applicant. EPA recognizes that there may be instances, in the case of small engine families, where the full fee may represent an unreasonable economic burden. Therefore, EPA will allow manufacturers to pay a fee based on 1.0 percent of the aggregate retail sales price (or value) of the vehicles covered by a certificate. EPA believes this best represents the proper balance between recovering the MVECP costs without imposing an unreasonable economic burden. The reduced fees provisions will continue to use the current two part test which, if met, would qualify an applicant for a reduction of a portion of the certification fee. The reduced fee is available in cases where:

(1) The certificate is to be used for the sale of vehicles or engines within the U.S.; and

(2) The full fee for the certification request exceeds 1.0 percent of the projected aggregate retail price of all vehicles or engines covered by that certificate.

The reduced fee program for this rule provides two separate pathways by which a manufacturer can request and pay a reduced fee amount. The fee will be 1.0 percent of the aggregate retail price of the vehicles and engines covered by the certificate with a refundable minimum initial payment of $750. Each pathway specifies when manufacturers are required to determine the price of the vehicles or engines actually sold under a certificate and when to either pay additional fees or seek a refund. Under both pathways the manufacturer:

(1) Pays a fully refundable initial payment of $750 or 1.0 percent of the aggregate retail price of the vehicles or engines, whichever is greater, with the request for a reduced fee.

(2) Receives a certificate for an estimated number of vehicles or engines in the engine family to be covered by the certificate.

(3) Requests a revised certificate if the number of vehicles or engines in the engine family exceeds that on the certificate.

(4) Is in violation of the Clean Air Act if the number of vehicles or engines made or imported is greater than the number indicated on the certificate.

The first pathway will be available for engine families having less than 6 vehicles, none of which have a retail price of more than $75,000 each. Manufacturers seeking a reduced fee shall include in their certification application a statement that the reduced fee is appropriate under the criteria. If 1.0 percent of the aggregate retail price of the vehicles or engines is greater than $750, the manufacturer must submit a calculation of the reduced fee and the actual fee. If 1.0 percent aggregate retail price of the vehicles or engines is less than $750 the manufacturer will submit a calculation of the reduced fee and an initial payment of $750. In the event that the manufacturer does not know the value of all of the vehicles to be imported under the certificate, it may use the values of the vehicles or engines that are available to determine the initial payment.

The manufacturer's evaluation and submission of a fee amount under this reduced fee provision is subject to EPA review or audit. If the manufacturer's statement of eligibility is accepted, the manufacturer will receive a certificate for 5 vehicles or engines.

If the manufacturer's statement of eligibility or request of a reduced fee is rejected by EPA then EPA may require the manufacturer to pay the full fee normally applicable to it or EPA may adjust the amount of the reduced fee that is due.

A manufacturer's statement that it is eligible for a reduced fee can be rejected by EPA before or after a certificate is issued if the Agency finds that manufacturer's evaluation does not meet the eligibility requirements for a reduced fee, the manufacturer failed to meet the requirements to calculate a final reduced fee using actual sales data, or the manufacturer failed to pay the net balance due between the initial and final reduced fee calculation (*see* below for discussion of the final fee calculation, reporting and payment).

Within 30 days of the end of the model year, the applicant for a reduced fee will provide EPA with a report called a ''report card'' to aid our review of the applicant's statement of applicability. This report shall include the total number of vehicles ultimately covered by the certificate. The report card shall include information on all certificates held by the manufacturer that were issued with a reduced fee under the first pathway. For each certificate the report will include a calculation of the actual final reduced fee due for each certificate which is derived by adding up the total number of vehicles and their sales prices and calculating 1.0 percent of the total, a statement of the initial fees paid and the difference between the initial payment and the total final fee for the manufacturer. Manufacturers will be required to submit the report card within 30 days of the end of the model year,[6] EPA believes this is reasonable as manufacturers should have final figures for each certificate by this time.

A manufacturer may request a refund if the final fee is less than the initial payment. If the final fee is greater than the initial payment, manufacturers will be required to ''true-up'' or submit the final reduced fee due as calculated in the report card within 45 days of the end of the model year. This is a change from the NPRM in which EPA proposed that manufacturers would only have to pay the final reduced fee if the difference between the final fee and the initial payment was greater than $500. The decision to eliminate a minimum final reduced fee was made as a result of comments regarding EPA's proposed refund policy. This is discussed more fully in the ''What is the Finalized Policy for Refunds and Final Fee Payments?'' section below and in section 8 of the Response to Comments Document.

In addition, EPA may require that manufacturers submit a report card, with the same or similar information as noted above, for previous model years. The purpose of such report card would be to give EPA assurance that the

[6] Typically, this will be the first February 15 after a certificate expires. Certificates generally expire on December 31 of the model year.

manufacturer has demonstrated a continuous capability of submitting the necessary year-to-year report cards and that appropriate fees have been paid. This will assist EPA in its determination as to whether a manufacturer is capable of adequately projecting its annual sales for reduced fee purposes and whether the manufacturer shall remain eligible for the reduced fee provisions.

Under this pathway, if a manufacturer fails to report within 30 days or pay the balance due by 45 days of the end of the model year, then EPA may refuse to approve future reduced fee requests from that manufacturer. In addition, if a manufacturer fails to report within 30 days and pay the balance due by 45 days of the end of the model year as noted above then the Agency may deem the applicable certificate *void ab initio.*

The second pathway is available for engine families that contain more than 5 vehicles or engines and/or have at least one vehicle or engine with a retail price of more than $75,000. Manufacturers seeking a reduced fee under this pathway include in their applications a statement that the reduced fee is appropriate under the criteria and a calculation of the amount of the reduced fee (1.0 percent of the aggregate retail price of vehicles or engines) or an initial payment of $750, whichever is greater. As in the first pathway, the manufacturer's evaluation and submission of a fee amount under this reduced fee provision is subject to EPA review or audit. If the manufacturer's statement of eligibility is accepted, the manufacturer will receive a certificate for the number of vehicles or engines to be covered by the certificate.

If the manufacturer's statement of eligibility or request of a reduced fee is rejected by EPA then EPA may require the manufacturer to pay the full fee normally applicable to it or EPA may adjust the amount of the reduced fee that is due.

A manufacturer's statement that it is eligible for a reduced fee can be rejected by EPA before or after a certificate is issued if the Agency finds that the manufacturer's evaluation does not meet the eligibility requirements for a reduced fee.

At the end of the model year, the manufacturer may request a refund if the final fee is less than the initial payment. Manufacturers with certificates issued with reduced fees under this pathway will not be required to submit the report card and true-up described above under the first pathway.

Under either pathway, if the manufacturer realizes that it will make or import more vehicles or engines than the number specified on the certificate, the manufacturer must revise the application for certification to reflect the new number of vehicles or engines to be covered and request a revised certificate with an increased number of vehicles or engines indicated. At the time of revision, the manufacturer must pay 1.0 percent of the aggregate retail price of the number of vehicles or engines that are being added to the certificate. The additional fee must be received by the Agency and the certificate must be revised and issued before the additional vehicles or engines may be sold or imported in the United States. If a manufacturer imports or sells more vehicles or engines than that indicated on the certificate, the manufacturer will be in violation of the CAA for selling or importing uncertified vehicles (those over and above the number indicated on the original certificate.)

In the case of vehicles or engines which have originally been certified by an original equipment manufacturer (OEM) but are being modified to operate on an alternative fuel, the cost basis for the reduced fee amount is the value-added by the conversion, not the full cost of the vehicle or engine.

On the other hand, ICI vehicle or engine certificates cover vehicles or engines which are imported into the U.S. and that were not originally certified by an OEM. As such, EPA costs associated with providing various MVECP services for these vehicles has not yet been recovered. Since the Agency has not received a fee payment for the ''base vehicle'' or the vehicle imported before its conversion to meet U.S. emissions requirements, the cost basis for calculating a reduced fee for an ICI certification shall be based upon the full cost of the vehicle or engine rather than the cost or value of the conversion.

For ICI requests, EPA will continue the current requirement to calculate the full cost of a vehicle based on a vehicle's average retail price listed in the National Automobile Dealer's Association (NADA) price guide. By using the NADA price guide to establish a vehicle's retail sales price (or value), EPA ensures uniformity and fairness in charging fees. Further, it avoids certain problems such as falsification of entry documents, in particular, sales receipts. Where the NADA price guide does not provide the retail price of a vehicle, and in the case of engines, the applicant for a reduced fee must demonstrate to the satisfaction of the Administrator the actual market value of the vehicle or engine in the United States at the time of final importation. When calculating the aggregate retail sales price of vehicles or engines under the reduced fee provisions such calculation must not only include vehicles and engines actually sold but also those modified under the modification and test options in 40 CFR 85.1509 and 40 CFR 89.609 and those imported on behalf of a private or another owner. Furthermore, EPA is clarifying its policy such that importation of modification and test vehicles and engines will only be allowed under certificates that cover that type of vehicle or engine. For example, light-duty modification and test vehicles must be imported only under light-duty certificates, motorcycle modification and test vehicles must be imported only under motorcycle certificates.

EPA expected the new fees rule to apply during the 2003 model year and thus we did not anticipate any time gap between the existing fee provisions for alternative fuel conversion vehicles—which ran through the 2003 model year—and the implementation of the new reduced fees provisions for such vehicles. Therefore, by today's rule EPA is amending section 86.908–93(a)(1)(iii) in order for those 2004 model year vehicles that are converted to dual or flexible-fuel to still be eligible, under the existing fees rule, to the reduced fees provisions. Therefore, alternative fuel vehicle converters that received certificates of conformity for 2004 model year vehicles may, after July 12, 2004, request a refund for the difference between the fee that they paid and 1% of the value added by the vehicle conversion.

Previously EPA had an exemption of fees for small volume certification requests for vehicles using alternative fuels through the 2003 model year. EPA believes that this program has completed its purpose of providing a short-term relief for alternative fuel conversion manufacturers. Therefore, starting with the 2004 model year, EPA is no longer including this exemption for alternative fuel convertors, and such convertors shall be subject to the same fee provisions as other manufacturers. This includes the reduced fee provisions.

We believe that this fee reduction program will provide adequate relief for small entities that would otherwise encounter some economic hardship by a standardized fee. It is important to note that this fee reduction does not raise the fees for other manufacturers; EPA will simply collect less funds.

The change in the reduced fee provisions results from comments received regarding EPA's proposed reduced fee program as is discussed

more fully in section 6 of the Response to Comments Document.

*G. What Is the Finalized Policy for Refunds and Final Fee Payments?*

There are instances when an applicant submits a filing form with the appropriate fee, has an application undergo a portion of the certification process, but fails to receive a signed certificate. Under the current rule, the Agency offers the manufacturer a partial refund and retains a portion of the fee to pay for the work which has already been done. This policy has been difficult to administer and requires substantial Agency oversight. Consequently, we have finalized a simplified refund policy in today's rule. When a certificate has not been issued, for any reason, the applicant will be eligible to receive, upon request, a full refund of the fee paid. Optionally, in lieu of a refund, the manufacturer may apply the fee to another certification request.

EPA proposed that manufacturers would not have to pay a final fee if the difference between the final fee and the initial payment was less than $500. Conversely, EPA proposed that it would not issue refunds for amounts less than $500. EPA estimated that the reduction in fees received from the final fee payments of under $500 would be balanced by the refunds of less than $500 that would not be distributed. However, the decision to eliminate a minimum final reduced fee of $500 was made as a result of comments regarding EPA's proposed policy of only issuing refunds greater than $500. Therefore, since EPA will be paying full refunds, EPA is setting forth in today's rule that full payment must be submitted at true-up to avoid an overall deficit in its recovery of MVECP costs and to continue to abide by the intent of the IOAA and CAA. The new refund policy will not reduce the money collected by the Agency because the fee schedule is based, in part, on the number of certificates actually issued rather than the number of certification requests.

EPA is continuing its retroactive refund policy wherein a manufacturer that paid the full fee for a certificate but would have qualified for a reduced fee, may request a refund for the difference between the fee paid and the amount of the calculated reduced fee. The Agency will also fully refund any fees if the manufacturer overpaid based on their own projections. This change in and clarification of the refund policy is the result of comments received and are discussed more fully in section 6 of the Response to Comments Document.

## III. What Are the Changes Made to the Proposed Cost Analysis?

EPA published in the Notice of Proposed Rule Making (NPRM) fees that reflected our then projected test plans and associated costs for the regulated industries. In the time between the NPRM and the FRM, EPA has gathered additional information about the programs and tests that it plans to conduct and is in a better position to determine the actual costs of its compliance programs for 2004 and beyond than it was at the time of that the NPRM was written. As a result of an internal reassessment of testing capabilities and requisite levels of appropriate compliance oversight, along with comments received, EPA made several adjustments which have resulted in a change in costs of certificates for several industry categories. EPA has used the information on resources and lab capabilities to make the changes and, therefore, the current rulemaking more accurately represents the test program that EPA will put into place. EPA also notes that conducting a compliance program requires some flexibility to ensure that vehicles and engines are in fact meeting applicable standards throughout their useful lives. This flexibility requires that potentially more testing be conducted when problem areas arise, or perhaps a shift in the types of testing that EPA conducts. The program being finalized today provides a foundation for an adequate compliance program; however, EPA plans to continue assessing the requisite levels of testing to determine an appropriate compliance program. As EPA's programs mature and testing capabilities increase then the compliance testing program will likely adjust. Any further changes in costs based on such adjustments, beyond those made today, will be made through a future rulemaking. The changes are generally described below. The issues are discussed more fully in the Response to Comments document. The changes are also reflected in several new worksheets based on ''Appendix C'' which was attached to the ''Motor Vehicle and Engine Compliance Program Cost Analysis'' document. Thus several new worksheets have been generated from those originally found in Appendix C and EPA also provides an additional description of the changes to these worksheets. The new worksheets and description are available in the docket for this rule and are called ''Updated Cost Analysis.''

*A. Will There Be Fees for Yet-To-Be Regulated Industries?*

The NPRM for this rule proposed establishing the level of fees for classes of nonroad engines and equipment where emissions regulations were under consideration by EPA but were not proposed at the time of the Fees NPRM. The final fees rule does not establish fees for classes of nonroad engines and equipment where EPA had not proposed emissions standards for these classes before the Fees NPRM was published on August 7, 2002. Although the fees proposal included fees for marine SI inboard /sterndrive engines, the final rule does not set fees for these engines. The final fees regulation does include fees for all other nonroad categories that were proposed. This change is a result of comments received. A more detailed discussion may be found in section 1 of the Response to Comments Document.

*B. Is There a Change in Costs for Heavy-Duty Highway and Nonroad CI Engines From the Proposal?*

In the NPRM, EPA projected an appropriate yet ambitious test program for heavy-duty highway and nonroad CI engines that included in-use and confirmatory certification testing for heavy-duty highway engines that would be conducted in newly equipped HD test cells at its Ann Arbor laboratory, in-use on-vehicle testing for HD HW and NR CI engines, as well as testing that would take place at a contractor's facility that would include confirmatory certification testing, selective enforcement audits, and in-use dyno testing. In its reassessment of the testing capabilities EPA adjusted its testing projections to a level that is more representative of the current amount of testing that may be accomplished with the new testing facility in Ann Arbor and the new enhanced engine compliance program testing that will be conducted at a contractor's facility. The programs set forth in this rulemaking more realistically represent the level of testing that EPA will accomplish as it acknowledges that the in-use dyno testing at Ann Arbor and the enhanced engine compliance programs are new programs and will not reach the proposed level of testing for some time.

As part of the reassessment, EPA also reexamined the recoverable costs for the test equipment for HDE tests cells #1 and #2. As discussed below, the cost of the test equipment for these cells has been prorated to reflect the amount of time that the cells would be used for compliance testing. EPA believes that this is a more appropriate cost to be included in the cost study as it

acknowledges that the cells are not used for compliance testing 100 percent of the time.

The reassessment resulted in changes in several elements of the cost study, specifically, a decrease in the number of FTE that would be conducting the testing, a decrease in the percentage of test cell time in the Ann Arbor laboratory, a reduction of the number of in-use engines that would be procured for testing and, finally, a decrease in the tests to be conducted at a contracted facility. These reductions are discussed more fully below. The revised testing programs for heavy-duty highway and nonroad CI are as follows:

TABLE III.B–1; NUMBER OF TESTS FOR HD HW AND NR CI

| | Confirmatory cert at AA | In-use at AA | Confirmatory cert at contractors | SEA | In-use at contractors |
|---|---|---|---|---|---|
| HD HW | 7 | 3 | 0 | 5 | 5 |
| NR CI | 0 | 0 | 6 | 10 | 5 |

The reduced number of tests requires fewer FTE to oversee the testing. Therefore, the number of direct FTE and indirect FTE listed under the heavy-duty highway column has been decreased to 1.25 and .25 FTE, respectively, from 2.25 and .5 FTE. This is a net reduction of 1.25 FTE. The change is included on revised worksheet # 7.

EPA proposed that fees recover all costs identified as compliance costs. Worksheet #10 of the Cost Analysis Document detailed the items identified in the laboratory modification budget request including the costs for various pieces of equipment within the heavy duty test engine sites. One hundred percent of the equipment identified for two heavy-duty engine test cells, HDE #1 and HDE #2, related to compliance-oriented activities was listed as recoverable and, therefore, was included in the fees for the heavy-duty category. These cells, however, will not be used 100 percent of the time for compliance work as anticipated, rather, one cell will be used for one quarter of a year for compliance testing. Therefore, it is appropriate that the amount of the recoverable costs should reflect the actual amount of time that the cells are used for compliance work. The recoverable amount of the two cells listed on worksheet #10 has been decreased to include only one-quarter of the cost for the equipment identified solely for use in HDE cell #2. In addition, some of the compliance oriented equipment will be used for both HDE cell #2 and HDE cell #1. Of this equipment EPA is only recovering one-eighth of the cost based on evenly splitting the cost of such equipment between the two test cells and then recovering one-quarter of the cost associated with HDE cell #2. At this time EPA anticipates using HDE cell #2 approximately one-quarter of the year for compliance oriented activity. EPA plans to conduct three HD in-use tests and seven certification confirmatory tests during that time. Accordingly, the recoverable total for worksheet #10 has been reduced resulting in a decrease in the fees for heavy-duty highway (HDE HW) engine families. This decrease is reflected for this industry in the fees table, Table II.B–1 above.

Although EPA is estimating that the amount of test cell time that will be dedicated to compliance testing is one-quarter of the time of HDE #2, this does not limit the testing that EPA may conduct. In the future, EPA may choose to conduct additional HDE compliance testing, however, fees will not increase to reflect this change until a new fees rulemaking is promulgated. This change responds to a comment received and is discussed in more detail in section V.C. below and section 2 of the Response to Comments Document. Additional changes in the cost for this industry are explained further below and include a change in the estimated number of certificates and the amount of compliance testing that EPA anticipates will be conducted.

Proposed engine procurement costs for heavy-duty engines were shown in worksheet #12. EPA had proposed to test 10 in-use engines, two engine families of five engines per family. The cost to procure the engines is $25,240 for the first engine of the family and $21,860 for subsequent engines as explained in general terms in the Cost Analysis, page 52. The revised test plan consists of testing of three engines in one engine family. The new cost for procuring these engines, at the same cost per engine as proposed, is $68,960. The revised costs are shown on new worksheet #12.

The costs for the proposed Enhanced Engine Compliance Program were shown on worksheet #16. The number of tests were revised as follows: the number of confirmatory tests for certification at a contracted facility were decreased for NR CI and HD HW to 6 families and 0 families, respectively. EPA decided that it will conduct certification confirmatory tests at its Ann Arbor facility in test cell #2 when in-use tests are not being conducted. Five HD HW confirmatory certification tests are being planned per year in Ann Arbor. Furthermore, the number of selective enforcement audits of HD HW engines has been revised from 10 to 5 audits. The revised costs for the enhanced engine compliance program for NR CI and HD HW industries are $300,000 and $165,000, respectively. The revised costs are shown in new worksheet #16.

*C. Is There a Change in the Number of Certificates?*

In order to determine the cost for each certificate EPA determine the total compliance costs associated with each industry and then divided that cost by its best estimate of the number of certificates that would be issued to that industry within a given model year. EPA received comment about the number of certificates for light duty vehicles, heavy-duty highway engines and NR CI engines. EPA reexamined the number of certificates issued over the last three complete model years and used an average of the past two years of certification information to determine a divisor for the three industries noted above. The divisor for the light-duty vehicles and trucks cert/fuel economy portion of the light-duty fee will remain 405 and the divisor for the in-use portion of the light-duty fee will remain 348, as listed in the cost analysis. The divisor for the HDE HW category will be 148 (the number used in the cost analysis was 130) and the divisor for the NR CI category is 662 as compared to 603 used in the cost analysis. As a result of this recalculation of the number of certificates only, the fee for heavy-duty compression and spark-ignition engines went from $30,437 to $25,819 and the fee for nonroad compression-ignition engines went from $2,156 to $1,964. This change is a result of comments received and is discussed further in

section 2 of the Response to Comments Document. The number of certificates will be adjusted and fees changed accordingly beginning in the 2006 calendar year as discussed above in section II.C.

*D. Indirect Changes*

Program changes to one category may indirectly affect the fees in another category. Specifically, the decrease in the number of FTEs in worksheet #7 to the heavy-duty highway engine category resulted in slight changes to the rest of the categories. The change is a result of the use of the FTE method of allocating costs [7] to the different categories. This change in FTE changed not only the allocation of indirect costs to the heavy-duty industry but also changed the proportion of recoverable to nonrecoverable indirect costs. For this reason the costs for the light-duty and highway motorcycles, and Other categories changed even though there were no changes made to the compliance programs for these industries. This change resulted in a slight decrease in fees for the light-duty, motorcycle, ICI and Other industries.

## IV. What Were the Opportunities for Public Participation?

On September 19, 2002, a public hearing was held. The public comment period was open until October 19, 2002. EPA received comments before and after the close of the comment period. All comments were fully addressed to the extent possible. Commenters included manufacturers, manufacturer trade associations and representatives, and an environmental consulting firm. For a list of commenters, see Response to Comments document contained in EPA Air Docket No. OAR–2002–0023.

## V. What Were the Major Comments Received on the Proposed Rule?

Comments on a wide range of issues concerning the proposed Fees rulemaking were received. Summarized here are the comments concerning the major or significant issues and the rationale behind EPA's final decisions. These issues are considered in more detail in the Response to Comments document prepared for this final rule and included in the docket noted earlier.

*A. Legal Authority*

1. Authority To Assess Nonroad Fees

*What We Proposed:*

We proposed an update to our existing Motor Vehicle and Engine Compliance Program (MVECP) fees regulations under which we assess fees for highway vehicle and engines certification and compliance activities. We also proposed the collection of fees for nonroad engines certification and compliance activities which we have regulated since our initial fees rulemaking. The ''nonroad engine category'' includes: nonroad compression engines, marine spark-ignition outboard/personal-water-craft, locomotive, small spark-ignition, recreational vehicles (including, but not limited to, snowmobiles, off-road motorcycles and all terrain vehicles), recreational marine and compression-ignition engines, large spark-ignition engines (over 19 kilowatts (kW)) and marine spark-ignition/inboard-sterndrive engines.

Our proposal examined: the Independent Offices Appropriation Act (IOAA), several provisions of the Clean Air Act (CAA or Act), the Office of Management and Budget's (OMB's) Circular No. A–25, and various court decisions including *Engine Manufacturers Association* v. *EPA*, 20 F.3d 1177 (D.C. Cir. 1994) which considered the Environmental Protection Agency's (EPA's or Agency's) initial fees rulemaking.

We explained that section 217 of the CAA authorizes the collection of fees for our new nonroad vehicle and engine certification and compliance activities. Section 217 allows the Agency to ''recover reasonable costs'' associated with: new vehicle or engine certification activities conducted under section 206(a) of the CAA, new vehicle or engine compliance monitoring and testing under section 206(b) of the CAA (including such activities as selective enforcement audits (SEA) and production line testing (PLT)), and in-use vehicle or engine compliance monitoring and testing under section 207(c) of the CAA. We also explained that section 213 creates a statutory enforcement program which generally mirrors that which Congress created for the regulation of new highway vehicles and engines. We noted that EPA's nonroad standards created under section 213 are subject to the same requirements (*e.g.*, sections 206, 207, 208, and 209) and implemented in the same manner (including certification, SEA, and in-use testing) and under the same sections (as those referenced in section 217) as regulations for new highway vehicles and engines under section 202 (with modifications to the implementing nonroad regulations as the Administrator deems appropriate). We then concluded that because the text of section 217 does not specify either highway or nonroad engines and vehicles, and because the certification and compliance activities related to both are pursuant to sections 206 and 207, we believed collecting fees for new nonroad vehicles and engines' certification and compliance activities under section 217 was appropriate as an additional compliance requirement.

We also stated that the IOAA creates additional and independent authority for EPA to collect fees due to the same special and unique benefits that manufacturers of both new highway and nonroad vehicle and engine manufacturers receive from EPA under the certification and compliance program.

*What Commenters Said:*

We received several comments that questioned our authority to assess and collect fees for our nonroad certification and compliance program activities. EMA argued that the IOAA neither overrides nor provides the EPA with expanded fee assessment authority since section 217 specifically sets out the Agency's authority to assess fees and also incorporates the IOAA by reference. EMA also argued that Congress would not have enacted the specific provisions of section 217 if the IOAA was still intended to apply to EPA's mobile source certification and compliance activities.

In addition, EMA argued that since section 217 is entitled: ''Motor Vehicle Compliance Program Fees,'' Congress could not have intended that this section would authorize fees assessment for nonroad compliance activities. The commenter further noted the distinction drawn between motor vehicle and nonroad vehicle in sections 216(2) and (11) and the omission of nonroad vehicle and engine in section 217 even though both sections 213 and 217 were promulgated as part of the 1990 Amendments. EMA also pointed out that section 213(d) specifically subjects the nonroad standards to sections 206, 207, 208 and 209 but fails to incorporate or even mention section 217.

The Motorcycle Industry Council questioned the applicability of section 217 to off-road motorcycles and all-terrain vehicles (ATVs) and further urged the Agency not to assess fees until clarification of the Agency's authority and issuance of applicable emission standards for these categories.

Another commenter argued that EPA does not have the authority under section 213 to assess fees for nonroad engines and therefore, lacked authority to assess fees for lawn and garden engines. This commenter also considered our discussion of our

[7] For more information on the FTE allocation method see the Cost Analysis, page 10.

authority to assess fees for non-road engines and vehicles as ''tortured.''

*Our Response:*

EPA disagrees with these comments. EPA confirms its view that section 217 authorizes the Agency to recover all reasonable costs associated with certification and compliance activities for nonroad vehicles and engines, including nonroad equipment. EPA also believes that action taken under section 217 is to be consistent with the IOAA. We also believe that even if section 217 does not extend to nonroad vehicles and engines, then the IOAA separately provides the Agency with authority to assess and recover fees for nonroad and engine certification and compliance, and section 217 does not limit or override the IOAA.

A plain reading of section 217 indicates that EPA may recover the costs associated with all of its vehicle and engine certification and compliance programs conducted under sections 206 and 207 of the Act. Under section 217, the Agency may recover the reasonable costs associated with ''new vehicle or engine certification'' under section 206(a), ''new vehicle or engine compliance monitoring and testing'' under section 206(b), and ''in-use vehicle or engine compliance monitoring and testing'' under section 207(c). 42 U.S.C. 7522(a). Under section 213(d), the standards for new nonroad vehicles and engines are subject to all the applicable requirements of sections 206 through 209. The provisions of sections 206(a), 206(b) and 207(c) are therefore applicable to emissions standards for nonroad engines. Here, the nonroad certification and compliance activities for which EPA is adopting fees are actions taken pursuant to these specific provisions. These nonroad costs are clearly costs for ''new vehicle or engine certification'' under section 206(a), ''new vehicle or engine compliance monitoring and testing'' under section 206(b), and ''in-use vehicle or engine compliance monitoring and testing'' under section 207(c).

Section 217 expressly allows for recovery of costs associated with ''vehicle or engine'' certification and compliance, and nonroad vehicles and engines are clearly ''vehicles'' and ''engines.'' CAA section 216(10), (11). The text of section 217 does not limit its scope to ''motor vehicle or engine'' certification and compliance programs. Congress was clearly aware that the terms motor vehicle or engine are different from the terms nonroad vehicle or engine, and in section 217 chose to use the more general terms ''vehicle'' and ''engine'' to identify the scope of authority under section 217. Congress defined motor vehicles and engines distinct from nonroad vehicles and engines, but subjected them both to sections 206(a), 206(b) and 207(c), as well as other provisions in Title II. Congress authorized the same fundamental certification and compliance framework for both nonroad and motor vehicle programs, and used language in section 217 that would then allow EPA to collect fees for its certification and compliance costs for both motor vehicles and engines and nonroad vehicles and engines. Congress likely would have expressly employed the term ''motor vehicle or engine,''[8] instead of ''vehicle'' or ''engine,'' had it intended to limit the reach of section 217 to motor vehicle or engine certification and compliance activity. There also is no specific provision in section 217 that can be read as precluding EPA from assessing fees for nonroad engines and vehicles. Collecting fees to recover the certification and compliance costs associated with nonroad engines and vehicles therefore is within the plain meaning of the language Congress used in section 217.

Moreover, there is nothing in the legislative history for section 217 to support the commenters' narrow reading. Rather, legislative history only evinces an intent for the Agency to ''recover the costs associated with operating'' compliance and certification programs. [H.R. 101–490, May 1990, 1990 U.S.C.C.A.N. 3355]. The terms used here are general in nature and reasonably indicate an intention to recover such certification and compliance costs. There is no indication in this text that Congress intended to recover only some of these costs, those associated with motor vehicles and engines. Congress likely would have at least identified or mentioned the limitation of section 217 to motor vehicles and engines and the inapplicability to nonroad vehicles and engines in this legislative history.

If, as the commenter suggests, EPA were to subject all nonroad engines and vehicles to the same applicable requirements as on-highway vehicles and engines except for fees assessment, this narrow reading of section 217 would not comport with the stated congressional intent that we ''recover the costs associated with operating'' our certification and compliance programs. [H.R. 101–490, May 1990, 1990 U.S.C.C.A.N 3355]. EPA's interpretation avoids this result and, consistent with the intent of section 217 and the IOAA, provides a reasonable mechanism to equitably collect fees for specific private benefits provided by the agency.

Commenters argue that Congress adopted both sections 213 and 217 in the 1990 amendments, but failed to specifically identify nonroad certification and compliance costs in section 217, and failed to reference section 217 in section 213(d), both indicating that Congress did not intend to include nonroad engines and vehicles in section 217's authority to collect fees. As noted above, this fails to account for the plain meaning of the language employed in section 217 and 213(d). In section 213(d), Congress specifically stated that nonroad engines and vehicles would be subject to the certification and compliance requirements of section 206 and 207, along with other provisions unrelated to fees. Congress also stated in section 217 that EPA could collect fees for costs related to engine and vehicles subject to these specific certification and compliance provisions in sections 206 and 207. Congress did not need to specifically mention nonroad engines and vehicles in section 217, and did not need to specifically mention section 217 in section 213(d) to authorize the collection of nonroad related fees, as the language it did use leads directly to that result. Similarly, Congress did not need to specifically mention motor vehicles or engines in the text of section 217 to authorize collection of fees for motor vehicle and engine certification and compliance costs under sections 206 and 207. The reference to section 206(a), 206(b) and 207(c) brings in both motor vehicle and nonroad related costs.

Clearly Congress could have made such specific references, but it instead used broader language in section 217 and a specific tie into actions under sections 206 and 207, where the plain meaning then covers both nonroad and motor vehicles and engines. It did not need to specifically refer to nonroad engines and vehicles to include them in section 217. The lack of specific references cited by commenters does not detract from the plain meaning of these provisions, and does not lead to the implication drawn by commenters. The plain text of section 217, read in combination with section 213(d), indicates that Congress intended to authorize collection of fees for both nonroad and motor vehicles and engines. There is no indication in the text of either section 217 or section 213(d) that Congress intended to limit section 217 to motor vehicles. This is

[8] *See*, for example, section 218: ''[t]he Administrator shall promulgate regulations applicable to *motor vehicle engines and nonroad engines* . . .'' 42 U.S.C. 7553 (emphasis added).

not a tortured interpretation, but a reasonable reading of the language used by Congress.

The Agency also disagrees with the contention that the title of section 217—''Motor Vehicle Compliance Program Fees''—indicates that Congress did not intend to authorize assessment of fees for nonroad vehicles and engines. ''Headings and titles are not meant to take the place of the detailed provisions of the statutory text; nor are they necessarily designed to be a reference guide or a synopsis.'' *Thistlethwaite* v. *Dowty Woodville Polymer, Ltd.*, 110 F.3d 861, 866 (2d Cir. 1997) (Internal quotation marks and alterations omitted), rather, ''[a]bsent a clearly expressed legislative intention to the contrary, [statutory] language must ordinarily be regarded as conclusive.'' *Consumer Product Safety Commission 447 U.S. 108, 100 S. Ct. 2055* (1980). Here, both the plain language of section 217 and it's legislative history indicate an intention to authorize collection of fees for all of the new vehicle and engine certification and compliance actions undertaken by EPA under section 206(a), (c) and 207(c). They provide no indication of an intention to limit such authority to motor vehicles and engines. In these circumstances, the use of the term ''motor vehicle'' in the heading of section 217 does not support rejecting a conclusion based on the language actually used by Congress.

Regardless of whether section 217 authorizes the collection of fees for costs related to nonroad engines and vehicles, the IOAA does authorize EPA to assess and recover fees associated with implementing the nonroad engines and vehicles certification and compliance programs. The plain language of the IOAA allows Agencies to charge and recoup reasonable costs for services that confer specific benefits upon identifiable beneficiaries[9]. It authorizes federal agencies to ''impose a fee only for a service that confers a specific benefit upon an identifiable beneficiary.'' *Engine Manufacturers Association (EMA)* v. *EPA*, 20 F.3d 1177, 1180 (D.C. Cir. 1994). That case indicates that the certification and compliance actions for which EPA is collecting fees do in fact confer a specific private benefit. ''In a regulated industry a certificate of approval [such as a certificate of conformity] is deemed a benefit specific to the recipient.'' *Id.*

There is nothing in the text of the IOAA that indicates the IOAA does not apply to collection of nonroad related costs, assuming section 217 does not authorize such fees. The question then is whether section 217 itself limits the scope of the IOAA with respect to nonroad certification and compliance costs that are otherwise outside the scope of section 217.

Nothing in the text of section 217 indicates that it limits the IOAA in areas not covered by section 217. The introductory text of section 217 refers to the IOAA, stating that EPA's action under section 217 is to be ''consistent with'' the IOAA. The clear meaning of that phrase is that EPA is to apply the criteria of the IOAA in promulgating fees under section 217. It indicates an intention that action taken under section 217 is to be consistent with the IOAA. It does not indicate that Congress intended to deviate from, limit, or override the IOAA in areas outside the scope of section 217.

It seems quite unlikely that Congress would limit the reach of the IOAA in such an oblique fashion in section 217. If Congress intended to amend or overrule the IOAA through section 217, Congress likely would have used language indicating that intent. Instead Congress just generally provided that section 217 is to be read ''consistent'' with the IOAA. *See*, *Chisom* v. *Roemer*, 501 U.S. 380, 111 S.Ct. 2354 (1991). Such an important limitation likely would be clearly discernable from the Act and the legislative history of section 217, and it is not.

The enactment of section 217 even though the IOAA was already in existence does not indicate otherwise. Section 217 serves several valid functions, none of which is related to or indicate an intention to limit or overrule the IOAA for areas not covered by section 217. For example, section 217 creates the fees fund and specifies that fees collected are to be deposited in a special account at the United States Treasury. It also resolves any doubt that a certification and compliance program can be basis for fees. The reference to the IOAA in section 217 is best read in this context. Moreover, reading section 217 as overriding the provisions of the IOAA would amount to a repeal by implication which is generally disfavored.

Commenter's argument would mean that EPA is precluded from recovering the costs associated with the nonroad vehicle or engine certification and compliance program under either the IOAA or section 217. This narrow reading of section 217, as overriding the IOAA, would result in our conferring the specific benefits of our certification and compliance program on non-road engine manufacturers without the authority to recover associated costs for providing this service. Such an interpretation would be inconsistent with the overall purpose of the IOAA—that agencies be ''self-sustaining'' by charging fees to recover costs associated with rendering services to identifiable beneficiaries. Commenter's interpretation also does not have any clearly limited boundaries. The interpretation begs the question of the extent to which section 217 limits the IOAA for areas outside the scope of the IOAA. Is it limited to nonroad certification and compliance activities? Is it limited to other activities under Title II of the Act? Does it extend to all other EPA actions under the Act? The lack of a clear boundary to the limits of IOAA authority under commenter's interpretation indicates it is neither a likely nor reasonable interpretation of Congressional intent underlying section 217.

EPA believes the best interpretation of section 217 and the IOAA is to read them as acting in harmony and in conjunction with each other. For areas covered by section 217, EPA's actions under that section are to be consistent with the IOAA. For areas not covered by section 217, the IOAA continues to be in effect as before section 217 was adopted. This will appropriately ensure that fees' assessment for all of the Agencies programs will be adequately addressed.

Since a nonroad engine manufacturer, similar to the on-highway engine manufacturer, ''obtains a benefit from the entire [EPA] compliance program,'' we believe we may recover the reasonable costs of compliance testing, by a fee that does not exceed the value of the benefit derived by the manufacturer, under the IOAA. *See*, EMA, 20 F.3d at 1181 (D.C. Cir. 1994). Thus, we believe that if section 217 is inapplicable, and we do not believe so, the IOAA would provide authority to assess fees for nonroad engines and vehicles.

In light of the foregoing, we disagree with the commenters' narrow interpretation of section 217. Accordingly, we believe that it is reasonable to read section 217 as providing the requisite authority to collect fees associated with nonroad certification and compliance activities. EPA also believes it is reasonable to read the IOAA as providing independent authority for assessment of fees for nonroad engine compliance and certification activities, if section 217 does not authorize such assessment.

[9] ''It is the sense of Congress that each service or thing of value provided by an agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible.'' 31 U.S.C. 9701(a).

EPA believes today's action is appropriate under either section 217 or the IOAA.

Similarly, with regard to comments asserting our lack of fees' assessment authority for other nonroad engines such as off-road motorcycles, ATVs and lawn and garden engines, we believe as discussed above that both section 217 and the IOAA provide us with the requisite authority to ''recover the reasonable costs'' associated with the certification and compliance programs for these nonroad engines.

We also do not believe it is necessary to further ''clarify'' our authority to collect nonroad fees. We set forth the basis for our authority within the NPRM and today's action confirms that authority. We separately address the suggestion to defer fees' collection until issuance of the off-road motorcycles and ATVs emission standards in the Authority to Recover Anticipated Costs for Proposed Programs section below.

2. Authority To Recover Anticipated Costs for Proposed Programs

*What We Proposed:*

EPA published new fees for all industries in the fees rule NPRM, Table III.D–1, 67 FR 51410. EPA updated fees for light-duty vehicles, motorcycles and heavy-duty highway engines and vehicles that were covered by EPA's original fees rulemaking. The new fees for these industries are determined considering inflationary costs, additional costs associated with programmatic decisions, and some future costs known at the time of the proposal that were also known to be necessary to maintain an effective MVECP.

We also proposed fees for certain certification request types in the nonroad industry based on the fact that EPA has had emission regulations in place, prior to the fees proposal, covering such nonroad industries and thus an on-going compliance program exists for these industries. These industries include nonroad (NR) compression-ignition (CI), marine spark-ignition (SI) outboard/personal water craft, small nonroad SI, and locomotives. Some of these industries have had emissions programs in place since the 1996 model year.

In addition, we proposed fees for certain nonroad industries (marine CI > 37kW) where EPA had finalized the applicable emission regulations for that industry prior to the fees proposal but the compliance programs had not yet been implemented. Such industries would only pay a fee for certification at the time of their initial applications for certification.

Similarly, EPA also proposed fees for certain nonroad industries (large nonroad SI > 19kW, recreational marine > 37kW, and recreational vehicles (off-road motorcycles (MC), ATVs, snowmobiles, etc)) for which emission regulations had been proposed at the time of the fees proposal (August 7, 2002) but for which no emission regulations had yet been finalized.

Lastly, for a certain nonroad industry (marine SI inboard/sterndrive) we proposed fees although the emission regulation and proposal was just under development at the time of the fees proposal.

*What Commenters Said:*

EMA maintains that it is improper for EPA to quantify fees for anticipated nonroad certification and compliance programs that have not been implemented and in some cases not even proposed. EMA asserts that section 217 only authorizes the Agency to ''recover'' the actual costs that it incurs for administering established certification and compliance programs—''[T]he Administrator may * * * recover * * *'' EMA provides what it feels to be the plain meaning of ''recover'' which is ''to get back.'' EMA contends that for the industry categories noted above, there are no such actual costs for the Agency to tally and then seek to recover or get back. There is no proper basis for the Agency to merely anticipate expenses that will be incurred in the future. EMA maintains that EPA should not impose fees for nonroad categories that were not finalized before the NPRM, nor should EPA include fees associated with nonroad rulemakings that have not yet been finalized and published.

Additionally, EMA believes it is unlawful and improper to establish fees for programs that have not even been proposed as it presupposes the outcome of such rulemakings and so undermines and trivializes the administrative rulemaking process. Without knowledge of the final outcome of the predicate rulemaking the public cannot participate meaningfully in the rulemaking. EMA urges EPA to wait for the underlying regulatory measures to be finalized and implemented before charging manufacturers for anticipated costs.

The Alliance and the Association of International Automobile Manufacturers (AIAM) state that EPA incorrectly bases its costs on ''budget requests'' and ''plans'' rather than actual ''expenditures.'' It is inappropriate to base costs on projections. EPA should account for ''actual expenditures'' or where costs have occurred. In addition, EPA must account for each employee who works on MVECP activities and subtract out time not spent on such activities.

The Motorcycle Industry Council asserts that the compliance fees should not include anticipated or projected costs, future plans and services. The commenter further states that only when actual costs are determined should a fair fee be established and the costs recovered. The Council further requested that the Agency defer finalizing fees for off-road motorcycles and ATVs until the Agency finalizes the applicable emissions requirements and at that time, issue the applicable fees or a ''separate but concurrent fee rule.''

The Outdoor Power Equipment Institute (OPEI) supports EMA's comment stating that EPA lacks the statutory authority to recover anticipated costs for proposed programs prior to their adoption as final regulations.

*Our Response:*

As stated above, we believe section 217 authorizes the Agency to recover reasonable costs associated with vehicle and engine certification and compliance activities. We also believe that the IOAA authorizes the Agency to recover fees. We believe it is appropriate to recover all costs which EPA will incur to provide the necessary MVECP services to a manufacturer during the course of certification and in-use compliance activities. For several reasons EPA also believes it is appropriate to collect such fees prior to issuing certificates. EPA disagrees with EMA's suggestion that the language in section 217 authorizing EPA to establish fees ''to recover'' all reasonable costs means that EPA should ''tally'' its costs and then ''get back'' such costs. EMA does not suggest that EPA change its current regulatory practice of collecting fees in advance of granting a certificate. As such, EMA tacitly recognizes that EPA is indeed projecting the actual future costs associated with certification and in-use activities at the time it is adopting the fees rule and when it collects the fee with the application for a certificate. EPA believes it may project actual costs as long as the fee payers are on adequate notice through rulemaking of what those projected costs are and that EPA has a reasonable basis for deciding that such projections will be accurate. EPA's fees rule is designed to recover or get back its expected actual costs.

We believe this practice is consistent with the guidance provided by OMB Circular No. A–25, which states under its ''General Policy'' section 6(a)(2)(c) that when determining the amount of user charges to assess that ''User charges will be collected in advance of, or

simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services.'' In this instance, EPA does not believe that section 217 of the CAA limits EPA's authority such that EPA could only seek reimbursement of past expenses. In addition, EPA's continued practice of collecting fees in advance is the most appropriate method and provides applicants with the best information regarding the fees that are owed at time of certification.

The Agency has finalized rules for certain nonroad categories that were proposed but not finalized at the time this fees rule was proposed. With the one exception noted below, we also no longer are ''projecting'' what our compliance activities will be for many of the nonroad industries included in the ''Other'' category as the rules regulating emissions for those industries have been finalized and our expected compliance activities will be implemented.

We agree with commenters that we should not finalize fees at this time for nonroad categories that were not proposed at the time that the fees rule NPRM was published. Although EPA also proposed fees for the marine SI inboard/sterndrive industry, based on what we anticipated to be a modest compliance program, we agree with EMA that it is premature to require fees at this time. EPA believes that the cost study and analysis are proper for this industry but we choose to wait until the actual emission regulation for this industry is proposed, to provide ample opportunity for comment on potential fees. We anticipate finalizing fees for that industry in the final emission regulation. Therefore, in EPA's revised worksheet #2, in the ''Other'' column, we have reduced the total cost of compliance activities by $20,645 to reflect that the marine SI category will not be covered by this regulation. The fees associated with the remaining regulated industries in the ''Other'' column remain the same—$826 per certificate. This change is reflected in section 85.2405 of the regulations, item 14 of the fees table, which indicates the fees for marine engines, excluding inboard and sterndrive engines.

As EPA has maintained throughout this rulemaking, we believe it is appropriate to recover all costs which EPA will incur to provide the necessary MVECP services to a manufacturer for certification and in-use. For several reasons EPA also believes it is appropriate to collect such fees prior to issuing certificates. We also believe that when any significant budget changes occur that affect allocations of resources dedicated to any MVECP activity, or regulatory changes that affect MVECP activities, or EPA evaluations of the compliance rates and associated environmental impacts change, then it is likely appropriate for EPA to reexamine its updated MVECP activities and determine whether any changes in costs have occurred.

We believe it is appropriate within this rule to require fees for those industries that are in fact required to meet EPA's emission standards in order to receive certificates of conformity. EPA proposed fees for certain nonroad industries where the compliance date of the emission standards had not yet occurred (meaning no applications for certification had been submitted), and we believe that such manufacturers had adequate notice of the regulatory emission requirements they would be required to meet in the future and how EPA intended to impose a fee related to EPA's services. Based on the regulatory structure of the emissions program for these industries, EPA also had a reasonable basis for deciding that the projected costs are accurate. As noted in the proposal, EPA intends to only conduct a modest MVECP program for these industries.

In addition, we also believe it is appropriate to require fees for those industries that are newly regulated since EPA issued the fees proposal. At the time of the fees proposal such industries (large nonroad SI > 19kW, recreational marine > 37kW, and recreational vehicles) were on notice of the emission requirements they would likely face (including the requirement of certification) due to existence of NPRMs for such industries prior to the fees proposal. Based on the regulatory structure of the emissions program for these industries, EPA also had a reasonable basis for deciding that the projected costs are accurate. The final emission regulations have since become effective for these industries and EPA anticipates no changes in its modest projections of the compliance activities and costs associated with these newly regulated industries.

*B. Assessment of Costs*

1. Costs Apportioned to Industries

*What We Proposed:*

Our proposed fees were based on past and projected actual costs of providing certification and compliance services to the various mobile source manufacturers and industries. We grouped these various manufacturers and industries into fee categories and we explained that separation of industries into groups with other similar industries was in order to ensure that each category pays fees only for the services that it receives.[10] We also explained that EPA conducted a cost analysis to determine the various compliance activities associated with each fee category and associated annual costs for each certification request type. We set forth our analyses in the Motor Vehicle and Engine Compliance Program Costs Analysis (Cost Analysis Document). We further explained that where the level and type of EPA activity and costs were similar for each industry then those industries were grouped together, the total number of certificates were added together, and equal fees were allocated to each anticipated certificate. (See Cost Analysis Document at p. 21.) In this way, EPA determined the portion of the MVECP costs dedicated to each certification request type.

We proposed three ''fee categories'': 1. Light-Duty, which includes light-duty vehicles and trucks, motorcycles, and because of similar compliance programs medium-duty passenger vehicles and certain heavy-duty vehicles were included, with subcategories created where it was determined that a different level of services and costs were expected to be expended; 2. Engines, which includes heavy-duty highway (HDE HW) and nonroad compression-ignition (NR CI) engines (excluding marine and locomotive), with subcategories created where it was determined that a different level of services and costs were expected to be expended; and 3. Other Engines and Vehicles, where currently EPA only plans to do certification review and includes marine CI and SI engines, nonroad SI engines, locomotive engines, large spark-ignition engines, recreational marine engines, recreational vehicles, heavy-duty engine evaporative systems and heavy-duty engines certified for California only.

*What Commenters Said:*

EMA maintains that the language of section 217(a) of the CAA relevant to heavy-duty engine and vehicle manufacturers, which states in part, that EPA's fees for such manufacturers ''shall not exceed a reasonable amount to recover an appropriate portion of [the] reasonable costs [of the MVECP]'' requires EPA to only recover a portion and not all of the certification and compliance program costs. EMA believes such portion should be from the costs just associated with the heavy-duty engine and vehicle manufacturers.

[10] See original Cost Analysis Document starting at page 16 (step 5 of ''general steps'').

Although EMA initially stated that they did not have a definitive percentage or portion that EPA should assess, EMA in a subsequent comment stated that the appropriate ''portion'' of EPA's certification and compliance costs for heavy-duty engine and vehicle manufacturers to bear is 50 percent.

EMA states that the plain language of section 217(a) requires that only a ''portion'' of the costs associated with the heavy-duty engine (HDE) compliance program can be recoverable and thus 100 percent of such costs is not a portion. EMA suggests that EPA's interpretation (that heavy-duty manufacturers pay 100 percent of the costs allocated to that industry) would provide no purpose or effect to the last sentence in 217(a). Since the basic premise of fee collection is to impose fees for specific benefits conferred upon an identifiable beneficiary,[11] EMA suggests that it is self-evident that EPA would only collect such appropriate fee even without the language in the last sentence. Further, EMA points to the EMA decision and claims it does not validate EPA's interpretation of 217(a). EMA suggests that the dicta from that decision only states that ''Congress intended that the EPA charge manufacturers of heavy-duty engines and vehicles something less than it charges other manufacturer'' and the EPA must ''do something that moves non-trivially in the direction that Congress intended'' and thus does not hold that EPA may assess HDE manufacturers 100 percent of all costs and yet still comply with the requirement in 217(a) which requires that only a portion of such reasonable costs be assessed.

*Our Response:*

EPA agrees with EMA's suggestion that the general principle of section 217 and of the IOAA is to generally recover all costs that are specifically tied to a specific benefit for an identifiable party. The introductory sentence on 217(a) suggests that ''all reasonable costs'' might appropriately be calculated for all the MVECP services as noted in 217(a)(1–3) for all industries and then EPA is subsequently directed to charge the heavy-duty engine and vehicle manufacturers its appropriate ''portion'' of the otherwise aggregated costs.

We disagree with EMA's interpretation of the EMA decision. The court discusses EMA's claim that heavy-duty manufacturers should pay less than the ''fair share'' of costs occurs in section III C of the decision. The court noted that ''According to EMA, the Congress intended that heavy-duty manufacturers be charged a fee that recovers less than their fair share of the total cost of the Compliance Program because they face smaller sales volumes and more onerous compliance testing than do manufacturers of light-duty vehicles and engines.'' The cost methodology EPA used in the fees rule that the court reviewed, and used for the current rule, was to segregate the costs for each certificate type (including HDE HW CI and SI) and divide such total costs by the number of certificates expected to be issued within that certificate type. As noted on worksheet #2 of the original Cost Analysis, the total costs for HDE HW CI and SI is $3,956,759 and cost per certificate is $30,437. Worksheet #2 of the revised Cost Analysis shows that this amount is now $3,193,596. The amount per certificate is $21,578, a reduction of $8,859 per certificate in the final rule (this reduction is a result in a recalculation in the number of certificates expected to be issued, a reduction in the costs associated with the upgrades to the test cells in Ann Arbor, and other adjustments) whereas the fee per light-duty vehicle certificate is $33,883.

The court in EMA (page 1183) acknowledged EPA's methodology of and intent to give effect to section 217(a) by segregating the costs of heavy-duty, light-duty, and motorcycle certificates and by waiving the fee to the extent that it exceeds one percent of the projected sales revenue for any manufacturer. The court suggests that it is reasonably clear that Congress intended that the EPA charge manufacturers of heavy-duty engines and vehicles ''something less than it charges other manufacturers'' although ''the statute is silent as to both the means by which and the degree to which the agency is to do so.'' The court continued and found that what EPA had done, in segregating costs as noted above, was an appropriate way to implement section 217(a) for heavy-duty manufacturers.

We also note that the discussion that EMA cites from EMA regarding the fact that the IOAA already provides the necessary authority and requirement that fees for service only be collected when a specific benefit falls upon an identifiable industry includes additional discussion of what is an ''identifiable beneficiary'' versus the general public. The court states that ''[a] general benefit conferred upon an *industry*, such as the public confidence that may attend the mere facts of its regulation, is insufficient to justify a fee.'' (italics added). The court continues and states that ''[i]n a *regulated industry*, a certificate of approval is deemed a benefit specific to the recipient.'' (italics added).[12] The court clearly differentiates between the regulated industry versus the general public.

All such manufacturers receive the specific benefit of a certificate from EPA and are otherwise regulated. However, we believe the language of section 217 authorizes us to use a methodology that identifies the costs directly associated or portioned by EPA that relate to the heavy-duty engine and vehicle industry. We have in fact identified such costs for this industry and apply no other costs to the fees collected from it. EPA believes this is an appropriate way to implement section 217(a).

*What Commenters Said:*

EMA then points to section 217's use of the term ''reasonable'' and legislative history on this section which is to the effect that ''[t]he authority granted to the Administrator under this section [217] must be carefully exercised so as to avoid proceeding with 'gold plated' compliance programs since the costs will not fall on the government.'' (*See* H.R. 101–490, May 17, 1990). EMA suggests that a 50 percent allocation would also give recognition to the tremendous outlays of capital and man-hours that HDE manufacturers already spend to conduct extensive certification and compliance testing and given the new costs to comply with the 2007 model year requirements and its own in-use not-to-exceed (NTE)[13] compliance testing.

EMA believes that 50 percent is the appropriate portion of the costs that should be collected in order to protect against ''gold-plated'' programs and by ensuring that EPA maintains a meaningful role in funding such programs. It would also recognize the capital and man-hours that heavy-duty manufacturers spend to stay up with EPA requirements, including costs for additional data and new test cells in order to meet the 2007 standards. In addition, EMA again claims that the manufacturers face extensive in-use NTE compliance testing in the future and thus in many ways are already paying more than their fair share of compliance cost burden.

*Our Response:*

EPA believes the best interpretation of section 217 is that the costs associated with heavy-duty manufacturers be

[11] EMA cites *EMA* v. *EPA,* 20 F.3d 1177, 1180 (D.C. Cir. 1994) for this proposition. The court held in this instance that ''Under the IOAA an agency may impose a fee only for a service that confer a specific private benefit upon an identifiable beneficiary.''

[12] EMA at 1180.

[13] Not-to-exceed requirements specify that engine emissions must not exceed a specified value for any of the regulated pollutants.

segregated from other types of manufacturers. In reaching this conclusion EPA is guided by the sentence in section 217 that EMA relies upon ''In the case of heavy-duty engine and vehicle manufacturers, such fees shall not exceed a reasonable amount to recover an appropriate portion of such reasonable costs'' and the preceding sentence which states ''The Administrator may establish for *all* foreign and domestic manufacturers a fee schedule based on such factors as the Administrator finds appropriate and equitable and nondiscriminatory, including the number of vehicles or engines produced under a certificate of conformity'' (italics added).

We believe it is appropriate to segregate the MVECP costs associated with each industry and then to divide the number of certificates within each respective industry by its segregated costs. In order to be nondiscriminatory we also believe that all industry groups (or ''fee categories'') must reimburse the government for all the costs for their respective industry group. The costs that each industry group must incur to comply with EPA's emission requirements such as manufacturers' own NTE testing, test cell development, etc., is properly considered by EPA when it adopts such requirements, *e.g.*, when it adopts emission standards. The cost to industry is taken into account in that rulemaking. This rule, however, focuses on EPA's actions and associated costs. We believe that is consistent with the directive in the IOAA that special benefit programs be self-sustaining to the extent possible and the first sentence of section 217(a) authorizing EPA to ''* * * establish fees to recover all reasonable costs.''

Thus, we believe that the directive to recover ''reasonable,'' ''appropriate,'' and ''equitable and nondiscriminatory'' costs or fees means that EPA must use clear and explained accounting measures, make reasonable estimates of costs, and properly distribute its costs to specific programs where specific benefits are bestowed to a specific industry group.

Therefore, EPA believes the purposes of section 217 and IOAA are also best served by collecting all costs incurred by the Agency but only collecting the fair share of costs of HDE compliance that is associated with such activity and therefore EPA makes no adjustment of its fees based on commenters' suggestions.

EPA believes that the certification and compliance program designed for the heavy-duty industry is appropriate and reasonably correlates with the contribution of emissions from this sector to the overall inventory of emissions from mobile sources and also is very reasonable when compared to the level of activity and costs associated with other industry categories, including the light-duty industry. EPA believes its certification and compliance program is reasonable, if not modest, for the heavy-duty industry and in no respect can it be considered a ''gold-plated'' program. From EPA's original proposed cost of $30,347 for each heavy-duty certificate we have now reduced the cost in the final rule to $21,578.

2. Costs Unrelated to the MVECP

*What We Proposed:*

We proposed recovery of those costs incurred by the Agency in conducting new vehicle and engine certification, new vehicle and engine compliance monitoring and testing and in-use vehicle or engine compliance monitoring. The proposed fees are based on what EPA believes to be all recoverable direct and indirect costs associated with administering these activities. Recoverable costs include all labor, direct and indirect program operating costs associated with the activities listed above, and EPA's general overhead costs. Operating costs include such things as the purchase of equipment or property as that specified on worksheet #10, which is the itemization of laboratory modernization budget request.

The Cost Analysis contains worksheets which further explain the associated costs. Several worksheets within the Cost Analysis set forth the costs that are applicable to the heavy-duty highway certification type.

*What Commenters Said:*

In its initial comments, EMA expressed the concern that EPA was seeking to assess and recover fees for EPA's developmental test lab facilities and personnel in Ann Arbor. EMA stated that since these facilities were not utilized in connection with the MVECP for manufacturers' heavy-duty on-highway or nonroad engines compliance or certification activities but instead are used for general regulatory efforts and technological feasibility demonstrations, such efforts and demonstrations do not confer specific benefits on any identifiable beneficiary or manufacturer.

OPEI supported EMA's comment and contended that EPA cannot impose certification fees on small spark-ignition (SSI) engine manufacturers for costs that are not directly related to processing SSI engine certification. Both commenters considered costs associated with EPA's developmental test lab facilities and personnel associated with such facilities in Ann Arbor, Michigan as ''unrelated costs.''

*Our Response:*

EPA agrees with commenters that fees should not be assessed for the costs associated with using Ann Arbor's test laboratory facilities and personnel for activities not related to the MVECP such as general regulatory efforts and technological feasibility demonstrations, or for other developmental purposes. As EPA noted in the NPRM, the costs of activities such as regulation development, emission factor testing, air quality assessment, support of state inspection programs and research were not included with the costs study nor are included in the fees proposed. (See 67 FR at 51409). As noted on worksheet #10, of the $14,130,000 associated with the laboratory modification budget, only $8,485,000 was deemed recoverable as laboratory equipment associated with compliance testing activities. Specifically, those costs linked to the ''advance engine test sites'' and the ''climate control test facility,'' which fall under the heading ''Critical Regulatory Developmental Test Capability'' are not labeled as recoverable and thus are not included in the fees proposed. Worksheet #10 also reflects that other costs associated with developmental testing are not labeled as recoverable. As further noted below, EPA has further refined these costs and has eliminated other costs not determined to be MVECP related.

We did not include the costs of developmental lab facilities and personnel in Ann Arbor in our fees calculation. The lab facilities that were included as recoverable in the cost study are for engine testing that EPA plans to begin in the near future. Therefore, the costs are associated with compliance testing and are recoverable by fees.

*What Commenters Said:*

In its initial comments, EMA also contended that EPA does not currently conduct any HDE testing at Ann Arbor and therefore questioned both the need for such testing along with the additional labor costs of conducting such testing along with the other costs of such testing as summarized on worksheet # 3.

*Our Response:*

EPA notes that the need for such testing partially arises from purely the emission contribution from heavy-duty engines which is second only to light-duty on-highway vehicles for mobile sources and represents approximately one-half of the emissions of light-duty vehicles. Furthermore, EPA has experienced a relatively high degree of the use of defeat devices and non-

conformity of heavy-duty vehicles in recent years. The discovery of the level of noncompliance in this industry led to the perception that EPA was not doing an adequate job of overseeing the HDE industry. In 1998 consent decrees were entered into with almost the entire HDE HW industry, to resolve claims of several cases of noncompliance. The Agency is only now beginning on its efforts to test some of these vehicles during in-use operation over their useful lives. EMA's comment suggests that it may be unnecessary to implement a new HDE compliance program (or that it is not necessary until the 2007 requirements commence), or that such a program is untenable in Ann Arbor. EPA believes these comments are misplaced. As noted from revised worksheet #1, EPA's proposed fees program allocated a cost of $3.2 million for the HDE on-highway industry. This amount has been further reduced by today's final rule.

EPA plans at this point to conduct dyno certification testing and in-use testing on 9 families out of 150 families, and approximately 11 additional families using portable test equipment for in-use surveillance testing. Thus, EPA believes that given the past rates of compliance with emissions standards of these industries, along with emissions contributions, demonstrates that creation of a reasonable compliance program for the heavy-duty industry is reasonable.

EPA believes it has developed and is now in the process of implementing a cohesive and comprehensive compliance program, including a significant component in Ann Arbor, for HDE on-highway engines. EMA is correct that a testing program in Ann Arbor did not exist at the time of the fees proposal, however, EPA has extensive experience in testing light-duty vehicles and has identified a similar need for heavy-duty in order to ensure that any emission problems are found in a timely manner. Similarly, EPA has extensive experience with procuring vehicles for testing and estimating costs and we note that commenters did not question the accuracy of such costs. EPA has invested the requisite resources to conduct a testing program in Ann Arbor and plans to use that facility along with testing conducted in the Washington, DC area and at any necessary outside contracted laboratories as explained at 2.2.4.

3. Costs for In-use Programs

*What We Proposed:*

We proposed continuance of the Agency's current compliance methods for light-duty vehicles, motorcycles and heavy-duty highway vehicles and engines which insure the overall compliance of a vehicle or engine with applicable emission standards throughout their useful life. EPA explained that this certification process may include confirmatory testing (testing conducted by EPA in-house to confirm manufacturer test data) and compliance inspections and investigations (such as selective enforcement audits) and in-use testing. (67 FR at 51406–51408). Currently, EPA conducts testing of in-use heavy-duty highway engines and nonroad compression-ignition engines at costs of $297,200 and $72,800, respectively. This testing is screening in nature, and uses portable test equipment on-board the vehicle. This screening is used as an indicator of engines that may be noncompliant. To assist in this testing, EPA is planning to purchase commercial emission detection units that can monitor emissions from heavy-duty engines and nonroad compression-ignition engines during use at costs of $80,000 and $20,000, respectively. These costs are shown on worksheet #13.

We also proposed fees for new compliance testing for in-use heavy-duty engines. Some of the testing will be conducted in the Ann Arbor laboratory at a test site that is being upgraded to conduct compliance-level tests. The proposed [14] costs for the in-use testing conducted at EPA's Ann Arbor facility included the equipment costs listed in revised worksheet #10 ($385,000 per year for heavy-duty), the labor listed in revised worksheet #7 (1.50 FTE), and the cost of procuring in-use heavy-duty engines listed under Engine Procurement—Heavy-Duty, on revised worksheet #12 ($68,960).

In addition to the new testing that will be conducted in Ann Arbor, we are planning an Enhanced Engine Compliance Program. Revised worksheet #16 reflects the costs for this program. This will be conducted at a contracted facility (with the exception of the selective enforcement testing) and includes selective enforcement testing and in-use engine dyno testing for both heavy-duty highway engines and nonroad CI engines and certification confirmatory testing for NR CI engines.

*What Commenters Said:*

EMA opposed fees based on EPA's expectation of conducting an enhanced in-use compliance program when, at the same time, the Agency is in the process of developing and implementing a manufacturer-run in-use testing program.

EMA states that EPA's current in-use testing is just geared toward regulatory development and feasibility testing of its measurement equipment. EMA further contended that the fees are inappropriate because the NTE emissions standards and related testing and requirements do not become effective for HDE HW engines until 2007, much later than when the new fees become effective, and are not yet proposed for NR CI engines.

*Our Response:*

Regulatory development and feasibility testing were not included in the cost study, and were not included in the costs that will be recovered by fees. Furthermore, the cost study only assesses the costs of compliance and confirmatory testing.

EPA acknowledges that one purpose of the current in-use testing has been developing the portable testing devices and related testing procedures, but the primary purpose now and certainly in the future of the enhanced engine compliance program will be compliance testing. This is to implement the prohibition against use of defeat devices and to conduct compliance testing of new emission control components based on both the 2004 HDE HW standards and the 2007 standards. Thus both our screening testing and laboratory testing will commence in 2004 and not await the additional requirements (such as NTE standards) in 2007. Our current on-vehicle testing has several compliance purposes, including: as a general screening tool to see how such vehicles might perform based on federal test procedure (FTP) conditions, as a tool to insure that no heavy-duty engine manufactures are employing defeat devices. As explained below, in addition to continuing surveillance-like testing of small samples of vehicles per engine family, EPA plans to conduct more compliance testing to measure the durability of new emission components and to measure such vehicles or engines in laboratory conditions.

EPA has included the additional HDE HW compliance programs in its cost analysis and is recovering such costs by today's rule because such programs are part of EPA's plan to increase its compliance oversight for this industry.

We also note that the near term compliance testing will not be for ''regulatory development'' purposes but rather to insure the durability on new technologies being applied to heavy-duty on-highway and nonroad engines. These new technologies have not undergone extensive in-use scrutiny and assurances of durability. As a result an

[14] Note that the final costs for the HDE equipment costs is $77,000 per year, not $193,000 as proposed.

in-use compliance program is necessary now to ensure that the applicable new emission standards are being met.

*What Commenters Said:*

EMA states that manufacturers will be conducting a comprehensive in-use not to exceed (NTE)[15] testing program of on-highway HDE during the 2005 and 2006 time period and will subsequently conduct a manufacturer-run in-use program. EMA maintains that as a result, EPA and the California Air Resources Board (CARB) will not engage in routine in-use testing of HDE engine families. Thus, EMA argues that EPA's in-use testing will be minimized, not enhanced, due to the manufacturer-run in-use testing.

*Our Response:*

EPA agrees with EMA's comment that manufacturers will be conducting an in-use NTE pilot testing program during 2005 and 2006 yet we disagree with EMA's characterization of this testing as ''comprehensive.'' In fact during this pilot period it is expected that EPA will be required to conduct its own testing if determination of the scope or causes of potential nonconformance was required and that EPA may be required to generate additional testing data should a remedial action for nonconformance be sought. EPA also expects, and therefore agrees with EMA's comment, that manufacturers will be conducting their own in-use verification testing program in 2007, and thus EPA will not be conducting routine testing that is duplicative of manufacturer testing. Independent from the manufacturers' testing throughout this time period, EPA sees the need to conduct the projected levels of in-use testing to ensure compliance with all emission standards, including NTE standards. EPA believes that an EPA-run in-use presence will continue into the future at the levels projected.

The enhanced in-use program is planned by EPA to address the Agency's compliance testing needs. New technologies, such as catalysts and traps, will soon be added to heavy-duty on-highway (both for the 2004 and 2007 regulatory requirements) and nonroad compression-ignition engines which have not undergone extensive in-use scrutiny and assurances of durability. Thus we believe it is appropriate to establish an in-use compliance presence to ensure that the applicable new emission standards are being met. In terms of equity with other industries and in terms of the need for the compliance programs, we believe that EPA's proposed compliance program and the associated fees are appropriate. In addition, as noted above, EPA's in-use testing will not be duplicative, but as envisioned by EPA's settlement agreement with EMA, EPA's testing will be used for purposes of verifying any manufacturer testing as necessary in order to make final compliance determinations and other separate testing to supplement the testing of engine families not tested by manufacturers.

As evidence of EPA's intent to conduct the current and future HDE HW and NR CI testing programs, EPA has formally requested an additional $8 million in the fiscal year 2004 budget request sent to Congress ''to help ensure compliance with the more stringent and complex Tier II and Diesel regulations for cars, heavy-duty diesel engines, and gasoline and diesel fuels that will take effect in FY 2004.'' Included in the request is the ''development of a credible heavy-duty compliance program'' as Congress has previously questioned EPA's oversight of this industry. We believe it is appropriate to include the new testing program costs associated with heavy-duty compliance in the budget request just as it was appropriate to include the $10 million associated with the recoverable portion of the $14 million spent on the laboratory modernization projections which, at the time, was based on both EPA's design plans and needs and a similar request to Congress for such funding which has since been funded in subsequent appropriations. We also note that much of the testing that will be conducted during the 2005–2006 pilot testing period will be for purposes of refining testing protocols, etc. and that EPA must maintain a reasonable level of compliance testing in order to ensure that emission standards are being met while vehicles are operating during their useful lives. Similar to EPA's in-use verification program conducted by manufacturers in the light-duty industry (the Compliance Assurance Program (CAP 2000)), EPA believes it will continue to test at projected levels beyond 2007 when manufacturers will be expected to be required to conduct their own in-use testing as EPA testing in conjunction with manufacturer testing forms the basis for adequately determining the performance of engines during in-use operation.

*What Commenters Said:*

The Alliance/AIAM maintains that since CAP 2000 transferred the obligation of in-use verification and confirmatory testing to manufacturers, EPA appears to be charging fees for costs that are already borne by manufacturers. They also cite to a statement regarding our authority to require SEA testing in the NPRM and contend that since CAP 2000 also reduced or transferred EPA's workload as it relates to SEA testing, that any costs associated with SEA testing is inappropriate.

*Our Response:*

Although the Alliance/AIAM maintains that CAP 2000 transferred the obligation of in-use verification and confirmatory testing to manufacturers, in fact what CAP 2000 accomplished was the shift in emphasis that had been placed on certification to in-use performance and in-use testing. EPA neither transferred nor intended to transfer EPA's own in-use verification and confirmatory testing to the manufacturers. Rather, after CAP 2000 was implemented, EPA began gradually increasing the amount of in-use testing that it was conducting, initially at the Virginia test laboratory (VTL) in Alexandria, Virginia, then transferred this testing (during the time when testing at VTL was being phased out) to EPA's Ann Arbor laboratory where the in-use testing program continues to operate and increase in scope. The costs of the in-use testing program reflects our implementation of the new Tier 2 emission standards and associated new technology.

We did not propose any fees for SEA testing for the light-duty program, therefore, the Cost Analysis Document does not reflect any light-duty costs for SEA testing. However, this does not preclude EPA from increasing its in-use testing program or conducting SEA testing if it deems it necessary in the future. Any related fee change would be through Notice and Comment rulemaking.

*What Commenters Said:*

EMA indicated that EPA should readdress the assessment of fees for in-use testing once the manufacturer-run program is up and running. EMA also stated that by the time EPA conducts a new rulemaking for HDE fees, the HDE manufacturers will have been making ''double payments.''

*Our Response:*

EPA believes that its initial modest compliance program that has been designed for the HDE industry, and for which costs will be recovered by today's rulemaking, is appropriate and is expected to continue for the foreseeable future. The Agency recognizes the significant role the HDE manufacturers will play in contributing to a comprehensive compliance program by conducting their own in-use testing. As such EPA anticipates that it may re-examine the scope of its own HDE HW

[15] Not-to-exceed requirements specify that engine emissions must not exceed a specified value for any of the regulated pollutants.

in-use compliance program and its effectiveness at a time when its new program is fully developed and can also be examined in the context of a mature manufacturer-run in-use program. This reexamination will focus on whether the manufacturer in-use testing program as finally adopted and implemented indicates that changes are appropriate in the nature or extent of EPA testing. EPA will examine the scope of manufacturer-run testing and determine whether any redundant or unnecessary in-use testing is being done by EPA or whether additional EPA testing is required. EPA believes that this will timely address the concern of ''double payments,'' in order to avoid manufacturers paying for testing that they are conducting and also paying fees for EPA to conduct the same testing.

4. Costs Too High for Industry

*What We Proposed:*

In the Cost Analysis Document we explained that each request for a certificate of conformity within a certification request type is potentially subject to an equal amount of EPA expenditure related to the applicable certification, SEA, and in-use compliance monitoring and audit programs, and where applicable, fuel economy. EPA believes it is fair and equitable to calculate fees in a manner whereby the fee for each certificate within a certification request type is approximately the same.

The Cost Analysis divided the various affected industries into three separate categories, light-duty vehicles, heavy-duty and nonroad compression-ignition engines, and ''Other.'' Each category was further subdivided if the amount of testing or EPA services varied significantly. The ''Other'' category was not subdivided as it included vehicles and engines that would only receive certification review and some minimal testing. The fees were determined by dividing the total costs of services provided by EPA to this category by the projected number of certificate applications that would be received by manufacturers included in the category.

*What Commenters Said:*

Mercury Marine opposed the fee structure for marine engine manufacturers. It asserted that EPA's proposed fee of $827 per certificate would have a 2003 model year impact to Mercury Marine of over $23,000.

Mercury Marine stated that the marine industry agreed to redesign its products to meet EPA regulations in 1994 and 1995. They noted that the cost of this redesign is in excess of 500 million dollars industry wide. Mercury stated that the discussions at that time certainly did not include any additional costs for certification.

Mercury Marine stated that the marine industry is sensitive to changing costs and is unable to deal with the fees that EPA proposed.

*Our Response:*

As mentioned above, both section 217 and the IOAA direct EPA to recover fees associated with the various engine and vehicle certification and compliance programs. Today's rulemaking is in compliance with the strictures of both provisions. Industries that have not had to pay fees until now will be charged fees to cover the services provided by the EPA. EPA understands that the new fees are an expense that many manufacturers have not had to pay and that this expense may be difficult to budget into a manufacturer's expenses. This is why EPA notified manufacturers of the new fees early in the rulemaking process to give manufacturers time to budget for the new fees.

To reduce their fees burden, EPA included liberal waiver provisions for small engine families to assure manufacturers that the cost of fees will never exceed one percent of the projected aggregate retail value of the vehicle or engines being certified. It should be noted that when a fee is reduced the cost of the compliance services are covered by the government and are not distributed among other fee payers.

Although we did not mention certification fees as part of the marine engines rulemaking, we believe that we have given adequate notice of the new fees in order for manufacturers to prepare for the new fees. Furthermore, since 1992 light-duty vehicle and heavy-duty engine manufacturers have been paying fees. Thus, we also believe that the new fees schedule will ensure the equitable treatment of all manufacturers that are certified by EPA.

*What Commenters Said:*

Briggs and Stratton stated that small engine applications are simple and straightforward, they require a minimum amount of review by EPA, there is no OBD II, fleet averaging, etc. Therefore, only a minimum fee should be set for certification, lower than those in the ''Other'' fee category. Because manufacturers of the small engine industry have a larger number of smaller engine families and the engines are of a low cost then this provides an additional justification for lower fees.

Outdoor Power Equipment Institute (OPEI) suggested that lawn and garden engines should be treated differently than the other engines and vehicles in EPA's category for ''other engines.'' OPEI asserted that EPA took the position that it incurs the same expense, whether processing a certificate for a very complex locomotive engine, or an engine used to power a hedge trimmer. Furthermore, OPEI comments that although it is not familiar with the intricacies of locomotive engine design and usage, EPA cannot possibly spend the same amount of time certifying a locomotive engine as a lawn and garden engine.

*Our Response:*

To reflect the services we provide to industries within a category (see worksheet #2 for the categories ''LDV and Highway Motorcycles,'' ''HDE Highway and Nonroad CI,'' and ''Other'') in some instances we further subcategorized the fee categories. In addition to assessing the time that may be spent reviewing certification applications within a category or subcategory, we also assessed whether the applicable industry type would receive a similar level of compliance testing and associated costs. The goal of this is to develop subcategories that are expected to receive similar compliance activity and related costs. EPA's cost analysis for the fees rule divided categories into subcategories whenever there was a substantial difference between the level of services given to a subcategory. For example, EPA conducts pre-certification testing and in-use testing for light-duty vehicle and trucks. Conversely, EPA plans to conduct much less motorcycle testing within that same category. Therefore, the fees for the motorcycles are less than the light-duty vehicle and light-duty truck fees. EPA plans, for the industries in the ''Other'' category, to conduct the same level of effort for certification review and also plans only a minimal amount of testing. Testing is a major cost that separates subcategories and is not a significant cost for this category. Therefore, the industries in the ''Other'' category remained grouped together.

The certification information submitted by the individual industries largely consists of test data, descriptions of engines or vehicles in the engine family, and forms indicating the standards that the vehicles or engines meet. This information does not vary significantly whether the engines are large and complex or small and less complex. Certification review of all industries in the ''Other'' category consists of a review of the information that the manufacturer submits. The review includes determining that the engine or vehicle is being certified in the correct certification category, that the certification tests were conducted on the worst case engine or vehicle, that the forms were filled out correctly, and

that the vehicle or engine meets EPA's emission standards. In this respect, all of the certificate applications submitted by the industries included in the ''Other'' category are the same.

In the course of EPA's review of certification applications, certain items may be reviewed more closely for one application than for another application, items such as defeat devices, auxiliary control devices or new technology. EPA decides whether these items should be reviewed depending upon the history of the industry, the manufacturer and other factors. Although the level of review of these items may change the total time spent on an individual or an industry's applications, the difference is not significant and does not merit a separate subcategory. Furthermore, other factors such as assisting new manufactures and reviewing incomplete applications require more time than the average difference in review time for industries' applications. For these reasons, EPA decided that the applications in the ''Other'' category are provided basically the same review and testing services and, therefore, should be assessed the same fee.

*What Commenters Said:*

OPEI stated that EPA had an overly simplistic arithmetic system of evenly dividing the certification costs between such disparate industries (as locomotive and trimmers) and OPEI finds this inappropriate and inequitable. OPEI asserted that, using the figures generated by EPA, more than half (546) of the 1,027 engine families in the Other Industries category are lawn and garden engines. In addition, OPEI stated that the simple arithmetic used by EPA results in unfairly loading the ''lion's share'' of the certification costs onto a single industry which should only be responsible for its own share of certification costs.

*Our Response:*

EPA divided the costs attributed to the services provided to the ''Other'' category by the number of projected certification applications from the industries included in this category since each application entails approximately the same amount of review or effort by the Agency. Regardless of the disparity of the applications, the amount of time spent on locomotive applications and trimmer applications will be about the same.

The projected number of applications for the lawn and garden industry constitutes more than half of the applications that will be received and processed by the Agency. Over half of resources that EPA spends on the ''Other'' category will be spent on lawn and garden engines. For this reason, we believe it is appropriate, equitable and nondiscriminatory for the lawn and garden industry to pay more than half of the costs for the ''Other'' category.

*C. Cost Study*

1. Number of Engine Families

*What We Proposed:*

EPA grouped industries into three fee categories (industry groups): (1) Light-Duty, consisting of light-duty vehicles and highway motorcycles; (2) Engines, consisting of heavy-duty highway and nonroad compression-ignition engines; and (3) ''Other'', which contains other vehicles and engines. We proposed a fee schedule based upon the recoverable costs for each certificate type under each fee category and the number of known and projected certificates issued annually for that certificate type. We then divided our recoverable costs by the number of certificates expected to be issued to manufacturers within that certification request type. Thus, for example, we determined the recoverable costs for the nonroad CI industry as $1,300,155 and the number of certificates issued as 603 and the resulting fee is $2,156. (Revised worksheet #2 of the revised Cost Analysis shows updated cost for the NR CI industry to be $2,205,895, the updated number of engine families to be 662 resulting in a new fee of $1,822.)

We determined the number of certificates expected to be issued by examining EPA's certification database. For currently active certification programs, we listed the number of certificates based on the latest information at the time of the proposal which was for the 2001 model year (67 FR at 51406). For other newly regulated industries for which certificates have not yet been issued, we projected the number of certificates based on discussions with manufacturers and information presented to EPA during the emission standards rulemakings for such industries. Id.

*What Commenters Said:*

EMA states that EPA significantly understated the number of HDE on-highway and nonroad CI engine certificates that are issued annually which resulted in an overstatement of the fees that should be allocated to each certificate. EMA stated that in 2001, we issued 159 HDE HW and 661 nonroad CI certificates. EMA also asked for an explanation as to why more current years and certification data should not be used since that would be more reflective of the increase in engine families.

The Alliance/AIAM stated that the Agency did not provide an explanation for the estimated number of certification requests used in calculating the fees. The Alliance/AIAM expresses concern that the number of light-duty certificates appears to be based on CAP 2000 assumptions; assumptions that they maintain have not materialized. In addition, they contended that EPA's Tier 2 and heavy-duty regulations, as well as CARB's low emission vehicle (LEV II) regulation, will likely result in creation of more certification requests than projected and lead to collection of more fees by EPA. As a result, EPA may collect more fees than it is entitled to if it receives more certification requests than projected.

The Alliance/AIAM submitted further comment that they expected 35 additional certificates to be issued for light-duty vehicles for model year (MY) 2004 and that the number of certificates would either remain the same or increase as a result of Tier 2. The Alliance/AIAM was hesitant to predict the effect of the CAP 2000 rule on the number of certificate requests.

The Alliance/AIAM suggests that EPA should base its fee calculation on the most current number of issued certificates. Because this number may fluctuate and because it may be difficult to project future certification trends, they suggest that EPA keep track of the trends and assess a fee based on the average taken from several years. Lastly, they suggest that this process be done by rulemaking to prevent EPA collecting more fees than appropriate.

*Our Response:*

EPA's intention throughout this rulemaking process is to determine with a reasonable level of certainty the recoverable costs of implementing its MVECP and assessing fees per certificate to cover such costs. Thus, we agree with the comment that we should use the most current and accurate number of issued certificates. However, EPA does not agree with the comments of EMA that the number of certificates used in the cost determination should remain the same regardless of the impact on fees collected. Simply put, EPA believes it should only recover what it anticipates to be its actual costs and should devise a reasonable system in order to charge a fee that most closely matches its final actual costs and final number of certificates to be issued in a given year. As explained below, EPA is including a ''rolling average'' formula to be applied in 2006 and thereafter in order to more accurately reflect the number of certificates issued each year and the corresponding fee that is owed per certificate.

In light of the comments that we received, EPA gathered information

regarding the number of certificates for HDE HW, nonroad CI, and light-duty vehicles and trucks, motorcycles and ICIs from several databases, and reexamined its certification numbers for the last three years, 2000, 2001 and 2002 which comprise EPA's most recent and complete information.

Using an average of the past two years of the most recent complete certification information (2001 and 2002) we determined the average number of certificates for HDE HW, nonroad CI, and light-duty vehicles and trucks certification request types. For the other types EPA saw no need to reexamine its projected number of certificates nor did EPA receive any comment. For the light-duty vehicles and truck category we have chosen to keep the number 405 as used in the proposal. Although the actual average is 382 for the 2001 and 2002 model years, we believe it is likely that there will be at least a modest increase in the number of light-duty vehicle and truck certificates given the complexity of Tier 2 standards. In addition, information submitted by the Alliance/AIAM states that the number of additional certificates for 2004 may be as high as 35. This would bring our projection to 417 for 2004. However, this is a projection and we do not have complete confidence in this number. Therefore, we have decided to retain the proposed 405 certificates in the final rule.

For the HDE HW category we have determined, based on a re-examination of our database and discussions with representatives from EMA, that 148 certificates is a more accurate projection, rather than the 130 in the proposal. This will result in a slight reduction of fees for such certificates. For NR CI we have also revised the number slightly upward to reflect a more accurate projection of 662 rather than the proposed. We have re-calculated the fees amount for each of these categories and this is reflected in the new fees table (a new revised worksheet #2 of the Revised Cost Analysis available in Docket OAR–2002–0023) and at 40 CFR § 85.2405(a).

*D. Automatic Adjustment of Fees*

*What We Proposed:*

We considered the effect of inflation on the MVECP and explained that inflation may have an impact on our recovery of the full costs associated with the program. Thus, we proposed, beginning with the 2005 model year, an annual automatic adjustment of fees based on the annual change in the Consumer Price Index (CPI). We also proposed a formula to enable manufacturers to calculate the increase. We also solicited comments on alternate ways of adjusting fees on account of inflationary factors. (*See* 67 FR at 51410)

We explained that we intended to issue annual letters, again beginning with the 2005 model year, informing manufacturers of the adjusted applicable fees. The proposed formula included an ability to project future fees due to the CPI adjustment based on two model years before the adjusted fee model year. Thus, for model year 2005 EPA proposed a formula whereby the CPI for MY2003 (as determined by July 2003 CPI number) is compared to the CPI from 2002. We also solicited comments regarding notification procedures of the new fee amounts. *Id.*

*What Commenters Said:*

One commenter urged the Agency not to include an annual automatic adjustment and maintained that an ''automatic'' increase in fees based on the CPI for ''all items'' should not be implemented as the actual costs of MVECP will be impacted by many factors more significant than the CPI and such factors are not significantly correlated with the general rate of inflation. This commenter also suggested that the Agency's formula for annual adjustment is improper because many of the underlying costs are actually one-time capital expenditures that will not fluctuate at all in response to any changes in the CPI.

*Our Response:*

In order to comply with both section 217 and the IOAA, and to timely collect fees based on actual costs and to collect fees for such costs at time of certification, EPA believes that it is most practical and appropriate to collect fees based on what it reasonably believes will be its actual costs at the time new certification applications are received. Thus EPA continues to believe it most appropriate to determine its current costs and how such costs may be affected by future events, including events such as inflation or the addition of new compliance programs. Although EPA does recognize that several variables exist which may influence the actual future costs that EPA incurs to provide MVECP services, including changes to its budget (and resulting changes to EPA's expenditures on certain compliance programs such as contract costs for testing and procurement of testing vehicles, etc.), EPA believes that such general historical budget variability (appropriations for most of EPA's costs don't change dramatically from year to year and general contract costs remain relatively unchanged) has not in fact significantly affected EPA's actual costs as compared to increases associated with annual inflation costs. However, by today's rule we are narrowing the budget items that will be affected by the inflation adjustment to further limit those items that may indeed be affected by general budget variability.

We believe it is reasonable to consider the effect of inflation on the costs of conducting our various certification and compliance programs. However, at this time, EPA chooses to only implement a fee schedule that will include some adjustment by calendar year for labor costs as these costs can be reasonably determined as explained below.

We also agree with comments that fees should not be adjusted for one-time capital expenditures or for other fixed costs. Because several components of the MVECP reflect items that have a ''fixed cost'' (for example, the costs associated with the Lab Modernization), EPA has changed the inflation formula to address concerns regarding ''one time costs'' and that such cost not be adjusted by the CPI. At this time, EPA will only adjust labor costs each calendar year because, as explained below, we can reasonably determine the effect of inflation on these costs.

EPA also believes that to some extent it may not be appropriate to automatically adjust fees for the costs of some compliance programs, including current direct program costs (*e.g.* contract costs) despite the general history of such costs increasing by some amount each year. Because EPA is not only continuing to implement its many current compliance activities but is also implementing several new compliance programs that may not have a predictable cost increase each year that tracks the inflation rate, EPA is not adjusting such direct program costs.

EPA believes that the determination of the labor requirements to cover the numerous compliance activities was accurate and that such labor requirements will remain constant or perhaps slightly increase within the next few years. Such labor costs (as expressed in annual salary increases or decreases) for EPA historically track a rate of increase (or decrease) that is at least as high as that of the CPI.[16] Thus, we are finalizing our regulations with a provision for automatic adjustment of

[16] EPA normally uses Federal payroll and non-payroll inflators for budget projections issued by the Office of Management and Budget (OMB) when OMB submits the President's Budget to Congress and the assumptions used for the ''inflators'' are higher than the CPI inflation adjuster that EPA is choosing to use to account for increases in labor costs in today's rulemaking. For example, in the fiscal year 2004 (FY 04) President's Budget to Congress, EPA used a payroll (or labor) inflator of 1.048 and for FY 05 through FY 13 EPA used an inflator of 1.040.

labor costs for each fee category based on the changes in the CPI. The fee formula and the table with labor and fixed cost values are discussed in detail in section II.B. above.

EPA notes that manufacturers may have some concern regarding the proper budgeting for its costs for future certification applications and thus the regulations note that EPA will provide notification to manufacturers at least 11 months in advance of the calendar year in which new fees are due. If an event such as a rulemaking occurs that causes a significant change in the number of certificate applications received, the Agency will reexamine the formula to determine whether adjusting the fees based upon the number of certificate applications is still applicable.

*E. Effective Date and Application of New Fees*

*What We Proposed:*

We proposed the ''effective date'' of our new fee schedule as 60 days from the date of publication of the final rule (67 FR at 51411). We also proposed applying the new fees to 2003 and later model year vehicles and engines. Id. In addition, we proposed excluding ''complete'' certification applications received prior to the effective date of the new fees regulation (including any remaining 2003 certification applications). *Id.*

*What Commenters Said:*

One commenter suggested that the new fee schedule should take effect for certification applications for the model year following the model year in which the final rule is published. In this way the manufacturers will have certainty regarding the appropriate amount of the certification fee to be submitted and thus will not have to guess the date that EPA will deem their certification application complete.

The Alliance/AIAM stated that EPA's proposal to increase fees (for light-duty vehicle manufacturers) for manufacturers that submit 2003 and later model year certification requests received on or after 60 days from publication of the final rule creates uncertainty regarding the appropriate fee to submit with each application. The commenter notes that it cannot project when EPA will issue the rule. This information is needed for it to perform its necessary budgeting to assure that it has necessary funds to cover the increase.

*Our Response:*

EPA understands that it would be helpful to manufacturers to have a date before which they are assured that they will be paying the old fees so that they can budget with certainty up to that date. For this reason EPA is finalizing the implementation date as 60 days from the publication of the final rule. We believe that at least a 60 day lead time between when the rule is published and when applicants will be required to pay new fees is adequate and appropriate. EPA is again guided by the principle that its compliance programs ought to be self-sustaining to the extent possible and that because we are incurring costs at this point in time that new fees should commence. Although we anticipated that the final fees rule would become final in fiscal year 2003 (FY03), and based our projections of costs to be incurred during that time, we believe it even more appropriate that we collect fees in FY04 (during which this rule becomes effective) as our compliance programs based on new requirements such as Tier 2 and the 2004 HDE regulations will be in place and our anticipated budget increases will be in place.

In addition, manufacturers have been informed of the new fees rulemaking and commencement of new fees in FY03 for over 2 years. An advance fees rulemaking briefing was held for regulated industries on August 29, 2001 in Ann Arbor, MI. At that time EPA provided a draft of the fees schedule and cost study. The purpose of the briefing was to give businesses enough time to plan for fees in their 2003 FY budgets. Furthermore, the proposed rule was published in August 2002 giving manufacturers notice of the fees rulemaking and implementation time periods. Therefore, the new fees will be applicable to any new certification applications (for MY 2004, or 2005) submitted and received more than 60 days after publication of this rule in the **Federal Register**. The new fees will not apply to any certification applications received by EPA prior to the effective date of the regulations, providing that they are complete and include all required data.

*F. Reduced Fees*

1. Reduced Fee of One Percent Aggregate Retail Price

*What We Proposed:*

EPA proposed to continue the current two part test which, if met, would qualify an applicant for a reduction of a portion of the certification fee.

A reduced fee is available when:

(1) The certificate is to be used for the sale of vehicles or engines within the U.S.; and

(2) The full fee for the certification request exceeds one percent of the projected aggregate retail price of all vehicles or engines covered by that certificate.

Manufacturers that qualify for a reduced fee pay one percent of the aggregate retail price of the vehicles and engines covered by a certificate. Under the reduced fee provision, we proposed to retain this requirement to ensure proper balance between recovering the MVECP costs and mitigating economic burden. EPA invited comment on the continued use of the one percent multiplier, 67 FR 51412.

The Agency proposed two separate pathways by which a manufacturer may request and pay a reduced fee amount. Under the first pathway, manufacturers seeking a reduced fee would include in their certification application a calculation of the reduced fee and a statement that they meet the reduced fee criteria.

Under the second pathway, manufacturers who, due to the nature of their business, are unable to make accurate estimates of the aggregate projected retail price of all the vehicles or engines to be covered by the requested certificate, would pay one percent of the retail selling price of five vehicles, engines or conversions when applying for a certificate or a minimum fee of $300. *Id.*

*What Commenters Said:*

VSC contended that the proposed minimum ''5-car-up-front deposit'' was unreasonable and that the Agency had failed to provide a rationale for its proposal. VSC also stated that it is just as common, if not more common, for an ICI's certificate to cover a total of one (1) car as opposed to 5. VSC noted that EPA had previously acknowledged that it is difficult for ICIs to work with a system that requires them to predict the number of cars they will import. VSC stated that the same associated problem would arise under the Agency's proposal.

VSC suggested that the one percent low volume fee should allow the ICI to pay one percent of the value of the cars to be covered by the certificate for which the ICI has a contract when making a certification request. VSC further suggested that for additional cars imported under the certificate, ICIs should pay one percent of the value of each car as each car is imported, until payment of the standard $8,394 fee. VSC noted that under a pay-as-you-go system, EPA would receive fees at the time of certification or importation and ICIs would only pay for cars they are actually working on and importing.

*Our Response:*

In response to comments received EPA has modified its reduced fee provisions to respond to many of the issues raised. The revised reduced fees

provisions also include two pathways that are discussed in detail in section II.F. above.

The first pathway will be available for engine families having less than six vehicles, none of which has a retail price of more than $75,000 each. Manufacturers seeking a reduced fee shall include in their certification application a statement that the reduced fee is appropriate under the criteria. If one percent of the aggregate retail price of the vehicles or engines is greater than $750, the manufacturer must submit a calculation of the reduced fee and the fee. If one percent aggregate retail price of the vehicles or engines is less than $750 the manufacturer will submit a calculation of the reduced fee and an initial payment of $750. In the event that the manufacturer does not know the value of all of the vehicles to be imported under the certificate, it may use the values of the vehicles or engines that are available to determine the initial payment.

As suggested by VSC, after the initial payment has been submitted, the above reduced fee provisions will allow manufacturers to pay one percent of the retail price of each vehicle or engine as needed. This pay-as-you-go provision will give ICIs and other manufacturers the advantage of only paying a $750 (equivalent to the average fee for two imported vehicles) or one percent of the value of the vehicles initial payment and then paying for additional vehicles as needed. If the initial payment is greater than the final fee, the manufacturer may request and receive a refund for the difference.

Under the provisions we are finalizing today, the difference between the initial payment and the final reduced fee will not be required until after the end of the year. Furthermore, there is no $300 minimum fee as was proposed. Therefore, EPA believes that the reduced fee provides flexibility and mitigates any unreasonable economic burden that a full fee may present to manufacturers with small engine families.

2. Retroactive Payment Under Reduced Fee Program

*What Commenters Said:*

EMA submitted an additional alternative to the reduced fee pathways. EMA suggested that manufacturers who pay the full fee at the time of certification should also have the ability to seek refunds at the end of the model year if the fee paid exceeds one percent of the retail sales. According to EMA, this would enable EPA to receive the fees up front and avoid any unnecessary delays while not adding too much year end burden for manufacturers already required to produce year-end production volume reports.

*EPA Response:*

Currently, the retroactive reduced fee option is available for those engine families/test groups that meet the one percent reduced fee provision. Our response is just to clarify the process. A manufacturer that pays the standard fee for an engine family or test group and later determines that it meets the criteria for a reduced fee may qualify for a retroactive reduced fee. Under today's provision, the manufacturer may be required to submit a report card and a refund request at the end of the calender year for the amount of the difference between the fee paid and one percent of the aggregate retail sales price of the vehicles or engines covered by the certificate.

*G. ICI Issues*

1. ICIs and SBREFA

*What We Proposed:*

In section VIII.B. of the proposed rule we concluded that our proposed fees will have no significant economic impacts on a substantial number of small entities. In addition, we also stated that our reduced fee provisions would limit the impacts of this rule on small entities. (Section VIII.B., Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.* (67 FR 51414).

*What Commenters Said:*

VSC stated that the Regulatory Flexibility Act, 5 U.S.C. 601–612 was amended by SBREFA, Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. VSC further quoted the SBREFA amendments in which Congress stated that ''uniform Federal regulatory * * * requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting, and consulting costs upon small businesses * * * with limited resources[,]'' and directed agencies to consider the impacts of certain actions on small entities.

VSC suggested that EPA consider two points: (1) ''the significant economic impact the proposed rule has on small entities; and (2) any significant alternatives to the proposed rule which would ensure that the objectives of the proposal were accomplished while minimizing the economic impact of the proposed rule on small entities and providing relief to small certifiers of vehicles.''

*Our Response:*

We are committed to minimizing the burden of the fees regulations on small entities or entities with small engine families to the extent feasible while still meeting the statutory requirements to charge fees. The Agency did consider the economic impacts of this rule on small entities, however, we believe this rule will not have a significant economic impact on a substantial number of small entities. We reviewed the rulemakings that set emission standards for the industries affected by the fees rule, including those manufacturers affected by the recreational vehicle rule. The review showed that approximately 108 small businesses will be paying fees. The Agency examined the cost of the fees and determined that the average cost for manufacturers of all sizes, across industry sectors, is approximately $.41 per vehicle or engine.

Nevertheless, to mitigate possible economic hardship EPA is adopting an alternative to the full certification fee requirement including reduced fee provisions to help small volume entities meet the regulations while ensuring the fees rule objectives can be accomplished. The reduced fee provisions limits the impact of this rule on small entities to one percent of the aggregate retail sales price of the vehicles or engines covered by a certification request. Hence, the fee a manufacturer would pay will not exceed one percent of the aggregate retail sales price of the vehicles or engines covered by a certificate. This one percent amount represents a modest cost of doing business. EPA also believes enough notification of this fees rule was provided to allow manufacturers enough time to plan for fees in their budgets.

*What Commenters Said:*

VSC suggested that EPA should recognize that ICIs are not OEMs. VSC further stated that SBREFA requires this distinction and also compels EPA to adopt a fee system that carefully considers ICIs and how they differ from OEMs. VSC requested that we consider and include the fact that ICIs are small businesses that, on the average, import fewer than 100 vehicles annually.

*Our Response:*

EPA believes that although ICI manufacturers are often small businesses and in some instances may differ from OEMs, both ICIs and OEMs are certificate holders. As certificate holders, ICIs are required to meet certain certification and compliance requirements. These requirements

include meeting emission standards, and also include undergoing recall, maintenance instruction, warranty, running changes, emissions testing and labeling, and fuel economy testing and labeling which are the same requirements with which light-duty OEMs must comply. EPA incurs costs for conducting these types of services.

Under the ICI category of the cost study, we have calculated fees only for the services applicable to ICIs and thus, ICI certificates cost considerably less than certificates for other vehicle manufacturers. EPA also believes that the reduced fees provision, while enabling the objectives of both section 217 and the IOAA to be met, minimizes the economic impact of this rule on small entities or entities with small engine families.

*H. Other Topics*

1. Fee Payment Timing

*What We Proposed:*

EPA proposed that fees must be paid in advance of receiving a certificate (67 FR 51410). We also emphasized that the Agency would not process applications until the appropriate fees had been fully paid. (67 FR 51411).

*What Commenters Said:*

Three commenters suggested that the Agency should not require fees payment prior to issuing certificates.

*Our Response:*

In most instances, we begin reviewing certification applications and, in some cases, complete our review, prior to receiving fees payment. Thus, we do not necessarily suspend application review because of non payment of fees. However, because we cannot issue a certificate of conformity before receipt of fees, we are maintaining the requirement that fees be paid in advance of submitting an application for certification. We believe this will ensure that we do not delay the issuance of certificates.

2. Refunds Less Than $500 and Final Fee Payments Less Than $500

*What We Proposed:*

For applicants who fail to obtain certificates and who subsequently request refunds, we proposed full fee refunds of amounts exceeding $500. This was a change from the existing requirement that allowed for partial refunds when applicants fail to obtain a signed certificate (see 40 CFR § 86.908–93(b)(1), as amended by § 86.908–01(b)(1)). We also proposed the option of applying the refund to another certification request.

Further, we proposed the continuation of the existing requirement of providing partial refunds resulting from decreases in the aggregate projected retail sales price of vehicles or engines covered by the certification request. (See, 40 CFR 86.908–93(b)(2) and 86.908–01(b)(2)). We also invited comments on whether to limit refund requests to $500. (67 FR 51412).

As discussed in section II.F. above, we proposed a reduced fee provision that includes calculating a final reduced fee within 30 days of the end of the model year and ''true-up'' of any additional fees owed within 45 days of the end of the model year. Under the 1992 fees rule reduced fee applicants pay an additional waiver fee any time the aggregate projected retail sales price of the vehicles or engines to be covered by a certification request changes. Also, there was no minimum amount due before payment was required. (*See,* 40 CFR 86.908–93(a)(5)).

*What Commenters Said:*

EMA supported our proposal to allow manufacturers to request a full refund in cases where a certificate is not issued. EMA suggested that 40 CFR 85.2407(a) should read ''may,'' instead of ''shall.'' EMA suggested that we clarify that manufacturers are entitled to a full refund regardless of the reason for non-issuance of a certificate.

EMA suggested that 40 CFR 85.2407(b) should read ''shall'' instead of ''may.'' EMA also suggested that refunds should be predicated upon a decrease in ''actual'' rather than ''projected'' sales prices.

EMA further objected to proposed 40 CFR 85.2407(b)(3) and (b)(4)(vi) and argued that manufacturers should be entitled to any and all refunds regardless of the amount.

*Our Response:*

EPA agrees with EMA's comment regarding refund language. Regulatory language has been amended to reflect these changes in 40 CFR § 85.2405(a) and (b). Upon request from a manufacturer EPA will refund fees. This includes instances of overpayment, when the manufacturer withdraws an application or when EPA denies a certificate as well as any other circumstances that would lead to a certificate not being issued.

However, we disagree with the comment that refunds should be predicated on the decrease in the aggregate ''actual'' price rather than the aggregate ''projected'' price. This is because not all of the vehicles or engines would have been sold and the actual price may not be available at the time of the refund request. Therefore we have revised the regulatory language to indicate projected or actual price. The manufacturer should use whichever is more accurate.

EPA agrees that it should not limit refunds to $500 minimum. Therefore EPA is not adopting proposed § 85.2407(b)(3) and (b)(4)(vi). However, the rationale behind EPA's proposal that manufacturers should not be required to pay a ''true-up'' payment of less than $500 was balanced out by the proposal that refunds would be limited to amounts of $500 or more. We believed that the amounts not paid in refunds would equal the payments not received for ''true-up.'' Therefore, since EPA will be paying full refunds, EPA is setting forth in today's rule that full payment must be submitted at true-up to avoid an overall deficit in its recovery of MVECP costs and to continue to abide by the intent of the IOAA and CAA.

3. Reduced Costs for California-Only

*What We Proposed:*

EPA proposed a separate California-only fee for only the light-duty and heavy-duty fee categories. No California-only fee was proposed for the motorcycle, ICI, Nonroad CI and Other categories because EPA's responsibilities for vehicles and engines are not decreased even though certification is only requested for the State of California.

*What Commenters Said:*

One commenter argued that our proposed fees for California-only certificates was inappropriate since the Agency did not provide any benefits to manufacturers.

Echo stated that the ''Other'' category should have reduced fees for California-only families because other categories have reduced fees for California-only. Echo stated that the full fees for these families cannot be justified and that EPA should not charge for service not provided. Echo also observed that CARB may decide to add its own fees further raising the cost to manufacturers.

OPEI commented that EPA should not impose certification fees on California-only engine families that are not sold outside of California. OPEI questioned the utility of requiring this dual certification burden. The commenter further argued that the proposed fees should be waived since California-only engine families are sold only in California, and as a result, do not generate national sales revenue. OPEI, further requested that the certification fee be waived with respect to California-only engine families.

*Our Response:*

The Clean Air Act requires that vehicles sold in the United States be covered by a federal certificate of conformity including those sold in

California. The EPA receives applications and certifies all vehicles and engines sold in the U.S. The EPA review and testing required for California-only certification, and therefore the benefits received, are no less than that required for other certificates. Test results generated by EPA from certification tests of these vehicles and engines are shared with the CARB to assist in its certification process. However, the California-only fee is less than the standard fee because EPA does not incur the cost of the in-use program. The CARB conducts an in-use program for these categories, but at this time EPA does not. Thus the fee for California-only certificates for light-duty and heavy-duty vehicles and engines reflects the EPA costs in the certification component of the MVECP.

In the case of engines and vehicles in the ''Other'' category, EPA is assessing the costs of the certification and minimal testing services that it provides. A lower California-only fee is not offered as EPA's work is not decreased by compliance work done by the CARB.

OPEI stated that no national sales revenue is generated to absorb the cost of the fee, however, because EPA reviews the certificate applications and the manufacturer receives benefit from receiving a certificate, EPA should recover the costs of providing this service as directed by the CAA and the IOAA.

## VI. What Is the Economic Impact of This Rule?

This rule will not have a significant impact on the majority of vehicle and engine manufacturers. The cost to industry will be a relatively small value per unit manufactured for most engine-system combinations.

EPA expects to collect about 18 million dollars annually, an increase of 7 million dollars from the 11 million that is currently collected. This averages out to approximately 41 cents per vehicle or engine sold annually. However, for engine families or test groups with low annual sales volume, the cost per unit will be higher. To remove the possibility of serious financial harm to companies producing only low sales volume designs, the regulations adopted today include reduced fee provisions for small volume engine families to reduce the burden of fees. These provisions should alleviate concerns about undue economic hardship to small volume manufacturers. Refer to the Regulatory Flexibility Act section, section VII.B, below, for more discussion on this topic.

## VII. What Are the Administrative Requirements for This Rule?

### *A. Executive Order 12866: Regulatory Planning and Review*

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA must determine whether this regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, Local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order 12866, it has been determined that this rule is a ''significant regulatory action'' because this rulemaking materially alters user fees. As such, this action was submitted to OMB for review.

### *B. Paperwork Reduction Act*

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0545.

EPA estimates that 1600 certifications will be requested annually of which 180 will qualify for a reduced fee. In addition, approximately 50 fee refunds will be processed each year. The total burden of these projected responses per year is 500 hours; an average of 18 minutes per response. There are no capital, start-up, operation, maintenance or other costs associated with this collection.

The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

EPA has established a public docket for this ICR under Docket ID No. OAR–2003–0111, which is available for public viewing at the Air and Radiation Docket and Information Center, in the EPA Docket Center (EPA/DC), EPA West, Room B102, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742. An electronic version of the public docket is available through EPA Dockets (EDOCKET) at *http://www.epa.gov/edocket.*

### *C. Regulatory Flexibility Act (RFA)*

EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business that meets the definition for business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. Table VII.B–1 provides an overview of the primary SBA small business categories potentially affected by this regulation. This list is not intended to be exhaustive, but rather provides a guide regarding entities likely to be regulated by this action.

TABLE VII.B–1.—PRIMARY SBA SMALL BUSINESS CATEGORIES POTENTIALLY AFFECTED BY THIS REGULATION

| Industry | NAICS [a] codes | Defined by SBA as a small business if: [b] |
|---|---|---|
| Farm Machinery and Equipment Manufacturing | 333111 | <500 employees. |
| Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing | 333112 | <500 employees. |
| Construction Machinery Manufacturing | 333120 | <750 employees. |
| Mining Machinery and Equipment Manufacturing | 333131 | <500 employees. |
| Turbine and Turbine Generator Set Unit Manufacturing | 333611 | <1,000 employees. |
| Speed Changer, Industrial High-speed Drive and Gear Manufacturing | 333612 | <500 employees. |
| Mechanical Power Transmission Equipment Manufacturing | 333613 | <500 employees. |
| Other Engine Equipment Manufacturing | 333618 | <1,000 employees. |
| Nonroad SI engines | 333618 | <1,000 employees. |
| Internal Combustion Engines | 333618 | <1,000 employees. |
| Industrial Truck, Tractor, Trailer, and Stacker Machinery Manufacturing | 333924 | <750 employees. |
| Power-Driven Handtool Manufacturing | 333991 | <500 employees. |
| Automobile Manufacturing | 336111 | <1000 employees. |
| Light Truck and Utility Vehicle Manufacturing | 336112 | <1000 employees. |
| Heavy-Duty Truck Manufacturing | 336120 | <1000 employees. |
| Fuel Tank Manufacturers | 336211 | <1000 employees. |
| Gasoline Engine and Engine Parts Manufacturing | 336312 | <750 employees. |
| Aircraft Engine and Engine Parts Manufacturing | 336412 | <1000 employees. |
| Railroad Rolling Stock Manufacturing | 336510 | <1000 employees. |
| Boat Building and Repairing | 336612 | <500 employees. |
| Motorcycles and Motorcycle Parts Manufacturers | 336991 | <500 employees. |
| Snowmobile and ATV manufacturers | 336999 | <500 employees. |
| Independent Commercial Importers of Vehicles and Parts | 421110 | <100 employees. |
| Engine Repair and Maintenance | 811310 | <$5 million annual receipts. |

**Notes:**
[a] North American Industry Classification System.
[b] According to SBA's regulations (13 CFR Part 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

After considering the economic impacts of today's rule on small entities, EPA has concluded that this action will not have a significant economic impact on a substantial number of small entities. Under the reduced fee provisions described above in section II.F, the fee paid by any manufacturer will not exceed 1.0 percent of the aggregate retail sales price of the vehicles or engines covered by a certificate request. The reduced fee provision limits the impact of this rule on small entities, and other manufacturers, to 1.0 percent of the aggregate retail sales price. Therefore, the rule will not have a significant economic impact on any manufacturers, including small entities. A review of rulemakings that set emissions standards for the industries affected by today's rule, including those manufacturers affected by the recreational vehicle rule, showed that approximately 108 small businesses will be paying fees.

The cost per vehicle or engine will vary because the cost per unit depends upon the cost of the certificate and the number of vehicles or engines that are manufactured and sold under one certificate. The cost per vehicle will be highest if a manufacturer pays a fee for a light-duty vehicle certificate but only makes and sells a single vehicles that, because of the value of the vehicle, does not qualify for a reduced fee. The fee cost per vehicle or engine will be least for a manufacturer that pays an ''Other'' category fee and receives a certificate that will cover thousands of vehicles or engines. In this case the fee cost per vehicle may be a fraction of a penny. Because of the difference between highest and lowest possible cost of fees per vehicle, EPA determined that the average fee cost for manufacturers, which, across industry sectors, is approximately $.41 per vehicle or engine.

The following is an example of a final reduced fee calculation: If a light-duty vehicle manufacturer has an engine family of 2 vehicles that are sold for $35,000 per vehicle, under today's fee schedule the full fee would be $33,883, or $16,944 per engine family ($16,942 or $8,472 per vehicle, respectively), depending upon whether the engine family is certified as a Federal vehicle or California-only engine family. Under the rule, the reduced fee would be 1.0 percent of the aggregate retail sales price of the vehicles ($70,000), or $700 (or $350 per vehicle) as shown below:

$$2 * \$35{,}000 * 0.01 = \$700$$

In today's rule EPA established an initial fee payment of $750. If, at the end of a model year the final reduced fee is less than the initial fee payment, the manufacturer may request a refund of the difference. EPA has eliminated the minimum refund provision proposed in the NPRM so the manufacturer will be entitled to the entire refund. In the above example the manufacturer would be refunded the sum of $50.

*D. Unfunded Mandates Reform Act*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory action on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before promulgation of an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least

burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop, under section 203 of the UMRA, a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulations with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's rule contains no Federal mandates for state, local, or tribal governments. Nor does this rule have Federal mandates that may result in the expenditures of $100 million or more in any year by the private sector as defined by the provisions of Title II of the UMRA as the total cost of the fee program is estimated to be about 20 million dollars. Nothing in the rule would significantly or uniquely affect small governments.

*E. Executive Order 13132: Federalism*

Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.''

This rule will not have federalism implications. It will not have 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. This rule will impose no direct compliance costs on states. Thus, the requirements of section 6 of Executive Order 13132 do not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' This rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. The requirements finalized by this action impact private sector businesses, particularly the vehicle and engine manufacturing industries. Thus, Executive Order 13175 does not apply to this rule.

*G. Executive Order 13045: Children's Health Protection*

Executive Order 13045: ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be economically significant as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA believes this rule is not subject to the Executive Order because it is not an economically significant regulatory action as defined by Executive Order 12866. In addition, this rule is not subject to the Executive Order because it does not involve decisions based on environmental health or safety risks that may disproportionately affect children. Today's rule seeks to implement a fees program and is expected to have no impact on environmental health or safety risks that would affect the public or disproportionately affect children.

*H. Executive Order 13211: Energy Effects*

This rule is not a ''significant energy action'' as defined in Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355) (May 22, 2001) because it will not have a significant adverse effect on the supply, distribution, or use of energy. Further, we have determined that this rule is not likely to have any adverse energy effects.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, 12(d) (15 U.S.C. 272), directs the EPA to use voluntary consensus standards (VCS) 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.*, materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as amended 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 Congress and the comptroller General of the United States.

We 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 after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective July 12, 2004.

**List of Subjects**

*40 CFR Part 85*

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

*40 CFR Part 86*

Environmental protection, Administrative practice and procedure, Air Pollution Control, Confidential business information, Diesel, Gasoline, Fees, Imports, Labeling, Motor vehicle pollution, Motor vehicles, Reporting and recordkeeping requirements.

Dated: April 29, 2004.

**Michael O. Leavitt,**

*Administrator.*

■ For the reasons set forth in the preamble, title 40 chapter I of the Code of Federal Regulations is amended as follows:

## PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

■ 1. The authority citation for part 85 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

■ 2. Add a new Subpart Y to Part 85 to read as follows:

### Subpart Y—Fees for the Motor Vehicle and Engine Compliance Program

Sec.
85.2401 To whom do these requirements apply?
85.2402 [Reserved]
85.2403 What definitions apply to this subpart?
85.2404 What abbreviations apply to this subpart?
85.2405 How much are the fees?
85.2406 Can I qualify for reduced fees?
85.2407 Can I get a refund if I don't get a certificate or overpay?
85.2408 How do I make a fee payment?
85.2409 Deficiencies.

## Subpart Y—Fees for the Motor Vehicle and Engine Compliance Program

### § 85.2401 To whom do these requirements apply?

(a) This subpart prescribes fees manufacturers must pay for the motor vehicle and engine compliance program (MVECP) activities performed by the EPA. The prescribed fees and the provisions of this subpart apply to manufacturers of:

(1) Light-duty vehicles (cars and trucks) (*See* 40 CFR part 86);

(2) Medium Duty Passenger Vehicles (*See* 40 CFR part 86);

(3) Complete gasoline-fueled highway heavy-duty vehicles (*See* 40 CFR part 86);

(4) Heavy-duty highway diesel and gasoline engines (*See* 40 CFR part 86);

(5) On-highway motorcycles (*See* 40 CFR part 86);

(6) Nonroad compression-ignition engines (*See* 40 CFR part 89);

(7) Locomotives (*See* 40 CFR part 92);

(8) Marine engines, excluding inboard & sterndrive engines (*See* 40 CFR parts 91 and 94, and MARPOL Annex VI, as applicable);

(9) Small nonroad spark-ignition engines (engines ≤ 19kW) (*See* 40 CFR part 90);

(10) Recreational vehicles (including, but not limited to, snowmobiles, all-terrain vehicles and off-highway motorcycles) (*See* 40 CFR part 1051);

(11) Heavy-duty highway gasoline vehicles (evaporative emissions certification only) (*See* 40 CFR part 86); and

(12) Large nonroad spark-ignition engines (engines > 19 kW) (*See* 40 CFR part 1048).

(b) This subpart applies to manufacturers that submit certification requests received by the agency on or after July 12, 2004.

(c) Certification requests which are complete, contain all required data, and are received prior to July 12, 2004 are subject to the provisions of 40 CFR part 86, subpart J.

(d) Nothing in this subpart will be construed to limit the Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

### § 85.2402 [Reserved]

### § 85.2403 What definitions apply to this subpart?

(a) The following definitions apply to this subpart:

*Agency or EPA* means the U.S. Environmental Protection Agency.

*Annex IV* is a Statement of Voluntary Compliance or Engine International Air Pollution Prevention Certificate issued by EPA under MARPOL Annex VI.

*Body Builder* means a manufacturer, other than the OEM, who installs certified on-highway HDE engines into equipment such as trucks, busses or other highway vehicles.

*California-only certificate* is a Certificate of Conformity issued by EPA which only signifies compliance with the emission standards established by California.

*Certification request* means a manufacturer's request for certification evidenced by the submission of an application for certification, ESI data sheet, or ICI Carryover data sheet. A single certification request covers one test group, engine family, or engine system combination as applicable. For HDV evaporative certification, the certification request covers one evaporative family.

*Consumer Price Index* means the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor.

*Federal certificate* is a Certificate of Conformity issued by EPA which signifies compliance with emission requirements in 40 CFR parts 85, 86, 89, 90, 91, 92, 94, 1048, and/or 1051 as applicable.

*Fuel economy basic engine* means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system, catalyst usage, and other characteristics specified by the Administrator.

*Filing form* means the MVECP Fee Filing Form to be sent with payment of the MVECP fee.

*MARPOL Annex VI* is an annex to the International Convention on the Prevention of Pollution from Ships, 1973, as modified by the protocol of 1978 relating thereto; the international treaty regulating disposal of wastes generated by normal operation of vessels.

*Other category* includes: HD HW evap, including ICI; Marine (excluding inboard & sterndrive ) including ICI & Annex VI; NR SI, including ICI; NR Recreational (non-marine), including ICI; Locomotives, including ICI.

*Recreational* means the engines subject to 40 CFR part 1051 which includes off road motorcycles, all-terrain vehicles, and snowmobiles.

*Subcategory* refers to the divisions of the light-duty category which is composed of two subcategories, the certification/fuel economy subcategory and the in-use subcategory.

*Total Number of Certificates Issued* means the number of certificates for which fees are paid or waivers are issued. This term is not intended to represent multiple certificates which are issued within a single family or test group.

(b) The definitions contained in the following parts also apply to this subpart. If the term is defined in paragraph (a) of this section then that definition will take precedence.

(1) 40 CFR part 85;
(2) 40 CFR part 86;
(3) 40 CFR part 89;
(4) 40 CFR part 90;
(5) 40 CFR part 91;
(6) 40 CFR part 92;
(7) 40 CFR part 94;
(8) 40 CFR part 1048; and
(9) 40 CFR part 1051.

### § 85.2404 What abbreviations apply to this subpart?

The abbreviations in this section apply to this subpart and have the following meanings:

Annex IV—a Statement of Voluntary Compliance or Engine International Air Pollution Prevention Certificate issued by EPA under MARPOL Annex VI.

Cal—California;

CI-Compression-ignition (Diesel) cycle engine;

CPI—Consumer Price Index;

ESI—Engine System Information;

EPA—U.S. Environmental Protection Agency;
Evap—Evaporative Emissions;
Fed—Federal;
HD—Heavy-duty
HDE—Heavy-duty motor vehicle engine;
HDV—Heavy-duty motor vehicle;
HW-On-Highway versions of a vehicle or engine;
ICI—Independent Commercial Importer;
LD—Light-Duty motor vehicle including both LDT and LDV;
LDT—Light-duty truck;
LDV—Light-duty vehicle;
MARPOL-An International Maritime Organization treaty for the control of marine pollution;
MC—Motorcycle;
MDPV—Medium-Duty Passenger Vehicle;
MVECP—Motor Vehicle and Engine Compliance Program;
MY—Model Year;
NR—Nonroad version of a vehicle or engine;
OEM—Original equipment manufacturer;
SI—Spark-ignition (Otto) cycle engine.

**§ 85.2405 How much are the fees?**

(a) *Fees for the 2004 and 2005 calendar years.* For certification applications received for these calendar years that qualify for today's fees under the provisions of § 85.2401 (b), the fee for each certification request is in the following table:

| Category | Certificate type | Fee |
|---|---|---|
| (1) LD, excluding ICIs | Fed Certificate | $33,883 |
| (2) LD, excluding ICIs | Cal-only Certificate | 16,944 |
| (3) MDPV, excluding ICIs | Fed Certificate | 33,883 |
| (4) MDPV, excluding ICIs | Cal-only Certificate | 16,944 |
| (5) Complete SI HDVs, excluding ICIs | Fed Certificate | 33,883 |
| (6) Complete SI HDVs, excluding ICIs | Cal-only Certificate | 16,944 |
| (7) ICIs for the following industries: LD, MDPV, or Complete SI HDVs | All Types | 8,387 |
| (8) MC (HW), including ICIs | All Types | 2,414 |
| (9) HDE (HW), including ICIs | Fed Certificate | 21,578 |
| (10) HDE (HW), including ICIs | Cal-only Certificate | 826 |
| (11) HDV (evap), including ICIs | Evap | 826 |
| (12) NR CI engines, including ICIs, but excluding Locomotives, Marine and Recreational engines. | All Types | 1,822 |
| (13) NR SI engines, including ICIs | All Types | 826 |
| (14) Marine engines, excluding inboard & sterndrive engines, including ICIs | All Types and Annex VI | 826 |
| (15) All NR Recreational, including ICIs, but excluding marine engines | All Types | 826 |
| (16) Locomotives, including ICIs | All Types | 826 |

(1) A manufacturer that requests a federal certificate for a marine engine family and an Annex VI for the same engine family will be charged the fee indicated in paragraph (a) of this section, Table item 14, for only the federal certificate.

(2) [Reserved]

(b) *Fees for 2006 calendar year and beyond.* (1) This subpart applies to manufacturers that submit certification requests received by the agency on or after January 1 of each calendar year beginning in 2006. The fees due for each certification request will be calculated using an equation which adjusts the fees in paragraph (a) of this section for the change in the consumer price index and the change in the total number of certificates issued for each fee category.

(2) Certification requests which are complete, contain all required data, and are received prior to January 1 of each calendar year are subject to the fees provisions of the year that they are received by the Agency.

(3) Fees for the 2006 and later calendar year certification requests will be calculated using the following equation:

$$\text{Certificate Fee}_{cy} = [F + L^* (CPI_{CY-2}/CPI_{2002})] * 1.169/[(\text{cert\#}_{MY-2} + \text{cert\#}_{MY-3}) * .5]$$

Certificate $Fee_{cy}$ = Fee per certificate for the calendar year of the fees to be collected

F = the fixed costs, not to be adjusted by the CPI

L = the labor costs, to be adjusted by the CPI

$CPI_{CY-2}$ = the consumer price index for all U.S. cities using the ''U.S. city average'' area, ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor listed for the month of November of the year two years before the calendar year. (*e.g.*, for the 2006 CY use the CPI based on the date of November, 2004).

$CPI_{2002}$ = the consumer price index for all U.S. cities using the ''U.S. city average'' area , ''all items'' and ''not seasonally adjusted'' numbers calculated by the Department of Labor for December, 2002. The actual value for $CPI_{2002}$ is 180.9.

1.169 = Adds overall EPA overhead which is applied to all costs

$\text{cert\#}_{MY-2}$ = the total number of certificates issued for a fee category or subcategory in the model year two years prior to the calendar year for applicable fees (Certificate $Fee_{cy}$)

$\text{cert\#}_{MY-3}$ = the total number of certificates issued for a fee category or subcategory in the model year three years prior to the calendar year for the applicable fees (Certificate $Fee_{cy}$)

(i) The values for F and L are listed in the following table:

| | F | L |
|---|---|---|
| (1) LD Cert/FE | $3,322,039 | $2,548,110 |
| (2) LD In-use | 2,858,223 | 2,184,331 |
| (3) LD ICI | 344,824 | 264,980 |
| (4) MC HW | 225,726 | 172,829 |
| (5) HD HW | 1,106,224 | 1,625,680 |
| (6) NR CI | 486,401 | 545,160 |
| (7) Other | 177,425 | 548,081 |

(ii) EPA will notify manufacturers within 11 months of the calendar year in which fees are adjusted by this section, with the new fees for each category, the number of certificates for the appropriate model years and the applicable CPI values after the November CPI values for each year are made available by the U.S. Department of Labor.

(1) Certificate fees for light-duty California-only certificates will be determined by applying the LD Cert/FE F and L values to the Certificate Fee equation in paragraph (b)(3) of this section. The certificate numbers in the equation will be the total of the number of California-only and federal light-duty certificates issued during the appropriate model years.

(2) Certificate fees for light-duty federal certificates are determined in a 3 part process:

(i) Apply the LD Cert/FE F and L values to the Certificate Fee equation in paragraph (b)(3) of this section. The

certificate numbers in the equation will be the total of the number of California-only and federal light-duty certificates issued during the appropriate model years. This results in the Cert/FE portion of the LD certificate fee.

(ii) Apply the LD In-use F and L values to the Certificate Fee equation in paragraph (b)(3) of this section. The certificate numbers in the equation will be the number of federal light-duty certificates issued during the appropriate model years. This results in the In-use portion of the LD certificate fee.

(iii) Add the LD Cert/FE portion of the fee and LD In-use portion of the fee together to determine the total LD federal fee per certificate.

(3) Certificate fees for all remaining categories of certificates are determined by applying the F and L values from the appropriate category to the Certificate Fee equation above. The certificate numbers in the equation will be the total number of certificates issued in that category during the appropriate model years.

(c) A single fee will be charged when a manufacturer seeks to certify multiple evaporative families within a single engine family or test group. Manufacturers that seek to certify HDE evaporative families will be charged a fee for each evaporative family.

(d) A body builder, who exceeds the maximum fuel tank size for a HDV that has been certified by an OEM and consequently makes a request for HDV certification, must pay a separate fee for each certification request. The fee will be that listed in paragraphs (a) and (b) of this section, paragraph (c) does not apply.

**§ 85.2406 Can I qualify for reduced fees?**

(a) *Eligibility Requirements.* To be eligible for a reduced fee, the following conditions must be satisfied:

(1) The certificate is to be used for sale of vehicles or engines within the United States; and

(2) The full fee for a certification request for a MY exceeds 1.0% of the aggregate projected retail sales price of all vehicles or engines covered by that certificate.

(b) *Determination of Certificate Type.* (1) If the number of vehicles or engines to be covered by the certificate is less than six and the retail sales price of all of the vehicles or engines is less than $75,000 each, a reduced fee request shall be made for a certificate covering 5 vehicles or engines. The final reduced fee calculation and adjustment provisions of paragraph (e) of this section are applicable to certificates issued under this provision.

(2) If the number of vehicles or engines to be covered by the certificate is greater than five and/or the retail sales price of at least one of the vehicles or engines is greater than $75,000 each, a reduced fee request shall be made for a certificate covering the estimated number of vehicles or engines.

(c) *Initial Reduced Fee Calculation.* (1) If the requirements of paragraph (a) of this section are satisfied, the initial fee payment to be paid by the applicant (the ''initial fee payment'') will be the greater of:

(i) 1.0% of the aggregate projected retail sales price of all the vehicles or engines to be covered by the certification request; or

(ii) A minimum initial fee payment of $750.

(2) For vehicles or engines that are converted to operate on an alternative fuel using as the basis for the conversion a vehicle or engine which is covered by an existing OEM certificate of conformity, the cost basis used in this section must be the aggregate projected retail value-added to the vehicle or engine by the conversion rather than the full cost of the vehicle or engine. To qualify for this provision, the applicable OEM certificate must cover the same sales area and model year as the requested certificate for the converted vehicle or engine.

(3) For ICI certification requests, the cost basis of this section must be the aggregate projected retail cost of the entire vehicle(s) or engine(s), not just the value added by the conversion. If the vehicles/engines covered by an ICI certificate are not being offered for sale, the manufacturer shall use the fair retail market value of the vehicles/engines as the retail sale price required in this section. For an ICI certification request, the retail sales price (or fair retail market value) must be based on the applicable National Automobile Dealer's Association (NADA) appraisal guide and/or other evidence of the actual market value.

(4) The aggregate cost used in this section must be based on the total projected sales of all vehicles and engines under a certificate, including vehicles and engines modified under the modification and test option in 40 CFR 85.1509 and 89.609. The projection of the number of vehicles or engines to be covered by the certificate and their projected retail selling price must be based on the latest information available at the time of the fee payment.

(5) A manufacturer may submit a reduced fee as described in paragraphs (a), (b) and (c)(1) through (c)(4) of this section if it is accompanied by a statement from the manufacturer that the reduced fee is appropriate under this section. The reduced fee shall be deemed approved unless EPA determines that the criteria of this section has not been met. The Agency may make such a determination either before or after EPA issues a certificate of conformity. If the Agency determines that the requirements of this section have not been met, EPA may deny future reduced fee requests and require submission of the full fee payment until such time as the manufacturer demonstrates to the satisfaction of the Administrator that its reduced fee submissions are based on accurate data and that final fee payments are made within 45 days of the end of the model year.

(6) If the reduced fee is denied by the Administrator, the applicant will have 30 days from the date of notification of the denial to submit the appropriate fee to EPA or appeal the denial.

(d) *Revision of the Number of Vehicles or Engines Covered by the Certificate.* (1) If after the original certificate is issued, the number of vehicles or engines to be produced or imported under the certificate exceeds the number indicated on the certificate, the manufacturer or importer shall:

(i) Request that EPA revise the certificate with a number that indicates the new projection of the vehicles or engines to be covered by the certificate. The revised certificate must be requested, revised and issued before the vehicles or engines are sold or imported into the United States.

(ii) Submit payment of 1.0% of the aggregate projected retail sales price of all the vehicles or engines over and above the number of vehicles or engines listed on the original certificate to be covered by the certification request;

(iii) Submit a final reduced fee calculation and adjustment at the end of the model year as set forth in the provisions of paragraph (e) of this section, if the original certificate was issued under the provisions of paragraph (b)(1) of this section.

(2) A manufacturer must receive a revised certificate prior to the sale or importation of any vehicles or engines that are not originally included in the certificate issued under paragraph (b)(1) or (b)(2) of this section, or as indicated in a revised certificate issued under paragraph (d)(1) of this section. In the event that a certificate is not timely revised such additional vehicles or engines are not covered by a certificate of conformity.

(e) *Final Reduced Fee Calculation and Adjustment.* (1) For certificates issued under the provisions of paragraph (b)(1) of this section, within 30 days of the

end of the model year, the manufacturer shall submit a model year reduced fee payment report covering all certificates issued under the provisions of paragraph (b)(1) of this section in the model year for which the manufacturer has paid a reduced fee. This report will include for each certificate issued:

(i) The fees paid prior to the time of issuance of the certificate;

(ii) The total actual number of vehicles covered by the certificate;

(iii) The calculation of the actual final reduced fee due for each certificate; and

(iv) The difference between the total fees paid and the total final fees due from the manufacturer.

(2) The final reduced fee shall be calculated using the procedures of paragraph (c) of this section but using actual production figures rather than projections.

(3) If the initial fee payment does not exceed the final reduced fee, then the manufacturer shall pay the difference between the initial reduced fee and the final reduced fee using the provisions of § 85.2408. This payment shall be paid within 45 days of the end of the model year. The total fees paid for a certificate shall not exceed the applicable full fee of § 85.2405. If a manufacturer fails to make complete payment with 45 days or to submit the report under paragraph (e)(1) of this section then the Agency may void *ab initio* the applicable certificate. EPA may also refuse to grant reduced fee requests submitted under paragraph (c)(5) of this section.

(4) If the initial fee payment exceeds the final reduced fee then the manufacturer may request a refund using the procedures of § 85.2407.

(5) Manufacturers must retain in their records the basis used to calculate the projected sales and fair retail market value and the actual sales and retail price for the vehicles and engines covered by each certificate that is issued under the reduced fee provisions of this section. This information must be retained for a period of at least three years after the issuance of the certificate and must be provided to the Agency within 30 days of request. Manufacturers are also subject to the applicable maintenance of records requirements of Part 86, Subpart A. If a manufacturer fails to maintain the records or provide such records to EPA as required by this paragraph then EPA may void *ab initio* the certificate for which such records shall be kept.

**§ 85.2407 Can I get a refund if I don't get a certificate or overpay?**

(a) *Full Refund.* The Administrator shall refund the total fee imposed by § 85.2405 if the applicant fails to obtain a certificate, for any reason, and requests a refund.

(b) *Partial Refund.* The Administrator shall refund a portion of a reduced fee, paid under § 85.2406, due to a decrease in the aggregate projected or actual retail sales price of the vehicles or engines covered by the certificate request. The Administrator shall also refund a portion of the initial payment when the initial payment exceeded the final fee for the vehicles or engines covered by the certificate request.

(1) Partial refunds are only available for certificates which were used for the sale of vehicles or engines within the United States.

(2) Requests for a partial refund may only be made once the model year for the applicable certificate has ended. Requests for a partial refund must be submitted no later than six months after the model year has ended.

(3) Requests for a partial refund must include all the following:

(i) A statement that the applicable certificate was used for the sale of vehicles or engines within the United States.

(ii) A statement of the initial fee amount paid (the reduced fee) under the applicable certificate.

(iii) The actual number of vehicles or engines produced or imported under the certificate (whether or not the vehicles/engines have been actually sold).

(iv) The actual retail selling or asking price for the vehicles or engines produced or imported under the certificate.

(v) The calculation of the reduced fee amount using actual production figures and retail prices.

(vi) The calculated amount of the refund.

(c) *Refunds due to errors in submission.* The Agency will approve requests from manufacturers to correct errors in the amount or application of fees if the manufacturer provides satisfactory evidence that the change is due to an accidental error rather than a change in plans. Requests to correct errors must be made to the Administrator as soon as possible after identifying the error. The Agency will not consider requests to reduce fee amounts due to errors that are reported more than 90 days after the issuance of the applicable certificate of conformity.

(d) In lieu of a refund, the manufacturer may apply the refund amount to the amount due on another certification request.

(e) A request for a full or partial refund of a fee or a report of an error in the fee payment or its application must be submitted in writing to: U.S. Environmental Protection Agency, Vehicle Programs and Compliance Division, Fee Program Specialist, National Vehicle and Fuel Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105.

**§ 85.2408 How do I make a fee payment?**

(a) All fees required by this subpart shall be paid by money order, bank draft, certified check, corporate check, or electronic funds transfer payable in U.S. dollars to the order of the Environmental Protection Agency.

(b) A completed fee filing form must be sent to the address designated on the form for each fee payment made.

(c) Fees must be paid prior to submission of an application for certification. The Agency will not process applications for which the appropriate fee (or reduced fee amount) has not been fully paid.

(d) If EPA denies a reduced fee, the proper fee must be submitted within 30 days after the notice of denial, unless the decision is appealed. If the appeal is denied, then the proper fee must be submitted within 30 days after the notice of the appeal denial.

**§ 85.2409 Deficiencies.**

(a) Any filing pursuant to this subpart that is not accompanied by a completed fee filing form and full payment of the appropriate fee is deemed to be deficient.

(b) A deficient filing will be rejected and the amount paid refunded, unless the full appropriate fee is submitted within a time limit specified by the Administrator.

(c) EPA will not process a request for certification associated with any filing that is deficient under this section.

(d) The date of filing will be deemed the date on which EPA receives the full appropriate fee and the completed fee filing form.

## PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

■ 3. The authority citation for Part 86 continues to read as follows:

**Authority:** 42 U.S.C. 7401–7671q.

### Subpart J—[Amended]

■ 4. Section 86.903–93 is revised to read as follows:

**§ 86.903–93 Applicability.**

(a) This subpart prescribes fees to be charged for the MVECP for the 1993 through 2004 model year. The fees charged will apply to all manufacturers and ICIs of LDVs, LDTs, HDVs, HDEs, and MCs. Nothing in this subpart shall be construed to limit the

Administrator's authority to require manufacturer or confirmatory testing as provided in the Clean Air Act, including authority to require manufacturer in-use testing as provided in section 208 of the Clean Air Act.

(b) The fee requirements of 40 CFR part 85, subpart Y for 2004 and later certification requests received on or after July 12, 2004 apply instead of the fees prescribed in this subpart.

(c) The fees prescribed in this subpart will only apply to those 2004 model year certification requests which are complete, include all data required by this title, and are received by the Agency prior to July 12, 2004.

■ 5. Section 86.908–93 is amended by revising paragraph (a)(1)(iii) to read as follows:

**§ 86.908–93 Waivers and refunds.**

(a) * * *

(1) * * *

(iii) For converted vehicles that are dual-or flexible-fuel vehicles and can operate on a gaseous fuel, the full fee for a certification request for a MY exceeds 1% of the value added to the vehicle by the conversion, for MY 2000 through July 12, 2004.

* * * * *

[FR Doc. 04–10338 Filed 5–10–04; 8:45 am]

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# Part III

# Department of Transportation

## Federal Aviation Administration

**14 CFR Part 43**

**Implementing the Maintenance Provisions of Bilateral Agreements; Proposed Rule**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 43**

**[Docket No. FAA–2004–17683; Notice No. 04–07]**

**RIN 2120–AI19**

## Implementing the Maintenance Provisions of Bilateral Agreements

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to amend its regulations governing maintenance, preventive maintenance, and alterations on U.S.-registered aircraft located in Canada. FAA has revised the Bilateral Aviation Agreement between the United States and Canada to a Bilateral Aviation Safety Agreement (BASA), and plans to include maintenance implementation procedures (MIP) with that BASA. Certain requirements found in Part 43.17, as presently written, provide constraints that are not in accordance with standards for other MIPs. This rulemaking action would remove those constraints and provide flexibility to implement a MIP.

**DATES:** Send your comments on or before August 9, 2004.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2004–17683 at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov.* You may review the public docket containing comments to these proposed regulations in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov.*

**FOR FURTHER INFORMATION CONTACT:** Leo J. Weston, Flight Standards, Aircraft Maintenance Division, AFS–306, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3811; facsimile (202) 267–5112, e-mail: *leo.weston@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites interested persons to participate in this rulemaking by sending written comments, data, or views. We also invite comments about the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. Please include cost estimates with your substantive comments. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the Web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive by the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal because of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

### Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the **Federal Register**'s Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

### Background

*Statement of the Problem:* 14 CFR 43.17 applies to certain Canadian maintenance activities. It contains constraints that inhibit negotiating Maintenance Implementation Procedures (MIP) under the current Bilateral Aviation Safety Agreement (BASA). The BASA/MIP would expand the allowable maintenance capabilities in the U.S. and Canada. The proposed changes would allow work in Canada, with respect to U.S.-registered aircraft, to be more in line with the maintenance allowed by other FAA-certificated domestic and foreign repair stations.

Section 43.17 contains the following constraints.

(1) It requires aeronautical products for use in maintaining or altering U.S.-registered aircraft to be transported to Canada from the U.S.

(2) It requires that work be performed in accordance with §§ 43.13, 43.15, and 43.16 and recorded in accordance with §§ 43.2 (a), 43.9, and 43.11.

FAA proposes to revise § 43.17 to resolve these constraints.

(1) FAA proposes to allow shipment of parts direct to Canada from their location. The parts would not have to be transported first to the U.S. and then to Canada.

(2) FAA proposes to remove references to specific regulations and replace it with a reference to ''an agreement between the United States and Canada.'' The effect of this change would be to facilitate agreements between the U.S. and Canada.

*History:* After World War II, the number of U.S. civil aircraft flying in Canadian airspace increased. At that time, the U.S. Civil Aeronautics Board (CAB) regulations only allowed U.S.-certificated mechanics and repair stations to perform maintenance, preventive maintenance, and alterations of U.S.-registered aircraft. In 1951, to alleviate the difficulties caused when

U.S.-registered aircraft required maintenance while in Canada, the Canadian government proposed a reciprocal maintenance arrangement with the United States. The CAB agreed and issued Special Civil Air Regulation No. SR–377 (SR–377), titled ''Mechanical Work Performed on United States Registered Aircraft by Certain Canadian Mechanics,'' on November 13, 1951. The preamble to SR–377 noted the CAB considered the Canadian standards to be of a ''high caliber'' and to ''compare favorably with those in force in the United States.''

SR–377 allowed Canadian maintenance persons to perform work on U.S.-registered aircraft located in Canada without holding U.S. airman certificates. The Civil Aeronautics Act of 1938 (1938 Act), however, required mechanics in the United States, to hold certificates to perform maintenance on U.S.-registered aircraft. The CAB relied on section 1(6) of the 1938 Act to exempt Canadian mechanics employed outside the United States from the definition of ''airman'' and thus from the requirement to hold a valid U.S. airman certificate. SR–377 did not specifically address Canadian maintenance companies.

In October 1964, SR–377 was reissued as Special Federal Aviation Regulation (SFAR) No. 10, and on April 13, 1966, the FAA reissued SFAR No. 10 as 14 CFR 43.17. In October 1968, the FAA issued an amendment to § 43.17 ''to extend to authorized employees of approved Canadian companies the privileges presently granted Canadian Aircraft Maintenance Engineers.'' The FAA did not extend similar privileges to Canadian maintenance companies to perform work on U.S.-registered aircraft or aeronautical parts.

In 1984, the United States and Canada signed the current Agreement Concerning the Airworthiness and Environmental Certification, Approval, or Acceptance of Imported Civil Aeronautical Products (the U.S./Canada Bilateral Aviation Agreement (BAA)). This agreement included provisions for aircraft certification and maintenance. The BAA provided for an agency-to-agency Implementation Procedure (IP), which included both maintenance and aircraft certification procedures in more detail than those included in BAAs previously concluded with other countries. The BAA and IP allow authorized persons and companies in each country to perform maintenance, alterations, or modifications on aircraft under the regulatory control of the other country if such work is performed in accordance with the laws, regulations, standards, and requirements of the country regulating the airworthiness of the affected aircraft or product. It also expanded the provisions of the previous agreement to include maintenance and alterations by Canadian Approved Maintenance Organizations (AMOs) of all aeronautical products shipped between the United States and Canada. In 1985, the United States and Canada signed the IP to carry out the objectives of the BAA. Although the IP were revised in 1988, no changes were made to provisions affecting maintenance. In 1991, the FAA published an amendment to § 43.17 to conform to the airworthiness maintenance provisions of the BAA and IP. This amendment also changed the language of the rule to expand applicability of § 43.17 to include Canadian AMOs.

Section 43.17 of the Federal Aviation Regulations (14 CFR 43.17) currently defines the scope of mechanical work authorized to be performed by Canadian persons on U.S.-registered aircraft. An appropriately rated Canadian aircraft maintenance engineer or authorized employee of an approved Canadian maintenance company (AMO), with respect to U.S.-registered aircraft located in Canada, may:

(1) Perform maintenance and alterations if the work is performed and recorded in accordance with the requirements of Part 43 of 14 CFR.

(2) Approve the work accomplished to return the aircraft to service (except that only a Canadian airworthiness inspector or an approved inspector may approve a major repair or major alteration).

Section 43.17(c) also states that Canadian persons are allowed to perform mechanical work with respect to a U.S.-registered aircraft only when the aircraft is located in Canada.

The need to maintain products used in U.S. and Canadian aircraft operations created the need for the United States and Canada to restructure their bilateral airworthiness agreement. In addition to including the present provisions of § 43.17 to maintain and alter U.S. registered aircraft in Canada, this agreement provides for the maintenance, preventive maintenance, and alterations of aeronautical products shipped between the United States and Canada.

In 1992, the United States and Canada began negotiating a new agreement to expand the scope of the 1984 BAA and align it with the new ''umbrella'' format of bilateral agreements the United States seeks with other countries. These executive agreements, termed Bilateral Aviation Safety Agreements (BASAs), provide for development of IP between the aviation authorities of each country. IP address the technical details of the agreement in areas such as certification, maintenance, simulators, and operations. Maintenance Implementation Procedures (MIP) would provide for reciprocal acceptance of inspections and surveillance of repair stations and AMOs using agreed-on standards.

The BASA/MIP is the vehicle now used to enter a new agreement or revise a present agreement with a country where an original agreement has been established under a Bilateral Aviation Agreement (BAA). The FAA has negotiated a BASA with Canada that revised the previous BAA. Negotiations are underway to establish Maintenance Implementation Procedures (MIP) that will set forth the provisions for the acceptance of maintenance, preventive maintenance, or alterations under the terms of the MIP. The present agreement with Canada includes provisions for Transport Canada Civil Aviation (TCCA) AMOs and TCCA maintenance airmen located in Canada, to perform maintenance, preventive maintenance, or alterations on U.S.-registered aircraft. The requirements for persons to perform maintenance, preventive maintenance, or alterations are set forth in § 43.17.

The BASA/MIP system provides procedures for mutual acceptance by the Foreign Civil Aviation Authority (FCAA) and the FAA to accept maintenance organizations and maintenance airmen. The MIP would set forth any specific conditions required by the FAA or TCCA for compliance with the terms of the agreement. Since the 1991 BAA agreement, TCCA has changed their regulations to harmonize those regulations with the FAA and Joint Aviation Authorities (JAA).

*Reference Material:* Agreement between the Government of the United States of America and the Government of Canada for Promotion of Aviation Safety, June 12, 2000; Implementation Procedures for Design Approval, Production Activities, Export Airworthiness Approval, Post Design Approval Activities, and Technical Assistance between Authorities, under the Agreement between the United States of America and the Government of Canada for Promotion of Aviation Safety, October 2000; U.S./Canadian Bilateral Airworthiness Agreement, August 31, 1984; Schedule of Implementation, May 18, 1988.

All references are available on the following Web site: *http://www2.faa.gov/certification/aircraft/*.

**General Discussion of the Proposals**

The FAA and Transport Canada Civil Aviation (TCCA) plan to negotiate a MIP under the current BASA that expands

the maintenance that can be performed in the U.S. and Canada. Revisions proposed in this rulemaking will allow maintenance in Canada, with respect to U.S.-registered aircraft, to be more in line with the maintenance allowed by other foreign repair stations. In this rulemaking action, FAA proposes changes to § 43.17 that will bring this regulation into line with a negotiated agreement.

By ''agreement,'' the FAA means the terms of the BASA and the MIP that sets forth the procedures to comply with the BASA.

**Section-by-Section Discussion of the Proposals**

*Section 43.17(a), (c)(1), (c)(2), (d)(1), and (e)(2)*

The identification of the Canadian agency has been changed from ''Canadian Department of Transport'' to ''Transport Canada Civil Aviation (TCCA).'' This change reflects the current name of the agency and uses the name found in the BASA.

*Section 43.17(a)*

FAA proposes minor wording changes to the definitions. The purpose is to make the language flow more smoothly, not to make any substantive change.

*Section 43.17(c)(2)*

The current language requires that aeronautical products for use in maintaining or altering U.S.-registered aircraft be transported to Canada from the U.S. FAA proposes to remove this language to allow parts to be shipped directly to Canada from any location. The part, when located outside the U.S., no longer has to be transported first to the U.S. and then to Canada.

The current rule refers to ''a person who is an authorized employee.'' When this was written, FAA used this language to be consistent with the Canadian rule. The Canadian rule has since changed. The FAA proposes to remove this reference to maintain consistency with the Canadian rule.

*Section 43.17(d)(2)*

The current language requires work to be performed in accordance with §§ 43.13, 43.15, and 43.16.

FAA proposes to remove references to the specific regulations and replace it with a reference to ''an agreement between the United States and Canada.'' The effect of this change would be to facilitate agreements between the U.S. and Canada by not requiring a change to § 43.17 each time a new U.S./Canadian agreement is negotiated. Any maintenance performance standards would be set forth in those agreements.

*Section 43.17(d)(4)*

The current language requires that work be recorded in accordance with §§ 43.2 (a), 43.9, and 43.11.

FAA proposes to remove references to the specific regulations and replace it with a reference to ''an agreement between the United States and Canada.'' The effect of this change would be to facilitate agreements between the U.S. and Canada. Any maintenance performance standards would be set forth in an agreement.

*Section 43.17 (d)(2), (d)(3), and (d)(4)*

To clarify the rule, the word ''work'' has been changed to ''maintenance, preventive maintenance, or alteration.''

**Paperwork Reduction Act**

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

**International Compatibility**

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

**Executive Order 12866 and DOT Regulatory Policies and Procedures**

Executive Order 12866, Regulatory Planning and Review, directs the FAA to assess both the costs and benefits of a regulatory change. We are not allowed to propose or adopt a regulation unless we make a reasoned determination that the benefits of the intended regulation justify the costs. Our assessment of this proposal indicates that its economic impact is minimal. Since its costs and benefits do not make it a ''significant regulatory action'' as defined in the Order, we have not prepared a ''regulatory evaluation,'' which is the written cost/benefit analysis ordinarily required for all rulemaking proposals under the DOT Regulatory Policies and Procedures. We do not need to do the latter analysis where the economic impact is minimal.

The FAA proposes to amend 14 CFR 43.17. The FAA has revised the Bilateral Aviation Agreement between the United States and Canada to a Bilateral Aviation Safety Agreement (BASA), and plans to include maintenance implementation procedures (MIP) with that BASA. Currently, some requirements written in § 43.17, provide constraints that are not in accordance with standards for other MIPs that are in place now. This rulemaking action would remove those constraints and make the implementation of BASA/MIP more beneficial to all parties by providing greater flexibility to implement a MIP.

The Canadian BASA/MIP would expand the maintenance that can be performed in the U.S. and Canada. Currently, § 43.17 contains two provisions among its requirements that present constraints with the expansion of the BAA. The FAA proposes to revise § 43.17 by removing the constraints allowing the implementation of the BASA. These constraints and proposed revisions are discussed below.

The first constraint is that § 43.17 requires for aeronautical products for use in maintaining or altering U.S.-registered aircraft be transported to Canada from the U.S, even if the products were made outside the United States. This rulemaking proposes a change allowing shipment of parts directly to Canada from their location. This change will extend the same privileges to Canadian maintenance organizations that presently apply to FAA-certificated domestic and foreign repair stations.

The second constraint requires work to be performed in accordance with §§ 43.13, 43.15, and 43.16 and recorded in accordance with §§ 43.2(a), 43.9, and 43.11. This rulemaking proposes a change that would remove references to the specific regulations and replace them with a reference to ''an agreement between the United States and Canada.'' The effect of this change would be to facilitate agreements between the U.S. and Canada so that changes to an agreement would not automatically require changes to the rule.

The FAA contends that amending § 43.17 would result in a cost savings to those entities that would be impacted by this rule and would eliminate a barrier to trade. Therefore, the FAA has determined that the proposed rule would be cost-beneficial.

**Regulatory Flexibility Act**

The Regulatory Flexibility Act (the Act) of 1980, (5 U.S.C. 601 *et seq.*) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and

governmental jurisdictions subject to regulation.'' To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities because it is removing a trade barrier between Canada and the United States, which should lower costs for air carriers that have aircraft maintenance performed in Canada. The FAA solicits comments from interested parties. All commenters are asked to provide documented information in support of their comments.

**Trade Impact Assessment**

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this proposed rule and determined that it would not constitute a barrier to international trade, including the export of U.S. goods and services to foreign countries or the import of foreign goods and services into the United States. In fact, the FAA believes it would remove a barrier to trade.

**Unfunded Mandates Assessment**

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed ''significant intergovernmental mandate.'' A ''significant intergovernmental mandate'' under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for those small governments to provide input in the development of regulatory proposals.

This proposed rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

**Executive Order 13132, Federalism**

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this notice of proposed rulemaking would not have federalism implications.

**Environmental Analysis**

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

**Energy Impact**

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Pub. L. 94–163, as amended (42 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the notice is not a major regulatory action under the provisions of the EPCA.

**List of Subjects in 14 CFR Part 43**

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety.

**The Proposed Amendment**

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 43 of Title 14, Code of Federal Regulations, as follows:

## PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for part 43 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701, 44703, 44705, 44707, 44711, 44713, 44717, 44725.

2. Revise § 43.17(a); (c)(1) and (2); (d)(1), (2), (3) and (4); and (e)(2) to read as follows:

**§ 43.17 Maintenance, preventive maintenance, and alterations performed on U.S. aeronautical products by certain Canadian persons.**

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

*Aeronautical product* means any civil aircraft or airframe, aircraft engine, propeller, appliance, component, or part to be installed thereon.

*Canadian aeronautical product* means any aeronautical product under airworthiness regulation by Transport Canada Civil Aviation (TCAA).

*U.S. aeronautical product* means any aeronautical product under airworthiness regulation by the FAA.

* * * * *

(c) *Authorized persons.* (1) A person holding a valid Transport Canada Civil Aviation Aircraft Maintenance Engineer license and appropriate ratings may, with respect to a U.S.-registered aircraft located in Canada, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (d) of this section and approve the affected aircraft for return to service in accordance with

the requirements of paragraph (e) of this section.

(2) A Transport Canada Civil Aviation Approved Maintenance Organization (AMO) holding appropriate ratings may, with respect to U.S.-registered aircraft or other U.S. aeronautical products, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (d) of this section and approve the affected products for return to service in accordance with the requirements of paragraph (e) of this section.

(d) * * *

(1) The person performing the work is approved by Transport Canada Civil Aviation to perform the same type of work with respect to Canadian aeronautical products;

(2) The maintenance, preventive maintenance, or alteration is performed in accordance with an agreement between the United States and Canada;

(3) The maintenance, preventive maintenance, or alteration is performed such that the affected product complies with the applicable requirements of part 36 of this chapter; and

(4) The maintenance, preventive maintenance, or alteration is recorded in accordance with an agreement between the United States and Canada.

(e) * * *

(1) * * *

(2) An AMO whose system of quality control for the maintenance, preventive maintenance, alteration, and inspection of aeronautical products has been approved by Transport Canada Civil Aviation, or an authorized employee performing work for such an AMO, may approve (certify) a major repair or major alteration performed under this section if the work was performed in accordance with technical data approved by the Administrator.

* * * * *

Issued in Washington, DC, on May 6, 2004.

**John M. Allen,**

*Acting Director, Flight Standards Service.*

[FR Doc. 04–10643 Filed 5–10–04; 8:45 am]

**BILLING CODE 4910–13–P**

Federal Register

Tuesday,
May 11, 2004

# Part IV

# Department of the Treasury

## Community Development Financial Institutions Fund

## 12 CFR Part 1805

## Community Development Financial Institutions Program; Interim Rule

**DEPARTMENT OF THE TREASURY**

**Community Development Financial Institutions Fund**

**12 CFR Part 1805**

**RIN 1505–AA92**

## Community Development Financial Institutions Program

**AGENCY:** Community Development Financial Institutions Fund, Department of the Treasury.

**ACTION:** Revised interim rule with request for comment.

**SUMMARY:** The Department of the Treasury is issuing a revised interim rule implementing the Community Development Financial Institutions Program (CDFI Program) administered by the Community Development Financial Institutions Fund (Fund). The mission of the CDFI Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The purpose of the CDFI Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). Under the CDFI Program, the Fund provides financial assistance in the form of grants, loans, equity investments and deposits to CDFIs selected through a merit-based application process. The Fund provides financial assistance to CDFIs to enhance their ability to make loans and investments, and to provide related services for the benefit of designated investment areas, targeted populations, or both. In addition, under the CDFI Program, the Fund provides technical assistance grants to CDFIs and entities that propose to become CDFIs, for the purpose of increasing their capacity to serve their target markets.

This revised interim rule includes several revisions that the Fund believes will inure to the benefit of CDFIs, CDFI Program applicants, and CDFI Program awardees. This revised interim rule: (i) Includes new definitions of the terms, ''State-Insured Credit Union'' and ''Appropriate State Agency'; (ii) includes county population loss as an Investment Area distress criterion for areas located outside of Metropolitan Areas; (iii) includes county net migration loss as an Investment Area distress criterion for areas located outside of Metropolitan Areas; (iv) permits the Fund to establish additional activity measures (such as loans outstanding) and the associated measurement time periods for Insured Credit Unions and State-Insured Credit Unions to meet the retained earnings since inception option for meeting the matching funds requirements; (v) in the case of State-Insured Credit Unions, permits the Fund to contact and consider the views of the Appropriate State Agency; and (vi) revises certain reporting requirements and deadlines to ensure consistency and decrease reporting burden. In addition, the revised interim rule revises the definition of State by deleting reference to Trust Territories of the Pacific Islands.

**DATES:** This revised interim rule is effective May 11, 2004; comments must be received in the offices of the Fund on or before July 12, 2004.

**ADDRESSES:** You may submit comments concerning this interim rule by any of the following methods: (i) via the Federal e-Rulemaking Portal at *http://www.regulations.gov* (please follow the instructions for submitting comments); (ii) via e-mail to the Fund at *reg_comments@cdfi.treas.gov* (please use an ASCII file format and provide your full name and mailing address); (iii) via mail or hand delivery to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, Department of the Treasury, 601 13th Street, NW., Suite 200 South, Washington, DC 20005; or (iv) via fax to (202) 622–8244. All submissions received must include the agency name and Regulatory Information Number (RIN) for this rulemaking. All comments received will be posted without change to the Fund's Web site at *http://www.cdfifund.gov,* including any personal information provided. Other information regarding the Fund and its programs may be obtained through the Fund's Web site at *http://www.cdfifund.gov.*

**FOR FURTHER INFORMATION CONTACT:** Linda Davenport, Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, at (202) 622–8662. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:**

### I. Background

The Fund was established as a wholly owned government corporation by the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*) (the Act). Subsequent legislation placed the Fund within the Department of the Treasury and gave the Secretary of the Treasury all powers and rights of the Administrator of the Fund as set forth in the Act.

The mission of the Fund is to increase the capacity of financial institutions to provide capital, credit and financial services in underserved markets. Its long-term vision is an America in which all people have access to affordable credit, capital and financial services. The Fund's programs are designed to facilitate the flow of lending and investment capital to distressed communities and to individuals who have been unable to take full advantage of the financial services industry. Access to credit, investment capital, and financial services are essential ingredients for creating and retaining jobs, developing affordable housing, revitalizing neighborhoods, unleashing the economic potential of small businesses, and empowering people.

The Fund was established to promote economic revitalization and community development through, among other things, investment in and assistance to CDFIs, which specialize in serving underserved markets and the people who live there. CDFIs—while highly effective—are typically small in scale and often have difficulty raising the capital needed to meet the demands for their products and services. Under the CDFI Program, the Fund provides CDFIs with financial assistance in the form of grants, loans, equity investments, and deposits in order to enhance their ability to make loans and investments, and provide services for the benefit of designated investment areas, targeted populations or both. Additionally, many CDFIs are in formation or in the early stages of development in many markets underserved by traditional financial institutions, including rural and Native American communities. The CDFI Program assists such entities—as well as established CDFIs—by providing grants through which they may acquire technical assistance to build their capacity to serve their target markets. Applicants participate in the CDFI Program through a merit-based qualitative application and selection process in which the Fund makes funding decisions based on pre-established evaluation criteria. An entity generally receives financial assistance monies from the Fund only after being certified as a CDFI and entering into an assistance agreement with the Fund. These assistance agreements include performance goals, matching funds requirements and reporting requirements.

On February 4, 2003, the Fund published in the **Federal Register** a revised interim rule (*68 FR 5704*) implementing the CDFI Program (the

current rule). The deadline for the submission of comments on the current rule was April 7, 2003.

## II. Comments on the February 4, 2003 Interim Rule

By the close of the April 7, 2003 comment period, the Fund received comments on the current rule from three organizations. The following includes a discussion of the significant issues raised by those commentors.

*Investment Area/Distress Criteria*

Section 1805.201(b)(3)(ii)(A)(2) of the current rule provides that in order for a geographic area to qualify as an Investment Area, it must generally meet one of the three objective criteria of economic distress set forth in § 1805.201(b)(3)(ii)(D). The current rule eliminated the section of the interim rule published on August 14, 2000 (65 **Federal Register** 49642) (the prior rule) that set forth two additional criteria of economic distress for areas located outside of Metropolitan Areas: The first was related to county population loss and the second was related to net migration loss. Two commentors on the current rule recommended that those two economic distress criteria be restored to the interim rule. Based on an analysis of the 2000 Census, the Fund has determined that those two criteria are appropriate indicators of declining economic conditions, particularly in rural areas. Accordingly, §§ 1805.201(b)(3)(ii)(D)(4) and (D)(5) of this revised interim rule restore those two criteria as measures of economic distress in Investment Areas.

*Primary Mission Eligibility Test*

Under § 1805.201(b)(1) of the current rule, the Fund, in determining whether an entity has a primary mission of promoting community development, only considers the activities of the entity individually and does not take into account, except where required by the Act, the activities of an entity's Affiliates. One commentor stated that the Fund should not eliminate the requirement that an entity and all of its Affiliates have a primary mission of community development. The Fund believes that: (i) The revised primary mission eligibility test complies with the plain meaning of the definition of ''CDFI'' contained in section 103 of the Act; (ii) if Congress had intended the primary mission test to apply to an entity on a collective basis with the entity's Affiliates, Congress would have so specified as it did elsewhere in the Act with regard to entities that are Depository Institution Holding Companies, Subsidiaries or Affiliates of Depository Institution Holding Companies, and Subsidiaries of Insured Depository Institutions; and (iii) the revised primary mission eligibility test reflects a sound policy approach in that it will facilitate the ability of venture capital companies to qualify as CDFIs. Accordingly, § 1805.201(b)(1) of the current rule is not changed.

*Application Contents*

Section 1805.601 of the prior rule described the general application content requirements for entities seeking financial and/or technical assistance. The current rule deletes the section of the prior rule that described application content requirements in detail. Two commentors recommended that the interim rule contain detailed application content requirements. The Fund reaffirms its determination that, for purposes of regulatory economy and efficiency, and for optimal policy flexibility, the detailed application content requirements contained in the prior rule should not be included in the current rule. Accordingly, the current rule does not contain specific application content requirements.

*Reporting Requirements*

Section 1805.804(e)(4) of the current rule sets forth the Fund's annual survey requirements, which may include, among other items, the collection and submittal of transaction-level data. One commentor objected to the collection and submission of transaction-level data on the basis that it is unduly burdensome to awardees. In accordance with the requirements of the Paperwork Reduction Act (PRA), the Fund has made its proposed annual survey (including the proposed transaction-level data) available for public comment and has collected such comments. The Fund will review and consider all comments that were received. In addition, the comments and the revised annual survey will be submitted to the Office of Management and Budget pursuant to the PRA.

## III. Summary of Changes

*Definitions: State-Insured Credit Union; Appropriate StateAgency; State*

Section 1805.104 of the current rule contains a list of definitions. This interim rule revises § 1805.104 by including the definition of two new terms: ''State-Insured Credit Union'' and ''Appropriate State Agency.'' This revision is made for the purpose of ensuring that State-Insured Credit Unions and Insured Credit Unions are treated similarly. The Fund has determined that State-Insured Credit Unions generally are not distinct in business structure or activities from NCUA-insured credit unions, and thus a State-Insured Credit Union should be treated the same for the purpose of determining whether it may be qualified as a CDFI, and in other evaluation and reporting criteria that pertain to such entities. Accordingly, (i) § 1805.104(hh) of the current rule is revised to include the definition of ''State-Insured Credit Union'' and (ii) § 1805.104(e) of the current rule is revised to include the definition of ''Appropriate State Agency.''

The definition of ''State'' is revised to delete the term, the Trust Territories of the Pacific Islands. This definition is revised because the Trust Territories of the Pacific Islands no longer exist as a legal entity. Accordingly, the Trust Territories of the Pacific Islands are deleted from §§ 1805.104(gg), 1805.201(b)(3)(ii)(A)(1) and 1805.201(b)(3)(iii)(A).

*Investment Area Distress Criteria: County Population Loss; County Net Migration Loss*

Section 1805.201(b)(3)(ii)(A)(2) of the current rule provides that in order for a geographic area to qualify as an Investment Area, it must, among other things, meet one of the three objective criteria of economic distress set forth in § 1805.201(b)(3)(ii)(D) of the current rule.

Section 1805.201(b)(3)(ii)(D)(4) of this rule is added to include as an Investment Area distress criterion for areas (counties only) located outside of a Metropolitan Area, a county population loss in the period between the most recent decennial census and the previous decennial census of at least 10 percent. The Fund has determined that this 10 percent threshold figure is appropriate because such a population loss is an indicator of declining economic conditions in a community. While the 2000 Census shows that there is a significant reduction in the number of such counties, the Fund concludes that those counties that continue to show a significant population decline represent communities in need of community development investment.

Section 1805.201(b)(3)(ii)(D)(5) of this rule is added to include as an Investment Area distress criterion for areas (counties only) located outside of a Metropolitan Area, a county net migration loss over the five year period preceding the most recent decennial census of at least five percent. In light of the most recent decennial census data, the Fund believes that the net migration loss criterion is an accurate measure of an area's economic distress.

Similar to areas with county population loss, described above, the Fund believes that communities that show population decline due to net migration loss are areas in need of community development investment.

*Matching Funds: Other Activity Measures for Insured Credit Unions and State-Insured Credit Unions*

Section 1805.504(d)(1) of the current rule sets forth the options available to Insured Credit Unions that elect to use retained earnings for matching funds. Section 1805.504(d)(4)(i)(A) of the current rule requires that such an Insured Credit Union Awardee increase its member shares and/or non-member shares by an amount that is set forth in the applicable Notice of Funds Availability. Section 1805.504(d)(4)(i)(A) of this rule permits the Fund to establish other measures of activity (such as loans outstanding) to measure increase in retained earnings. Section 1805.504(d)(4)(i)(B) of the current rule requires that such increased retained earnings must be achieved within 24 months of June 30 of the calendar year in which the applicable application deadline falls. Section 1805.504(d)(4)(i)(B) of this rule permits the Fund to establish the date for the achievement of such increased retained earnings or other measure of activity and publish the date in the applicable Notice of Funds Availability. The Fund believes that these revisions will offer greater flexibility to Insured Credit Unions and State-Insured Credit Unions.

*State-Insured Credit Unions: Consultation With the Appropriate State Agency*

Section 1805.701(d) of this rule is added to permit the Fund, prior to providing assistance to a State-Insured Credit Union, to consult with, and consider the views of, the Appropriate State Agency.

*Reporting*

Section 1805.804(e)(2) of the current rule requires each Awardee to submit: (i) Annual reports 60 days following the end of the Awardee's fiscal year; (ii) audited financial statements 120 days following the end of the Awardee's fiscal year; and (iii) annual surveys 120 days after the end of the Awardee's fiscal year, unless some other period is specified in the Assistance Agreement. The Fund believes that these reporting deadline requirements are unduly burdensome and lack clarity.

Accordingly, this rule is revised to state that the Annual Report generally comprises the following components: (i) Financial Report; (ii) Performance Goals Report/Annual Survey; (iii) Financial Status Report (for awardees that receive technical assistance grants); (iv) Uses of Financial Assistance and Matching Funds Report; and (v) Explanation of Noncompliance (as applicable). All Awardees must submit all components of the Annual Report, including the Financial Report, to the Fund no later than 180 days after the end of the Awardee's fiscal year. Non-profit organizations (excluding regulated financial institutions) are to provide reviewed financial statements and the related accountant's review report (audited financial statements can be used in lieu of reviewed financial statements, if available). For-profit organizations (excluding regulated financial institutions) are to provide audited financial statements and the related auditor's report. Non-profit awardees subject to the audit requirements of OMB Circular A–133 must also submit their separate A–133 financial statements and auditor's reports, no later than 270 days after the end of the Awardee's fiscal year.

## IV. Rulemaking Analysis

*Executive Order (E.O.) 12866*

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

*Regulatory Flexibility Act*

Because no notice of proposed rule making is required for this revised interim rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

*Paperwork Reduction Act*

The collections of information contained in this interim rule have been previously reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 and assigned OMB Control Numbers 1559–0006, 1559–0021, and 1559–0022. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB. This document restates the collections of information without substantive change.

Comments concerning suggestions for reducing the burden of collections of information should be directed to the Deputy Director for Policy and Programs, Community Development Financial Institutions Fund, 601 13th Street, NW., Suite 200 South, Washington, DC 20005 and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

*National Environmental Policy Act*

Pursuant to Treasury Directive 75–02 (Department of the Treasury Environmental Quality Program), the Department has determined that these interim regulations are categorically excluded from the National Environmental Policy Act and do not require an environmental review.

*Administrative Procedure Act*

Because the revisions to this interim rule relate to loans and grants, notice and public procedure and a delayed effective date are not required pursuant to the Administrative Procedure Act found at 5 U.S.C. 553(a)(2).

*Comment*

Public comment is solicited on all aspects of this interim regulation. The Fund will consider all comments made on the substance of this interim regulation, but does not intend to hold hearings.

*Catalog of Federal Domestic Assistance Number:* Community Development Financial Institutions Program—21.020.

**List of Subjects in 12 CFR Part 1805**

Community development, Grant programs—housing and community development, Loan programs—housing and community development, Reporting and recordkeeping requirements, Small businesses.

■ For the reasons set forth in the preamble, 12 CFR part 1805 is revised to read as follows:

## PART 1805—COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS PROGRAM

### Subpart A—General Provisions

Sec.
1805.100 Purpose.
1805.101 Summary.
1805.102 Relationship to other Fund programs.
1805.103 Awardee not instrumentality.
1805.104 Definitions.
1805.105 Waiver authority.
1805.106 OMB control number.

### Subpart B—Eligibility

1805.200 Applicant eligibility.
1805.201 Certification as a Community Development Financial Institution.

### Subpart C—Use of Funds/Eligible Activities

1805.300 Purposes of financial assistance.
1805.301 Eligible activities.
1805.302 Restrictions on use of assistance.

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**Subpart D—Investment Instruments**

1805.400 Investment instruments—general.
1805.401 Forms of investment instruments.
1805.402 Assistance limits.
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**Subpart E—Matching Funds Requirements**

1805.500 Matching funds—general.
1805.501 Comparability of form and value.
1805.502 Severe constraints waiver.
1805.503 Time frame for raising match.
1805.504 Retained earnings.

**Subpart F—Applications for Assistance**

1805.600 Notice of Funds Availability.

**Subpart G—Evaluation and Selection of Applications**

1805.700 Evaluation and selection—general.
1805.701 Evaluation of applications.

**Subpart H—Terms and Conditions of Assistance**

1805.800 Safety and soundness.
1805.801 Notice of award.
1805.802 Assistance Agreement; sanctions.
1805.803 Disbursement of funds.
1805.804 Data collection and reporting.
1805.805 Information.
1805.806 Compliance with government requirements.
1805.807 Conflict of interest requirements.
1805.808 Lobbying restrictions.
1805.809 Criminal provisions.
1805.810 Fund deemed not to control.
1805.811 Limitation on liability.
1805.812 Fraud, waste and abuse.

**Authority:** 12 U.S.C. 4703, 4703 note, 4710, 4717; and 31 U.S.C. 321.

## Subpart A—General Provisions

### § 1805.100 Purpose.

The purpose of the Community Development Financial Institutions Program is to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions.

### § 1805.101 Summary.

Under the Community Development Financial Institutions Program, the Fund will provide financial and technical assistance to Applicants selected by the Fund in order to enhance their ability to make loans and investments and provide services. An Awardee must serve an Investment Area(s), Targeted Population(s), or both. The Fund will select Awardees to receive financial and technical assistance through a merit-based qualitative application process. Each Awardee will enter into an Assistance Agreement which will require it to achieve performance goals negotiated between the Fund and the Awardee and abide by other terms and conditions pertinent to any assistance received under this part.

### § 1805.102 Relationship to other Fund programs.

(a) *Bank Enterprise Award Program.* (1) No Community Development Financial Institution may receive a Bank Enterprise Award under the Bank Enterprise Award (BEA) Program (part 1806 of this chapter) if it has:

(i) An application pending for assistance under the Community Development Financial Institutions Program;

(ii) Directly received assistance in the form of a disbursement under the Community Development Financial Institutions Program within the preceding 12-month period prior to the date the Fund selected the CDFI to receive a Bank Enterprise Award (meaning, the date of the Fund's BEA Program notice of award); or

(iii) Ever directly received assistance under the Community Development Financial Institutions Program for the same activities for which it is seeking a Bank Enterprise Award.

(2) An equity investment (as defined in part 1806 of this chapter) in, or a loan to, a Community Development Financial Institution, or deposits in an Insured Community Development Financial Institution, made by a BEA Program Awardee may be used to meet the matching funds requirements described in subpart E of this part. Receipt of such equity investment, loan, or deposit does not disqualify a Community Development Financial Institution from receiving assistance under this part.

(b) *Liquidity enhancement program.* No entity that receives assistance through the liquidity enhancement program authorized under section 113 (12 U.S.C. 4712) of the Act may receive assistance under the Community Development Financial Institutions Program.

### § 1805.103 Awardee not instrumentality.

No Awardee (or its Community Partner) shall be deemed to be an agency, department, or instrumentality of the United States.

### § 1805.104 Definitions.

For the purpose of this part:

(a) *Act* means the Community Development Banking and Financial Institutions Act of 1994, as amended (12 U.S.C. 4701 *et seq.*);

(b) *Affiliate* means any company or entity that Controls, is Controlled by, or is under common Control with another company;

(c) *Applicant* means any entity submitting an application for CDFI Program assistance or funding under this part;

(d) *Appropriate Federal Banking Agency* has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), and includes, with respect to Insured Credit Unions, the National Credit Union Administration;

(e) *Appropriate State Agency* means an agency or instrumentality of a State that regulates and/or insures the member accounts of a State-Insured Credit Union;

(f) *Assistance Agreement* means a formal agreement between the Fund and an Awardee which specifies the terms and conditions of assistance under this part;

(g) *Awardee* means an Applicant selected by the Fund to receive assistance pursuant to this part;

(h) *Community Development Financial Institution* (or *CDFI*) means an entity currently meeting the eligibility requirements described in § 1805.200;

(i) *Community Development Financial Institution Intermediary* (or *CDFI Intermediary*) means an entity that meets the CDFI Program eligibility requirements described in § 1805.200 and whose primary business activity is the provision of Financial Products to CDFIs and/or emerging CDFIs;

(j) *Community Development Financial Institutions Program* (or *CDFI Program*) means the program authorized by sections 105–108 of the Act (12 U.S.C. 4704–4707) and implemented under this part;

(k) *Community Facility* means a facility where health care, childcare, educational, cultural, or social services are provided;

(l) *Community-Governed* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) represent greater than 50 percent of the governing body;

(m) *Community-Owned* means an entity in which the residents of an Investment Area(s) or members of a Targeted Population(s) have an ownership interest of greater than 50 percent;

(n) *Community Partner* means a person (other than an individual) that provides loans, Equity Investments, or Development Services and enters into a Community Partnership with an Applicant. A Community Partner may include a Depository Institution Holding Company, an Insured Depository Institution, an Insured Credit Union, a State-Insured Credit Union, a not-for-profit or for-profit organization, a State or local government entity, a quasi-government entity, or an investment company authorized pursuant to the

Small Business Investment Act of 1958 (15 U.S.C. 661 *et seq.*);

(o) *Community Partnership* means an agreement between an Applicant and a Community Partner to collaboratively provide Financial Products or Development Services to an Investment Area(s) or a Targeted Population(s);

(p) *Comprehensive Business Plan* means a document covering not less than the next five years which meets the requirements described in an applicable Notice of Funds Availability (NOTICE OF FUNDS AVAILBILITY);

(q) *Control* means: (1) Ownership, control, or power to vote 25 percent or more of the outstanding shares of any class of Voting Securities of any company, directly or indirectly or acting through one or more other persons; (2) Control in any manner over the election of a majority of the directors, trustees, or general partners (or individuals exercising similar functions) of any company; or (3) The power to exercise, directly or indirectly, a controlling influence over the management, credit or investment decisions, or policies of any company.

(r) *Depository Institution Holding Company* means a bank holding company or a savings and loan holding company as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(1));

(s) *Development Services* means activities that promote community development and are integral to the Applicant's provision of Financial Products and Financial Services. Such services shall prepare or assist current or potential borrowers or investees to utilize the Financial Products or Financial Services of the Applicant. Such services include, for example: financial or credit counseling to individuals for the purpose of facilitating home ownership, promoting self-employment, or enhancing consumer financial management skills; or technical assistance to borrowers or investees for the purpose of enhancing business planning, marketing, management, and financial management skills;

(t) *Equity Investment* means an investment made by an Applicant that, in the judgment of the Fund, supports or enhances activities that serve an Investment Area(s) or a Targeted Population(s). Such investments must be made through an arms-length transaction with a third party that does not have a relationship with the Applicant as an Affiliate. Equity Investments may comprise a stock purchase, a purchase of a partnership interest, a purchase of a limited liability company membership interest, a loan made on such terms that it has sufficient characteristics of equity (and is considered as such by the Fund), a purchase of secondary capital, or any other investment deemed to be an Equity Investment by the Fund;

(u) *Financial Products* means loans, Equity Investments and similar financing activities (as determined by the Fund) including the purchase of loans originated by certified CDFIs and the provision of loan guarantees; in the case of CDFI Intermediaries, grants to CDFIs and/or emerging CDFIs and deposits in Insured Credit Union CDFIs, emerging Insured Credit Union CDFIs, and/or State-Insured Credit Union CDFIs.

(v) *Financial Services* means checking, savings accounts, check cashing, money orders, certified checks, automated teller machines, deposit taking, safe deposit box services, and other similar services;

(w) *Fund* means the Community Development Financial Institutions Fund established under section 104(a) (12 U.S.C. 4703(a)) of the Act;

(x) *Indian Reservation* means any geographic area that meets the requirements of section 4(10) of the Indian Child Welfare Act of 1978 (25 U.S.C. 1903(10)), and shall include land held by incorporated Native groups, regional corporations, and village corporations, as defined in and pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1602), public domain Indian allotments, and former Indian reservations in the State of Oklahoma;

(y) *Indian Tribe* means any Indian Tribe, band, pueblo, nation, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), which is recognized as eligible for special programs and services provided by the United States to Indians because of their status as Indians;

(z) *Insider* means any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent or more of any class of stock), or agent (or any family member or business partner of any of the above) of any Applicant, Affiliate or Community Partner;

(aa) *Insured CDFI* means a CDFI that is an Insured Depository Institution or an Insured Credit Union;

(bb) *Insured Credit Union* means any credit union, the member accounts of which are insured by the National Credit Union Share Insurance Fund;

(cc) *Insured Depository Institution* means any bank or thrift, the deposits of which are insured by the Federal Deposit Insurance Corporation;

(dd) *Investment Area* means a geographic area meeting the requirements of § 1805.201(b)(3);

(ee) *Low-Income* means an income, adjusted for family size, of not more than:

(1) For Metropolitan Areas, 80 percent of the area median family income; and

(2) For non-Metropolitan Areas, the greater of:

(i) 80 percent of the area median family income; or

(ii) 80 percent of the statewide non-Metropolitan Area median family income;

(ff) *Metropolitan Area* means an area designated as such by the Office of Management and Budget pursuant to 44 U.S.C. 3504(e) and 31 U.S.C. 1104(d) and Executive Order 10253 (3 CFR, 1949–1953 Comp., p. 758), as amended;

(gg) *Non-Regulated CDFI* means any entity meeting the eligibility requirements described in § 1805.200 which is not a Depository Institution Holding Company, Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union;

(hh) *State* means any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands;

(ii) *State-Insured Credit Union* means any credit union that is regulated by, and/or the member accounts of which are insured by, a State agency or instrumentality;

(jj) *Subsidiary* means any company which is owned or Controlled directly or indirectly by another company and includes any service corporation owned in whole or part by an Insured Depository Institution or any Subsidiary of such a service corporation, except as provided in § 1805.200(b)(4);

(kk) *Targeted Population* means individuals or an identifiable group of individuals meeting the requirements of § 1805.201(b)(3); and

(ll) *Target Market* means an Investment Area(s) and/or a Targeted Population(s).

(mm)(1) *Voting Securities* means shares of common or preferred stock, general or limited partnership shares or interests, or similar interests if the shares or interest, by statute, charter, or in any manner, entitle the holder:

(i) To vote for or select directors, trustees, or partners (or persons exercising similar functions of the issuing company); or

(ii) To vote on or to direct the conduct of the operations or other significant policies of the issuing company.

(2) *Nonvoting shares.* Preferred shares, limited partnership shares or interests, or similar interests are not Voting Securities if:

(i) Any voting rights associated with the shares or interest are limited solely to the type customarily provided by statute with regard to matters that would significantly and adversely affect the rights or preference of the security or other interest, such as the issuance of additional amounts or classes of senior securities, the modification of the terms of the security or interest, the dissolution of the issuing company, or the payment of dividends by the issuing company when preferred dividends are in arrears;

(ii) The shares or interest represent an essentially passive investment or financing device and do not otherwise provide the holder with control over the issuing company; and

(iii) The shares or interest do not entitle the holder, by statute, charter, or in any manner, to select or to vote for the selection of directors, trustees, or partners (or persons exercising similar functions) of the issuing company.

**§ 1805.105 Waiver authority.**

The Fund may waive any requirement of this part that is not required by law upon a determination of good cause. Each such waiver shall be in writing and supported by a statement of the facts and the grounds forming the basis of the waiver. For a waiver in an individual case, the Fund must determine that application of the requirement to be waived would adversely affect the achievement of the purposes of the Act. For waivers of general applicability, the Fund will publish notification of granted waivers in the **Federal Register**.

**§ 1805.106 OMB control number.**

The collection of information requirements in this part have been approved by the Office of Management and Budget and assigned OMB control numbers 1559–0006, 1559–0021 and 1559–0022.

## Subpart B—Eligibility

**§ 1805.200 Applicant eligibility.**

(a) *General requirements.* (1) An entity that meets the requirements described in § 1805.201(b) and paragraph (b) of this section will be considered a CDFI and, subject to paragraph (a)(3) of this section, will be eligible to apply for assistance under this part.

(2) An entity that proposes to become a CDFI is eligible to apply for assistance under this part if the Fund:

(i) Receives a complete application for certification from the entity within the time period set forth in an applicable Notice of Funds Availability; and

(ii) Determines that such entity's application materials provide a realistic course of action to ensure that it will meet the requirements described in § 1805.201(b) and paragraph (b) of this section within the period set forth in an applicable Notice of Funds Availability. The Fund will not, however, disburse any financial assistance to such an entity before it meets the requirements described in this section. Moreover, notwithstanding paragraphs (a)(1) and (a)(2)(ii) of this section, the Fund reserves the right to require an entity to have been certified as described in § 1805.201(a) prior to its submission of an application for assistance, as set forth in an applicable Notice of Funds Availability.

(3) The Fund shall require an entity to meet any additional eligibility requirements that the Fund deems appropriate.

(4) The Fund, in its sole discretion, shall determine whether an Applicant fulfills the requirements set forth in this section and § 1805.201(b).

(b) *Provisions applicable to Depository Institution Holding Companies and Insured Depository Institutions.* (1) A Depository Institution Holding Company may qualify as a CDFI only if it and its Affiliates collectively satisfy the requirements described in this section.

(2) No Affiliate of a Depository Institution Holding Company may qualify as a CDFI unless the holding company and all of its Affiliates collectively meet the requirements described in this section.

(3) No Subsidiary of an Insured Depository Institution may qualify as a CDFI if the Insured Depository Institution and its Subsidiaries do not collectively meet the requirements described in this section.

(4) For the purposes of paragraphs (b)(1), (2) and (3) of this section, an Applicant will be considered to be a Subsidiary of any Insured Depository Institution or Depository Institution Holding Company that controls 25 percent or more of any class of the Applicant's voting shares, or otherwise controls, in any manner, the election of a majority of directors of the Applicant.

**§ 1805.201 Certification as a Community Development Financial Institution.**

(a) *General.* An entity may apply to the Fund for certification that it meets the CDFI eligibility requirements regardless of whether it is seeking financial or technical assistance from the Fund. Entities seeking such certification shall provide the information set forth in the application for certification. Certification by the Fund will verify that the entity meets the CDFI eligibility requirements. However, such certification shall not constitute an opinion by the Fund as to the financial viability of the CDFI or that the CDFI will be selected to receive an award from the Fund. The Fund, in its sole discretion, shall have the right to decertify a certified entity after a determination that the eligibility requirements of paragraph (b) of this section, § 1805.200(b) or (a)(3) (if applicable) are no longer met.

(b) *Eligibility verification.* An Applicant shall demonstrate whether it meets the eligibility requirements described in this paragraph (b) of this section and § 1805.200 by providing the information described in the application for certification demonstrating that the Applicant meets the eligibility requirements described in paragraphs (b)(1) through (b)(6) of this section. The Fund, in its sole discretion, shall determine whether an Applicant has satisfied the requirements of this paragraph (b) and § 1805.200.

(1) *Primary mission.* A CDFI shall have a primary mission of promoting community development. In determining whether an Applicant has such a primary mission, the Fund will consider whether the activities of the Applicant are purposefully directed toward improving the social and/or economic conditions of underserved people (which may include Low-Income persons and persons who lack adequate access to capital and/or Financial Services) and/or residents of economically distressed communities (which may include Investment Areas).

(2) *Financing entity.* A CDFI shall be an entity whose predominant business activity is the provision, in arms-length transactions, of Financial Products, Development Services, and/or other similar financing. An Applicant may demonstrate that it is such an entity if it is a(n):

(i) Depository Institution Holding Company;

(ii) Insured Depository Institution, Insured Credit Union, or State-Insured Credit Union; or

(iii) Organization that is deemed by the Fund to have such a predominant business activity as a result of analysis of its financial statements, organizing documents, and any other information required to be submitted as part of its application. In conducting such analysis, the Fund may take into consideration an Applicant's total assets and its use of personnel.

(3) *Target Market*—(i) *General.* An Applicant may be found to serve a Target Market by virtue of serving one or more Investment Areas and/or Targeted Populations. An Investment Area shall meet specific geographic and other criteria described in paragraph (b)(3)(ii) of this section, and a Targeted Population shall meet the criteria described in paragraph (b)(3)(iii) in this section.

(ii) *Investment Area*—(A) *General.* A geographic area will be considered eligible for designation as an Investment Area if it:

*(1)* Is entirely located within the geographic boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands); and either

*(2)* Meets at least one of the objective criteria of economic distress as set forth in paragraph (b)(3)(ii)(D) of this section and has significant unmet needs for loans, Equity Investments, or Financial Services as described in paragraph (b)(3)(ii)(E) of this section; or

*(3)* Encompasses (*i.e.* wholly consists of) or is wholly located within an Empowerment Zone or Enterprise Community designated under section 1391 of the Internal Revenue Code of 1986 (26 U.S.C. 1391).

(B) *Geographic units.* Subject to the remainder of this paragraph (B), an Investment Area shall consist of a geographic unit(s) that is a county (or equivalent area), minor civil division that is a unit of local government, incorporated place, census tract, block numbering area, block group, or American Indian or Alaska Native area (as such units are defined or reported by the U.S. Bureau of the Census). However, geographic units in Metropolitan Areas that are used to comprise an Investment Area shall be limited to census tracts, block groups and American Indian or Alaskan Native areas. An Applicant may designate one or more Investment Areas as part of a single application.

(C) *Designation.* An Applicant may designate an Investment Area by selecting:

(*1*) A geographic unit(s) which individually meets one of the criteria in paragraph (b)(3)(ii)(D) of this section; or

(*2*) A group of contiguous geographic units which together meet one of the criteria in paragraph (b)(3)(ii)(D) of this section, provided that the combined population residing within individual geographic units not meeting any such criteria does not exceed 15 percent of the total population of the entire Investment Area.

(D) *Distress criteria.* An Investment Area (or the units that comprise an area) must meet at least one of the following objective criteria of economic distress (as reported in the most recently completed decennial census published by the U.S. Bureau of the Census):

(*1*) The percentage of the population living in poverty is at least 20 percent;

(*2*) In the case of an Investment Area located:

(*i*) Within a Metropolitan Area, the median family income shall be at or below 80 percent of the Metropolitan Area median family income or the national Metropolitan Area median family income, whichever is greater; or

(*ii*) Outside of a Metropolitan Area, the median family income shall be at or below 80 percent of the statewide non-Metropolitan Area median family income or the national non-Metropolitan Area median family income, whichever is greater;

(*3*) The unemployment rate is at least 1.5 times the national average;

(*4*) In counties located outside of a Metropolitan Area, the county population loss during the period between the most recent decennial census and the previous decennial census is at least 10 percent; or

(*5*) In counties located outside of a Metropolitan Area, the county net migration loss during the five-year period preceding the most recent decennial census is at least five percent.

(E) *Unmet needs.* An Investment Area will be deemed to have significant unmet needs for loans or Equity Investments if a narrative analysis provided by the Applicant adequately demonstrate a pattern of unmet needs for Financial Products or Financial Services within such area(s).

(F) *Serving Investment Areas.* An Applicant may serve an Investment Area directly or through borrowers or investees that serve the Investment Area or provide significant benefits to its residents.

(iii) *Targeted Population*—(A) *General.* Targeted Population shall mean individuals, or an identifiable group of individuals, who are Low-Income persons or lack adequate access to Financial Products or Financial Services in the Applicant's service area. The members of a Targeted Population shall reside within the boundaries of the United States (which shall encompass any State of the United States, the District of Columbia or any territory of the United States, Puerto Rico, Guam, American Samoa, the Virgin Islands, and the Northern Mariana Islands).

(B) *Serving A Targeted Population.* An Applicant may serve the members of a Targeted Population directly or indirectly or through borrowers or investees that directly serve or provide significant benefits to such members.

(4) *Development Services.* A CDFI directly, through an Affiliate, or through a contract with another provider, shall provide Development Services in conjunction with its Financial Products.

(5) *Accountability.* A CDFI must maintain accountability to residents of its Investment Area(s) or Targeted Population(s) through representation on its governing board or otherwise.

(6) *Non-government.* A CDFI shall not be an agency or instrumentality of the United States, or any State or political subdivision thereof. An entity that is created by, or that receives substantial assistance from, one or more government entities may be a CDFI provided it is not controlled by such entities and maintains independent decision-making power over its activities.

## Subpart C—Use of Funds/Eligible Activities

### § 1805.300 Purposes of financial assistance.

The Fund may provide financial assistance through investment instruments described under subpart D of this part. Such financial assistance is intended to strengthen the capital position and enhance the ability of an Awardee to provide Financial Products and Financial Services.

### § 1805.301 Eligible activities.

Financial assistance provided under this part may be used by an Awardee to serve Investment Area(s) or Targeted Population(s) by developing or supporting, through lending, investing, enhancing liquidity, or other means of finance:

(a) Commercial facilities that promote revitalization, community stability or job creation or retention;

(b) Businesses that:

(1) Provide jobs for Low-Income persons;

(2) Are owned by Low-Income persons; or

(3) Enhance the availability of products and services to Low-Income persons;

(c) Community Facilities;

(d) The provision of Financial Services;

(e) Housing that is principally affordable to Low-Income persons, except that assistance used to facilitate home ownership shall only be used for services and lending products that serve Low-Income persons and that:

(1) Are not provided by other lenders in the area; or

(2) Complement the services and lending products provided by other lenders that serve the Investment Area(s) or Targeted Population(s);

(f) The provision of consumer loans (a loan to one or more individuals for household, family, or other personal expenditures); or

(g) Other businesses or activities as requested by the Applicant and deemed appropriate by the Fund.

#### § 1805.302 Restrictions on use of assistance.

(a) An Awardee shall use assistance provided by the Fund and its corresponding matching funds only for the eligible activities approved by the Fund and described in the Assistance Agreement.

(b) An Awardee may not distribute assistance to an Affiliate without the Fund's consent.

(c) Assistance provided upon approval of an application involving a Community Partnership shall only be distributed to the Awardee and shall not be used to fund any activities carried out by a Community Partner or an Affiliate of a Community Partner.

#### § 1805.303 Technical assistance.

(a) *General.* The Fund may provide technical assistance to build the capacity of a CDFI or an entity that proposes to become a CDFI. Such technical assistance may include training for management and other personnel; development of programs, products and services; improving financial management and internal operations; enhancing a CDFI's community impact; or other activities deemed appropriate by the Fund. The Fund, in its sole discretion, may provide technical assistance in amounts, or under terms and conditions that are different from those requested by an Applicant. The Fund may not provide any technical assistance to an Applicant for the purpose of assisting in the preparation of an application. The Fund may provide technical assistance to a CDFI directly, through grants, or by contracting with organizations that possess the appropriate expertise.

(b) The Fund may provide technical assistance regardless of whether the recipient also receives financial assistance under this part. Technical assistance provided pursuant to this part is subject to the assistance limits described in § 1805.402.

(c) An Applicant seeking technical assistance must meet the eligibility requirements described in § 1805.200 and submit an application as described in § 1805.600.

(d) Applicants for technical assistance pursuant to this part will be evaluated pursuant to the merit-based qualitative review criteria in subpart G of this part, except as otherwise may be provided in the applicable Notice of Funds Availability. In addition, the requirements for matching funds are not applicable to technical assistance requests.

## Subpart D—Investment Instruments

#### § 1805.400 Investment instruments—general.

The Fund will provide financial assistance to an Awardee through one or more of the investment instruments described in § 1805.401, and under such terms and conditions as described in this subpart D. The Fund, in its sole discretion, may provide financial assistance in amounts, through investment instruments, or under rates, terms and conditions that are different from those requested by an Applicant.

#### § 1805.401 Forms of investment instruments.

(a) *Equity.* The Fund may make nonvoting equity investments in an Awardee, including, without limitation, the purchase of nonvoting stock. Such stock shall be transferable and, in the discretion of the Fund, may provide for convertibility to voting stock upon transfer. The Fund shall not own more than 50 percent of the equity of an Awardee and shall not control its operations.

(b) *Grants.* The Fund may award grants.

(c) *Loans.* The Fund may make loans, if permitted by applicable law.

(d) *Deposits and credit union shares.* The Fund may make deposits (which shall include credit union shares) in Insured CDFIs and State-Insured Credit Unions. Deposits in an Insured CDFI or a State-Insured Credit Union shall not be subject to any requirement for collateral or security.

#### § 1805.402 Assistance limits.

(a) *General.* Except as provided in paragraph (b) of this section, the Fund may not provide, pursuant to this part, more than $5 million, in the aggregate, in financial and technical assistance to an Awardee and its Affiliates during any three-year period.

(b) *Additional amounts.* If an Awardee proposes to establish a new Affiliate to serve an Investment Area(s) or Targeted Population(s) outside of any State, and outside of any Metropolitan Area, currently served by the Awardee or its Affiliates, the Awardee may receive additional assistance pursuant to this part up to a maximum of $3.75 million during the same three-year period. Such additional assistance:

(1) Shall be used only to finance activities in the new or expanded Investment Area(s) or Targeted Population(s); and

(2) Must be distributed to a new Affiliate that meets the eligibility requirements described in § 1805.200 and is selected for assistance pursuant to subpart G of this part.

(c) An Awardee may receive the assistance described in paragraph (b) of this section only if no other application to serve substantially the same Investment Area(s) or Targeted Population(s) that meets the requirements of § 1805.701(a) was submitted to the Fund prior to the receipt of the application of said Awardee and within the current funding round.

#### § 1805.403 Authority to sell.

The Fund may, at any time, sell its equity investments and loans, provided the Fund shall retain the authority to enforce the provisions of the Assistance Agreement until the performance goals specified therein have been met.

## Subpart E—Matching Funds Requirements

#### § 1805.500 Matching funds—general.

All financial assistance awarded under this part shall be matched with funds from sources other than the Federal government. Except as provided in § 1805.502, such matching funds shall be provided on the basis of not less than one dollar for each dollar provided by the Fund. Funds that have been used to satisfy a legal requirement for obtaining funds under either the CDFI Program or another Federal grant or award program may not be used to satisfy the matching requirements described in this section. Community Development Block Grant Program and other funds provided pursuant to the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et seq.*), shall be considered Federal government funds and shall not be used to meet the matching requirements. Matching funds shall be used as provided in the Assistance Agreement. Funds that are used prior to the execution of the Assistance Agreement may nevertheless qualify as matching funds provided the Fund determines in its reasonable discretion that such use promoted the purpose of the Comprehensive Business Plan that the Fund is supporting through its assistance.

**§ 1805.501 Comparability of form and value.**

(a) Matching funds shall be at least comparable in form (*e.g.*, equity investments, deposits, credit union shares, loans and grants) and value to financial assistance provided by the Fund (except as provided in § 1805.502). The Fund shall have the discretion to determine whether matching funds pledged are comparable in form and value to the financial assistance requested.

(b) In the case of an Awardee that raises matching funds from more than one source, through different investment instruments, or under varying terms and conditions, the Fund may provide financial assistance in a manner that represents the combined characteristics of such instruments.

(c) An Awardee may meet all or part of its matching requirements by committing available earnings retained from its operations.

**§ 1805.502 Severe constraints waiver.**

(a) In the case of an Applicant with severe constraints on available sources of matching funds, the Fund, in its sole discretion, may permit such Applicant to comply with the matching requirements by:

(1) Reducing such requirements by up to 50 percent; or

(2) Permitting an Applicant to provide matching funds in a form to be determined at the discretion of the Fund, if such an Applicant:

(i) Has total assets of less than $100,000;

(ii) Serves an area that is not a Metropolitan Area; and

(iii) Is not requesting more than $25,000 in assistance.

(b) Not more than 25 percent of the total funds available for obligation under this part in any fiscal year may be matched as described in paragraph (a) of this section. Additionally, not more than 25 percent of the total funds disbursed under this part in any fiscal year may be matched as described in paragraph (a) of this section.

(c) An Applicant may request a ''severe constraints waiver'' as part of its application for assistance. An Applicant shall provide a narrative justification for its request, indicating:

(1) The cause and extent of the constraints on raising matching funds;

(2) Efforts to date, results, and projections for raising matching funds;

(3) A description of the matching funds expected to be raised; and

(4) Any additional information requested by the Fund.

(d) The Fund will grant a ''severe constraints waiver'' only in exceptional circumstances when it has been demonstrated, to the satisfaction of the Fund, that an Investment Area(s) or Targeted Population(s) would not be adequately served without the waiver.

**§ 1805.503 Time frame for raising match.**

Applicants shall satisfy matching funds requirements within the period set forth in the applicable Notice of Funds Availability.

**§ 1805.504 Retained earnings.**

(a) An Applicant that proposes to meet all or a portion of its matching funds requirements as set forth in this part by committing available earnings retained from its operations pursuant to § 1805.501(c) shall be subject to the restrictions described in this section.

(b)(1) In the case of a for-profit Applicant, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings (excluding the after-tax value to an Applicant of any grants and other donated assets) that has occurred over the Applicant's most recent fiscal year (*e.g.*, retained earnings at the end of fiscal year 2003 less retained earnings at the end of fiscal year 2002); or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for an equity investment. The terms and conditions of financial assistance will be determined by the Fund.

(c)(1) In the case of a non-profit Applicant (other than an Insured Credit Union or a State-Insured Credit Union), retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in an Applicant's net assets (excluding the amount of any grants and value of other donated assets) that has occurred over the Applicant's most recent fiscal year; or

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years.

(2) Such retained earnings may be used to match a request for a grant. The terms and conditions of financial assistance will be determined by the Fund.

(d)(1) In the case of an Applicant that is an Insured Credit Union or a State-Insured Credit Union, retained earnings that may be used for matching funds purposes shall consist of:

(i) The increase in retained earnings that has occurred over the Applicant's most recent fiscal year;

(ii) The annual average of such increases that has occurred over the Applicant's three most recent fiscal years; or

(iii) The entire retained earnings that have been accumulated since the inception of the Applicant provided that the conditions described in paragraph (d)(4) of this section are satisfied.

(2) For the purpose of paragraph (d)(4) of this section, retained earnings shall be comprised of ''Regular Reserves,'' ''Other Reserves'' (excluding reserves specifically dedicated for losses), and ''Undivided Earnings'' as such terms are used in the National Credit Union Administration's accounting manual.

(3) Such retained earnings may be used to match a request for a grant. The terms and conditions of financial assistance will be determined by the Fund.

(4) If the option described in paragraph (d)(1)(iii) of this section is used:

(i) The Assistance Agreement shall require that:

(A) An Awardee increase its member and/or non-member shares or other measurable activity (*e.g.*, loans outstanding) as defined in and by an amount that is set forth in an applicable Notice of Funds Availability; and

(B) Such increase must be achieved by a date certain set forth in the applicable Notice of Funds Availability;

(ii) The Applicant's Comprehensive Business Plan shall discuss its strategy for raising the required shares (or other measurable activity) and the activities associated with such increased shares (or other measurable activity);

(iii) The level from which the increases in shares (or other measurable activity) described in paragraph (d)(4)(i) of this section will be measured will be as of June 30 of the calendar year in which the applicable application deadline falls (or such other date as set forth in the applicable Notice of Funds Availability); and

(iv) Financial assistance shall be disbursed by the Fund only as the amount of increased shares (or other measurable activity) described in paragraph (d)(4)(i)(A) of this section is achieved.

(5) The Fund will allow an Applicant to utilize the option described in paragraph (d)(1)(iii) of this section for matching funds only if it determines, in its sole discretion, that the Applicant will have a high probability of success in increasing its shares (or other measurable activity) to the specified amounts.

(e) Retained earnings accumulated after the end of the Applicant's most recent fiscal year ending prior to the

appropriate application deadline may not be used as matching funds.

## Subpart F—Applications for Assistance

### § 1805.600 Notice of Funds Availability.

Each Applicant shall submit an application for financial or technical assistance under this part in accordance with the applicable Notice of Funds Availability published in the **Federal Register**. The Notice of Funds Availability will advise potential Applicants on how to obtain an application packet and will establish deadlines and other requirements. The Notice of Funds Availability may specify any limitations, special rules, procedures, and restrictions for a particular funding round. After receipt of an application, the Fund may request clarifying or technical information on the materials submitted as part of such application.

## Subpart G—Evaluation and Selection of Applications

### § 1805.700 Evaluation and selection—general.

Applicants will be evaluated and selected, at the sole discretion of the Fund, to receive assistance based on a review process, that could include an interview(s) and/or site visit(s), that is intended to:

(a) Ensure that Applicants are evaluated on a merit basis and in a fair and consistent manner;

(b) Take into consideration the unique characteristics of Applicants that vary by institution type, total asset size, stage of organizational development, markets served, products and services provided, and location;

(c) Ensure that each Awardee can successfully meet the goals of its Comprehensive Business Plan and achieve community development impact;

(d) Ensure that Awardees represent a geographically diverse group of Applicants serving Metropolitan Areas, non-Metropolitan Areas, and Indian Reservations from different regions of the United States; and

(e) Take into consideration other factors as described in the applicable Notice of Funds Availability.

### § 1805.701 Evaluation of applications.

(a) *Eligibility and completeness.* An Applicant will not be eligible to receive assistance pursuant to this part if it fails to meet the eligibility requirements described in § 1805.200 or if it has not submitted complete application materials. For the purposes of this paragraph (a), the Fund reserves the right to request additional information from the Applicant, if the Fund deems it appropriate.

(b) *Substantive review.* In evaluating and selecting applications to receive assistance, the Fund will evaluate the Applicant's likelihood of success in meeting the goals of the Comprehensive Business Plan and achieving community development impact, by considering factors such as:

(1) Community development track record (*e.g.*, in the case of an Applicant with a prior history of serving a Target Market, the extent of success in serving such Target Market);

(2) Operational capacity and risk mitigation strategies;

(3) Financial track record and strength;

(4) Capacity, skills and experience of the management team;

(5) Understanding of its market context, including its analysis of current and prospective customers, the extent of economic distress within the designated Investment Area(s) or the extent of need within the designated Targeted Population(s), as those factors are measured by objective criteria, the extent of need for Equity Investments, loans, Development Services, and Financial Services within the designated Target Market, and the extent of demand within the Target Market for the Applicant's products and services;

(6) Program design and implementation plan, including an assessment of its products and services, marketing and outreach efforts, delivery strategy, and coordination with other institutions and/or a Community Partner, or participation in a secondary market for purposes of increasing the Applicant's resources. In the case of an Applicant submitting an application with a Community Partner, the Fund will evaluate the extent to which the Community Partner will participate in carrying out the activities of the Community Partnership; the extent to which the Community Partner will enhance the likelihood of success of the Comprehensive Business Plan; and the extent to which service to the designated Target Market will be better performed by a Community Partnership than by the Applicant alone;

(7) Projections for financial performance, capitalization and raising needed external resources, including the amount of firm commitments and matching funds in hand to meet or exceed the matching funds requirements and, if applicable, the likely success of the plan for raising the balance of the matching funds in a timely manner, the extent to which the matching funds are, or will be, derived from private sources, and whether an Applicant is, or will become, an Insured CDFI or a State-Insured Credit Union;

(8) Projections for community development impact, including the extent to which an Applicant will concentrate its activities on serving its Target Market(s), the extent of support from the designated Target Market, the extent to which an Applicant is, or will be, Community-Owned or Community-Governed, and the extent to which the activities proposed in the Comprehensive Business Plan will expand economic opportunities or promote community development within the designated Target Market;

(9) The extent of need for the Fund's assistance, as demonstrated by the extent of economic distress in the Applicant's Target Market and the extent to which the Applicant needs the Fund's assistance to carry out its Comprehensive Business Plan;

(10) In the case of an Applicant that has previously received assistance under the CDFI Program, the Fund also will consider the Applicant's level of success in meeting its performance goals, financial soundness covenants (if applicable), and other requirements contained in the previously negotiated and executed Assistance Agreement(s) with the Fund, the undisbursed balance of assistance, and whether the Applicant will, with additional assistance from the Fund, expand its operations into a new Target Market, offer more products or services, and/or increase the volume of its activities; and

(11) The Fund may consider any other factors, as it deems appropriate, in reviewing an application as set forth in an applicable Notice of Funds Availability.

(c) *Consultation with Appropriate Federal Banking Agencies.* The Fund will consult with, and consider the views of, the Appropriate Federal Banking Agency prior to providing assistance to:

(1) An Insured CDFI;

(2) A CDFI that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency; or

(3) A CDFI that has as its Community Partner an institution that is examined by, or subject to, the reporting requirements of an Appropriate Federal Banking Agency.

(d) *Consultation with Appropriate State Agencies.* Prior to providing assistance to a State-Insured Credit Union, the Fund may consult with, and consider the views of, the Appropriate State Agency.

(e) *Awardee selection.* The Fund will select Awardees based on the criteria described in paragraph (b) of this section and any other criteria set forth in this part or the applicable Notice of Funds Availability.

## Subpart H—Terms and Conditions of Assistance

### § 1805.800 Safety and soundness.

(a) *Regulated institutions.* Nothing in this part, or in an Assistance Agreement, shall affect any authority of an Appropriate Federal Banking Agency or Appropriate State Agency to supervise and regulate any institution or company.

(b) *Non-Regulated CDFIs.* The Fund will, to the maximum extent practicable, ensure that Awardees that are Non-Regulated CDFIs are financially and managerially sound and maintain appropriate internal controls.

### § 1805.801 Notice of award.

(a) The Fund will generally signify its selection of an Applicant as an Awardee by delivering a signed notice of award to the Applicant. The notice of award will contain the general terms and conditions underlying the Fund's provision of assistance to an Awardee including, but not limited to, the requirement that an Awardee and the Fund enter into an Assistance Agreement.

(b) To become an Awardee under paragraph (a) of this section, an Applicant shall execute the notice of award and return it to the Fund.

(c) By executing a notice of award, an Awardee agrees that, if prior to entering into an Assistance Agreement with the Fund, information comes to the attention of the Fund that either adversely affects the Awardee's eligibility for funding, or adversely affects the Fund's evaluation of the Awardee's application, or indicates fraud or mismanagement on the part of the Awardee, the Fund may, in its discretion and without advance notice to the Awardee, terminate the notice of award or take such other actions as it deems appropriate. Moreover, by executing a notice of award, an Awardee also agrees that, if prior to entering into an Assistance Agreement with the Fund, the Fund determines that the Awardee is not in compliance with the terms of any previous Assistance Agreement entered into with the Fund, the Fund may, in its discretion and without advance notice to the Awardee, either terminate the notice of award or take such other actions as it deems appropriate. An Awardee shall notify the Fund of information that an Awardee may reasonably believe may affect its eligibility or ability to achieve the objectives of its Comprehensive Business Plan as submitted to the Fund (such as changes in management).

(d) The Fund will notify an Awardee of either the Fund's termination of a notice of award or such other action(s) taken by the Fund under paragraph (c) of this section.

### § 1805.802 Assistance Agreement; sanctions.

(a) Prior to providing any assistance, the Fund and an Awardee shall execute an Assistance Agreement that requires an Awardee to comply with performance goals and abide by other terms and conditions of assistance. Such performance goals may be modified at any time by mutual consent of the Fund and an Awardee or as provided in paragraph (c) of this section. If a Community Partner or an Affiliate is part of an application that is selected for assistance, such partner must be a party to the Assistance Agreement, if deemed appropriate by the Fund.

(b) An Awardee shall comply with performance goals that have been negotiated with the Fund and which are based upon the Comprehensive Business Plan submitted as part of the Awardee's application. Such performance goals may include measures that require an Awardee to:

(1) Be financially sound;

(2) Be managerially sound;

(3) Maintain appropriate internal controls; and/or

(4) Achieve specific lending, investment, and development service objectives.

Performance goals for Insured CDFIs shall be determined in consultation with the Appropriate Federal Banking Agency, as applicable. Such goals shall be incorporated in, and enforced under, the Awardee's Assistance Agreement. Performance goals for State-Insured Credit Unions may be determined in consultation with the Appropriate State Agency, if deemed appropriate by the Fund.

(c) The Assistance Agreement shall provide that, in the event of fraud, mismanagement, noncompliance with the Act and the Fund's regulations, or noncompliance with the terms and conditions of the Assistance Agreement on the part of the Awardee (or the Community Partner, if applicable), the Fund, in its discretion, may:

(1) Require changes in the performance goals set forth in the Assistance Agreement;

(2) Require changes in the Awardee's Comprehensive Business Plan;

(3) Revoke approval of the Awardee's application;

(4) Reduce or terminate the Awardee's assistance;

(5) Require repayment of any assistance that has been distributed to the Awardee;

(6) Bar the Awardee (and the Community Partner, if applicable) from reapplying for any assistance from the Fund; or

(7) Take such other actions as the Fund deems appropriate.

(d) In the case of an Insured CDFI, the Assistance Agreement shall provide that the provisions of the Act, this part, and the Assistance Agreement shall be enforceable under 12 U.S.C. 1818 of the Federal Deposit Insurance Act by the Appropriate Federal Banking Agency, as applicable, and that any violation of such provisions shall be treated as a violation of the Federal Deposit Insurance Act. Nothing in this paragraph (d) precludes the Fund from directly enforcing the Assistance Agreement as provided for under the terms of the Act.

(e) The Fund shall notify the Appropriate Federal Banking Agency before imposing any sanctions on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of that agency. The Fund shall not impose a sanction described in paragraph (c) of this section if the Appropriate Federal Banking Agency, in writing, not later than 30 calendar days after receiving notice from the Fund:

(1) Objects to the proposed sanction;

(2) Determines that the sanction would:

(i) Have a material adverse effect on the safety and soundness of the institution; or

(ii) Impede or interfere with an enforcement action against that institution by that agency;

(3) Proposes a comparable alternative action; and

(4) Specifically explains:

(i) The basis for the determination under paragraph (e)(2) of this section and, if appropriate, provides documentation to support the determination; and

(ii) How the alternative action suggested pursuant to paragraph (e)(3) of this section would be as effective as the sanction proposed by the Fund in securing compliance and deterring future noncompliance.

(f) In reviewing the performance of an Awardee in which its Investment Area(s) includes an Indian Reservation or Targeted Population(s) includes an Indian Tribe, the Fund shall consult with, and seek input from, the appropriate tribal government.

(g) Prior to imposing any sanctions pursuant to this section or an Assistance

Agreement, the Fund shall, to the maximum extent practicable, provide the Awardee (or the Community Partner, if applicable) with written notice of the proposed sanction and an opportunity to comment. Nothing in this section, however, shall provide an Awardee or Community Partner with the right to any formal or informal hearing or comparable proceeding not otherwise required by law.

**§ 1805.803 Disbursement of funds.**

Assistance provided pursuant to this part may be provided in a lump sum or over a period of time, as determined appropriate by the Fund. The Fund shall not provide any assistance (other than technical assistance) under this part until an Awardee has satisfied any conditions set forth in its Assistance Agreement and has secured in-hand and/or firm commitments for the matching funds required for such assistance pursuant to the applicable Notice of Funds Availability. At a minimum, a firm commitment must consist of a written agreement between an Awardee and the source of the matching funds that is conditioned only upon the availability of the Fund's assistance and such other conditions as the Fund, in its sole discretion, may deem appropriate. Such agreement must provide for disbursal of the matching funds to an Awardee prior to, or simultaneously with, receipt by an Awardee of the Federal funds.

**§ 1805.804 Data collection and reporting.**

(a) *Data—General.* An Awardee (and a Community Partner, if appropriate) shall maintain such records as may be prescribed by the Fund that are necessary to:

(1) Disclose the manner in which Fund assistance is used;

(2) Demonstrate compliance with the requirements of this part and an Assistance Agreement; and

(3) Evaluate the impact of the CDFI Program.

(b) *Customer profiles.* An Awardee (and a Community Partner, if appropriate) shall compile such data on the gender, race, ethnicity, national origin, or other information on individuals that utilize its products and services as the Fund shall prescribe in an Assistance Agreement. Such data will be used to determine whether residents of Investment Area(s) or members of Targeted Population(s) are adequately served and to evaluate the impact of the CDFI Program.

(c) *Access to records.* An Awardee (and a Community Partner, if appropriate) must submit such financial and activity reports, records, statements, and documents at such times, in such forms, and accompanied by such reporting data, as required by the Fund or the U.S. Department of Treasury to ensure compliance with the requirements of this part and to evaluate the impact of the CDFI Program. The United States Government, including the U.S. Department of Treasury, the Comptroller General, and their duly authorized representatives, shall have full and free access to the Awardee's offices and facilities and all books, documents, records, and financial statements relating to use of Federal funds and may copy such documents as they deem appropriate. The Fund, if it deems appropriate, may prescribe access to record requirements for entities that are borrowers of, or that receive investments from, an Awardee.

(d) *Retention of records.* An Awardee shall comply with all record retention requirements as set forth in OMB Circular A–110 (as applicable).

(e) *Data collection and reporting.* Each Awardee shall submit to the Fund, at least annually and within 180 days after the end of the Awardee's fiscal year, such information and documentation that will permit the Fund to review the Awardee's progress (and the progress of its Affiliates, Subsidiaries, and/or Community Partners, if appropriate) in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement. The information and documentation shall include, but not be limited to, an Annual Report, which shall comprise the following components:

(1) *Financial Report:*

(i) All non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the Fund financial statements that have been reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services,* issued by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year (audited financial statements can be provided by the due date in lieu of reviewed statements, if available). Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are required to have their financial statements audited pursuant to OMB Circular A–133 *Audits of States, Local Governments and Non-Profit Organizations,* must also submit their A–133 audited financial statements to the Fund no later than 270 days after the end of the Awardee's fiscal year. Non-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) that are not required to have financial statements audited pursuant to OMB Circular A–133, *Audits of States, Local Governments and Non-Profit Organizations,* must submit to the Fund a statement signed by the Awardee's Authorized Representative or certified public accountant, asserting that the Awardee is not required to have a single audit pursuant OMB Circular A–133.

(ii) For-profit organizations (excluding Insured CDFIs and State-Insured Credit Unions) must submit to the Fund financial statements audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants, no later than 180 days after the end of the Awardee's fiscal year.

(iii) Insured CDFIs are not required to submit financial statements to the Fund. The Fund will obtain the necessary information from publicly available sources. State-Insured Credit Unions must submit to the Fund copies of the financial statements that they submit to the Appropriate State Agency.

(iv) If multiple organizations sign the Assistance Agreement: The Awardee may submit combined financial statements and footnotes for the Awardee and other entities that signed the Assistance Agreement as long as the financial statements of each signatory are shown separately (for example, in combining financial statements).

(v) If the Assistance is in the form of a loan or a deposit: The Awardee must provide the Fund with financial statements annually throughout the term of the loan or deposit.

(vi) If the Assistance is in the form of an equity investment (common or preferred stock, secondary capital, certificate of deposit, partnership interest, or debentures): The Awardee must provide the Fund with financial statements annually for each year in which the Fund holds the equity investment.

(2) *Performance Goals Report/Annual Survey:* Performance Goals include performance goals and measures that are specific to the Awardee's application for funding.

(i) *Performance Goals Report:* The Awardee will submit to the Fund information through the Annual Survey that will inform the Fund of its compliance toward meeting the Performance Goals set forth in the Performance Goals Report.

(ii) *Annual Survey:* The Fund will use the Annual Survey to collect data by which to assess the Awardee's compliance toward meeting its

Performance Goals and the impact of the CDFI Program and the CDFI industry. The Annual Survey is comprised of two components, the Institution-Level Report and the Transaction-Level Report.

(A) *Institution-Level Report.* The Institution-Level Report includes, but is not limited to, organizational, financial, portfolio and community development impact information and any other information that the Fund deems appropriate.

(B) *Transaction-Level Report.* The Transaction-Level Report includes, but is not limited to, specific data elements on each of the Awardee's loans and investments including, but not limited to, borrower location, loan/investment type, loan/investment amount, and terms. The Awardee must submit the Transaction-Level Report to the Fund at least annually but no more frequently than quarterly. If the Fund requires the Awardee to submit the Transaction-Level Report on a semi-annual or quarterly basis, the Fund will notify the Awardee of the due date for the submission of said report at least 60 days prior to the due date. Only Awardees that receive financial assistance awards are required to submit Transaction-Level Reports.

(3) *Financial Status Report:* The Financial Status Report is applicable only to Awardees that receive technical assistance awards and must be signed by the Awardee's authorized representative, and submitted to the Fund with the Annual Report. This form is only applicable to the technical assistance portion of the award.

(4) *Uses of Financial Assistance and Matching Funds Report:* This report describes the Awardee's use of its financial assistance award and its matching funds during its preceding fiscal year.

(5) *Explanation of Noncompliance:* Any Awardee that fails to meet a performance goal in its Performance Goals Report must submit to the Fund a narrative explanation.

(6) Awardees are responsible for the timely and complete submission of the Annual Report, even if all or a portion of the documents actually are completed by another entity or signatory to the Assistance Agreement. If such other entities or signatories are required to provide Annual Surveys or Financial Reports, or other documentation that the Fund may require, the Awardee is responsible for ensuring that the information is submitted timely and complete. The Fund reserves the right to contact such additional signatories to the Assistance Agreement and require that additional information and documentation be provided.

(7) The Fund's review of the progress of an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union in implementing its Comprehensive Business Plan and satisfying the terms and conditions of its Assistance Agreement may also include information from the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(8) The Fund shall make reports described in this section available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

(f) *Exchange of information with Appropriate Federal Banking Agencies and Appropriate State Agencies.* (1) Except as provided in paragraph (f)(4) of this section, prior to directly requesting information from or imposing reporting or record keeping requirements on an Insured CDFI or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, the Fund shall consult with the Appropriate Federal Banking Agency to determine if the information requested is available from or may be obtained by such agency in the form, format, and detail required by the Fund.

(2) If the information, reports, or records requested by the Fund pursuant to paragraph (f)(1) of this section are not provided by the Appropriate Federal Banking Agency within 15 calendar days after the date on which the material is requested, the Fund may request the information from or impose the record keeping or reporting requirements directly on such institutions with notice to the Appropriate Federal Banking Agency.

(3) The Fund shall use any information provided by an Appropriate Federal Banking Agency or Appropriate State Agency under this section to the extent practicable to eliminate duplicative requests for information and reports from, and record keeping by, an Insured CDFI, State-Insured Credit Union or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency.

(4) Notwithstanding paragraphs (f)(1) and (2) of this section, the Fund may require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to provide information with respect to the institution's implementation of its Comprehensive Business Plan or compliance with the terms of its Assistance Agreement, after providing notice to the Appropriate Federal Banking Agency or Appropriate State Agency, as the case may be.

(5) Nothing in this part shall be construed to permit the Fund to require an Insured CDFI, State-Insured Credit Union, or other institution that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency or Appropriate State Agency to obtain, maintain, or furnish an examination report of any Appropriate Federal Banking Agency or Appropriate State Agency, or records contained in or related to such report.

(6) The Fund and the Appropriate Federal Banking Agency shall promptly notify each other of material concerns about an Awardee that is an Insured CDFI or that is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency, and share appropriate information relating to such concerns.

(7) Neither the Fund nor the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be) shall disclose confidential information obtained pursuant to this section from any party without the written consent of that party.

(8) The Fund, the Appropriate Federal Banking Agency (or Appropriate State Agency, as the case may be), and any other party providing information under this paragraph (f) shall not be deemed to have waived any privilege applicable to the any information or data, or any portion thereof, by providing such information or data to the other party or by permitting such data or information, or any copies or portions thereof, to be used by the other party.

(g) *Availability of referenced publications.* The publications referenced in this section are available as follows:

(1) OMB Circulars may be obtained from the Office of Administration, Publications Office, 725 17th Street, NW., Room 2200, New Executive Office Building, Washington, DC 20503 or on the Internet (*http://www.whitehouse.gov/OMB/grants/index.html*); and

(2) General Accounting Office materials may be obtained from GAO Distribution, 700 4th Street, NW., Suite 1100, Washington, DC 20548.

**§ 1805.805 Information.**

The Fund and each Appropriate Federal Banking Agency shall cooperate and respond to requests from each other and from other Appropriate Federal Banking Agencies in a manner that ensures the safety and soundness of Insured CDFIs or other institution that

is examined by or subject to the reporting requirements of an Appropriate Federal Banking Agency.

**§ 1805.806 Compliance with government requirements.**

In carrying out its responsibilities pursuant to an Assistance Agreement, the Awardee shall comply with all applicable Federal, State, and local laws, regulations, and ordinances, OMB Circulars, and Executive Orders.

**§ 1805.807 Conflict of interest requirements.**

(a) *Provision of credit to Insiders.* (1) An Awardee that is a Non-Regulated CDFI may not use any monies provided to it by the Fund to make any credit (including loans and Equity Investments) available to an Insider unless it meets the following restrictions:

(i) The credit must be provided pursuant to standard underwriting procedures, terms and conditions;

(ii) The Insider receiving the credit, and any family member or business partner thereof, shall not participate in any way in the decision making regarding such credit;

(iii) The board of directors or other governing body of the Awardee shall approve the extension of the credit; and

(iv) The credit must be provided in accordance with a policy regarding credit to Insiders that has been approved in advance by the Fund.

(2) An Awardee that is an Insured CDFI, a Depository Institution Holding Company or a State-Insured Credit Union shall comply with the restrictions on Insider activities and any comparable restrictions established by its Appropriate Federal Banking Agency or Appropriate State Agency, as applicable.

(b) *Awardee standards of conduct.* An Awardee that is a Non-Regulated CDFI shall maintain a code or standards of conduct acceptable to the Fund that shall govern the performance of its Insiders engaged in the awarding and administration of any credit (including loans and Equity Investments) and contracts using monies from the Fund. No Insider of an Awardee shall solicit or accept gratuities, favors or anything of monetary value from any actual or potential borrowers, owners or contractors for such credit or contracts. Such policies shall provide for disciplinary actions to be applied for violation of the standards by the Awardee's Insiders.

**§ 1805.808 Lobbying restrictions.**

No assistance made available under this part may be expended by an Awardee to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. 1352.

**§ 1805.809 Criminal provisions.**

The criminal provisions of 18 U.S.C. 657 regarding embezzlement or misappropriation of funds is applicable to all Awardees and Insiders.

**§ 1805.810 Fund deemed not to control.**

The Fund shall not be deemed to control an Awardee by reason of any assistance provided under the Act for the purpose of any applicable law.

**§ 1805.811 Limitation on liability.**

The liability of the Fund and the United States Government arising out of any assistance to a CDFI in accordance with this part shall be limited to the amount of the investment in the CDFI. The Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing in this section shall affect the application of any Federal tax law.

**§ 1805.812 Fraud, waste and abuse.**

Any person who becomes aware of the existence or apparent existence of fraud, waste or abuse of assistance provided under this part should report such incidences to the Office of Inspector General of the U.S. Department of the Treasury.

Dated: May 5, 2004.

**Owen Jones,**

*Acting Director, Community Development Financial Institutions Fund.*

[FR Doc. 04–10646 Filed 5–10–04; 8:45 am]

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Federal Register

Tuesday,
May 11, 2004

# Part V

# Office of Management and Budget

**2 CFR Subtitles A and B**

**Governmentwide Guidance for Grants and Agreements; Federal Agency Regulations for Grants and Agreements; Final Rule**

**2 CFR Part 215 Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110); Final Rule**

## OFFICE OF MANAGEMENT AND BUDGET

### 2 CFR Subtitles A and B

### Governmentwide Guidance for Grants and Agreements; Federal Agency Regulations for Grants and Agreements

**AGENCY:** Office of Management and Budget.

**ACTION:** Establishment of CFR title for policy guidance for grants and agreements.

**SUMMARY:** The Office of Management and Budget (OMB) is establishing title 2 in the Code of Federal Regulations (CFR) for grants and other financial assistance and nonprocurement agreements. Title 2 consists of two subtitles, subtitles A and B. In subtitle A, OMB is publishing government-wide guidance to Federal agencies for grants and agreements—guidance that currently is in seven separate OMB Circulars and other OMB policy documents. (The document in today's **Federal Register** immediately following this document publishes one of those circulars in subtitle A.) In subtitle B, Federal agencies that implement the OMB guidance through regulation will publish their agency-wide implementing regulations. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

**DATES:** Effective May 11, 2004.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone 202–395–3053 (direct) or 202–395–3993 (main office) and e-mail: *ephillip@omb.eop.gov*.

**SUPPLEMENTARY INFORMATION:**

## I. Background

In a **Federal Register** document [68 FR 33883] published on June 6, 2003, OMB proposed to establish title 2 of the CFR as a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. The proposal included the establishment of two subtitles within title 2—subtitle A for OMB's government-wide guidance to Federal agencies on the award and administration of grants and agreements and subtitle B for Federal agency regulations implementing that OMB guidance.

In addition to the proposal to establish title 2 and its subtitles A and B, the June 6 document proposed to establish two chapters in subtitle A—chapters I and II—to enable OMB to publish its government-wide guidance in title 2 in two phases. In the first phase, OMB proposed to move circulars and other guidance, in their current form, into chapter II and to reserve chapter I. In the second phase, as OMB finalizes any changes to its guidance based on recommendations of interagency work groups implementing Public Law 106–107, the June 6 document proposed that OMB would publish the new, changed guidance in chapter I and remove the original guidance from chapter II. If OMB is to make a substantive change in the guidance when publishing it in either chapter I or II of subtitle A, the change will be proposed in the **Federal Register** with an opportunity for public comment.

Finally, the June 6 document proposed that OMB would publish in title 2, subtitle A, an introductory part 1 providing general information about the title. Specifically, part 1 would address the purpose and scope of the title, the applicability of the various portions of the OMB guidance to different types of agreements, and the responsibilities of OMB and the Federal agencies with respect to the guidance.

We received comments on these proposals from: Three State governments; two non-profit organizations; an association representing non-profit entities; one institution of higher education; an association representing academic institutions; a group of universities that participate with Federal agencies in a demonstration program on research administration; and five Federal agencies. We considered all comments in developing this final **Federal Register** document. The following paragraphs summarize the major comments and our responses, organized by the subjects the comments addressed.

## II. Comments and Responses

*Comments on Publication of OMB Guidance in Title 2 of the CFR*

*Comment:* Commenters had different views on whether we should establish title 2 as a single location for publishing OMB guidance on grants and agreements. Comments from State governments, non-profit organizations, and Federal agencies strongly supported the proposal as a way to help recipients more easily find and use the policy documents. Comments from the academic community recommended that we not publish the guidance in title 2 at this time because doing so: (1) Would serve little purpose, since the OMB guidance can be found easily now at the OMB Web site; (2) could blur the important distinction between guidance and regulations; and (3) might be the first step toward merging OMB circulars applicable to universities with circulars for other types of recipients, a merger that the academic community historically has not supported.

*Response:* After careful consideration of the two points of view represented in the comments, we are proceeding with our proposal and are establishing title 2 with a subtitle in which we will publish OMB guidance. We understand that many recipients access OMB circulars at the OMB Web site, and we plan to continue posting the documents at this site (*www.whitehouse.gov*\omb\circulars). However, the fact that several commenters stated that publishing the guidance in the CFR would make it easier to find and use confirms that there is value in having it in the CFR.

With respect to the difference between guidance and regulation, we note that the academic community comments made a further suggestion that we preface any OMB guidance published in the CFR with statements that clearly make that distinction. We agree. We have included language to make the distinction in § 1.105 of the introductory part 1 of title 2 (see the text of part 1 in this **Federal Register** document, following this preamble).

Finally, we note the academic community's concern about the establishment of title 2 being a possible precursor to a merger of guidance that currently is in separate OMB circulars. However, adoption of the June 6 proposal alone will not cause the organization or substance of the guidance to change. CFR publication does not require the guidance to be organized in any particular way and, as indicated above, our initial activity will be relocating the guidance to title 2 in its current form. Should a recommendation to reorganize the guidance subsequently emerge from the interagency work groups' ongoing efforts to implement Public Law 106–107, that recommendation would be entirely independent of the publication of the guidance in title 2 and the public would have an opportunity to comment on any such substantive change.

*Comment:* Four commenters raised questions related to combining OMB circulars or applying their policies uniformly to different types of

recipients. Two of the commenters, as discussed in the previous paragraph, recommended that we not establish title 2 at this time because doing so was a possible first step toward a merger of circulars. The other two commenters who addressed this issue supported the publication of the OMB guidance in title 2; one of these, a recipient organization, recommended that any future changes to the OMB circulars continue to distinguish between types of recipients. In another comment, a Federal agency suggested that we simplify the OMB guidance, which is nearly the same for different types of recipients, by consolidating OMB Circulars A–102 and A–110 into a single set of administrative requirements and Circulars A–21, A–87, and A–122 into one set of cost principles. The agency suggested that we maintain separate requirements in each case only when necessary to respect differences between types of recipients.

*Response:* The comments reflect a diversity of points of view on one issue—the question of combining guidance that currently is located in separate circulars—yet indicate agreement on a second issue—the need to recognize important differences among types of recipients. We infer that the concern about combining circulars stems primarily from a desire to maintain distinctions between types of recipients and is based on an assumption that combining guidance documents will lead to applying the same set of requirements to all recipients. Although we can not anticipate what recommendations the interagency work groups may make for improving the OMB guidance, it should be noted that combining guidance does not require that the guidance be identical for all types of recipients. For example, OMB Circular A–102 currently includes guidance for both awards to States and awards to other governmental organizations; however, the guidance for awards to States differs in some areas from the guidance for awards to other governmental organizations. Both OMB and the interagency work groups work with all types of recipients and appreciate their important distinctions.

*Comment:* One comment from a group of recipient organizations suggested that an OMB review of the guidance in the current OMB circulars affecting each type of recipient, to ensure internal consistency across the circulars for that type of recipient, would do more for recipients than publishing the OMB guidance in title 2.

*Response:* We strongly agree that consistency is important. However, the issue of consistency, like the question of merging circulars, is entirely separate from publication in title 2. As previously noted, the interagency work groups involved in the implementation of Public Law 106–107 may recommend improvements to the OMB guidance—internal consistency, which is an OMB objective, is one element of the work groups' review.

*Comment:* One commenter recommended that the OMB guidance in title 2 include the compliance supplement to OMB Circular A–133 and the **Federal Register** document [68 FR 38401] amending Circular A–133 to raise the Federal expenditure threshold above which recipients are required to have single audits performed. The commenter also suggested including links to the Federal Acquisition Regulation (FAR) cost principles [48 CFR part 31] for for-profit organizations and to the Generally Accepted Government Auditing Standards (GAGAS).

*Response:* Agree in part. When we publish OMB Circular A–133 in title 2, we will publish the current version (now available at the OMB Web site), which includes the recent change to the audit threshold. We do not currently anticipate publishing the OMB Circular A–133 compliance supplement in title 2 because the supplement is updated annually and the CFR is more suited to issuances that change less frequently. The suggested links to the FAR cost principles and GAGAS are more appropriate for a Web site than the text of the CFR (no portion of the CFR currently maintains electronic links to the many publications it references and it would be impractical at this time to do so). We will add those links at the OMB Web site, where the OMB guidance in title 2 also will be posted.

*Comment:* Two commenters suggested that we publish in title 2 the suspension and debarment and lobbying requirements in a way that replaces the Federal agencies' current multiple codifications of common rules implementing the requirements in their own titles of the CFR. The first commenter, a recipient organization, stated that the same requirements also would have to be published in title 48 of the CFR, since they also apply to procurement contracts, but noted that there could be a consolidated publication in title 2 for nonprocurement. The second commenter, a Federal agency, also suggested that the same approach could be used to replace Federal agencies' separate codifications of common rules implementing drug-free workplace requirements and the requirements of Executive Order (E.O.) 12372 on intergovernmental coordination.

*Response:* We agree with the suggested approach for nonprocurement debarment and suspension and drug-free workplace requirements and will also consider the same approach for other government-wide guidance, such as the common rule implementing restrictions on lobbying and the common rule implementing E.O. 12372 (although the Executive order applies to more Federal activities than just those resulting in grants and agreements). On November 26, 2003, the Federal agencies published the final common rule on debarment and suspension and on drug-free workplace requirements in the **Federal Register** [68 FR 66533]. We plan to publish the corresponding OMB guidance in subtitle A, chapter I of title 2 in the near future. Once the guidance is published in subtitle A, each agency will publish in subtitle B of title 2 regulatory language that adopts the guidance and will remove that common rule from its own title of the CFR. Thus, the full text of the government-wide policies will appear only once, in the OMB guidelines, and each agency's regulations will adopt those guidance documents (identifying any agency-specific additions, exceptions, or clarifications) without repeating the full text. This approach parallels the way that agencies currently implement the cost principles in OMB Circulars A–21, A–87, and A–122 and the single audit requirements in OMB Circular A–133, where it is the agency regulations that require recipients to comply with these OMB documents.

This approach has at least three benefits for the public and Federal agencies. One benefit is that an applicant or recipient could quickly and easily identify any variations from the common language in an agency's implementation because the agency's regulation would consist of brief language adopting the OMB guidance, rather than the full text of a common rule, followed by statements of any additions, clarifications, or exceptions to the common language. Currently, identifying any agency-to-agency variations from the government-wide language requires locating the original **Federal Register** document in which the Federal agencies adopted the common rule or carefully reading and comparing agencies' separate codifications of the rule. A second benefit of this approach is that it would reduce the volume of regulations since each agency would not duplicate the full text of the OMB guidance in its own regulations.

A third benefit of the approach is that Federal agencies could more quickly

implement OMB guidance than is possible through common rules. Issuing a common rule is a complex and lengthy process, with 30 or more Federal agencies processing the same rulemaking document before it can be sent to OMB and published. Under the new approach, OMB would update its guidance through publication in the **Federal Register** with an opportunity for public comment—the same process used to revise OMB circulars. An agency regulation adopting the OMB guidance would be automatically updated when OMB makes final revisions to its guidance, without a need for further agency rulemaking, just as it works currently with agency regulations adopting the OMB circulars containing the cost principles and single audit requirements. Use of this approach will promote more timely updates to the Federal policy framework.

In response to the first commenter, it also should be noted that the agency adoption of OMB guidelines in title 2 would apply only to assistance and other nonprocurement transactions. There currently is separate coverage in the FAR (title 48 of the CFR) for debarment and suspension, lobbying, and drug-free workplace requirements for procurement contracts. That coverage would not be affected by publication in title 2 of the OMB guidelines or agency regulations adopting them.

*Comment:* One recipient organization recommended that OMB publish in title 2 a listing of class deviations it granted to Federal agencies from requirements in the OMB guidance. The commenter suggested that doing so would make information about them more readily available on a continuing basis than is the case currently, thereby giving the Federal agency and recipients more opportunity to later revisit the conditions that originally gave rise to the deviation.

*Response:* We referred this suggestion for consideration by the interagency work groups developing recommendations for future improvements to the OMB guidance.

*Comments on Publication of Federal Agency Regulations in Title 2 of the CFR*

*Comment:* Commenters views' on whether Federal agency regulations should be published in title 2 largely paralleled their views on the publication of OMB's guidance in title 2. Comments from State governments and non-profit organizations were supportive of the proposal, as were most comments from Federal agencies, as a way to make the regulations easier to find and use. The academic community recommended that we reconsider the proposal to publish in title 2, deferring it until a more robust and uniform means of agency implementation of the OMB guidance is developed.

*Response:* After considering the comments, we are proceeding with our proposal and are establishing a second subtitle in title 2 in which Federal agencies that issue regulations to implement OMB guidance will publish those regulations. We agree that improving Federal agencies' implementation of the OMB guidance is an important objective, as discussed further in the response to the next comment. However, that objective should not affect the decision on whether to publish agency regulations in title 2 because the organization and content of agency regulations is independent of where they are published—whether in title 2 or in the agency's own title of the CFR.

*Comment:* Five commenters made recommendations for greater uniformity in the format and content of agency regulations on grants and agreements. Three of those commenters, including two Federal agencies, suggested that OMB issue a standard format or organization for agency implementing regulations. Two other commenters, a recipient organization and an association representing recipients, suggested developing uniform government-wide regulations to eliminate the need for applicants and recipients to understand and comply with the implementing regulations of more than two dozen different agencies.

*Response:* Agree in part. Although the organization of the OMB guidance and agency regulations in subtitles A and B of title 2, respectively, are beyond the scope of this **Federal Register** document, we agree that a standard format would be helpful. Therefore, OMB is working with an interagency work group to consider ways to improve the OMB guidance and to develop an outline, to the extent possible, for agency regulations implementing the guidance.

Regarding the development of uniform government-wide regulations, there is great variety in Federal program purposes, in the needs and preferences of the different types of recipients (*e.g.*, State or local government agencies, institutions of higher education, or other nonprofit organizations) that receive awards under those programs, and in Federal agencies' organizational approaches to carrying out assistance award and administration functions. Developing uniform, government-wide regulations for some parts of the OMB guidance (*e.g.*, parts where differences in program purposes and recipients are most important) could have an unintended effect of broadening to all agencies, programs, and their recipients more requirements than needed.

While uniform government-wide regulations may not be the best way to implement all aspects of the OMB guidance, a similar approach may work for some of the guidance. As stated in response to an earlier comment, more uniform government-wide implementation of the nonprocurement debarment and suspension and drug-free workplace requirements will be achieved by publishing OMB guidance that agencies can adopt in their regulations (identifying any agency-specific additions, exceptions, or clarifications), in lieu of agencies' separately codifying a common rule. We will continue to look for other opportunities, such as the government-wide guidance on lobbying restrictions, where we can achieve greater uniformity without the unintended effect of imposing unnecessary additional requirements.

*Comment:* Following on the previous comment, one commenter further suggested that the standard format should organize agency regulations in an order running from pre-award through post-award requirements, much as we do in the current common rule implementing OMB Circular A–102 and the attachment to OMB Circular A–110.

*Response:* An interagency work group already is considering that order of presentation as it develops recommendations for improving the OMB guidance and an outline for agency implementation of the guidance.

*Comment:* One recipient organization recommended that OMB require Federal agencies to publish in title 2 listings of the deviations from OMB's government-wide guidance that are required of them by virtue of statutes. The commenter suggested that doing so would provide valuable information to the affected public about the basis for the deviations.

*Response:* We referred this suggestion for consideration by the interagency work group that will develop an outline for agency implementation of the guidance.

*Comment:* One commenter said that the proposal in the June 6 **Federal Register** document was correct in limiting agency regulations in title 2 to those for grants and agreements and excluding those for procurement contracts.

*Response:* We agree. For parts of the OMB guidance in title 2 that apply to procurement contracts as well as to grants and agreements, such as the single audit requirements in OMB

Circular A–133 and the cost principles in OMB Circulars A–21, A–87, and A–122, the implementation of that guidance for procurement contracts properly belongs in the FAR.

*Comment:* Two commenters suggested that OMB review Federal agencies' regulations implementing the OMB guidance when the agencies publish them in title 2. One of the commenters further recommended that OMB let an agency include requirements that were not in the OMB guidance only when OMB deemed the additional provisions as necessary to carry out the agency's program.

*Response:* We agree. After we make final changes to the OMB guidance based on recommendations from interagency work groups implementing Public Law 106–107, we will review each Federal agency's regulations for conformity with the guidance when they are published in title 2, subtitle B. While we are not requiring Federal agencies to relocate their regulations in title 2 until we finalize revisions to the OMB guidance, we are not prohibiting agencies from electing to publish their existing regulations in title 2 sooner. However, we think it is likely that we will be able to develop an outline for regulations implementing the guidance, as discussed in response to a previous comment, and therefore agencies may wish to defer publication of their regulations in subtitle B of title 2 until the outline is available. If any agency relocates its current regulations before we finalize the OMB guidance in chapter I of subtitle A, we would not do a complete review of the substance of the regulations (which OMB reviewed when the agency published the regulations in its own CFR title), unless the agency is making substantive changes. We will review the substance of the regulations when the agency subsequently revises them to reflect the final OMB guidance.

With respect to the comment about limiting the content of agencies' regulations, Federal programs that use grants and agreements have a wide variety of purposes. As such, some agencies' regulations for awarding and administering assistance instruments must vary in some ways from those of other agencies. The OMB guidance provides government-wide uniformity for requirements that broadly apply to most Federal programs, but the diversity of programs makes it inappropriate for the OMB guidance to prescribe all of the agency-specific and program-specific requirements that may be needed. We believe that the commenter's intent is served, however, because agencies are required to justify alternative or additional provisions they include in their regulations when submitted to OMB for review.

*Comment:* Some components of one Federal department expressed concern that the June 6 **Federal Register** document did not state clearly whether the intent was for agencies to publish in title 2 their program regulations for programs that use grants and agreements, as well as department-wide regulations that address award and administration of grants and agreements in general.

*Response:* While we would not preclude an agency from moving program regulations that might be appropriate for inclusion in title 2, the intent is to require agencies to publish in title 2 only those regulations that implement the requirements in the OMB guidance and apply to the award and administration of grants and agreements in general (as opposed to those of a specific program). That would include agency-wide regulations and any regulations of agency subcomponents that broadly apply to grants and agreements but would not include program regulations.

*Comment:* One commenter suggested that OMB set a date ''by'' which all Federal agencies must publish their regulations in title 2, while another commenter recommended that OMB set a date ''on'' which they should do so.

*Response:* It is important to note, as previously discussed, that we plan to publish the OMB guidance in title 2 in two phases. In the first phase, we will publish the circulars in their current form in chapter II of subtitle A. Agencies may publish their regulations in subtitle B during this first phase but they are not required to do so (and, as noted previously, they may wish to wait until an outline for agency implementing regulations is available). During the second phase, we will publish the OMB guidance in chapter I of subtitle A after we: (1) Propose, for public comment, any changes to streamline and simplify the guidance based on recommendations from the interagency working groups implementing Public Law 106–107; and (2) resolve the comments and finalize the guidance with the help of the working groups.

Various parts of the guidance will become final and be published at different times, so the publication in chapter I will take place over a period of time rather than on a single date. As each part of the guidance is published in final form in chapter I, we will set a deadline for agency implementation of that part.

*Comments on Internet Presentation of OMB Guidance and Agency Regulations*

*Comment:* Two commenters expressed views on the advantages and disadvantages of the CFR presentation on the Internet. One Federal agency said that, with the publication of the OMB guidance in the CFR, the Office of the Federal Register would update title 2 quickly each time that OMB made a final change to the guidance and thereby make available on the Internet a fully conformed version of the updated guidance. One recipient organization suggested that OMB organize the Internet presentation in a better way than it currently is organized at the CFR site, where one can retrieve only one CFR section at a time, rather than the entire document, and often retrieves duplicate pages when the pages are common to more than one section.

*Response:* We appreciate that having the OMB guidance available at the CFR Internet site will be of value to many applicants, recipients, and Federal agencies. We also are committed to continuing to maintain our updated guidance in a timely manner at the OMB Internet site (*http://www.whitehouse.gov/omb/grants/grants_circulars.html*), where we will maintain a fully conformed version of each document that can be retrieved in its entirety as a single electronic file. Therefore, OMB will not ask the Office of the Federal Register to deviate from its current practice for the CFR when it provides documents for title 2 on the Internet.

*Comment:* One subcomponent of a Federal agency suggested that electronic links to program regulations should be provided from agency-wide regulations implementing the OMB guidance as it applies to grants and agreements generally.

*Response:* We encourage any Federal agency with multiple program regulations to help the affected public find the pertinent provisions of those regulations in any way possible, such as providing direct electronic links from a central site at which it posts its agency-wide regulations implementing our guidance.

## III. Summary of Actions

In summary, OMB in this **Federal Register** document is establishing a new title 2 of the CFR, ''Grants and Agreements,'' with subtitles A and B. In subtitle A, ''Office of Management and Budget Guidance for Grants and Agreements,'' OMB is publishing its guidance to Federal agencies on the award and administration of grants and agreements. In subtitle B, each Federal

agency with regulations implementing the OMB guidance will have a chapter in which those regulations eventually will be published.

To begin the process of moving OMB circulars to the new title 2, the **Federal Register** document immediately following this one publishes OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'' in subtitle A of the new title. OMB will move additional circulars and other policy documents to title 2, subtitle A, in the near future. Meanwhile, the OMB circulars continue to be available on the OMB Web site (*http://www.whitehouse.gov/omb/circulars*).

### List of Subjects in 2 CFR Part 1

Cooperative agreements, Grant programs, Grants administration.

Dated: April 29, 2004.

**Joshua B. Bolten,**

*Director.*

### Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget establishes 2 CFR consisting of subtitle A—Government-wide Grants and Agreements (part 1 and reserved chapters I and II), and subtitle B—Federal Agency Regulations for Grants and Agreements, as set forth below.

## TITLE 2—GRANTS AND AGREEMENTS

## SUBTITLE A—OFFICE OF MANAGEMENT AND BUDGET GUIDANCE FOR GRANTS AND AGREEMENTS

## PART 1—ABOUT TITLE 2 OF THE CODE OF FEDERAL REGULATIONS AND SUBTITLE A

### Subpart A—Introduction to Title 2 of the CFR

Sec.
1.100 Content of this title.
1.105 Organization and subtitle content.
1.110 Issuing authorities.

### Subpart B—Introduction to Subtitle A

1.200 Purpose of chapters I and II.
1.205 Applicability to grants and other funding instruments.
1.210 Applicability to Federal agencies and others.
1.215 Relationship to previous issuances.
1.220 Federal agency implementation of this subtitle.
1.230 Maintenance of this subtitle.

### Subpart C—Responsibilities of OMB and Federal Agencies

1.300 OMB responsibilities.
1.305 Federal agency responsibilities.

**Authority:** 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

## Subpart A—Introduction to Title 2 of the CFR

### § 1.100 Content of this title.

This title contains—

(a) Office of Management and Budget (OMB) guidance to Federal agencies on government-wide policies and procedures for the award and administration of grants and agreements; and

(b) Federal agency regulations implementing that OMB guidance.

### § 1.105 Organization and subtitle content.

(a) This title is organized into two subtitles.

(b) The OMB guidance described in § 1.100(a) is published in subtitle A. Publication of the OMB guidance in the CFR does not change its nature—it is guidance and not regulation.

(c) Each Federal agency that publishes regulations implementing the OMB guidance has a chapter in subtitle B in which it issues those regulations. The Federal agency regulations in subtitle B differ in nature from the OMB guidance in subtitle A because the OMB guidance is not regulatory (Federal agency regulations in subtitle B may give regulatory effect to the OMB guidance, to the extent that the agency regulations require compliance with all or portions of the guidance).

### § 1.110 Issuing authorities.

OMB issues this subtitle. Each Federal agency that has a chapter in subtitle B of this title issues that chapter.

## Subpart B—Introduction to Subtitle A

### § 1.200 Purpose of chapters I and II.

(a) Chapters I and II of subtitle A provide OMB guidance to Federal agencies that helps ensure consistent and uniform government-wide policies and procedures for management of the agencies' grants and agreements.

(b) There are two chapters for publication of the guidance because portions of it may be revised as a result of ongoing efforts to streamline and simplify requirements for the award and administration of grants and other financial assistance (and thereby implement the Federal Financial Assistance Management Improvement Act of 1999, Pub. L. 106–107).

(c) The OMB guidance in its initial form—before completion of revisions described in paragraph (b) of this section—is published in chapter II of this subtitle. When revisions to a part of the guidance are finalized, that part is published in chapter I and removed from chapter II.

### § 1.205 Applicability to grants and other funding instruments.

The types of instruments that are subject to the guidance in this subtitle vary from one part of the guidance to another (note that each part identifies the types of instruments to which it applies).

### § 1.210 Applicability to Federal agencies and others.

(a) This subtitle contains guidance that directly applies only to Federal agencies.

(b) The guidance in this subtitle may affect others through each Federal agency's implementation of the guidance, portions of which may apply to—

(1) The agency's awarding or administering officials;

(2) Non-Federal entities that receive or apply for the agency's grants or agreements or receive subawards under those grants or agreements; or

(3) Any other entities involved in agency transactions subject to the guidance in this chapter.

### § 1.215 Relationship to previous issuances.

Although some the guidance was organized differently within OMB circulars or other documents, much of the guidance in this subtitle existed prior to the establishment of title 2 of the CFR. Specifically:

| Guidance in * * * | On * * * | Previously was in* * * |
|---|---|---|
| (a) [Reserved.]. | | |
| (b) Subchapter B of Chapter II, part 215 ..... | Administrative requirements for grants and agreements. | OMB Circular A–110. |
| (c) [Reserved.]. | | |

**§ 1.220 Federal agency implementation of this subtitle.**

A Federal agency that awards grants and agreements subject to the guidance in this subtitle implements the guidance in agency regulations in subtitle B of this title and/or in policy and procedural issuances, such as internal instructions to the agency's awarding and administering officials. An applicant or recipient would see the effect of that implementation in the organization and content of the agency's announcements of funding opportunities and in its award terms and conditions.

**§ 1.230 Maintenance of this subtitle.**

OMB issues guidance in this subtitle after publication in the **Federal Register**. Any portion of the guidance that has a potential impact on the public is published with an opportunity for public comment.

## Subpart C—Responsibilities of OMB and Federal Agencies

**§ 1.300 OMB responsibilities.**

OMB is responsible for:

(a) Issuing and maintaining the guidance in this subtitle, as described in § 1.230.

(b) Interpreting the policy requirements in this subtitle.

(c) Reviewing Federal agency regulations implementing the requirements of this subtitle, as required by Executive Order 12866.

(d) Conducting broad oversight of government-wide compliance with the guidance in this subtitle.

(e) Performing other OMB functions specified in this subtitle.

**§ 1.305 Federal agency responsibilities.**

The head of each Federal agency that awards and administers grants and agreements subject to the guidance in this subtitle is responsible for:

(a) Implementing the guidance in this subtitle.

(b) Ensuring that the agency's components and subcomponents comply with the agency's implementation of the guidance.

(c) Performing other functions specified in this subtitle.

**Chapter I—[Reserved]**

## PARTS 100–199 [RESERVED]

**Chapter II—Office of Management and Budget Circulars and Guidance [Reserved]**

## PARTS 200–299 [RESERVED]

## SUBTITLE B—FEDERAL AGENCY REGULATIONS FOR GRANTS AND AGREEMENTS [RESERVED]

[FR Doc. 04–10351 Filed 5–10–04; 8:45 am]

BILLING CODE 3110–01–P

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## OFFICE OF MANAGEMENT AND BUDGET

## 2 CFR Part 215

## Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations (OMB Circular A–110)

**AGENCY:** Office of Management and Budget.

**ACTION:** Policy guidance relocation to 2 CFR chapter II.

**SUMMARY:** The Office of Management and Budget (OMB) is relocating Circular A–110 to title 2 in the Code of Federal Regulations (2 CFR), subtitle A, chapter II, subchapter B, part 215 as part of an initiative to provide the public with a central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. This document relates to the previous document in today's **Federal Register** which established 2 CFR as that central location. Consolidating the OMB guidance and co-locating the agency regulations provides a good foundation for streamlining and simplifying the policy framework for grants and agreements as part of the efforts to implement the Federal Financial Assistance Management Improvement Act of 1999 (Pub. L. 106–107).

**DATES:** Part 215 is effective May 11, 2004. This document republishes the existing OMB Circular A–110, which already is in effect.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Phillips, Office of Federal Financial Management, Office of Management and Budget, telephone (202) 395–3053 (direct) or (202) 395–3993 (main office) and e-mail: *ephillip@omb.eop.gov.*

**SUPPLEMENTARY INFORMATION:** In a **Federal Register** document [68 FR 33883] published on June 6, 2003, OMB proposed to establish title 2 of the Code of Federal Regulations (CFR) to serve as the central location for Federal government policies on grants and other financial assistance and nonprocurement agreements. The document in today's **Federal Register** immediately preceding this notice describes the comments received on the proposal and our responses and establishes the new title 2 CFR, with a subtitle A—Government-wide Grants and Agreements, and a subtitle B—Federal Agency Regulations for Grants and Agreements.

It is important to note that OMB plans to publish its guidance in title 2 in two phases. In the first phase, we are publishing the circulars in their current form in chapter II of subtitle A. During the first phase, agencies may publish their regulations implementing this guidance in subtitle B if they wish, but are not required to do so. In the second phase, OMB will publish guidance in chapter I of subtitle A after we: (1) Propose for public comment any changes to streamline and simplify the guidance based on recommendations from the interagency working groups implementing Public Law 106–107; and (2) resolve the comments and finalize the guidance with the help of the working groups.

The OMB guidance published in this notice is a relocation of OMB Circular A–110, Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations. We have made minor adjustments to conform to the formatting requirements of the CFR, but there are no substantive changes of any type. Agency implementing regulations may continue to reference this guidance using its circular number, title, and section numbers which remain the same, only now preceded by the 2 CFR part number (215). For example, under OMB Circular A–110, section 24 discusses program income, and in 2 CFR program income is discussed in § 215.24.

### List of Subjects in 2 CFR Part 215

Accounting, Colleges and universities, Grant programs, Grants administration, Hospitals, Nonprofit organizations, Reporting and recordkeeping requirements.

Dated: April 29, 2004.

**Joshua B. Bolten,**

*Director.*

### Authority and Issuance

■ For the reasons set forth above, the Office of Management and Budget amends 2 CFR subtitle A, chapter II by adding a part 215 as set forth below.

## PART 215—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NON-PROFIT ORGANIZATIONS (OMB CIRCULAR A–110)

Sec.
215.0 About this part.

**Subpart A—General**

215.1 Purpose.
215.2 Definitions.
215.3 Effect on other issuances.
215.4 Deviations.
215.5 Subawards.

**Subpart B—Pre-Award Requirements**

215.10 Purpose.
215.11 Pre-award policies.
215.12 Forms for applying for Federal assistance.
215.13 Debarment and suspension.
215.14 Special award conditions.
215.15 Metric system of measurement.
215.16 Resource Conservation and Recovery Act.
215.17 Certifications and representations.

**Subpart C—Post-Award Requirements**

**Financial and Program Management**

215.20 Purpose of financial and program management.
215.21 Standards for financial management systems.
215.22 Payment.
215.23 Cost sharing or matching.
215.24 Program income.
215.25 Revision of budget and program plans.
215.26 Non-Federal audits.
215.27 Allowable costs.
215.28 Period of availability of funds.
215.29 Conditional exemptions.

**Property Standards**

215.30 Purpose of property standards.
215.31 Insurance coverage.
215.32 Real property.
215.33 Federally-owned and exempt property.
215.34 Equipment.
215.35 Supplies and other expendable property.
215.36 Intangible property.
215.37 Property trust relationship.

**Procurement Standards**

215.40 Purpose of procurement standards.
215.41 Recipient responsibilities.
215.42 Codes of conduct.
215.43 Competition.
215.44 Procurement procedures.
215.45 Cost and price analysis.
215.46 Procurement records.
215.47 Contract administration.
215.48 Contract provisions.

**Reports and Records**

215.50 Purpose of reports and records.
215.51 Monitoring and reporting program performance.
215.52 Financial reporting.
215.53 Retention and access requirements for records.

**Termination and Enforcement**

215.60 Purpose of termination and enforcement.
215.61 Termination.
215.62 Enforcement.

**Subpart D—After-the-Award Requirements**

215.70 Purpose.
215.71 Closeout procedures.
215.72 Subsequent adjustments and continuing responsibilities.
215.73 Collection of amounts due.

**Appendix A to Part 215—Contract Provisions**

**Authority:** 31 U.S.C. 503; 31 U.S.C. 1111; 41 U.S.C. 405; Reorganization Plan No. 2 of 1970; E.O. 11541, 35 FR 10737, 3 CFR, 1966–1970, p. 939.

### § 215.0 About this part.

(a) *Purpose.* This part contains OMB guidance to Federal agencies on the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations. The guidance sets forth standards for obtaining consistency and uniformity in the agencies' administration of those grants and agreements.

(b) *Applicability.* (1) Except as provided herein, the standards set forth in this part are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided in this part, the provisions of the statute shall govern.

(2) The provisions of subparts A through D of this part shall be applied by Federal agencies to recipients. Recipients shall apply the provisions of those subparts to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations described in paragraph (a) of this section.

(3) This part does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A–102, ''Grants and Cooperative Agreements with State and Local Governments'' [1] and the Federal agencies' grants management common rule (see § 215.5) which standardize the administrative requirements Federal agencies impose on State and local grantees. In addition, subawards and contracts to State or local governments are not covered by this part. However, this part applies to subawards made by State and local governments to organizations covered by this part.

(4) Federal agencies may apply the provisions of subparts A through D of this part to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

(c) *OMB responsibilities.* OMB is responsible for:

(1) Issuing and maintaining the guidance in this part.

(2) Interpreting the policy requirements in this part and providing assistance to ensure effective and efficient implementation.

(3) Reviewing Federal agency regulations implementing the guidance in this part, as required by Executive Order 12866.

(4) Granting any deviations to Federal agencies from the guidance in this part, as provided in § 215.4. Exceptions will only be made in particular cases where adequate justification is presented.

(5) Conducting broad oversight of government-wide compliance with the guidance in this part.

(d) *Federal agency responsibilities.* The head of each Federal agency that awards and administers grants and agreements subject to the guidance in this part is responsible for:

(1) Implementing the guidance in subparts A through D of this part by adopting the language in those subparts unless different provisions are required by Federal statute or are approved by OMB.

(2) Ensuring that the agency's components and subcomponents comply with the agency's implementation of the guidance in subparts A through D of this part.

(3) Requesting approval from OMB for deviations from the guidance in subparts A through D of this part in situations where the guidance requires that approval.

(4) Performing other functions specified in this part.

(e) *Relationship to previous issuance.* The guidance in this part previously was issued as OMB Circular A–110. Subparts A through D of this part contain the guidance that was in the attachment to the OMB circular. Appendix A to this part contains the guidance that was in the appendix to the attachment.

(f) *Information Contact.* Further information concerning this part may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, telephone (202) 395–3993.

[1] See 5 CFR 1310.9 for availability of OMB circulars.

(g) *Termination Review Date.* This part will have a policy review three years from the date of issuance.

## Subpart A—General

### § 215.1 Purpose.

This part establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in § 215.4, and § 215.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

### § 215.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

(1) Goods and other tangible property received;

(2) Services performed by employees, contractors, subrecipients, and other payees; and,

(3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

(1) Earnings during a given period from:

(i) Services performed by the recipient, and

(ii) Goods and other tangible property delivered to purchasers, and

(2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical

existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in § 215.24(e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. ''Research'' is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. ''Development'' is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of ''award'' in § 215.2(e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (''subject inventions''), as defined in 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.''

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O. 12549 (51 FR 6370, 3 CFR, 1986 Comp., p. 189) and E.O. 12689 (54 FR 34131, 3 CFR, 1989 Comp., p. 235), ''Debarment and Suspension.''

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations,* for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

**§ 215.3 Effect on other issuances.**

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in § 215.4.

**§ 215.4 Deviations.**

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

**§ 215.5 Subawards.**

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,'' published at 7 CFR parts 3015 and 3016, 10 CFR part 600, 13 CFR part 143, 15 CFR part 24, 22 CFR part 135, 24 CFR parts 44, 85, 111, 511, 570, 571, 575, 590, 850, 882, 905, 941, 968, 970, and 990, 28 CFR part 66, 29 CFR parts 97 and 1470, 32 CFR part 278, 34 CFR parts 74 and 80, 36 CFR part 1207, 38 CFR part 43, 40 CFR parts 30, 31, and 33, 43 CFR part 12, 44 CFR part 13, 45 CFR parts 74, 92, 602, 1157, 1174, 1183, 1234, and 2015, and 49 CFR part 18.

## Subpart B—Pre-Award Requirements

**§ 215.10 Purpose.**

Sections 215.11 through 215.17 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

**§ 215.11 Pre-award policies.**

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (*i.e.*, grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, ''substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.'' Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

**§ 215.12 Forms for applying for Federal assistance.**

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, ''Controlling Paperwork Burdens on the Public,'' with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, ''Intergovernmental Review of Federal Programs,'' (47 FR 30959, 3 CFR, 1982 Comp., p. 197) the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the *Catalog of Federal Domestic Assistance.* The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

**§ 215.13 Debarment and suspension.**

Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule (see § 215.5) implementing E.O.s 12549 and 12689, ''Debarment and Suspension.'' This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

**§ 215.14 Special award conditions.**

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

**§ 215.15 Metric system of measurement.**

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, ''Metric Usage in Federal Government Programs'' (56 FR 35801, 3 CFR, 1991 Comp., p. 343).

**§ 215.16 Resource Conservation and Recovery Act.**

Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct

Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

**§ 215.17 Certifications and representations.**

Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

## Subpart C—Post Award Requirements

### Financial and Program Management

**§ 215.20 Purpose of financial and program management.**

Sections 215.21 through 215.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

**§ 215.21 Standards for financial management systems.**

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in § 215.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, ''Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs.''

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

**§ 215.22 Payment.**

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain:

(1) Written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and

(2) Financial management systems that meet the standards for fund control and accountability as established in § 215.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, ''Request for Advance or Reimbursement,'' or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in § 215.12(b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraphs (h)(1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, ''Managing Federal Credit Programs.'' Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraphs (k)(1), (2) or (3) of this section apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations at 31 CFR part 205 do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, ''Outlay Report and Request for Reimbursement for Construction Programs.''

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

**§ 215.23 Cost sharing or matching.**

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraphs (c)(1) or (2) of this section.

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraphs (g)(1) or (2) of this section apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (*e.g.*, certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

**§ 215.24 Program income.**

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) of this section shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) of this section shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in § 215.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (see § 215.30 through § 215.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

**§ 215.25 Revision of budget and program plans.**

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, ''Cost Principles for Educational Institutions,'' and OMB Circular A–122, ''Cost Principles for Non-Profit Organizations,'' or 45 CFR part 74 Appendix E, ''Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,'' or 48 CFR part 31, ''Contract Cost Principles and Procedures,'' as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (*i.e.*, the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in this paragraph (e) are automatically waived (*i.e.*, recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever paragraphs (h)(1), (2) or (3) of this section apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in § 215.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

**§ 215.26 Non-Federal audits.**

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and revised OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

(c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

**§ 215.27 Allowable costs.**

For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, ''Cost Principles for State, Local, and Indian Tribal Governments.'' The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, ''Cost Principles for Non-Profit Organizations.'' The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, ''Cost Principles for Educational Institutions.'' The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, ''Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.'' The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

**§ 215.28 Period of availability of funds.**

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

**§ 215.29 Conditional exemptions.**

(a) OMB authorizes conditional exemption from OMB administrative requirements and cost principles circulars for certain Federal programs with statutorily-authorized consolidated planning and consolidated administrative funding, that are identified by a Federal agency and approved by the head of the Executive department or establishment. A Federal agency shall consult with OMB during its consideration of whether to grant such an exemption.

(b) To promote efficiency in State and local program administration, when Federal non-entitlement programs with common purposes have specific statutorily-authorized consolidated planning and consolidated administrative funding and where most of the State agency's resources come from non-Federal sources, Federal agencies may exempt these covered State-administered, non-entitlement grant programs from certain OMB grants management requirements. The exemptions would be from all but the allocability of costs provisions of OMB Circulars A–87 (Attachment A, subsection C.3), ''Cost Principles for State, Local, and Indian Tribal Governments,'' A–21 (Section C, subpart 4), ''Cost Principles for Educational Institutions,'' and A–122 (Attachment A, subsection A.4), ''Cost Principles for Non-Profit Organizations,)'' and from all of the administrative requirements provisions of Part 215 (OMB Circular A–110, ''Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,'') and the agencies' grants management common rule (see § 215.5).

(c) When a Federal agency provides this flexibility, as a prerequisite to a State's exercising this option, a State must adopt its own written fiscal and administrative requirements for expending and accounting for all funds, which are consistent with the provisions of OMB Circular A–87, and extend such policies to all subrecipients. These fiscal and administrative requirements must be sufficiently specific to ensure that: funds are used in compliance with all applicable Federal statutory and regulatory provisions, costs are reasonable and necessary for operating these programs, and funds are not be used for general expenses required to carry out other responsibilities of a State or its subrecipients.

## Property Standards

**§ 215.30 Purpose of property standards.**

Sections 215.31 through 215.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of § 215.31 through § 215.37.

**§ 215.31 Insurance coverage.**

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

**§ 215.32 Real property.**

Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (*i.e.*, awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the

Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

**§ 215.33 Federally-owned and exempt property.**

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (*e.g.*, the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, ''Improving Mathematics and Science Education in Support of the National Education Goals'' (57 FR 54285, 3 CFR, 1992 Comp., p. 323)). Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) *Exempt property.* When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is ''exempt property.'' Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

**§ 215.34 Equipment.**

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the Federal awarding agency which funded the original project, then

(2) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of

the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

**§ 215.35 Supplies and other expendable property.**

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

**§ 215.36 Intangible property.**

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements.''

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 215.34(g).

**§ 215.37 Property trust relationship.**

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

## Procurement Standards

**§ 215.40 Purpose of procurement standards.**

Sections 215.41 through 215.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

**§ 215.41 Recipient responsibilities.**

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

**§ 215.42 Codes of conduct.**

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award,

or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

**§ 215.43 Competition.**

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

**§ 215.44 Procurement procedures.**

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that paragraphs (a)(1), (2) and (3) of this section apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of ''brand name or equal'' descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (*e.g.*, fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The ''cost-plus-a-percentage-of-cost'' or ''percentage of construction cost'' methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, ''Debarment and Suspension.''

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, *etc.,* when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a ''brand name'' product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

**§ 215.45 Cost and price analysis.**

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and

evaluation of each element of cost to determine reasonableness, allocability and allowability.

**§ 215.46 Procurement records.**

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

(b) Justification for lack of competition when competitive bids or offers are not obtained; and

(c) Basis for award cost or price.

**§ 215.47 Contract administration.**

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

**§ 215.48 Contract provisions.**

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The ''bid guarantee'' shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A ''performance bond'' is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A ''payment bond'' is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, ''Surety Companies Doing Business with the United States.''

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of appendix A to this part, as applicable.

## Reports and Records

**§ 215.50 Purpose of reports and records.**

Sections 215.51 through 215.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

**§ 215.51 Monitoring and reporting program performance.**

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 215.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in § 215.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of

5 CFR part 1320 when requesting performance data from recipients.

**§ 215.52 Financial reporting.**

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the ''Remarks'' section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the ''Remarks'' section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons:

(A) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or,

(C) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the ''Remarks'' section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in § 215.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

**§ 215.53 Retention and access requirements for records.**

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in § 215.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts,

transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) *Indirect cost rate proposals, cost allocations plans, etc.* Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) *If submitted for negotiation.* If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) *If not submitted for negotiation.* If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

## Termination and Enforcement

### § 215.60 Purpose of termination and enforcement.

Sections 215.61 and 215.62 set forth uniform suspension, termination and enforcement procedures.

### § 215.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraphs (a)(1), (2) or (3) of this section apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2) of this section.

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in § 215.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

### § 215.62 Enforcement.

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in § 215.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c)(1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see § 215.13).

## Subpart D—After-the-Award Requirements

### § 215.70 Purpose.

Sections 215.71 through 215.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

### § 215.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not

authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with § 215.31 through § 215.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

**§ 215.72 Subsequent adjustments and continuing responsibilities.**

(a) The closeout of an award does not affect any of the following:

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 215.26.

(4) Property management requirements in § 215.31 through § 215.37.

(5) Records retention as required in § 215.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in § 215.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

**§ 215.73 Collection of amounts due.**

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by paragraphs (a)(1), (2) or (3) of this section.

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, ''Federal Claims Collection Standards.''

## Appendix A to Part 215—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, ''Equal Employment Opportunity'' (30 FR 12319, 12935, 3 CFR, 1964–1965 Comp., p. 339), as amended by E.O. 11375, ''Amending Executive Order 11246 Relating to Equal Employment Opportunity,'' and as supplemented by regulations at 41 CFR part 60, ''Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.''

2. *Copeland ''Anti-Kickback'' Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland ''Anti-Kickback'' Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, ''Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States''). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, ''Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction''). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2000 for construction contracts and in excess of $2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, ''Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,'' and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to

parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, ''Debarment and Suspension.'' This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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- South Carolina; published 5-11-04

**OFFICE OF MANAGEMENT AND BUDGET**

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Grants, other financial assistance, and nonprocurement agreements; published 5-11-04

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Airworthiness directives:
- Airbus; published 4-26-04
- Boeing; published 4-6-04
- Bombardier; published 4-6-04
- Construcciones Aeronauticas, S.A. (CASA); published 4-6-04
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- General Electric Co.; published 4-6-04
- Gulfstream Aerospace; published 4-6-04
- McDonnell Douglas; published 4-6-04
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**TREASURY DEPARTMENT**

**Community Development Financial Institutions Fund**

Grants and cooperative agreements; availability, etc.:
- Community Development Financial Institutions Program Financial Assistance Component; published 5-11-04

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- Real estate mortgage investment conduits; Section 446 application with respect to inducement fees; published 5-11-04

## COMMENTS DUE NEXT WEEK

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**Animal and Plant Health Inspection Service**

Plant-related quarantine, domestic:
- Mexican fruit fly; comments due by 5-17-04; published 4-15-04 [FR 04-08558]

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- Clementines, mandarins, and tangerines from Chile; pest risk assessment; comments due by 5-21-04; published 3-22-04 [FR 04-06325]

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Food Stamp Program:
- Farm Security and Rural Investment Act of 2002; implementation—
  - Employment and Training Program; comments due by 5-18-04; published 3-19-04 [FR 04-06184]

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- West Coast States and Western Pacific fisheries—
  - West Coast salmon; comments due by 5-20-04; published 5-5-04 [FR 04-10209]

International fisheries regulations:
- Pacific tuna—
  - Albacore tuna; comments due by 5-17-04; published 4-30-04 [FR 04-09849]

**COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA**

Semi-annual agenda; Open for comments until further notice; published 12-22-03 [FR 03-25121]

**DEFENSE DEPARTMENT**

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Danger zones and restricted areas:
- Mobile, AL; Coast Guard Base Mobile; comments due by 5-17-04; published 4-16-04 [FR 04-08603]

**ENERGY DEPARTMENT**

**Federal Energy Regulatory Commission**

Electric rate and corporate regulation filings:
- Virginia Electric & Power Co. et al.; Open for comments until further notice; published 10-1-03 [FR 03-24818]

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Air pollution control; new motor vehicles and engines:
- Light-duty vehicles, light-duty trucks, and heavy-duty vehicles; emission durability procedures; comments due by 5-17-04; published 4-2-04 [FR 04-06297]

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  - Minnesota and Texas; Open for comments until further notice; published 10-16-03 [FR 03-26087]

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- Various States; comments due by 5-17-04; published 4-9-04 [FR 04-08048]

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- Evaluating safety of antimicrobial new animal drugs with regard to their microbiological effects on bacteria of human health concern; Open for comments until further notice; published 10-27-03 [FR 03-27113]

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- Maryland; Open for comments until further notice; published 1-14-04 [FR 04-00749]

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- Massachusetts; comments due by 5-17-04; published 4-27-04 [FR 04-09482]

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  - Security zone; comments due by 5-19-04; published 5-4-04 [FR 04-10112]

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Garmin AT and Apollo GX series global positioning system navigation units with software versions 3.0 through 3.4 inclusive; comments due by 5-17-04; published 4-1-04 [FR 04-07288]

McDonnell Douglas; comments due by 5-17-04; published 4-1-04 [FR 04-07294]

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## LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal_register/public_laws/public_laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

**S. 1904/P.L. 108–225**

To designate the United States courthouse located at 400 North Miami Avenue in Miami, Florida, as the "Wilkie D. Ferguson, Jr. United States Courthouse". (May 7, 2004; 118 Stat. 641)

**S. 2022/P.L. 108–226**

To designate the Federal building located at 250 West Cherry Street in Carbondale, Illinois the "Senator Paul Simon Federal Building". (May 7, 2004; 118 Stat. 642)

**S. 2043/P.L. 108–227**

To designate a Federal building in Harrisburg, Pennsylvania, as the "Ronald Reagan Federal Building". (May 7, 2004; 118 Stat. 643)

**Last List May 6, 2004**

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